ACTS
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THE CODE OF CRIMINAL PROCEDURE ACT, 2008

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SCHEDULES TO THE CODE OF CRIMINAL PROCEDURE ACT, 2008

LAWS OF SOUTHERN SUDAN

THE CODE OF CRIMINAL PROCEDURE ACT, 2008

In accordance with the provisions of Article 59 (2) (b) read together with Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enacts the following—

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement.

This Act may be cited as "The Code of Criminal Procedure Act, 2008", and shall come into force as from the date of its signature by the President.

Signed on 20th March, 2008

2. Repeal and Saving.

The Criminal Procedure Code Act, 2003, is hereby repealed; provided that, all proceedings, orders and regulations taken or made there under, except to the extent they are cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until such time as they shall be lawfully repealed or amended in accordance with the provisions of this Act. In no event shall the provisions of this Act affect individual cases in process or already decided.

3. Purpose.

The purpose of this Act is to establish the rules and procedures which govern the criminal justice system in Southern Sudan, in order to foster a just, peaceful and secure society.

4. Authority and Application.

(1) This Act is drafted in accordance with the provisions of Schedule (B) of the Interim Constitution of Southern Sudan, 2005, and is part of the effort to establish minimum Southern Sudan standards and uniform norms in the areas of criminal laws and judicial institutions.

(2) The provisions of this Act represent the minimum standards that shall be applied to all the criminal proceedings in or before any Court in Southern Sudan, except for criminal proceedings under National Laws, which shall be governed by national legislation.

5. Interpretations.

(1) In this Act, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively—

"Bail" means the money or sureties provided by the accused to guarantee that he or she shall appear in Court at a later date or on call;

"Charge" means the formal accusation of any offence as framed therein as a preliminary step in prosecution, and includes any head of charge when the charge contains more than one head;

"Chief" includes any chief, sub-chief or headman of a village, Boma, Payam or of any town, and any other person by whatever title known, who has the function of preserving security and order;

"Code" means the Code of Criminal Procedure and any amendments that may ensue hereto;

"Code of Evidence" means the law governing the admissibility of evidence in the Courts of Southern Sudan, as may be applicable from time to time;

"Complaint" means an oral or written allegation presented by a person, against whom or within the limits of whose responsibility the offence has been alleged to have been committed, but it does not include a police report;

"Compound" means to agree not to prosecute in return for a consideration or otherwise;

"Constitution" means the Interim Constitution of Southern Sudan, 2005 (ICSS); or State Constitution;

"Court" means any court of competent jurisdiction in Southern Sudan;

"Directorate of Public Prosecution" means the Directorate of Public Prosecution established within the Ministry of Legal Affairs and Constitutional Development, responsible for Public Prosecution;

"Deponent" means a person who testifies by deposition, or gives written testimony for later use in Court;

"First Information Report" means the initial written document, prepared by the police, in response to the receipt of information or a complaint pertaining to an offence;

"Government" means the Government of Southern Sudan (GoSS) or a State Government;

"Government and State Institutions" means the institutions of the government established at the GoSS or State levels;

"Information" means an allegation of an offence made by any person entrusted with preserving security and order, or any person as to offences to which a public right relates;

"Interim period" means the six year period following the 9th July 2005;

"Investigation" means the act or process of finding out relevant facts that concern a crime, and includes all proceedings by the police acting pursuant to the directives of the Public Prosecution Attorney, Magistrate or Court, as the case may be for the collection of evidence;

"Investigator" means the person charged with enumeration, recording and arrangement of particulars and executing the procedure and directives relating to investigation;

"Local Limits of Jurisdiction" means the local limits of the Government, State, County or Payam in which the police, Public Prosecution Attorney, Magistrate or Court ordinarily exercises his, her, or its functions, provided that, a Magistrate, except in so far as his or her powers are limited by the terms of his or her appointment or otherwise, may exercise his or her powers in any part of Southern Sudan in which he or she happens to be;

"Magistrate" means the Magistrate presiding over any competent criminal court in Southern Sudan;

"Minister" means the Minister of Legal Affairs and Constitutional Development;

"Ministry" means the Ministry of Legal Affairs and Constitutional Development;

"Officer-in-Charge of a Police Station" means the policeman or policewoman in charge of the police station at a particular time;

"Penal Code" means the Penal Code Act, 2008 of Southern Sudan, as may be in effect from time to time;

"Pleader" means any person authorised under section 182 to act as a pleader in a criminal proceeding;

"Police" or "Policeman" or "Policewoman" means any member of the police force of whatever rank;

"President" means the President of the Government of Southern Sudan;

"President of the Supreme Court" means the head of the judiciary of Southern Sudan;

"Public Prosecution Attorney" means the Legal Counsel charged with the prosecution of a matter, and who exercises the authority of the Minister in criminal matters;

"Sanctions" means the authority that must be obtained before commencing certain types of criminal proceedings;

"SDG" means the Sudanese Pound;

"Summary" means a trial which decides some of the criminal cases without adherence to the formalities of pleadings or other types of Court procedures;

"Take Cognizance" means when a person takes notice of an event or matter in his or her official capacity; and

"Under Secretary" means the Under Secretary of the Ministry of Legal Affairs and Constitutional Development.

(2) Terms not specifically defined herein, and which are defined in either the Penal Code or the Evidence Act, 2006, as in force from time to time, shall have the meanings set forth in those laws, unless the context is inconsistent, and except where it is otherwise expressly provided.

6. Principles to be Observed.

In the application of this Act the following principles shall be observed—

(a) every accused person shall have the right of a fair and speedy trial, and justice shall not be delayed;

(b) every accused person is presumed innocent until his or her guilt is proved beyond reasonable doubt;

(c) that no accused person shall be forced to incriminate himself or herself;

(d) no punishment shall be inflicted upon any person exceeding that prescribed by the law in force at the time such an offence was committed;

(e) no person shall be subject to cruel or inhuman treatment or punishment;

(f) justice shall be done to all, irrespective of such person's social or economic status, gender, religion or belief;

(g) adequate compensation shall be awarded to victims of offences;

(h) due regard shall, as far as possible, be had to lenity in the procedure of inquiry and summons, and the exercise of the powers of arrest shall not be resorted to except when necessary;

(i) voluntary reconciliatory agreements between parties shall be recognized and enforced; and

(j) substantive justice shall be administered without undue regard to technicalities.

CHAPTER II

COMPETENCES AND POWERS OF CRIMINAL COURTS

General Provisions

7. General Authority.

The criminal courts of Southern Sudan shall have the power to try all criminal cases, impose sentences and other penalties, and to award compensation to victims of offences.

8. Offences Under the Penal Code and Other Laws.

(1) All offences under the Penal Code shall first be investigated, charge framed, submitted for trial and otherwise dealt with according to the provisions of this Act.

(2) All offences against any other law shall first be investigated; charge framed, submitted for trial and otherwise dealt with according to the provisions of such law, but shall be subject to any provisions in this Act, regarding the manner or place of investigation, trial or other matters dealing with such offences.

(3) Any offence in any other law may be tried by any Court mentioned in such law or by any Court with greater powers, but shall not be tried summarily unless it is explicitly provided for in the law, or unless it is; provided that, it may be tried by a County Court of a Magistrate of the Third Class or Payam Judge.

(4) Further, when no Court is so mentioned, the offence may be tried by any Court, but shall not be tried summarily, if the offence is punishable with death or imprisonment for a term exceeding six months; provided that—

(a) an offence punishable with death or imprisonment for life shall be tried exclusively by a High Court;

(b) a County Court of a Magistrate of the First Class shall not try an offence punishable with imprisonment for a term which may exceed seven years or with a fine exceeding SDG5000;

(c) a County Court of a Magistrate of the Second Class shall not try an offence punishable with imprisonment for a term exceeding three years or with a fine exceeding SDG2500; and

(d) a Payam Court shall not try an offence punishable with imprisonment for a term exceeding six months or with a fine exceeding SDG150.

Criminal Courts and Their Powers

9. Criminal Courts.

There shall be established the following six levels of Courts in Southern Sudan with jurisdiction over certain criminal matters—

(a) The Supreme Court;

(b) The Courts of Appeal;

(c) The High Courts;

(d) County Courts of Magistrates of the First Class;

(e) County Courts of Magistrates of the Second Class; and

(f) Payam Courts.

10. The Supreme Court.

The Southern Sudan Supreme Court shall have the following powers and competence—

(a) to serve as the Court of final judicial adjudication in respect of any litigation or prosecution under Southern Sudan or State law, including statutory and customary law, except that any decisions arising under national laws shall be subject to review and decision by the National Supreme Court;

(b) have original jurisdiction to adjudicate disputes that arise under the ICSS and the Constitutions of the States of Southern Sudan at the instance of individuals, juridical entities or governments;

(c) be a Court of review and cassation in respect of any criminal, civil and,or administrative matters arising out of or under the laws of Southern Sudan;

(d) have criminal jurisdiction over the President and Vice President of the Government of Southern Sudan and the Speaker of Southern Sudan Legislative Assembly;

(e) review and confirm death and life imprisonment sentences imposed by Southern Sudan Courts in respect of offences committed under the laws of Southern Sudan;

(f) receive appeals from decisions and judgments of the Courts of Appeal;

(g) adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws of Southern Sudan States to the extent of inconsistency; and

(h) have such other competences as may be determined by this Act or any other law.

11. The Court of Appeal.

A Southern Sudan Court of Appeal shall have the following powers and competencies in the area of criminal law—

(a) all the powers granted to a High Court;

(b) power to receive appeals against judgments of High Courts;

(c) hearing appeals from the attachment of property; and

(d) such other competences as may be determined by this Act or any other law.

12. The High Court.

A High Court shall have the following powers and competences in the area of criminal law to—

(a) serve as the exclusive trier of any offence punishable with death or life imprisonment;

(b) pass any penalty, sanction or sentence authorised by law;

(c) direct the release of an individual on probation;

(d) require the execution of bonds for keeping the peace or good behaviour, subject to the provisions of section 140 of this Act;

(e) make orders providing for police supervision;

(f) release persons imprisoned for failing to give security;

(g) reduce security;

(h) cancel bonds for keeping the peace;

(i) review appeals;

(j) review of certain criminal proceedings on its own motion; and

(k) such other competences as may be determined by this Act or any other law.

13. County Court of a Magistrate of the First Class.

(1) A County Court of a Magistrate of the First Class shall have the following powers and competences in the area of criminal law—

(a) power to require the execution of bonds for keeping the peace or good behaviour, subject to the provisions of section 140 of this Act;

(b) make orders providing for police supervision;

(c) in the case of an offender who, in the opinion of the Magistrate, is under eighteen years of age, resolve or try the case in accordance with the procedures applicable to the juveniles; and

(d) have such other competences as may be determined by this Act or any other law.

(2) Limitations on the Court's Authority—

(a) when trying an offence non-summarily, the Court of a Magistrate of the First Class may pass the following penalties, sanctions or sentences—

(i) imprisonment for a term not exceeding seven years;

(ii) fine not exceeding SDG5000;

(iii) detention; and

(iv) compensation, care and reform measures.

(b) when trying an offence summarily, such Court may pass the following penalties, sanctions or sentences—

(i) imprisonment for a term not exceeding one year;

(ii) fine not exceeding SDG100;

(iii) compensation, care and reform measures.

14. County Court of a Magistrate of the Second Class.

(1) A County Court of a Magistrate of the Second Class shall have the following powers and competences in the area of criminal law—

(a) power to require the execution of bonds for keeping the peace or good behaviour, subject to the provisions of section 140 of this Act;

(b) make orders providing for police supervision;

(c) in the case of an offender who is in the opinion of the Magistrate is under eighteen years of age, resolve or try the case in accordance with the procedures applicable to the juveniles; and

(d) have such other competences as may be determined by this Act or any other law.

(2) Limitations on the Court's Authority—

(a) when trying an offence non-summarily, the County Court of a Magistrate of the Second Class may pass the following penalties, sanctions or sentences—

(i) imprisonment for a term not exceeding three years;

(ii) fine not exceeding SDG2500;

(iii) detention; or

(iv) compensation, care and reform measures.

(b) when trying an offence summarily, it may pass the following penalties, sanctions and sentences—

(i) imprisonment for a term not exceeding six months;

(ii) fine not exceeding SDG150; and

(iv) compensation, care and reform measures.

15. Payam Courts.

A Payam Court shall only try cases summarily and may pass the following sentences—

(a) imprisonment for a term not exceeding one year; and

(b) fine not exceeding SDG300.

Special Courts

16. Special Courts.

(1) The President of the Supreme Court may constitute Special Courts for the trial of juvenile offenders and he or she may prescribe the procedure to be followed by such Courts;

(2) The President of the Supreme Court may convene a Special Court to be presided over by a High Court Judge or any other Senior Judge to be assisted by two assessors for the trial of tribal or sectional conflicts and disputes involving capital offences;

(3) A High Court Judge may convene a Special Court presided over by a County Court Magistrate of the First Class, assisted by four assessors for the trial of tribal or sectional conflicts and disputes not involving capital offences; and

(4) The President of the Supreme Court may, by order, constitute a Special Court for the trial of any person accused under Chapters V and VI (inclusive) of the Penal Code.

Temporary and Delegated Powers

17. Powers of Acting Officials.

All the powers and duties vested in any person under this Act by virtue of his or her office may be exercised and performed by any other person temporarily officiating in such office during a vacancy or in the absence or incapacity of the holder of the office.

18. Delegation of Powers by the President.

The President may by an order signed by him or her delegate all or any of the powers reserved to him or her under this Act and subject to any restriction or modification either generally or in any particular case or class of cases, to any person or persons when he or she deems it appropriate.

19. Delegation of Powers by the President of the Supreme Court.

The President of the Supreme Court may delegate temporary powers of a criminal court to a public servant or any other person, when he or she deems it appropriate for the exercise of a judicial function, subject to the provisions of the Judiciary Act, 2008, and any other applicable law.

20. Ex-Officio Magistrates.

By virtue of his or her office, a Judge of the Court of Appeal and a High Court Judge is deemed to be a Magistrate of the First Class.

21. Subordination of Magistrates to High Court Judges.

All Magistrates exercising their functions within any circuit (except the Supreme Court and Appeal Court Judges) shall be subordinate to the High Court Judge who shall, subject to any directives from the President of the Supreme Court, distribute the business amongst the Magistrates subordinate to him or her.

CHAPTER III

THE DIRECTORATE OF PUBLIC PROSECUTION

22. Establishment of the Directorate of Public Prosecution.

(1) Pursuant to the provisions of Ministry of Legal Affairs and Constitutional Development Organization Act, 2008, establishing the Directorate of Public Prosecution in the Ministry, the Directorate's competences and powers shall be specified by the Minister, and the Minister may also identify specialized Public Prosecution Attorneys to handle specific types of cases.

(2) The Directorate of Public Prosecution shall consist of the Minister, the Under-Secretary of the Ministry, and the Directors of Specialized Units, as well as the Directors of Legal Administrations in the States, all of whom shall be deemed to be Public Prosecution Attorneys.

(3) The Minister shall make such regulations, as may be necessary to efficiently organize the work of the Directorate of Public Prosecution, including the establishment of its structure, as well as the grades of its members and their respective competences and powers.

23. Powers and Functions of the Directorate.

(1) The Directorate of Public Prosecution shall have the following powers and functions—

(a) to supervise the progress of criminal cases, including, but not limited to directing or executing the investigation, framing of the charges, and prosecution of cases on behalf of the Government and, during four years into the Interim Period at the State level, before the criminal courts of Southern Sudan;

(b) to render legal advice to the Government and State Institutions in all matters relating to criminal law and criminal procedures and any other relevant penal laws;

(c) to supervise all the Public Prosecution Attorneys at the Government and State levels; and

(d) to perform any other duty or function that may be assigned to it, or which is reasonably related to the foregoing activities.

(2) The Minister may grant powers of a Public Prosecution Attorney in inquiry, to any person, or commission, whenever he or she deems that it is in furtherance of the cause of justice.

24. Confirmation and Appeal of Decisions of the Public Prosecution Attorney.

(1) The decision of the Public Prosecution Attorney to dismiss a criminal case, refuse to initiate criminal case, refuse to frame a charge, to pursue an arrest or seize property, may be appealed against to the direct senior of such Public Prosecution Attorney.

(2) Upon consideration of the appeal, the Senior Public Prosecution Attorney shall have the power to confirm, alter or set aside the decision.

(3) The final decision of the Director of Public Prosecution may be appealed against to the Court of Appeal.

25. Stay of Criminal Proceedings.

(1) The Minister may after completion of an investigation and at any stage of inquiry and before the finding in any trial, stay the criminal proceedings against any accused on reasonable grounds.

(2) The Minister may inform the Magistrate who has taken cognizance of the offence or Magistrate or court conducting such inquiry or trial that he or she intends to stay proceedings.

CHAPTER IV

POLICE AND PRISONS UNITS AND THEIR FUNCTIONS

26. Police and Prisons Powers.

The various police duties and functions in the area of criminal justice shall be the responsibility of the Public Prosecution Attorney, the Police Service and Prisons Services, as described in this Chapter and any other law.

27. Functions and Powers of Crime Police Unit.

(1) There shall be established in the Police Service, a Crime Police Unit whose functions and duties shall be to conduct investigations into criminal matters, subject to the supervision of the Public Prosecution Attorney.

(2) The Crime Police shall have the following functions and powers—

(a) to conduct any investigation or criminal proceedings according to the directives of the Public Prosecution Attorney;

(b) present criminal cases to criminal court in accordance with the directives of the Public Prosecution Attorney;

(c) to execute orders as may be passed by the Public Prosecution Attorney; and

(d) such other competences as may be determined by this Act or any other law.

28. Functions and Powers of the Court Police.

(1) There shall be established in the Police Service a Court Police Unit, under the Crime Police whose functions and duties shall be to serve in the Southern Sudan Courts.

(2) The Court Police shall have the following functions and powers—

(a) preparation of the cases for judicial hearings and sittings;

(b) controlling security and order in the Courts;

(c) execution of such penalties, as may be assigned thereto by the Courts;

(d) execution of such orders and directives, as may be passed by the Courts; and

(e) performance of any other task, as may legally be assigned thereto by the Court or any other law.

29. Functions and Powers of the Prisons Service.

Subject to the provisions pertaining to the execution of penalties provided for in this Act, the Prisons Service shall have the following functions and powers—

(a) executing death and imprisonment sentences and any other penalty, the execution of which is entrusted thereto by the Court;

(b) executing detention orders entrusted thereto by the Court; and

(c) the performance of any other task, as may be assigned thereto under any other law.

30. Establishment, Organization, Functions and Powers of the Police Service.

(1) There shall be established a Police Service, which shall *inter alia*, have the following functions and powers—

(a) prevent, combat and investigate crime;

(b) maintain law and public order;

(c) protect the people of Southern Sudan and their properties; and

(d) uphold and enforce the ICSS and the law.

(2) Without prejudice to the provisions of subsection (1) above, the Police Service shall have the following functions and powers with respect to criminal cases—

(a) receive information and complaints with respect to offences;

(b) conduct criminal investigations, under the supervision and directives of the Public Prosecution Attorney;

(c) execute the judicial judgments and orders, or any legal judgment, or decisions, as may be passed by the Public Prosecution Attorney, Magistrate, Court or any other competent authority, as the case may be;

(d) perform technical criminal research;

(e) present criminal cases to the Magistrates or Courts, in accordance with the directives of the Public Prosecution Attorney;

(f) conduct investigations in accordance with the provisions of this Act and any other applicable law;

(g) arrest, in accordance with the provisions of this Act and any other applicable law;

(h) closure of public roads and places, in accordance with the provisions of section 166 of this Act;

(i) to search, detect and seize, in accordance with the directives of the Public Prosecution Attorney, Magistrate or Court, as the case may be;

(j) take bonds and securities, in accordance with the provisions of this Act and any other applicable law;

(k) execute summons, warrants of arrest and search, in accordance with the provisions of this Act;

(l) require the assistance of any person, to prevent the occurrence of any offence, or to detect the same; and

(m) such other powers as may be assigned by law.

31. Power of Officer-in-Charge of a Police Station When Public Prosecution Attorney and Judge Absent.

(1) The officer-in-charge of a police station, shall exercise the powers of supervision of investigation, only in the case of absence of the Public Prosecution Attorney, Magistrate or Court, and may, at the same time, exercise their powers relating to initiation of the criminal proceedings, dismiss the same, frame the charge and power of detection, subject to the same rules and restrictions that apply to the Public Prosecution Attorney, Magistrate and, or Court under this Act; and

(2) Absence of the Public Prosecution Attorney, Magistrate or Judge means that no Public Prosecution Attorney, Magistrate or Judge has been appointed, or that they are actually absent temporarily, by reason of leave, illness or any other reason and no substitute has been appointed for any one of them.

32. Inspection of Prisons.

The Public Prosecution Attorney, Magistrate or Court, as the case may be, may enter the prison, inspect the same and get acquainted with the conditions of the detainees and the convicts.

33. Inspection of Custodies.

The Public Prosecution Attorney or in his or her absence, the Magistrate or Court, as the case may be, shall daily inspect custodies and check the arrests register and verify the validity of procedures and advise on the treatment of the arrested persons, in accordance with the law.

CHAPTER V

CRIMINAL CASES

Initiation of a Criminal Case

34. Manner of Initiation.

A criminal case shall be initiated, upon taking cognizance by the police under the directives of the Public Prosecution Attorney, Magistrate or Court, as the case may be, upon such information or complaint as may be presented to them.

35. Presentation of Information and Complaint.

(1) Information shall be presented by any person entrusted with preserving security and order, or any person as to offences to which a public right relates; and

(2) A complaint shall be presented by the person, against whom, or within whose responsibility an offence has been committed, or by whoever deputizes for him or her. Where the person against whom the offence has been committed is a juvenile, invalid, idiot or lunatic, any person competent as his or her guardian may present the complaint on his or her behalf.

