Uganda

Trial on Indictments Act

Chapter 23

Legislation as at 31 December 2000

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Trial on Indictments Act
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Chapter 23

Commenced on 6 August 1971

[This is the version of this document as it was at 31 December 2000 to 4 December 2008.]

[Note: The version of the Act as at 31 December 2000 was revised and consolidated by the Law Reform Commission of Uganda. All subsequent amendments have been researched and applied by Laws.Africa for ULII.]

An Act to consolidate the law relating to the trial of criminal cases on indictment before the High Court and for matters connected therewith and incidental thereto.

Part I – Jurisdiction and mode of trial

1. Jurisdiction of the High Court

The High Court shall have jurisdiction to try any offence under any written law and may pass any sentence authorised by law; except that no criminal case shall be brought under the cognisance of the High Court for trial unless the accused person has been committed for trial to the High Court in accordance with the Magistrates Courts Act.

2. Sentencing powers of the High Court

(1) The High Court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

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

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

3. Assessors

(1) Except as provided by any other written law, all trials before the High Court shall be with the aid of assessors, the number of whom shall be two or more as the court thinks fit.

(2) The rules entitled "The Assessors Rules", set out in the Schedule to this Act shall have effect in relation to the several matters mentioned in them.

(3) The Minister may, after consultation with the Chief Justice, by statutory instrument, amend the Assessors Rules, except rules 2 and 9 of those rules.

4. Place and date of sessions of the High Court

(1) For the exercise of its original criminal jurisdiction, the High Court shall hold sittings at such places and on such days as the Chief Justice or the judge who is to preside may direct.

(2) The chief registrar of the High Court shall ordinarily give notice beforehand of all such sittings.

Part II – Warrant of arrest

5. Warrant of arrest

The High Court may issue a warrant of arrest at any time to secure the attendance of the accused person.

6. Form, contents and duration of warrant of arrest

(1) Every warrant of arrest shall be under the hand of the judge issuing it and shall bear the seal of the High Court.

(2) Every warrant of arrest shall state shortly the offence with which the person against whom it is issued is indicted and shall name or otherwise describe that 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 High Court to answer to the indictment mentioned in it and to be further dealt with according to law.

(3) Every warrant of arrest shall remain in force until it is executed or until it is cancelled by the court.

7. Warrants, to whom directed

(1) A warrant of arrest may be directed to one or more police officers or chiefs named in it or generally to all police officers or chiefs; except that the judge issuing the warrant may, if its immediate execution is necessary and no police officer or chief is immediately available, direct it to any other person, and that person shall execute the warrant.

(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.

8. Execution of warrant directed to a police officer

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

9. Notification of substance of warrant

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

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

The police officer or other person executing a warrant of arrest shall, without unnecessary delay, bring the person arrested before the High Court.

11. Where warrant of arrest may be executed

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

12. Irregularities in warrant of arrest

Any irregularity or defect in the substance or form of a warrant of arrest, and any variance between it and the indictment, or between either and the evidence produced on the part of the prosecution at any trial, shall not affect the validity of any proceedings at or subsequent to the hearing of the case.

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

(1) Where any accused person whose presence is required by the High Court 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.

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

14. Release on bail

(1) The High Court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognisance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before the court on such a date and at such a time as is named in the bond.

(2) Notwithstanding subsection (1), in any case where a person has been released on bail, the court may, if it is of the opinion that for any reason the amount of the bail should be increased—

(a) issue a warrant for the arrest of the person released on bail directing that he or she should be brought before it to execute a new bond for an increased amount; and

(b) commit the person to prison if he or she fails to execute a new bond for an increased amount.

15. Refusal to grant bail

(1) Notwithstanding section 14, the court may refuse to grant bail to a person accused of an offence specified in subsection (2) if he or she does not prove to the satisfaction of the court—

(a) that exceptional circumstances exist justifying his or her release on bail; and

(b) that he or she will not abscond when released on bail.

(2) An offence referred to in subsection (1) is—

(a) an offence triable only by the High Court;

(b) an offence under the Penal Code Act relating to acts of terrorism or cattle rustling;

(c) an offence under the Firearms Act punishable by sentence of imprisonment of not less than ten years;

(d) abuse of office contrary to section 87 of the Penal Code Act;

(e) rape, contrary to section 123 of the Penal Code Act and defilement contrary to sections 129 and 130 of the Penal Code Act;

(f) embezzlement, contrary to section 268 of the Penal Code Act;

(g) causing financial loss, contrary to section 269 of the Penal Code Act;

(h) corruption, contrary to section 2 of the Prevention of Corruption Act;

(i) bribery of a member of a public body, contrary to section 5 of the Prevention of Corruption Act; and

(j) any other offence in respect of which a magistrates's court has no jurisdiction to grant bail.

(3) In this section, "exceptional circumstances" means any of the following—

(a) grave illness certified by a medical officer of the prison or other institution or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;

(b) a certificate of no objection signed by the Director of Public Prosecutions; or

(c) the infancy or advanced age of the accused.

(4) In considering whether or not the accused is likely to abscond, the court may take into account the following factors—

(a) whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda;

(b) whether the accused has sound securities within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail;

(c) whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; and

(d) whether there are other charges pending against the accused.

16. Restriction on period of pretrial remand

If an accused person has been remanded in custody before the commencement of his or her trial—

(a) in respect of any offence punishable by death, for a continuous period exceeding four hundred and eighty days; or

(b) in respect of any other offence, for a continuous period exceeding two hundred and forty days,

the judge before whom he or she first appears after the expiration of the relevant period shall release him or her on bail on his or her own recognisance, notwithstanding that he or she is accused of an offence referred to in section 15(1), unless—

(c) he or she has, prior to the expiration of that period, been committed to the High Court for trial; or

(d) the judge is satisfied that it is for the protection of the public that he or she should not be released from custody.

17. Power to order sufficient bail

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

18. Discharge of sureties

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

(2) On such application being made, the court shall issue a warrant of arrest directing that the person released be brought before it.

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

19. Death of surety

Where a surety to a bond dies before the bond is forfeited, his or her estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

20. Persons bound by recognisance absconding may be committed

If it is made to appear to the High Court, by information on oath, that any person bound by recognisance is about to leave Uganda, 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.

21. Forfeiture of recognisance

(1) Whenever it is proved to the satisfaction of the High Court that a recognisance has been forfeited, the court shall record the grounds of that proof and may call upon any person bound by the 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 penalty by issuing a warrant for the attachment and sale of the moveable property belonging to that person, or his or her estate if he or she is dead.

(3) Such warrant may be executed at any place within Uganda, and it shall authorise the attachment and sale of the movable property belonging to such person.

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

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

(6) When a person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his or her recognisance, a certified copy of the judgment of the court by which he or she was convicted of that 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.

Part III – Indictments

22. Contents of indictment

Every indictment 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.

23. Joinder of counts

(1) Any offences, whether felonies or misdemeanours, may be charged together in the same indictment 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.

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

24. Joinder of persons

The following persons may be joined in one indictment and may be tried together—

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

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

(c) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code Act or of any other written law) committed by them jointly within a period of twelve months;

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

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

(f) persons accused of any offence relating to counterfeit coin under Chapter XXXV of the Penal Code Act, and persons accused of any other offence under that chapter relating to the same coin, or of abetment of, or attempting to commit, any such offence.

25. Rules for the framing of indictments

The following provisions shall apply to all indictments and, notwithstanding any rule of law or practice, an indictment shall, subject to this Act, not be open to objection in respect of its form or contents if it is framed in accordance with this Act—

(a) a count of an indictment shall commence with a statement of the offence charged, called the statement of offence;

(b) the statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence, and it shall contain a reference to the section of the enactment creating the offence;

(c) after the statement of the offence, particulars of that offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary; but where any written law limits the particulars of an offence which are required to be given in an indictment, nothing in this paragraph shall require any more particulars to be given than those so required;

(d) where an indictment contains more than one count, the counts shall be numbered consecutively;

(e) 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;

(f) 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;

(g) the description of property in an indictment 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;

(h) where property is vested in more than one person, and the owners of the property are referred to in an indictment, it shall be sufficient to describe the property as owned by one of those persons by name with the others; and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or “inhabitants”, “trustees”, “commissioners” or “club” or other such name, it shall be sufficient to use the collective name without naming any individual;

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

(j) 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 the amount was composed, or the particular nature of the bank or currency note, shall not be provided), and, in case 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 of any coin or bank or currency note, although the coin or bank or currency note may have been delivered to him or her in order that some part of its value should be returned to the party delivering it or to any other person and that part shall have been returned accordingly;

(k) when a person is indicted for any offence under sections 268, 269, 270 and 271 of the Penal Code Act, 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;

(l) the description or designation in an indictment of the accused person, or of any other person to whom reference is made in the indictment, 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, the description or designation shall be given as is reasonably practicable in the circumstances, or the person may be described as "a person unknown";

(m) 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 of the document or instrument, without setting out any copy of it;

(n) 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 indictment in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to;

(o) 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;

(p) where a previous conviction of an offence is averred in an indictment, it shall be averred at the end of the indictment 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;

(q) figures and abbreviations may be used for expressing anything which is commonly expressed by figures and abbreviations.

