CHAPTER 11:01
CRIMINAL PROCEDURE CODE

Act No. 26 of 1933

• Laws • Subsidiary Legislation •

Amended by

Act No. 8 of 1937	Act No. 15 of 1953	Act No. 5 of 1992
Act No. 15 of 1939	Act No. 19 of 1954	Act No. 11 of 1994
Act No. 32 of 1939	Act No. 5 of 1957	Decree No. 48 of 1995
Act No. 28 of 1940	Act No. 1 of 1962	Decree No. 50 of 1995
Act No. 39 of 1940	Act No. 1 of 1964	Decree No. 94 of 1996
Act No. 6 of 1945	Act No. 36 of 1964	Act No. 2 of 2002
Act No. 4 of 1947	Act No. 6 of 1981	Act No. 3 of 2003
Act No. 30 of 1948	Act No. 8 of 1981	Act No. 5 of 2005
Act No. 6 of 1949	Act No. 15 of 1982	
Act No. 7 of 1952	Act No. 6 of 1986	

LAWS

ARRANGEMENT OF SECTIONS

PART I

Preliminary

PART II

Powers of Courts

PART III

General Provisions Arrest, Escape and Retaking

Arrest Generally

Arrest without Warrant

PART VII

Procedure in Trials before the High Court

General

Arraignment

PART X

Supplementary Provisions

Irregular Proceedings

Directions in the Nature of Habeas Corpus and Writs

Miscellaneous

CHAPTER 11:01
CRIMINAL PROCEDURE CODE

An Act to make provision for the procedure to be followed in criminal cases, and for connected matters.

[Act No. 26 of 1933 amended by Act No. 8 of 1937, Act No. 15 of 1939, Act No. 32 of 1939, Act No. 28 of 1940, Act No. 39 of 1940, Act No. 6 of 1945, Act No. 4 of 1947, Act No. 30 of 1948, Act No. 6 of 1949, Act No. 7 of 1952, Act No. 15 of 1953, Act No. 19 of 1954, Act No. 5 of 1957, Act No. 1 of 1962, Act No. 1 of 1964, Act No. 36 of 1964, Act No. 6 of 1981, Act No. 8 of 1981, Act No. 15 of 1982, Act No. 6 of 1986, Act No. 5 of 1992, Act No. 11 of 1994, Decree No. 48 of 1995, Decree No. 50 of 1995, Decree No. 94 of 1996, Act No. 2 of 2002, Act No. 3 of 2003, Act No. 5 of 2005.]

[Date of commencement: 1*st October*, 1934.]

PART I

Preliminary

1. Short title

This Act may be cited as the Criminal Procedure Code (hereinafter referred to as "this Code").

2. Interpretation

In this Code, unless the context otherwise requires—

"child" means a person under the age of eighteen years;
[Act No. 5 of 2005.]

"cognizable offence" means an offence which—

(*a*) on conviction may be punished by imprisonment for a term of one year or more; or

(*b*) on conviction may be punished by a fine exceeding one thousand dalasis; or

(*c*) is declared by law to be a cognizable offence or to be an offence for which a person may be arrested without warrant.

"complaint" means an allegation that some person known or unknown has committed or is guilty of an offence;
[Act No. 1 of 1964.]

"court" means the Supreme Court, Court of Appeal, High Court, Court Martial, subordinate court and all courts established by law in The Gambia but does not include a District Tribunal;
[Act No. 2 of 2002.]

"Court of Appeal" means the Court of Appeal of The Gambia;
[Act No. 2 of 2002.]

"District Tribunal" means a Tribunal established under the District Tribunals Act;
[Act No. 8 of 1937, Cap. 6:03.]

"guardian", in relation to a child, includes a person who, in the opinion of the court having cognizance of a case in relation to the child or in which the child is concerned, has for the time being the charge of or control over the child;
[Act No. 1 of 1964.]

"High Court" means the High Court of The Gambia;
[Act No. 1 of 1964, Act No. 2 of 2002.]

"non-cognizable offence" means an offence other than a cognizable offence;

"officer in charge of a police station" includes—

(*a*) when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his or her duties, the police officer who is next in rank to such officer and is above the rank of constable; and

(*b*) every officer appointed to an area who is superior in rank to the officer in actual charge of a police station in such area;

"police officer" includes a member of the police force, and in the Regions a Badge Messenger appointed under the Local Government Act;

[Act No. 8 of 1937, Act No. 5 of 2005.]

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

"public prosecutor" includes the Attorney-General, the Solicitor-General, a State Counsel and any person appointed as such under section 65 of this Code;

[Act No. 1 of 1964.]

"subordinate court of the first, second or third class" means respectively a court presided over by a Magistrate of the First, Second or Third Class;

"summary trial" means a trial held by a subordinate court under Part V;

[Act No. 1 of 1964.]

"Supreme Court" means the Supreme Court of The Gambia;

[Act No. 2 of 2002.]

"young person" . . . . . .

[Deleted by Act No. 5 of 2005.]

3. Trial of offences under Criminal Code and other laws

(1) All offences under the Criminal Code shall be inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained and of any other law.

[Act No. 8 of 1937, Act No. 1 of 1964, Act No. 2 of 2002.]

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

(3) The procedure and practice to be observed in the High Court in the exercise of its criminal jurisdiction shall, subject to the express provisions of this Code and any law for the time being in force in The Gambia, be assimilated as nearly as circumstances admit to the course of procedure and practice of Her Majesty's High Court of Justice and the Courts of Oyer and Terminer and General Gaol Delivery in England at the date of the coming into operation of this Code.

PART II

Powers of Courts

4. Powers of High Court

Except where a law provides for the trial of an offence in a particular court, the High Court may—

(*a*) try any offence under any law; and

(*b*) pass any sentence authorised by law.

[Act No. 2 of 2002.]

5. Powers of subordinate courts

(1) A subordinate court may try any offence under any law except the offence of treason:

Provided that nothing in this section shall—

(*a*) derogate from any law which provides that a particular offence shall be triable only by a subordinate court of a particular class or classes or by a court other than a subordinate court; or

(*b*) be deemed to prohibit the exercise of the power of the High Court to transfer any case for trial by itself or by any other subordinate court, or of the Attorney-General to require that a case triable by a subordinate court be tried by the High Court.

[Act No. 6 of 1986, Act No. 3 of 2003.]

(2) A subordinate court of the first class may pass any sentence authorised by law.

[Act No. 6 of 1986, Act No. 3 of 2003.]

(3) A subordinate court of the second class may pass any of the following sentences or both of them—

(*a*) imprisonment for a period not exceeding ten years;

(*b*) fine not exceeding five hundred thousand dalasis.

[Act No. 6 of 1986, Act No. 3 of 2003.]

(4) A subordinate court of the third class may pass any of the following sentences or both of them—

(*a*) imprisonment for a period not exceeding five years;

(*b*) fine not exceeding two hundred and fifty thousand dalasis.

[Act No. 3 of 2003.]

6. . . . . . .

[Deleted by Act No. 2 of 2002.]

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

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

Provided that sentences of imprisonment in default of payment of a fine, whether imposed in addition to a substantive term of imprisonment or not, shall not be directed to run concurrently.

(2) When a person is convicted at one trial of two or more distinct offences, any two or more of which are legally punishable with corporal punishment, only one sentence of corporal punishment may be passed in respect of all the offences.

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

Provided that the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction, competent to impose.

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

(5) Where a person, who is detained in prison or is undergoing imprisonment by virtue of an order made under section 43 of this Code, is sentenced to a term of imprisonment for an offence committed prior to the making of the order, the sentence shall be executed in lieu of the detention or imprisonment imposed under section 43 of this Code.

(6) Where a sentence is passed on an escaped convict, the sentence if of death, fine or corporal punishment shall take effect immediately, but if the sentence is one of imprisonment, the sentence shall take effect immediately after the convict has completed any period of imprisonment which at the time of his or her escape remained unserved.

PART III

General Provisions Arrest, Escape and Retaking

Arrest Generally

8. Arrest, how made

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

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

[Act No. 8 of 1937, Act No. 1 of 1964.]

(3) Nothing contained in this section shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the person.

9. Search of place entered by person sought to be arrested

(1) If a person acting under a warrant of arrest, or a police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of that place shall, on demand of the person acting as aforesaid or the police officer, allow him or her free ingress thereto and afford all reasonable facilities to search therein for the person sought to be arrested.

(2) If ingress to that place cannot be obtained under subsection (1) of this section, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer to enter that place and search therein for the person to be arrested, and, in order to effect an entrance into that place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, or otherwise effect entry into the house or place, if after notification of his or her authority and purpose, and demand of admittance duly made, he or she cannot otherwise obtain admittance.

10. Power to break out of house, etc., for purposes of liberation

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

11. No unnecessary restraint

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

12. Notification of substance of warrant

Except when the person arrested is in the actual course of the commission of a crime

or is pursued immediately after escape from lawful custody, the police officer or other person making the arrest shall inform the person arrested of the cause of the arrest, and, if the police officer or other person is acting under the authority of a warrant, shall notify the substance thereof to the person to be arrested and, if so required, shall show him or her the warrant.

13. Search of arrested persons

(1) Whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person makes over the person arrested, may search the person, and place in safe custody all articles other than necessary wearing apparel found upon him or her:

Provided that whenever the person arrested can be legally admitted to bail and bail is furnished, that person shall not be searched unless there are reasonable grounds for believing that he or she has about his or her person, any—

(*a*) stolen articles;

(*b*) instruments of violence;

(*c*) tools connected with the kind of offence which he or she is alleged to have committed; or

(*d*) other articles which may furnish evidence against him or her in regard to the offence which he or she is alleged to have committed.

(2) All searches shall be made with strict decency, and whenever it is necessary to cause a woman to be searched, the search shall be made by another woman.

(3) The right to search an arrested person does not include the right to examine his or her private person.

(4) Notwithstanding the other provisions of this section, a police officer or other person making an arrest may in any case take from the person arrested any offensive weapons which he or she has about his or her person.

(5) Where any property has been taken under this section from a person charged before a court of competent jurisdiction with any offence, a report shall be made by the police to the court of the fact of the property having been taken from the person charged and of the particulars of the property, and the court, shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct the property, or any portion thereof, to be returned to the person charged or to such other person as he or she may direct.

(6) Where any property has been taken from a person under this section, and the person is not charged before any court but is released on the ground that there is no sufficient reason to believe that he or she has committed an offence, any property taken from him or her shall be restored to him or her.

14. Arrested persons to be taken at once to a police station

(1) A person who is arrested, whether with or without a warrant, shall be taken with all reasonable dispatch to a police station, or other place for the reception of arrested persons, and shall without delay be informed of the charge against him or her.

(2) The person while in custody shall be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for his or her defence or release.

Arrest without Warrant

15. Arrest by police officer without warrant

A police officer may, without an order from a Magistrate and without a warrant, arrest any person—

(*a*) whom he or she suspects on reasonable grounds of having committed a

cognizable offence, an offence under any of the provisions of Chapter XVII of the Criminal Code or any offence for which under any law provision is made for arrest without warrant;

(*b*) who commits a breach of the peace in his or her presence;

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

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

(*e*) whom he or she suspects on reasonable grounds of being a deserter from the Armed Forces;

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

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

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

(*i*) for whom he or she has reasonable cause to believe a warrant of arrest has been issued by a court of competent jurisdiction in The Gambia;

(*j*) whom he or she believes to be bound by any recognisance to appear before any court or any police officer and whom he or she believes to be about to leave or is making preparations to leave The Gambia.

[Act No. 1 of 1964, Cap. 10:01, Cap. 12:01.]

16. Arrest of vagabonds, etc.

An officer in charge of a police station may in like manner arrest or cause to be arrested any person—

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

(*b*) within the limits of the station who has no ostensible means of subsistence or who cannot give a satisfactory account of himself or herself.

17. Procedure when officer in charge of police station deputes subordinate to arrest without warrant

In any case where power of arrest without a warrant is vested solely in an officer in charge of a police station, the officer may cause the arrest to be effected (otherwise than in his or her presence) by any officer subordinate to him or her by delivering to the officer required to make the arrest an order in writing specifying the person to be arrested and the cause for which the arrest is to be made.

18. Refusal to give name and residence

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

(2) When the true name and residence of the person has been ascertained he or she

shall be released on his or her executing a recognisance, with or without sureties, to appear before a Magistrate if so required:

Provided that if the person is not resident in The Gambia, the recognisance shall be secured by a surety or sureties resident in The Gambia.

(3) In the event that the true name and residence of the person is not ascertained within twenty-four hours from the time of arrest, or in the event that he or she fails to execute the recognisance or, if so required, to furnish sufficient sureties, he or she shall forthwith be taken before the nearest Magistrate having jurisdiction.

19. Arrest by private person

A private person may arrest any person who in his or her view commits a cognizable offence, or whom he or she reasonably suspects of having committed a felony.

20. Arrest by owners of property

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

21. Disposal of person arrested by private person

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

(2) If there is reason to believe that the person comes under the provisions of section 15 of this Code, a police officer shall re-arrest him or her.

(3) If there is reason to believe that he or she has committed a non-cognizable offence, and he or she refuses on the demand of a police officer to give his or her name and residence, or gives a name or residence which the officer has reason to believe to be false, he or she shall be dealt with under the provisions of section 18 of this Code. If there is no sufficient reason to believe that he or she has committed any offence he or she shall be at once released.

22. Bail of person arrested without a warrant

(1) When a person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station or other place for the reception of arrested persons to which that person is brought shall at once inquire into the case, and if, when the inquiry is completed, there is no sufficient reason to believe that the person has committed any offence, he or she shall be released forthwith.

(2) If on such inquiry there is reason to believe that the person arrested has committed an offence and, if the offence does not appear to be of a serious nature, the officer may, and shall, if it does not appear practicable to bring the person before an appropriate subordinate court within seventy-two hours after he or she was taken into custody, release the person on his or her executing a recognisance, with or without sureties for a reasonable amount, to appear before a subordinate court at a time and place named in the recognisance.

(3) If, on a person being taken into custody as aforesaid, it appears to the officer that the inquiry into the case cannot be completed forthwith, he or she may release the said person on his or her entering into a recognisance, with or without sureties for a reasonable amount, to appear at such police station and at such times as are named in the recognisance, unless he or she previously receives notice in writing from the officer of police in charge of that police station that his or her attendance is not required, and the recognisance may be enforced as if it were a recognisance conditional for the appearance of the said person before a subordinate court for the place in which the police station named in the recognisance is situate.

(4) Where any person taken into custody as aforesaid is retained in custody, he or she shall be brought before a subordinate court at the earliest time practicable, whether

or not the police inquiries are completed.

23. Police to report apprehensions

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

24. Offence committed in Magistrate's presence

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

25. Arrest by Magistrate

Within the local limits of his or her jurisdiction, a Magistrate may arrest or direct the arrest in his or her presence of a person whose arrest on a warrant he or she could have lawfully ordered if the facts known to him or her at the time of making or directing the arrest had been stated before him or her on oath by some other person.

Escape and Retaking

26. Recapture of person escaping

If a person in lawful custody escapes or is rescued, the person from whose custody he or she escapes or is rescued may immediately pursue and arrest him or her in any place in The Gambia.

27. Provisions of sections 9 and 10 to apply to arrests under section 26

The provisions of sections 9 and 10 of this Code shall apply to arrests under section 26 of this Code although the person making the arrest is not acting under a warrant and is not a police officer having authority to arrest.

Assistance to Magistrate or Police Officer

28. Assistance to Magistrate or police officer

A person is bound to assist a Magistrate or police officer reasonably demanding his or her aid—

(*a*) in the taking or preventing the escape of any other person whom the Magistrate or police officer is authorised to arrest;

(*b*) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any telegraph or public property.

Prevention of Offences

Security for Keeping the Peace and for Good Behaviour

29. Security for keeping the peace

(1) When a Magistrate is informed on oath that a person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the Magistrate may, in the manner hereinafter provided, require that person to show cause why he or she should not be ordered to execute a recognisance, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is

apprehended, is within the local limits of the Magistrate's jurisdiction.

30. Security for good behaviour from vagrants and suspected persons

When a Magistrate is informed on oath that a person is taking precautions to conceal his or her presence within the local limits of the Magistrate's jurisdiction, and that there is reason to believe that the person is taking such precautions with a view to committing an offence, the Magistrate may, in the manner hereinafter provided, require that person to show cause why he or she should not be ordered to execute a recognisance, with sureties, for his or her good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

31. Security for good behaviour from habitual offenders

When a Magistrate is informed on oath that a person within the local limits of his or her jurisdiction—

(*a*) is by habit a robber, house-breaker or thief;

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

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

(*d*) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapter XXX, Chapter XXXIII or Chapter XXXVI of the Criminal Code;

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

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

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

32. Order to be made

When a Magistrate acting under section 29, 30 or 31 of this Code deems it necessary to require any person to show cause under the section, he or she shall make an order in writing setting forth—

(*a*) the substance of the information received;

(*b*) the amount of the recognisances to be executed;

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

(*d*) the number, character and class of sureties, if any, required.

33. Procedure in respect of person present in court

If the person in respect of whom the order is made is present in court at the time of making the order, it shall be read over to him or her or, if he or she so desires, the substance thereof shall be explained to him or her.

34. Summons or warrant in case of person not so present

(1) If the person is not present in court, the Magistrate shall issue a summons requiring him or her to appear, or, when the person is in custody, a warrant directing the officer in whose custody he or she is to bring him or her before the court.

(2) When it appears to the Magistrate, on the report of a police officer or on other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that the breach of the peace cannot be prevented otherwise than by the immediate arrest of that person, the Magistrate may at any time issue a warrant for his or her arrest.

35. Copy of order under section 32 to accompany summons or warrant

A summons or warrant issued under section 34 of this Code shall be accompanied by a copy of the order made under section 32 of this Code and the copy shall be delivered by the officer serving or executing the summons or warrant to the person served with or arrested under the same.

36. Power to dispense with personal attendance

The Magistrate may, if he or she sees sufficient cause, dispense with the personal attendance of a person called upon to show cause why he or she should not be ordered to execute a recognisance for keeping the peace or maintaining good behaviour, and may permit him or her to appear by a counsel.

37. Inquiry as to truth of information

(1) When an order under section 32, has been read or explained under section 33 of this Code, to a person present in court, or when a person appears or is brought before a Magistrate in compliance with or in execution of a summons or warrant issued under section 34 of this Code, the Magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

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

(3) Pending the completion of the inquiry under subsection (1) of this section, the Magistrate, if he or she considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 32 of this Code has been made to execute a recognisance, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him or her in custody until the recognisance is executed or, in default of execution, until the inquiry is concluded:

Provided that—

(*a*) a person against whom proceedings are being taken under section 29 of this Code shall not be directed to execute a recognisance for maintaining good behaviour;

(*b*) the conditions of the recognisance, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous that those specified in the order under section 32 of this Code; and

(*c*) a person shall not be remanded in custody under the powers conferred by this section for a period exceeding fifteen days at a time.

(4) For the purposes of this section, the fact that a person comes within the provisions of section 31 of this Code may be proved by evidence of general repute or otherwise.

