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CHAPTER 136

CRIMINAL PROCEDURE CODE

Act 21 of 1981
Act 13 of 1984
Act 19 of 1986
Act 8 of 1988
Act 13 of 1989
Act 8 of 2003
Act 14 of 2006
Act 37 of 2021

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SCHEDULE – Cognisable offences

CRIMINAL PROCEDURE CODE

To provide for a code of procedure in criminal cases.

PART 1 – PRELIMINARY PROVISIONS

1. Interpretation

In this Code, unless the context otherwise requires –

"advocate" means a person entitled to practise as a legal practitioner before a court in Vanuatu;

"Assistant Public Prosecutor" means a person appointed as an Assistant Public Prosecutor under section 21 of the Public Prosecutors Act [Cap. 293];

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

"complainant" means a person who makes a formal complaint to a prosecutor or a police officer alleging that some other person has committed an offence;

"Deputy Public Prosecutor" means the Deputy Public Prosecutor appointed under section 20 of the Public Prosecutors Act [Cap. 293];

"judicial officer" means a judge or a magistrate;

"magistrate" means a magistrate or a senior magistrate as the case may be;

"medical practitioner" means a person duly authorised to practice medicine in Vanuatu;

"Minister" means the Minister responsible for administration of this Act;

"private prosecutor" means a person (other than a prosecutor or police officer acting in the course of his duty as such) who having formally complained to a prosecutor or a police officer that some other person has committed an offence makes a formal complaint to a judicial officer to the same effect;

"prosecutor" includes Public Prosecutor, Deputy Public Prosecutor, Assistant Public Prosecutors, or state prosecutors;

"registrar" means a registrar of the Supreme Court or a clerk of the Magistrates' Court;

"state prosecutor" means a person appointed as state prosecutor under section 22 of the Public Prosecutors Act [Cap. 293].

2. Trial of offences

(1) All criminal offences under the Penal Code shall be tried and otherwise dealt with according to the same provisions, subject, however, to any other law regulating the manner or place of inquiring into, trying or otherwise dealing with such offences.

(2) Notwithstanding any other provisions of this Code, a court may, subject to the provisions of any other law of criminal jurisdiction in respect of any matter or thing to which the procedure described by this Code is inapplicable, or for which no procedure is so prescribed, exercise such jurisdiction according to substantial justice and the general principles of law.

3. Committal for sentence – section 4(2) of Cap. 122

(1) When a magistrate trying a case under the provisions of section 4(2) of the Courts Act [Cap. 122]* has convicted a person and considers that a higher sentence should be

** Editor's Note: Cap. 122 has since been repealed. The equivalent provision in the Judicial Services and Courts Act [Cap. 270] is section 14(4).*

passed than he has power to pass, he may commit the offender for sentence to the Supreme Court.

(2) When a magistrate commits an offender under subsection (1) he may either release the offender on bail or remand him in custody until he appears or is brought before the Supreme Court.

(3) When an offender is committed under this section the Supreme Court may deal with the offender in any manner in which he could have dealt with if he had been convicted by the Supreme Court.

PART 2 – GENERAL PROVISIONS

Arrest Generally

4. Arrest how made

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

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

(3) Nothing in this section shall justify the use of greater force than is reasonable in the particular circumstances in which it is employed, or is necessary for the arrest.

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

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

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

6. Power to break open doors and windows for purposes of liberation

Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

7. No unnecessary restraint

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

8. Search of arrested persons

Whenever a person is arrested and detained in custody, the police officer making the arrest or, when the, arrest is made by a private person the police officer into whose custody he places the person arrested, may search such person and place in safe custody all articles other than necessary wearing apparel, found upon him.

9. Power of police officer to detain and search boats, vehicles and persons in certain circumstances

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

10. Mode of searching persons

Whenever it is necessary to cause a person to be searched, the search shall be made by a person of the same sex.

11. Power to seize offensive weapons

The police officer or other person making an arrest may take from the person arrested any offensive weapons which he has about his person and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested.

12. Arrest by police officer without warrant

(1) Any police officer may, without an order from a judicial officer, or warrant, arrest any person whom he suspects upon reasonable grounds of having committed a cognisable offence.

(2) Without prejudice to the generality of subsection (1) a police officer may without a warrant arrest –

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

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

(c) any person whom he suspects upon reasonable grounds of being a deserter from the police or defence forces;

(d) any person whom he finds lying or loitering in any highway, yard or garden or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit an offence or who has in his possession without lawful excuse any offensive weapon or housebreaking implement;

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

13. Procedure when police officer deputes subordinate to arrest without warrant

When any officer in charge of a police station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall give the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

14. Refusal to give name and residence

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

(2) When the true name and address of such person has been ascertained he shall be released on –

(a) his signing a written undertaking to appear before a court if so required; and

(b) if not being normally resident in the Republic he surrenders his passport to a police officer who may retain it for not more than 72 hours.

(3) Should the true name and address of such person not be ascertained within 24 hours from the time of arrest, or should he fail to sign the undertaking or, if so required, to surrender his passport, he shall forthwith be taken before the nearest court having jurisdiction.

15. Disposal of person arrested by police officer

A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein contained as to release from custody, take or send the person arrested before a judicial officer or before an officer in charge of a police station.

16. Arrest by private person

(1) Any private person may arrest any person who commits a cognisable offence, or whom he reasonably suspects of having committed an offence punishable by a term of imprisonment for more than 10 years.

(2) Persons found committing any offence involving damage to property may be arrested without a warrant by the owner of the property or persons authorised by him.

17. Disposal of person arrested by private person

(1) Any private person who arrests a person without a warrant shall without unnecessary delay place the person so arrested in the custody of a police officer, or in the absence of a police officer shall take such person to the nearest police station.

(2) If there is reason to believe that a person placed in police custody under subsection (1) comes under the provisions of section 12 a police officer shall re-arrest him.

(3) If there is reason to believe that such person has committed a non-cognisable offence and he refuses on the demand of a police officer to give his name and address, or gives a name or address which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 14. If there is not sufficient reason to believe that he has committed any offence, he shall be at once released.