26. Indictment to be in the name of the Director of Public Prosecutions

All indictments shall be in the name of and, subject to section 135, signed by the Director of Public Prosecutions.

27. Form of indictment

(1) Every indictment shall bear the date of the day when it is signed and, with such modifications as shall be necessary to adapt it to the circumstances of each case, may commence in the following form—

"In the High Court of Uganda at _____ the day of _____, 20 ___, at the sessions holden at _____ on the _____ day of _____, 20 ___, the court is informed

by the Director of Public Prosecutions that _____ is charged with the following offence (or offences)".

(2) The registrar of the High Court shall give the accused person and the Director of Public Prosecutions reasonable notice, not being less than fourteen days, of the date of the trial.

Part IV – Previous conviction or acquittal

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

A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of that offence shall, while the conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence.

29. Persons may be tried again for a separate offence

A person convicted or acquitted of any offence may afterwards be tried for any other offence with which he or she might have been charged on the former trial under section 23(1).

30. Consequences supervening or not known at time of former trial

A person convicted or acquitted of any act causing consequences which together with that act constitute a different offence from that for which that person was convicted or acquitted may be afterwards tried for that 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.

31. Where original court was not competent to try subsequent charge

A person convicted or acquitted of any offence constituted by any acts may, notwithstanding the 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.

32. Previous conviction or acquittal, how proved

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

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

(b) in case of a conviction, either by a certificate signed by the officer in charge of the prison in which the punishment or any part of it was inflicted, or by production of the warrant of commitment under which the punishment was suffered.

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

(3) A previous conviction in any place outside Uganda may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order and the fingerprints, or photographs of the fingerprints, of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person. That certificate shall be *prima facie* evidence of all facts set forth in it without proof that the officer purporting to sign it did in fact sign it and was empowered to do so.

Part V – Witnesses and evidence

33. Summons for witness

(1) If it is made to appear that material evidence can be given by or is in the possession of any person, the High Court may issue a summons to that 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 all documents, writings or things in his or her possession or power which may be specified or otherwise sufficiently described in the summons.

(2) Any exhibit produced before the court may be retained until thirty days after the conclusion of the trial at which it was produced, and in the event of an appeal for such further period as the court to which the appeal is made shall direct.

(3) Nothing in this section shall be deemed to affect section 122 or 123 of the Evidence Act.

34. Warrant for witness who disobeys summons

If, without sufficient excuse, a witness does not appear in obedience to the summons, the High 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 specified in the warrant.

35. Warrant for witness in first instance

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

36. Mode of dealing with witness arrested under warrant

When any witness is arrested under a warrant, the High Court may, on his or her furnishing security by recognisance 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 the security, order him or her to be detained for production at the hearing.

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

(1) If the High Court is desirous of examining as a witness, in any case pending before it, any person confined in any prison, it may issue an order to the officer in charge of that 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.

(2) The officer so in charge, on receipt of the order, shall act in accordance with it and shall provide for the safe custody of the prisoner during his or her absence from the prison for the purpose set forth in subsection (1).

38. Penalty for nonattendance of witness

(1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the High 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 four hundred shillings.

(2) Such fine shall be levied by attachment and sale of any movable property belonging to the witness.

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

39. Power to summon material witness or examine person present

(1) The High Court may, at any stage of any trial under this Act, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and reexamine any person already examined, and the court shall summon and examine or recall and reexamine any such person if his or her evidence appears to it essential to the just decision of the case.

(2) The advocate for the prosecution or the defendant or his or her advocate shall have the right to cross-examine any such person, and the court shall adjourn the case for such time, if any, as it thinks necessary to enable the cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

40. Evidence to be given on oath

(1) Every witness in a criminal cause or matter before the High Court shall be examined upon oath, and the court shall have full power and authority to administer the usual oath.

(2) Any 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.

(3) Where in any proceedings any 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; but 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 implicating him or her.

(4) If any witness in any criminal cause or matter offers to give evidence on oath or affirmation in any form common among, 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 any third person, the court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender that oath or affirmation to him or her.

41. Refractory witness

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

(a) refuses to be sworn;

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

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

without in any such case offering any 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 that person to prison, unless he or she sooner consents to do what is required of him or her.

(2) If that 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 that person consents to do what is so required of him or her.

(3) Nothing in this section shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him or her, or shall prevent the

court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

42. Reports by Government analyst, ballistic expert and geologist

(1) Any document purporting to be a report under the hand of a Government ballistic expert or of any Government analyst or Government geologist, upon any matter or thing duly submitted to him or her for examination or analysis and report, may be used as evidence in any trial under this Act.

(2) Without prejudice to section 39, the court may presume—

(a) that the signature on any such report as is mentioned in subsection (1) 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; and

(b) that any matter or thing to which that report relates has, if it is proved to have been delivered at the office or laboratory specified in the report, been duly submitted for examination or analysis.

(3) The examination or analysis, or any part of it, on which any such report as is mentioned in subsection (1) is based may be made by the person signing the report or by any person acting under his or her direction.

(4) In this section—

(a) "Government analyst" includes the senior pathologist, a pathologist and the Government chemist;

(b) "Government ballistic expert" means any person designated as such by the Minister by statutory instrument;

(c) "Government geologist" includes the commissioner of geological survey and mines, a senior geologist and any geologist who is employed in the public service.

43. Competency of accused as witness

Every person indicted for an offence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person; but—

(a) a person so indicted shall not be called as a witness in pursuance of this section except upon his or her own application;

(b) the failure of any person indicted for an offence to give evidence shall not be made the subject of any comment by the prosecution;

(c) every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his or her evidence from the witness box or other place from which the other witnesses have given their evidence;

(d) nothing in this section shall affect any right of the accused person to make a statement without being sworn.

44. Procedure when person charged is the only witness called

Where the only witness to the facts of the case called by the defence is the person charged, he or she shall be called as a witness immediately after the close of the evidence for the prosecution.

Part VI – Procedure in case of the insanity or other incapacity of an accused person

45. Inquiry by the court as to the insanity of the accused

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

(2) Notwithstanding subsection (1), if the court is of the opinion that it is expedient so to do and in the interests of the accused person, the court may postpone the inquiry mentioned in that subsection until any time up to the opening of the case for the defence; and if before the inquiry is made the court acquits the accused person on the count or each of the counts on which he or she is being tried, the inquiry shall not take place.

(3) If, as a result of an inquiry made under this section, the court is of the opinion that the accused person is of unsound mind and consequently incapable of making his or her defence, it shall postpone further proceedings in the case.

(4) 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 of it to the Minister.

(5) Upon consideration of the record, the Minister may, by warrant under his or her hand directed to the court, order that the accused be confined as a criminal lunatic in a mental hospital or other suitable place of custody; and the court shall give any directions necessary to carry out the order.

(6) Any such warrant of the Minister shall be sufficient authority for the detention of the accused person until the Minister shall make a further order in the matter or until the court finding him or her incapable of making his or her defence shall order him or her to be brought before it again in the manner provided by sections 46 and 47.

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

(1) If any person confined in a mental hospital or other place of custody under section 45 is found by the medical officer in charge of the mental hospital or place to be capable of making his or her defence, the medical officer shall immediately forward a certificate to that effect to the Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall thereupon inform the court which recorded the finding against that person whether it is the intention of the State that the proceedings against that person shall continue or otherwise. In the former case such court shall thereupon order the removal of that 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 described by section 47; otherwise the court shall immediately issue an order for the immediate release from custody of that person.

47. Resumption of trial

(1) Whenever any trial is postponed under section 45, the High Court may at any time, subject to section 46, 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, or begin de novo, as appears expedient.

(2) Any certificate given to the Director of Public Prosecutions under section 46 may be given in evidence in any proceedings under this section without further proof unless it is proved that the medical officer purporting to sign it did not in fact sign it.