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

38. Order to give security

(1) If on the inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a recognisance, with or without sureties, the Magistrate shall make an order accordingly:

Provided that—

(*a*) a person shall not be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 32 of this Code;

(*b*) the amount of the recognisance shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(*c*) when the person in respect of whom the inquiry is made is a minor, the court shall not require the minor to execute the recognisance but in like manner shall require a relative, guardian or other fit person to enter into a recognisance, with or without sureties, that the child shall keep the peace or be of good behaviour.

(2) A person ordered to give security for keeping the peace or maintaining good behaviour under this section may appeal to the High Court, and the provisions of Part IX of this Code (relating to appeals) shall apply to the appeal.

39. Discharge of person informed against

If on an inquiry under section 37 of this Code it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a recognisance, the Magistrate, shall make an entry on the record to that effect, and, if that person is in custody only for the purposes of the inquiry, shall release him or her, or, if the person is not in custody, shall discharge him or her.

Proceedings in All Cases Subsequent to Order to Furnish Security

40. Commencement of period for which security is required

(1) If a person in respect of whom an order requiring security is made under section 38 of this Code is, at the time the order is made, sentenced to or under going a sentence of imprisonment, the period for which the security is required shall commence on the expiration of the sentence.

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

41. Contents of recognisance

(1) The recognisance to be executed by the person shall bind him or her to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission anywhere within The Gambia at any time during the continuance of the recognisance of an offence punishable with imprisonment, shall be deemed to constitute a breach of the recognisance.

[Act No. 1 of 1964.]

(2) When a Magistrate receives information that a person who has executed a recognisance under the provisions of section 38 of this Code has committed a breach of the recognisance, he or she shall by summons or warrant require that person and his or her sureties, if any, to appear before him or her and shall enquire into the truth of the information on which the summons or warrant was issued in the same manner as provided in section 37 of this Code and if satisfied that there has been a breach of the recognisance he or she shall declare the amount of the recognisance to be forfeited and adjudge the person bound thereby, whether as principal or sureties or any of them, to pay the sum in which they are respectively bound.

[Act No. 1 of 1964.]

(3) A Magistrate who declares the amount of a recognisance to be forfeited may,

instead of adjudging a person to pay the whole sum in which he or she is bound, adjudge him or her to pay part only of the sum or remit the sum.

[Act No. 1 of 1964.]

(4) Payment of any sum adjudged to be paid under this section including any costs awarded, may be enforced, collected and applied as if it were a fine and as if the adjudication were a conviction.

[Act No. 1 of 1964.]

(5) A person aggrieved by an order declaring a bond to be forfeited may appeal to the High Court, and the provisions of Part IX of this Code shall apply to the appeal.

[Act No. 1 of 1964.]

42. Power to reject sureties.

A Magistrate may refuse to accept a surety offered under any of the preceding sections on the ground that, for reasons to be recorded by the Magistrate, the surety is an unfit person.

43. Procedure on failure of person to give security

(1) If a person ordered to give security as aforesaid does not have the security on or before the date on which the period for which the security is to be given commences, he or she shall, except in the case mentioned in subsection (2) of this section, 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 gives the security to the court or Magistrate who made the order requiring it.

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

(3) The High Court, after examining the proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may make such orders in the case as it thinks fit.

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

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

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

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

44. Power to release persons imprisoned for failure to give security

When a Magistrate who has made an order under section 38 of this Code is of opinion that a person imprisoned for failing to give security may be released without hazard to the community, the Magistrate shall make an immediate report of the case for the orders of the High Court, and the Court may, if it thinks fit, order the person to be discharged.

45. Power of High Court to cancel recognisance

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

46. Discharge of sureties

(1) A surety for the peaceable conduct or good behaviour of another person may at any time apply to a Magistrate to cancel a recognisance executed under any of the preceding sections within the local limits of his or her jurisdiction.

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

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

(4) The order shall for the purposes of sections 41, 42, 43 and 44, be deemed to be an order made under section 38, of this Code.

Preventive Action of the Police

47. Police to prevent cognizable offences

A police officer may interpose for the purpose of preventing, and shall to the best of his or her ability prevent, the commission of a cognizable offence.

48. Information of design to commit such offences

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

49. Arrest to prevent such offences

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

50. Prevention of injury to public property

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

PART IV

Provisions Relating to All Criminal Investigations

Place of Inquiry or Trial

51. General authority of courts of The Gambia

A court has authority to cause to be brought before it a person who is within the local limits of its jurisdiction and is charged with an offence committed within The Gambia, or which according to law may be dealt with as if it had been committed within The Gambia, and to deal with the accused person according to its jurisdiction.

52. Accused person to be sent to district where offence committed

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

according to law.

53. Removal of accused person under warrant

Where a person is to be sent in custody in pursuance of section 52 of this Code, a warrant shall be issued by the court within whose jurisdiction he or she is found, and that warrant shall be sufficient authority to a person to whom it is directed to receive and detain the person therein named and to carry him or her and deliver him or her up to the court within whose Region or district the offence was committed or may be inquired into or tried, and the person to whom the warrant is directed shall execute it according to its tenor without any delay.

54. Powers of High Court

The High Court may exercise its criminal jurisdiction at any place where it has power to hold sittings.

[Act No. 1 of 1964, Act No. 6 of 1986.]

55. Ordinary place of inquiry and trial

Subject to the provisions of section 54, and to the powers of transfer conferred by section 63, of this Code, an offence shall ordinarily be inquired into or tried by a court within the local limits of whose jurisdiction it was committed.

56. Trial at place where act done or where consequence of offence ensues

When a person is accused of the commission of an offence by reason of anything which has been done or of a consequence which has ensued, the offence may be inquired into or tried by a court within the local limits of whose jurisdiction the thing has been done or the consequence has ensued.

57. Trial where offence is connected with another offence

When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a court within the local limits of whose jurisdiction either act was done.

58. Trial where place of offence is uncertain

When—

(*a*) it is uncertain in which of several local areas an offence was committed;

(*b*) an offence is committed partly in one local area and partly in another;

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

(*d*) an offence consists of several acts done in different local areas,

it may be inquired into or tried by a court having jurisdiction over any of the local areas.

59. Offence committed on a journey

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

60. High Court to decide in cases of doubt

When a doubt arises as to the court by which an offence should be inquired into or tried, a court entertaining such doubt may, in its discretion, report the circumstances to the High Court and the High Court shall decide by which court the offence shall be inquired into or

tried. The decision of the High Court shall be final and conclusive except that it shall be open to an accused person to show that no court in The Gambia has jurisdiction in the case.

61. Court to be open

The place in which a criminal court is held for the purpose of inquiring into or trying an 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 Judge or Magistrate may, if he or she thinks fit, order at any stage of the inquiry into or trial of any particular case that the public generally or any particular person shall not have access to or be or remain in the room or building used by the court.

Transfer of Cases

62. Transfer of case where the matter is outside jurisdiction

(1) If on the hearing of any proceedings under this Code it appears that the cause or matter is outside the limits of the jurisdiction of the court, the court shall, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction.

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

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

63. Power of High Court to change venue

(1) When it appears to the High Court that—

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

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

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

(*d*) an order under this section will tend to the general convenience of the parties or witnesses or the more speedy or satisfactory administration of justice; or

(*e*) such an order is otherwise expedient for the ends of justice or is required by any provision of this Code,

it may order that—

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

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

(iii) an accused person be tried by itself,

(iv) an accused person committed to itself for trial be tried summarily under Part V of this Code by any court (including the court which committed the accused) in other respects competent to try the offence in respect of which the accused stands committed.

[Act No. 1 of 1964.]

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

(3) An application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Attorney-General, be supported by affidavit.

(4) An accused person making the application shall give to the Attorney-General notice in writing of the application, together with a copy of the grounds on which it is made, and an order shall not be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of the notice and the hearing of the application.

(5) When an accused person makes an application, the High Court may direct him or her to execute a recognisance, with or without sureties, on condition that he or she will, if convicted, pay the costs of the prosecutor.

(6) An application made by the Attorney-General under this section shall be granted as of course.

[Act No. 1 of 1964.]

(7) When in exercise of the powers conferred on it by this section the High Court orders that an accused person be tried by itself, for an offence ordinarily triable by a subordinate court, it shall follow, *mutatis mutandis*, the procedure specified in Part V of this Code for trials before subordinate courts.

[Act No. 1 of 1964.]

Control of State in Criminal Proceedings

64. Power of Director of Public Prosecution to enter *nolle prosequi*

(1) Subject to section 85 of the Constitution, in criminal case and at any stage thereof before verdict or judgement, as the case may be, the Director of Public Prosecution may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the State intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he or she has been committed to prison shall be released, or if on bail his or her recognisances shall be discharged, but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him or her on account of the same facts.

(2) If the accused is not before the court when the *nolle prosequi* is entered, the clerk of the court shall forthwith cause notice in writing of the entry of the *nolle prosequi* to be given to the keeper of the prison in which the accused may be detained, and also, if the accused person has been committed for trial, to the subordinate court by which he or she was so committed, and the subordinate court shall forthwith cause a similar notice in writing to be given to any witnesses bound over to prosecute and give evidence and to their sureties (if any) and also to the accused and his or her sureties in case he or she has been admitted to bail.

(3) . . . . . .

[Decree No. 50 of 1995, section 85 of the Constitution.]

65. Appointment of public prosecutors

(1) The Attorney-General may by writing under his or her hand appoint generally, or in any case or for a specified class of cases, a person to be a public prosecutor.

[Act No. 6 of 1949, Act No. 1 of 1964.]

(2) A public prosecutor shall be subject to the express directions of the Attorney-General.

66. Powers of public prosecutors

A public prosecutor may appear and plead without a written authority before a court in which a case of which he or she has charge is under inquiry, trial or appeal, and if a private person instructs a counsel to prosecute in the case, the public prosecutor may conduct the prosecution, and the advocate so instructed shall act therein under his or her directions.

67. Permission to conduct prosecution and title of summary proceedings

(1) A Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but a person other than a public prosecutor or other officer generally or specially authorised by the President in this behalf shall not be entitled to conduct the prosecution without such permission.

[Act No. 6 of 1949, Act No. 1 of 1964.]

(2) A person conducting the prosecution may do so personally or by a counsel.

(3) In a summary trial, if the prosecutor is a private person, his or her name shall appear in the title of the proceedings as the prosecutor, and if the prosecutor is a police officer, it shall be sufficient if, in the title of the proceedings, the prosecutor is described as the Inspector-General of Police.

[Act No. 6 of 1949.]

68. Withdrawal from prosecution in trials before subordinate courts

(1) In any trial or inquiry before a subordinate court a prosecutor, with the consent of the court, or on the instructions of the Attorney-General at any time before judgement is pronounced, may withdraw from the prosecution of a person either generally or in respect of any one or more of the offences with which he or she is charged, and upon the withdrawal, if it is made in the course of a trial—

(*a*) before the accused person is called upon to make his or her defence, he or she shall be discharged in respect of the offence or offences; or

(*b*) after the accused person is called upon to make his or her defence, he or she shall be acquitted in respect of the offence or offences:

Provided that in any trial before a subordinate court in which the prosecution in respect of any offence is withdrawn before the accused is called upon to make his or her defence, the court may in its discretion order the accused to be acquitted if the court is satisfied upon the merits of the case that such order is proper.

[Act No. 6 of 1986.]

(2) A discharge of an accused person under this section shall not operate as a bar to subsequent proceedings against him or her on account of the same facts.

Institution of Proceedings

69. Method of instituting criminal proceedings

(1) Criminal proceedings may be instituted in one of the following ways—

(*a*) by a police officer bringing a person arrested with or without a warrant before a Magistrate upon a charge;

(*b*) by a public prosecutor or a police officer laying a charge against a person before a Magistrate and requesting the issue of a warrant or a summons; or

(*c*) by a person, other than a public prosecutor or a police officer, making a complaint as provided in subsection (3) of this section and applying for the issue of a warrant or a summons in the manner hereinafter mentioned.

[Act No. 1 of 1964.]

(2) The validity of any proceedings instituted or purported to be instituted in pursuance of subsection (1) of this section shall not be affected by a defect in the charge

or complaint or by the fact that a summons or warrant was issued without a complaint or charge or, in the case of a warrant, without a complaint on oath.

[Act No. 1 of 1964.]

(3) A person, other than a public prosecutor or a police officer, who has reasonable and probable cause to believe that an offence has been committed by a person, may make a complaint thereof to a Magistrate who has jurisdiction to try or inquire into the alleged offence, or within the local limits of whose jurisdiction the accused person is alleged to reside or be. The complaint may be made orally or in writing signed by the complainant, but if made orally shall be reduced into writing by the Magistrate and when so reduced shall be signed by the complainant.

[Act No. 1 of 1964.]

(4) The Magistrate, upon receiving a complaint under subsection (3) of this section, if he or she is satisfied that *prima facie* the commission of an offence has been disclosed and that the complaint is not frivolous or vexatious, shall draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence or offences alleged to have been committed by the accused.

(5) Where a charge has been—

(*a*) laid under the provisions of paragraph (*b*) of subsection (1) of this section; or

(*b*) drawn up under the provisions of subsection (4) of this section,

the Magistrate shall issue either a summons or a warrant, as he or she deems fit, to compel the attendance of the accused person before the court over which he or she presides, or if the offence alleged appears to be one which he or she is not empowered to try or inquire into, before a competent court having jurisdiction:

Provided that a warrant shall not be issued in the first instance unless the charge is supported by evidence on oath, either oral or by affidavit.

(6) Notwithstanding the provisions of subsection (5) of this section, a Magistrate receiving a charge or complaint may, if he or she thinks fit for reasons to be recorded in writing, postpone the issuing of a summons or warrant and may direct an investigation, or further investigation, to be made by the police into the charge or complaint, and a police officer receiving the direction shall investigate or further investigate the charge or complaint and report to the court issuing the direction.

(7) Without prejudice to the provision of section 18 of this Code, nothing in subsection (5) of this section shall authorise a police officer to make an arrest without a warrant for an offence other than a cognizable offence.

(8) A summons or warrant may be issued on any day including a Sunday or a public holiday.

Issue of Summons

70. Form and contents of summons

(1) A summons issued by a court under section 69 of this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of the court or by such other officer as the High Court may from time to time by rule direct.

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

71. Service of summons

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

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

72. Service when person summoned cannot be found

Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him or her with some adult male member of his or her family or with his or her employer or with his or her servant residing with him or her, and the person with whom the summons is left shall, if required by the serving officer, sign a receipt therefor, on the back of the other duplicate.

73. Procedure when service cannot be effected as before provided

If service in the manner provided by sections 71 and 72 of this Code cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

74. Service on servant of Government

Where the person summoned is in the active service of the Government, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which the person is employed, and the head shall thereupon cause the summons to be served in the manner provided by section 71 of this Code and shall return it to the court under his or her signature with the endorsement required by that section. The signature shall be evidence of the service.

75. Service on company

Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered letter addressed to the chief officer of the corporation in The Gambia at the registered office of the company or body corporate. In the latter case service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

76. Where summons may be served

A summons may be served anywhere in The Gambia.

[Act No. 1 of 1964.]

77. Proof of service when serving officer not present

(1) Where the officer who served a summons is not present at the hearing of the case, and in any case where a summons issued by a court has been served outside the local limits of its jurisdiction, an affidavit purporting to be made before a Magistrate that the summons has been served, and a duplicate of the summons purporting to be endorsed in the manner hereinbefore provided by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

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

78. Power to dispense with personal attendance of accused

(1) When a Magistrate issues a summons in respect of an offence other than a felony, he or she may if he or she sees reason to do so, and shall when the offence with which the accused is charged is punishable only by fine or only by fine and imprisonment for a term not exceeding three months, dispense with the personal attendance of the accused, provided that he or she pleads guilty in writing or appears by a counsel. A statement to this effect shall be contained in the summons.

(2) Notwithstanding subsection (1) of this section, the Magistrate trying a case may

in his or her discretion, at any subsequent state of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce the attendance by warrant in manner hereinafter provided. But a warrant shall not be issued unless a complaint has been made upon oath.

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

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

(5) When the attendance of an accused has been dispensed with and his or her attendance is subsequently required, the cost of any adjournment for that purpose shall be borne in any event by the accused.

Issue of Warrant of Arrest

79. Warrant after issue of summons

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

[Act No. 1 of 1964.]

80. Disobedience of summons

(1) If the accused person, other than a corporation, does not appear at the time and place appointed in and by the summons, and his or her personal attendance has not been dispensed with under section 78 of this Code, the court may issue a warrant to apprehend him or her and cause him or her to be brought before the court.

[Act No. 1 of 1964.]

(2) If the accused person, being a corporation, does not appear in the manner provided for under this Code, the court may cause any officer thereof to be summoned before it in the manner provided for under this Code for compelling the attendance of witnesses and if the officer fails to attend he or she may be dealt with under, the provisions of subsection (1) of this section.

[Act No. 1 of 1964.]

(3) In this section and in section 296 of this Code, **"officer"** of a corporation means any director, member of the board of management by whatsoever name or style designated or the secretary.

[Act No. 1 of 1964.]

(4) A warrant shall not be issued under this section for the arrest of a person unless the court is satisfied by evidence on oath that the summons directed to that person was duly served.

[Act No. 1 of 1964.]

(5) Nothing in this section shall affect the power of a court to deal with a case in the absence of the accused person, whether an individual or a corporation, in the manner provided for by section 163 of this Code.

81. Form, contents and duration of warrant of arrest

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

(2) A warrant shall state shortly the offence with which the person against whom it

is issued is charged and shall name or otherwise describe such person, and it shall order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him or her before the court issuing the warrant or before some other court having jurisdiction in the case to answer to the charge therein mentioned and to be further dealt with according to law.

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

82. Court may direct security to be taken

(1) A court on issuing a warrant for the arrest of a person in respect of an offence other than murder or treason, may, if it thinks fit by endorsement on the warrant, direct that the person named in the warrant, on arrest, be released on his or her entering into a recognisance in such amount as may be specified, with or without sureties, for his or her appearance before the court and at such time as the endorsement shall state.

(2) The endorsement shall specify—

(*a*) the number of sureties (if any);

(*b*) the amount in which they and the person named in the warrant are respectively to be bound;

(*c*) the court before which the person arrested is to attend; and

(*d*) the time at which he or she is to attend, including an undertaking to appear at such subsequent times as he or she may be directed by the court.

(3) Where the endorsement is made, the officer in charge of a police station to which on arrest the person named in the warrant is brought, shall release him or her upon his or her entering into a recognisance with or without sureties, approved by that officer, in accordance with the endorsement, conditioned for his or her appearance before the court, and at the time and place named in the recognisance.

(4) When security is taken under this section, the officer who takes the recognisance shall cause it to be forwarded to the court before which the person named in the warrant is bound to appear.

83. Warrants, to whom directed

(1) A warrant of arrest may be directed to one or more police officers named therein or generally to all police officers:

Provided that a court issuing a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person, and that person shall execute the same.

[Act No. 1 of 1964.]

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

[Act No. 1 of 1964.]

84. Execution of warrant directed to police officer

A warrant directed to a police officer may also be executed by any other police officer whose name is endorsed on the warrant by the officer to whom it is directed or endorsed.