18. Detention of person arrested without warrant

(1) Subject to subsection (2) when any person has been taken into custody without a warrant for an offence other than intentional homicide or any offence against the external security of the State, the officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate court within 24 hours after he has been so taken into custody, inquire into the case. Unless the offence appears to the officer to be of a serious nature the officer shall release the person on his signing a written undertaking to appear before a court at a time and place to be named in the undertaking; but where any person is kept in custody he shall be brought before a court as soon as practicable.

(2) The officer in charge of the police station may release a person arrested on suspicion of committing any offence, when after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with a prosecution for the offence.

19. Police to report arrests

Officers in charge of police stations shall make a report to the Commissioner of Police about all persons arrested without warrant within the limits of their respective stations, whether such persons have been released from custody or otherwise.

Escape and Arrest

20. Recapture of person escaping
If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in the Republic.

21. Provisions of sections 5 and 6 to apply to arrests under section 20
The provisions of sections 5 and 6 shall apply to arrests under section 20, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

22. Assistance to judicial officer or police officer
Every person is bound to assist a judicial officer or police officer reasonably demanding his aid –

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

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

Preventive Action by the Police

23. Police to prevent breaches of the peace or cognisable offences
Every police officer may intervene for the purpose of preventing, and shall to the best of his ability prevent, a breach of the peace or the commission of any cognisable offence.

PART 2 B – PREVENTION OF OFFENCES

23A. Security for keeping the peace
(1) Whenever a magistrate is informed on oath that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, the magistrate may, in the manner herein after provided, require such person to show cause why he should not be ordered to enter into a recognizance, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.

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

23B. Order to be made
(1) When a magistrate acting under section 23A deems it necessary to require any person to show cause thereunder, he shall make an order in writing setting forth –

(a) the substance of the information received;

(b) the amount of the recognizance;

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

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

23C. Procedure in respect of person present in court
If the person in respect of whom such order is made is present in court, it shall be read over to him, or if he so desires, the substance thereof shall be explained to him.

23D. Summons or warrant in case of person not so present

If such person is not present in court, the magistrate shall issue a summons requiring him to appear, or when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

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

23E. Copy of order under section 23B to accompany summons or warrant

Every summons or warrant issued under section 23D shall be accompanied by a copy of the order made under section 23B and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

23F. Power to dispense with personal attendance

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

23G. Inquiry as to truth of information

(1) When an order under section 23B has been read or explained to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before the Magistrates' Court.

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

23H. Order to give security

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

Provided that –

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 23B;

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

(c) when the person in respect of whom the inquiry is made is a minor, the recognizance shall be entered into only by his sureties.

(2) Any person ordered to give security for good behaviour under this section may appeal to the Supreme Court, and the provisions of Part 11 (relating to appeals) shall apply to every such appeal.

23I. Discharge of person informed against

If on an inquiry under section 23G it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry

is made should enter into a recognizance, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

23J. Commencement of period for which security is required

(1) If any person in respect of whom an order requiring security is made under section 23B or 23H is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

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

23K. Contents of recognizance

The recognizance to be entered into by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the recognizance.

23L. Power to reject sureties

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

23M. Procedure on failure of person to give security

(1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in subsection (2), be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it.

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

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

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

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

23N. Power to release persons imprisoned for failure to give security

Whenever a magistrate is of opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate shall make an immediate report of the case for the orders of the Supreme Court, and such court may, if it thinks fit, order such person to be discharged.

23P. Power of Supreme Court to cancel recognizance

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

23Q. Discharge of sureties

(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate to cancel any recognizance entered into under any of the preceding sections.

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

(3) When such person appears or is brought before the magistrate, such magistrate shall cancel the recognizance and shall order such person to give, for the unexpired portion of the term of such recognizance, fresh security of the same description as the original security. Every such order shall for the purposes of sections 23K to 23N inclusive be deemed to be an order made under section 23H.

PART 3 – PROVISIONS RELATING TO ALL PROSECUTIONS

Place of Trial

24. General authority of courts

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

25. Place and date of sittings of the Supreme Court

(1) For the exercise of its criminal jurisdiction the Supreme Court shall hold sittings in each district of the Court at such places and on such dates as the Chief Justice may direct.

(2) The registrar shall ordinarily give notice beforehand of all such sittings.

26. Court to be open

(1) Subject to subsection (2) the place in which a court is held for the purpose of trying an offence shall be open and accessible to the public so far as the same can conveniently contain them.

(2) The judicial officer may for reasons of decency, security of the State or where otherwise authorised by law, order at any stage in the trial of any particular case that the public generally, or any particular person or class of persons, shall not have access to, or be or remain in, the room or building used by the court.

27. Power of Supreme Court to transfer proceedings

(1) Whenever it appears to the Supreme Court that it is necessary or expedient so to do, it may order that the accused person against whom proceedings have been instituted in the Magistrates' Court be brought for trial to itself or that an accused person against whom proceedings have been instituted in the Supreme Court be sent for trial to the Magistrates' Court if that court has jurisdiction to try the case.

(2) The Supreme Court may act either on the report of the Magistrates' Court or on the application of an interested party or of its own motion.

28. (*Repealed*)

Nolle Prosequi

29. Nolle prosequi

(1) In any criminal case and at any stage thereof before verdict or judgment, the Public Prosecutor may enter a *nolle prosequi* by informing the court that he 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 has been committed to prison shall be released; such discharge of an accused person shall operate as a bar to any subsequent proceedings against him on account of the same facts and he shall be treated in all respects as though he had been acquitted.

(2) If the accused shall not be before the court when a *nolle prosequi* is entered, the registrar of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the keeper of the prison in which the accused may be detained.

30. (*Repealed*)

31. (*Repealed*)

32. (*Repealed*)

Prosecution by public officer

33. Certain offences may be prosecuted by public officer

In any prosecution for an offence under any law other than the Penal Code, the Public Prosecutor may permit any public officer having legal or administrative responsibility for the enforcement of such law to conduct the prosecution, notwithstanding that he has not been appointed a state prosecutor.

Institution of Proceedings

34. Institution of proceedings

Proceedings shall be instituted by the making of a complaint or a preferment of a charge.

35. Complaint and charge

(1) Any person who believes from reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a judicial officer.

(2) A complaint shall be made under oath and may be made orally or in writing but if made orally shall be reduced to writing by the judicial officer, and, in either case, shall be signed by the private prosecutor and the judicial officer:

Provided that where the proceedings are instituted by a prosecutor or by a public officer authorised under section 33, a formal charge duly signed by any such person may be presented to a judicial officer and shall be deemed to be a complaint for the purposes of this Code.