36. Decisions of Public Prosecution Attorney.

(1) After consideration of the facts of the case, the Public Prosecution Attorney may decide to—

(a) prosecute the criminal matter;

(b) refuse to initiate criminal proceedings or case; or

(c) dismiss the criminal case.

(2) The decision of the Public Prosecution Attorney to—

(a) initiate or refuse to initiate criminal proceedings;

(b) frame or refuse to frame the charges;

(c) arrest or refuse to arrest;

(d) seize or refuse to seize; and

(e) to take any other action which restricts freedom, as to life, or property,

may be appealed against to the Public Prosecution Attorney's direct senior in charge within his or her jurisdiction.

(3) In case of an appeal under subsection (2) above, the Public Prosecution Attorney shall, as soon as possible, submit his or her decision of dismissal of the criminal case to his or her direct senior in charge within his or her jurisdiction.

Limits of Local Jurisdiction

37. Place of Investigation and Trial.

(1) Investigation as to any offence shall ordinarily be conducted by the Police Service under the directives of the Public Prosecution Attorney, or in the absence of the Public Prosecution Attorney, under the directives of the Magistrate or the Court, and trials as to any offence shall ordinarily be conducted by the Magistrate or Court within the local limits of jurisdiction in which—

(a) the offence was wholly or in part committed;

(b) some act forming part of the offence was committed;

(c) some consequence of the offence has ensued;

(d) an offence was committed by reference to which the offence is defined;

(e) person against whom, or property in respect of which, the offence was committed is found, having been transported there by the offender or by some other person knowledgeable about the offence; or

(f) the existence of the complainant, or the accused, or any property, with respect to which the offence has been committed, and the competent Public Prosecution Attorney deems it necessary and appropriate that investigation should not be returned to the limits of local jurisdiction wherein the offence has taken place.

Illustrations—

In all the following cases "A" may be tried either in Wau or Yei—

(a) "A" posts in Wau a letter addressed to "B" in Yei threatening to accuse "B" of an offence in order to extort money from him or her;

(b) "A" stabs "B" in Wau and "B" dies ten days in Yei as a consequence of the wound;

(c) "A" in Wau abets an offence committed by "B" in Yei;

(d) "A" abducts "B" in Wau and carries him or her to Yei where he or she is found; and

(e) "A" steals property in Wau and the property is taken by "B", who knows it to be stolen, to Yei where it is found.

(2) When there is doubt as to which is the competent Magistrate or Court within a particular jurisdiction under subsection (1) above, the High Court or the County Court of First Class Magistrate shall decide which local area should exercise jurisdiction and before what Court a trial shall take place within the Circuit or County.

38. Location of Commission is Uncertain.

Where it is uncertain in which of several local areas an offence was wholly or in part committed, the investigation of the offence may be conducted by the General Police Service, Public Prosecution Attorney, or in the absence of the Public Prosecution Attorney, the Magistrate or Court having jurisdiction over any of such local areas.

39. Offences Committed Where Penal Code is not in Force.

Every offence which by virtue of the Penal Code may be punished under that Code, although committed outside Southern Sudan, may be dealt with under this Act, as if it has been committed at any place in Southern Sudan where the offender may be found.

Power to Transfer to Other Jurisdictions

40. Transfer of Criminal Cases.

(1) Whenever the Public Prosecution Attorney takes cognizance of any offence, and deems it appropriate pursuant to the rules governing jurisdiction or distribution of work, that the investigation should be conducted by another Public Prosecution Attorney, he or she may transfer the investigation thereto.

(2) The Minister, Under Secretary, the Director of Public Prosecution and his or her subordinates in any State, may issue an order transferring an investigation from one Public Prosecution Attorney to another, within the local limits of his or her jurisdiction, whenever he or she deems it necessary and appropriate in the interest of justice.

(3) The Directors of the Legal Administrations in the States or the Director of Public Prosecution may issue an order transferring any investigation from one Public Prosecution Attorney to another, within the local limits of his or her jurisdiction, whenever he or she deems that such transfer will promote the interests of justice.

(4) The Minister may transfer any investigation from one Public Prosecution Attorney to another, within Southern Sudan, whenever he or she deems it necessary and appropriate in the interest of justice.

(5) Whenever it appears that a transfer will promote the ends of justice or will be in the interest of public tranquility, the President of a Court of Appeal, High Court or the County Court Magistrate of First Class may transfer any case from one Court within the local Circuit or County to another at any stage of the proceedings.

(6) The President of the Supreme Court may make the transfer from one Court to any other Court in Southern Sudan.

41. Power to Issue Summons or Warrant of Arrest for Offence Committed beyond Local Jurisdiction.

When a Public Prosecution Attorney has reason to believe that a person within the local limits of his or her jurisdiction has committed an offence outside such local limits of jurisdiction, and such offence cannot under the provisions of section 37 of this Act, or any other law for the time being in force, be investigated within such local limits, but is triable under a law in force in Southern Sudan, he or she may investigate the offence as if it had been committed within such local limits of jurisdiction and compel such person in the manner hereinbefore provided to appear before him or her and send such person to a Public Prosecution Attorney having jurisdiction to investigate the offence or, if the offence is bailable, may take a bond with or without sureties for his or her appearance before such Public Prosecution Attorney.

42. Proceedings not Invalid by Reason of Lack of Jurisdiction.

Criminal proceedings, orders and judgments of any Court, shall not be deemed to be invalid by reason of the fact that according to the provisions of this Chapter, such proceedings should have been taken by or before some other local jurisdiction; provided that, such actions were taken in good faith.

CHAPTER VI

RESTRICTIONS ON INITIATING CRIMINAL CASES

43. Cases Involving Public Servants.

(1) No Public Prosecution Attorney shall take cognizance of any offence—

(a) punishable under the Penal Code, involving or pertaining to offences against public servants, except with the previous sanction or on the complaint of the public servant concerned or of public servant to whom he or she is subordinate;

(b) punishable under the Penal Code under sections 127, 130, 131, 132, 133, 136, 137, 138, 146, 147, 148, 151, 152 and 154, when such offence is committed in or in relation to any proceedings in any Court, except with the previous sanction or on the complaint to such Court or to the President of the High Court or to the County Court Magistrate or of any Court to which such Court is subordinate;

(c) described in Penal Code under section 357 or punishable under section 361 or 363, when such offence has been committed by a party to any proceedings in any Court in respect to a document produced or given in evidence in such proceedings,

except with the previous sanction or on the complaint of such Court or of the President of the High Court or of the County Court Magistrate or of any Court to which such Court is subordinate; and

(d) punishable under section 260 of the Penal Code, or of failing to give information of such an offence except with the previous sanction of the concerned County authority.

(2) In subparagraphs (1) (b) and (c) above, the term "Court" shall include every civil, criminal or customary law court.

(3) The provisions of subsection (1) above, with reference to the offences named therein, also apply to the abetment of such offences and attempt to commit them.

(4) The sanctions referred to in this section may be expressed in general terms and need not name the accused person, but it shall so far as practicable specify the place where and the occasion on which the offence was committed.

(5) When a sanction is given in respect of any offence referred to in this section, the Public Prosecution Attorney, Magistrate or Court taking cognizance of the offence may frame a charge of any other offence which is disclosed by the facts.

(6) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing to grant it is a subordinate.

44. Trial of Offences Against the Government.

No person shall be brought to trial under section 7 of the Penal Code, or the provisions of Chapters V and VI of the Penal Code or under any other law without a previous written sanction of the President or of the person whom he or she authorizes to give such sanction; provided that the President of the Supreme Court of Southern Sudan, by order, constitutes a Special Court for the trial of any person accused under the abovementioned sections of the Penal Code or any other Law.

Compounding

45. Compounding Offences.

(1) No offence shall be compounded except as provided by this section.

(2) The compounding of an offence under this section shall have the effect of an acquittal of the accused.

(3) The offences punishable under the sections of the Penal Code described in the first two columns of the table attached hereto as Schedule I, may be compounded by the persons mentioned in the third column of that table.

(4) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is in itself an offence) may be compounded in like manner.

(5) When the person who would otherwise be competent to compound an offence under this section is a juvenile, invalid, an idiot or a lunatic, any person competent as his or her guardian may compound the offence.

(6) The offences mentioned in Chapter I of the table attached as Schedule I, may be compounded without the leave of any authority at any time before the accused person is convicted by a County Court Magistrate or committed for trial to a High Court.

(7) The offences mentioned in Chapter II of the table attached as Schedule I, may be compounded before the County Court Magistrate who has convicted the accused person or committed for trial, only with the consent of a Magistrate who has jurisdiction to try the accused person for the offence or to commit him or her for trial.

(8) After a commitment for trial, an offence shall not be compounded except—

(a) with the leave of the committing Magistrate if the trial has not commenced; or

(b) with the leave of the Court trying the case if the trial has commenced and has not been concluded.

(9) After a trial, whether before a Magistrate or a Court, an offence shall not be compounded except with the leave of the authority to whom an appeal would lie or which has the power to call for the proceedings under section 265 of this Act.

46. Lapse of Criminal Case.

(1) A criminal case shall lapse, and shall therefore not be subject to prosecution, for any of the following reasons—

(a) the matter is resolved by reason of the death of the accused, or upon compounding of the criminal case;

(b) passing a final judgment therein of acquittal or conviction;

(c) decision by the Public Prosecution Attorney refusing to frame the charge, or the dismissal of the criminal case; and or

(d) a decision by the Minister staying the criminal proceeding.

(2) Where the criminal case lapses, for any one of the reasons mentioned in subsection (1) above, no other criminal case based upon the same facts shall be initiated, except in case of non-framing of charges, or dismissal of the criminal case.

47. Period of Limitation.

(1) No criminal case shall be initiated with respect to an offence for which the period of limitation has lapsed.

(2) The following offences shall have uninterrupted periods of limitation as follows—

(a) ten years, in any offence, the commission of which is punishable with death, or imprisonment for ten years, or more;

(b) five years, in any offence, the commission of which is punishable with imprisonment for more than one year; and

(c) two years, in any other offence.

(3) The running of the periods of limitation shall be interrupted, when and if the criminal case is initiated within the period of limitation.

48. Persons Previously Convicted or Acquitted.

(1) A person who has once been tried by a Magistrate or Court of competent jurisdiction for an offence and convicted or acquitted of that offence shall, while such conviction or acquittal remains in force, not be liable for trial again for the same offence and the same facts, or for any other offence for which a different charge from the one made against him or her might have been made under section 244 of this Act or of which he or she might have been convicted under section 245 of this Act.

(2) A person convicted of any offence constituted by any act causing consequences, which together with such act constituted a different offence from that of which he or she was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened or were not known to the Magistrate or Court to have happened at the time when he or she was convicted.

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

Illustrations—

(a) "A" is tried upon a charge of theft as a servant and acquitted. He or she cannot afterwards, while the acquittal remains in force, be charged with theft as a servant or upon the same facts with the theft simply or with criminal breach of trust; and

(b) "A" is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that "A" committed robbery at the time when the murder was committed; he or she may afterwards be charged with and tried for robbery.

49. Previous Acquittal or Conviction, when to be Proved.

A previous acquittal or conviction may be pleaded or proved at any stage of an inquiry or trial for the same offence or any other offence to a charge of which it is a bar. Upon the previous acquittal or conviction being proved, the accused shall be discharged.

50. Prosecution for Defamation and Offences Against Marriage.

No Public Prosecution Attorney, Magistrate or Court shall take cognizance of any offence falling under sections 264, 265 and 289 of the Penal Code, except upon a complaint made by the person aggrieved by such offence.

51. Prosecution for Adultery, Enticing a Married Woman.

No Public Prosecution Attorney, Magistrate or Court shall take cognizance of an offence under sections 266, 267 or 396 of the Penal Code, except upon a complaint made by the spouse or the aggrieved.

CHAPTER VII

INVESTIGATION OF CRIMINAL CASES

52. Authority to Conduct Investigations.

(1) Investigations shall be conducted by the police under the supervision and directive of the Public Prosecution Attorney, or in the absence of the Public Prosecution Attorney, the Magistrate, as the case may be, in accordance with the provisions of this Act.

(2) The Public Prosecution Attorney or Magistrate may exercise the powers of investigation, or complete the investigation himself or herself, where necessity requires.

53. Preparation of First Information Report.

(1) When information is given to the officer-in-charge of a police station of facts supporting the commission of an offence within his or her local limits of jurisdiction, other than by a public servant acting in the exercise of his or her public duties, and regardless as to whether the police is authorised to arrest with or without a warrant, the officer-in-charge of a police station shall—

(a) reduce the information or cause the information to be reduced to writing in the prescribed form called the First Information Report or such other report as may be prescribed with respect to the type of offence;

(b) read it or cause it to be read over to the informant or complainant, if any;

(c) cause the First Information Report to be signed or sealed by the complainant or person providing such information;

(d) enter or cause to be entered the substance thereof in a book to be kept in the prescribed form called the Register of Information; and

(e) refer the report to the appropriate Public Prosecution Attorney, or if there is no Public Prosecution Attorney, to the Magistrate or the Court, as the case may be.

(2) When on any other grounds the officer-in-charge of a police station has reason to suspect the commission of an offence, he or she shall enter or cause to be entered the grounds of his or her suspicion in a First Information Report and the substance thereof in the Register of Information.

(3) In the event that the officer-in-charge of a police station is satisfied that no public interest will be served by a prosecution of the offence to which information relates, he or she may refuse to accept the information, but shall provide written notice to the informant of the informant's right to complain to a Public Prosecution Attorney.

54. Manner of Submitting First Information Report.

(1) The officer-in-charge of a police station, after preparing the First Information Report shall submit it through the senior officer, if any, to the Public Prosecution Attorney.

(2) An officer, through whom a First Information Report is submitted under the provisions of subsection (1) above, may give such instructions as he or she deems appropriate to the officer submitting the report and shall after recording such instructions, if any, on the First Information Report pass the same to the Public Prosecution Attorney without delay.

55. Case Diary to be Kept by the Police.

(1) Any officer-in-charge of a police station, his or her deputy or subordinate conducting an investigation under this Act or under any other applicable law, shall keep a case diary in which he or she shall set forth, at a minimum, the following information, in chronological order—

(a) any information received by him or her in connection with the investigation;

(b) any action taken or investigation made by him or her in the course of the investigation and the facts ascertained as a result thereof;

(c) any report made by any policeman or policewoman acting under his or her instructions; and

(d) the statement of any witness, if reduced to writing, or a summary of any oral statements.

(2) The First Information Report or a copy thereof shall in all cases be attached to and form part of the case diary.

56. Case Diary not to be Evidence.

(1) A case diary shall not be admissible as evidence against any accused person in any magisterial inquiry or trial, except as follows—

(a) any Magistrate or Court may in any magisterial inquiry or trial refer to the case diary to aid him or her or it in conducting the investigation or trial;

(b) any Public Prosecution Attorney, Magistrate or Court may in any magisterial inquiry or trial use any relevant part of the case diary for the purpose of examining any witness whose testimony at the magisterial inquiry or trial is at variance with his or her statement entered in the case diary as to such variance with a view to testing his or her credibility; and

(c) any relevant part of the case diary may be used by the officer-in-charge of a police station or investigating policeman who made the same to refresh his or her memory if called as a witness.

(2) Except to the extent to which the case diary is used for the purposes set out in subparagraphs (1) (b) and (c) above, the accused or his or her agent shall not be entitled to call for or inspect such case diary or any part thereof.

57. Powers of the Public Prosecution Attorney.

(1) The Public Prosecution Attorney shall have the right to supervise the investigation through the officer-in-charge of a police station, and to issue any directives, as may be related to the progress of the criminal case.

(2) The officer-in-charge of a police station shall notify the Public Prosecuting Attorney of the progress of the investigation, and shall submit the case diary to him or her for such directives as may be issued thereto, with respect to the investigation.

(3) The Minister, the Under Secretary and the Director of Public Prosecution shall have the right to require, at any time during the investigation, the case diary to be placed before him or her, and issue any directives with respect thereto.

58. Process of Investigation.

(1) No investigation into an offence shall be made by any officer-in-charge of a police station or policeman without the order of a Public Prosecution Attorney, unless the circumstances appear to be such that the delay which would be caused by submitting such a report may seriously prejudice the interest of justice, in which case the investigation may be commenced forthwith but a report shall be sent as soon as possible to the Public Prosecution Attorney giving the reasons for the action taken and on the

receipt of such a report the Public Prosecution Attorney may give such orders or directives as he or she deems appropriate.

(2) Subject to the directives and guidance of the Public Prosecution Attorney, the officer-in-charge of a police station shall proceed as follows—

(a) he or she or his or her deputy or subordinate shall proceed to the spot where the incident reportedly occurred, to investigate the case and report back to the officer-in-charge of a police station;

(b) in the event the accused is not already in custody, take such steps as may be necessary for his or her discovery and arrest; provided that, if the offence is one which a warrant is required for arrest, no arrest of a suspected person shall be made without a warrant;

(c) if, however, the information is given against a person by name and the alleged offence is not of a serious character the officer need not make or direct the investigation on the spot;

(d) if it appears to the officer-in-charge of a police station that there is no sufficient grounds or reason for conducting investigation he or she need not investigate the case; provided that, the officer-in-charge of a police station shall record in the First Information Report and the Register of Information the reasons for his or her not fully complying with the requirements of this section; and

(e) if he or she deems it unnecessary to conduct an investigation he or she shall notify the informant or complainant, if any, forthwith.

59. Cases Involving Death or Serious Injuries.

In cases involving death or serious injuries of any person, the officer-in-charge of a police station shall arrange, if possible, for a medical officer to examine the body or the person injured, and if the officer or the policeman deputized by him or her so directs, the body or the person injured shall be brought into the nearest hospital for such further examination as he or she or the medical officer considers necessary and notwithstanding anything in the Public Health Law, the burial shall not take place except in case of necessity until leave has been obtained from a Public Prosecution Attorney, the Magistrate or the Court.

60. No Inducement to be Offered.

(1) No policeman or person in authority shall make use of any threat or of any promise of an advantage towards any person in investigation under this Chapter, in order to influence the evidence he or she may give.

(2) No policeman or other person shall prevent any person by any caution or otherwise from making, in the course of the investigation, any statement, which of his or her own free will, he or she may be induced to make.

61. Judicial Confession.

(1) If any person, in the course of an investigation under this Chapter, or at any time after the closure of the investigation but before the commencement of any trial, confesses to the commission of an offence in connection with the subject matter of the investigation, and when the confession is in respect of a serious offence or one which is triable only by a High Court, he or she shall be taken before a Magistrate, in order that his or her statement be recorded by such Magistrate in the case diary.

(2) When a Magistrate records such confession in a case diary, he or she shall do so in detail in his or her own handwriting in the presence of the person making the same and after reading over to him or her such record the Magistrate shall sign the same.

(3) No Magistrate shall record any such confession, unless after questioning the person making it, he or she is satisfied that it is made voluntarily.

(4) No oath shall be administered to any person making a judicial confession.

(5) The record of such confession in the case diary, if made by a Magistrate in the manner aforesaid, shall be admissible as evidence against the person who made the same and if so admitted shall be read out in Court by the Magistrate conducting the trial and it shall not be necessary to call as a witness the Magistrate who recorded the same provided that the Magistrate or the Court trying the case may if he or she or the Court thinks appropriate either on the application of the accused or of its own motion call the Magistrate who recorded the confession as witness to the contents and to prove the circumstances in which it was recorded.

62. Medical Examination of Suspect.

(1) A person under arrest upon reasonable suspicion of having been concerned with the commission of an offence punishable with imprisonment, may be required by any policeman or policewoman acting under the directives and supervision of the Public Prosecution Attorney, to submit to a medical examination by a registered medical practitioner or, if no such practitioner is available, by a medical assistant.

(2) Such a medical examination shall only be required if it is desirable in the interest of justice, as tending to establish whether or not the person arrested is guilty of the offence suspected.

(3) A person required to submit to a medical examination is entitled to have a doctor nominated by him or her present at the examination unless the time taken in securing his or her presence might defeat the purpose of the examination.

63. Taking of Fingerprints, Eye Prints and Photographs.

(1) The fingerprints, eye prints and or photograph of any accused person may be taken during his or her trial, or while he or she is being interrogated or investigated if it were in the interest of such trial, interrogation or investigation that such fingerprints eye prints and photograph be taken.

(2) Such fingerprints, eye prints and photograph may be kept for a period of six months at the end of which they shall be destroyed, unless the person concerned has been convicted of an offence.

64. Remand in Custody.

(1) A person arrested by the police as part of an investigation, may be held in detention, for a period not exceeding twenty-four hours for the purposes of investigation.

(2) The Public Prosecution Attorney, or in his or her absence the Magistrate, as the case may be, where the matter requires the same, may renew detention of the arrested person, for a period not exceeding one week, for the purposes of investigation.

(3) The Magistrate, upon the recommendation of the Public Prosecution Attorney, may order detention of the arrested person, for purposes of investigation, every week, for a period, not exceeding, in total two weeks, and he or she shall record the renewal in the case diary.

(4) The Magistrate, in the case of an arrested person who is charged, may order renewal of his or her detention, for the purposes of investigation, every week, provided that the period of detention shall not in total, exceed three months, except upon the approval of the competent President of the Court of Appeal.

CHAPTER VIII

PROVISIONS PERTAINING TO PERSONS SUMMONS, WARRANTS OF ARREST, ARREST AND SEARCH WARRANTS

Summons

65. Summons to Compel Appearance.

(1) A police officer, acting upon the directives or orders of the Public Prosecution Attorney, or in the absence of the Public Prosecution Attorney, the Magistrate or Court, may summon any person to appear, in order to present himself or herself, or to produce any document, or other thing, whenever it is necessary, for the purpose of investigation, trial or execution of any order issued by the Public Prosecution Attorney, the Magistrate or the Court.

(2) A person properly summoned shall be bound to attend and to answer truthfully any questions put to him or her, except so far as his or her answers would tend to expose him or her to a criminal charge or to a penalty, other than a charge of failing to give information under Chapter IX of this Act.