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

48. Special finding of not guilty by reason of insanity

(1) Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of that person for that offence that he or she was insane so as not to be responsible for his or her action at the time when the act was done or omission made, then if it appears to the High Court that that person did the act or made the omission charged but was insane as aforesaid at the time when he or she did the Act or made the omission, the court shall make a special finding to the effect that the accused is not guilty of the act or omission charged by reason of insanity.

(2) When a special finding is made under subsection (1), the court shall report the case for the order of the Minister, and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct.

(3) The Minister may order a person in respect of whom a special finding has been made to be confined in a mental hospital, prison or other suitable place of safe custody.

(4) The superintendent of a mental hospital, prison or other place which any criminal lunatic is detained by an order of the Minister under subsection (3) shall make a report to the Minister of the condition, history and circumstances of every such lunatic at the expiration of a period of three years from the date of the Minister's order and thereafter at the expiration of periods of two years from the date of the last report.

(5) On the consideration of any such report, the Minister may order that the criminal lunatic be discharged or otherwise dealt with.

(6) Notwithstanding subsections (4) and (5), the Commissioner of Prisons or the chief medical officer may, at any time after a criminal lunatic has been detained in any place by an order of the Minister, make a special report to the Minister on the condition, circumstances and history of any such criminal lunatic, and the Minister, on consideration of any such report, may order that the criminal lunatic be discharged or otherwise dealt with.

(7) The Minister may at any time order that a criminal lunatic be transferred from a mental hospital to a prison, or from a prison to a mental hospital, or from any place in which he or she is detained to either a prison or a mental hospital.

49. Procedure when the accused does not understand the proceedings

(1) If the accused, though not insane, cannot be made to understand the proceedings, the High Court shall proceed to hear all the evidence available both for the prosecution and the defence and if satisfied that the accused is guilty of the offence charged shall order him or her to be detained in safe custody, pending an order made by the Minister under subsection (3), in such place and manner as it thinks fit.

(2) Where an order has been made under subsection (1), the court shall transmit the court record, or a certified copy of it, to the Minister.

(3) Upon consideration of the record transmitted to him or her under subsection (2), the Minister may by order under his or her hand direct that the person convicted shall be detained in such prison or other place of custody as may be specified in the order or that such person be released.

(4) Any order made under subsection (3), other than an order directing the release of a person convicted, may at any time be varied or discharged by the Minister and—

(a) the order so made shall be sufficient authority for the removal of the person to whom it relates to the place of detention specified in the order so made or varied and for his or her detention in that place of detention;

(b) any person removed or detained under the authority of any such order shall be deemed to be in lawful custody.

Part VII – Proceedings at the trial

50. Orders for alteration of indictment

(1) Every objection to an indictment for any formal defect on the face of the indictment shall be taken immediately after the indictment has been read over to the accused person and not later.

(2) Where before a trial upon indictment or at any stage of the trial it is made to appear to the High Court that the indictment is defective or otherwise requires amendment, the court may make such an order for the alteration of the indictment (by way of its amendment or by substitution or addition of a new count) as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required alterations cannot be made without injustice; except that no alteration to an indictment shall be permitted by the court to charge the accused person with an offence which, in the opinion of the court, is not disclosed by the evidence set out in the summary of evidence prepared under section 168 of the Magistrates Courts Act.

(3) Where an indictment is altered under subsection (2), a note of the order for alteration shall be endorsed on the indictment, and the indictment shall be treated for the purposes of all proceedings in connection therewith as having been filed in the altered form.

51. Procedure when indictment altered

(1) Where an indictment is altered under section 50 —

(a) the court shall thereupon call upon the accused person to plead to the altered indictment;

(b) the accused 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 advocate, whereupon the prosecution shall have the right to reexamine any such witnesses on matters arising out of such further cross-examination; and

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

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

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

(4) In any case where an indictment is altered under section 50, the court may make such order as to the payment by the prosecution of any costs incurred owing to the alteration of the indictment as it shall think fit.

52. Separate trials

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

(2) Where an order of the court is made under this section for a separate trial—

(a) the procedure on the separate trial of a count shall be the same in all respects as if the count has been found in a separate indictment; and

(b) the court may make such order as to admitting the accused to bail and as to the enlargement of recognisances and otherwise as the court thinks fit.

53. Power to postpone or adjourn proceedings

(1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the High 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 trial on such terms as it thinks fit for such time as it considers reasonable, and may by warrant remand the accused to some prison or other place of security.

(2) If an application for the exercise of the discretion granted to the court by subsection (1) is refused, the trial shall proceed on the evidence then available.

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

(4) The court may on remand admit the accused to bail subject to such conditions as may seem appropriate.

54. Presence of accused during trial

(1) The accused shall be entitled to be present in court during the whole of the trial so long as he or she conducts himself or herself properly.

(2) If an accused does not conduct himself or herself properly, the court may, in its discretion, direct him or her to be removed and kept in custody, and proceed with the trial in his or her absence, making such provision as in its discretion appears sufficient for his or her being informed of what passed at the trial and for the making of his or her defence.

55. Right of accused to be defended

Any person accused of an offence before the High Court may of right be defended by an advocate, at his or her own expense.

56. Interpretation of evidence to accused or his or her advocate

(1) Whenever any evidence is given in a language not understood by the accused person, it shall be interpreted to him or her in open court in a language understood by him or her.

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

57. Interpretation of documents

When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to interpret as much of them as appears necessary.

58. Quashing of indictment

(1) If any indictment does not state, and cannot by any alteration authorised by section 50 be made to state, any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment.

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

59. Procedure in case of previous convictions

Where an indictment contains a count charging an accused person with having been previously convicted for any offence, the procedure shall be as follows—

(a) the part of the indictment stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he or she has been previously convicted as alleged in the indictment, unless 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 indictment;

(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 such previous conviction;

except, however, that if upon the trial of any person for any such subsequent offence the person shall give evidence of his or her own good character, it shall be lawful for the advocate for the prosecution in answer thereto to give evidence of the conviction of the person for the previous offence or offences before a finding of guilty is entered, and the court shall inquire concerning such previous conviction or convictions at the same time as it inquires concerning such subsequent offence.

60. Pleading to indictment

The accused person to be tried before the High Court shall be placed at the bar unfettered, unless the court shall cause otherwise to order, and the indictment shall be read over to him or her by the chief registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court; and the accused person shall be required to plead instantly to the indictment, unless, where the accused person is entitled to service of a copy of the indictment, he or she shall object to the want of such service, and the court shall find that he or she has not been duly served with a copy.

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

(1) Any accused person against whom an indictment is filed may plead—

(a) that he or she has been previously convicted or acquitted, as the case may be, of the same offence; or

(b) that he or she has obtained the President's pardon for his or her offence.

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

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

62. Refusal to plead

If any accused person being arraigned upon any indictment stands mute of malice, or neither will, nor by reason of infirmity can, answer directly to the indictment, the court if it thinks fit, shall 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 not guilty; or else the court may if it has reason to believe that the accused person is of unsound mind or cannot be made to understand the nature of the proceedings act in accordance with either section 45 or 49 as the circumstances may require.

63. Plea of guilty

If the accused pleads guilty, the plea shall be recorded and he or she may be convicted on it.

64. Plea of guilty to offence other than that charged

Where the accused is arraigned on an indictment for any offence and can lawfully be convicted on that indictment of some other offence not charged in the indictment, he or she may plead not guilty to the offence charged in the indictment, but guilty of that other offence; but the court shall not accept a plea of guilty under this section unless the advocate for the prosecution has signified his or her consent.

65. Proceedings after a plea of not guilty

If the accused person pleads not guilty, or a plea of not guilty is entered in accordance with section 62, the court shall (subject to the provisions of section 66) proceed to choose assessors and to try the case.

66. Preliminary hearing

(1) Notwithstanding section 65, if an accused person who is legally represented pleads not guilty, the court shall as soon as is convenient hold a preliminary hearing in open court in the presence of the accused and his or her advocate and of the advocate for the prosecution to consider such matters as will promote a fair and expeditious trial.

(2) At the conclusion of a preliminary hearing held under this section, the court shall prepare a memorandum of the matters agreed; and the memorandum shall be read over and explained to the accused in a language that he or she understands, signed by the accused and by his or her advocate and by the advocate for the prosecution, and then filed.

(3) Any fact or document admitted or agreed (whether the fact or document is mentioned in the summary of evidence or not) in a memorandum under this section shall be deemed to have been duly proved; but if, during the course of the trial, the court is of the opinion that the interests of justice so demand, the court may direct that any fact or document admitted or agreed in a memorandum filed under this section be formally proved.