(3) Subject to subsection (4) the judicial officer upon receiving any such complaint shall, unless such complaint has been made in the form of a formal charge under subsection (2) draw up or cause to be drawn up and shall sign a formal charge.

(4) Where the judicial officer is of opinion that a complaint or formal charge made or presented under this section does not disclose any offence, he shall make an order refusing to admit such complaint or formal charge and shall record his reasons for making such order.

36. Issue of summons or warrant

(1) Upon receiving a complaint or charge made in accordance with the provisions of section 35, the judicial officer may in his discretion issue either a summons or a warrant to compel the attendance of the accused person before a court having jurisdiction to try the offence alleged to have been committed.

(2) The validity of any proceedings taken in pursuance of a complaint or charge shall not be affected either by any defect in the complaint or charge or by the fact that a summons or warrant was issued without a complaint or charge.

(3) A summons or warrant may be issued on a Sunday or a public holiday.

37. Person arrested without warrant how to be dealt with

(1) Where a person who has been arrested without a warrant is brought before a court, the judicial officer before whom the person is brought shall draw up or cause to be drawn up and shall sign a charge containing a statement of the offence with which such person is charged, unless such a charge shall be signed and presented by a prosecutor.

(2) The court, if it has jurisdiction, may try the offence alleged to have been committed.

(3) If the accused person is brought before the Magistrates' Court and such court has no jurisdiction to try him on the charge drawn up or presented under subsection (1), the court may release him on bail or remand him in custody for a period not exceeding 14 days pending the initiation of a preliminary enquiry under the provisions of Part 7.

(4) If at the end of such period of bail or custody, the prosecutor has not initiated a preliminary inquiry under the provisions of Part 7 or taken steps to have the accused person appear or be brought before the Supreme Court, or taken any action to terminate the proceedings under the provisions of section 29 or otherwise, the Magistrates' Court shall direct that the accused person appear or be brought before the Supreme Court and may release the accused person from custody on bail or remand him in custody to appear or be brought before the Supreme Court in order that the Supreme Court may direct whether he should be discharged.

Processes to Compel the Appearance of Accused Persons

Summons

38. Form and contents of summons

(1) Every summons issued by a judicial officer under this Code shall be in writing, in duplicate and signed by such judicial officer.

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

39. Service of summons

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

(2) The officer shall, after serving the summons, ask the person summoned whether he can read and understand it; if so requested or if it appears to him to be desirable or necessary, he shall explain the substance thereof in clear and simple terms to the person summoned.

(3) Every person on whom a summons is so served shall, except where prevented by infirmity or otherwise, be required by the serving officer to sign or if illiterate to make

his mark for the purpose of acknowledging receipt thereof on the back of the duplicate retained by the serving officer.

40. Service when person summoned cannot be found

(1) Where a person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving 1 of the duplicates for him with some adult member of his family or with his employer; and the person with whom the summons is so left shall, if so required by the serving officer, acknowledge receipt thereof in the manner provided for in section 39(3).

(2) If any person with whom a summons is left pursuant to this section fails or refuses to take all reasonable steps to cause the same to be served on the person summoned he shall be guilty of contempt of court.

41. Procedure when service cannot be effected as before provided

If service in the manner provided by section 39 or 40 cannot by the exercise of due diligence be effected, the serving officer shall affix 1 of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the summons shall have been duly served.

42. Service on body corporate

(1) Service of a summons on a body corporate may be effected by serving it on the secretary, clerk, local manager or other principal officer of the body or by registered letter addressed to the registered office or office of the secretary, clerk or local manager of the body in the Republic. In the latter case service shall be considered to have been effected when the letter would arrive in ordinary course of post.

(2) A person upon whom a summons is served in accordance with subsection (1) shall acknowledge receipt thereof on behalf of the body corporate he represents in the manner provided for in section 39(3).

43. Proof of service

Where the officer who has served a summons is not present at the hearing of the case, an affidavit purporting to be made before the registrar or a judicial officer that such summons has been served and a duplicate of the summons purporting to be endorsed in the manner hereinbefore provided by the person to whom it was delivered or tendered or with whom it was left shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

44. Power to dispense with personal attendance of accused

(1) Subject to subsection (2) whenever a judicial officer issues a summons in respect of any offence punishable by imprisonment for 2 years or less, he may if he sees reason to do so, dispense with the personal attendance of the accused, if such accused pleads guilty in writing or appears by an advocate, and shall do so without conditions when the offence with which the accused is charged is punishable only by fine or by a term of imprisonment not exceeding 3 months or both.

(2) A court trying any case may in its discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

(3) If the court imposes a fine on an accused person whose personal attendance has been dispensed with under this section without having sentenced him to imprisonment in default of payment, and such fine is not paid within the time prescribed for payment the court may issue a summons calling upon the convicted person to show cause why he should not be committed to prison for such term as the court may then fix within the limits prescribed by law. If such convicted person does not attend upon the return of

such summons the court may forthwith issue a warrant and commit such person to prison for such term as the court may then fix.

(4) Whenever the attendance of an accused person has been dispensed with and his attendance is subsequently required, the proceedings may be adjourned for such period as is necessary for such purpose.

Warrant of arrest

45. Warrant in case of avoidance of service

(1) Where a prosecution has been instituted and a judicial officer has reason to believe that the accused is avoiding service or that he is unlikely to obey the summons or surrender himself into custody or attend the resumed hearing, as the case may be, the judicial officer may issue a warrant for the arrest of the accused.

(2) An application for a warrant under this section may be made either in writing by a public prosecutor or orally by any police officer or by the complainant in which case the judicial officer shall examine the applicant and any necessary witness on oath or affirmation and record the substance of his information.

46. Warrant on disobedience to summons

If the accused does not appear at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section 44, the court may issue a warrant to arrest him and cause him to be brought before such court; but no such warrant shall be issued unless a complaint has been made upon oath.

47. Form, contents and duration of warrant

(1) Every warrant of arrest shall be under the hand of the judicial officer issuing it.

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

(3) Every such warrant shall remain in force until it is executed or until it is cancelled by the judicial officer who issued it or if he is unable so to do by another judicial officer.