(3) No person giving evidence in an investigation under the provisions of this Act, shall be required to take an oath or sign his or her statement, if it is to be reduced to writing, nor shall such writing be used as evidence, unless expressly permitted under this Act or under any other law.

66. Forms of Summons.

(1) Every summons issued under the provisions of this Act by a Public Prosecution Attorney, Magistrate or Court shall be—

(a) in writing;
(b) in duplicate; and
(c) signed or sealed by the Public Prosecution Attorney, Magistrate or Court.

(2) Such summons may be served by—

(a) a policeman or policewoman;
(b) a retainer;
(c) a Chief;
(d) the officer of the Court issuing it; or
(e) any other public servant who, under any rule for the time being in force, may be authorised to serve a summons.

67. Service and Signature of Summons.

(1) All efforts shall be made to serve the summons personally on the person named therein, delivering or tendering to him or her one of the duplicates of the summons.

(2) The person served shall, if so required by the serving officer or person, sign or seal a receipt therefore on the back of the other duplicate.

68. Service on Legal Entity or Business.

Service of a summons on a legal entity or business may be carried out by serving it on the secretary, local manager or other principal officer of the entity or business at any of its offices in Southern Sudan.

69. Service When Person Summoned Cannot be Found.

Where the person named in the summons, after the exercise of due diligence and care, cannot be found, the summons may be served by leaving one of the duplicates for him or her with an adult member of his or her family, who shall, if so required by the serving officer, sign a receipt on the back of the other duplicate, or by affixing one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides.

70. Inability of Person Served to Sign or Seal.

Where the person on or with whom a summons is served or left, is unable to sign his or her name or affix his or her seal, the summons shall be served or left in the presence of a witness.

71. Service of Summons Outside Local Limits.

A summons required to be served outside the local limits of the jurisdiction of the Public Prosecution Attorney, Magistrate or Court issuing it, shall ordinarily be sent in duplicate to a Magistrate or Public Prosecution Attorney, within whose jurisdiction the person summoned resides or is to be served therein.

72. Proof of Service.

An affidavit or declaration purporting to be made before a Public Prosecution Attorney, Magistrate or the Court, as the case may be, by the serving officer or by a witness to the service that a summons has been served and a duplicate of the summons purporting to be endorsed in the manner provided in this Act, by the person to whom it was delivered or tendered or with whom it was left shall be admissible as evidence and the statements made herein shall be deemed to be correct unless and until the contrary is proved.

73. Issue of Warrant for Arrest in lieu of or in Addition to Summons.

(1) A Public Prosecution Attorney, Magistrate or Court empowered by this Act to issue a summons for the appearance of any person may, after recording its, his or her reasons in writing, issue a warrant for arrest, in addition to or in lieu of the summons if—

(a) either before or after the issuance of such summons, the Public Prosecution Attorney, Magistrate or Court, as the case may be, sees reason to believe that the person has absconded or will not obey the summons; or

(b) at the time fixed for his or her appearance, the person summoned fails to appear, and the summons is proved to have been duly served in time to permit his or her appearance, and no reasonable excuse is offered for his or her failure to appear.

(2) A Public Prosecution Attorney, Magistrate or Court empowered by this Act to issue a warrant for the arrest of any person, may issue a summons in the place of a warrant if he, she or it deems appropriate.

Citations in lieu of Arrest

74. Limited Application.

A person, who is specified in a warrant of arrest for a minor offence, may be released upon the issuance of a citation, in lieu of physical arrest; provided that, the incident or act cited in the warrant does not involve—

(a) an act of violence;

(b) the use of a firearm;

(c) resisting arrest;

(d) providing false information to a police officer;

(e) a person who is a source of danger to himself, herself or others due to intoxication or being under the influence of a drug;

(f) a person who has other charges pending against him or her;

(g) a person who refuses to sign the notice or summon to appear;

(h) a person who cannot provide satisfactory evidence of personal identification; and/or

(i) a warrant of arrest indicates that the person is not eligible to be released on a citation.

Arrest and Warrants of Arrest

75. Powers of Arrest.

A Public Prosecution Attorney, Magistrate or Court has the power to arrest, or issue a warrant for the arrest of any person—

(a) who commits, in his or her presence, an act which constitutes an offence;

(b) against whom a case for the commission of an offence has been instituted and a valid request has been filed by the Public Prosecution Attorney;

(c) who contravenes any summons, bail or bond executed by him or her, under the provisions of this Act; or

(d) the order for whose release has been revoked.

76. Powers of Arrest by Police and Chief.

Any policeman or Chief may arrest any person—

(a) for whose arrest he or she has a warrant, or whom he or she is directed to arrest by a Public Prosecution Attorney, Magistrate or Court;

(b) who has been involved in an offence for which pursuant to this Act, or under any other law, the police may arrest without warrant;

(c) against whom a reasonable complaint has been made, a credible information has been received, or reasonable suspicion exists of his or her having been so concerned;

(d) the order for whose discharge from prison has been cancelled by the Court of Appeal, the High Court or the County Court Magistrate under section 151 of this Act, or any person the suspension or remission of whose sentence has been cancelled by the President under section 288 of this Act;

(e) whom he or she reasonably suspects to be designing to commit an offence for which the police may arrest without a warrant, if it appears to him or her that the commission of the offence cannot be otherwise prevented;

(f) who is required to appear by a proclamation published under section 97 of this Act;

(g) who is found taking precautions to conceal his or her presence in suspicious circumstances or who being found in suspicious circumstances, cannot give a satisfactory account of himself or herself;

(h) in whose possession property 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 property;

(i) who obstructs a policeman or policewoman while in the execution of his or her official duty;

(j) who has escaped or attempted to escape from lawful custody;

(k) who is reasonably suspected of being a deserter from the Sudan People's Liberation Army, the Joint Integrated Units, Sudan Armed Forces or any other organized force;

(l) who in his or her presence, has committed or has been accused of committing any offence, for which the police may not according to the third column of Schedule I to this Act, arrest without a warrant if, on his or her demand such person refuses to give his or her name and address or gives a name or address, which he or she believes to be a false one; and

(m) who has been placed under police supervision, and whom he or she reasonably suspects to have committed, or to be committing a breach of any of the restrictions mentioned in section 155 of this Act, which are applicable to him or her.

77. Private Persons Powers of Arrest.

Any private person may arrest any person—

(a) for whose arrest he or she has a warrant or whom he or she is directed to arrest by a Public Prosecution Attorney, Magistrate or Court;

(b) who has escaped from his or her lawful custody;

(c) who is required to appear by a proclamation published under section 97 of this Act; and or

(d) who committed in his or her presence an offence for which the police can arrest without a warrant.

78. Form of Warrant of Arrest.

(1) Every warrant of arrest issued under the provisions of this Act by a Public Prosecution Attorney, Magistrate or Court shall be in writing, signed or sealed by the Public Prosecution Attorney, Magistrate or Court.

(2) Every such warrant shall remain in force until it is cancelled by the Public Prosecution Attorney, Magistrate or Court issuing it or until it is executed.

79. Special Warrant Endorsement.

(1) A Public Prosecution Attorney, Magistrate or Court issuing a warrant for the arrest of any person shall have discretion to direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his or her attendance before the Public Prosecution Attorney, Magistrate or Court at a specified time and place, and thereafter until otherwise directed, the person to whom the warrant is directed shall, on receiving security, release such person from custody.

(2) The endorsement shall state—

(a) the number of sureties required;

(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 and place at which he or she is to attend.

(3) Whenever security is taken under this section, the person to whom the warrant is directed shall forward the bond to the Public Prosecution Attorney, Magistrate or Court.

80. Warrant to whom it is Directed.

(1) A warrant of arrest shall ordinarily be directed to one or more policemen or Chiefs but the Public Prosecution Attorney, Magistrate or Court issuing the warrant may, if its immediate execution is necessary, and no policeman or Chief is immediately available, direct it to any other person or persons.

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

81. Re-Direction of Warrants.

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

82. Notification of Substance of Warrant.

The person executing a warrant of arrest, shall notify the person to be arrested of the substance thereof, and shall show the warrant to him or her.

83. Person Arrested to be brought before the Public Prosecution Attorney, Magistrate or Court Without Delay.

The person executing a warrant of arrest shall, subject to the provisions of section 79 of this Act, as to security, without unnecessary delay, bring the person arrested before the Public Prosecution Attorney, Magistrate or Court specified in the warrant, and, in any event, within 24 hours after his or her arrest.

84. Where and When Warrant may be Executed.

A warrant of arrest may be executed at any place and at any time in Southern Sudan or outside of Southern Sudan as provided by this Act.

85. Warrant forwarded for Execution Outside the Local Limits of Jurisdiction.

(1) When a warrant is to be executed outside the local limits of the jurisdiction of the Public Prosecution Attorney, Magistrate or Court issuing it, such Public Prosecution Attorney, Magistrate or Court may, instead of directing such warrant as set forth in section 80 of this Act forward it, for endorsement by post or otherwise to any Public Prosecution Attorney, Magistrate or Court within the local limits of whose jurisdiction it is to be executed.

(2) The Public Prosecution Attorney, Magistrate or Court shall endorse his, her or its name thereon and if practicable, cause it to be executed in the manner therein provided within the local limits of its, his or her jurisdiction.

86. When Police, Chief, or Other Official may Require Identification.

Any policeman or Chief may require any person whom he or she has reasonable grounds of suspecting having committed an offence, to furnish him or her with his or her name and address, and he or she may require any such person to accompany him or her to the police station.

87. Resisting Arrest.

If a person liable to arrest who resists on endeavor to arrest him or her or attempts to evade the arrest, the person authorised to arrest him or her may use all reasonable means necessary to effect the arrest; provided that, this section shall not give the right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for a term which may exceed ten years.

88. Assistance to Arrest or Prevent Escape.

Every person is bound to assist a policeman or policewoman or any other person reasonably demanding his or her assistance in arresting or preventing the escape of any person whom such policeman or policewoman or any other person is authorised to arrest.

89. Search of Place Entered by Person Sought to be Arrested.

(1) Any person who is authorised to effect the arrest of another person and who has reason to believe that such person has entered into or is within any place, the person who is authorised to arrest, may enter such place and cause that person to be arrested.

(2) The person residing in or being in charge of such a place shall on demand allow free ingress thereto and afford all reasonable facilities for search.

(3) If on demand such ingress is refused, the person authorised to make the arrest may effect an entry by force.

90. Pursuit of Offender into Other Jurisdictions.

Any person authorised to effect the arrest of another person may, for the purpose of affecting the arrest, pursue him or her into any part of Southern Sudan or outside of it.

Procedures After Arrest

91. Procedure After Arrest by Private Person.

(1) Any person, except a Public Prosecution Attorney, Magistrate or policeman or policewoman, making an arrest without a warrant shall without unnecessary delay, take the person arrested to the nearest police station or hand him or her over to a policeman or policewoman.

(2) If the arrested person appears to be one whom a policeman is authorised to arrest, the policeman shall re-arrest him or her, otherwise the arrested person shall be immediately released from custody.

(3) A policeman or policewoman making an arrest without warrant or re-arrest under subsection (1) above, shall without unnecessary delay, take or send the person so arrested, before a Public Prosecution Attorney, the Magistrate or the Court competent under Chapter XIV to take cognizance of the case or before the officer-in-charge of a police station.

92. Procedure When Offender has refused to give his or her Name and Address.

Any person arrested for refusing to give his or her name and address or for giving a false name or address shall—

(a) if he or she is found to have given his or her true name and address be released;

(b) when his or her true name and address are ascertained, be released on his or her executing a bond, with or without sureties, to appear before a Magistrate or Court if and when required;

(c) should his or her true name and address not be ascertained within twenty-four hours from the time of arrest or should he or she fail to execute the bond or, if so required, to furnish sufficient sureties, be forthwith forwarded to the nearest Public Prosecution Attorney, Magistrate or Court competent under Chapter XIV to take cognizance of the case.

93. Treatment of an Arrested Person.

(1) An arrested person shall not be subjected to any treatment against human dignity nor shall he or she be physically or morally abused.

(2) An arrested person shall always be entitled to contact his or her advocate.

(3) An arrested person shall be placed under the custody of the Police, and he or she shall not be transferred, or placed in any other place except upon the order or directives of the Public Prosecution Attorney, Magistrate or the Court as the case may be.

(4) An arrested person shall have the right to inform his or her family, or the body to which he or she belongs, and contact the same. Where the arrested person is a juvenile, or suffering from a mental infirmity, or any disease, in such a way that he or she may not be able to contact his or her family, or the body to which he or she belongs, the police, Public Prosecution Attorney, Magistrate or the Court shall, on its own initiative notify the family or the appropriate body.

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

(6) An arrested person shall abide by the rules of public morals, sound conduct, as well as any regulations pertaining to his or her custody.

94. No Unnecessary Restraint.

An arrested person shall not be subject to more restraint than is necessary to prevent his or her escape.

95. Search of Arrested Person.

(1) The police making the arrest or receiving an arrested person from a person by whose name the arrest was made shall search the arrested person or cause him or her to be searched and place him or her in a safe custody.

(2) All articles, other than the necessary clothes, found on the arrested person shall be catalogued, and registered.

(3) When the arrested person is a woman, the search shall not be conducted by any other person other than by a woman.

(4) The person making an arrest may take from the person arrested any offensive weapons which he or she has about his or her person and shall deliver all weapons so taken to the Public Prosecution Attorney, Magistrate, Court or officer, as the case may be, before whom the person arrested is required by the warrant of arrest or by this Act to be produced.

96. Report and Register of Arrests.

(1) An officer-in-charge of a police station shall immediately report to the Public Prosecution Attorney, the Magistrate or the Court, as the case may be, all cases of arrest, made without warrant within the local limits of the station.

(2) A register of arrests shall be kept in the prescribed form at every police station, and every arrest made within the local limits of the station, shall be entered therein by the officer-in-charge of the police station as soon as the arrested person is brought to the station.

Proclamation to Appear

97. Proclamation to Appear.

(1) If the Senior Public Prosecution Attorney or High Court Judge, has reason to believe, whether after taking evidence or not, that a person against whom a warrant of arrest has been issued by himself, herself, or itself within the local limits of his, her or its jurisdiction, has absconded or is concealing himself or herself so that such warrant cannot be

executed, the Senior Public Prosecution Attorney or High Court Judge , shall publish a written proclamation requiring him or her to appear at a specified place and time, not less than thirty days from the date of publication of the proclamation.

(2) The proclamation shall be published as follows—

(a) it shall be broadcasted or published through any suitable means of information media or be publicly affixed in a conspicuous place in the village in which such person ordinarily resides;

(b) it shall be affixed to a conspicuous part of the house or homestead in which such person ordinarily resides or to a conspicuous place in such a town or village; and, or

(c) a copy of the proclamation shall be affixed to a conspicuous part of the Senior Public Prosecution Attorney's office or the High Court.

(3) A statement in writing by a Senior Public Prosecution Attorney or High Court Judge to the effect that the proclamation was duly published on a specified day, shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such a day.

98. Attachment of Property of Person Absconding.

(1) A Senior Public Prosecution Attorney or High Court Judge, as the case may be, may at any time thereafter, order the attachment of any property, movable or immovable or both, belonging to the person subject of the proclamation.

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(2) The official named in the order shall be authorised to attach any property belonging to the proclaimed person, which is located within the jurisdiction. The attachment may be made by seizure or in any other manner provided for by civil

process. Further, such order shall authorize the attachment in like manner of any property belonging to such person outside Southern Sudan, when endorsed by the Senior Public Prosecution Attorney or High Court Judge, as the case may be, within whose jurisdiction the property is located.

(3) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Senior Public Prosecution Attorney or High Court Judge, but it shall not be sold until the expiration of three months from the date of the attachment, unless it is subject to speedy and natural decay or the Senior Public Prosecution Attorney or High Court Judge considers that, the sale would be for the benefit of the owner, in either case, the Senior Public Prosecution Attorney or High Court Judge, may cause the property to be sold whenever he or she or it deems necessary and appropriate.

99. Restoration of Attached Property.

If, within one year from the date of the attachment, any person whose property is or has been at the disposal of the Senior Public Prosecution Attorney or High Court Judge under section 98 of this Act, appears voluntarily or upon being arrested, is brought before the Senior Public Prosecution Attorney or High Court Judge, and he or she proves to the satisfaction of the Senior Public Prosecution Attorney or High Court Judge that he or she did not abscond or conceal himself or herself for the purpose of avoiding execution of the warrant, and that he or she had not heard such a notice of the proclamation as to enable him or her to attend within the time specified therein, such property, so far as it has not been sold, and the net proceeds of any part thereof, which has been sold shall, after satisfying all costs incurred in consequence of the attachment, be returned to him or her.

100. Detention for Trial.

A Magistrate or Court may order detention of the accused, for the purpose of trial, and may renew his or her detention weekly, for a period, not exceeding, in total, one month; provided that, the period of detention shall not, in total, exceed six months, except with consent of the President of the Court of Appeal concerned.

101. Power to Take Bond for Appearance.

When any person for whose appearance or arrest a summons or warrant may be issued is present before a Public Prosecution Attorney, Magistrate or Court, the Public Prosecution Attorney, Magistrate or Court may require him or her to execute a bond with or without sureties, for his or her subsequent appearance.

Search Warrants for Persons

102. Search for a Person Wrongfully Confined.

(1) When a Public Prosecution Attorney, Magistrate or the Court, as the case may be, upon information and after such inquiry, if any, as he or she deems necessary and appropriate, has reason to believe that, a person is confined under such circumstances that the confinement amounts to an offence, he or she may issue a search warrant authorizing the person to whom it is addressed to search for the person confined, and to bring him or her before the Public Prosecution Attorney, Magistrate or the Court; upon the confined person being brought before him or her, the Public Prosecution Attorney, Magistrate or the Court shall make such order as he or she deems necessary and appropriate.

(2) Upon a complaint made on oath to a Public Prosecution Attorney, the Magistrate or the Court of the abduction for any unlawful purpose or the unlawful detention of any person, the Public Prosecution Attorney, Magistrate or the

Court, may after such investigation, if any, as he, she or it deems necessary, make an order for the production before himself or herself, of such a person or for the immediate restoration of such person to his or her liberty, or if such person is under eighteen years of age, release to his or her parent, guardian or other person having lawful charge of him or her, and may compel compliance with such order using such force as may be reasonably necessary.

(3) Upon the production before him or her or it of such a person, the Public Prosecution Attorney, Magistrate or the Court, shall make such order as he or she deems necessary and appropriate.

CHAPTER IX

PROVISIONS RELATING TO PROPERTY SUMMONS, SEARCH, SEIZURE, AND CONFISCATION

Summons

103. Summons to Produce Document or Other Things.

When a Public Prosecution Attorney and in his or her absence, a Magistrate or Court, considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceedings under this Act, the Public Prosecution Attorney, Magistrate or Court may issue a summons in a written order to any person in whose possession or power the document or thing is believed to be, requiring him or her to attend and produce it or to cause it to be produced at the time and place stated in the summons or order.

Search and Seizure

104. Search in Pursuit of Suspect.

The Public Prosecution Attorney and in his or her absence, a Magistrate or Court may issue a search warrant authorizing the person to whom it is addressed to search or inspect generally or in the place or places mentioned in the warrant for any document or thing specified or for any purpose described in the warrant and to seize any such document or thing and to dispose of it in accordance with the terms of the warrant.

105. Application for Search Warrant.

Where an investigation under this Act is being made by an officer-in-charge of a police station, working under the directives of the Public Prosecution Attorney and in his or her absence, a Magistrate or the Court, he or she may apply to any Public Prosecution Attorney, Magistrate or the Court within the local limits of whose jurisdiction his or her station is located for the issuance of a search warrant.

106. Search for Stolen Property.

Where upon information and after such investigation, if any, as he or she deems necessary a Public Prosecution Attorney, Magistrate or the Court has reason to believe that any place is used for the deposit or sale of stolen property, or that there is kept or deposited in such a place any property in respect of or by means of which an offence has been committed or which is intended to be used for any illegal purpose, he or she or it may issue a search warrant authorizing any policeman, retainer or Chief—

(a) to search the place in accordance with the terms of a warrant and to seize any property appearing to be of the description mentioned in the search warrant and to dispose of it in accordance with the terms of the warrant; and

(b) to arrest any person found in the place and appearing to have or to be a party to any offence committed or intended to be committed in connection with such property.

NOTE—For Form of Warrant see Schedule III, Form 2.

107. Search to be made in the Presence of Witnesses.

(1) Searches under this Chapter shall, unless the Public Prosecution Attorney, and in his or her absence, Magistrate or Court, owing to the pressing nature of the case otherwise directs, be made in the presence of two reliable witnesses to be summoned by the person to whom the search warrant is addressed.

(2) A list of all things seized and of the places in which they are found shall be drawn up by the person carrying out the search and shall be signed or sealed by the two witnesses.

108. Occupant of Place to Attend the Search.

The occupant of any place searched or some persons on his or her behalf shall be permitted to be present at the search and shall receive a copy of the list of things seized therein signed or sealed by the witnesses.

109. Search of Persons Found in Place.

(1) Where a person, found in a place which is being searched, is reasonably suspected of concealing any article for which search is made, such person may be searched; provided that, if such person is a woman, the search shall not be conducted by any other person other than a woman.

(2) A list of all the items found on such person and seized shall be prepared and witnessed, and a witnessed copy of the list shall be delivered to the person searched or to his or her representative.

110. Execution of Search Warrant Outside the Jurisdiction.

Every person executing a search warrant beyond the local limits of the jurisdiction of the Public Prosecution Attorney, Magistrate or Court issuing it shall, before executing the search warrant, apply to the Public Prosecution Attorney, Magistrate or Court within the local limits of whose jurisdiction search is to be conducted, and shall act under his, her or its directives.

111. Provisions as to Warrant of Arrest to Apply for Search Warrant.

The provisions of section 89 of this Act, as to ingress and all other provisions hereinbefore contained as to warrants of arrest shall, so far as applicable, apply to search warrants.