(4) Whenever possible, the accused person shall be tried during the sessions at which he or she is arraigned, and if a case has to be adjourned to the next sessions due to the absence of witnesses or any other cause, nothing in this section shall be read as requiring the same judge who held the preliminary hearing under this section to preside at the trial.

(5) The Minister may, after consultation with the Chief Justice, by statutory instrument, make rules for better carrying out the purposes of this section and, without prejudice to the generality of the foregoing, the rules may provide for—

(a) delaying the summoning of witnesses until it is ascertained whether they will be required to give evidence at the trial or not;

(b) giving of notice to witnesses warning them that they may be required to attend court to give evidence at the trial.

67. Oath of assessor

At the commencement of the trial and, where the provisions of section 66 are applicable, after the preliminary hearing has been concluded, each assessor shall take an oath impartially to advise the court to the best of his or her knowledge, skill and ability on the issues pending before the court.

68. Challenge for cause

(1) The accused person or his or her advocate, and the prosecutor may, before an assessor is sworn, challenge the assessor for cause on any of the following grounds—

(a) presumed or actual partiality;

(b) personal cause such as infancy, old age, deafness, blindness or infirmity;

(c) his or her character, in that he or she has been convicted of an offence which, in the opinion of the judge, renders him or her unfit to serve as an assessor;

(d) his or her inability adequately to understand the language of the court.

(2) When a challenge is disputed, the issue shall be tried by the judge and the person challenged may be examined on oath.

69. Absence of assessor

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

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

70. Assessors to attend adjourned sittings

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

71. Opening of case for the prosecution

When the assessors have been chosen, the advocate for the prosecution shall open the case against the accused person and shall call witnesses and adduce evidence in support of the indictment.

72. 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 advocate and to reexamination by the advocate for the prosecution.

73. Close of case for the prosecution

(1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is no sufficient evidence that the accused or any one of several accused committed the offence, shall, after hearing the advocates for the prosecution and for the defence, record a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is sufficient evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each accused person of his or her right —

(a) to give evidence on his or her own behalf;

(b) to make an unsworn statement;

(c) to call witnesses in his or her defence, and shall then ask the accused person, or his or her advocate, if it is intended to exercise any of the rights under paragraphs (a) or (b) and (c) of this subsection and shall record the answer. The court shall then call on the accused person to enter on his or her defence, except where the accused person does not wish to exercise any of such rights, in which event the advocate for the prosecution may sum up the case for the prosecution.

74. Defence

(1) The accused person or his or her advocate may then open his or her case, stating the facts or law on which he or she intends to rely, and making such comments as he or she thinks necessary on the evidence for the prosecution; and the accused person may then give evidence on his or her own behalf or make an unsworn statement, and he or she or his or her advocate may examine his or her witnesses, if any, and after their cross-examination and reexamination, if any, may sum up his or her case.

(2) In any case where there is more than one accused person, the court may either hear each accused person and his or her witnesses (if any) in turn, or may, if it appears more convenient, hear all the accused persons and then hear all their witnesses.

75. Witnesses for the defence

The accused person shall be allowed to examine any witness if the witness is in attendance, but he or she shall not be entitled as of right to have any witness summoned other than the witnesses whom he or she named to the magistrates's court committing him or her for trial as witnesses whom he or she desired to be summoned.

76. Evidence in reply

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

77. Prosecutor's reply

Subject to section 78, if the accused person, or any one of several accused persons, adduces any evidence, the advocate for the prosecution shall be entitled to reply.

78. Right of reply

In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

79. Additional material facts

No additional material fact which does not form part of the summary of the case against an accused person shall be alleged by the prosecution unless the prosecution has given reasonable notice in writing to the accused person or his or her advocate of the intention to allege that fact, but no such notice need be given if the prosecution first becomes aware of it on the day on which it is alleged in evidence during the trial.

80. Additional powers of the court

(1) Without prejudice to section 39, the High Court shall have power, at any stage of a trial, to summon and examine any person qualified in the opinion of the court, to give evidence regarding—

(a) any custom prevalent in any area;

(b) the way of life of any community; or

(c) the background against which the alleged offence was committed,

where it considers that the evidence may assist the court in arriving at a just decision or in assessing, in the event of a conviction, the appropriate sentence to be imposed.

(2) Where a witness is called by the court under subsection (1), section 39(2) shall apply.

81. Assessors and confessions

(1) Notwithstanding any rule of practice to the contrary, in a trial before the High Court the assessors shall not be required to leave the court while the issue of the admissibility of a confession is being tried, and the judge may seek their opinions on any fact relevant to that issue; but the decision of any question of fact or of law upon which the admissibility of a confession depends shall be for the judge alone.

(2) In this section, "confession" includes any statement the admissibility of which is challenged by the accused person.

82. Verdict and sentence

(1) When the case on both sides is closed, the judge shall sum up the law and the evidence in the case to the assessors and shall require each of the assessors to state his or her opinion orally and shall record each such opinion. The judge shall take a note of his or her summing up to the assessors.

(2) The judge shall then give his or her judgment, but in so doing shall not be bound to conform with the opinions of the assessors.

(3) Where the judge does not conform with the opinions of the majority of the assessors, he or she shall state his or her reasons for departing from their opinions in his or her judgment.

(4) The assessors may retire to consider their opinions if they so wish and during any such retirement or, at any time during the trial, may consult with one another.

(5) If the accused person is convicted, the judge shall pass sentence on him or her according to law.

(6) If the accused is acquitted, he or she shall be immediately discharged from custody unless he or she is acquitted by reason of insanity.

83. Drawing up 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, or by the clerk or other officer of the court.

84. Order of acquittal bar to further proceedings

The production of a copy of the order of acquittal, certified by the clerk or other officer of the court, shall without other proof be a bar to any subsequent proceedings for the same matter against the same accused person.

85. Mode of delivering judgment

(1) The judgment in every trial in the High Court shall be pronounced, or the substance of the judgment 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 advocates, if any; except that whole judgment shall be read out by the judge if he or she is requested so to do either by the prosecution or the defence.

(2) The accused person shall, if in custody, be brought up, or, if not in custody, be required by the court to attend, to hear judgment delivered, except where his 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.

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his or her advocate on the day or from the place notified for the delivery of the

judgement, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of that day and place.

86. Contents of judgment

(1) Every judgment delivered under section 85 shall be written by, or reduced to writing under the personal direction and superintendence of, the judge in the language of the court, and shall contain the point or points for determination, the decision on it and the reason for the decision and shall be dated and signed by such presiding judge as on the date on which it is pronounced in open court.

(2) For the purposes of subsection (1), any judgment may be recorded in shorthand or by any mechanical means under the superintendence of the judge and the transcription of it signed by that judge.

(3) In the case of a conviction, the judgment shall specify the offence of which, and the section of the written law under which, the accused person is convicted.

(4) The judgment 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.

87. Person charged may be convicted of minor offence

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

88. Conviction for attempt

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

89. Conviction for 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 to the commission of that offence although he or she was not so charged.

90. Convictions in respect of charges relating to death of a child

(1) When a woman is charged with the murder of her child, being a child under the age of twelve months, and the court is of the opinion that she by any wilful act or omission caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to that child and that, by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section 213 of the Penal Code Act she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

(2) When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 141 or 142 of the Penal Code Act (relating to the procuring of abortion), and the court is of opinion that he or she is not guilty of murder, manslaughter or infanticide or of an offence under section 141 or 142 of the Penal Code Act, but that he or she is guilty of the offence of killing an unborn child, he or she may be convicted of that offence although he or she was not charged with it.

(3) When a person is charged with killing an unborn child and the court is of opinion that he or she is not guilty of that offence but that he or she is guilty of an offence under section 141 or 142 of the Penal Code Act, he or she may be convicted of that offence although he or she was not charged with it.

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

91. Certain sections of Magistrates Courts Act to apply

When a person is indicted for any of the offences mentioned in sections 149, 150, 151, 152, 153, 154 or 155 of the Magistrates Courts Act, those sections of that Act shall be construed as if references to a "court" included references to the High Court.

92. Construction of sections 87 to 91

The provisions of sections 87 to 91 shall be construed as in addition to and not in derogation of the provisions of any other written law and the other provisions of this Act, and the provisions of sections 88 to 91 shall be construed as being without prejudice to the generality of the provisions of section 87.