48. Power to direct recognizance to be taken

(1) A judicial officer issuing a warrant for the arrest of any person in respect of any offence other than intentional homicide or an offence against the external security of the State may in his discretion direct by endorsement on the warrant that, if such person enters into a written recognizance with or without conditions for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall release such person from custody.

(2) The endorsement shall state –

(a) any conditions of the release of such person; and

(b) the time at which he is to attend before the court.

49. Warrant, to whom directed

(1) A warrant of arrest may be directed to one or more police officers, or generally to all police officers but a judicial officer issuing such a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

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

50. Execution of warrant directed to 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.

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

52. Person arrested to be brought before the court without delay
The police officer or other person executing a warrant of arrest shall, subject to the provisions of section 48, without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

53. Warrant may be executed at any time and place
Subject to any provision of any law to the contrary, a warrant of arrest may be executed at any time of the day or night or on any day of the year, and at any place in the Republic.

54. Irregularities in warrant
Any irregularity or defect in the substance or form of a warrant, and any variance between it and the written complaint or information, or between either and the evidence produced on the part of the prosecution at any inquiry or trial shall not affect the validity of any proceedings at or subsequent to the hearing of the case, but if any such variance appears to the court to be such that the accused has been thereby deceived or misled, such court may, at the request of the accused, adjourn the hearing of the case to some future date and in the meantime remand the accused or release him from custody.

Search Warrants

55. Power to issue search warrants
Where it is proved on oath to a judicial officer that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary for the conduct of an investigation into any offence is in any building, ship, aircraft, vehicle, box, receptacle or other place, the judicial officer may by the issue of a search warrant authorise a police officer or other person therein named to search the building, ship, aircraft, vehicle, box, receptacle or place named or described in the warrant for any such thing, and if anything searched for be found, to seize it and detain it for use in evidence.

56. Execution of search warrant
Every search warrant may be issued on any day including Sunday or public holiday and may be executed on any day between the hours of sunrise and sunset but the judicial officer may, by the warrant, in his discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.

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

(2) If entry to, or exit from, such building or other place cannot be obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 5 or 6.

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person

may be searched and if such person is a woman the provisions of section 10 shall be observed.

58. Detention of property seized

(1) When any thing is seized in accordance with sections 55, 56 and 57 it may be detained until the conclusion of the case, reasonable care being taken for its preservation.

(2) If any appeal is made, the court may order it to be further detained for the purpose of the appeal.

(3) If no appeal is made, the court shall direct such thing to be restored to the person from whom it was taken, unless the court sees fit and is authorised or required by law to dispose of it otherwise.

59. Provisions applicable to search warrants

The provisions of sections 47(1), 47(3), 49, 50 and 53 shall, so far as may be, apply to all search warrants issued under section 55.

Provisions as to Bail

60. Power in certain cases to release from custody

(1) When any person, other than a person accused of an offence punishable by life imprisonment, is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to enter into a bond in writing, with or without conditions, for his subsequent appearance before the court, such person may be temporarily released from custody on bail.

(2) The conditions of such release shall be fixed with due regard to the circumstances and shall not be oppressive or unreasonable.

(3) Notwithstanding anything contained in subsection (1) the Supreme Court may in any case direct that any person be released from custody on bail or that the conditions required by the Magistrates' Court or a police officer be amended so as to be less onerous.

61. Bond for appearance

Before any person is released temporarily from custody a bond in writing subject to such conditions if any, as the court or police officer, as the case may be, thinks necessary, shall be executed by such person, on condition that such person shall attend at the time and place mentioned in the undertaking and shall continue to attend until otherwise directed by the court or police officer, as the case may be.

62. Special conditions of bail

(1) In releasing any person from custody on bail on his own recognizance a court may impose such conditions as it may consider fit.

(2) The conditions on which any person is released from custody on bail may include conditions appearing to the court to be likely to result in his appearance at the time and place required or to be necessary in the interests of justice or for the prevention of crime.

(3) When a court releases, or directs the release of, any person from custody on bail and imposes a condition under subsection (2) it shall not require him to find any surety in respect of that condition.

63. Discharge from custody of person released

(1) As soon as a bond has been executed in accordance with section 61 the person concerned shall be released, and when he is in prison the court ordering his release

from custody shall issue an order of release to the officer in charge of the prison, and such officer on receipt of the order shall release him.

(2) Nothing in this section or in section 60 shall require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

64. Power to order sufficient conditions when conditions first imposed are insufficient

If, through mistake, fraud or otherwise, insufficient conditions have been imposed, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that a person released from custody on bail be brought before it and may order him to comply with sufficient conditions, and on his failing so to do may commit him to prison.

65. Committal of person bound by bail bond

If it appears to any court from information on oath, that any person bound by a bond to appear is about to leave the Republic, the court may cause him to be arrested and may commit him to prison until the trial, unless the court shall see fit to release him from custody on bail upon further conditions.

66. Statement of rights to be read on refusal of bail by magistrate

Upon the refusal by the Magistrates' Court of an application for bail, the magistrate shall state the grounds for such refusal and shall read aloud to the applicant in open court the following statement –

"Your application for release from custody on bail having been refused by this Court, you now have the right to make a fresh application for bail to the Supreme Court. If you so desire, the matter will be referred immediately by this Court to the Supreme Court, which will review your application as soon as possible. You will remain in custody in the meantime but will suffer no disadvantage by reason of making a further application to the Supreme Court. Do you wish the Supreme Court to consider your application for release from custody on bail?"

67. Presiding magistrate responsible for forwarding file to Supreme Court

If an applicant for bail informs the presiding magistrate that he wishes his application to be considered by the Supreme Court, that magistrate shall be personally responsible for ensuring that the relevant case file and other documents and material are forwarded without delay to the Registrar of the Supreme Court.

68. Report by presiding magistrate to Supreme Court

The file forwarded to the Supreme Court pursuant to section 67 shall include a written report by the magistrate addressed to the Supreme Court stating the grounds for refusing bail and setting out in detail the evidence or information upon which his conclusions were based. The report shall be dated and signed by the magistrate.