85. Person arrested to be brought before the court without delay

The police officer or other person executing a warrant of arrest shall, subject to the provisions of section 82 of this Code, without unnecessary delay bring the person arrested before the court before which he or she is required by the warrant or the requirements of section 87 of this Code, as the case may be, to produce the person.

86. Where warrant of arrest may be executed

A warrant of arrest may be executed at any place in The Gambia.

87. Procedure on arrest of person outside jurisdiction

(1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued, the person arrested shall, unless the court which issued the warrant is within thirty-two kilometres of the place of arrest, or is nearer than the Magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 82 of this Code, be taken before the Magistrate within the local limits of whose jurisdiction the arrest was made.

[Act No. 1 of 1964.]

(2) The Magistrate shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his or her removal in custody to such court:

Provided that if the person has been arrested for an offence other than an offence punishable with death, and he or she is ready and willing to give bail to the satisfaction of the Magistrate or if a direction has been endorsed under section 82 of this Code on the warrant and the person is ready and willing to give the security required by the direction, the Magistrate shall take such bail or security, as the case may be, and shall forward the recognisance to the court which issued the warrant.

[Act No. 1 of 1964.]

(3) Nothing in this section shall be deemed to prevent a police officer from taking security under section 82 of this Code.

Miscellaneous Provisions Regarding Processes

88. Irregularities in processes

(1) An irregularity or defect in the substance or form of a summons or warrant, and any variance between a summons or warrant and the written complaint, or between a summons or warrant and the evidence adduced at any inquiry or trial on the part of the prosecution against an accused person whose attendance has been procured by the summons or warrant, shall not affect the validity of any proceedings at or subsequent to the hearing of the case, but if the variance appears to the court to be such that the accused has been thereby deceived or misled, the court may, at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or admit him or her to bail in the manner hereinafter mentioned.

(2) A warrant, summons or other process issued by a Judge or Magistrate under this Code or otherwise shall not be avoided or invalidated by reason of the Judge or Magistrate who signed the same dying or ceasing to hold office or have jurisdiction.

89. Power to take recognisance for appearance

(1) Where a person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant is present in the court, the officer may require that person to execute a recognisance, with or without sureties, for his or her appearance in the court.

(2) Where the recognisance is taken from a person accused on complaint, the taking of the recognisance shall be deemed to be the issue of process against him or her upon the complaint.

90. Arrest for breach of recognisance for appearance

When a person who is bound by a recognisance taken under this Code to appear before a court does not appear, the official presiding in the court may issue a warrant directing that the person be arrested and produced before him or her.

91. Power of court to order prisoner to be brought before it

(1) Where a person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison, the court may issue an order to the officer in charge of the prison requiring him or her to bring the prisoner in proper custody, at

a time to be named in the order, before the court.

[Act No. 1 of 1964.]

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

(3) The court shall not exercise its powers under this section if it appears that by reason of the petty nature of the offence charged or other similar reason it is undesirable to order the prisoner's production.

[Act No. 1 of 1964.]

92. Provisions of this Part generally applicable to summonses and warrants: powers of Justices of the Peace

The provisions contained in this Part relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code by any court, or by a Justice of the Peace, whether against an accused person or not, and, except in so far as the same may be inconsistent with any other law, the powers of a Magistrate or court in relation to the issuing or endorsing of a summons or warrant may be exercised by a Justice of the Peace.

Searches and Search Warrants

93. Search of premises

(1) When a police officer has reason to believe that material evidence can be obtained in connection with an offence for which an arrest has been made or authorised, a police officer may search the dwelling or place of business of the person so arrested or of the person for whom the warrant of arrest has been issued and may take possession of anything which might reasonably be used as evidence in a criminal proceedings.

[Act No. 1 of 1964.]

(2) (*a*) When a senior police officer has cause to believe that a person has in his or her custody or possession or on any premises owned or occupied by him or her any stolen property or property which has been unlawfully obtained, he or she may by writing under his or her hand authorise a police officer to enter into and search the premises or any other premises where the person may be, and to seize any such property discovered:

Provided that authority shall not be given under this paragraph unless the person in respect of whom the authority is to be issued has been previously convicted of receiving or retaining stolen property or of some other offence involving fraud or dishonesty punishable with imprisonment.

(*b*) It shall not be necessary for any senior police officer to specify in any authority given under this subsection any particular property.

(*c*) In this subsection, a **"senior police officer"** means an officer of or above the rank of Assistant Superintendent.

(3) Any property seized under the provisions of this section shall be dealt with as if it had been seized under a search warrant.

94. When search warrant may be issued and proceedings thereunder

(1) A Magistrate or Justice of the Peace who is satisfied, by proof upon oath, that there is reasonable ground for believing that there is in any building, vessel, carriage, box, receptacle, or place anything—

(*a*) on or in respect of which an offence has been or is suspected to have been committed;

(*b*) which there is reasonable ground for believing will afford evidence as to the commission of an offence; or

(*c*) which there is reasonable ground for believing is intended to be used for the purpose of committing an offence,

may at any time issue a warrant under his or her hand authorising a police officer to search the building, vessel, carriage, box, receptacle or place for that thing, and to seize and carry it before the Magistrate or Justice of the Peace issuing the warrant or some other Magistrate or Justice of the Peace to be dealt with by him or her according to law.

[Act No. 8 of 1937.]

(2) If the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have the same powers and protection as are given by any law for the time being in force to any person lawfully authorised to search for any such thing, and the thing itself shall be disposed of in the manner as directed by the law, or in default of such direction, as the Inspector-General of Police may direct.

95. Execution of search warrant

A search warrant may be issued and executed on any day, including a Sunday, and shall be executed between the hours of sunrise and sunset, but the Magistrate or Justice of the Peace may, by the warrant, in his or her discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.

[Act No. 8 of 1937.]

96. Persons in charge of closed place to allow ingress thereto and egress therefrom

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

(2) If ingress into or egress from the building or other place cannot be obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 9 or section 10 of this Code.

(3) Where a person in or about the building or place is reasonably suspected of concealing about his or her person any article for which search should be made, the person may be searched. If the person is a woman the provisions of subsection (2) of section 13 of this Code shall be observed.

97. Detention of articles seized

(1) When any thing is seized under a search warrant and brought before any Magistrate or Justice of the Peace, he or she may detain or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the case, and if any appeal is made, he or she may order it further to be detained for the purpose of or pending an appeal. If no appeal is made, the Magistrate or Justice of the Peace shall direct such thing to be restored to the person from whom it was taken, except in the cases hereinafter mentioned, unless he or she is authorised or required by law to dispose of it otherwise.

[Act No. 8 of 1937.]

(2) If, under the warrant, there is brought before a Magistrate or Justice of the Peace any forged bank note, bank note paper, or instrument, or any thing the possession of which in the absence of lawful excuse, is an offence according to any law for the time being in force, the Magistrate or Justice of the Peace may direct the thing to be detained for production in evidence or to be otherwise dealt with as the case may require.

(3) If, under the warrant, there is brought before a Magistrate or Justice of the Peace any counterfeit coin or other thing, the possession of which, with knowledge of its nature and without lawful excuse, is an offence according to any law for the time being in force, every such thing shall be delivered up to the Inspector-General of Police, or to any person authorised by him or her to receive the same, as soon as it has been produced in evidence, or as soon as it appears that it will not be required to be produced.

[Act No. 8 of 1937.]

(4) If, under the warrant, there is brought before a Magistrate or Justice of the Peace anything which is of a perishable nature, such thing may be disposed of forthwith in such manner as he or she may direct.

[Act No. 8 of 1937.]

98. Provisions applicable to search warrants

The provisions of subsections (1) and (3) of section 81, and sections 83, 84, and 88 of this Code shall, so far as may be, apply to all search warrants issued under section 94 of this Code.

Provisions as to Bail and Recognisances Generally

99. The grant of bail by courts

(1) When a person, other than a person accused of an offence punishable with death or imprisonment for life, appears or is brought before a court on any process or after being arrested without a warrant, and is prepared at any time or at any stage of the proceedings to give bail, the person may in the discretion of the court be released upon his or her entering in the manner hereinafter provided into a recognisance, with or without a surety or sureties, conditioned for his or her appearance before the court at the time and place mentioned in the recognisance.

[Act No. 11 of 1994, Act No. 2 of 2002.]

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

(3) . . . . . .

[Deleted by Act No. 2 of 2002.]

100. General provisions as to recognisances

(1) When, as respects any recognisance, the amount has been fixed in which the sureties (if any) are to be bound, the recognisance need not be entered into before the court, but may, subject to any rules made in pursuance of this Code, be entered into by the parties before any other court or before any clerk of a court, or before a Chief Inspector or Inspector of Police or other officer of police of equal or superior rank or in charge of any police station, or where any of the parties is in prison, before the Commissioner or other keeper of such prison, and thereupon all the consequences of law shall ensue, and the provisions of this Code with respect to recognisances taken before a court shall apply, as if the recognisance had been entered into before the said court.

(2) Where as a condition of the release of a person he or she is required to enter into a recognisance with sureties, the recognisance of the sureties may be taken separately and either before or after the recognisances of the principal and if so taken the recognisances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

(3) A recognisance for the appearance of a person before the court may be conditioned for his or her appearance at every time and place, to which, during the course of the proceedings, the hearing may be from time to time adjourned, without prejudice, however, to the power of the court to vary the order at any subsequent hearing.

101. Release from custody

(1) Where the execution of a recognisance is a condition of the release of a person that person shall be released as soon as the recognisance has been executed and if he or she is in prison or police custody, the court shall issue an order of release to the officer in charge of the prison or other place of detention and the officer on receipt of the order shall release him or her.

(2) Nothing in this section or in section 99 of this Code shall be deemed to require the release of a person liable to be detained for some matter other than that in respect of which the recognisance was executed.

102. Deposit instead of recognisance

When a person is required by any court or officer to execute a recognisance, with or without sureties, the court or officer may, except in the case of a recognisance for good behaviour, permit him or her to deposit a sum of money or currency notes to such amount as the court or officer may fix in lieu of executing the recognisance, as security for the due performance of the conditions imposed on him or her by the court or officer requiring the execution of the recognisance. Upon the breach of the conditions, proceedings under section 107 of this Code may be taken for the forfeiture of the deposit in the same manner and to the same extent as if a recognisance for the amount of the deposit had in fact been executed.

103. Variation of a recognisance

If at any time after a recognisance has been entered into, it appears to the court that for any reason the sureties are unsuitable or that having regard to all the circumstances of the case, the amount of the recognisance is insufficient, the court may issue a summons or warrant for the appearance of the principal, and upon him or her coming before the court, may order him or her to execute a fresh recognisance in another amount or with other surety or sureties, as the case may be.

104. Application for discharge by sureties

(1) A surety for the appearance or behaviour of a person may at any time apply to a Magistrate to discharge the recognisance either wholly or so far as it relates to the applicant.

(2) On such application being made, the Magistrate shall issue a summons or warrant of arrest directing that the person in respect of whom the applicant is bound, shall appear or be brought before him or her.

(3) On the appearance of the person, the Magistrate shall direct the recognisance to be discharged either wholly or so far as it relates to the applicant or applicants, and shall call upon the person to find other sufficient sureties, and if he or she fails to do so may commit him or her to prison.

105. Recognisances in respect of minors

When in any case the person in respect of whom a court makes an order requiring that a recognisance be entered into, is a minor, the court shall not require the minor to execute the recognisance but shall require a relative, guardian or other fit person with or without sureties to execute a recognisance on condition that the child shall do what is required under the court's order.

106. Persons bound by recognisance absconding may be committed

When a court is satisfied on oath that a person bound by recognisance to appear before a court or police officer is about to leave The Gambia, the court may cause him or her to be arrested and may commit him or her to prison until the trial, unless the court shall see fit to admit him or her to bail upon further recognisance.

107. Forfeiture of recognisance

(1) Whenever it is proved to the satisfaction of a court by which a recognisance under this Code has been taken, or when the recognisance is for appearance before a court, to the satisfaction of such court, that the recognisance has been forfeited, the court shall record the grounds of the proof, and may call on any person bound by such recognisance to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by forfeiting any sum deposited in pursuance of section 102 of this Code or by issuing a warrant for the attachment and sale of the movable property belonging to the person or his or her estate if he or she be dead.

(3) The warrant may be executed within the local limits of the jurisdiction of the court which issued it, and it shall authorise the attachment and sale of any movable

property belonging to the person without such limits, when endorsed by a Magistrate within the local limits of whose jurisdiction the property is found.

(4) If the penalty is not paid and cannot be recovered by the attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment without hard labour for a term which may extend to six months.

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

(6) Where a surety to a recognisance dies before the recognisance is forfeited, his or her estate shall be discharged from all liability in respect of the recognisance.

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

(8) All orders issued under this section by any Magistrate shall be appealable to, and may be reviewed by, the High Court.

108. Ordering of fresh security upon original order

When a surety to a recognisance becomes insolvent or dies or when a recognisance is forfeited under the provisions of section 107 of this Code, the court may order the person from whom such recognisance was demanded to furnish fresh security in accordance with the directions of the original order, and, if the security is not furnished, the court may proceed as if there had been default in complying with the original order.

109. Power to direct levy of amount due on certain recognisances

The High Court may direct a Magistrate to levy the amount due on a recognisance entered into before the High Court.

[Act No. 1 of 1964.]

Charges and Information

110. All necessary particulars of offence to be specified

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

[Act No. 1 of 1964.]

111. Joinder of accused

The following persons may be charged and tried together, namely—

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

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

(*c*) persons accused of more than one offence of the same kind committed by them jointly within the period of twelve months;

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

(*e*) persons accused of an offence under Chapters XXVI to XXXI of the Criminal Code and persons accused of receiving or retaining, or assisting in the disposal or concealment of property, possession of which is alleged to have been transferred by any such offence committed by the first-named

persons, or of abetment of or attempting to commit any such last-named offence;

(*f*) persons accused of offences under sections 297 and 298 of the Criminal Code or any of those sections in respect of property the possession of which has been transferred by one offence; and

(*g*) persons accused of any offence under Chapter XXXVI of the Criminal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence.

[Act No. 1 of 1964, Cap. 10:01.]

112. Joinder of two or more offences in one charge or information

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

[Act No. 1 of 1964.]

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

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

[Act No. 1 of 1964.]

113. Rules for the framing of charges and information

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

(*a*) (i) a count of a charge or information shall commence with a statement of the offence charged, called the statement of offence,

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

(iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:

Provided that where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge or information nothing in this paragraph shall require any more particulars to be given than those so required,

(iv) where a charge or information contains more than one count, the counts shall be numbered consecutively;

(*b*) (i) where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence,

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

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

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

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

(iv) coin, bank notes and currency notes may be described as money, and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin, or of any bank or currency note (although the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note, shall not be provided), and, in cases of stealing and defrauding by false pretences, by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him or her in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly,

(v) when a person is charged with any offence under section 252 and section 257, or section 258, or section 259 or section 260 of the Criminal Code, it shall be sufficient to specify the gross amount of property 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;

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

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

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

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

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

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

Previous Conviction or Acquittal

114. Persons convicted or acquitted not to be tried again for same offence

(1) Subject to the provisions of sections 279, 284 and 288 of this Code, a person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of the offence shall not be liable to be tried again on the same facts for the same offence or any other offence of which he or she could have been lawfully convicted at the first trial.

(2) A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him or her on the former trial under subsection (1) of section 112 of this Code.

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

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

115. Previous conviction, how proved

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

(*a*) an extract certified, under the hand of the officer having the custody of the records of the court in which the conviction was had, to be a copy of the sentence or order; or

(*b*) a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered,

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

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

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

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

Offences by Foreigners within Gambian Waters

116. Leave of the Attorney-General necessary before prosecution instituted.

(1) Proceedings for the trial of a person, who is not a citizen of The Gambia, for an offence committed on the open sea within three nautical miles (approximately six kilometres) of the coast of The Gambia measured from low-water mark, shall not be instituted in any court except with the leave of the Attorney-General and upon his or her certificate that it is expedient that such proceedings should be instituted.

[Act No. 1 of 1964.]

(2) This section is subject to the following provisions—

(*a*) proceedings before a subordinate court previous to the determination of the court that the offender is to be put upon his or her trial shall not be deemed proceedings for the trial of the offence committed by the offender for the purposes of the said consent and certificate under this section;

(*b*) it shall not be necessary to aver in any complaint, charge sheet or information that the consent or certificate of the Attorney-General required by this section has been given, and the fact of the same having been given shall be presumed unless disputed by the accused person at the trial. The production of a document purporting to be signed by the Attorney-General and containing such consent and certificate shall be sufficient evidence for all the purposes of this section of the consent and certificate required by this section;

(*c*) this section shall not prejudice or affect the trial of any act of piracy.

[Act No. 1 of 1964.]

(3) The term **"offence"** as used in this section means an act, neglect or default of such a description as would, if committed in The Gambia, be punishable on trial upon information according to the laws for the time being in force.

Compelling Attendance of Witnesses

117. Summons for witness

If it is made to appear that material evidence can be given by or is in the possession of any person, it shall be lawful for a court having cognizance of any criminal cause or matter to issue a summons to such person requiring his or her attendance before the court or requiring him or her to bring and produce to the court for the purpose of evidence subject to just exceptions all documents and writings in his or her possession or power which may be specified or otherwise sufficiently described in the summons.

118. Warrant for witness who disobeys summons

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

119. Warrant for witness in first instance

If the court is satisfied by evidence on oath that a person can give material evidence and will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be therein specified.

120. Mode of dealing with witness arrested under warrant

When a witness is arrested under a warrant the court may, on his or her furnishing security by recognisance with or without surety or sureties, to the satisfaction of the

court for his or her appearance at the hearing of the case, order him or her to be released from custody, or shall, on his or her failing to furnish such security, order him or her to be detained for production at the hearing.

121. Power of court to order prisoner to be brought up for examination

(1) A court desirous of examining as a witness, in any case pending before it, a person confined in a prison may issue an order to the officer in charge of the prison requiring him or her to bring the prisoner in proper custody, at a time to be named in the order, before the court for examination.

[Act No. 1 of 1964.]

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

122. Penalty for non-attendance of witness

(1) A person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, is liable by order of the court to a fine not exceeding two hundred dalasis.

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

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

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

Examination of Witnesses

123. Power to call and recall witnesses

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

124. Evidence to be given on oath

(1) A witness in a criminal cause or matter shall be examined upon oath and the court before which any witness appears shall have full power and authority to administer the usual oath.

[Act No. 1 of 1964.]

(2) A witness upon objecting to being sworn, and stating as the grounds for such objection either that he or she has no religious belief or that the taking of an oath is contrary to his or her religious belief, shall be permitted to make his or her solemn affirmation instead of taking an oath which affirmation shall be of the same effect as if he or she had taken the oath.

[Act No. 1 of 1964.]

(3) Where, in any proceedings a child of tender years called as a witness does not, in the opinion of the court, understand the nature of an oath, his or her evidence may be received, though not given upon oath, if, in the opinion of the court, he or she is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth:

Provided that where evidence admitted by virtue of this subsection is given on behalf of the prosecution the accused shall not be liable to be convicted unless the evidence is corroborated by some other material evidence in support thereof.

(4) If a witness in a criminal cause or matter offers to give evidence on oath or affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he or she belongs, and not repugnant to justice or decency, and not purporting to affect a third person, the court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him or her.