93. Person charged with misdemeanour not to be acquitted if felony proved

If on any trial before the High Court for misdemeanour the facts proved in evidence amount to felony, the accused shall not be therefore acquitted of the misdemeanour; and no person tried for the misdemeanour shall be liable afterwards to be prosecuted for felony on the same facts, unless the court before which the trial may be had shall think fit, in its discretion, to refrain from recording a finding upon that trial, and to direct that person to be prosecuted for felony, in which case that person may be dealt with in all respects as if he or she had not been put upon his or her trial for the misdemeanour.

94. Calling upon the accused

If the accused person is found guilty or pleads guilty, the judge shall ask him or her whether he or she has anything to say why sentence should not be passed upon him or her according to law, but the omission so to ask him or her shall have no effect on the validity of the proceedings.

95. Motion in arrest of judgment

(1) The accused person may, at any time before sentence, whether on his or her plea of guilty or otherwise, move in arrest of judgment on the ground that the indictment does not, after any alteration which the court is willing and has 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 of the matter to a future time to be fixed for that purpose.

(3) If the court decides in favour of the accused, he or she shall be discharged from that indictment.

96. Sentence

If no motion in arrest of judgment is made, or if the court decides against the accused person upon the motion, the court may pass sentence upon the accused person or make an order against him or her at any time during the session.

97. Objections cured by verdict

No judgment shall be stayed or reversed on the ground of any objection, which if stated after the indictment was read over to the accused person, or during the progress of the trial, might have been amended by the court, nor for any informality in swearing the witnesses or any of them.

98. Inquiry may be made prior to passing sentence

The court, before passing any sentence other than a sentence of death, may make such inquiries as it thinks fit in order to inform itself as to the proper sentence to be passed, and may inquire into the character and antecedents of the accused person either at the request of the prosecution or the accused person and may take into consideration in assessing the proper sentence to be passed such character and antecedents including any other offences committed by the accused person whether or not he or she has been convicted of those offences; except that—

(a) the accused person shall be given an opportunity to confirm, deny or explain any statement made about him or her and in any case of doubt the court shall in the absence of legal proof of the statement ignore the statement;

(b) no offence of which the accused person has not been convicted shall be taken into consideration in assessing the proper sentence unless the accused person specifically agrees that the offence shall be taken into consideration and a note of that request shall have been recorded in the proceedings; and

(c) if for any reason the sentence passed by the court is set aside, the accused person shall not be entitled to plead *autrefois convict* in respect of any offence taken into consideration in assessing the sentence that was set aside.

Part VIII – Sentences and their execution

99. Sentence of death

(1) Sentence of death shall be carried out by hanging in accordance with the provisions of the Prisons Act.

(2) When any person is sentenced to death, the sentence shall direct that he or she shall suffer death in the manner authorised by law.

100. 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.

101. Authority for detention

A certificate, under the hand of the judge by whom any person has been sentenced, that sentence of death has been passed and naming the person condemned, shall be sufficient authority for the detention of that person.

102. Record and report to be sent to Minister

(1) As soon as conveniently may be after sentence of death has been pronounced by the court, if no appeal is preferred, or if an appeal is preferred and the sentence is upheld by the Court of Appeal, then as soon as conveniently may be after the determination of the appeal, the High Court shall forward to the Minister a copy of the judgment of the court and of the notes of evidence taken at the trial, with a report in writing signed by the judge who presided at the trial containing any recommendations or observations on the case which he or she may think fit to make.

(2) The Minister shall communicate to the High Court the terms of any decision that has been reached by the President with regard to the exercise of the prerogative of mercy in respect of the case to which the report mentioned in subsection (1) relates, and the court shall give directions for the tenor and substance of the terms of the decision of the President to be entered in the records of the court.

(3) 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 to give effect to the decision. If the sentence is commuted to 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.

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

103. Sentence of death on pregnant woman

Where a woman convicted of an offence punishable with death is found in accordance with section 104 to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death.

104. Evidence of pregnancy

(1) 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 court.

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

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

105. Sentence of death on person under 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 of the sentence of death the court shall order that person to be detained in safe custody pending an order made by the Minister under subsection (2) in such place and manner as it thinks fit; and the court shall transmit the court record, or a certified copy of it, together with a report under the hand of the presiding judge containing any recommendation or observations on the case he or she may think fit to make, to the Minister.

(2) Upon consideration of the record and of the report transmitted to him or her under subsection (1), the Minister may by order under his or her hand direct that the person convicted shall be detained in such prison or other place of custody as may be specified in the order.

(3) Any order made under subsection (2) may at any time be varied or discharged by the Minister and—

(a) the order so made shall be sufficient authority for the removal of the person to whom it relates to the place of detention specified in the order so made or varied and for his or her detention in that place;

(b) any person removed or detained under the authority of that order shall be deemed to be in lawful custody.

106. Warrant in case of sentence of imprisonment

(1) A warrant under the hand of the judge by whom any person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Uganda, shall be issued by the judge, and

shall be full authority to the officer in charge of that prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.

(2) Subject to the express provisions of this or any other law to the contrary, every sentence shall be deemed to commence from and to include the whole of the day of the date on which it was pronounced.

(3) Where on appeal an appellate court makes an order which has the effect of requiring a person to commence or resume a sentence of imprisonment, any 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 that person has already served part of the sentence to be resumed, on the day on which that person is first received into prison after the making of the order.

107. Prisons in which sentences of imprisonment may be served

(1) Subject to subsection (2), every sentence of imprisonment passed by the High Court shall be served in a prison administered by the Government or by the administration of a district.

(2) Where the court sentences a person to imprisonment for a period not exceeding fourteen days whether awarded as a substantive sentence or in default of payment of money, the court may, as it thinks fit, order the sentence to be served in any suitable place.

108. Mitigation of penalties

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

(2) A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

109. Corporal punishment

(1) Only one sentence of corporal punishment shall be imposed at one time. Such corporal punishment shall be inflicted with a rod or cane to be approved by the Minister. The sentence shall specify the number of strokes which shall not exceed twenty-four.

(2) No sentence of corporal punishment shall be passed upon any of the following persons—

(a) females;

(b) males sentenced to death;

(c) males whom the court considers to be more than forty-five years of age.

(3) Whenever a male person under the age of sixteen years is convicted of any offence for which he is liable to imprisonment, the court may, in its discretion, sentence him to corporal punishment in addition to or in substitution for any other punishment to which he is liable; except that no sentence of corporal punishment may be imposed in default of payment of a fine.

(4) When a sentence of corporal punishment is to be carried out, there shall be present a Government medical officer; and no such sentence shall be carried out unless the medical officer has after examination certified that in his or her opinion the prisoner is physically fit to undergo the whole of the sentence of corporal punishment about to be inflicted upon him. If the medical officer is unable to certify as aforesaid, neither the sentence nor any part of it shall be carried out; and the sentence shall be deemed for the purposes of subsection (7) to have been wholly prevented from being carried out.

(5) The medical officer shall be present during the infliction of the corporal punishment and may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out, if in his or her opinion the prisoner is unable to bear that sentence without risk of grave or permanent injury. If the medical officer intervenes as

provided in this subsection, the sentence shall be deemed for the purposes of subsection (7) to have been partially prevented from being carried out.

(6) No sentence of corporal punishment shall be carried out by installments.

(7) If any person has been sentenced to corporal punishment in substitution for any other punishment to which he might have been liable, and the sentence of corporal punishment is, wholly or partially, prevented from being carried out, that person shall be kept in custody and shall as soon as possible be taken before the court which passed the sentence of corporal punishment, and the court shall remit the sentence of corporal punishment, and may, in its direction, pass upon that person any sentence other than a sentence of corporal punishment, to which he might have been liable.

(8) An offender sentenced to undergo corporal punishment may be detained in a prison or some other convenient place for such time as may be necessary for carrying the sentence into effect, or for ascertaining whether it shall be carried into effect.

(9) No sentence of corporal punishment shall be carried out in any case where the person who has been so sentenced has a right of appeal—

(a) unless that person fails within the time allowed by any written law to lodge a notice of appeal; or

(b) if notice of appeal has been lodged within that time, until the determination of the appeal.

(10) Every sentence of corporal punishment shall be administered as soon as possible and in any case before the expiry of six weeks after the final determination of the proceedings in consequence of which the offender was sentenced. Any sentence of corporal punishment not inflicted within that period shall not be inflicted at all.