69. Decision of Supreme Court on bail

The decision of the Supreme Court on an application referred to it pursuant to sections 67 and 68 shall be delivered in writing and copies thereof shall be issued without delay to the appropriate magistrate and all parties to the proceedings. If the Supreme Court shall order that the applicant be released from custody on bail, the magistrate shall be personally responsible for ensuring that a copy of the decision is served upon the officer in charge of the prison or other place where he is detained and that he is forthwith produced before him in court for release for such period and upon such conditions as the magistrate shall determine.

70. No appeal against order refusing bail

There shall be no right of appeal under Part 11 against the order of a judicial officer refusing the grant of bail to any person.

PART 4 – FURTHER PROVISIONS CONCERNING ALL CRIMINAL TRIALS

Charges and Informations

71. Offences to be specified in charge or information with necessary particulars

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

72. Joinder of counts in a charge or information

(1) More than 1 offence may be put together in the same charge or information if the offences charged are founded on the same facts or form, or are a part of a series of offences of the same or similar character.

(2) Where more than 1 offence is put in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count.

(3) Where, before trial or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than 1 offence in the same charge or information, or that for any other reason it is desirable to direct that the person should be tried separately for any 1 or more offences put in a charge or information, the court may order a separate trial of any count or counts of such charge or information.

73. Joinder of 2 or more accused in 1 charge or information

The following persons may be joined in 1 charge or information 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 complicity, or of an attempt to commit that offence;

(c) persons accused of more offences than 1 of the same kind (that is to say, offences punishable with the same amount of punishment under the same provision of the Penal Code or of any other law) committed by them jointly;

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

(e) persons accused of any offence involving dishonesty and of aiding, counselling or procuring the commission of or of attempting to commit any such offence;

(f) persons accused of any offence relating to counterfeit currency and of complicity or of attempting to commit any such offence.

74. Rules for the framing of charges and informations

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

(a) a count of a charge or an information 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 if the offence charged is one created by enactment, shall contain a reference to the provision of the enactment creating the offence;

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

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

(d) forms approved by the Chief Justice or forms conforming thereto as closely as possible shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as closely as possible shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case;

(e) where a charge or an information contains more than 1 count, the counts shall be numbered consecutively.

75. Manner of proof of previous convictions or acquittals

(1) In any trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other manner 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 judgment for such conviction or acquittal was given, 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 thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each case, evidence as to the identity of the accused person so convicted or acquitted.

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

Compelling Attendance of Witnesses

76. Witness summons

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

(2) Any person who, having been duly served with a witness summons, without due cause fails to appear in answer thereto, or having appeared refuses to give evidence or produce what is required shall be guilty of an offence and be liable to a fine not exceeding VT 10,000:

Provided that no witness shall be compelled to disclose anything or produce any document or writing in circumstances in which he might plead privilege from so doing.

77. Warrant for witness who disobeys summons

If without sufficient excuse a witness does not appear in obedience to a summons issued pursuant to section 76 the court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him before the court at such time and place as shall be therein specified.

78. Warrant for witness in first instance

If the court is satisfied by evidence on oath that such 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 therein specified.

79. Mode of dealing with witness arrested under warrant

When any witness is arrested under a warrant the court may, on his entering into a recognizance in writing to the satisfaction of the court for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish such recognizance, order him to be detained for production at such hearing.

80. Power to order production of prisoner as witness

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

(2) An officer in charge of a prison on receipt of an order under subsection (1) shall act in accordance therewith and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

Presumption of Innocence

81. Statement of presumption to be read to accused

In every criminal trial in which a plea of not guilty has been entered, the judicial officer presiding shall, before the prosecution case is opened, read aloud to the accused the following statement of the presumption of innocence –

> "In this trial you will be presumed to be innocent unless and until the prosecution has proved your guilt beyond reasonable doubt. It is not your task to prove your innocence. If at the end of the trial, any reasonable doubt exists as to your guilt, you will be deemed to be innocent of the charge and will be acquitted"

and shall record such step in the proceedings.

Examination of Witnesses

82. Power to summon material witness or examine person present

(1) Any court may at any stage of any trial or other proceeding under this Code summon or call any person as a witness, or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

(2) The prosecutor or the defendant or his advocate, shall have the right to cross-examine any such person, and the court shall adjourn the case for such purpose if it considers necessary.

83. Evidence to be given on oath

(1) Subject to subsection (2) and save as otherwise provided, every witness in any criminal cause or matter shall be examined upon oath and the court before which any witness shall appear shall have full power and authority to administer the usual oath.

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

(3) Where evidence admitted by virtue of subsection (2) is given on behalf of the prosecution in any proceedings, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by other material evidence.

84. Proof by formal admission

(1) Subject to subsection (2) any fact of which oral evidence may be given in any criminal trial may be admitted for the purpose of that trial by or on behalf of the prosecutor or defendant and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in that trial of the fact admitted.

(2) An admission under this section –

(a) may be made before or during the trial;

(b) if made otherwise than in court, shall be in writing;

(c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;

(d) if made on behalf of a defendant who is an individual, may be made by his advocate;

(e) if made at any stage before the trial by a defendant who is an individual, must be approved by his advocate (whether at the time it was made or subsequently) before or during the trial in question.

85. Refractory witnesses

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

(a) refuses to be sworn; or

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

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

without in any such case offering any sufficient excuse for such refusal of neglect, the court may adjourn the case for any period not exceeding 8 days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

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

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

86. Report of Government analyst or prescribed expert

(1) Any document purporting to be a plan made by a surveyor or a report under the hand of any analyst or geologist in the employment of Government or of a medical practitioner upon any person, matter or thing submitted to him for examination or analysis may be used as evidence of the facts stated therein in any trial or other proceeding under this Code.

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

(3) When any document is so used the court may, if it thinks fit, summon the surveyor, analyst, geologist or medical practitioner, as the case may be, and examine him as to the subject-matter thereof, or may cause written interrogatories to be submitted to him for reply, and such interrogatories and any reply thereto, purporting to be a reply from such person, may also be used as evidence in such trial or other proceedings.

(4) Nothing in this section shall affect any other law under which any certificate or other document is made admissible in evidence, and the provisions of this section are additional to, and not in substitution for, any such law.