[Act No. 1 of 1964.]

125. Refractory witnesses

(1) When a person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to give evidence—

(*a*) refuses to be sworn or affirmed;

(*b*) having been sworn or affirmed, refuses to answer a question put to him or her;

(*c*) refuses or neglects to produce a document or thing which he or she is required to produce; or

(*d*) when lawfully required to do so refuses to sign his or her deposition,

without in any such case offering any lawful or reasonably sufficient excuse for the refusal or neglect, the court may adjourn the case for any period not exceeding eight days, and may in the meantime commit the person to prison, unless he or she sooner consents to do what is required of him or her.

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

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

126. Analyst's report to be evidence in all courts

(1) A document purporting to be an original report under the hand of a Government medical practitioner, analyst or chemical examiner upon a substance or thing duly submitted to him or her for examination or analysis and report, may, if it is directed to the court or is produced by any police officer to whom it is directed or some one acting on his or her behalf, be used as evidence of the facts therein stated in any inquiry, trial or other proceeding under this Code.

[Act No. 1 of 1964.]

(2) A document purporting to be an original report under the hand of a Government registered or licensed medical practitioner relating to the nature or extent of the injuries of a person certified to have been examined by the practitioner, may, if it is directed to the court or is produced by any police officer to whom it is addressed or by someone acting on his or her behalf, be admitted as evidence of the facts therein stated in any inquiry or trial before a subordinate court.

[Act No. 19 of 1954.]

(3) The court may presume that the signature to such document is genuine, and that the person signing it held the office which he or she professed to hold at the time when he or she signed it.

(4) Upon receiving the report in evidence the court may, if it thinks such a course proper for the ends of justice, summon and examine the medical practitioner, analyst or chemical examiner as a witness or cause his or her evidence to be taken on commission under the provisions of this Code, as the case may require.

[Act No. 8 of 1937.]

Commissions for Examination of Absent Witnesses

127. Issue of commission by the High Court or a subordinate court of first or second class for examination of witnesses

(1) When in the course of any inquiry, trial or other proceedings under this Code, it appears to the High Court or a subordinate court of the first or second class that the examination of a witness is necessary for the ends of justice, and that the attendance of the witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, the court may dispense with such attendance and may issue a commission to any subordinate court, within the local limits of whose jurisdiction the witness resides, to take the evidence of the witness.

[Act No. 8 of 1937, Act No. 1 of 1964.]

(2) The subordinate court, to which the commission is issued, shall proceed to the place where the witness is or shall summon the witness before it, and, after satisfying itself that sufficient notice has been given to the parties to the proceedings, shall take down the evidence of the witness in the same manner, and may for this purpose exercise the same powers, as a subordinate court empowered to hold a preliminary inquiry under this Code.

[Act No. 8 of 1937.]

128. Power of subordinate court of third class to apply for issue of commission

When in the course of any inquiry, trial, or other proceedings under this Code before a subordinate court of the third class, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case would be unreasonable, the court shall apply to the High Court or a subordinate court of the first class, stating the reasons for the application, and the High Court or the subordinate court of the first class (as the case may be) may either issue a commission in the manner hereinbefore provided or reject the application.

[Act No. 8 of 1937, Act No. 1 of 1964.]

129. Parties may examine witnesses

(1) The parties to any proceedings under this Code, in which a commission is issued, may respectively forward any interrogatories in writing which the court directing the commission may think relevant to the issue, and the court to which the commission is directed shall examine the witness upon such interrogatories.

[Act No. 8 of 1937.]

(2) A party may appear before the court by counsel, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

130. Return of commission

(1) After a commission issued under section 127 or section 128 of this Code has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court out of which it issued, and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to just exceptions, be read in evidence in the case by either party and shall form part of the record.

[Act No. 8 of 1937.]

(2) A deposition so taken may also be read in evidence at a subsequent stage of the case before another court:

Provided that—

(*a*) the deposition is the deposition of a witness who is proved at such subsequent stage of the case by oath or affirmation of a credible witness to be dead, absent from The Gambia or insane, or so ill as not to be able to travel, or who cannot be found or who is kept out of the way by means of the procurement of the accused or on his or her behalf or whose attendance

cannot be procured without an amount of delay, expense, or inconvenience, which in the circumstances of the case would be unreasonable;

(*b*) it is proved at such subsequent stage of the case that the adverse party had the opportunity to cross-examine either in person or by counsel or by interrogatories in writing;

(*c*) the deposition purports to be signed by the Magistrate or Justice of the Peace of the subordinate court before whom it purports to have been taken.

[Act No. 8 of 1937.]

(3) A certificate purporting to be signed by the Magistrate of the subordinate court of the first class, which issued the commission or (in the case of a commission issued by the High Court) of the Registrar of the High Court that the person (whether prosecutor or accused person) against whom it is proposed to read such deposition in evidence had full opportunity of forwarding interrogatories in writing and a certificate purporting to be signed by a Magistrate or the Justice of the Peace of the subordinate court, which executed such commission, that reasonable notice in writing of the intention to take such deposition was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence and that he or she or his or her counsel (if any) had or might have had, if he or she had chosen to be present, full opportunity of cross-examining the person making the same may be received by any other court as proof of the facts therein contained or such court may take other evidence in regard to such facts.

[Act No. 8 of 1937.]

131. Adjournment of trial

In every case in which a commission is issued under section 127 or 128 of this Code, the trial or other proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

[Act No. 8 of 1937.]

Procedure in Case of the Lunacy or other Incapacity of an Accused Person

132. Accused apparently insane and incapable of making his or her defence

(1) When in the course of a trial the court has reason to believe that the accused is of unsound mind and consequently incapable of making his or her defence, it shall cause the accused to be medically examined and shall thereafter take medical and any other available evidence regarding the state of the accused's mind.

[Act No. 15 of 1982.]

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

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

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

[Act No. 8 of 1937, Act No. 1 of 1964.]

(5) Upon consideration of the record, the Minister responsible for health may by warrant under his or her hand directed to the court order that the accused be confined as a criminal lunatic in a place of detention appointed for the confinement of lunatics under the provisions of the Lunatics' Detention Act, or other suitable place and the court shall give any directions necessary to carry out such order. The warrant of the Minister shall be sufficient authority for the detention of the accused person until the Minister makes further order in the matter or until the court finding him or her incapable of

making his or her defence orders him or her to be brought again before it in the manner provided by sections 133 and 134 of this Code.

[Cap. 40:05, Act No. 1 of 1964.]

133. Procedure when accused is certified as capable of making his or her defence

If a person confined in a place of detention or other place of custody by order of the Minister responsible for health under section 132 of this Code is found by the medical officer in charge of such place to be capable of making his or her defence, the medical officer shall forthwith forward a certificate to that effect to the court which recorded the finding under section 132 of this Code in respect of such person. The court shall thereupon order the removal of the person from the place where he or she is detained and shall cause him or her to be brought in custody before it in the manner prescribed by section 134 of this Code. Any certificate given under this section may be given in evidence without further proof in any further proceedings under section 134 of this Code unless it is proved that the medical officer purporting to sign it did not in fact sign it.

[Act No. 1 of 1964.]

134. Resumption of trial

(1) When a trial is postponed the court may at any time resume the trial and require the accused to appear or be brought before the court, when, if the court considers him or her capable of making his or her defence, the trial shall proceed.

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

135. Defence of lunacy

When the accused person appears to be of sound mind at the time of a trial the court, notwithstanding that it is alleged that at the time when the act was committed, in respect of which the accused person is charged, he or she was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case.

136. Special verdict

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

[Act No. 1 of 1964.]

(2) When the special verdict is found the court shall forward the court record or a certified copy thereof to the Minister responsible for health and shall order the accused to be kept in custody as a criminal lunatic, in such place and in such manner as the court shall direct till the President's pleasure shall be known, and it shall be lawful for the Minister to signify the President's pleasure by warrant under his or her hand and from time to time, to give such order for the safe custody of the said person during pleasure, in such place of detention, prison or other suitable place of safe custody and in such manner as he or she may deem fit.

137. The regulation of places of confinement for criminal lunatics

(1) It shall be lawful for the Minister responsible for health to make rules prescribing special places of confinement for criminal lunatics, the government and management of such places, the duties and conduct of the officers thereof and the care and treatment of the persons confined therein.

[Act No. 1 of 1964.]

(2) The Minister responsible for health may from time to time by warrant direct the transfer of any criminal lunatic detained in any prison, asylum or other place to some other prison, asylum or place, and the criminal lunatic shall accordingly be received and detained in the place to which he or she is transferred.

138. Escape and retaking of criminal lunatics

In case of escape of a criminal lunatic confined in a place under a warrant of the Minister responsible for health issued under section 132, section 136 or section 137 of this Code, he or she may be re-taken at any time by the superintendent of such place or any officer or servant belonging thereto, or a person assisting the superintendent, officer, or servant in this behalf, or any other person authorised in writing in this behalf by an officer in charge of a police station or the superintendent, and upon being re-taken he or she may be conveyed to and received and detained in such place.

[Act No. 1 of 1964.]

139. Periodical reports concerning criminal lunatics

(1) The superintendent of any place in which a criminal lunatic is detained shall make a report to the Minister responsible for health at such times (and at least once a year) and containing such particulars as the Minister may require, of the condition and circumstances of every criminal lunatic in such place, and the Minister shall, at least once in every two years during which a criminal lunatic is detained, take into consideration the condition, history, and circumstances of the lunatic, and determine whether he or she ought to be discharged or otherwise dealt with.

[LN 27 of 1962, Act No. 1 of 1964.]

(2) The Minister responsible for health by warrant may absolutely discharge a criminal lunatic, and may also discharge a criminal lunatic conditionally, that is to say, on such conditions as to the duration of the discharge and otherwise as the Minister may think fit.

[Act No. 1 of 1964.]

(3) Where in pursuance of this section a criminal lunatic has been discharged conditionally, if any of the conditions of the discharge appears to the Minister responsible for health to be broken, or the conditional discharge is revoked, the Minister may by warrant direct him or her to be taken into custody, and to be conveyed to some place named in the warrant, and he or she may thereupon be taken in like manner as if he or she had escaped from such place, and shall be received and detained therein as if he or she had been removed thereto in pursuance of the provisions of section 137 of this Code.

[Act No. 1 of 1964.]

140. Procedure when accused does not understand proceedings

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

[Act No. 1 of 1964.]

Judgement

141. Mode of delivering judgement

(1) The judgement in a trial in a criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgement shall be explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their counsel if any:

Provided that the whole judgement shall be read out by the presiding Judge or Magistrate if he or she is requested so to do either by the prosecution or the defence.

[Act No. 1 of 1964.]

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

[Act No. 1 of 1964.]

(3) A judgement delivered by a court shall not be deemed to be invalid by reason only of the absence of a party or his or her counsel on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their counsel or any of them, the notice of such day and place.

[Act No. 1 of 1964.]

(4) Nothing in this section shall be construed to limit in any way the provisions of section 291 of this Code.

[Act No. 1 of 1964.]

142. Contents of judgement

(1) A judgement delivered under the provisions of section 141 of this Code shall, except as otherwise expressly provided by this Code, be written by, or reduced to writing under the personal direction and supervision of the presiding Judge or Magistrate in the language of the court, and shall contain, the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the presiding Judge or Magistrate as on the date on which it is pronounced in open court.

(2) For the purposes of subsection (1) of this section, a judgement may be recorded in shorthand or by any mechanical means under the supervision of the presiding Judge or Magistrate and the transcription thereof signed by the presiding Judge or Magistrate.

[Act No. 1 of 1964.]

(3) In the case of a conviction, the judgement shall specify the offence of which, and the section of the Criminal Code or other law under which, the accused person is convicted.

[Cap. 10:01, Act No. 1 of 1964.]

(4) In the case of an acquittal, the judgement shall state the offence of which the accused person is acquitted and shall direct that he or she be set at liberty.

[Act No. 1 of 1964.]

(5) The judgement, in the case of a conviction, shall be followed by a note of the steps taken by the court prior to sentence and by a note of the sentence passed together with the reasons for the sentence when there are special reasons for passing a particular sentence.

Costs and Compensation

143. Costs

(1) A court may order the payment of costs in any of the following circumstances—

(*a*) to the prosecutor, whether public or private, by a person convicted of an offence by the court;

(*b*) to a person acquitted of an offence by the court, by the prosecutor, whether public or private, if the court considers that the prosecutor had no reasonable grounds for prosecuting the person;

(*c*) to the respondent by an appellant whose appeal fails, if the appeal court considers that the appellant had no reasonable grounds on which to appeal;

(*d*) to an appellant by a respondent, on the success of an appeal if the court considers that the respondent had no reasonable grounds for contesting the appeal;

(*e*) to a person in any matter of an interlocutory nature, including a request for an adjournment, if the person has been put to any expense when in the opinion of the court the applicant had no reasonable or proper grounds for

making the application or where the applicant has failed to give the person adequate notice in the case of a request for an adjournment, in which latter case the court may make the immediate payment of the costs awarded a condition precedent to the grant of the application.

[Act No. 1 of 1964.]

(2) Any costs awarded by a court under subsection (1) of this section shall not exceed the sum of one thousand dalasis.

[Act No. 1 of 1964.]

(3) Costs awarded under this section may be awarded in addition to a compensation awarded under sections 144 or 145 of this Code.

[Act No. 1 of 1964.]

(4) An appeal shall lie to the High Court against an award of costs of over one hundred dalasis by a subordinate court but no appeal shall lie against an order of the High Court either awarding or refusing to award costs nor shall any appeal lie to the High Court against an order of a subordinate court refusing to award costs:

Provided that a court hearing an appeal relating to other matters than costs may vary any order relating to costs made by the court from whose decision the appeal is made.

[Act No. 1 of 1964.]

144. Compensation in case of false and vexatious charge

(1) If, in any case instituted upon complaint, one or more persons is or are accused before a Magistrate of an offence and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his or her order of discharge or acquittal, if the person upon whose complaint the accusation was made is present, call upon him or her forthwith to show cause why he or she should not pay compensation to the accused or to each or any of the accused when there are more than one, or, if the person is not present, direct the issue of a summons to him or her to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which the complainant may show, and if he or she is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such an amount not exceeding two hundred and fifty dalasis as he or she may determine, be paid by the complainant to the accused or to each or any of them.

[Act No. 1 of 1964.]

(3) A person who has been directed to pay compensation under this section shall not, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him or her:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(4) A complainant who has been ordered under subsection (2) of this section to pay compensation may appeal from the order, in so far as the order relates to the payment of the compensation, as if the complainant had been convicted on a trial held by the Magistrate.

(5) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under subsection (4) of this section, the compensation shall not be paid to him or her before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where the order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

145. Compensation for material loss or personal injury

(1) When an accused person is convicted by a court of an offence not punishable

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

[The proviso deleted by Decree No. 48 of 1995, Act No. 1 of 1964.]

(2) When a person is convicted of any offences under Chapters XXVI to XXXI and Chapter XXXIV of the Criminal Code, the power conferred by subsection (1) of this section shall be deemed to include a power to award compensation to any bone fide purchaser of any property in relation to which the offence was committed for the loss of such property if the same is restored to the possession of the person entitled thereto.

[Cap. 10:01, Act No. 6 of 1986.]

(3) An order for compensation, made under this section, shall be subject to appeal.

[Act No. 1 of 1964.]

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

146. Costs and compensation to be specified in order, how recoverable

The sums allowed for costs or compensation shall in all cases be specified in the conviction or order, and the same shall be recoverable in like manner as a fine may be recovered under this Code, and in default of payment of such costs or compensation or of distress as hereinafter provided, the person in default shall be liable to imprisonment in the manner provided under section 31 of the Criminal Code.

[Cap. 10:01.]

Restitution of Property

147. Property found on accused person

Where, upon the apprehension of a person charged with an offence, any property is taken from him or her, the court before which he or she is charged may order that the property or a part thereof be—

(*a*) restored to the person who appears to the court to be entitled thereto, and, if he or she is the person charged, that it be restored either to him or her or to such other person as he or she may direct; or

(*b*) applied to the payment of any fine or any costs or compensation directed to be paid by the person charged:

Provided that an order shall not be made under paragraph (*b*) of this section if the court is satisfied that the property does not belong to the person on whom it was found.

147A. Restriction on the disposal of property of accused person

(1) Where any property in respect of which a person is charged before a court with an offence under Chapters XXVI to XXXI or Chapter XXXIV of the Criminal Code is in the custody or possession of another person, the court at any time before the determination of the case may, of its own motion or shall, on the application of the prosecution, order that the person in whose custody or possession the property is, shall not part with or dispose of the property until otherwise directed by the court.

[Cap. 10:01, Act No. 6 of 1986.]

(2) An application for the exercise of the power conferred by this section shall be by way of originating summons supported by affidavit.

[Act No. 6 of 1986.]

(3) Where an order is made restraining any person from disposing of any property under subsection (1) of this section, the person may apply to the court for the order to

be vacated and the court may, if satisfied that the property was acquired in good faith and that the person gave adequate consideration for the property transferred to him or her, vacate the order on such terms and conditions as it deems fit.

[Act No. 6 of 1986.]

148. Property stolen

(1) If a person guilty of an offence as is mentioned in Chapters XXVI to XXXI and Chapter XXXIV of the Criminal Code, in stealing, taking, obtaining, extorting, converting, or disposing of, or in receiving or retaining any property, or in being in possession of any property reasonably suspected of being stolen or unlawfully obtained, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his or her representative.

[Cap. 10:01, Act No. 6 of 1986.]

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

Provided that where goods have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not re-vest in the person who was the owner of the goods or his or her personal representative, by reason only of the conviction of the offender:

And provided that nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment thereof, or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without any notice or without any reasonable cause to suspect that the same had been stolen.

In this subsection, the expression **"goods"** includes all chattels personal other than things in action and money.

(3) On the restitution of any stolen property, if it appears to the court by the evidence that the offender has sold the stolen property to a person, that the person had no knowledge that the same was stolen, and that any monies have been taken from the offender on his or her apprehension, the court may, on the application of the purchaser, order that out of such monies a sum not exceeding the amount of the proceeds of the sale be delivered to the said purchaser.

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

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

(*b*) in cases where an appeal is lodged, until the determination of the appeal, and in cases where the operation of the order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(ii) The High Court may make provision by rules for securing the safe custody of any property during the suspension of the operation of the order.

(5) An order made under this section shall be subject to appeal and, upon the hearing of the appeal, the Court may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

(6) Whenever any property is or may be the subject of an order under section 147, or this section, of this Code and is in the opinion of the court of a perishable nature, the court may in its discretion order that the property be sold and the proceeds thereof paid into court, and such proceeds shall be dealt with thereafter in the same manner as the property itself would have been dealt with had it not been sold.

[Act No. 1 of 1964.]

148A. Recovery of property from convicted person

(1) Where a person is convicted of an offence referred to under section 147A of this Code and any property which is the subject matter of the offence for which he or she is convicted is not recovered, the court on sentencing the offender or at any time thereafter may, on its own motion and shall, on the motion of the person who appears to the court to be entitled thereto, make an order for the return by that person of the property not recovered and for payment in default of the value of any property not returned.

[Act No. 6 of 1986.]