112. Public Prosecution Attorney or Magistrate may Direct Search in his or her Presence.

Any Public Prosecution Attorney, Magistrate or Court may direct a search to be made in his, her or its presence of any place for the search of which he, she or it is competent to issue a search warrant.

113. Impounding of Documents and Property.

Any Court, if it deems necessary and appropriate, may impound any document or thing produced before it pursuant to the provisions of this Act.

Seizure and Disposal of Property

114. Power of Police to Seize Property Suspected to be Stolen.

Any policeman may seize any property which is alleged or suspected to have been stolen, or which may be found in circumstances which created the suspicion of the commission of an offence. Such policeman, if subordinate to the officer-in-charge of a police station, shall forthwith report seizure to that officer.

115. Procedure Upon Seizure of Stolen or Taken Property Upon Arrest.

(1) The seizure by any policeman of property taken from a person upon his or her arrest, or which is alleged or suspected to have been stolen, or which is otherwise found in circumstances which created the suspicion of the commission of an offence, shall be forthwith reported to the Public Prosecution Attorney and in his or her absence to the Magistrate or Court.

(2) The Public Prosecution Attorney, Magistrate or Court shall make such order as he, she or it deems necessary and appropriate in respect of the disposal of such property or the delivery to the person entitled to the possession thereof on such conditions, if any, as the Public Prosecution Attorney, Magistrate or Court deems necessary and appropriate.

(3) If the person entitled to the possession of such property is unknown, the Public Prosecution Attorney, Magistrate or Court may retain it and shall in such case issue a public notice as he, she or it deems appropriate, specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him or her and establish his or her claim within six months from the date of such notice.

116. Procedure Where no Claimant Appears Within Six Months.

(1) If within six months, no person establishes his or her claim over such property and, if the person in whose possession such property was found is unable to show that it was lawfully acquired by him or her, such property shall be under the custody of the police and may be sold on the orders of the Public Prosecution Attorney, Magistrate or Court pursuant to the provisions of the Code of Civil Procedure Act, 2007.

(2) At any time, within two years from the date of the property coming into the possession of the police, the Public Prosecution Attorney, Magistrate or the Court may direct the property or the proceeds of the sale of the property to be delivered to any person proving his or her title thereto on payment by him or her of any expenses incurred during the civil process.

117. Power to Sell Perishable Property.

If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay or if the Public Prosecution Attorney to whom its seizure is reported is of the opinion that, its sale would be for the benefit of the owner, the Public Prosecution Attorney, Magistrate or Court may, at any time direct it to be sold, and the provisions of sections 115 and 116 shall as may be practicable apply to the ten percent (10%) of the proceeds of such sale.

118. Order for Custody and Disposal of Property Pending Trial.

When any property relating to an offence or which appears to have been used for the commission of an offence is produced before any Public Prosecution Attorney, Magistrate or the Court as the case may be, during any investigation or trial, the Public Prosecution Attorney or the Court may make such order as it deems necessary and appropriate, for the proper custody of such property pending the conclusion of the investigation or trial and, if the property is subject to speedy or natural decay, may after recording such evidence as it deems necessary, order it to be sold or otherwise disposed of.

119. Order for Disposal of Property After Trial.

(1) Upon the conclusion of any trial by Magistrate or Court, the Magistrate or Court may make such order as it deems necessary and appropriate for the disposal by destruction, confiscation or delivery to any person appearing to be

entitled to the possession thereof, or otherwise if any movable property or document produced before it or in its custody for recording which any offence appears to have been committed or which has been used for the commission of any offence.

(2) When an order is made under subsection (1) above, and the case is subject to appeal or otherwise requires confirmation, such order shall not, except when the property is an animal or is subject to speedy and natural decay be carried out until the period allowed for presenting such appeal has passed or when such appeal is presented within such period until appeal has been disposed of or until the order is confirmed; provided that, the Magistrate or Court may in any case make an order under the provisions of subsection (1) above, for the delivery of any property to any person appearing to be entitled to the possession thereof on his or her executing a bond with or without sureties to the satisfaction of the Court to restore such property to the Court, if the order made under this section is modified or set aside by the appellate or confirming authority.

NOTES—*For power to make orders for the temporary custody or destruction of animals, which have been cruelly treated or killed, see section 198 of the Penal Code.*

120. Payment to an Innocent Purchaser of Money Found on Accused.

When any person is convicted of any offence which includes or amounts to theft or receiving stolen property, and it is proved that another person bought the stolen property from him or her without knowing or having reason to believe that the property was stolen and that any money on his or her arrest has been taken

out of the possession of the convicted person, the Magistrate or the Court may, on the application of such purchaser and on restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by the purchaser be delivered to him or her.

121. Destruction of Defamatory and Other Matter.

(1) On a conviction under the Penal Code sections 260, 291, and,or 292, the Court may order the destruction of all the copies of things in respect of which the conviction was based and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Penal Code sections 178,179, 180, 181, 182, 183, and,or 184, order the food, drink, drug or medical preparation in respect of which the conviction was based, to be destroyed.

122. Power to Restore Possession of Immovable Property.

(1) Where a person is convicted of an offence attended by criminal force, the show of force or criminal intimidation, and it appears to the Magistrate or the Court that any person has disposed of any immovable property, the Magistrate or the Court may, if it deems appropriate order such property to be restored to the lawful possession of the owner.

(2) No such order shall prejudice any right or interest to or in such immovable property, which any person may be able to establish in a civil suit.

CHAPTER X

RELEASE AFTER ARREST

123. Release on a Minor Offence.

Any person who has been arrested for a minor offence may be released on his or her own personal bond by a Public Prosecution Attorney and his or her absence, a Magistrate or Court may release the person from custody upon the arrested person giving bail, including a person arrested upon an out-of-county warrant. An arrested person is entitled to a release on his or her own personal bond only if that release will not compromise public safety and there is reasonable assurance that the arrested person will appear as required.

124. Cases of Release on Bail.

(1) Release on bail of an arrested person shall be allowed as follows—

(a) by the arrested person personally executing a bond to appear, with or without securities or sureties;

(b) by another person executing a bail, to bring the arrested person, with or without securities; or

(c) by paying a deposit coupled with bond, or bail.

(2) Upon the fulfillment of the requirement of the bail, an arrested person shall be released from custody.

125. Offences Punishable with Fine Only.

Any person arrested for an offence punishable with a fine only, shall be released on bail or when appropriate after executing a bond without securities as hereinafter provided.

126. Offences Punishable with Ten Years, Or Less.

When any person accused of an offence punishable with imprisonment for a term not exceeding ten years is arrested or detained without a warrant by an officer-in-charge of a police station, or appears or is brought before a Public Prosecution Attorney and in his or her absence, a Magistrate or Court, and is prepared at any time while in custody of such officer or before such Public Prosecution Attorney, Magistrate or Court, to give such bail as may seem sufficient to the Public Prosecution Attorney, Magistrate or Court, such person shall be released on bail unless the Public Prosecution Attorney, Magistrate or Court, for reasons to be recorded considers that by reason of granting of bail, the proper investigation of the offence would be prejudiced or a serious risk of the accused escaping from justice be occasioned; provided that, such Public Prosecution Attorney, Magistrate or Court, if he or she or it deems it appropriate may instead of taking bail from such person, discharge the accused person, upon the execution of a bond without sureties for his or her appearance as hereinafter provided.

127. When Bail may be Taken in respect of Non-Bailable Offences.

(1) A person accused of an offence punishable with death shall not be released on bail.

(2) A person accused of an offence punishable with imprisonment for a term exceeding ten years shall not ordinarily be released on bail; provided that, the Public Prosecution Attorney and in his or her absence, the Magistrate or Court may upon application may release on bail a person accused as aforesaid under the following circumstances—

(a) that by reason of the granting of bail the proper investigation of the offence would not be prejudiced nor a serious risk of the accused escaping from justice be occasioned; or

(b) that there are no reasonable grounds for believing that the accused committed the offence, but that there are sufficient grounds for further investigation.

128. Considerations in Setting, Reducing or Denying Bail.

(1) In setting, reducing or denying bail, the Public Prosecution Attorney, and in his or her absence, the Magistrate or the Court shall take into consideration the protection of the public, the seriousness of the offence charged, the previous criminal record of the accused, and the probability of his or her appearing at inquiry or trial of the case. The public safety shall be the primary consideration.

(2) In considering the seriousness of the offence charged, the Public Prosecution Attorney, Magistrate or Court shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the offence charged, the use of a firearm or any other deadly weapon, in the commission of the offence charged.

129. Power to Arrest Person Released on Bail.

A Public Prosecution Attorney, Magistrate or Court, as the case may be, at any subsequent stage of any proceedings under this Act, shall cause any person who has been released under the preceding sections of this Chapter, to be re-arrested and may commit him or her to custody.

130. Bond of Accused and Sureties.

Before any person is released under the preceding sections of this Chapter, he or she shall execute a bond for such sum of money as the Public Prosecution Attorney, and in his or her absence, Magistrate or Court deems sufficient, on condition that, such a person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Public Prosecution Attorney, Magistrate or Court and if he or she is released on bail the sureties shall execute the same or another bond or other bonds conditioned to the same effect.

131. Discharge from Custody.

(1) At such time as the bond has been executed, the person for whose appearance the bond has been executed, shall be released from custody.

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

132. Other Provisions Relating to Bail Guarantee for Good Behaviour.

(1) Upon the conviction of any person as an idle person or as a vagabond, the Magistrate or Court shall have the power in addition to or in substitution for any other punishment, to order the person convicted to enter into a bond of such a sum as the Magistrate or Court may deem appropriate; provided that the person convicted shall be of good behaviour for a period not exceeding one year.

(2) Upon default of the bond executed under subsection (1) above, by the person convicted, the Court shall have power to order him or her to be imprisoned in lieu thereof until the period for which he or she was ordered to give such bond expires or until he or she gives the bond to the Court requiring it.

(3) The provisions of subsection (2) above, shall apply in addition to any other punishment to which the person may be subject.

133. Deposit instead of Bond.

When any person is required by any Public Prosecution Attorney, and in his or her absence, a Magistrate or Court to execute a bond with or without sureties, such Public Prosecution Attorney, Magistrate or Court may, except in the case of bonds to be executed under Chapter VI, permit him or her to deposit a

sum of money to such an amount as the Public Prosecution Attorney, Magistrate or Court may deem appropriate in lieu of executing such bond.

134. Bond required from a Minor.

When the person required to execute a bond is a minor, the bond shall be executed by a surety or sureties.

135. Amount of Bond.

(1) The amount of every bond shall be fixed with due regard to the circumstances of the case, and shall not be excessive.

(2) If, through a mistake, fraud or otherwise, insufficient sureties have been accepted or if the sureties afterwards become insufficient, the Public Prosecution Attorney, and in his or her absence, a Magistrate or Court may issue a warrant for the arrest of the person on whose behalf the sureties executed the bond and, when such person appears, the Public Prosecution Attorney, Magistrate or Court, may order him or her to find sufficient sureties and on his or her failing to do so may make such order as in the circumstances is just and proper.

NOTE—*If a person required by a Public Prosecution Attorney, Magistrate or Court to find sufficient sureties under this section fails to do so, the proper order for the Public Prosecution Attorney, Magistrate or Court to make will, ordinarily be-*

(a) in the case of an offender released on probation order requiring him or her to appear on a date to be stated therein before the appropriate Court and receive sentence;

(b) in the case of a person ordered to give security for good behaviour under section 140 or section 146, an order committing him or her to prison for the remainder of the period for which he or she was originally ordered to give security or until he or she finds sufficient sureties; and

(c) in the case of a person accused of an offence and released, on bail under section 79, an order committing him or her to prison until he or she is brought to trial or discharged.

136. Discharge of Sureties.

(1) Sureties to a bond may at any time apply to the Public Prosecution Attorney, Magistrate or Court which caused the bond to be taken to discharge the bond either wholly or so far as it relates to the applicants.

(2) On such application, the Public Prosecution Attorney, Magistrate or Court may issue a warrant for the arrest of the person on whose behalf the bond was executed, and upon his or her appearance, shall discharge the bond either wholly or so far as it relates to the applicants and shall require such person to find other sufficient sureties and, if he or she fails to do so, may make such order as the circumstances is just and proper.

NOTE—See note to Section 135.

137. Discharge of Surety's Estate.

When a surety to a bond dies or is adjudicated bankrupt before his or her bond is forfeited, his or her estate shall be discharged from the liability under the bond, but the person on whose behalf such surety executed the bond, may be required to find a new surety; in such case the Public Prosecution Attorney, Magistrate or Court may issue a warrant for the arrest of such person and upon his or her appearance, may require him or her to find a new surety and; if he or she fails to do so, may make such order as in the circumstances is necessary and appropriate.

NOTE- See note to Section 135

138. Procedure on Forfeiture of Bond.

(1) Whenever it is proved to the satisfaction of the Public Prosecution Attorney, Magistrate or Court by whom a bond has been taken, or when the bond is for appearance before a Public Prosecution Attorney, Magistrate or Court, and it is proved to the satisfaction of the Public Prosecution Attorney, Magistrate or the Court that a bond has been forfeited, the Public Prosecution Attorney, Magistrate or the Court shall record the grounds of such proof and may call upon any person bound by the bond to pay the penalty thereof or to show cause why it should not be paid.

(2) If the penalty is not paid, and sufficient cause for non-payment is not shown, the Public Prosecution Attorney, the Magistrate or the Court may proceed to recover the same from such person or if he or she is dead, from his or her estate, in the manner set forth in section 282 of this Act for the recovery of a fine.

NOTE—The surety's estate is only liable if the surety dies after the bond is forfeited. See Section 137.

(3) If the penalty is not paid and cannot be recovered in a manner aforesaid, the person bound shall be guilty, by an order of the Magistrate or the Court, which issued the warrant under section 282 of this Act, to sentence him or her for a term not exceeding six months.

(4) The Magistrate or Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

NOTE- (1) For Forms, see Schedule III, Forms 24, 25, 26, 27, 31, and 42.

(2) For appeal against an order made by Magistrate under this Section, see Section 264(2).

139. Arrest for Breach of a Bond for Appearance.

When a person who is bound by any bond to appear before a Magistrate or Court fails to appear, the Magistrate or Court may issue a warrant for his or her arrest.

CHAPTER XI

PREVENTION OF CRIME

Security for Keeping the Peace

140. Security upon Conviction.

(1) Whenever any person is convicted by a High Court or a County Court of a Magistrate of the First or Second Class, of any offence involving or likely to cause a disturbance of the public tranquility or breach of the peace, and such Court is of the opinion that, it is expedient to require such person to execute a bond for keeping peace and good behaviour, such Court may, at the time of passing sentence on such person order him or her to execute a bond for a sum proportionate to his or her means and with or without sureties for keeping peace and good behaviour for a period not exceeding one year, and may in lieu of or in addition to requiring such security, make an order for police supervision.

(2) If the County Court of a Magistrate of the First or Second Class has not made any order under subsection (1) above, the Court of Appeal or the High Court Judge may make such an order, when exercising their powers of appeal under Chapter XXIV of this Act.

141. Security in other Cases.

Whenever a Public Prosecution Attorney, and in his or her absence, a Magistrate or Court receives compelling information that a person is likely to commit a breach of peace or to disturb public tranquility or to do an illegal act, which may probably

cause breach of peace or disturb public tranquility, the Public Prosecution Attorney, Magistrate or Court may issue a summons, requiring such a person to appear before him, her or it to execute a bond with or without sureties for keeping peace or refraining from illegal acts, likely to disturb public tranquility for any period not exceeding one year or to show cause why he or she should not execute such a bond and such summons may, in addition to the foregoing or in substitution thereof require such a person to show cause why an order of police supervision should not be made.

142. Security for Good Behaviour from Habitual Offenders.

(1) Whenever a Magistrate or Court receives compelling information that any person within the local limits of his or her jurisdiction habitually commits the offences listed in subsection (2), below, such Magistrate or Court may issue a summons requiring such person to appear before him or her to execute a bond with sureties for his or her good behaviour for any period not exceeding two years or to show cause why he or she should not execute such bond, and such summons may in addition to the foregoing or in substitution therefrom require such a person to show sufficient cause why an order of police supervision should not be made.

(2) Persons who habitually commit any one or more of the following offences are subject to this section—

(a) any offence punishable under sections 269 to 282 of the Penal Code, relating to kidnapping, abduction, forced labour, etc;

(b) robbery, housebreaking or theft;

(c) receipt of stolen property knowing it to have been stolen;

(d) protecting or harbouring thieves or aiding in the concealment or disposal of stolen property;

(e) mischief, extortion, cheating or counterfeiting coin, notes or revenue stamps or attempts so to do;

(f) the commission, attempted commission, aiding or abetting the commission of offences involving breach of peace; and,or

(g) anyone who is as desperate and dangerous as to render his or her being at large, causes security hazard to the community.

143. Warrant of Arrest may be issued if Breach of Peace is Likely.

When it appears to a Public Prosecution Attorney, and in his or her absence, a Magistrate or Court acting under section 140 or 142 of this Act, upon the report of a policeman or upon other information (the substance of which report or information shall be recorded by the Public Prosecution Attorney, Magistrate or Court) that there is reason to fear the commission of a breach of peace or disturbance of public tranquility, and that such breach of peace or disturbance of public tranquility cannot be prevented otherwise than by the immediate arrest of any person, such Public Prosecution Attorney, Magistrate or Court may at any time issue a warrant for his or her arrest.

NOTE—For Forms of Summons, see Schedule III, Form 13.

144. Summons or Warrant under Sections 141, 142 or 143.

A Public Prosecution Attorney, Magistrate or Court when issuing a summons or warrant under sections 141, 142 or 143 of this Act, shall therein set forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required, and if it is desired (if the information be true) to make an order for police supervision, shall call upon the person summoned or arrested to show cause why an order for police supervision should not be made.

145. Investigation as to the Truthfulness of Information.

(1) When any person has appeared, or is brought before the Public Prosecution Attorney, Magistrate or Court in compliance with a summons or warrant of arrest under sections 141, 142 or 143 of this Act, the Public Prosecution Attorney, Magistrate or Court shall proceed to inquire into the truthfulness of the information upon which action has been taken, and to take such further evidence, as it may appear necessary.

(2) Such investigation shall be made as far as practicable in the manner hereinafter provided for conducting trials and recording evidence in non-summary trials before a Magistrate, except that—

(a) no charge needs to be framed nor shall any witness be re-called for cross-examination except with the permission of the Court; and

(b) the Public Prosecution Attorney may refuse to release on bail any person arrested under section 143 of this Act, unless he or she executes a bond of the nature specified in the warrant of arrest but limited in time to the conclusion of the investigation.

(3) For the purposes of this section, the fact that a person is an habitual offender or is so desperate and dangerous as to render his or her being at large without security hazardous to the community, may be proved by evidence of general repute.

NOTE—*When a person appears in response to a summons under section 141 or section 142 of this Act, and the Public Prosecution Attorney, Magistrate or Court considers it necessary to detain him or her in custody pending the conclusion of the investigation, he, she or it must issue a warrant of arrest under section 143 of this Act.*

146. Order to Give Security.

If an investigation under section 145 of this Act, proves that it is necessary for keeping the peace, preserving public tranquility 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 or should in addition or in lieu of executing such bond be placed under police supervision, the Public Prosecution Attorney, Magistrate or Court as the case may be, shall make an order accordingly; provided that, no person shall be ordered to give security of a nature different from or of an amount more than or for a period longer than that specified in the summons or warrant of arrest issued under sections 141, 142 or 143 of this Act, and; provided further that, no person shall be placed under police supervision unless he or she was called upon in the summons or warrant aforementioned to show cause why he or she should not be placed under police supervision.

NOTE— (1) For Form of Bond, see Schedule III, Form 22. See also Section 149.

(2) For appeal against this Section, see Section 264 (2)(b).

147. Discharge of Person Informed Against.

If an investigation under section 145, does not indicate that it is necessary for keeping peace, preserving public tranquility or maintaining good behaviour as the case may be, that the person in respect of whom the investigation is made should execute a bond, or should in addition to or in lieu of executing such bond be placed under police supervision, the Public Prosecution Attorney, shall make an entry on the record to that effect and if such person is in custody only for the purpose of the inquiry shall release him or her or if such, person is not in custody shall discharge him or her.

148. Commencement of Period for which Security is required.

(1) If any person subject to an order requiring security made under section 141 or section 146 of this Act is at the time the order is made subject to a sentence of imprisonment, the period for which such security is required shall commence upon the expiration of the sentence of imprisonment.

(2) In all other cases, the period for which such security is required, shall commence on the date of such order unless the Magistrate or Court for sufficient reasons fix a later date.

149. Contents of Bond.

The bond to be executed by any such person shall bind him or her to keep the peace or to refrain from illegal acts likely to disturb public tranquility or to be of good behaviour as the case may be, and in the last case the commission or an attempt to commit or the abetment of an offence punishable with imprisonment wherever it may be committed is a breach of the bond.

150. Imprisonment in Default of Security.

If any person ordered to give security under section 140 or section 146 of this Act, does not give such security on or before the date of the commencement of the period for which such security is to be given, he or she shall be committed to prison or if he or she is already in prison, be detained in prison until such period expires or until within such period he or she shall give the security ordered.

(1) For appeal against the order to give security when a person is committed to prison under this Section, see Section 260 and 261; and

(2) For Form of Warrant of commitment to prison, see Schedule III, Form 30.

151. Power to Release Persons Imprisoned for Failure to give Security.

(1) Whenever the Supreme Court, the Court of Appeal or the High Court judge is of the opinion that any person imprisoned for failure to give security under this Chapter may be released without hazard to the public or to any person, it, he or she may order such person to be discharged; provided that if the order to give security was made or confirmed by the Supreme Court, the Court of Appeal or the High Court judge shall not make the order of discharge without the consent of the Supreme Court.