110. Fines

Where a fine is imposed by the High Court under the provisions of any law, in fixing the amount of the fine, the court shall take into consideration, among other things, the means of the offender so far as they are known to the court, and in the absence of express provisions relating to the fine in any such law, the following provisions shall apply—

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

(b) in the case of an offence punishable with a fine or a period of imprisonment, the imposition of a fine or a period of imprisonment shall be a matter for the discretion of the court;

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

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

(ii) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant; but if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if the offender has undergone the whole of the imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so;

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

Amount	Maximum period
Not exceeding shs. 20	7 days
Exceeding shs. 20 but not exceeding shs. 100	1 month
Exceeding shs. 100 but not exceeding shs. 400	6 weeks
Exceeding shs. 400 but not exceeding shs. 1,000	3 months
Exceeding shs. 1,000	12 months

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

111. Power to allow time to pay fine

(1) Notwithstanding anything contained in section 110, the High Court, on imposing a fine under any law—

(a) shall, subject to subsection (2), allow the offender at least thirty days within which to pay the fine or the first installment of the fine; and

(b) may, in its discretion, defer passing sentence of imprisonment in default of payment of the fine until the default shall occur.

(2) When a court imposes a fine on any person and sentences him or her to imprisonment in default of payment of the fine, the court may, if the person fails to pay the fine immediately, and—

(a) he or she appears to the court to have sufficient means to pay the fine immediately;

(b) when being asked by the court whether he or she wishes to have time to pay, he or she does not ask for time;

(c) he or she fails to satisfy the court that he or she has a fixed abode; or

(d) there is some special circumstance (relating to the gravity of the offence or the character of the offender) appearing to the court to justify immediate committal,

commit him or her to prison, and the court shall state in the warrant of commitment the reasons for not allowing the offender time to pay.

(3) Where the court—

(a) imposes a fine on any person and at the same time or by subsequent order sentences him or her to imprisonment in default of payment of the fine; or

(b) sentences to imprisonment for want of or in lieu of distress any person against whom an order for the payment of money has been made,

the court may—

(c) order that the person pay the fine in one sum or by installments at such time, not being less than thirty days from the date of imposition of the fine, or in such manner as the court thinks fit, and shall, subject to subsection (4), immediately release him or her;

(d) if that person is employed, whether in the public service or otherwise, by order (hereafter referred to as an "attachment order") to be served upon that person's employer direct that the amount due shall be deducted from that person's salary or wages and paid to the court either in one payment or by such monthly installments as the court may direct; and the court shall, subject to subsection (4), immediately release him or her; except that no attachment order shall include a direction to make a payment or monthly installment exceeding one half of that person's monthly rate of salary or wages.

(4) Before releasing any person under subsection (3)(c) or (d), the court may, if it thinks fit, require him or her to enter into a bond, with or without sureties, conditioned for his or her appearance on such date or dates as the court may determine, and, in default of his or her so entering into such bond, the court shall immediately commit him or her to prison.

(5) If a person who has been allowed time for payment under subsection (3) or (c) fails to pay the amount due, or any installment of that amount, in accordance with the order made by the court, the court may, subject to subsection (7), thereupon commit him or her to prison.

(6) Where the court has ordered payment by installments and default is made in the payment of any such installment, the whole of the amount then remaining unpaid shall become immediately due and payable.

(7) The court shall not commit to prison in default of payment any person to whom time has been allowed for payment under this section until it has made inquiry as to his or her means in his or her presence.

(8) Upon making inquiry in accordance with subsection (7), the court may, in its discretion, instead of immediately issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the installments or the times at which the installments were, by the previous order of the court, directed to be paid, as the case may be.

(9) For the purpose of enabling inquiry to be made under subsection (7), the court may issue a summons to the person ordered to pay the money to appear before it, and, if he or she does not appear in obedience to the summons, may issue a warrant for his or her arrest or, without issuing a summons, issue in the first instance a warrant for his or her arrest.

112. Warrant for levy of fine, etc.

(1) When the High Court orders money to be paid by an accused person or by the prosecutor for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay the same by distress and sale under warrant. If he or she shows sufficient movable property to satisfy the order, his or her immovable property shall not be sold.

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

(3) A warrant under this section may be executed in any place within Uganda, and it shall authorise the distress and sale of any property belonging to the person ordered to pay.

113. Commitment

If the officer having the execution of a warrant of distress reports that he or she could find no property or not sufficient property on which to levy the money mentioned in the warrant with expenses, the court may issue such process as may be necessary for the appearance of the person against whom the order for payment was made and sentence him or her to imprisonment according to section 110(d).

114. Payment in full after commitment

Any person committed for nonpayment may pay the sum mentioned in the warrant, with the amount of expenses authorised in the warrant, 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.

115. Part payment after commitment

(1) If any person committed to prison for nonpayment shall pay any sum in part satisfaction of the sum adjudged to be paid, the period 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 that 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 subsection (1) 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 period of imprisonment originally awarded is reduced by that payment in part satisfaction, and shall make such order as is required in the circumstances.

116. Sentence of imprisonment 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 has no property on which the distress may be levied or for other sufficient reason, the court may if it thinks fit, instead of or after issuing a warrant of distress, issue such process as may be necessary for his or her appearance and sentence him or her to imprisonment according to section 110(d).

117. Objections to attachment

(1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under section 112 may, at any time prior to the receipt by the court of the proceeds of sale of that property, give notice in writing to the court of his or her objection to the attachment of that property; the notice shall set out shortly the nature of the claim which the person (hereinafter in this section called the "objector") makes to the whole or part of the property attached, and shall certify the value of the property claimed by him or her; such value shall be deposed to on affidavit, which shall be filed with the notice.

(2) Upon receipt of a valid notice given under subsection (1), the court shall, by an order in writing addressed to the officer having the execution of the warrant, direct a stay of the execution proceedings.

(3) Upon the issue of an order under subsection (2), the court shall, by notice in writing, direct the objector to appear before it and establish his or her claim upon a date to be specified in the notice.

(4) A notice shall be served upon the person whose property was, by the warrant issued under section 112, directed to be attached, and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of the property; the notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he or she wishes to be heard upon the hearing of the objection.

(5) Upon the date fixed for the hearing of the objection, the court shall investigate the claim and, for that purpose, may hear any evidence which the objector may give or adduce and any evidence given or adduced by any person served with a notice in accordance with subsection (4).

(6) If, upon investigation of the claim, the court is satisfied that the property attached was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him or her, or in the occupancy of a tenant or other person paying rent to him or her, or that,

being in the possession of the person ordered to pay the money at such time it was so in his or her possession not on his or her own account or as his or her own property but on account of or in trust for some other person or partly on his or her own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(7) If, upon the date fixed for his or her appearance, the objector fails to appear, or if, upon investigation of the claim in accordance with subsection (5), the court is of opinion that the objector has failed to establish his or her claim, the court shall order the attachment and execution to proceed, and shall make such order as to costs as it deems proper.

(8) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (1) of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

118. Who may issue a warrant

Every warrant for the execution of any sentence may be issued either by the judge who passed the sentence or by his or her successor in office.

119. Discharge of an offender without punishment

(1) Where, in any trial before the High Court, the court thinks that the indictment against the accused person is proved but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may—

(a) without proceeding to conviction, make an order dismissing the charge; or

(b) convict the accused person and caution him or her.

(2) When an order is made by a court under this section dismissing a charge, that order shall be deemed to be a conviction for the purposes of sections 125(1), 126 and 130.

120. Security for coming up for judgment

(1) Where a person is convicted by the High Court, the court may, instead of passing sentence, discharge the offender upon his or her entering into a recognisance, with or without sureties, in such sum as the court may think fit or conditioned that—

(a) he or she shall appear and receive judgment when called upon so to do within a period of twelve months from the date of the discharge; and

(b) during that period he or she shall keep the peace and be of good behaviour.

(2) If at any time the High Court is satisfied 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 arrest.

(3) An offender when apprehended on any such warrant shall be brought immediately before the court, and the court may either remand him or her in custody until the case is heard or admit him or her to bail with a sufficient surety conditioned for his or her appearing for sentence; and the court may, after hearing the case, pass sentence.

121. Sentences fixed by law

Sections 108, 119 and 120 shall have no effect in cases where the accused person has been convicted of an offence for which the penalty is fixed by law.

122. Sentences cumulative unless otherwise ordered

(1) Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him or her under the first conviction or before the expiration of that sentence, any sentence of imprisonment which is passed upon 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 of it; but it shall not be lawful for the court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under section 110(c)(i) or any part of it.

(2) Where a person is convicted of more than one offence at the same time and is sentenced to pay a fine in respect of more than one of those offences, then the court may order that all or any of such fines may be noncumulative.