(2) A dispute as to the value of the property, shall be tried by the court in the same manner as in a civil action.

[Act No. 6 of 1986.]

(3) An order made under this section may be enforced during the term of the sentence imposed, or at any time within ten years after the expiry thereof.

[Act No. 6 of 1986.]

(4) An order made under this section shall be deemed to be an exercise of the civil jurisdiction of the court, in an action between the person in whose favour the order is made as plaintiff and the person against whom the order is made or the offender as defendant, and shall be enforceable in the same manner and be subject to the like appeal as are orders for the return of money or other property.

[Act No. 6 of 1986.]

(5) The court shall have jurisdiction under this section notwithstanding that the property in respect of which the order is made or its value exceeds the limit of the civil jurisdiction of the court.

[Act No. 6 of 1986.]

(6) In making an order under this section, if it appears to the court from the evidence given during the trial or at the hearing of the application for the order, that the offender has, since the commission of the offence, transferred any property to any person, the transfer shall be deemed to have been made out of the proceeds of the offence and the court may accordingly, on the application of the person who appears to the court to be entitled thereto, make an order for the return of the property to that person by the person to whom the transfer has been made.

[Act No. 6 of 1986.]

(7) An order shall not be made under subsection (6) of this section if it is shown to the satisfaction of the court by the person to whom such transfer has been made that—

(*a*) the property was acquired in good faith and that he or she gave valuable consideration commensurate to the value of the property transferred to him or her; or

(*b*) he is a dependant of the person convicted and that the property transferred to him or her was for his or her reasonable living expenses made to him or her as such dependant.

[Act No. 6 of 1986.]

(8) An order made under this section shall not be deemed to operate as a bar to the subsequent institution of civil proceedings for the recovery of any property which is the subject matter of the offence in respect of which a person is charged but is not convicted.

Miscellaneous Provisions

149. The person accused of any offence may be convicted of attempt

(1) When a person 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.

(2) When a person is charged with an attempt to commit an offence and the evidence establishes the commission of the full offence, the accused may not be convicted of the full offence but may nevertheless be convicted of the attempt.

150. Person charged with an offence may be convicted of being an accessory

after the fact

When a person is charged with an offence he or she may be convicted of being an accessory after the fact although he or she was not so charged.

[Act No. 1 of 1964.]

151. When offence proved is included in offence charged

A charge shall be deemed to be divisible into the integral parts legally necessary to constitute the offence charged as described in the enactment creating the offence, and if the evidence shows that some integral parts of the offence charged only are proved, and such parts which are so proved or some of them taken together constitute another offence, the person charged may be convicted of the other offence or of an attempt to commit it.

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

(1) If on any trial for any of the offences mentioned in Chapter XXIX of the Criminal Code, the facts proved in evidence authorise a conviction for some other of the said offences and not the offence wherewith the accused is charged, he or she may be found guilty of the said other offence, and thereupon he or she shall be punished as if he or she had been convicted on a charge or an information charging him or her with such offence.

[Cap. 10:01.]

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

[Act No. 5 of 1957.]

153. Conviction of false pretences on charge of stealing and *vice versa*

(1) When a person is charged with stealing anything and it is proved that he or she obtained the thing in any such manner as would amount, under the provisions of the Criminal Code, to obtaining it by false pretences with intent to defraud, he or she may be convicted of obtaining it by false pretences although he or she was not charged with that offence.

[Cap. 10:01.]

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

154. Conviction of infanticide on charge of murder

(1) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury or where there is no jury, the court is of opinion that she by any wilful act or omission caused the child's death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, she may be convicted of infanticide.

[Act No. 15 of 1939.]

(2) When a person is charged with the murder or manslaughter of a child or with infanticide or an offence against section 140 or 141 of the Criminal Code, and it is proved that the person charged is not guilty of murder, manslaughter or infanticide, or of an offence against the said sections, as the case may be, but is shown by the evidence to be guilty of the felony of child destruction, he or she may be convicted of that felony.

[Cap. 10:01.]

(3) When a person is charged with the felony of child destruction, and it is proved that he or she is not guilty of that felony, but is shown by the evidence to be guilty of an offence against section 140 or section 141 of the Criminal Code, he or she may be convicted of that offence.

(4) When a person is charged with the murder or manslaughter of a child or with infanticide, and it is proved that the person charged is not guilty of murder or manslaughter or infanticide, then if it appears in evidence that the child had recently been born and that the person did by some secret disposition of the dead body of the child endeavour to conceal the birth thereof, he or she may be convicted of an offence against section 207 of the Criminal Code.

(5) Nothing in this section shall affect the power upon an information for the murder of a child to return a verdict of manslaughter or a verdict of guilty but insane.

[Act No. 15 of 1939.]

155. Person charged with rape may be convicted of kindred offence

If on a trial for rape or for defilement of a girl under the age of eighteen years the facts proved in evidence authorise a conviction for an offence under section 126, section 127, section 128 or section 130 of the Criminal Code and not the offence wherewith the accused is charged, he or she may be convicted of an offence under section 126, section 127, section 128 or section 130, of the Criminal Code as the case may be, and thereupon he or she shall be punished as if he or she had been convicted on a charge or an information charging him or her with that offence.

[Cap. 10:01.]

156. Conviction of incest lawful on charge of rape

(1) If, on any trial for rape the facts proved in evidence authorise a conviction for an offence under section 148 of the Criminal Code and not the offence wherewith the accused is charged, he or she may be convicted of an offence under section 148 of the Criminal Code and he or she shall be punished as if he or she had been convicted on a charge or information charging him or her with that offence.

[Cap. 10:01.]

(2) If, on a trial for an offence under section 148 of the Criminal Code, the facts proved in evidence authorise a conviction for an offence under section 126, section 127 or section 128 of the Criminal Code, and not the offence wherewith the accused is charged, he or she may be convicted of an offence under section 126, section 127 or section 128 of the Criminal Code, and he or she shall be punished as if he or she had been convicted on a charge or information charging him or her with that offence.

[Cap. 10:01.]

157. Person charged with misdemeanour not to be acquitted if felony proved, unless court so directs

If, on a trial for misdemeanour, the facts proved in evidence amount to a felony, the accused person shall not be therefore acquitted of the misdemeanour, and a person tried for such misdemeanour shall not be liable afterwards to be prosecuted for felony on the same facts, unless the court thinks fit, in its discretion, to direct the person to be prosecuted for felony, whereupon the person may be dealt with as if not previously put on trial for misdemeanour.

158. Conviction on other charges pending

Where an accused person is found guilty of an offence, the court may, in passing sentence, take into consideration any other charge of the same kind then pending against the accused person if the accused person admits the other charge and desires it to be taken into consideration and if the prosecutor of the other charge consents.

159. Right of accused to be defended

A person accused of an offence, or against whom proceedings are instituted under this Act, may of right be defended by a counsel:

Provided that in considering an application for an adjournment for the purpose of employing a counsel, a court shall have regard to the desirability of the prompt enforcement of justice and to the principle that no such adjournment may be demanded as of right.

PART V

Procedure in Trials before Subordinate Courts

Provisions Relating to the Hearing and Determination of Cases

160. Non-appearance of prosecutor at hearing

If, in a case which a subordinate court has jurisdiction to hear and determine, the accused person comes before the court on a summons, warrant or otherwise, then, if the prosecutor, having had notice of the time and place appointed for the hearing of the charge, does not appear himself or herself or by his or her counsel, the court shall discharge the accused person, unless for some reason it thinks it proper to adjourn the hearing of the case until some other date, upon such terms as it thinks fit:

Provided that where the accused person does not appear personally and pleads guilty in writing or by his or her counsel under the provisions of section 78 of this Code the court may proceed to conviction notwithstanding the absence of the prosecutor or his or her counsel.

161. Appearance of both parties

If at the time appointed for the hearing of the case both the prosecutor and the accused person appear before the court which is to hear and determine the charge, or if the prosecutor appears himself or herself or by his or her counsel and the personal attendance of the accused person has been dispensed with under section 78 of this Code, the court shall proceed to hear the case.

161A. Objections to charge to be taken at once

An objection to a charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused person and not later.

[Act No. 2 of 2002.]

162. Adjournment

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

Provided that the adjournment shall not be for more than fifteen clear days, or if the accused person has been committed to prison, for more than seven clear days, the day following that on which the adjournment is made being counted as the first day.

163. Non-appearance of parties after adjournment

(1) If at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court which made the order of adjournment, it is lawful for the court, unless the accused person is charged with felony, to proceed with the hearing or further hearing as if the accused were present, and if the prosecutor or his or her counsel does not appear the court may, having regard to the merits of the case, either acquit the accused person or discharge him or her with or without costs as the court thinks fit.

(2) Where a court is satisfied that a person accused of an offence who is bound by recognisance to appear at a hearing or adjourned hearing of the case, is by reason of illness or accident unable at the date of the hearing or further hearing to appear personally before the court, it may, in the absence of the accused person, order a further

adjournment for such time as may be lawful and reasonable and the time conditioned in the accused person's recognisance shall be deemed to be varied accordingly.

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

(4) Where any sentence is passed in the accused person's absence under the provisions of subsection (1) of this section, the court shall give directions for the carrying out of the sentence and shall issue its commitment or other warrant therefor, and in addition to authorising the carrying out of the sentence, the warrant, shall, if necessary, be deemed to authorise the apprehension of the convicted person for the purpose of carrying out the sentence. The person effecting the apprehension shall endorse the date thereof on the back of the warrant and any sentence of imprisonment imposed on a person apprehended on the warrant shall commence from the date of his or her apprehension.

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

164. Accused to be called upon to plead

(1) If the accused person appears personally or, under the provisions of subsection (1) of section 78 of this Code by his or her counsel, the substance of the charge shall be stated and explained to him or her or, if he or she is not personally present, to his or her counsel (if any) and he or she or his or her counsel, as the case may be, shall be asked whether he or she pleads guilty or not guilty.

[Act No. 1 of 1964.]

(2) If the plea is one of guilty, the plea shall be recorded as nearly as possible in the words used, or if there is an admission of guilt by letter under the provisions of subsection (1) of section 78 of this Code, the letter shall be placed on the record and the court shall convict the accused person and pass sentence or make an order against him or her, unless there appears to it sufficient cause to the contrary.

(3) If the plea is one of "not guilty" the court shall proceed to hear the case as hereinafter provided.

(4) If the accused person or his or her counsel, as the case may be, refuses to plead, or if he or she does not appear and the court decides to hear the case in his or her absence under the provisions of subsection (1) of section 163 of this Code, a plea of "not guilty" shall be entered and the plea so entered shall have the same force and effect as if the same had been actually pleaded.

[Act No. 1 of 1964.]

(5) If the accused pleads that he or she has—

(*a*) been previously convicted or acquitted, as the case may be, of the same offence; or

(*b*) obtained the President's pardon for his or her offence,

the court shall try whether the plea is true in fact or not. If the court holds that the facts alleged by the accused person do not prove the plea, or if it finds that it is false in fact, the accused person shall be required to plead to the charge.

165. Procedure on plea of not guilty

(1) If the accused person does not plead guilty to the charge, the court shall proceed to hear such evidence as the prosecutor may adduce in support of the charge.

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

(3) If the accused person does not employ a counsel, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether

he or she wishes to put any questions to that witness and shall record his or her answer.

166. Acquittal or discharge of accused person when no case to answer

If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall, as to that particular charge, acquit him or her.

[Act No. 1 of 1964.]

167. The defence

(1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him or her to make a defence, the court shall call upon him or her to enter into his or her defence and shall inform him or her that, if he or she so desires, he or she may give evidence himself or herself on oath or may make a statement. The court shall then hear the accused if he or she desires to be heard and any evidence he or she may adduce in his or her defence.

[Act No. 1 of 1964.]

(2) If the accused person states that he or she has witnesses to call but that they are not present in court, and the court is satisfied that the absence of the witnesses is not due to any fault or neglect of the accused person and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of the witnesses.

(3) If the accused person examines any witnesses or gives any evidence other than as to the accused person's, general character, the court may grant leave to the prosecutor to give or adduce evidence in reply.

168. Opening and closing of case for prosecution and defence

(1) The prosecutor and the accused person are entitled to address the court at the commencement of their respective cases.

[Act No. 1 of 1964.]

(2) After the close of the accused person's case the accused person shall be entitled to address the court and the prosecutor shall then be entitled to reply:

Provided that if the accused person adduces no evidence, or no evidence other than evidence given by himself or herself, the accused person shall, subject to the provisions of subsection (3) of this section, be entitled to the right of reply.

[Act No. 1 of 1964.]

(3) Notwithstanding the provisions of subsection (2) of this section, where any issue of law is raised by a person with the right of reply in the course of the reply, the court may, in its discretion, give to any other person having a right of address leave to address the court on that issue of law.

[Act No. 1 of 1964.]

(4) Where a right of address or reply is conferred by the provisions of this section upon a prosecutor or any accused person, that right may be exercised by a counsel representing the prosecutor or accused person.

[Act No. 1 of 1964.]

169. Amendment of charges

(1) Where, at any stage of a trial, it appears to the court that—

(*a*) the evidence discloses an offence other than the offence with which the accused is charged;

(*b*) the charge is defective in a material particular; or

(*c*) the accused desires to plead guilty to an offence other than the offence with

which he or she is charged,

then the court, if it is satisfied that no injustice to the accused person will be caused thereby, may make such orders for the alteration of the charge by way of its amendment or by the substitution or addition of a new charge as it thinks necessary to meet the circumstances of the case:

Provided that where a charge is altered under the provisions of this subsection—

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

(ii) the accused person may demand that the witnesses for the prosecution or any of them be recalled and be further cross-examined by the accused or his or her counsel whereupon the prosecution shall have the right to re-examine the witnesses on matters arising out of the further cross-examination, and

(iii) the accused person shall have the right to give or to call such further evidence on his or her behalf as he or she may wish.

[Act No. 1 of 1964.]

(2) Where an alteration of a charge is made under the provisions of subsection (1) of this section, the court shall, if it is of the opinion that the accused person has been thereby prejudiced, adjourn the trial for such period as may be reasonably necessary.

(3) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within any time limited by law for the institution thereof.

(4) The court shall inform the accused of his or her right to demand the recall of witnesses under the proviso to subsection (1) of this section, and that he or she may apply to the court for an adjournment under subsection (2) thereof.

(5) In any case where a charge is altered under the provisions of subsection (1) of this section the court may make such orders as to the payment by the prosecution of any costs incurred owing to the alteration of the charge as it thinks fit.

170. The decision

The court, having heard what each party has to say as aforesaid and the witnesses and evidence so adduced, shall consider the whole matter and determine the same and shall either convict the accused and pass sentence upon or make an order against him or her according to law or shall acquit him or her as the case may be. The court may, if it thinks fit, receive evidence to inform itself as to the sentence proper to be passed and in the event of the court convicting or making an order against an accused person in respect of which an appeal lies to the High Court under the provisions of Part IX of this Code, the court shall inform the person of his or her right to appeal at the time of entering the conviction or making the order.

171. Drawing up of conviction or order

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

172. Order of acquittal bar to further proceedings

Subject to the other provisions of this Code, the production of the order of acquittal, duly certified by a Judge or Magistrate, shall be without other proof a bar to any subsequent charge for the same matter against the same accused person.

173. Petty cases

(1) Notwithstanding anything contained in this Code, a subordinate court having jurisdiction to try any offence may, if so requested by the prosecutor or if the court itself deems such procedure expedient, try the offence in the manner provided by this section:

Provided that a person may not be so tried, if in the opinion of the court, he or she is under the age of seventeen years.

(2) A Magistrate trying an offence under the provisions of this Code shall not be required to record the evidence of the witnesses, but shall record, in such forms as the High Court may direct, the following particulars—

(*a*) the serial number of the case;

(*b*) the name of the accused;

(*c*) the date upon which the accused first appeared before the court in answer to the charge;

(*d*) the date upon which the proceedings terminated;

(*e*) the offence charged;

(*f*) the plea of the accused;

(*g*) the finding of the court; and

(*h*) the sentence or other order of the court.

(3) A sentence of—

(*a*) imprisonment exceeding one month;

(*b*) fine exceeding one hundred dalasis with or without imprisonment in default of payment thereof, the imprisonment not to exceed one month; or

(*c*) corporal punishment,

shall not be passed in the case of a conviction for an offence tried under the provisions of this section and the sentence shall not include more than one of the foregoing punishments:

Provided that a court may, in addition to any of the foregoing punishments, order the restitution, confiscation or forfeiture of any property which is or forms part of the subject matter of any charge, where the restitution, confiscation or forfeiture is provided for by law.

(4) A Magistrate may, if he or she thinks fit, and shall if so requested by the accused or his or her counsel or the person conducting the prosecution, record a sufficient note of any question of law which may arise during the trial of an offence under the provisions of this section and of any relevant evidence relating thereto, and shall, if so required by the High Court, transmit the note to the High Court.

(5) Where in the course of any trial under the provisions of this section it appears to the Magistrate that the case is of such a character as to render it undesirable that it should be so tried, the Magistrate shall recall any witnesses who have given evidence and proceed to rehear the case *de novo* in accordance with the foregoing provisions of this Part of this Code.

Limitations and Exceptions Relating to Trials before Subordinate Courts

174. Limitation of time for summary trials in certain cases

Except where a longer time is specially allowed by law, an offence, the maximum punishment for which does not exceed a fine of five hundred dalasis or imprisonment for a term of six months or both the fine and imprisonment, shall not be triable by a subordinate court, unless the charge or complaint relating to it is laid within twelve months from the time when the matter of such charge of complaint arose.

175. Procedure in case of offence proving unsuitable for summary trial

(1) If, in the course of a trial before a subordinate court, it appears to the Magistrate at any stage of the proceedings before the signing of judgement that the case is one which ought to be tried by the High Court, the Magistrate shall stop the proceedings as

a trial and shall proceed in the following manner—

(*a*) the Magistrate shall expunge from the record the accused person's answer to the charge;

(*b*) if the accused person had already been called upon to enter his or her defence, the Magistrate shall expunge the minutes of the defence from the record; and

(*c*) discharge the accused person and order the case to be transferred to the High Court.

[Act No. 15 of 1982.]

(2) In determining whether a case is suitable for summary trial, the Magistrate shall take into consideration any representation made in the presence of the accused person by or on behalf of the prosecutor, any circumstances which render the offence of a grave or serious character, all other circumstances of the case (including adequacy of the punishment the court has power to inflict), and, if the court has already determined upon the evidence that the accused person ought to be convicted, but not otherwise, the character and antecedents of the accused.

(3) A subordinate court shall not deal summarily with any case where the prosecution is being carried on by the Attorney-General without his or her consent.

PART VA

Commencement of Criminal Proceedings in the High Court

175A. Commencement of criminal proceedings in the High Court

Whenever a person is charged with an offence which is not being tried summarily before a subordinate court, the procedure specified is sections 175B, 175C and 175D of this Code shall be followed.

[Act No. 15 of 1982.]

175B. Filing of information and summary of evidence

The Attorney-General, or a person authorised by him or her, may commence criminal proceedings in the High Court by filing with the Registrar of the High Court—

(*a*) information which shall be in the form of indictment and shall state in writing the charge against the accused;

(*b*) a summary of evidence which shall comprise a list of the witnesses whom the prosecution proposes to call at the trial and summary of the evidence to be given by each witness.