(2) Whenever any person has been imprisoned for failure to give security under this Chapter, the Court of Appeal or the High Court judge may make an order reducing the amount of the security or the number of sureties or the time for which security has been required: provided that if the order to give security was made or confirmed by the Supreme Court, the Court of Appeal or the High Court judge shall not make an order under this subsection without the consent of the Supreme Court.

(3) An order under subsection (1) may direct the discharge of such person either without condition or upon any conditions which such person accepts.

(4) If any condition upon which any such person is discharged is in the opinion of the Supreme Court or the Court of Appeal or the High Court judge, as the same may be, not fulfilled, it, he or she may cancel the order or discharge and thereupon such person may be committed to prison until the expiry of the period for which he or she was originally ordered to give security, unless before that time he or she gives such security.

(5) A policeman or policewoman, public guard, retainer or Chief may arrest such person without a warrant. See Section 76 (d).

(6) The power given in this Section is entirely independent of the right to appeal under Section 260 and 261 against an order, failure to comply with which has resulted in the imprisonment of the defaulter. This Section gives no right to appeal and the powers given in it may be exercised by the Supreme Court, Court of Appeal or the High Court judge on its, his and her own motion.

152. Power to Cancel Bond.

The Magistrate or Court, as the case may be, may at any time cancel any bond for keeping peace or refraining from illegal acts likely to disturb public tranquility or for good behaviour executed under this Chapter.

Police Supervision

153. Authority to Impose Supervision.

In lieu of, or in addition to requiring a security under section 140 of this Act, a Magistrate or Court, may make an order for police supervision.

154. Period of Supervision.

The period during which police supervision shall be in force, shall be three years or such lesser period as the Magistrate or Court making the order shall fix; provided that, in computing such period no account shall be taken of a period after the date of the order during which the person to be supervised shall be in custody serving any sentence of imprisonment, whether such sentence shall be passed concurrently with or subsequent to the making of such an order.

155. Restrictions While Under Police Supervision.

(1) A person placed under police supervision under this Act, shall be subject to such of the following restrictions as the Magistrate or Court making an order for such supervision shall direct—

(a) he or she may be required to reside within the local limits of any town or County chosen by himself or herself and specified in the order of supervision, which in the opinion of the Magistrate or Court, can be adequately effected; provided that, on due cause being shown, the Minister of Internal Affairs, may at any time substitute the order for such Payam or town for another Payam or town, chosen by the person under supervision, provided that it is a Payam or town in which in the opinion of the Minister of Police and Security supervision can be adequately effected;

(b) except as provided in paragraph (a) above, he or she may not transfer his or her residence to any other Payam or town without the prior written authority of the Police Inspector of the Payam within which he or she is resident and consent of the Police Inspector of the Payam within which he or she desires to reside and subject to such conditions as to duration and the place of abode as the Police Inspector aforesaid may determine;

(c) he or she shall not go outside the local limits of the Payam or town within which he or she resides without the written permission of the Police Inspector of such Payam or town;

(d) he or she shall at all times keep the Police Inspector of the Payam or town in which he or she resides informed of the house or place in which he or she is resident; and, or

(e) he or she shall, whenever called upon to do so by the police authority of the Payam or town, reports himself or herself to the nearest police station.

(2) In addition to the restrictions set forth in subsection (1) above, the Magistrate or Court making the order, may require that the person placed under police supervision shall also be confined to his or her house or place of residence between the hours of 10 pm until 5 am, unless he or she obtains the prior written permission of the Inspector of Police in charge.

156. Punishment for Breach of Restrictions.

A person placed under police supervision, who breaches any of the restrictions mentioned in section 155 of this Act, to which he or she is subject, shall be guilty on conviction by a County Court of a Magistrate of the First or Second Class to imprisonment for a period not exceeding six months or to a fine not exceeding SDG150 or with both.

Residence Orders

157. Powers to make Residence Orders.

(1) Whenever a Magistrate or Court is informed that the presence of any person in any County is against the interest of public security, the Magistrate or Court may issue a summon requiring such person to attend before him, her or it to show cause why he or she should not be ordered to reside elsewhere.

(2) Upon the appearance of any such person, the Magistrate or Court shall proceed to investigate into the truth of the information and to take such further evidence as may appear necessary.

(3) If on such investigation, the Magistrate or Court is convinced that it is necessary for preserving public security that the person in respect of whom the investigation is made ceases to reside in the Payam, the Magistrate or Court shall make an order accordingly, and may order the person to reside in any other specified Payam.

CHAPTER XII

UNLAWFUL ASSEMBLIES

158. Right to Peaceful Assembly.

(1) The right to peaceful assembly is recognized and guaranteed in Southern Sudan. In this regard, every person shall have the right to freedom of association with others.

(2) Notwithstanding the generality of subsection (1) above, certain types of assemblies which pose a threat to the safety and soundness of Southern Sudan, the Government Institutions, State Institutions, and the public welfare, are deemed to be "unlawful assemblies" and are subject to the provisions of this Chapter.

159. Unlawful Assembly.

An assembly may be designated as an unlawful assembly, if the common object of the persons composing that assembly is one or more of the following—

(a) to overthrow by force or show of force the Government or any Government or State Institutions, or any public servant in the exercise of his or her lawful powers;

(b) to resist the execution of any law or of any legal process;

(c) to commit any mischief or criminal trespass or any other offence;

(d) by means of force or show of force to enforce a right or supposed right;

(e) by means of force or show of force to compel any person to do what he or she is not legally bound to do or to omit to do what he or she is legally suppose to do;

(f) any assembly which is without a permit required by local law or regulation or which fails to comply with the conditions set forth in such permit; or

(g) any assembly which, having been prohibited by the local authority, the Public Prosecution Attorney, Magistrate or Court on the recommendation of the Chief Inspector of Police, takes place.

160. Unlawful Assembly to Disperse on Command of Public Prosecution Attorney, Magistrate, Court or Police.

Any Public Prosecution Attorney, and in his or her absence, a Magistrate, Court or officer-in-charge of a police station may command any unlawful assembly or any assembly likely to involve the offence of rioting or breach of the public peace to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

161. Use of Civil Force to Disperse.

If, upon being so commanded, any such assembly does not disperse, any Public Prosecution Attorney, and in his or her absence, a Magistrate, Court or officer-in-charge of a police station, may proceed to disperse such assembly by force and, may require the assistance of any person, not being a military officer or soldier acting as such, for the purpose of dispersing such assembly and if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law. Any such person whose assistance is so required shall be bound to render such assistance.

NOTE—For punishment for omitting to assist, see Section 122 of the Penal Code.

162. Use of Military Force.

If any such assembly cannot be otherwise dispersed, and if it is necessary for public security that it should be dispersed, the most senior Public Prosecution Attorney, and in his or her absence, the Magistrate or Judge who is present, may cause it to be dispersed by military force.

163. Duty of Officer Commanding Troops required by Public Prosecution Attorney, Magistrate or Court to Disperse Assembly.

(1) When a Public Prosecution Attorney, Magistrate or Court determines that any such assembly ought to be dispersed by military force, he or she may require any commissioned or non-commissioned officer in command of any troops to disperse such assembly by military force and to arrest and confine such persons forming part of it as the Public Prosecution Attorney or Magistrate may direct or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to the law.

(2) Every such officer shall obey such requisition in such a manner as he or she deems appropriate, but in so doing he or she shall use reasonable force and do as little injury to persons and property as may be consistent with dispersing the assembly and arresting and detaining such persons.

164. Power of Commissioned Military Officer to Disperse Assembly.

When the public security is manifestly endangered by any such assembly and when no Public Prosecution Attorney or Magistrate can be communicated with, any commissioned officer in command of any troops, may disperse such an assembly by military force and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to the law; provided that, if

while he or she is acting under this section, it becomes practicable for him or her to communicate with a Public Prosecution Attorney or Magistrate he or she shall do so, and shall thereafter, obey the instructions of such Public Prosecution Attorney or Magistrate as to whether he or she shall or shall not continue such action.

165. Control of Assemblies and Processions.

(1) The Chief Inspector of Police may direct the conduct of all meetings, assemblies and processions on the public roads or in the public streets or other public places, and prescribe the routes by which, and the time at which, such processions may pass.

(2) The Chief Inspector of Police on being satisfied that any person or class of persons intends to convene or conduct a meeting or assembly on any such road, street or place or to form a procession which would, in his or her opinion, if uncontrolled, be likely to cause a breach of the peace or annoyance to the public of any section thereof, may require by special or general notice that such person or class of persons shall first obtain a permit from him or her for the purpose.

(3) On application for such permit being made, the Chief Inspector of Police with the consent of the local authority shall issue a permit specifying the names of the permit holders and defining the conditions on which such meeting, assembly or procession is permitted.

(4) Notwithstanding the provisions of subsection (3) above, the local authority if satisfied at any time that the holding of any meeting, assembly or procession of any, is contrary to or against the interests of public security, the local authority may by special or general notice prohibit the holding of such meeting, assembly or procession, for such period as he or she may deem appropriate.

(5) The local authority may, with regard to the whole or any part of its territory, by order direct that no meeting, assembly or procession shall take place on the public roads or streets or in other public places unless the necessary notice thereof has first been given in accordance with such conditions as may be prescribed by such order.

166. Authority to Close Public Places.

(1) If at any time the Chief Inspector of Police or his or her authorised representative is satisfied that an unlawful assembly, riot or disturbance of the public tranquility is taking place or may reasonably be apprehended, he or she may order all persons licensed to sell intoxicating liquor and the proprietors of all coffee houses and of such other places of public resort, as may be specified in such order, to close their respective premises.

(2) Such order shall specify the area within which, and the period for which, it shall have effect.

(3) The police may, with written permission of the Public Prosecution Attorney, use such force as may be reasonably necessary to close and keep closed any such premises in accordance with the terms of such order.

167. Protection Against Prosecution for Acts Done Under this Chapter.

(1) No prosecution against any person for any act purporting to be done in good faith under this Chapter shall be instituted in any criminal court, except with the sanction of the Minister of Internal Affairs.

(2) Without prejudice to the provisions of subsection (1) above, no offence shall be deemed to have been committed by the following—

(a) a Public Prosecution Attorney, Magistrate, Court or policeman acting under this Chapter in good faith;

(b) an officer acting under section 164 in good faith;

(c) a person doing any act in good faith in compliance with a requisition under section 162 or section 163; and

(d) a junior officer or soldier doing any act in obedience to any lawful order, which he or she was bound to obey.

CHAPTER XIII

PUBLIC NUISANCE

168. Conditional Order for Removal of Nuisance.

Whenever an information or complaint is submitted to the Public Prosecution Attorney or in his or her absence, a Magistrate or Court that an offence under sections 119, 186,189, 191, or 212 of the Penal Code is being committed, such Public Prosecution Attorney, Magistrate or Court may make a conditional order requiring the offender within a time fixed in the order to cease committing such offence, and to amend or remove the causes thereof in such manner as in the order specified, or to appear before a Public Prosecution Attorney, Magistrate or Court at a time and place to be fixed by the order and apply to have the order set aside or modified in a manner hereinafter provided.

169. Service of Order.

(1) The order reference in section 168 of this Act shall, if practicable, be served on the person against whom it is made in a manner herein provided for the service of summon.

(2) If such order cannot be so served it may be served by registered letter through the post addressed to such person at his or her last known address or, if no such address is known, then by affixing a notice thereof in a conspicuous place in the town or village in or near which the nuisance or offence is being committed.

NOTE—For Form of order under this Section, see Schedule III, Form 16.

170. Action Required.

The person against whom such order is made shall—

(a) perform within the time and in the manner specified in the order the act as directed; or

(b) appear in accordance with such order and apply to have the order set aside or modified.

171. Consequences of Failing to Comply.

If such a person does not perform such an act or appear and apply to have the order set aside or modified, he or she shall be liable to the penalty prescribed therefore under section 124 of the Penal Code, and the order shall be made absolute.

NOTE- For right to appeal against an order thus made absolute, see Section 260.

172. Appearance before a Public Prosecution Attorney, Magistrate or Court.

(1) If he or she appears and applies to have the order set aside or modified, the Public Prosecution Attorney, Magistrate or Court shall take decision as he, she or it deems necessary and appropriate.

(2) If the Public Prosecution Attorney, Magistrate or Court is satisfied that the order with or without modification is reasonable and proper, he or she shall make it absolute with such modification, if any, as he, she or it shall think necessary and appropriate.

(3) If the Public Prosecution Attorney, Magistrate or Court is not so satisfied he, she or it shall cancel the order.

NOTE—For right to appeal against an order thus made absolute, see Section 260.

173. Consequences of Disobedience to Order Made Absolute.

(1) If the act directed by the order made absolute under section 172 (1) or 172(2) is not performed within the time fixed and in the manner specified therein, the Public Prosecution Attorney, Magistrate, or Court may cause such act to be performed, and may recover the cost of performing it either by the sale of any building, goods or other property removed by his, her or its order or by seizure and sale of any other movable property of such person in manner hereinafter prescribed for the recovery of a fine.

(2) No cases shall lie with respect of any acts committed in good faith and in the course of duty under this section.

174. Injunction Pending Investigation.

(1) If a Public Prosecution Attorney, Magistrate or Court making an order under section 168 of this Act, considers that immediate measures should be taken to prevent imminent danger or injury of serious kind to the public, he or she may issue an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) Upon default of such a person forthwith from obeying such an injunction or if notice thereof cannot by the exercise of due diligence be served upon him or her immediately, the Public Prosecution Attorney, Magistrate or Court may himself, herself or itself use or cause to be used such means as he, she or it deems necessary and appropriate to obviate or prevent such danger or to prevent such injury.

(3) No case shall lie in respect of anything done in good faith under subsection (2) above.

175. Prohibition of Repetition or Continuance of Nuisance.

Any Public Prosecution Attorney, Magistrate or Court may in any proceedings under this Chapter or in any criminal proceedings in respect of a public nuisance order any person not to repeat or continue such public nuisance.

NOTE- (1) See Section 195 of the Penal Code.

(2) For Form of order, see Schedule III, Form 17.

CHAPTER XIV

PREVENTIVE ACTION

176. Duty to Keep Peace.

Every policeman, Chief or person authorised by law, shall keep security and public order, and exert utmost effort to prevent the occurrence, or continuance of a crime.

177. Prevention by Police of Offences and Injury to the Public Property.

Any policeman or Chief or person authorised by law may intervene for the purpose of preventing crime and shall, to the best of his or her ability, prevent the commission of any offence, for which he or she is authorised to arrest without a warrant, or any damage to any public property movable or immovable.

NOTE- The power to intervene includes power to arrest if the offence one or which the police may arrest without a warrant and it can not otherwise be prevented or if the police are obstructed in the execution of their duty to intervene. See Section 76 (e) and (i).

178. Public to Assist Public Prosecution Attorney, Magistrate or Policeman.

Every person is bound to assist a Public Prosecution Attorney, Magistrate or policeman reasonably demanding his or her aid in the supervision of a breach of the peace or in the prevention of any damage to any public property movable or immovable or to any railway, canal, water supply, telegraph, telephone or electric installation or in the prevention or the removal of any public landmark or buoy or other mark used for navigation.

179. Duty to Inform on Certain Matters.

Every person shall, in the absence of reasonable excuse, give information to the Public Prosecution Attorney, and in his or her absence, a Magistrate, Court, policeman or a Chief if not himself or herself a Chief as follows—

(a) in the event he or she has reason to believe that any other person has committed suicide or has been killed by another by an accident or of any kind whatsoever or that a dead body has been found; or

(b) in the event he or she is aware of the commission or of the intention of any other person to commit any offence punishable under any of the following sections of the Penal Code: 64, 66, 67, 69, 70, 71, 72, 73, 74, 77, 206, 207, 209, 210,238, 239, 259, 271,276, 296, 305, 307, 308, 309, 312, 313, 314, 323, 329, 334, and 335.

180. Chief Bound to Report Certain Matters.

Every Chief shall forthwith communicate to the nearest Public Prosecution Attorney, Magistrate, Court or to the nearest policeman any information, which he or she may possess or obtain in respect of—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property;

(b) the resort to or passage through his or her village, Boma or Payam of any person whom he or she knows or reasonably suspects to be a murderer, robber, escaped convict or person required to appear by a proclamation published under section 97 of this Act;

(c) the occurrence within his or her village, Boma or Payam of the death of any person or the disappearance from such village, Boma or Payam of any person in circumstances which lead to a reasonable suspicion that the death or disappearance is the result of an offence committed in respect of such person; or

(d) any matter likely to affect the maintenance of law and order or the prevention of crime or the safety of person or property in respect of which the Chief Inspector of Police has directed him or her to report.

CHAPTER XV

COURT PROCEEDINGS

General Provisions

181. Courts to be Open to the Public.

The place in which any Court is held for the purpose of trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them; provided that, the presiding Magistrate, may if he or she deems necessary and appropriate order at any stage of any trial of any particular case that the public generally or any particular person shall not have access to or remain in such place.

182. Pleaders.

Any advocate authorised generally to practice before the criminal courts of Southern Sudan, may appear and act as pleader in any criminal proceedings; and any Magistrate or Court may as regards any particular proceeding before it, authorize any other person to act as pleader; provided that, a professional advocate not authorised generally to practice in the criminal courts of Southern Sudan shall not appear in any criminal proceedings without the sanction of the President of the Supreme Court.

183. Prosecutions.

Prosecutions may be conducted by the Public Prosecution Attorney, in case of his or her absence the Crime Police, by any person appointed or permitted by the Public Prosecution Attorney or by the complainant or a pleader appointed by him or her; provided that, the Director of Public Prosecution may intervene to remove the conduct of the prosecution from the complainant or his or her pleader and in such case, he or she shall direct by whom the prosecution shall be conducted.

184. Right to be Defended by Pleader.

Every person accused before any Court under this Act, may as of right, be defended by a pleader; provided that, in the case of serious offences, if the accused is a pauper the Minister, on application by the accused, and if satisfied that it is necessary in the interest of justice, shall appoint an advocate to defend the accused and pay all or part of the cost.

185. Power to Postpone or Adjourn Proceedings.

(1) If due to the absence of a witness or any other, reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any trial, the Magistrate or Court may, if he, she or it thinks appropriate by order in

writing stating the reasons thereof from time to time, postpone or adjourn the same on such terms as it deems appropriate for such time as it considers reasonable and may by a warrant remand the accused, if in custody.

(2) No Magistrate or Court shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(3) If the time during which the accused remained in custody as a result of renewal of his or her remand, amounted to six months or half the maximum period of imprisonment provided for the offence with which he or she is charged, whichever is less, the Magistrate or Court shall not renew the remand in custody without first obtaining a written permission from the President of the Supreme Court.

186. Procedure by a Magistrate in cases of which he or she cannot Dispose.

(1) If in the course of trial before a Magistrate, the evidence appears to him or her to warrant a presumption that the case is one that should be tried or committed for trial to some other Magistrate or Court, he or she shall stay proceedings and submit the case with a brief report explaining its nature to a County Court Magistrate of the First or Second Class to whom he or she is subordinate or to such other Magistrate of like powers as the High Court or County Court Magistrate may direct.

(2) The Magistrate to whom the case is submitted, may either try the case himself or herself, if he or she has jurisdiction so to do, or commit the accused for trial or refer it for trial on commitment to any Magistrate subordinate to him or her having jurisdiction.

(3) If any such case, the Magistrate to whom the case is submitted or referred to, considers that the accused should be committed for trial, he or she shall follow the procedure set forth in Chapter XVI, except that he or she shall not be bound to take again any of the evidence already recorded.

(4) If in any such case the Magistrate decides that the case should be tried, the trial shall begin anew.

187. Joint Trial may be Stayed and Accused Tried Separately.

The Magistrate or Court at any stage of a trial where there are several accused may, by order in writing stating the reasons therefore, stay the proceedings of the joint trial and may continue the proceedings against each or any of the accused separately.

NOTE- *This section enables a Magistrate or Court to stay proceedings in a joint trial whenever it appears that, the evidence of one of the accused is required for the prosecution or defence of another accused. It is not necessary to begin such separate trials afresh, but the separate trials may be continued from the point reached in the joint trial, when the order staying the proceedings in it was made. In such case, the accused whose evidence is desired should, if possible be acquitted or convicted before his or her evidence is taken.*

188. Transfer of Case to Magistrate's Successor and Replacement.

(1) Whenever any Magistrate after having recorded the whole or any part of the evidence in a trial, is transferred or temporarily replaced in his or her Court by another Magistrate, the Magistrate so succeeding may act on the evidence so recorded or partly recorded by his or her predecessor and partly recorded by himself or herself; or he or she may of his or her own motion or on the reasonable demand of the accused re-summon all or any of the witnesses or recommence the trial.

(2) Whenever during the course of a trial before a Payam Court, any member of the Court is unable to continue to act, the County Court Magistrate, may nominate another member to take his or her place and the trial shall be continued without the evidence already heard and recorded being re-heard; provided that, the Court may of its own motion or on the reasonable demand of the accused re-summon all or any of the witnesses or recommence the trial.

189. Transfer of Case by Magistrate.

If an offence of which a Magistrate takes cognizance is one which under any general regulations for the distribution of business issued by the County Court Magistrate ought to be tried by another Magistrate or if in the opinion of the Magistrate taking cognizance thereof, the offence might be consistent with such general regulations be more conveniently tried by another Magistrate, he or she shall transfer the case to such other Magistrate.

190. Reference on Points of Law.

A Payam Court may refer for the opinion of the appropriate County Court Magistrate of the First Class, any question of law which arises in the hearing of any case pending before it or may give judgment in any such case subject to the Magistrate's decision and pending such decision may either commit the accused to prison or release him or her on bail to appear for judgment when called upon. At such time as the County Court Magistrate of the First Class notifying his or her decision, the case shall be disposed of conformably to it.

191. Procedure when an Accused does not Understand the Proceedings.

If the accused though not insane cannot understand the proceedings, the Court shall not proceed with the trial; and/or, if the accused is ultimately convicted, the proceedings shall be forwarded with a report of the circumstances of the case to the

County Court Magistrate or if the trial was before the County Court Magistrate to the High Court and if by the High Court to the Court of Appeal and the County Court Magistrate or the High Court or the Court of Appeal shall pass thereon such order as he, she or it deems necessary and appropriate.