123. Escaped convicts to serve unexpired sentences when recaptured

When sentence is passed under this Act on an escaped convict, the sentence, if of fine or corporal punishment, shall, subject to the provision of this Act and any other law for the time being in force, take effect immediately, but if of imprisonment shall not take effect until the convict has served a period of imprisonment that remained unexpired at the date of his or her escape from prison.

124. Police supervision

(1) Where any person to whom this section applies is sentenced to imprisonment for a term less than life, the High Court shall, at the time of passing sentence, order that he or she shall be subject to police supervision as hereafter provided for a period not exceeding five years from the date of the expiration of the sentence.

(2) Every person subject to police supervision shall, on his or her discharge from prison, be furnished by the prescribed officer with an identity card in the prescribed form, and while at large in Uganda shall—

(a) report himself or herself personally at such intervals of time, at such place and to such person as shall be endorsed on his or her card; and

(b) notify the place of his or her residence and any change of it in such manner and to such person as may be prescribed by rules made under this section.

(3) If any person subject to police supervision who is at large in Uganda refuses or neglects to comply with any requirement prescribed by this section or by any rules made thereunder, that person, unless he or she proves to the satisfaction of the court that he or she did his or her best to act in conformity with the law, commits an offence and is liable to a period of imprisonment not exceeding two years.

(4) The Minister may make rules by statutory instrument for carrying out this section.

(5) This section applies to—

(a) any person convicted of robbery contrary to section 285 of the Penal Code Act; and

(b) any person convicted of an offence declared by a statutory order of the Minister to be an offence to which this section shall apply.

Part IX – Costs, compensation and restitution

125. Award of costs

(1) The High Court may order the payment of costs in any of the following circumstances—

(a) to the prosecutor, by a person convicted of any offence;

(b) to any person acquitted of any offence by the High Court, by the prosecutor if the court considers that the prosecutor had no reasonable grounds for prosecuting that person;

(c) to any person in any matter of an interlocutory nature, including a request for an adjournment, if that 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.

(2) Any costs awarded by any court under subsection (1) shall not exceed the sum of three thousand shillings.

(3) An appeal shall lie to the Court of Appeal against any order awarding costs under this section.

126. Compensation

(1) When any accused person is convicted by the High Court of any offence 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, 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.

(2) When any person is convicted of any offence under Chapters XXV to XXX, both inclusive, of the Penal Code Act, the power conferred by subsection (1) shall be deemed to include a power to award compensation to any *bona fide* purchaser of any property in relation to which the offence was committed for the loss of the property if the property is restored to the possession of the person entitled to it.

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

(4) An appeal shall lie to the Court of Appeal against any order awarding compensation under this section.

127. Recovery of costs and compensation, and imprisonment in default

(1) Sums allowed for costs or compensation under section 125 or 126, shall, in all cases be specified in the conviction or order.

(2) If the person who has been ordered to pay the costs or compensation fails so to pay, a warrant of distress may be issued in accordance with section 112, and, in default of distress, the court may issue such process as may be necessary for his or her appearance and may sentence him or her to imprisonment in accordance with section 113 or 116.

128. Power of court to award expenses or compensation out of fine

(1) Whenever the High Court imposes a fine, or a sentence of which a fine forms part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

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

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

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

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

129. 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 High Court may order—

(a) that the property or a part of it be restored to the person who appears to the court to be entitled to it 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) that the property or a part of it be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

130. Property stolen

(1) If any person charged with any offence as is mentioned in Chapters XXV to XXX, both inclusive, of the Penal Code Act, in stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property is prosecuted to conviction or admits the offence under any of the provisions of this Act, the property shall be restored to the owner or his or her representative.

(2) In every case referred to in this section, the High Court shall have power to award from time to time orders for restitution for that property or to order the restitution of it in a summary manner; except that—

(a) where goods as defined in the Sale of Goods Act have been obtained by fraud or other wrongful means not amounting to stealing, the property in those goods shall not revest 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

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

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

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

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

(b) in cases where an appeal is lodged, until the determination of the appeal,

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(5) The Chief Justice may make provision by rules for securing the safe custody of any property, pending the suspension of the operation of any order under this section.

(6) In this section, "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into which or for which the property may have been converted or exchanged and anything acquired by that conversion or exchange whether immediately or otherwise.

131. Order for disposal of property regarding which offence committed

(1) During or at the conclusion of any trial, the High Court may make such order as it thinks fit for the disposal whether by way of forfeiture, confiscation or otherwise of any property produced before it regarding which any offence appears to have been committed or which has been used for the commission of or to facilitate the commission of any offence.

(2) In any case where no evidence has been called, if the prosecutor wishes any property to be disposed of under subsection (1), the prosecutor shall, after the conviction of the accused person, produce that property before the court which may thereupon make an order under subsection (1).

(3) Where the court orders the forfeiture or confiscation of any property as provided in subsection (1), but does not make an order for its destruction or for its delivery to any person, the court may direct that the property shall be kept or sold and that the property or, if sold, the proceeds of the sale shall be held as it directs until some person establishes to the court's satisfaction a right to the property or the proceeds of the sale. If no person establishes such a right within six months from the date of forfeiture or confiscation, the property or the proceeds of its sale shall be paid into and form part of the Consolidated Fund.

(4) The power conferred by this section upon the court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions regarding forfeiture, confiscation, destruction, detention or delivery contained in the written law under which the conviction was had or in any other written law applicable to the case.

(5) When an order is made under this section in a case in which an appeal lies, the order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting the appeal has passed or when the appeal is entered until the disposal of the appeal.

(6) In this section, "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the property has been converted or exchanged and anything acquired by the conversion or exchange, whether immediately or otherwise.

Part X – Appeals from the High Court

132. Appeals to the Court of Appeal from the High Court

(1) Subject to this section—

(a) an accused person may appeal to the Court of Appeal from a conviction and sentence by the High Court in the exercise of its original jurisdiction, as of right on a matter of law, fact or mixed law and fact;

(b) an accused person may, with leave of the Court of Appeal, appeal to the Court of Appeal against the sentence alone imposed by the High Court, other than a sentence fixed by law;

(c) where the High Court has, in the exercise of its original jurisdiction, acquitted an accused person, the Director of Public Prosecutions may appeal to the Court of Appeal as of right on a matter of law, fact or mixed law and fact,

and the Court of Appeal may—

(d) confirm, vary or reverse the conviction and sentence;

(e) in the case of an appeal against the sentence alone, confirm or vary the sentence; or

(f) confirm or reverse the acquittal of the accused person.

(2) Where the Court of Appeal reverses an acquittal under subsection (1), it shall order the accused person to be convicted and sentenced according to law.

(3) No appeal shall be allowed in the case of any person who has pleaded guilty in his or her trial by the chief magistrate or magistrate grade I or on appeal to the High Court and has been convicted on the plea, except as to the legality of the plea or to the extent or legality of the sentence.

(4) Except in a case where the appellant has been sentenced to death, a judge of the High Court or the Court of Appeal may, in his or its discretion, in any case in which an appeal to the Court of Appeal is lodged under this section, grant bail, pending the hearing and determination of the appeal.

(5) Section 40 of the Criminal Procedure Code Act other than subsection (2) of that section shall apply to a convicted appellant appealing under this section.

133. Appeal against special finding

(1) A person in whose case a special finding has been made may appeal against the finding to the Court of Appeal on a question of law or of fact or of mixed law and fact, and the Court of Appeal shall allow the appeal if it thinks that the special finding should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that it should be set aside on the ground of a wrong decision on any question of law if the decision has in fact caused a miscarriage of justice, or on any other ground if the court is satisfied that there has been a miscarriage of justice, and in any other case shall dismiss the appeal; but the Court of Appeal 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.

(2) Where, apart from the provisions of this subsection—

(a) an appeal against a special finding would fall to be allowed; and

(b) none of the grounds for allowing it relates to the question of the insanity of the appellant,

the Court of Appeal may dismiss the appeal if it is of the opinion that, but for the insanity of the appellant, the proper verdict would have been that he or she was guilty of an offence other than the offence for which he or she was indicted.

(3) Where, in accordance with the provisions of this section, an appeal against a special finding is allowed —

(a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the High Court as to the insanity of the appellant ought not to stand and the Court of Appeal is of opinion that the proper verdict would have been that he or she was guilty of an offence (whether the offence for which he or she was indicted or any other offence of which the High Court could have found him or her guilty), the Court of Appeal shall substitute for the special finding a verdict of guilty of that offence, and shall have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the High Court would have had if it had come to the substituted verdict;

(b) in any other case, the Court of Appeal shall substitute for the verdict of the High Court a verdict of acquittal.