[Act No. 15 of 1982.]

175C. Form and content of Bill of Indictment

(1) The Bill of Indictment shall comply with the form and content set out in the Schedule of this Code.

[Act No. 15 of 1982, Schedule.]

(2) The Bill of Indictment and summary of evidence may, by leave of the Court, be amended or added to at any time during the proceedings but before judgement is delivered.

(3) The prosecution may, and shall if so directed by the Court, deliver into the custody of the Court all documents and things which, according to the summary of evidence, are intended to be put in evidence at the trial.

[Act No. 5 of 1992.]

175D. Information and summary of evidence to be authenticated by Attorney-General

The Attorney-General or any member of his or her professional staff designated by him or her shall, by appending his or her signature thereto, authenticate an information and summary of evidence.

[Act No. 15 of 1982.]

176. to 207. . . . . . .

[Part VI, dealing with Provisions Relating to the Committal of Accused Person for Trial before the High Court and consisting of sections 176 to 207, both inclusive, was repealed by Act No. 15 of 1982.]

PART VII

Procedure in Trials before the High Court

General

208. Practice of the High Court

Subject to the provisions of this Code, the practice of the High Court in its criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of Her Majesty's High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Gaol Delivery in England.

[Act No. 1 of 1964.]

208A. Remand pending trial in High Court

Where a charge has been brought against any person of an offence not triable by a subordinate court, the Magistrate may subject to section 99, remand that person into custody until such time that the matter is mentioned in the High Court.

[Act No. 5 of 1992.]

209. to 215. . . . . . .

[Act No. 15 of 1982.]

Arraignment

216. Pleading to information

The accused person to be tried before the High Court upon an information shall be placed at the bar unfettered, unless the Court sees cause otherwise to order, and the information shall be read over to him or her by the Registrar of the High Court or the Judge and explained if need be by the Registrar or the Judge or interpreted by the Interpreter of the Court, and the accused person shall be required to plead instantly thereto, unless, where the accused person is entitled to service of a copy of the information, he or she objects to the want of such service, and the Court finds that he or she has not been duly served therewith.

[Act No. 1 of 1964.]

217. Objections to information to be taken at once

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

218. Orders for amendment of information, separate trial, and postponement of trial

(1) Where, before a trial upon information or at any stage of the trial, it appears to the Court that the information is defective, or that an order should be made under section 112 of this Code for a separate trial, the Court shall make such order for the amendment of the information as the Court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice. All the amendments shall be made upon such terms as to the Court shall seem just.

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

(3) Where, before a trial upon information or at any stage of the trial, the Court is of opinion that the postponement of the trial of the accused person is expedient as a consequence of the exercise of any power of the Court under this Code, the Court shall make such order as to the postponement of the trial as appears necessary.

(4) Where an order of the Court is made under this section for a separate trial or for postponement of a trial—

(*a*) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects as if the trial had not commenced;

(*b*) the Court may make such order as to admitting the accused to bail, and as to the enlargement or recognisances and otherwise as the Court thinks fit.

[Act No. 1 of 1964, Act No. 15 of 1982.]

(5) The power of the Court under this section shall be in addition to and not in derogation of any other power of the Court for the same or similar purposes.

219. Quashing an information

(1) An information shall be quashed either on a motion made before the accused person pleads or on a motion made in arrest of judgement, on the grounds that the indictment does not state and cannot by any authorised amendment be made to state any offence of which the accused person has had notice.

(2) A written statement of the motion shall be delivered to the Registrar of the High Court by or on behalf of the accused person and shall be entered upon the record.

[Act No. 15 of 1982.]

220. Procedure where accused is charged in information with previous conviction

Where an information contains a count charging a person with an offence and a further count that he or she is by reason of a previous conviction liable to enhanced punishment or to punishment of a different kind for the subsequent offence, the procedure shall be as follows, namely—

(*a*) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused person be asked whether he or she has been previously convicted as alleged in the information, unless and until he or she has either pleaded guilty to or been convicted of the subsequent offence;

(*b*) if he or she pleads guilty to or is convicted of the subsequent offence, he or she shall then be asked whether he or she has been previously convicted as alleged in the information;

(*c*) if he or she answers that he or she has been so previously convicted, the Judge may proceed to pass sentence on him or her accordingly, but if he or she denies that he or she has been so previously convicted, or refuses to or does not answer the question, the Court shall then hear evidence concerning the previous conviction and shall record a finding on the count which charges it:

Provided, however, that if upon the trial of any person for a subsequent offence the person gives evidence of his or her own good character, it shall be lawful for the counsel for the prosecution, in answer thereto, to give evidence of the conviction of the person for the previous offence or offences before a verdict of guilty is returned, and the Court shall inquire concerning the previous conviction or convictions at the same time that it inquires concerning the subsequent offence.

[Act No. 1 of 1964.]

221. Plea of "not guilty"

An accused person, upon being arraigned on any information, by pleading generally thereto the plea of "not guilty" shall, without further form, be deemed to have put himself or herself upon the country for trial.

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

(1) An accused person against whom an information is filed may plead that he or she has—

(*a*) been previously convicted or acquitted, as the case may be, of the same offence; or

(*b*) obtained the President's pardon for his or her offence.

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

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

223. Refusal to plead

If an accused person being arraigned on any information stands mute of malice, or neither will, nor by reason of infirmity can, answer directly to the information, the Court, if it thinks fit, shall order the Registrar of the High Court or other officer of the Court to enter a plea of "not guilty" on behalf of the accused person, and the plea so entered shall have the same force and effect as if the accused person had actually pleaded the same, or else the Court shall thereupon proceed to try whether the accused person is of sound or unsound mind, and, if he or she is found of sound mind, shall proceed with the trial, and if he or she is found of unsound mind, and consequently incapable of making his or her defence, shall proceed in the manner provided by section 132 of this Code.

224. Plea of "guilty" to charge

(1) If the accused person pleads "guilty" the plea shall be recorded and he or she may be convicted thereon.

(2) Where an accused person is arraigned on an information for an offence and can lawfully be convicted on that information of some other offence not charged in the information, he or she may plead "not guilty" of the offence charged in the information but "guilty" of the other offence and upon the plea of guilty the Court may, with the consent of the Attorney-General, acquit the accused person of the offence with which he or she is charged and convict him or her of the other offence to which he or she pleads guilty.

225. Proceedings after plea of "not guilty"

If the accused person pleads "not guilty", or if a plea of "not guilty" is entered in accordance with the provisions of section 223 of this Code, the Court shall proceed to try the case mentioned.

[Act No. 15 of 1982.]

226. Power to postpone or adjourn proceedings

If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the Court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the Court may from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may by warrant remand the accused person to some prison or other place of security.

During a remand the Court may at any time order the accused person to be brought before it.

The Court may on a remand admit the accused to bail.

227. to 232. . . . . . .

[Repealed by Act No. 15 of 1982.]

Case for the Prosecution

233. Opening of case for prosecution

When the plea of the accused person has been taken, the counsel for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

[Act No. 1 of 1964, Act No. 15 of 1982.]

234. Additional witnesses for prosecution

If the prosecution is of the opinion that there is in any case before the High Court any material or necessary witness other than those mentioned in the summary of evidence, the prosecution may call the witness before the trial Court upon giving to the Registrar of the Court and to the accused person notice of his or her intention to do so and shall provide them with a summary of the evidence to be given by the witness.

235. Cross-examination of witnesses for the prosecution

The witnesses called for the prosecution shall be subject to cross-examination by the accused person or his or her counsel and to re-examination by the counsel for the prosecution.

236. . . . . . .

[Repealed by Act No. 15 of 1982.]

237. Police statements and proof of statements

(1) A statement of the accused person made before the commencement of the trial, may be given in evidence unless it is proved that the statement was not made by the accused person or that the statement was made under duress. Where the prosecution does not put in the statement, the Judge, on the application of the defence, may order the statement to be read at the conclusion of the prosecution evidence as part of the prosecution case.

[Act No. 15 of 1982.]

(2) At any time before, or during the course of the trial, the accused person may require the police to deliver to him or her a copy of a statement taken by them from a person who is listed in the summary of evidence or in any supplementary summary or is actually called as a witness.

[Act No. 15 of 1982.]

(3) If the witness is cross-examined at the trial on behalf of the accused person on any part of the witness's statement to the police, the prosecution may furnish the Court with a copy of the statement which shall become part of the record of the trial.

[Act No. 15 of 1982.]

(4) The statement shall not thereby become evidence of any facts alleged therein, but the Judge may take it into account in judging the credibility of the witness on his or her evidence as a whole and the prosecution and the defence shall be entitled to refer to it in examining or cross-examining any witness and in addressing the Court.

[Act No. 15 of 1982.]

238. Close of prosecution

When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person has been given in evidence, the Court, if it considers that there is no sufficient evidence that the accused person or any one of several accused persons committed the offence, shall, after hearing the counsel for

the prosecution and for the defence, record a finding of not guilty.

[Act No. 1 of 1964, Act No. 15 of 1982.]

Case for the Defence

239. At close of prosecution case, Judge to inform undefended accused of his or her rights

At the conclusion of the evidence for the prosecution and after the statement or evidence on oath (if any) of the accused person has been given in evidence, the Court shall in cases where the accused person is not defended by counsel, inform him or her of his or her right to address the Court, to give evidence on his or her own behalf or to call witnesses in his or her defence and in all cases shall require him or her or his or her counsel to state whether it is intended to call any witnesses as to fact other than the accused person himself or herself. Upon being informed thereof the Judge shall record the same and shall then observe the appropriate procedure set out in section 240 of this Code.

[Act No. 15 of 1982.]

240. Procedure to be followed where accused is undefended

(1) Where the accused person is not defended by a counsel and states that he or she does not intend to call any witness as to the facts except himself or herself, the Court shall forthwith call upon the accused person to make his or her statement or give evidence on oath as to the facts and after his or her cross-examination (if any), he or she shall be permitted to address the Court if he or she so desires and to call any witnesses as to character.

(2) Where the accused person is not defended by counsel but states that he or she intends to call witnesses (other than himself or herself) as to the facts, the Court shall call upon him or her to open his or her case if he or she so desires. The accused person shall then make his or her own unsworn statement or give his or her evidence on oath, and thereafter he or she shall call his or her witnesses (including witnesses as to character). At the conclusion of the evidence for the defence the accused person shall be permitted to sum up his or her case to the court and the counsel for the prosecution shall be entitled to reply.

(3) Where the accused person is defended by a counsel who states that no witness as to the facts will be called except the accused, the Court shall require the accused person to make his or her unsworn statement or give his or her evidence, as the case may be. Thereafter the counsel for the prosecution may address the Court and the counsel for the defence may reply and shall then call his or her witnesses (if any) as to the character of the accused person.

(4) Where the accused person is defended by a counsel who states that he or she intends to call witnesses as to the facts other than the accused person, the Court shall call upon the accused person's counsel to open his or her case and shall then require the accused person, if he or she so desires, to make his or her own unsworn statement or give his or her evidence on oath, as the case may be, and thereafter to call his or her witnesses (including witnesses as to character). At the conclusion of the evidence for the defence, the counsel for the accused person may address the Court and the counsel for the prosecution may reply.

(5) In any case where two or more accused persons are jointly tried and some accused person are defended by counsel and others are not, the Court shall for the purposes of procedure deem all the accused person to be defended by counsel.

(6) Notwithstanding anything contained in this section, the following officers when appearing personally as counsel for the prosecution shall in all cases have the right of reply—

(*a*) the Attorney-General, the Solicitor-General, the Director of Public Prosecutions, the Director of Civil Litigation, the Parliamentary Counsel;

(*b*) any Principal State Counsel, Senior State Counsel, or State Counsel; and

(*c*) any police officer, or other person appearing on behalf of the Attorney-

General or the Inspector-General of the Police.
[Decree No. 94 of 1996.]

241. Additional witnesses for the defence

The accused person shall be allowed to examine any witnesses and shall, if he or she apprehends that a witness will not attend the trial voluntarily, be entitled to apply for the issue of process to compel the witness's attendance:

Provided that an accused person shall not be entitled to any adjournment to secure the attendance of any witness unless he or she shows that he or she could not by reasonable diligence have taken earlier steps to obtain the presence of the witness.
[Act No. 15 of 1982.]

242. Evidence by prosecution in rebuttal

Notwithstanding anything contained in section 240 of this Code, at the close of the evidence for the defence, or, where it is sought to rebut evidence of good character, after such evidence of good character has been given, the Court may, in its discretion, on the application of the counsel for the prosecution, grant him or her leave to call evidence to disprove any new facts set up by the defence. Where such evidence in rebuttal is given, the counsel for the defence shall be entitled to comment on the evidence so given.

Close of Hearing

243. Summing-up

(1) When the case on both sides is closed, the Judge shall sum up the law and the evidence in the case and make notes in the record of the summing up.
[Act No. 1 of 1964, Act No. 15 of 1982.]

(2) The Judge shall, after the summing-up, give judgement by either acquitting or convicting the accused person.
[Act No. 15 of 1982.]

(3) If the accused person is convicted, the Judge shall pass sentence on him or her according to law.
[Act No. 15 of 1982.]

Passing Sentence

244. Calling upon the accused

If the accused person is found guilty or pleads guilty, it shall be the duty of the Judge to ask him or her whether he or she has anything to say why sentence should not be passed on him or her according to law, but the omission to ask him or her shall have no effect on the validity of the proceedings.
[Act No. 1 of 1964.]

245. Motion in arrest of judgement

(1) The accused person may, at any time before sentence, whether on his or her plea of guilty or otherwise, move in arrest of judgement on the ground that the information does not, after any amendment which the Court has made and had power to make, state any offence which the Court has power to try.

(2) The Court may, in its discretion, either hear and determine the matter during the same sitting, or adjourn the hearing thereof to a future time to be fixed for that purpose.

(3) If the Court decides in favour of the accused person he or she shall be discharged from that information, but the discharge shall not operate as a bar to any subsequent proceedings against him or her on the same facts.

246. Sentence

If no motion in arrest of judgement is made, or if the Court decides against the accused person on such motion, the Court may sentence the accused person at any time during the session.

247. Power to reserve decision on question raised at trial

The Court before which a person is tried for an offence may reserve the giving of its final decision on questions raised at the trial, and its decision whenever given shall be considered as given at the time of trial.

248. Objections cured by verdict

A judgement shall not be stayed or reversed on grounds of an objection, which if stated after the information as read over to the accused person, or during the progress of the trial, might have been amended by the Court.

[Act No. 1 of 1964, Act No. 15 of 1982.]

249. Evidence for arriving at a proper sentence

The Court may, before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed, and, in case of a plea of guilty, the Court may refer to the depositions.

PART VIII

Sentences and their Execution

Sentence of Death

250. Sentence of death

When a person is sentenced to death the sentence shall direct that he or she shall suffer death in the manner authorised by law.

[Act No. 1 of 1964, Act No. 6 of 1981, Act No. 8 of 1981.]

251. Accused to be informed of right to appeal

When an accused person is sentenced to death, the Court shall inform him or her of the period within which, if he or she wishes to appeal, his or her appeal should be preferred.

252. Authority for detention

A certificate under the hand of the Registrar of the High Court or other officer of the Court that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of that person.

253. Record and report to be sent to President

(1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is preferred, or if the appeal is preferred and the sentence is confirmed, then as soon as conveniently may be after the confirmation, the trial Judge shall forward to the President a copy of the finding and sentence and of the notes of evidence taken on the trial, with a report in writing signed by him or her containing any recommendation or observations on the case he or she may think fit to make.

[Act No. 15 of 1982.]

(2) The trial Judge shall, at the same time, send to the Minister of Justice a copy of the finding and sentence, the notes of evidence and of his or her report on the trial, signed by him or her, and any recommendations or observations, which he or she may see fit to make thereon.

[Act No. 15 of 1982.]

(3) The President, after receiving the advice of the Minister of Justice, shall make such orders as may be requisite.

[Act No. 15 of 1982.]

(4) The Minister of Justice shall send a copy of the President's order to the trial Judge, or to his or her successor in office, and the order shall be entered by him or her in the record of the Court.

[Act No. 15 of 1982.]

(5) The President shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his or her hand and the public seal of The Gambia to give effect to the said decision. If the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial of the body of the person executed. If the sentence is commuted for any other punishment, the order shall specify that punishment. If the person sentenced is pardoned, the pardon shall state whether it is free, or to what conditions (if any) it is subject:

Provided that the President's order may direct that the execution shall take place at such time and at such place and that the body of the person executed shall be buried at such place, as shall be appointed by some officer specified in the order.

(6) The warrant, or order, or pardon of the President shall be sufficient authority in law to all persons to whom the same is directed to execute the sentence of death or other punishment awarded, and to carry out the directions therein given in accordance with the terms thereof.

[Act No. 15 of 1982.]

(7) The Minister of Justice may from time to time make and, when made, alter or revoke rules to be observed on the execution of judgement of death as he or she may from time to time deem expedient for the purpose, as well of guarding against any abuse in the execution as also of giving greater solemnity thereto, and of making known outside the prison walls that the execution is taking or has taken place.

[Act No. 15 of 1982.]

254. Pregnancy

(1) Where a woman convicted of an offence punishable with death is found in accordance with the provisions of subsection (2) of this section to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.

[Act No. 1 of 1964.]

(2) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the Court before whom she is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by the trial Judge, that is to say, the Judge who tried her for the offence.

[Act No. 1 of 1964.]

(3) The question whether the woman is pregnant or not shall be determined by the Judge on such evidence as may be laid before him or her on the part of the woman or on the part of the State and the Judge shall find that the woman is not pregnant unless it is proved affirmatively to his or her satisfaction that she is pregnant.

[Act No. 1 of 1964.]

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

[Act No. 1 of 1964.]

(5) If for any reason whatsoever the trial Judge is unable to sit for the purpose of determining the question whether or not the woman is pregnant, then some other Judge shall sit and determine that question.

[Act No. 1 of 1964.]

255. Persons under the age of eighteen years

(1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he or she was under the age of eighteen years, but in lieu thereof the Court shall sentence the person to be detained during the President's pleasure, and, if so sentenced, he or she shall notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and under such conditions as the Minister of Justice may direct, and whilst so detained shall be deemed to be in legal custody.

[Act No. 1 of 1964, Act No. 15 of 1982.]

(2) When a person has been sentenced to be detained during the President's pleasure under subsection (1) of this section, the presiding Judge shall forward to the Minister of Justice a copy of the notes of evidence taken on the trial, with a report in writing signed by him or her containing any recommendation or observations on the case he or she may think fit to make.

[Act No. 1 of 1964, Act No. 15 of 1982.]

Other Sentences

256. Warrants to be issued in respect of sentences of imprisonment

(1) Where a person is sentenced to a term of imprisonment, the court which sentenced him or her shall issue a warrant of commitment ordering that the sentence shall be carried out in any prison within The Gambia, and the warrant shall be full authority to the police and prison officers to take, convey and keep that person and to all other persons for carrying into effect the sentence described in the warrant. The warrant shall be under the seal of the court and shall be signed either by the Judge or Magistrate who imposed the sentence or by his or her successor in office. Subject to the provisions of any law to the contrary, a sentence of imprisonment shall be deemed to commence from and to include the whole of the day of the date on which it is pronounced. When the accused person is confined in a prison in pursuance of the warrant, the Superintendent in charge of the prison shall have the custody of the warrant and upon the release of the prisoner, the Superintendent shall endorse the date of his or her release on the warrant and shall return the warrant to the court which issued it.