192. Cognizance of Offences by Public Prosecution Attorneys.

Subject to the provisions of Chapters XII and XIII of this Act, any Public Prosecution Attorney or, in case of his or her absence, the Magistrate, may take cognizance of any offence—

(a) when an arrested person is brought before him or her under section 91 or section 92 of this Act;

(b) upon receiving a complaint of facts which constitute the offence; and/or

(c) if from information received from any person other than a policeman or from his or her own knowledge he or she has reason to believe or suspect that an offence has been committed.

Procedure for Taking Evidence

193. Oaths.

Every witness giving evidence in any trial under this Act shall take an oath or make a solemn affirmation that he or she shall say the truth, the whole truth and nothing but the truth; provided that, the evidence of any person, who by reason of youth or ignorance or otherwise is in the opinion of the Magistrate or the Court is unable to understand the nature of the oath, may be received without the taking of an oath or making of an affirmation, if in the opinion of the Magistrate or the Court he or she is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of telling the truth.

194. Nature of Evidence.

(1) The admission of evidence in every judicial proceeding under this Act shall be made in accordance with the provisions of the Code of Evidence, as well as reason and justice with a view to ascertaining the truth, without unfair treatment of the accused or the witnesses.

(2) Without limiting the generality of subsection (1) above—

(a) nothing shall be admitted as evidence which does not tend directly or indirectly to prove or disprove the charge; and

(b) the evidence produced shall be the best obtainable in the circumstances of the case.

195. Protection of Witnesses.

The Court shall prevent the putting of irrelevant questions to the witnesses and shall protect them from any language, remarks or gestures likely to intimidate them. Further, the Court shall prevent the putting of any question of an indecent or offensive nature unless such question bears directly on facts which are material to the proper appreciation of the facts of the case.

196. Taking and Recording of Evidence.

(1) Except as otherwise provided in this Act, all evidence in every trial shall be taken in the presence of the accused or, when his or her personal attendance is dispensed with, in the presence of his or her pleader or advocate.

(2) Except as otherwise provided in this Act, the evidence of each witness and the examination and statement (if any) of the accused shall be recorded in writing in English or when necessary, in any other language prevalent in the Southern Sudan.

(3) The record shall ordinarily be in the form of a narrative and not in the form of question and answer, but at the discretion of the presiding Magistrate any particular question and answer may be taken down in full.

(4) The record of the statement of a witness shall be read over upon the application of the witness or the accused. If any objection is made to the record, it shall be corrected, if wrong, or a note made of the objection.

(5) After recording the evidence of a witness, the presiding Magistrate shall also record or cause to be recorded such remarks as he or she thinks material respecting the demeanor of such witness whilst under examination.

197. Power to Examine the Accused.

(1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him or her, the Court may at any stage of a trial, without a previous warning to the accused, put such questions to him or her as the Court considers necessary, and shall for the purpose aforesaid question him or her generally on the case, after the witnesses for the prosecution have been examined and before he or she is called on for his or her defence.

(2) The accused shall not render himself or herself liable to punishment by refusing to answer such questions or by giving false answers to the Court; but the Court may draw such inference from such refusal or answers as it deems just.

(3) The answers given by the accused may be taken into consideration in the trial and put in evidence for or against him or her in any other trial for any other offence, which such answers may tend to show that, he or she had committed.

(4) No oath shall be administered to the accused.

198. Power to Summon Material Witnesses or Examine Persons Present.

Any Magistrate or Court may at any stage of any trial or other judicial proceedings under this Act, summon any person as a witness or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined; and the Magistrate or Court shall summon and examine or recall and re-examine any such person, if his or her evidence appears to it essential to the just decision of the case.

199. Tender of Pardon.

(1) In the case of any offence triable exclusively by a High Court or punishable with imprisonment for a term which may extend to seven years, any Public Prosecution Attorney investigating into the offence, may at any time, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his or her making full and true disclosure of the whole of the circumstances within his or her knowledge relating to such offence, and the connection is therewith of every other person concerned with the offence, whether as a principal or abettor in the commission of the offence.

(2) Every person accepting a tender under this section shall be examined as a witness at the trial.

(3) Every person accepting a tender under this section shall be committed for trial, if the offence which he or she appears to have committed is one which under this Act is exclusively triable by a High Court.

(4) Such person shall, subject to the provisions of this Act as to bail, be detained in custody until the termination of the case.

(5) Every Public Prosecution Attorney, Magistrate or Court who tenders a pardon under this section, shall record in the case diary his or her reasons for so doing.

(6) The Magistrate or Court trying a person who has accepted a tender of pardon shall, if the accused pleads that he or she has complied with the conditions on which the tender of pardon was made, record the plea and proceed with the trial, and shall find whether or not the accused has complied with the conditions of the pardon and if it is found that he or she has so complied, the Court shall, notwithstanding anything contained in this Act pass judgment of his or her acquittal.

200. When Pardon may be Revoked.

(1) When a pardon has been tendered under section 199 of this Act, and any person who has accepted such tender has either willfully concealed something essential by giving false evidence or otherwise did not comply with a condition on which the tender was made, he or she may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he or she appears to have been guilty of, in connection with the same matter; provided that, such person shall not be tried jointly with any of the other accused persons, and it shall be necessary for the prosecution to prove that he or she did not comply with the condition on which the tender was made.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him or her at such trial.

201. Admissibility of Evidence of Witness in Subsequent Proceedings.

(1) The evidence of a witness given on oath and duly recorded in any judicial proceeding under this Act may, in the discretion of the Magistrate or the Court, be read and accepted as evidence in any such subsequent proceedings

against the same accused or in a later stage of the same proceedings; provided that, the questions in issue are substantially the same on each occasion and that, if the witness is a witness for the prosecution, the accused had the right and opportunity to cross-examine the witness, and provided further that—

(a) the witness is dead or cannot be found;

(b) is incapable of giving evidence; and

(c) his or her presence cannot be obtained without an amount of delay, expense or inconvenience which the Court considers unreasonable in the circumstances of the case.

(2) If a witness is produced and examined in any judicial proceedings under this Act, his or her evidence given on oath and duly recorded in writing at any such proceedings previously held against the same accused in which the questions in issue were substantially the same or in a previous stage of the same judicial proceedings, may be read out after his or her evidence in chief has been given and, he or she may be examined and cross-examined upon it and, it may be accepted as evidence by the Court.

202. Admissibility of Statement by the Accused.

Where there are several accused, the statements of each made in connection with establishing a defence may be taken into consideration by the Court and shall be admissible for or against himself or herself, and any of the other accused at the same or any subsequent stage of the same proceedings; provided that, such statement made by one of the accused shall not be admitted at the trial of the other accused unless the accused person who made such statements was being tried jointly with the other accused and the statements were made in the presence of the other accused.

NOTE- *The statements made admissible in evidence under this section should not be given less weight in as much as they are not made on oath and are not subject to cross-examination. Where the accused that has made statements incriminating the other accused is not on trial with them, he or she should be called as a witness in the usual way. When the evidence of one accused is an essential part of the case for the prosecution or defence of another, the accused should be tried separately. An exception may be made when persons are being jointly tried by virtue of section 187 for offences connected within this Act.*

203. Language not understood by Accused.

When any evidence is given in a language not understood by the accused and the accused is present in Court, it shall be interpreted to him or her in a language that he or she understands.

204. Interpreter bound to Interpret Truthfully.

When the services of an interpreter are required by any proceeding before Court under this Act, for the interpretation of any evidence or statement made under oath, the interpreter shall be bound to state the true interpretation of such evidence or statement.

205. View.

Whenever in the course of any judicial proceedings under this Act, the Magistrate or Court thinks it advisable to view the place where the offence alleged to have been committed or any other place, the Magistrate or Court may proceed to view it and shall be accompanied by the accused and may cause any witness to attend, he or she may take any evidence hear any statement or explanation by the accused on the spot, and the Public Prosecution Attorney and the pleader for the accused shall have the right to be present at the site.

206. A Person Incapable of Making his or her Defence by Reason of Unsoundness of Mind.

(1) Whenever during the course of a trial proceeding under this Act, there is reason to believe that the accused is of unsound mind and consequently incapable of making his or her defence, the trial shall be adjourned and the accused shall be referred for examination by one or more specialized physicians who shall report the result of such examination to the Court conducting the trial.

(2) If the unsoundness of mind is established, the trial proceeding shall be further adjourned until such time as the accused shall have sufficiently recovered to make his or her defence. The accused shall be placed in such custody as the Magistrate or Court conducting the trial deems appropriate.

(3) If in the opinion of the Magistrate or Court, and the circumstances permit it, the custody may subject as aforesaid, be that of any relatives or friends of the accused willing to take charge of him or her. In such case, the Magistrate or Court may if, he, she or it deems necessary and appropriate take security from the custodians that the lunatic shall be properly taken care of and that he or she shall be prevented from doing injury to himself or herself or to any other person and for his or her production at such time and place as the Magistrate or Court may from time to time direct.

(4) The Magistrate or Court conducting the trial may order the reference of the lunatic to the County Commissioner if it appears from the circumstances that it is not possible to keep him or her in custody or take care of him or her by any other means.

207. Person of Unsound Mind doing an Act which but for such Unsoundness Would Be An Offence.

If at the time of his or her trial proceeding, an accused person appears to be of sound mind, and it appears from the evidence that he or she has done an act which had he or she been of sound mind would have constituted an offence, but that at the time of doing it, he or she did not possess the power of appreciating the nature of his or her acts or of controlling himself or herself by reason of insanity or mental infirmity, the Court shall record its finding that he or she did the act but was at the time of doing it was of unsound mind and shall forward him her to be dealt with as under the preceding section.

208. Commissions to Take Evidence.

(1) Whenever in the course of any judicial proceedings under this Act, it appears to a Magistrate of the First Class or a High Court that the examination of a witness is necessary for the achievement of 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 or Court may dispense with his or her attendance and may issue a commission, to any Magistrate of the First or Second Class within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) When in such a case the proceedings are before a Magistrate of the Second Class or Payam Court, the Magistrate may apply to a Magistrate of the First Class who shall have power if he or she deems appropriate to issue a commission for the examination of the witness.

NOTE- *The issue of such commission is an expedient, which should only be adopted in extreme cases of delay, expense or inconvenience.*

209. Examination of Witness on Commission.

(1) The Magistrate or Court issuing such commission may send any interrogatories in writing submitted by the prosecution or the defence or prepared by himself or herself which he or she deems relevant to the questions at issue, to the Magistrate to whom the commission is directed who shall examine the witness upon such interrogatories.

(2) The Public Prosecution Attorney and the accused may appear in person or by pleader before such Magistrate or Court and examine, cross-examine or re-examine as the case may be such witness provided that if the accused is in custody he or she shall not be entitled to appear in person.

NOTE- *Commissions should as a rule be addressed to Magistrates by the titles of their offices and not personally and, if the record or extracts from it are not sent with the commission, sufficient information should be given to enable the examining Magistrate to understand the points upon which the evidence of the witness is required.*

210. Evidence Taken Abroad by Interrogatories.

(1) Whenever in the course of any judicial proceedings under this Act, it appears to a High Court Judge or County Court Magistrate of the First Class that, for purpose of ascertaining the nature, source or other attribute of identification of any article, the examination of a witness who is abroad is necessary for the achievement of 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 High Court Judge or County Court Magistrate of the First Class, after hearing the Public Prosecution Attorney, if any, and the accused or his or her advocate may dispense with his or her attendance and may settle such interrogatories in writing to be answered by such witness as may be necessary for the aforesaid purpose.

(2) The interrogatories settled by the High Court Judge or County Court Magistrate of the First Class under subsection (1) above, may be answered by an affidavit duly sworn by the witness in question or in such other manner as a County Court Magistrate of the First Class, or in his or her absence, the High Court or the Court of Appeal may order.

211. Return of Commission.

After any commission issued under section 208 of this Act has been duly executed, it shall be returned together with the deposition of the witness examined there under to the Court which issued the commission, the return thereto and the deposition shall be open at all reasonable times to inspection by the prosecution or defence and subject to all just exceptions may be read in evidence in the case and shall form part of the record. Any deposition so taken may also be received in evidence at any subsequent stage of the same case before another Court.

212. Deposition of Medical Witness.

(1) The evidence of any physician taken on oath before a Magistrate in the presence of the accused may be read in evidence in any trial or other proceedings under this Act although he or she is not called as a witness.

(2) The Court may if it deems appropriate, summon such physician to appear before it as a witness.

(3) A written report by any such physician may at the discretion of the Magistrate or Court be admitted in evidence for the purpose of providing the nature of any injuries received by and the physical cause of the death of any person, who has been examined by him or her provided that, on the admission of such report the same shall be read over to the accused, and he or she shall be asked whether he or she disagrees with any statement therein, and any such disagreement shall be recorded by the Court and; provided further that, if by reason of any such disagreement or

otherwise, it appears desirable for the achievement of the ends of justice that such physician shall attend, and give evidence in person, the Magistrate or Court shall summon such physician to appear as a witness.

213. Report of Scientific Expert.

Any document purporting to be a report under the hand of any expert in bacteriology, physiology, biology, pathology, chemistry or other branch of scientific knowledge in the civil service of Southern Sudan or other parts of the Sudan, regarding any matter or thing duly submitted by him or her for examination or analysis in the course of any proceedings under this Act, may be used as evidence in any trial or other proceeding under this Act.

214. Record of Evidence in the Absence of an Absconding Accused.

If it is proved that an accused person has absconded and that there is no immediate prospect of arresting him or her, the Court may in his or her absence examine any witnesses produced on behalf of the prosecution and record their depositions. Any such deposition may on the arrest of such person be given in evidence against him or her at the trial for the offence with which he or she is charged, if the deponent is dead or incapable of giving evidence or his or her attendance cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable.

215. Record of Evidence when Offender is Unknown.

If it appears that an offence punishable with death or imprisonment for ten years or more has been committed by an unknown person, any Magistrate of the First Class may hold an inquiry and examine any witness who can give evidence concerning the offence during the investigation. Any depositions so taken may

be given in evidence against any person who is subsequently accused of the offence if the deponent is dead or incapable of giving evidence or beyond the local limits of the Sudan.

216. Investigation.

If a Public Prosecution Attorney or Magistrate taking cognizance of an alleged offence is not satisfied that the offence has been committed, or if for any other reason he or she deems it expedient to do so, he or she may either himself or herself make an investigation into the case or direct the police to do so. Such investigation shall be conducted so far as may be in the manner and with the powers with which an investigation under Chapter VII is conducted, and shall, if the police have already investigated the case, be deemed to be a continuation of that investigation.

217. Public Prosecution Attorney may Refuse to Proceed.

A Public Prosecution Attorney or in his or her absence, a Magistrate taking cognizance of an alleged offence may refuse to proceed with the case if after examining the complainant (if any) and considering the result of any investigation held under section 52 of this Act, there is, in his or her opinion, no sufficient grounds for proceeding; he or she shall thereupon briefly record his or her reasons for such refusal.

218. Trial.

When a Magistrate taking cognizance of an offence is satisfied that there is sufficient ground for proceeding, he or she shall after causing process to issue for the attendance of the accused person, if he or she is not already in custody or on bail, proceed to try the accused under Chapter XV or XVI; provided that, he or she is competent so to do.

219. Power to Dispense with Personal Attendance of Accused.

Where a summons is issued, the Magistrate or Court may, if he, she or it sees reasons to do so, dispense with the personal attendance of the accused; provided that, the accused pleads guilty in writing or appears by his or her pleader or other permissible agent.

CHAPTER XVI

TRIALS BY THE LOWER COURTS

Summary Trials

220. Offences that may be Tried Summarily by the Lower Courts.

A Magistrate or Court may try any of the following offences summarily—

(a) offences which are punishable with imprisonment, or other penalty, that does not exceed the summary jurisdiction of the Court concerned;

(b) offences which the Court deems to try summarily, by reason of the clarity of the evidence and simplicity of the case; and

(c) offences in which compounding or pardon has been made, except in offences the commission of which is punishable with death.

221. Procedure in Summary Trial.

(1) A Magistrate or Court conducting a trial summarily shall apply the following procedures—

(a) hearing the statement of the prosecutor, if any, and the complainant;

(b) hearing the accused reply;

(c) hearing the statement of the defence witnesses, if any;

(d) passing the decision of conviction or acquittal, together with a summary statement of the grounds thereof; and

(e) passing the final orders, in the judgment.

(2) A Magistrate or Court shall have due regard to the procedure of trial provided for under this section, in such a way as may not be inconsistent with the summary nature of the trial.

222. Record in Summary Trial.

(1) In summary trials, the Magistrate or Court need not record the evidence of the witnesses or frame a formal charge, but he or she shall enter in a form to be prescribed, the following particulars—

(a) the serial number of the criminal case;

(b) the name, nationality, residence, occupation and age of the accused;

(c) the name, nationality, residence and occupation of the complainant (if any);

(d) the offence complained of and the offence (if any) proved, with the value of the property in respect of which the offence has been committed;

(e) the date and place of commission of the offence and the date of arrest (if any);

(f) the date of the report or complaint;

(g) the date of instituting the criminal case;

(h) the names of the witnesses for the prosecution and defence, and a summary of the statements of each;

(i) the plea of the accused and his or her examination (if any);

(j) the finding and, in the case of a conviction, a brief statement of the reasons thereof;

(k) the sentence or other final order; and

(l) the date on which the proceedings were terminated.

(2) The record shall be in English and shall be signed or sealed by the Magistrate or Court.

223. Summary Procedure Transferred into Non-Summary Procedures.

If at any time after the commencement of a summary trial, the offence alleged appears to be one not triable summarily by the Magistrate or Court, or if the Magistrate or Court is of opinion that the offence cannot be adequately punished on summary conviction by him, her or it, the Magistrate or Court shall stay the proceedings, and shall either submit the case under section 186 of this Act, or if he, she or it, is competent to do so, try the case non-summarily.

Non-Summary Trials

224. Procedure in Non-Summary Trial.

(1) The procedures set fort under this section shall be observed by the Magistrates and the Courts in the trial of cases non-summarily.

(2) The Magistrate or Court shall follow the trial procedure in the following sequence—

(a) verifying the basic evidence about the accused, the witnesses and the subject of the case;

(b) hearing the prosecution opening speech, statements of the inquirer and the complainant, if any, and discussion of the same;

(c) reply of the accused to the prosecution;

(d) evidence of the prosecution, and discussion of the same;

(e) examination of the accused;

(f) framing of the charge, by drafting the charge sheet, where the Court deems it appropriate;

(g) addressing the accused, with the charge, and his or her reply thereto;

(h) hearing the evidence of the defence;

(i) any procedure in evidence, as the Court may allow;

(j) admission of final pleadings, if any, for the proprietor or private right, the prosecution and then the defence;

(k) delivery of the decision of conviction or acquittal;

(l) hearing reasons of mitigation or aggravation of penalty; and

(m) the final orders in judgment.

(3) Where the accused admits the offence, upon his or her reply, to the prosecution, the Court may frame the charge, without he or she hearing the evidence of the prosecution.

(4) Where the accused denies the offence or the Court deemed it necessary, and notwithstanding his or her admission, that it is most appropriate to hear the evidence, the Court shall call for the prosecution evidence, and proceed with the rest of the procedure.

225. Evidence for Prosecution.

(1) Whenever the accused appears or is brought before him or her, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate shall ascertain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and who are able to give evidence for the prosecution and shall summon those he or she thinks necessary to give evidence before himself or herself.

(3) The accused shall be at liberty to cross-examine the witnesses for the prosecution and, if he or she does so, may re-examine them.

226. Dismissal of Criminal Case During Trial.

(1) If, upon taking all the prosecution's evidence, and making such examination (if any) of the accused as the Magistrate or Court thinks necessary for the purpose of enabling him or her to explain any circumstances appearing in the evidence against him or her, the Magistrate or Court finds that no case has been made out against the accused that would warrant a conviction of the accused, the Magistrate or Court shall dismiss the case, and discharge the accused.

(2) The Magistrate or Court may discharge the accused at any stage of the case, if for reasons to be recorded by him or her, he or she considers the charge to be groundless.

227. Charge to be Framed when an Offence Appears to have been Committed.

(1) When such evidence and examination have been taken and made or at any previous stage of the case and the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, which such Magistrate is competent to try, and it is in his or her opinion

that he or she could adequately try the case, he or she shall frame a charge under his or her hand, declaring with what offence the accused is charged, and shall then proceed as hereinafter provided; and

(2) If at any stage before the pronouncement of judgment in the trial of a case under this Chapter, it appears to the Magistrate that the case is one which ought to be tried by a High Court, he or she shall in like manner frame a charge against the accused, and in so far as he or she has not already done so, shall complete the procedure set forth in this Act on magisterial inquiry and committing for trial to the High Court down to the framing of the charge. The Magistrate shall thereafter observe the procedure prescribed in the said part to be followed after the framing of the charges.

228. Response of the Accused.

(1) If the Magistrate is of opinion that the offence is one which, he or she should try himself or herself, the charge shall then be read and explained to the accused and the accused shall be asked as to whether he or she is innocent or guilty, and whether he or she has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea and may in his or her directives convict him or her thereon.

NOTE- *The Magistrate must before convicting on a plea of guilty satisfy himself or herself that the accused has clearly understood the meaning of the charge in all its details, and essentials and also the effect of his or her plea. On accepting a plea of guilty it may be necessary to examine the record of any proceedings taken before the trial and to call witnesses whose evidence appears in such proceedings.*

229. Defence.

(1) If the accused pleads not guilty or makes no plea, or if he or she otherwise refrains from giving a reply, he or she shall be required to present his or her defence, and shall be required to state whether he or she wishes to cross-examine any witness, and if so, which of the witnesses for the prosecution whose evidence has been taken.

(2) If the accused wishes to cross-examine any witnesses, the witnesses named by him or her shall be recalled and after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any) they also shall be discharged. The accused shall then be called upon to enter upon his or her defence and produce his or her evidence.