(4) The term of any sentence passed by the Court of Appeal in the exercise of the powers conferred by subsection (3) shall, unless the court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings in the High Court.

(5) In this section—

(a) "insanity" includes diminished responsibility defined in section 194 of the Penal Code Act;

(b) "special finding" means a special finding made under —

(i) section 48(1); or

(ii) section 194(1) of the Penal Code Act.

Part XI – Control by Director of Public Prosecutions

134. Power to enter *nolle prosequi*

(1) In any case committed for trial to the High Court, and at any stage thereof before verdict, the Director of Public Prosecutions 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 such *nolle prosequi* is entered, the chief registrar or clerk of the court shall immediately 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 magistrates's court by which he or she was so committed, and the magistrates's court shall immediatley 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 shall have been admitted to bail.

135. Exercise of the powers of the Director of Public Prosecutions

The Deputy Director of Public Prosecutions, a state attorney or a state prosecutor may exercise any of the powers vested in the Director of Public Prosecutions by this Act except the power to enter a *nolle prosequi*.

136. Conduct of prosecutions

(1) All prosecutions before the High Court shall be conducted by a member of the Attorney General's chambers or by such other person as the Director of Public Prosecutions may, by writing under his or her hand, appoint.

(2) An appointment under subsection (1) may be for a particular case or for a specified class or series of cases, and every person so appointed shall be under the express direction of the Director of Public Prosecutions.

Part XII – Miscellaneous

137. Court to be open

(1) The place in which the High Court is held for the purpose of trying any offence shall be deemed an open court to which the public generally may have access, so far as the place can conveniently

contain them; but the presiding judge may, if he or she thinks fit, order at any stage of the 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.

(2) The High Court, for the purpose of trying any offence may sit on a Sunday or a public holiday; and no finding, sentence or order made or passed by the court shall be reversed or altered only by reason of the fact that it was made or passed on a Sunday or a public holiday; but the court shall not sit on a Sunday or a public holiday unless in the opinion of the presiding judge the omission to do so would cause an amount of delay, expense, or inconvenience which, in the circumstances of the case, would be unreasonable.

138. Obtaining copies or originals of documents in custody of bank

(1) For the purposes of any investigation of a crime, a bank manager or any officer of the bank authorised by the bank shall, upon request in writing by the Director of Public Prosecutions or a police officer not below the rank of inspector, authorised in writing by the Director of Public Prosecutions, supply without delay to the Director of Public Prosecutions or the police officer, a copy or copies of any document in the custody of the bank against a receipt signed by the Director of Public Prosecutions or the police officer; and the receipt shall be countersigned by the bank manager.

(2) Where it is necessary that the original of any document in the custody of the bank should be inspected or that tests should be carried out on it, the Director of Public Prosecutions or a police officer not below the rank of inspector, authorised in writing by the Director of Public Prosecutions, may apply to the bank for the original; and a bank manager or an officer of the bank authorised by the bank shall deliver the original to the Director of Public Prosecutions or the police officer against a receipt signed by the Director of Public Prosecutions or the police officer.

(3) When the original of a document in the custody of a bank is to be delivered under subsection (2), the Director of Public Prosecutions or the police officer referred to in that subsection shall give to the bank manager a photocopy of the original certified by the Director of Public Prosecutions or the police officer and by the bank manager or authorised officer to be a true copy of the original.

(4) A document certified under subsection (3) to be a true copy of an original of a document in the custody of the bank may be tendered by the banker as the original document for all purposes.

(5) A police officer acting under this section shall be responsible to the Director of Public Prosecutions for anything to be done by that officer under this section.

(6) This section shall have effect notwithstanding the provisions of the Evidence (Bankers' Books) Act.

139. Reversability or alteration of finding, sentence or order by reason of error, etc.

(1) Subject to the provisions of any written law, no finding, sentence or order passed by the High Court shall be reversed or altered on appeal on account of any error, omission, irregularity or misdirection in the summons, warrant, indictment, order, judgment or other proceedings before or during the trial unless the error, omission, irregularity or misdirection has, in fact, occasioned a failure of justice.

(2) In determining whether any error, omission, irregularity or misdirection 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.

140. Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings

No distress made under this Act shall be deemed unlawful, nor shall any person making the distress 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.

141. Practice of High Court in its criminal jurisdiction

When no express provision is made in this Act, the practice of the High Court in its criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of the High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Goal Delivery in England.

142. Copies of proceedings

If any person affected by any judgment or order passed in any proceedings under this Act desires to have a copy of the judgment or order or any part of the record, he or she shall, on applying for the copy be furnished with it if he or she pays for it, unless the court for some special reason thinks fit to furnish it free of cost.

143. Record of evidence

The Chief Justice may, by statutory instrument, make rules prescribing the manner in which evidence shall be taken down in cases coming before the High Court, and the evidence (or the substance of it) shall be taken down in accordance with those rules.

Schedule (Section 3)

The Assessors Rules

1. Preparation of list of assessors

Chief magistrates shall, before the first day of March in each year, prepare lists of suitable persons in their magisterial areas liable to serve as assessors.

2. Liability to serve

(1) Subject to the exemptions contained in subrule (2) of this rule, all citizens of Uganda between the ages of twenty-one and sixty, who are able to understand the language of the court with a degree of proficiency sufficient to be able to follow the proceedings, shall be liable to serve as assessors at any trial held before the High Court.

(2) The following persons are exempt from liability to serve as assessors—

(a) persons actively discharging the duties of priests or ministers of their respective religions;

(b) medical practitioners, dentists and pharmacists in active practice;

(c) legal practitioners in active practice;

(d) members of the armed forces on full pay;

(e) members of the police forces or of the prison services;

(f) persons exempted from personal appearance in court under the provisions of any written law for the time being in force, relating to civil procedure;

(g) persons disabled by mental or bodily infirmity;

(h) persons exempted from liability to serve as assessors by statutory instrument made by the Minister.

3. Publication of lists

(1) When the lists provided for in rule 1 of these Rules have been prepared, extracts from them containing the names of the persons liable to serve as assessors, residing in each magisterial area, shall be posted for public inspection at the courthouse of the chief magistrate.

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

4. Revision of lists

(1) The chief magistrate or the magistrate grade I shall, at the time and place mentioned in the notice provided for in rule 3(2) of these Rules, revise the list and hear the objections, if any, of persons interested in the amendment of the list and shall strike out the name of any person not suitable, in his or her judgment, to serve as an assessor, or who may establish his or her right to any exemption from service given by rule 2 of these Rules, and insert the name of any person omitted from the list whom he or she considers qualified for such service.

(2) A copy of the list revised in the manner provided in subrule (1) of this rule shall be signed by the magistrate and sent to the chief registrar.

(3) Any entry made by a magistrate in preparing or revising the list shall not be subject to further review by any other authority.

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

(5) If any person suitable to serve as an assessor is found in any magisterial area after the list has been settled, his or her name may be added to the list by the chief magistrate of the area, and he or she shall be liable to serve as an assessor.

5. Summoning of assessors

The chief registrar shall ordinarily, seven days before the day which may be fixed for holding particular sessions of the High Court, send a letter to a magistrate having jurisdiction in the area in which the sessions are to be held requesting him or her to summon as many persons from the list of assessors settled under rules 3 and 4 of these Rules as seem to the judge who is to preside at the sessions to be needed for trials at the sessions.

6. Form of summons

Every summons to an assessor shall be in writing and shall require his or her attendance as an assessor at a time and place to be specified in the summons.

7. Excuses

A judge of the High Court may, for reasonable cause, excuse any assessor from attendance at any particular sessions, and may, at the conclusion of any trial direct that the assessors who have served at the trial shall not be summoned to serve again as assessors for such period as may appear reasonable.

8. List of assessors attending

(1) At each session of the High Court, the chief registrar shall cause to be made a list of the names of those who have attended as assessors at the sessions, and the list shall be kept with the list of assessors as revised under rule 4 of these Rules.

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

9. Penalty for nonattendance of assessor

(1) Any person summoned to attend as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after an adjournment of the court after having been ordered to attend, is liable by order of a judge of the High Court to a fine not exceeding four hundred shillings.

(2) A fine imposed under this rule shall be levied by a chief magistrate or a magistrate grade I by attachment and sale of any movable property belonging to the defaulter within the local limits of the jurisdiction of the magistrate.

(3) For good cause shown, a judge of the High Court may remit or reduce any fine imposed under this rule.

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