87. Taking of evidence in absence of the accused

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

Evidence for Defence

88. Statement of rights of accused to be read aloud

In every trial in which a plea of not guilty has been entered, at the close of the case for the prosecution, and if the court shall decide that there is a *prima facie* case made out against the accused, the presiding judicial officer shall read aloud to the accused, whether or not he is represented by an advocate, the following statement –

> "In making your defence in this trial, you are entitled, in addition to calling other persons as witnesses, to give evidence yourself on your own behalf, upon oath or affirmation and subject to cross-examination by the prosecution. However you are not obliged to give evidence and may elect instead to remain silent. If you do not choose to give evidence, this will not of itself lead to an inference of guilt against you."

and shall record this step in the proceedings.

89. Competency of accused and husband or wife as witnesses

(1) Subject to the rules contained in subsection (2) every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.

(2) The following rules shall apply to the witnesses referred to in subsection (1) –

(a) a person charged with an offence shall not be called as a witness pursuant to this section except upon his own application;

(b) the failure to give evidence of any person charged with an offence or of the wife or husband, as the case may be, of the person so charged, shall not be made the subject of any comment by the prosecution;

(c) the wife or husband of the person charged with an offence shall not be called as a witness without consent of such person unless –

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

(ii) such person is charged with an offence against morality under sections 90 to 101 of the Penal Code; or

(iii) such person is charged in respect of any act or omission affecting the person or property of the wife or husband of such person or the children of both or either of them.

(d) nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;

(e) a person charged and giving evidence as a witness pursuant to this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

(f) a person charged and called as a witness pursuant to this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he is of bad character or has committed or been convicted of or been charged with any offence other than that with which he is then charged, unless –

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

(ii) he has personally or by his advocate asked questions of a witness for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence.

90. Order of defence witnesses

Where the person charged is called by the defence as a witness he shall be called as the first defence witness, unless the court shall for special reason otherwise permit.

Insanity or Other Incapacity of an Accused Person

91. Enquiry by court as to insanity of accused

(1) When at the commencement or in the course of a preliminary enquiry or a trial the court has reason to believe that the accused may be of unsound mind and consequently unfit to plead or incapable of making his defence, it shall enquire into the fact of such unsoundness, and shall for that purpose order him to be detained in a hospital for medical observation and report for any period not exceeding 1 month.

(2) If the court after enquiry under subsection (1) is of opinion that the accused is of unsound mind and consequently unfit to plead or incapable of making his defence, it shall postpone further proceedings in the case.

(3) The provisions of the Penal Code shall thereafter apply to the case.

92. Defence of insanity at trial

Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane within the meaning of the Penal Code, then if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane at the time when he did or made the same, the court shall make a special finding to the effect that the accused is not guilty of the offence charged by reason that he was insane when he did the act or made the omission. When such special finding is made the court may order that the accused be kept in custody in such place and in such manner as the court shall direct and the provisions of the Penal Code shall thereafter apply.

Judgment

93. Mode of delivering judgment

(1) Subject to subsection (2) the judgment in every trial in any criminal court in the exercise of its original jurisdiction shall be pronounced or the substance of such 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.

(2) The whole judgment shall be read out by the presiding judicial officer if he is requested so to do either by the prosecution or the defence.

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

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

94. Convicted person to be informed of right of appeal

At the time of any conviction by a court the presiding judicial officer shall, where a right of appeal exists, inform the convicted person of his right of appeal and the period of time within which he must lodge notice of appeal, and the judicial officer shall thereupon record that he has complied with the provisions of this section, sign such note and date it.

95. Contents of judgment

(1) Every judgment shall, except as otherwise expressly provided by this Code, be written by the presiding judicial officer in the language of the court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding judicial officer in open court at the time of pronouncing it.

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

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be forthwith set at liberty, unless he is already in custody for some other offence.

96. Copy of judgment to be given to accused on application

On the application of the accused, a copy of the judgment if it has been prepared in written form shall be given to him without delay and free of cost.

97. Alternative or additional charges

Where there are more charges than 1 against the same accused and he has been convicted of 1 or more of them the person conducting the prosecution (if any) may, with the consent of the court, withdraw the others or the court of its own motion may stay the proceedings on the others.

Costs and Compensation

98. Costs against accused

(1) It shall be lawful for the judicial officer to order any person convicted by him of an offence to pay to the public or private prosecutor, as the case may be, such costs as the judicial officer shall consider reasonable in addition to any other penalty imposed.

(2) The costs awarded under subsection (1) by a magistrate shall not exceed VT 100,000.

99. Costs against private prosecutor

(1) Subject to subsection (3) it shall be lawful for the judicial officer who acquits or discharges a person accused of an offence, if the prosecution for such offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, to order such private prosecutor to pay to the accused such costs as subject to subsection (2) the judicial officer shall consider reasonable.

(2) The costs awarded to subsection (1) shall not exceed VT 50,000 in the case of an acquittal or discharge by the Supreme Court or VT 25,000 in the case of an acquittal or discharge by the Magistrates' Court.

(3) No such order shall be made if the judicial officer shall consider that the private prosecutor had reasonable grounds for making his complaint.

100. Costs in addition to compensation

The costs awarded under section 98 and 99 may be awarded in addition to any compensation awarded under section 103.

101. State not to pay costs

(1) Except where the court is of opinion that a prosecution is unjustified or oppressive, the State shall not be ordered to pay costs in case of dismissal of any charge; witnesses called on behalf of the State shall be entitled to payment of their attendance fees and allowances by the State, in all cases subject to recovery by the State from any party ordered to pay costs.

(2) The court shall have power to disallow fees or travelling allowances to any witness called on behalf of the State in any case tried by it.

102. Orders to pay costs appealable

An appeal shall lie from any order awarding costs under section 98 or 99 if made by a magistrate, to the Supreme Court and, if made by the Supreme Court, to the Court of Appeal. The appellate court shall have power to give such costs of the appeal as it shall consider reasonable.

103. Compensation in case of frivolous or vexatious charge

If on the dismissal of any case any court shall be of opinion that the charge was frivolous or vexatious, such court may order the private prosecutor to pay to the accused person a

reasonable sum as compensation for the trouble, expense and any special loss to which such person may have been put by reason of such charge, in addition to his costs.

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

Sums allowed for costs or compensation awarded under section 98, 99 or 103 shall in all cases be specified in the conviction or order. If the person who has been ordered to pay such costs or compensation fails to pay the same, he shall, in default of distress levied in accordance with section 193, be liable to imprisonment in accordance with the rate prescribed in section 52 of the Penal Code, unless such costs or compensation be sooner paid.