(3) If the accused presents to the Court any written statement, the presiding Magistrate shall file it with the record of proceedings.

(4) The complainant or Public Prosecution Attorney may cross-examine any witnesses produced for the defence and the accused may re-examine them.

230. Process for Compelling Attendance of Witness and Production of Evidence for the Accused.

(1) The accused may, after presenting his or her defence, apply to the Magistrate or Court to issue any process for compelling the attendance of any witness for the purpose of examination or the production of any document or other thing. The Magistrate or Court shall issue such process unless there are such reasons, to be recorded by him or her in writing, he or she considers that the application is made for the purpose of vexation or delay or of defeating the ends of justice.

(2) Before summoning any witness for attendance in accordance with an application from the accused, the Magistrate or Court may order the deposit in the Court of any reasonable expenses to be incurred for the attendance of that witness except expenses for his or her transport, which shall be borne by the Government.

231. Procedure on Acquittal or Conviction.

(1) If in any case under this section in which a charge has been framed, the Magistrate or Court finds the accused not guilty, he or she shall record an order of acquittal.

(2) If in any such case the Magistrate or Court finds the accused guilty, he or she shall announce his or her finding and shall thereafter, if the accused has not previously called any witness to character, call upon him or her to produce such witnesses if he or she so desires and he or she wishes to make a statement in mitigation of punishment. The record of the accused previous convictions (if any), if such record has not already been put in evidence, shall be produced and if necessary proved by the police and the Magistrate or Court shall then pass the sentence upon the accused according to law.

232. Absence of Complainant.

When the proceedings have been instituted upon complaint and, upon such day fixed for the hearing of the case and the complainant is absent, the Magistrate or Court may in his or her discretion notwithstanding anything hereinbefore contained at any time before the charge has been framed discharge the accused.

CHAPTER XVII

PROCEDURES FOR CHARGING

Charge Sheet

233. Charge to State Offence.

(1) In order to record the charge and fill the charge sheet, the Magistrate shall ascertain the satisfactions of all the elements and conditions required by law.

(2) The framing of a charge is equivalent to making a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(3) Every charge under this Act shall—

(a) state the offence with which the accused is charged;

(b) if the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only;

(c) if the law which creates the offence, does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the offence with which he or she is charged; and

(d) the law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(4) The charge shall be written in English or when necessary in any other language prevalent in the area.

234. Particulars as to Time, Place and Person.

(1) The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which the offence was committed, as are reasonably sufficient to give the accused notice of the offence with which he or she is charged.

(2) When the accused is charged with criminal breach of trust or criminal misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of a single offence.

(3) When the accused is charged with falsification of accounts under section 366 of the Penal Code, it shall be sufficient to allege a general intent to defraud without naming any particular person intended to be defrauded to be the subject of the fraud or any particular day on which the offence was committed.

235. When Manner of Committing Offence Must be Stated.

When the nature of the case is such that the particulars mentioned in this Chapter do not give the accused sufficient notice of the offence with which he or she is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustration—

(a) "A" is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was affected;

(b) "A" is accused of cheating "B" at a given time and place. The charge must set out the manner in which "A" cheated "B"; and

(c) "A" is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by "A" which is alleged to be false.

236. Effect of Errors.

No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence of those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice.

Illustrations—

(a) "A" is charged with cheating "B", and the manner in which "A" cheated "B" is not set out in the charge or is set out incorrectly. "A" defends himself or herself, calls witnesses and gives his or her own account of the transaction. The Court or the confirming authority may infer from this that the omission to set out the manner of the cheating is not material;

(b) "A" is charged with cheating "B", and the manner in which "A" cheated "B" is not set out in the charge. There were many transactions between "A" and "B", and "A" had no knowledge to which of them the charge referred and offered no defence. It may be inferred from such facts that the omission to set out the manner of the cheating was in this case a material error;

(c) "A" is charged with the murder of "B" on 21st January 2000. In fact the murdered person's name was "B" and the date of the murder was the 30th January, 2000. "A" was never charged with any murder but one

and had heard the inquiry before the Magistrate, which referred exclusively to the case of "B". It may be inferred from these facts that "A" was not mislead and that the error in the charge was immaterial; and

(d) "A" was accused of murdering "B" on the 20th January 2000 and "B" (who tried to arrest him for that murder) on the 21st January, 2000. He or she was, upon a charge tried for referring to the murdered man as" the murder of "B". The witnesses present in his or her defence were witnesses in the case of "B". It may be inferred from this that "A" was mislead and that the error was material.

237. Power of Court to Frame, Alter or Add to Charge.

(1) When any person is committed for trial without a charge, the Magistrate or Court may frame a charge against the accused.

(2) Subject to the provisions of this Act as to the joinder of charges and the separate trial of distinct offences, any Court may at any time before judgment is pronounced, frame a new charge or additional head of charge or amend any charge which is erroneous or defective.

(3) Every charge or head of charge so framed, added or amended shall be read and explained to the accused and his or her plea thereof shall be taken.

238. When the Court may Proceed with Trial Immediately After Framing, Altering or Adding to a Charge.

If the charge as revised under this Chapter, is such that proceeding immediately with the trial is not likely in the opinion of the Magistrate or Court to prejudice the accused in his or her defence of the Public Prosecution Attorney (if any) in the conduct of the case, the Magistrate or Court may in his, her or its discretion forthwith proceed with the trial, as if the charge so revised had been the original charge.

239. When a New Trial May be Directed, or Trial Suspended.

If the revised charge is such that proceeding immediately with the trial is likely in the opinion of the Magistrate or Court to prejudice the accused or the Public Prosecution Attorney, as aforesaid, the Magistrate or Court may either, direct a new trial or adjourn the trial for such period as may be necessary.

240. Recall of Witnesses when a Charge is Revised.

For every distinct offence of which any person is accused of, there shall be a separate charge and every such charge shall be tried separately, except in the cases mentioned in sections 241, 242, 243, 244, 245 and 248 of this Act.

Illustration—

"A" is accused of theft on one occasion, and of causing grievous hurt on another occasion. "A" must be separately charged and separately tried for the theft and for causing grievous hurt.

241. Offences of Like Character may be Charged Together.

Where a person is accused of several offences of the same or similar character, he or she may be charged with and tried at one trial for any number of them; provided that, if the Magistrate or Court, before the trial or at any stage of the trial before judgment is pronounced, considers that he or she may be prejudiced in his or her defence by such procedure, or that for any other reason, it is desirable to do so, the Magistrate or Court may order a separate trial for any one or more of such charges.

242. Acts Forming the Same Transaction.

If it is alleged that a series of acts so connected together, form the same transaction, the accused may be charged with and tried at one trial for each offence which he or she would have committed, if the whole of such acts or some or more of them without the rest were proved.

NOTE- *In passing sentence the Court must nevertheless have regard to section 18 of the Penal Code.*

Illustrations—

(a) "A", an accountant, commits a criminal breach of trust and to conceal his or her offence falsifies his or her accounts. "A" may be separately charged with and tried at one trial for criminal breach of trust (section 350 of the Penal Code) and falsification of accounts (section 366 of the Penal Code); and

(b) "A" commits robbery on "B" and in doing so voluntarily causes hurt to him or her. "A" may be separately charged with and tried at one trial for offences under sections 237, 305 and 307 of the Penal Code.

243. When it is Doubtful on Which Occasion Offences Have Been Committed.

If a series of acts is of such a nature that it appears that an offence was committed on one of several occasions, but it is doubtful whether the facts which can be proved will show on which occasion an offence was committed, the accused may be charged with having committed an offence alternatively on one or other of such occasions.

Illustration—

"A" states on oath before the Magistrate that he or she saw "B" hit "C" with a club. Before another Court" A" states on oath that "B" never hit "C". "A" may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

244. When it is Doubtful what Offence has been Committed.

If a single act or series of acts is of such a nature that it is doubtful which of several different offences the facts will support, the accused may be charged with having committed all or any one or more of such offences and any number of such charges may be tried together, or he or she may be charged in the alternative with having committed one or more of the said offences.

Illustration—

"A" is accused of an act which may amount to theft or receiving stolen property or criminal breach of trust. He or she may be charged with-

(a) theft and receiving stolen property and criminal breach of trust;

(b) theft or receiving stolen property or criminal breach of trust alternatively; or

(c) one or two of these offences omitting either of them.

245. When a Person Charged with One Offence may be Convicted of Another.

(1) If in the case mentioned in section 244 of this Act, that the accused is charged with one offence, and it appears in evidence that he or she committed a different offence with which he or she might have been charged under the provisions of that section, he or she may be convicted of the offence, which he or she is shown to have committed although he or she was not charged with it.

(2) When the accused is charged with an offence, he or she may be convicted of having attempted to commit that offence although the attempt is not separately charged.

246. Conviction of Lesser Offence where Greater is Charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some of which constitute a complete minor offence and such combination is proved but the remaining particulars are not proved, he or she may be convicted of the minor offence though he or she was not charged with it.

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

247. What Persons may be Charged Jointly.

The following persons may be charged and tried jointly—

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

(b) persons accused of an offence and persons accused of abetment or of an attempt to commit the same offence;

(c) persons accused of more than one offence of the same or similar character committed by them jointly;

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

(e) persons accused of offences which include theft, extortion or criminal misappropriation and persons accused of receiving or retaining or assisting in the disposal or concealment of property, the possession of which has been transferred by offences committed by the first-named persons, or abetment of or attempting to commit any of the last named offences;

(f) persons accused of offences under sections 297 and 300 of the Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XI of the Penal Code relating to counterfeit coin or notes or revenue stamps and persons accused of any other offences under the said Chapters relating to the same coin or note or the same revenue stamp or of abetment of or attempting to commit any such offence; and

(h) persons accused of offences committed during a fight or series of fights one arising out of another, and persons accused of abetting any of these offences; the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.

Illustrations—

(a) "A" and "B" are accused of the same murder. "A" and "B" may be charged and tried together for the murder;

(b) "A" and "B" are accused of housebreaking by night in the course of which "A" commits a murder with which "B" has nothing to do with. "A" and "B" may be tried together on a charge, charging both of them with housebreaking by night and "A" alone with the charge of murder; and

(c) "A" and "B" are both charged with theft and "B" is charged with two other thefts committed by him or her in the course of the same transaction. "A" and "B" may be tried together on a charge, charging both with the one theft and "B" alone with the two other thefts.

CHAPTER XVIII

JUDGMENT AND SENTENCING

248. Language and Mode of Delivering Judgment.

(1) The judgment in every trial under this Act shall be written in English; provided however, that it may also be written in any other language prevailing in the area if necessary.

(2) The judgment shall be pronounced or the substance of it explained in an open Court either immediately after the termination of the trial or at some subsequent time of which due notice shall be given; provided that, the whole judgment shall be read out by the presiding Magistrate if he or she is requested to do so, either by the prosecution or the defence.

(3) If the accused is in custody, he or she shall be brought up to hear judgment delivered, if he or she is not in custody, he or she shall be required to attend to hear judgment delivered unless his or her presence is dispensed with by the presiding Magistrate.

249. Contents of Judgment.

(1) Subject to the provisions as to summary trials contained in Chapter XVI, every judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed or sealed by the presiding Magistrate in open Court at the time of pronouncing it.

(2) If the judgment is a judgment of conviction, it shall specify the offence of which and the section of the Penal Code or any other law under which the accused is convicted and the punishment to which he or she is sentenced.

(3) When it is doubtful upon which of several occasions, an offence was committed the Court shall distinctly express the same and pass judgment in the alternative.

(4) If the judgment is a judgment of acquittal it shall state the offence of which the accused is acquitted and direct that he or she be discharged.

250. Combination of Sentences.

Any Magistrate or Court may pass any lawful sentence combining any of the sentences, which are authorised by law.

251. Reason for not passing Death Sentence to be Stated.

If the accused is convicted of an offence punishable with death, and the Court sentences him or her to any punishment other than death, the Court shall in its judgment state the reasons why sentence of death was not passed on the accused.

252. Cases in which Death Sentence shall not be Passed Against an Accomplice.

Subject to any special provisions in respect of any offences referred to in the preceding section, no death sentence or sentence of confiscation of property shall be passed on any person if the only evidence against him or her is that of an accomplice or accomplices in the offence.

253. Sentence of Imprisonment.

If the sentence is one of imprisonment, the Court may if, having regard to the nature of the offence and the antecedents of the offender, it thinks necessary and appropriate, recommend that he or she shall be given special treatment.

254. Cases in which Appeal Lies.

When a judgment of conviction is one from which may be appealed against, the presiding Magistrate shall inform the convicted person that he or she has a right to appeal and of the period within which if he or she desires to appeal, his or her petition is to be presented.

255. Court not to Alter Judgment.

No Court when it has signed its judgment, shall alter or review the same, except as provided in sections 285 and 286 of this Act or to correct a clerical error.

256. Copy of Judgment etc. to be given to Accused on Application.

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

257. Original Judgment to be Filed.

The original judgment shall be filed with the record of the proceedings.

CHAPTER XIX

CONFIRMATION, APPEAL AND REVISION

258. Submission for Confirmation of Judgment of Court.

Every judgment of a High Court passing a death sentence or a sentence of imprisonment for life shall be submitted to the Supreme Court for confirmation.

259. Right of Convicted Person to Present Petition of Appeal to the Confirming Authority.

(1) Whenever a judgment of conviction subject to confirmation under section 258 of this Act, the convicted person, may submit to the Supreme Court by way of petition of appeal, a statement in writing of his or her reasons, why such judgment should be reversed.

(2) Similarly, a person subject to the execution of a bond or order of police supervisions under section 140 of this Act may also appeal to a higher Court.

260. Jurisdiction of the Supreme Court.

The Supreme Court is competent to deal with appeals on points of law against a decision made by Court of Appeal under sections 261 and 262, if the judgment against which appeal is made was based on contravention, wrong application or misinterpretation of the law or if there is a procedural defect affecting the judgment.

261. Appeals in Cases Other than those Provided for Under Section 140 or Section 259.

(1) Every person convicted by a High Court other than under Section 140 or Section 159 may submit an appeal to the Court of Appeal; provided that the appeal shall be by a petition in writing showing the reasons for appeal against the judgment or the order made by such Court; and

(2) In addition to the powers conferred upon it by subsection (1) above the Court of Appeal is competent to deal with all appeals and applications for revision against decisions by a High Court judge, whether made in his or her appellate or original jurisdiction.

262. Presentation of the Appeal to the Appellate Authority.

An appeal by petition in writing shall be submitted to the High Court by the convicted persons, with respect to judgment of the County Magistrate of the First Class, Second Class or of the Payam Court Judge, under Section 12, 13, 14, and 15 respectively, where a sentence is passed in excess of the penalties which such magistrates are competent to award under this Act, when trying offences summarily.

263. Presentation of Petition of Appeal.

(1) Every petition of appeal under this section shall be presented within fifteen days after the pronouncement of a sentence or the making of the order which may be appealed against; provided that, if the appellant has been committed to or detained in prison under the provisions regarding imprisonment upon default in security, under section 150, he or she may present a petition of appeal against the order to give security within fifteen days of the commencement of the imprisonment or detention.

(2) If the appellant is in prison he or she may present his or her petition to the officer-in-charge of the prison that shall forward it to the appropriate authority.

264. Powers of Confirming or Appellate Authority.

(1) The Supreme Court when acting upon a judgment submitted to it for confirmation or an appeal from the Court of Appeal, the Court of Appeal when acting upon a judgment submitted to it from the High Court, and the High Court when acting upon a judgment submitted from the County Court, may exercise the following powers—

(a) confirm the finding and the sentence, if any;

(b) confirm a finding of guilty and alter the sentence as follows—

(i) by remitting the punishment in whole or in part;

(ii) by commuting a sentence of imprisonment into a sentence of imprisonment for a shorter period and a fine;

(iii) by commuting a sentence of imprisonment into a sentence of fine only;

(iv) in case in which the conditions regarding release on probation are fulfilled, may direct that the offender be released on his or her entering into such a bond as is provided for under Section 284 of this Act;

(v) and the Supreme Court may commute a sentence of death to a sentence of imprisonment, and commute a sentence of imprisonment and fine to a fine only;

(c) alter a finding of guilty of one offence to a finding of guilty of another offence of which the Court could on the charge and evidence before it have found the offender guilty; provided that, such offence is not punishable with any greater punishment than is prescribed for the offence of which the Court found the offender guilty, and thereupon he or she shall if necessary, alter the sentence so as to make it conform to the punishment prescribed for the offence mentioned in the altered finding and may in so doing exercise all or any of the powers of alteration provided in paragraph (b) above;

(d) send back the finding whether guilty or not guilty or the sentence for revision once only, and if the finding only is sent back for revision the Court shall have power without any directives to revise and if it deems appropriate to increase the sentence awarded (if any) or if there has been no sentence to award one;

provided always that, it shall not be lawful for any Court on revision to receive any additional evidence unless expressly authorised by the Court of Appeal, the High Court or the County Judge as the case may be;

(e) refuse confirmation of the finding whether of guilty or not guilty, the refusal of confirmation of a finding shall have the effect of annulling the proceedings so far as they relate to that finding and upon refusal of confirmation of a finding of guilty the accused shall be released, but such refusal of confirmation shall not prevent his or her subsequent retrial if ordered by a competent authority; provided that, upon refusing to confirm a finding the Supreme Court, the High Court Judge or the County Court Magistrate of the First Class, as the case may be, may order either a re-trial of the case by same or another Court and on the same or another charge framed by him or her or a resumption of the original trial for the purpose of hearing fresh evidence or of further examining all or any of the witnesses at the original trial and of giving a fresh judgment, and may also order such previous preliminary investigation or inquiry as he or she may deem appropriate;

(f) substitute a finding of not guilty for a finding of guilty;

(g) while exercising any of the foregoing powers amend, annul or add any consequential order as may be just or proper; and

(h) confirm or annul any recommendation for special treatment or make such recommendation in any case in which none has been made.

(2) The Supreme Court, the Court of Appeal, the High Court Judge or the County Court Magistrate, as the case may be, upon an order for bond or police supervision, under section 140 being submitted to him or her for confirmation, and the County Court Magistrate, after receiving a petition of appeal under section 263 of this Act, and sending for the record of the proceedings, may exercise the following powers—

(a) he or she may confirm the order;

(b) if the order was made under sections 140 or 146 of this Act, he or she may annul the order or reduce the amount of the security or the number of the sureties or the term for which security has been required or he or she may postpone the enforcement of the order to give security; and, if he or she annuls the order any bond already executed under sections 140 or 146 of this Act, shall forthwith become void; and

(c) if the order was made under section 140 of this Act, regarding forfeiture of bond he or she may annul the order or vary it in such a manner as he or she deems appropriate.

Note—For Form of warrant of commitment to prison on alteration of sentence, see Schedule III, Forms 37 and 38.

265. Powers of Review and Revision.

(1) As a means of ensuring the correctness, legality, or propriety of any findings recorded or passed or as to the regularity of the proceedings of a Court, the records of a criminal proceeding may be reviewed as follows—

(a) the Supreme Court may, on its own motion, call for and examine the record of any criminal proceedings before any Court;

(b) the Court of Appeal may, on its own motion, call for and examine the record of any criminal proceedings before any Court within its jurisdiction;

(c) the High Court may, on its own motion, call for and examine the record of any criminal proceedings before any County Court Magistrate; and

(d) the County Court Magistrate of the First Class may, on its own motion, call for and examine the record of any proceedings before any County Court Magistrate of the Second Class or of a Payam Court within his or her County.

(2) The Supreme Court, a Court of Appeal, a High Court, and a County Court Magistrate, as the case may be, shall be provided, in respect of the proceedings under review, the record of the proceeding, and shall have all the powers of an appellate authority under section 264 of this Act; provided that, no order shall be made under this subsection for the revision of any finding of not guilty or of any sentence with a view to its being increased or for the retrial or the resumption of the trial of any person who has been acquitted unless the record of the proceedings was called for within three months of the date of the delivery of the judgment.

(3) The Supreme Court, a Court of Appeal, a High Court, and a County Court Magistrate, as the case may be, shall have the power to confirm, annul, alter or Send back for revision or substitute any other order, as it may think just and proper and for any order made in any proceedings the record of which is called for under this section and to which the provisions of section 264 are not applicable.

(4) When proceedings under this section are called for, the Supreme Court, the Court of Appeal, a High Court, or a County Court Magistrate as the case may be, may within three months from the date on which the case was dealt with by a

lower Court, by confirmation or otherwise, annul any order made and exercise all the powers provided in section 264, as if a petition of appeal has been submitted under sections 261 or 263 of this Act; provided that, no confirmation or other order made by the Court shall be annulled, if more than three months have elapsed since it was made.

266. Power of Confirming Authority to Pass Interim Order.

Whenever the record of a case comes before the Supreme Court, a Court of Appeal, a High Court or a County Court Magistrate under the provisions of this Chapter, the Supreme Court, Court of Appeal, High Court or County Court Magistrate, as the case may be, may by an order in writing, order that a person in confinement be released on bail or on his or her own bond pending any further proceedings or order or that an acquitted person be re-arrested.

267. Sentence to Take Effect Pending Appeal or Confirmation.

A sentence other than of death, shall take effect notwithstanding an appeal or a submission for confirmation, provided that—

(a) where a warrant has been issued under section 282 of this Act, no sale shall take place until the sentence has been confirmed or the appeal decided; and

(b) where an order for release under section 266 of this Act has been made, the time during which the convicted person has been so released, shall be excluded in computing the period of any sentence, which he or she has ultimately to undergo.

268. Accused to be Heard on Appeal.

The Supreme Court, a Court of Appeal, a High Court or a County Court Magistrate may in exercising their powers under this Act, hear the accused or the complainant or the Public Prosecution Attorney, if any, either in person or through an agent, and the accused is entitled to be heard in person or by agent, if the Court decides to increase the sentence or alter it to his or her detriment.