[Act No. 1 of 1964.]

(2) Where on appeal the Court of Appeal of The Gambia or the High Court makes an order which has the effect of requiring a person to commence or resume a sentence of imprisonment, the time during which that person has been at liberty, whether on bail or otherwise, after the sentence was first passed upon him or her, shall not count as part of the sentence, which shall be deemed to commence or, if the person has already served part of the sentence, to be resumed on the day on which the person is first received into prison after the making of the order.

[Act No. 1 of 1964.]

(3) . . . . . .

[This subsection made the provisions of subsection (2) additional to those of subsection (2) of section 281, which was repealed by Act No. 2 of 2002.]

257. Persons sentenced to fine may be searched for money to pay fine

Where a court adjudges money to be paid by an accused person, for fine, penalty, compensation, costs or otherwise, and the accused person is then and there before the court, the court may order him or her to be searched and any money found on him or her on apprehension or when so searched or which may be found on him or her when taken to prison in default of payment of the sum so adjudged to be paid, may, unless the court otherwise directs, be applied towards the payment of the sum so adjudged to be paid, and the surplus, if any, shall be returned to him or her:

Provided that the money shall not be so applied if the court is satisfied that the money does not belong to the person on whom it was found, or that the loss of the money will be more injurious to his or her family than his or her imprisonment.

258. Levy of fine, etc., by distress

(1) Whenever a person has been ordered to pay any sum by way of fine, costs, compensation or otherwise, the court making the order may, subject to the provisions of section 261, and in addition to any other powers conferred by section 259 or otherwise, of this Code, take action to recover the sum by levying the same on the movable and immovable property of the person ordered to pay the same by distress and sale under a distress warrant.

[Act No. 15 of 1982.]

(2) The necessary wearing apparel and bedding of a person and his or her family, and, to the value of one hundred dalasis, the tools and implements of his or her trade, shall not be taken under a distress issued under this section. If there is sufficient movable property available to satisfy the warrant, the immovable property shall not be sold.

[Act No. 15 of 1982.]

(3) Where a person pays or tenders to the person charged with the execution of a warrant of distress the sum mentioned in the warrant, or produces the receipt for the same of the court issuing the warrant, and also pays the amount of the costs and charges of the distress up to the time of the payment or tender, the warrant shall not be executed.

(4) A warrant shall not be issued or executed if the person ordered to pay the fine, costs, compensation or other penalty, has undergone the whole of the imprisonment ordered to be suffered in default of payment.

[Act No. 1 of 1964.]

(5) A warrant under this section shall authorise the distress and sale of any property belonging to the person and may be executed anywhere within The Gambia.

[Act No. 1 of 1964.]

(6) A warrant for distress under this section shall take priority over any other debt due by the person ordered to pay the fine, costs, compensation or other penalty whether the debt is unsecured or secured by any debenture, mortgage, lien, assignment, bill of sale or by any other means, whether the debt was incurred before or after the issue of the warrant.

[Act No. 1 of 1964.]

(7) Where the person ordered to pay the fine, costs, compensation or other penalty is a corporation, and it appears to the court or the representative of the Sheriff that the property of the corporation is or is likely to be insufficient to satisfy the warrant, the court may in its discretion issue warrants of distress against any or all of the directors of the corporation or against any manager or officer of the corporation, and the director, manager or officer of the corporation shall thereupon become jointly and severally liable for the payment of the fine, costs, compensation or other penalty awarded against the corporation.

[Act No. 1 of 1964.]

(8) The provisions of sections 260 and 261 of this Code shall apply in respect of any director, manager, or officer of any corporation in respect of whom distress under this section is or may be levied.

[Act No. 1 of 1964.]

259. Suspension of execution of sentence of imprisonment in default of fine, etc., and provision for payment by instalments

(1) When a person has been ordered only to pay a sum of money by way of fine, costs, compensation or otherwise and is sentenced to imprisonment in default of payment of the sum, and the sum is not paid forthwith, the court may—

(*a*) order that the sum shall be paid either in full on or before such date, or by instalments payable on or before such dates, as may seem to the court reasonable in the circumstances; and

(*b*) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a recognisance, with or without sureties, as the court thinks fit, conditioned for his or her appearance before the court on the date or dates on or before which payment of the sum or the instalments thereof, as the case may be is to be

made, and if the amount of the sum or of any instalment as the case may be, is not realised on or before the latest date on which it is payable under the order, the court may direct the sentence of imprisonment to be carried into execution at once.

(2) If the person against whom the order has been made, on being required to enter into a recognisance such as is referred to in subsection (1) of this section, fails to do so, the court may at once pass sentence of imprisonment.

260. Commitment for warrant of distress

If the officer having the execution of a warrant of distress reports that he or she could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may, subject to such delay as may be necessary having regard to the nature of any order made under section 258 of this Code, by the same or a subsequent warrant, commit the person ordered to pay to prison for a time specified in the warrant, unless the money and all expenses of the distress and commitment to be specified in the warrant, are sooner paid.

261. Commitment in lieu of distress

When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his or her family, or (by his or her confession or otherwise) that he or she has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may if it thinks fit, instead of or after issuing a warrant of distress, commit him or her to prison for a time specified in the warrant, unless the money and all expenses of the commitment to be specified in the warrant, are sooner paid.

262. Warrant of arrest

(1) A court which has ordered a person to pay a fine, costs, compensation or any other sum, or against whom it has issued a warrant of distress, may, at any time, issue a warrant of arrest for that person if it is made to appear to the court that the person is making preparations to leave or is likely to leave the limits of its jurisdiction.

[Act No. 1 of 1964.]

(2) Upon the person being brought before it the court may examine the person and shall make such orders for his or her commitment or for his or her release upon recognisances as it considers fit.

263. Payment in full after commitment

When a person has been committed to prison in default of payment, the sum mentioned in the warrant may be paid, with the amount of expenses therein authorised (if any), to the person in whose custody he or she is, and that person shall thereupon discharge him or her if he or she is in custody for no other matter.

264. Part payment after commitment

(1) If a person committed to prison for non-payment pays a sum in part satisfaction of the sum adjudged to be paid, the term of his or her imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the person is committed, as the sum so paid bears to the sum for which he or she is liable.

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of subsection (1) of this section shall, on application being made to him or her by the prisoner, at once take him or her before a court, and the court shall certify the amount by which the term of imprisonment originally awarded is reduced by the payment in part satisfaction, and shall make such order as is required in the circumstances.

265. Who may issue warrant

A warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence or by his or her successor in office.

Probation, etc., of Offenders

266. Power to admonish and release

In any case in which a person is charged with an offence under section 252, section 258, section 261, section 288 or section 290 of the Criminal Code or any offence punishable with not more than two years' imprisonment and the court is of the opinion that the charge is proved, it may, if the person has not been previously convicted of any offence and if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trial nature of the offence or any extenuating circumstances in which the offence was committed, instead of convicting him or her, admonish him or her and order his or her release.

267. Power to release upon probation instead of sentencing to punishment

(1) Where a person is charged with an offence not punishable with death and it appears to the court that the charge is proved but that having regard to the age, character, antecedents or physical or mental condition of the offender, and to the circumstances in which the offence was committed or to the trivial nature of the offence, it is expedient that the offender should be released on probation, the court may, instead of convicting and sentencing him or her at once to any punishment, order that he or she be released on his or her entering into a recognisance, with or without sureties, to appear for conviction and sentence when called upon during such period (not exceeding three years) as the court may direct, and in the meantime to keep the peace and be of good behaviour.

(2) The court may, when it makes an order under this section, further order that the offender shall pay costs of the proceedings in the same manner as if a conviction were had against the offender.

(3) A recognisance ordered to be entered into under this section shall, if the court so orders, contain a condition that the offender be under the supervision of such person as may be named in the order during the period specified in the order, and such other conditions for securing the supervision as may be specified in the order, and an order requiring the insertion of such conditions as aforesaid in the recognisance is in this section referred to as a probation order.

(4) A recognisance under this section may contain such additional conditions with respect to residence, abstention from intoxicating liquor, and any other matters, as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence, or the commission of other offences.

(5) The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he or she is required to observe, or if the offender is illiterate shall carefully explain the conditions to him or her.

268. Orders under sections 266 and 267 to be appealable, etc.

(1) In a case where a person in respect of whom an order has been made by a subordinate court under section 266 or section 267 of this Code did not plead guilty or admit the truth of the charge, he or she shall have a right to appeal against the order on the ground that he or she was not guilty of the offence charged, in the same manner as if he or she had been convicted of the offence. On an appeal the court shall allow the appeal if it thinks that the appellant was not guilty of the offence charged, and in any other case shall dismiss the appeal.

(2) Any order under section 266 or section 267 of this Code may be made by the High Court when exercising its power of appeal or review.

(3) Where an order is made under section 266 or section 267 of this Code, the order shall for the purpose of revesting or restoring stolen property and of enabling the court to make orders as to the restitution or delivery of property of the owner and as to the

payment of money upon or in connection with the restitution or delivery have the like effect as a conviction.

269. Provisions in case of offender failing to observe conditions of his or her recognisance

(1) If the court before which an offender is bound by his or her recognisance under section 267 of this Code to appear for conviction or sentence or a subordinate court, is informed on oath that the offender has failed to observe any of the conditions of his or her recognisance, it may issue a warrant for his or her apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his or her sureties (if any) requiring him or her or them to attend at the court and at such time as may be specified in the summons.

(2) The offender, when apprehended, shall, if not brought forthwith before the court before which he or she is bound by his or her recognisance to appear for conviction or sentence, be brought before the subordinate court which issued the warrant without delay.

(3) The court before which an offender on apprehension is brought, or before which he or she appears in pursuance of such summons as aforesaid, may, if it is not the court before which he or she is bound by his or her recognisance to appear for conviction or sentence, remand him or her to custody or on bail until he or she can be brought before the last-mentioned court.

(4) Where an offender is so remanded to custody or on bail by a subordinate court, that court shall transmit to the court before which the offender is bound to appear under his or her recognisance a certificate signed by the Magistrate stating that the offender has failed to observe the conditions of the recognisance, together with such particulars of the circumstances of the case as the first-mentioned court may consider expedient, and for the purposes of proceedings in the court to which it is transmitted the certificate purporting to be signed by a Magistrate shall be admissible as evidence that the offender has so failed.

(5) A court before which a person is bound by his or her recognisance to appear for conviction and sentence, on being satisfied that he or she has failed to observe a condition of his or her recognisance, may forthwith, without further proof of his or her guilt, convict and sentence him or her for the original offence.

(6) The court before which an offender is brought or appears for failing to observe the conditions of his or her recognisance may, instead of sentencing him or her for the original offence under subsection (5), or remanding him or her to custody or on bail under subsection (3) of this section, as the case may be, and without prejudice to the continuance in force of the recognisance, impose on him or her in respect of such failure a penalty not exceeding two hundred dalasis.

[Act No. 15 of 1982.]

Defects in Order or Warrant

270. Errors and omissions in orders and warrants

The court may at any time amend a defect in substance or in form in any order or warrant issued for the purpose of or in connection with the carrying out of the order, and an omission or error as to the time and place, or defect in form in any order or the warrant, shall not be held to render void or unlawful any act done or intended to be done by virtue of the order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgement, and there is a valid conviction or judgement to sustain the same.

PART IX

Appeals

Appeals from Subordinate Courts

271. Appeal to High Court

(1) An appeal shall lie from a decision of a subordinate court to the High Court.

[Act No. 2 of 2002.]

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

272. No appeal on plea of guilty

An appeal shall not be allowed in the case of an accused person who has pleaded guilty and has been convicted on such plea by a subordinate court, except as to the extent or legality of the sentence:

Provided that there shall be no appeal from a sentence of imprisonment passed by the court in default of the payment of a fine, when no substantive sentence of imprisonment has also been passed unless the sentence in default is an unlawful one.

273. . . . . . .

[Deleted by Act No. 2 of 2002.]

274. Limitation for appeal

An appeal shall be entered within thirty days of the date of the order or sentence appealed against.

275. Petition of appeal

An appeal shall be made in the form of a petition in writing presented by the appellant or his or her counsel and the petition shall (unless the High Court otherwise directs) be accompanied by a copy of the judgement or order appealed against. Where the appellant is represented by a counsel the petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred.

[Act No. 5 of 1957.]

276. Appellant in prison

If the appellant is in prison, he or she may present his or her petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward the petition to the Registrar of the High Court.

277. Summary dismissal of appeal

(1) On receiving the petition and copy under section 275 of this Code, the High Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that an appeal shall not be dismissed unless the appellant or his or her counsel has had a reasonable opportunity of being heard in support of the same:

And provided further that an appeal, where the appellant is in custody, shall not be dismissed unless the appellant's counsel (if the Court has been notified that he or she has a counsel) has had such opportunity.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

278. Notice of time and place of hearing

If the High Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his or her counsel and to the Attorney-General of the time and place at which the appeal shall be heard, and shall furnish the Attorney-General with a copy of the proceedings and of the grounds of appeal.

279. Power of High Court on appeal

(1) The High Court, on any appeal against conviction, shall allow the appeal if it thinks that the judgement should be set aside on the grounds that it is unreasonable or cannot be supported having regard to the evidence or that it should be set aside on the grounds of a wrong decision on any question of law if such decision has in fact caused a miscarriage of justice, or on any other grounds of justice, and in any other case shall dismiss the appeal:

Provided that the court shall, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers no substantial miscarriage of justice has actually occurred.

[Act No. 1 of 1964.]

(2) Subject to the provisions of subsection (1) of this section, the High Court on any appeal may—

(*a*) reverse the finding and sentence, and acquit or discharge the appellant, or order him or her to be tried or retried by a court of competent jurisdiction;

(*b*) alter the finding and find the appellant guilty of another offence, maintaining the sentence, or with or without altering the finding reduce or increase the sentence; or

(*c*) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence.

[Act No. 1 of 1964.]

(3) The High Court may, on any appeal from an acquittal or dismissal or discharge, remit the case together with its judgement thereon to the court of trial for determination whether or not by way of rehearing, with such directions as the High Court may think necessary.

[Act No. 1 of 1964.]

(4) The High Court may on any appeal from any order other than a conviction, acquittal or dismissal alter or reverse the order.

[Act No. 1 of 1964.]

(5) On the termination of the hearing on an appeal, the Court shall, either at once or at some future date which shall either then be appointed or of which notice shall subsequently be given, deliver judgement in open court:

Provided that—

(*a*) in the case of an appeal against a conviction, if the Court is of the opinion that the appeal shall be allowed and the appellant discharged, it may on the termination of the hearing of the appeal order the release of the appellant if he or she is in custody; and

(*b*) if it is inconvenient for the Judge or any of the Judges who heard the appeal to deliver the judgement, the judgement may be read in open court by another Judge or by the Registrar at the time and place appointed or fixed as aforesaid.

[Act No. 1 of 1964.]

(6) An appellant who is in custody is entitled to be present at the hearing of an appeal unless his or her appeal is being conducted by a counsel:

Provided that the Court may, in any case in which it considers it to be in the interest of the appellant that he or she be present, direct his or her attendance.

280. Order of High Court to be certified to lower court

(1) When a case is decided on appeal by the High Court, it shall certify its judgement or order to the court by which the conviction, sentence or order appealed against was recorded or passed.

(2) The court to which the High Court certifies its judgement or order shall thereupon make such orders as are conformable to the judgement or order of the High Court, and, if necessary, the records shall be amended in accordance therewith.

281. . . . . . .

[Repealed by Act No. 2 of 2002.]

282. Further evidence

(1) In dealing with an appeal from a subordinate court, the High Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court, that court shall certify the evidence to the High Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the accused or his or her counsel shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

(5) In dealing with an appeal from a subordinate court, the High Court may, if it thinks fit, call for and receive from the subordinate court a report on any matter connected with the appeal.

[Act No. 1 of 1964.]

283. Abatement of appeals

An appeal from a subordinate court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

284. Second appeals

(1) Either party to an appeal from a subordinate court may appeal against the decision of the High Court in its appellate jurisdiction, to the Court of Appeal on a matter of law (not including severity of sentence), or on a matter of mixed fact and law.

[Act No. 1 of 1964, Act No. 15 of 1982.]

(2) On the appeal, the Court of Appeal may, if it thinks that the judgement of the subordinate court or of the High Court should be set aside or varied, make any order which the subordinate court or the High Court could have made, or may remit the case, together with its judgement or order thereon, to the High Court or to the subordinate court for determination, whether or not by way of rehearing with such directions as the Court of Appeal may think necessary:

Provided that in the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against, it shall not (except as provided in subsection (3) of this section) increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the subordinate court or by the High Court, unless the Court of Appeal thinks that the sentence was an unlawful one, in which case it may impose such sentence in substitution therefor, as it thinks proper.

[Act No. 1 of 1964.]

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count, has been properly convicted on some other count, the Court of Appeal may, in respect of the count on which the Court considers that the appellant has been properly convicted, either affirm the sentence passed by the subordinate court or by the High Court, or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper.

[Act No. 1 of 1964.]

(4) Where a party to an appeal has been convicted of an offence and the subordinate court or the High Court could lawfully have found him or her guilty of some other offence and, on the finding of the subordinate court or of the High Court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him or her guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the subordinate court or by the High Court a conviction of that other offence, and pass such sentence in substitution for the

sentence passed by the subordinate court or by the High Court as may be warranted in law for that other offence.

[Act No. 1 of 1964.]

(5) On any appeal brought under this section, the Court of Appeal may, notwithstanding that it may be of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

[Act No. 1 of 1964.]

(6) For the purposes of this section the proceedings of the High Court on revision shall be deemed to be an appeal.

[Act No. 1 of 1964.]

285. Limitation and general

An appeal under section 284 of this Code shall be entered within ten days of the order appealed against, and subject to any rules made by the Court of Appeal, the provisions of sections 275, 276, 278, 279, 280, 282 and 283 of this Code shall apply, *mutatis mutandis*, to the appeal.

Reservation of Question of Law and Right of the Attorney-General to Appeal from the High Court to the Court of Appeal.

285A. Question of law to be reserved

(1) A Judge of the High Court may, in the trial of any indictable offence, reserve a question of law which may arise for the consideration of the Court of Appeal.

[Act No. 15 of 1982.]

(2) In the exercise of the power to reserve a question of law for the consideration of the Court of Appeal under subsection (1) of this section, a Judge may act on his or her own motion or on the application of the Attorney-General or the defence.

[Act No. 15 of 1982.]

(3) Where a question of law is reserved in pursuance of subsection (1) of this section, the Judge may postpone judgement until the question has been considered and decided.

[Act No. 15 of 1982.]

(4) The Court of Appeal may in considering a question of law reserved under this section—

(*a*) affirm or quash the conviction or order a new trial;

(*b*) make such other orders as may be necessary to give effect to its decision:

Provided that the Court of Appeal may, notwithstanding that it is of the opinion that the question so reserved might be decided in favour of the convicted person, affirm the conviction if it considers that no miscarriage of justice has actually occurred.