105. Power of court to award expenses out of fine

(1) Whenever any court imposes a fine, or confirms on appeal a sentence of fine, or a sentence of which a fine forms part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied in defraying expenses properly incurred in the prosecution.

(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 be presented, before the decision of the appeal.

(3) It shall also be lawful for the responsible authority to restore to the lawful owner thereof any article or articles which have been seized or forfeited, or to restore the proceeds of the same if sold, in any case in which the seizure or forfeiture may have been made or decreed by way of penalty for any contravention of any law in the Republic.

Disposal of Property in Possession of the Police, Forfeiture and Restitution of Property

106. Disposal of property in possession of police

(1) Where any property of whatsoever description comes into the possession of the police in the course of their duties it shall be lawful for the Commissioner of Police to direct that it be disposed of by sale or otherwise unless it be claimed by the owner within –

(a) 1 day, in the case of perishable goods;

(b) 15 days, in the case of all other goods when the total value of such goods belonging to the same person is less than VT 1,000;

(c) in all other cases 3 months after a notice shall have appeared in the Gazette giving a description of the property and requesting the owner to claim it from the police.

(2) All moneys resulting from the sale or disposal of such property by the police, after deduction of all expenses, shall be paid into the Public Fund and no claim lies against the police by any person in respect of such property.

(3) This section shall not apply to any property forfeited to the State.

107. Order for payment of money where property sold

(1) On the making of an order for restitution of any property under section 54 of the Penal Code, if it appears to the court that the offender has sold such property to any person who had no knowledge that the same had been unlawfully obtained and that any moneys have been taken from the offender on his arrest, the court may, on the application of such purchaser order that out of such moneys a sum not exceeding the amount of the proceeds of such sale, be given to the said purchaser.

(2) Any person aggrieved by an order made by a judicial officer under section 54 of the Penal Code or this section may appeal to the Supreme Court or the Court of Appeal, as the case may be, and upon the hearing of such appeal the court may annul or vary

any order made for the restitution of any property or the payment of any money to any person.

108. Property found on accused person

Where, upon the arrest of a person charged with an offence, any property is taken from him, the court before which he is charged may order –

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

(b) that the property or part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

Conviction for Offences other than those Charged

109. Conviction when offence proved is included in offence charged

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constituted a complete lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence although he was not charged with it.

(2) When a person is charged with an offence, and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it.

110. Person charged with offence may be convicted of attempt

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

111. Alternative verdicts in cases of homicide of children

(1) When a person is charged with the intentional or unintentional homicide of any child, or with unlawful abortion, and the court is of opinion that he is not guilty of such offence, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

(2) When a person is charged with killing an unborn child and the court is of opinion that he is not guilty of that offence but that he is guilty of unlawful abortion, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with the intentional homicide of any child or with killing an unborn child and the court is of opinion that he is not guilty of such offence, but that he is guilty of abandoning a child, he may be convicted of that offence although he was not charged with it.

112. Alternative verdict in charge of unintentional homicide resulting from driving of motor vehicle

When a person is charged with unintentional homicide in connection with the driving of a motor vehicle by him and the court is of opinion that he is not guilty of that offence, but that he is guilty of an offence under any law relating to road traffic or road transport, he may be convicted of that offence although he was not charged with it.

113. (*Repealed*)

114. Person charged with robbery may be convicted of theft

When a person is charged with an offence of robbery and the court is of opinion that he is not guilty of that offence but that he is guilty of any other offence of theft, he may be convicted of that offence although he was not charged with it.

115. Alternative verdicts in charges of theft etc.

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

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

116. Person charged with lesser offence not to be acquitted if more serious offence proved

If in any trial for an offence the facts proved in evidence amount to a more serious offence, the accused shall not be acquitted of the lesser offence; and no person tried for such lesser offence shall be liable afterwards to be prosecuted for a more serious offence on the same facts, unless the court shall think fit, in its discretion, to direct such person to be prosecuted for such more serious offence, whereupon such person may be dealt with as if not previously put on trial for the lesser offence.

117. Right of accused to be defended

(1) Any person accused of an offence before any criminal court or against whom proceedings are instituted under this Code in any such court, may of right be defended by an advocate.

(2) In the Magistrates' Court, such person may be defended, with leave of the Court, by an agent or friend.

118. *(Repealed)*

119. *(Repealed)*

PART 5 – MODE OF TAKING AND RECORDING EVIDENCE IN TRIALS

General

120. Evidence to be taken in presence of accused

Except as otherwise expressly provided, all evidence taken in any trial under this Code shall be taken in the presence of the accused, save when his personal attendance has been dispensed with.

121. Interpretation of evidence to accused or his advocate

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

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

(3) When documents are put in for the purpose of formal proof it shall be in the discretion of the presiding judicial officer to interpret as much thereof as appears necessary.

(4) When the presiding judicial officer is satisfied that he is sufficiently conversant with English, French or Bislama, he may, without the use of a sworn interpreter, undertake any interpretation required under this section or which may be necessary in any trial from one into any other of the said languages with which he is conversant.

Magistrates' Court

122. Manner of recording evidence before magistrate

In trials other than trials under section 124 before a magistrate, the evidence of the witnesses shall be recorded in the following manner –

(a) the evidence of each witness shall be taken down in writing in English, French or Bislama by the magistrate, or in his presence and hearing and under his personal direction and supervision, and shall be signed by the magistrate and shall form part of the record;

(b) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative:

Provided that the magistrate may, in his discretion, take down or cause to be taken down any particular question and answer;

(c) whenever the evidence of a witness is given in English, French or Bislama, the magistrate may, if he is satisfied that he is sufficiently conversant with these languages, take down or cause to be taken down such evidence in any other of the said languages in accordance with the provisions of the preceding paragraphs without the use of a sworn interpreter.

123. Remarks respecting demeanour of witness

When a magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he considers material respecting the demeanour of such witness whilst under examination.