269. Non-interference with the Finding, Sentence or Order in Certain Cases.

The Supreme Court, in exercising the powers of confirmation and the Court of Appeal, High Court and the County Court First Class Magistrate in exercising their respective appellate powers shall not interfere with any finding, sentence or other orders of the, on the ground only that the evidence has been wrongly admitted or that there has been a technical irregularity in procedure if the accused has not been prejudiced in his or her defence and the findings, sentence or order is correct.

270. Vacancies in Court to which Judgment is sent back.

Whenever a finding or sentence is sent back by the confirming or appellate authority under this Chapter and owing to death, transfer or the cause making it is impossible to reconstitute the Court as originally constituted, the President of Court of Appeal, a High Court Judge or a County Court Magistrate, as the case may be, shall nominate a Magistrate or Magistrates to fill the vacancy or vacancies.

271. Prohibition of Hearing on Appeal.

No Magistrate or Judge shall take part in any appeal against a finding, judgment or order made by him or her or in the making of which he or she participated.

PART XX

EXECUTION OF SENTENCES

General Provisions

272. Imprisonment in Default of Payment of Fine.

In case of default on the payment of a fine, a criminal court may impose a term of imprisonment as authorised by sections 14 and 15 of the Penal Code; provided that—

(a) the term shall not be in excess of the powers of the Court under sections 12 to 15 (inclusive) of this Act;

(b) in any case in which imprisonment imposed upon default on the payment of fine, the term shall not exceed—

(i) three years, if the Magistrate is of the First Class or six months if the case is tried summarily, and

(ii) one year if the Magistrate is of the Second Class or three months if the case is tried summarily.

273. Sentences in case of Conviction for Several Offences at One Trial.

(1) When a person is convicted for two or more distinct offences at one trial, the Magistrate or Court may, subject to the provisions of section 18 of the Penal Code, sentence the person convicted of such offences for the several punishments prescribed therein; provided that, the Magistrate or Court is competent to impose such punishments.

(2) The sentences passed under subsection (1) above, when consisting of imprisonment, shall run consecutively unless the Magistrate or Court directs that such punishments shall run concurrently.

(3) In cases falling under this section, a Court shall not be limited by the provisions of sections 12 through 15 (inclusive) of this Act; provided that, subject to the exception in section 14 of the Penal Code, a Magistrate shall not impose consecutive sentences exceeding in the aggregate twice the amount of punishment which he or she is, in the exercise of his or her ordinary jurisdiction, competent to inflict.

274. Return of Warrant on Execution of Sentence.

When a sentence has been fully executed, the officer executing it shall return the warrant to the Court in which the trial took place with an endorsement under his or her hand certifying the manner in which the sentence has been executed.

Death Sentence

275. Sentence of Death.

When a person is sentenced to death, the sentence shall direct that the convict be hanged by the neck until he or she is dead.

NOTE- For Forms of Warrant, see Schedule III, Forms 33 and 34.

276. Execution of Death Sentence.

(1) When a person is sentenced to death, the Magistrate or President of the Court shall issue a warrant committing him or her to prison pending confirmation of the sentence by the Supreme Court. When the sentence has been confirmed or altered, the President of the Supreme Court shall issue such warrant to the officer-in-charge of the prison as may be necessary to cause the sentence as confirmed or altered to be carried into effect.

(2) If the Supreme Court confirms the death sentence, the President of the Supreme Court shall submit the case to the President for confirmation.

(3) The President may confirm the death sentence, commute it and alter the sentence or pardon the convict.

Note- See Schedule III, Forms 33 and 34.

(4) If the President confirms the death sentence he or she shall sign the death warrant to send it back for execution.

277. Stay of Execution of Death Sentence on a Pregnant or Suckling Woman or on the Aged.

Subject to the provisions of section 9 of the Penal Code—

(a) no death sentence shall be executed on any person who has reached the age of seventy. Whenever the officer-in-charge of the prison discovers that a person sentenced to death has reached the age of seventy, he or she shall stay the execution of the death sentence and report the case to the President of the Supreme Court;

(b) if a woman sentenced to death, is found to be pregnant, the officer-in-charge of the prison shall order the execution of the sentence to be postponed and shall report the case to the President of the Supreme Court after full investigation as to how this came to be the case;

(c) in the case referred to in subsections (a) and (b) above, the President of the Supreme Court shall re-submit the case together with the report of officer-in-charge of the prison and any other investigation may have ordered, to the President for reconsideration of the original confirmation order; and

(d) if the death sentence is confirmed by the President, the execution of the death sentence on the pregnant or suckling woman shall be postponed until after two years from the date of delivery if the child remained alive.

Imprisonment

278. Execution of Sentence of Imprisonment.

(1) When a convicted person is sentenced to imprisonment, the Court passing the sentence shall forthwith issue a warrant committing him or her to prison and shall forward the warrant and the convicted person to the prison in which he or she is to be confined.

(2) Every such warrant shall be directed to the officer-in-charge of the prison or other place in which the prisoner is to be confined, and shall be lodged with the officer-in-charge of such prison or place.

Note- For Forms of Warrant, See Schedule III, Form 35.

279. Execution of Sentence on Escaped Convict.

When a sentence of imprisonment is passed on an escaped convict, such sentence shall take effect after he or she has served a term of imprisonment for a further period equal to that, which at the time of his or her escape, remained un-expired of his or her former sentence.

280. Sentence on an Offender already Sentenced for Another Offence.

When a person already undergoing a sentence of imprisonment is sentenced to an additional term of imprisonment, such imprisonment shall commence at the expiration of the current term of imprisonment, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

Fines

281. Powers of Court when Offender is Sentenced to Fine Only.

(1) When an offender has been sentenced to a fine only, with or without a sentence of imprisonment upon the default of payment of the fine, the Court or any person authorised by section 283 to issue a warrant may exercise all or any of the following powers—

(a) allow additional time to pay the fine;

(b) direct that the fine be paid by installments;

(c) postpone the issue of a warrant under section 282;

(d) without postponing the issue of a warrant under section 282, postpone the sale of any property seized under such warrant; and

(e) postpone the execution of sentence of imprisonment in default of payment of the fine.

(2) Any order made in the exercise of the powers set forth in subsection (1) above, may be made subject to the offender giving such security as the authority making the order thinks appropriate, by means of a bond with or without sureties, and such bond may be conditioned either for the payment of the fine in accordance with the order or for the appearance of the offender as required in the bond or both.

(3) In like manner, the Court or any person authorised as aforesaid may order that the execution of the sentence of imprisonment upon an offender who has been committed to prison in default of payment of a fine be suspended and that he or she be released but only subject to the offender giving security as set forth in subsection (1), above

(4) In the event of the fine or any installment thereof not being paid in accordance with an order under this section, the authority making the order may enforce payment of the fine or of the balance outstanding by any means authorised in this Chapter, and may cause the offender to be arrested and may commit or re-commit him or her to prison under the sentence of imprisonment in default of payment of the fine.

NOTES—

(1) Payment of a fine by the sureties to a bond discharges the offender as if he or she had paid it himself or herself; and

(2) See sections 12 to 16 of the Penal Code.

282. Warrant for Levy of a Fine.

(1) When an offender is sentenced to pay a fine, the Magistrate or Court passing the sentence may, at its discretion, although the sentence directs that in default of payment of the fine the offender shall be imprisoned, issue a warrant for the levy of the amount—

(a) by the seizure and sale of any movable property belonging to the offender;

(b) by the attachment of any debts due to the offender; or

(c) with the consent of the County Commissioner in which any land or other immovable property of the offender is situated, by the attachment and sale of such property.

(2) A warrant for seizure and sale of the movable property of an offender shall be addressed to a Magistrate within the local limits of whose jurisdiction it is to be executed. When execution is to be enforced by attachment of debts or by sale of immovable property, the warrant shall be sent for execution to any civil court competent to execute decrees for the payment of money in civil suits, and such Court shall follow the procedure in force for the execution of such decrees and shall out of the proceeds of the execution, pay the costs thereof and a fee of five percent (5%).

Note- For Forms of Warrant, See Schedule III, Forms 41 and 42.

283. Who may issue Warrant.

Subject to the provisions of section 276, a warrant for the execution of any sentence or other order of a criminal court, may be issued by the Magistrate who, or the presiding Magistrate of the Court which, passed such sentence or order or by his or her successor in office; provided that, if in any case it is not possible without delay or inconvenience for a warrant to be issued as aforesaid, the warrant may be issued by the County Court Judge, High Court or the Court of Appeal.

CHAPTER XXI

PROBATION, PARDONS, SUSPENSIONS, REMISSIONS, LAPSES AND COMMUTATION OF SENTENCES

284. Power to Direct Release on Probation.

(1) When any adult is convicted by a Magistrate of the First or Second Class or by a Court of any greater powers, of an offence punishable with imprisonment for not more than seven years, or when any juvenile or any woman is convicted by any such Court as foresaid of an offence not punishable with death, and if in either case no previous sentence of an imprisonment exceeding six months is proved against such a person during the period of five years preceding the present conviction or that a period of ten years has passed since he or she served the sentence in the case of any other previous sentence and it appears to the Court taking into consideration the age, character and past story of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender be released on probation, the Court may instead of sentencing him at once to any punishment, direct that he or she be released on his or her entering into a bond with or without sureties to appear and receive sentence, when called upon during such period not exceeding three years or as the Court may direct, and in the mean time to keep peace and be of good behaviour, and the Court may make it a condition of such bond that the victim be paid by or on behalf of the offender such damages for injury or compensation for loss caused by the offence, as the Court deems reasonable.

(2) The Court of Appeal, The High Court or the County Court may make any order under this section when exercising their powers under Chapter XXIII.

285. Power to Pardon.

The President may remit the whole or part of the sentence and he or she may drop the conviction of any person for any offence.

Suspension and Remittance

286. Power to Suspend or Remit Sentences.

(1) When any person has been sentenced to punishment for an offence, the President, on the recommendation of the Minister, may at any time without conditions or upon any conditions, which the person sentenced accepts, suspend the execution of his or her sentence or remit the whole or any part of the punishment to which he or she has been sentenced.

(2) If any condition, on which a sentence has been suspended or remitted is in the opinion of the President not fulfilled, the President may cancel the suspension or remission, and if the convicted person has been released from prison before the period of his or her imprisonment has expired, he or she may be re-arrested without warrant by any policeman or Chief or retainer, and may be re-committed to prison by any County Court Magistrate of the First or Second Class to serve the un-expired portion of his or her sentence and in calculating such un-expired portion the time during which the convicted person has been at large shall be excluded from the calculation.

(3) A condition, on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted or one independent of his or her will.

(4) A committee consisting of the President of the Supreme Court, the Minister of Internal Affairs and the Minister, or their respective representatives shall be established and shall be charged with the duty of considering and reporting to the President upon the case of every prisoner, in respect

of whom a recommendation for suspension or remission of sentence has been submitted to the President prior to consideration by the President.

Note- For Forms of warrant of commitment after commission, see Schedule III Form 37.

287. Lapse of Convictions After Execution of Sentence.

If any person is convicted of an offence, such conviction shall lapse automatically—

(a) after five years since the sentence was executed or served if such sentence did not exceed six months imprisonment or SDG60 fine and if the person convicted was not convicted for any illegal act during these five years; and

(b) after ten years since the sentence was executed or served if such sentence exceeded that specified in subsection (a) above and the person convicted was not convicted of any illegal act during these ten years.

288. Conviction of Persons Under Eighteen Years to Lapse.

The conviction of any person under eighteen years of age, before any Magistrate or Court of any offence not punishable with death or life imprisonment shall lapse and have no consequence once the sentence was executed or served and such conviction may be noted for record purposes only.

289. Power to Commute Punishment.

The President may, without the consent of the person sentenced-

(a) commute a sentence of death into any other sentence allowed by law; or

(b) commute a sentence of imprisonment into one of a fine.

CHAPTER XXII

CIVIL POWER OF THE COURT

290. Civil Power of the Court.

Upon exercise by the Court of its powers in adjudication of compensation, the Magistrate or Court shall have due regard of the following—

(a) no injured person, who instituted a civil suit for compensation for damages resulting out of the offence, shall claim compensation for the same injury, before the criminal court, unless he or she relinquishes the compensation suit;

(b) the Court, on its own motion, or upon the application of the injured person, the accused or any person having an interest, may join to the suit, any person having an interest, or under an obligation, in the compensation suit;

(c) the Court shall hear the evidence, relating to proof of the injury, resulting out of the criminal act, and assessment of compensation;

(d) where the Court deems there is ground for instituting the compensation suit, the charge sheet shall include an allegation thereof, and the court shall hear the reply of the accused;

(e) the accused, or any person having such interest, at the defence stage, may adduce such evidence as he or she may deem necessary, for rebutting the compensation suit, or assessment thereof; and

(f) where the Court decides to award compensation, the judgment shall specify the amount of compensation, whether the same is independent, or part of any fine inflicted by the Court.

CHAPTER XXIII

OFFENCES AFFECTING ADMINISTRATION OF JUSTICE

291. Procedure in cases mentioned in Section 43 of this Act.

(1) When any Criminal or Civil Court is of the opinion that any offence referred to in section 43 of this Act is committed before it or brought to its notice in the course of any judicial proceedings, should be investigated into or tried, such Court, after making any preliminary inquiry which it thinks necessary and appropriate, may send the case for investigation or trial to the nearest Public Prosecution Attorney, County Court Magistrate of the First or Second Class as the case may be, and may send the accused to custody or take sufficient security for his or her appearance before such Public Prosecution Attorney or Magistrate and may compel any person to appear and give evidence at such investigation or trial.

(2) Such Public Prosecution Attorney or Magistrate shall thereupon proceed according to law and as if upon complaint made and recorded under section 35.

(3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred that an appeal is pending against the decision arrived at in the judicial proceedings out of which the matter has arisen, he or she may, if he or she deems appropriate, adjourn the hearing of the case until such appeal is decided.

292. Procedure in Certain Cases of Contempt.

(1) When any such offence as is described in sections 111, 115, 116, 117 or 127 of the Penal Code is committed in the view or presence of any civil or criminal court, the Court may instead of proceeding under section 291, cause the offender

to be detained in custody; and at any time before the end of the Court sitting on the same day if it thinks appropriate, take cognizance of the offence and sentence the offender to fine not exceeding SDG100 and in default of payment to imprisonment for a term a not exceeding one month; and

(2) Nevertheless no criminal court shall impose a sentence under this section, which it is not competent to impose under the provisions of Chapter II, and no Payam Court shall impose a sentence under this section which it is not competent to impose under this Act.

293. Record in Cases of Contempt.

(1) When any Court takes cognizance under section 292 of an offence, it shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and sentence.

(2) If the offence is under section 124 of the Penal Code the record shall show the nature and stage of the judicial proceedings in which the Court was interrupted or insulted, while in session and the nature of the interruption or insult.

294. Discharge of Offender on Submission of Apology.

When any Court has under Section 292 sentenced an offender to punishment for refusing or omitting to do anything which he or she was lawfully required to do, or for any intentional insult or interruption, the Court may at its discretion discharge the offender or remit the punishment on his or her submission to the order or requisition of the Court or on apology being made to its satisfaction.

295. Imprisonment or Commitment to Officer's Custody of Person Refusing to Answer or Produce Document.

If any witness or any person called to produce a document or a thing before a criminal court refuses to answer such questions as are put to him or her or to produce any document or thing in his or her possession or power which the Court requires him or her to produce, and does not offer any reasonable excuse for such refusal, the Court may for reasons to be recorded in writing, sentence him or her to imprisonment or by warrant under the hand of the presiding Magistrate, commit him or her to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime he or she accepts to be examined and to answer or to produce the document or a thing. In the event of his or her persisting in his or her refusal, he or she may be dealt with according to the provisions of section 291 or section 292 of this Act.

296. Appeals from Convictions in Contempt Cases.

Any person sentenced by any Court under section 292 or section 295 of this Act, may notwithstanding anything hereinbefore contained, appeal to the Court or authority to which judgment or orders made in that Court are appealable against or are sent for confirmation.

CHAPTER XXIV

MISCELLANEOUS PROVISIONS

297. Expenses of Complainants and Witnesses.

Subject to any rules made by the Supreme Court, any criminal court may, if it deems appropriate, order payment on the part of the Government of the reasonable expenses of any complainant or witness attending for the purposes of any investigation, trial or other proceedings before such Court under this Act.

298. Power of the Court to Pay Expenses or Compensation Out of a Fine.

(1) Where and whenever under any law in force from time to time, a criminal court imposes a fine, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses incurred in the prosecution;

(b) in compensation for the injury caused by the offence committed, where substantial compensation is in the opinion of the Court recoverable by civil suit;

(c) in compensating an innocent purchaser of any property in respect of which the offence was committed who has been compelled to give it up;

(d) in defraying expenses incurred in medical treatment of any person injured by the accused in connection with the offence.

(2) If the fine is imposed in a case, which is subject to appeal or requires confirmation, no such payment shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the decision of the appeal or before the sentence is confirmed

299. Payments to be Taken Into Consideration in Subsequent Suit.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into consideration any sum paid or recovered as compensation under section 300 of this Act.

300. Moneys Ordered to be Recoverable as Fines.

Payment of any money (other than a fine) payable by virtue of any order made under this Act may be enforced as if it were a fine.

301. Copies of Proceedings.

If any person affected by a judgment or order passed by a criminal court desires to have a copy of any order or deposition or other part of the record, he or she shall on applying for such copy be furnished therewith; provided that, he or she pays such fee for a copy as may, from time to time be laid down, unless the Court or the confirming or appellate authority in any case for special reason directs the copy to be furnished without fee.

302. Compensation to Persons Wrongfully Arrested.

When any person causes the arrest of another person and it appears to a Magistrate or Court by whom the case is investigated into or tried that there was no sufficient grounds for causing such arrest, the Magistrate or Court may in his or her discretion direct the person causing the arrest to pay to the arrested person or each of the arrested persons, if there are more than one, such compensation not exceeding SDG100 which the Magistrate or Court deems appropriate, and may award a term of imprisonment not exceeding thirty days in the aggregate in default of payment, and the provisions of section 16 and 17 of the Penal Code shall apply as if such compensation were a fine; provided that, before making any such directives the Magistrate or Court shall—

(a) record and consider any objection which the person causing the arrest, if present, may make against the making of the directives; and

(b) if he or she directs any compensation to be paid, state in writing his or her reasons for awarding the compensation.

303. Frivolous or Vexatious Accusation.

(1) If, in any case instituted by complaint as defined in this Act, or upon information given to a member of the Police Service or Public Prosecution Attorney and heard under this Chapter, the Magistrate discharges or acquits the accused and is satisfied that the accusation against him or her was frivolous or vexatious, the Magistrate may in his or her discretion by his or her order of discharge or acquittal direct the complainant or informant to pay to the accused, or to each of the accused, where there are more than one, such compensation not exceeding SDG100 as the Magistrate thinks appropriate and may award a term of imprisonment not exceeding thirty days in the aggregate in default of payment, and the provisions of sections 16 and 17 of the Penal Code, shall apply as if such compensation were a fine.

(2) Subject to the foregoing, before making any such directives the Magistrate shall—

(a) record and consider any objection which the complainant or informant, if present at the hearing may make against the making of the directives; and

(b) if he or she directs any compensation to be paid, state in writing in his or her order of discharge or acquittal his or her reasons for awarding the compensation.

304. Forms.

(1) The President of the Supreme Court may from time to time alter or cancel any of the forms set forth in the Second Schedule or may prescribe new forms which shall have effect as if they were included in the Second Schedule or may prescribe new forms which shall have effect as if they were included in the Second Schedule.

(2) The forms set forth in the Second Schedule, with such variation as the circumstances of each case require, may be used for the respective purpose therein mentioned and if used shall be sufficient.

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305. Power to Make Rules as to Fees.

The President of the Supreme Court may from time to time make, alter or annul any rules prescribing fees to be charged for any act or thing done under this Act.

306. Case in which a Magistrate is Personally Interested.

No Magistrate shall try or commit for trial or sit as a member of a Court which tries any case to or in which he or she is a party or personally interested without the consent of the County Court Judge or in the case of County Court Judge of the High Court, or in case of the High Court Judge, the Court of Appeal and in the case of the Court of Appeal, the Supreme Court.

Explanation—

A Magistrate shall not be deemed to be a party to or personally interested in any case within the meaning of this section by reason only that he or she is concerned therein in a public capacity or by reason only that he or she has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred or made or held an inquiry in connection with the case.

307. Public Servant Concerned in Sales Note to Purchase or Bid for Property.

A public servant having any duty to perform in connection with the sale of any property under this Act shall not purchase or bid for that property.

308. Police Officers and Public Prosecution Attorneys.

No officer-in-charge of a police station or Public Prosecution Attorney shall assume investigation, in any criminal case, to which he or she is a party, or which he or she has a personal interest.

309. Making Rules and Laying Down Forms.

The President of the Supreme Court, in the judicial matters, and the Minister, in otherwise than the same, may from time to time, make such rules and lay down such forms, as may be necessary for the implementation of the provisions of this Act.

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SCHEDULES TO THE CODE OF CRIMINAL PROCEDURE ACT, 2008

TABULAR STATEMENT OF OFFENCES

EXPLANATORY NOTES-

(1) This Schedule serves to supplement the provision of the Code of Criminal Procedure, 2008, and sets forth the following—

Column 1—The relevant section of the Penal Code.
Column 2—A brief description of the Offence.
Column 3—Arrest Warrant Requirements.
Column 4—Warrant and Summons Requirements.
Column 5—Sentence under the Penal Code.
Column 6—Appropriate Court.
Column 7—Whether the Court my try the offence summarily or non-summarily.

(2) The entries in Columns 2 and 5 of this Schedule, headed respectively "Description of Offences" and "Sentence under the Penal Code" are not intended as definitions of the offences and the sentences described in the corresponding sections of the Penal Code or even as abstracts of those section, but merely as references to the subject of the section, the number of which is given in the first column.

(3) Any offence may be tried by any Court with greater powers than those mentioned in Column 6.