285B. Right of the Attorney-General to appeal

The Attorney-General may—

(*a*) appeal against the acquittal of a person charged with an offence before the High Court on a question of law;

(*b*) with the leave of the High Court or the Court of Appeal, appeal against the acquittal of a person charged with an offence on a question of fact alone or on a question of mixed law and fact;

(*c*) with the leave of the Court of Appeal, appeal against a decision of the High Court.

[Act No. 15 of 1982.]

285C. Review of sentence

(1) The Attorney-General may, with the leave of the High Court or the Court of Appeal, apply to the High Court or the Court of Appeal, as the case may be, to review a sentence, other than a sentence which is fixed by law, passed by a court other than the Court of Appeal, on the grounds that the sentence is not authorised by law, is wrong in principle or is manifestly excessive or manifestly inadequate.

[Act No. 15 of 1982.]

(2) An application by the Attorney-General under this section shall be made within thirty days from the date on which the sentence was passed or within such further time as the High Court or Court of Appeal may allow.

[Act No. 15 of 1982, Act No. 5 of 1992.]

(3) The application shall be in writing and filed with the Registrar of the High Court or Court of Appeal together with a certified copy of the record of the case.

[Act No. 15 of 1982, Act No. 5 of 1992.]

(4) The High Court or Court of Appeal may, if the respondent is not in custody, order him or her to be detained or, on application by him or her, admit the respondent to bail pending the hearing of the application.

[Act No. 5 of 1992.]

285D. Judgement of the Court of Appeal

(1) The Court of Appeal may, on hearing the application, quash the sentence passed by the High Court if it is of the opinion that the sentence was—

(*a*) not authorised by law;

(*b*) wrong in principle; or

(*c*) manifestly excessive or manifestly inadequate,

and pass such other sentence as it considers proper in law in substitution therefor or refuse to alter the sentence.

(2) The Attorney-General and the respondent shall have the right to be heard on the hearing of the application.

[Act No. 15 of 1982.]

285E. Intention of the Attorney-General to appeal against acquittal or sentence to be given orally

(1) Where the Attorney-General intends to—

(*a*) appeal under section 273 of this Code against the acquittal of a person by a Magistrate; or

(*b*) appeal under section 285B of this Code against the acquittal of a person charged with an offence before the High Court; or

(*c*) apply under section 285C of this Code to the High Court or the Court of Appeal for the review of a sentence,

the prosecution may give oral notice of such intention immediately after judgement is read or sentence passed, as the case may be:

Provided that failure to give oral notice shall not be a bar to an appeal if a written petition of appeal is filed within thirty-days of the order or sentence appealed against.

[Act No. 6 of 1986, Act No. 5 of 1992.]

(2) When a notice is given under subsection (1) of this section, the Court shall, if the person in respect of whom the notice is given is not in custody, order him or her to be detained or, on application by that person, admit him or her to bail pending the hearing of the appeal or application.

(3) An oral notice of appeal given under this section shall be followed by a written

petition of appeal within thirty days of the date of the order or sentence appealed against.

[Act No. 5 of 1992.]

(4) If a petition is not presented within the period specified under subsection (3), the order made under subsection (2) of this section, shall lapse.

Review

286. Review

(1) At the end of every month, or at such interval as the Chief Justice shall direct, every subordinate court shall forward to the High Court on such form as the Chief Justice may prescribe, a complete list of all criminal proceedings decided by or brought before the court, setting out the name of the defendant, the offence with which he or she was charged, and, if convicted, the date of conviction, and the sentence or order in full.

[Act No. 1 of 1964.]

(2) In addition to the powers conferred upon it by subsection (1) of this section, the High Court may, at any time, call for and examine the record of any criminal proceedings before a subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the subordinate court.

287. Power of Magistrates to call for records of inferior courts and to report to the High Court

(1) A Magistrate may call for and examine the record of any criminal proceedings before a subordinate court of a class inferior to the court which he or she is empowered to hold, and situate within the limits of his or her jurisdiction, for the purpose of satisfying himself or herself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the inferior subordinate court.

[Act No. 1 of 1964.]

(2) If a Magistrate acting under subsection (1) of this section considers that any finding, sentence or order of the inferior subordinate court is illegal or improper, or that the proceedings are irregular, he or she shall forward the record, with such remarks thereon as he or she thinks fit, to the High Court.

288. Power of the High Court on revision.

(1) In the case of any proceedings in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, when it appears that in such proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the High Court may in the case of—

(*a*) a conviction exercise any of the powers conferred on it as a Court of Appeal by sections 279 and 282 of this Code and may enhance the sentence;

(*b*) any other order, other than an order of acquittal, alter or reverse the order.

[Act No. 1 of 1964.]

(2) An order under this section shall not be made unless the Attorney-General has had an opportunity of being heard and an order shall not be made to the prejudice of an accused person unless he or she has had an opportunity of being heard either personally or by a counsel in his or her own defence.

[Act No. 1 of 1964.]

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than might have been inflicted by the court which imposed the sentence.

[Act No. 1 of l964.]

(4) Nothing in this section shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction:

Provided that when a person is acquitted of the offence with which he or she was charged but is convicted of another offence whether charged with such other offence or not, the High Court may, if it reverses the finding of conviction, itself convert the finding of acquittal into one of conviction.

[Act No. 1 of 1964.]

(5) Where an appeal lies from any finding, sentence or order, and no appeal is brought, proceedings by way of revision shall not be entertained at the instance of the party who could have appealed.

[Act No. 1 of 1964.]

(6) In dealing with a case under this section, the High Court may, pending the final determination of the case, release a convicted person on bail:

Provided that if the convicted person is ultimately sentenced to imprisonment the time he or she has spent on bail shall be excluded in computing the period for which he or she is sentenced.

[Act No. 1 of 1964.]

(7) In dealing with a case under this section, the High Court may, if it thinks fit, call for and receive from the subordinate court before which the case was heard a report on any matter connected with the case.

[Act No. 1 of 1964.]

(8) When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decisions so certified, and, if necessary, the record shall be amended in accordance therewith.

289. Discretion of court as to hearing parties

Except as provided in section 288 of this Code, no party has a right to be heard either personally or by counsel before the High Court when exercising its powers of revision:

Provided that the court may, if it thinks fit, when exercising such powers hear any party either personally or by counsel.

PART IXA

Additional Procedure in Trials for Offences Relating to Misappropriation and Theft of Public Property

289A. Definition

In this Part, **"public property"** includes the property of—

(*a*) the Government;

(*b*) a statutory Corporation;

(*c*) an institution whose funds are wholly or partly provided by the National Assembly; and

(*d*) a company, firm or any other body in which the Government owns shares or has an interest.

[Act No. 6 of 1986.]

289B. Offences to which this Part applies

Notwithstanding the provisions of this Code relating to bail and recognisance, the provisions of this Part shall apply to all offences relating to theft, misappropriation and other similar offences in which public property is affected and shall in particular apply to all cases relating to offences specified in Chapters XXVI to XXXII and Chapter XXXIV

of the Criminal Code which affect public property.

[Act No. 6 of 1986, Cap. 10:01.]

289C. Certain rules of evidence not to apply

When a person charged with an offence referred to under section 289B of this Code is brought before a court—

(*a*) the court shall dispense with any technicality relating to the law of evidence unless the court is of the opinion that by so doing there may be a miscarriage of justice; and

(*b*) the proceedings of the trial shall not be adversely affected by such defect as duplicity or any other irregularity on the face of the charge.

[Act No. 6 of 1986.]

289D. Restriction on the granting of bail

(1) When a person is brought before the court charged with an offence referred to under section 289B of this Code that person shall not be released on bail unless the court is satisfied that there are special circumstances warranting the granting of bail.

[Act No. 6 of 1986.]

(2) Before a person is released on bail under this section the court shall order that the person shall as a condition for his or her release—

(*a*) deposit into the court, an amount equal to one-third of the total monies alleged to be the subject matter of the charge, or pledge other property of equivalent amount as security; or

(*b*) find at least two sureties who shall deposit into court an amount equal to one-third of the total monies alleged to be the subject matter of the charge, or pledge properties of equivalent amount as security.

(3) Whenever it is proved to the satisfaction of the court that a person to whom bail has been granted under this Part has jumped bail, the court shall order that the money deposited shall be forfeited to the State and shall issue a warrant for the attachment and sale of any property pledged as security.

[Act No. 6 of 1986.]

289E. Preservation of properties affected by this Part

(1) Where a complaint is lodged to the police to investigate a person suspected of having committed an offence referred to under section 289B of this Code, the Inspector-General of Police or an officer authorised by him or her shall immediately apply to the court for an order freezing—

(*a*) any accounts operated in the name of the suspected person or in any other name or any account to which he or she is a signatory; and

(*b*) the account of any other person suspected of operating an account on behalf of the suspected person.

[Act No. 6 of 1986.]

(2) An order for the freezing of an account shall be made by the court on such terms and conditions as is just and appropriate and may be varied from time to time.

[Act No. 6 of 1986.]

(3) The Inspector-General of Police shall publish in the *Gazette* the name of a person whose account is so frozen.

[Act No. 6 of 1986.]

(4) The Inspector-General of Police or an officer authorised by him or her may, subject to subsection (5) of this section, also take into his or her custody any property owned by the suspect or any property held by any other person on his or her behalf.

[Act No. 6 of 1986.]

(5) Any property taken into the custody of the police under subsection (4) of this section may be returned to any claimant who satisfies the court that he or she acquired that property lawfully.

289F. Restrictions on frozen account

(1) Where an account is frozen under section 289E of this Code, a bank shall not pay out of, or otherwise deal with, such account except as directed by the court.

[Act No. 6 of 1986.]

(2) If a person contravenes this section, he or she is liable on conviction to a fine not exceeding ten thousand dalasis or to a term of imprisonment not exceeding five years or to both the fine and imprisonment.

289G. De-freezing and returning properties to owner

If a person charged with an offence referred to under section 289B of this Code is acquitted of the charges, the court shall, on acquitting that person, order that his or her accounts be de-frozen and other properties taken into the custody of the police be released to him or her.

[Act No. 6 of 1986.]

289H. High Court to have concurrent jurisdiction with subordinate courts

(1) Without prejudice to section 5 of this Code, the High Court shall have concurrent jurisdiction with a subordinate court of the first class to try a person charged with an offence referred to under section 289B of this Code.

[Act No. 6 of 1986.]

(2) In trying the offence, the High Court shall, subject to the provisions of this Part, follow, *mutatis mutandis*, the procedure specified in Part V of this Code for trials by subordinate courts.

289I. Rules

The Rules Committee established by the Courts Act, may make rules prescribing the procedure and other matters for giving full effect to the purposes of this Part.

[Act No. 6 of 1986, Cap. 6:01.]

PART X

Supplementary Provisions

Irregular Proceedings

290. Proceedings in wrong place

A finding, sentence or order of any criminal court shall not be set aside merely on the ground that the inquiry, trial or other proceedings, in the course of which it was arrived at or passed, took place in a wrong Region, district or other local area, unless it appears that the error has in fact occasioned a failure of justice.

291. When sentence or order reversible by reason of error or omission in charge or other proceedings

Subject to the provisions hereinbefore contained, a finding, sentence or order passed by a court of competent jurisdiction shall not be reversed or altered on appeal or review on account—

(*a*) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgement or other proceedings before or during the trial or in any inquiry or other proceedings under this Code; or

(*b*) of any misdirection,

unless the error, omission, irregularity or misdirection has in fact occasioned a failure of justice:

Provided that in determining whether any error, omission or irregularity has occasioned a failure of justice, the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

[Act No. 1 of 1964.]

292. Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings

A distress made under this Code shall not be deemed unlawful, nor shall a person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

Directions in the Nature of Habeas Corpus and Writs

293. Power to issue directions of the nature of *habeas corpus*

(1) The High Court may whenever it thinks fit direct that—

(*a*) a person within the limits of The Gambia be brought up before the court to be dealt with according to law;

(*b*) a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) a prisoner detained in a prison situate within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in the court;

(*d*) a prisoner detained as aforesaid be brought before a court-martial or any Commissioners acting under the authority of any commission from the President for trial or to be examined touching any matter pending before the court-martial or Commissioners respectively;

(*e*) a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment.

(2) The High Court may from time to time frame rules to regulate the procedure in cases under this section.

294. Power of High Court to issue writs

(1) The High Court may in the exercise of its criminal jurisdiction issue any order, including orders of *mandamus*, *certiorari* and prohibition.

[Act No. 15 of 1982.]

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

Miscellaneous

295. Persons before whom affidavits may be sworn

Affidavits and affirmations to be used before the High Court may be sworn and affirmed before a Judge of the High Court or a Magistrate or the Registrar of the High Court or a Justice of the Peace or Commissioner for Oaths.

296. Appearance by a corporation

(1) Appearance before a court by a corporation shall be by a counsel or by an officer of the corporation.

[Act No. 1 of 1964.]

(2) Notwithstanding anything contained in the Articles of Association, by-laws or other document governing the constitution of a corporation, and notwithstanding anything contained in any other law, an officer appearing in court on behalf of a corporation shall be deemed to appear with the full authority of the corporation, and to have full power to represent the corporation.

297. Special provisions for subordinate courts

(1) Subject to the powers of the High Court, a court of the first class in respect of courts of the second and the third class, and a court of the second class in respect of a court of the third class, may direct that any case arising within the jurisdiction of the court of the second or the third class shall be tried by itself or by the court of the second or the third class as it considers fit:

Provided that the Attorney-General or any prosecutor acting under his or her directions may require that any case shall be tried by a subordinate court specified by him or her.

[Act No. 1 of 1964.]

(2) When a Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein, and is succeeded whether by virtue of an order of transfer under the provisions of this Code or otherwise, by another Magistrate who has and who exercises such jurisdiction, the Magistrate succeeding may act on the evidence recorded by his or her predecessor, or partly recorded by his or her predecessor and partly by himself or herself, or he or she may re-summon the witnesses and recommence the inquiry or trial:

Provided that—

(*a*) in any trial the accused person may, when the second Magistrate commences his or her proceedings, demand that the witnesses or any of them be re-summoned and re-heard;

(*b*) the High Court may, whether there is an appeal, or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if it is of opinion that the accused person has been materially prejudiced thereby, and may order a new inquiry or trial.

[Act No. 1 of 1964.]

(3) When a Magistrate, after judgement has been delivered in any case but before sentence has been passed, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under the provisions of this Code or otherwise, by another Magistrate who has and who exercises such jurisdiction, the Magistrate succeeding may sentence or may make any order in the case which he or she could have made if he himself or she herself had delivered judgement therein.

298. Shorthand notes of proceedings

Shorthand notes may be taken of the proceedings at the trial of a person before the High Court, and a transcript of the notes shall be made if the Court so directs, and the transcript shall for all purposes be deemed to be the official record of the proceedings at the trial.

299. Copies of proceedings

If a person affected by any judgement or order passed in any proceedings under this Code desires to have a copy of the judgement or order or any deposition or other part of the record, he or she shall on applying for the copy be furnished therewith provided he or she pays for the same, unless the court for some special reason thinks fit to furnish it free of cost.

299A. Disposal of exhibits

(1) At the end of every trial under this Act, all exhibits tendered in evidence shall,

where no appeal has been lodged within the time allowed for appeals or where any appeal lodged has been disposed of, be retrieved from the custody of the Registrar of the Court by the person tendering the exhibits, within thirty days.

[Act No. 15 of 1982.]

(2) Where the person fails to retrieve the exhibits in accordance with subsection (1) of this section, the Registrar of the Court shall dispose of the exhibits by returning it to the owner or in a manner directed by the Judge and shall thereafter not be liable for any claim by any person in respect of the exhibit.

300. Forms

Such forms as the High Court may from time to time approve, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

301. Power to make rules

(1) The Rules Committee established by the Courts Act, may, with the approval of the Minister responsible for finance, make rules prescribing—

(*a*) the fees to be paid by appellants under this Code;

(*b*) the manner in which the fees should be paid;

(*c*) the person who may be exempted from the payment of the fees;

(*d*) the fees to be paid, if any are payable, for copies of any proceedings held under the provisions of this Code;

(*e*) the amount of expenses payable to complainants, witnesses and assessors attending before any court for the purposes of any inquiry, trial or proceedings held under the provisions of this Code.

[Act No. 1 of 1964, Cap. 6:01.]

(2) Notwithstanding the provisions of paragraph (*e*) of subsection (1) of this section or any rules made thereunder, a court may in its discretion disallow the payment of or reduce the expenses payable to any person.

Schedule

FORM OF BILL OF INDICTMENT

[Section 175C, Act No. 15 of 1982.]

A Bill of Indictment shall bear the date on which it is signed and, with such modifications as may be necessary to adapt it to the circumstances of each case, shall be in the following form:

THE HIGH COURT OF THE GAMBIA

Court of trial (e.g. The High Court Building at Banjul).
A.B. is charged with the following offence:

First Count

STATEMENT OF OFFENCE

Rape, contrary to section 121 of the Criminal Code (Cap. 10:01)

PARTICULARS OF OFFENCE

A.B. on the ..... day of ....., 20….. at ..... raped C.D.

Second Count

STATEMENT OF OFFENCE

Abduction contrary to section 124 of the Criminal Code (Cap. 10:01)

PARTICULARS OF OFFENCE

A.B. on the ..... day of ....., 20….. at ..... abducted C.D.

with intent to cause her to be carnally known against her will.

CONTENTS OF BILL OF INDICTMENT

1. The following provisions shall apply to indictments and an indictment shall not be open to objection in respect of its form or content if it is in accordance with the provisions of the Criminal Procedure Code.

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

3. Figures and abbreviations may be used for expressing anything which is commonly expressed thereby.

4. (i) a description of the offence charged, or where more than one offence is charged, of each offence so charged, shall be set out in the separate paragraph termed a "count",

(ii) a "count" shall commence with a statement of the offence charged, called the "Statement of Offence",

(iii) the Statement of Offence shall in simple language devoid of any technicality, give a brief description of the offence. If the offence charged is one created by an Act or a regulation made under an Act, the statement shall make reference to the section of the Act or the regulation creating the offence,

(iv) the Statement of Offence shall be followed by the particulars of the offence and shall be set out in simple language without the use of technical terms,

(v) where any rule of law or Act limits the particulars of an offence which are required to be given in an indictment, nothing in this rule shall require any more particulars to be given than those required,

(vi) when an indictment contains more than one count, the counts shall be numbered consecutively,

(vii) where an enactment constituting an offence states the offence to be the omission to do any one of any different acts in the alternative, or the doing or omission to do any act in any one of different capacities, or with any one of any different intentions, the acts, omission, capacities, or intentions or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence,

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

5. The description or designation in an indictment of the accused or of any other person to whom reference is made therein, shall be such as reasonably sufficient to identify him or her. Where the name of the person is not known or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances or such person may be described as a person unknown.

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

7. Where it is necessary in an indictment to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer, it shall be described in simple language and in such manner as to indicate with reasonable clearness the place, thing, matter, act, or omission referred to.

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

CHAPTER 11:01
CRIMINAL PROCEDURE CODE

SUBSIDIARY LEGISLATION

No Subsidiary Legislation