124. Procedure in cases of minor offences

(1) Notwithstanding anything in this Code, any magistrate having jurisdiction to try any of the offences set out in subsection (2) may try any such offence without recording the evidence as hereinbefore provided, but in any such case he shall enter, in such form as the Chief Justice may direct, the following particulars –

(a) the serial number;

(b) the date of the commission of the offence;

(c) the date of the complaint;

(d) the name of the complainant;

(e) the name, surname and address of the accused person;

(f) the offence complained of and the offence (if any) proved and in cases coming under paragraph (d) of subsection (2) the value of the property in respect of which the offence has been committed;

(g) the plea of the accused;

(h) the finding and, where evidence has been taken, a judgment embodying the substance of such evidence;

(i) the sentence or other final order;

(j) the date on which the proceedings terminated.

(2) The offences referred to in subsection (1) are –

(a) offences punishable with imprisonment for a term not exceeding 3 months or a fine not exceeding VT 10,000 or both;

(b) offences of absolute liability;

(c) assault causing no physical damage;

(d) offences against property where the value of the property in respect of which the offence is alleged to have been committed does not exceed VT 2,000;

(e) any other offence which in pursuance of any enactment may be tried in accordance with the provisions of this section;

(f) attempting, aiding, counselling or procuring the commission of any of the foregoing offences.

(3) When in the course of a trial under the provisions of this section it appears to the magistrate that the case is of a character which renders it undesirable that it should be so tried, the magistrate shall recall any witnesses and proceed to rehear the case in the manner provided by the preceding provisions of this Part.

(4) No sentence of imprisonment for a term exceeding 3 months and no fine of an amount exceeding VT 10,000 shall be imposed in the case of any conviction under this section.

125. Conviction on evidence partly recorded by one magistrate and partly by another
Whenever any magistrate, after having heard and recorded the whole or any part of the evidence in any trial, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under the provisions of this Code or otherwise, by another magistrate who has and who exercises such jurisdiction the magistrate so succeeding may act on the evidence recorded by his predecessor, or partly recorded by his predecessor and partly by himself, or he may summon the witnesses afresh and recommence the trial:

Provided that –

(a) in any trial the accused may, when the second magistrate commences his proceedings, require that the witnesses or any of them be summoned afresh and reheard;

(b) the Supreme Court, upon an appeal, may set aside any conviction passed on evidence not wholly recorded by the magistrate by whom the conviction was entered, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new trial.

Supreme Court

126. Manner of recording evidence in Supreme Court
The manner in which evidence shall be taken down in cases coming before the Supreme Court shall be prescribed by the Chief Justice, and the judge of such court shall take down or cause to be taken down the evidence or the substance thereof in accordance with such rules.

PART 6 – PROCEDURE IN TRIALS BEFORE THE MAGISTRATES' COURT

127. Non-appearance of complainant at hearing
If, in any case in which a court has jurisdiction to hear and determine, the accused person appears in answer to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear the court shall dismiss the charge, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either release the accused

from custody or remand him to prison, or take such undertaking for his appearance as the court shall think fit.

128. Appearance of both parties

If at the time appointed for the hearing of the case both the complainant and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears and the personal attendance of the accused person has been dispensed with under section 44, the court shall proceed to hear the case.

129. Withdrawal of charge

If a prosecutor, at any time before a final order is passed in any case under this Part, satisfies the court that there are sufficient grounds for permitting him to withdraw the charge, the court may permit him to withdraw the same.

130. Adjournment

(1) Before or during the hearing of any case it shall be lawful for the court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may allow the accused person to go at large or may commit him to prison, or may release him upon bail conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned.

(2) If the accused person has been committed to prison, such adjournment shall be for not more than 14 clear days, the day following that on which the adjournment is made being counted as the first day.

131. Non-appearance of parties after adjournment

If at the time and place to which a hearing or further hearing has been adjourned, the accused person does not appear before the court which made the order of adjournment the court may issue a warrant for the arrest of the accused and cause him to be brought before the court. If the complainant does not appear the court may dismiss the charge with or without costs as it may consider fit.

132. Conduct of prosecution

(1) In every trial for an offence which has been the subject of an investigation by the police, the Deputy Public Prosecutor, an Assistant Public Prosecutor or a state prosecutor may appear to conduct the case for the prosecution.

(2) If the Deputy Public Prosecutor, an Assistant Public Prosecutor or a state prosecutor does not so appear and in every trial for an offence which has not been the subject of an investigation by the police, the presiding magistrate may conduct the proceedings without the assistance of a prosecutor and shall be himself bound by the rules of procedure and evidence which would apply to a prosecutor, in addition to such duties as fall upon him in the capacity of presiding magistrate.

133. Accused to be called upon to plead

(1) The substance of the charge or complaint shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2) Subject to subsection (5) if the accused person pleads guilty to or admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary.

(3) If the accused person does not admit the truth of the charge the court shall proceed to hear the case as hereinafter provided.

(4) If the accused person refuses to plead, the court shall order a plea of not guilty to be entered for him.

(5) Notwithstanding the foregoing provisions of this section upon a plea of guilty or admission of the truth of a charge by an accused person the court may make brief enquiry into the nature of the facts admitted and the effect of such facts in law and if the court has reason to believe that he may not be guilty of the offence charged, it shall substitute a plea of not guilty and proceed to hear the case.

134. Procedure on plea of not guilty

(1) If a plea of not guilty has been entered, the court shall proceed to hear the complainant and other witnesses for the prosecution.

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

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

135. Acquittal of accused person when no case to answer

If at the close of the evidence in support of the charge, it appears to the court that a *prima facie* case is not made out against the accused person so as to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.

136. The defence

(1) If at the close of the evidence in support of the charge, it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall again explain the substance of the charge to the accused and after complying with the requirements of section 88, ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear any such witnesses and other evidence.

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

137. Evidence in reply

If the accused person adduces evidence in his defence introducing new matter which could not by the exercise of reasonable diligence have been foreseen, the prosecutor or court, as the case may be, may adduce evidence in reply to rebut such matter.

138. Addressing the court

(1) The accused person, his advocate or agent may address the court at the commencement of the defence case when witnesses to the facts other than the accused himself are to be called for the defence.

(2) After the close of the evidence for the defence and in rebuttal if any, the accused person, his advocate or agent may address the court.

(3) Where there are several accused persons the order of addresses to the court by or on behalf of the accused shall follow the order in which their names appear on the charge or information.

139. Amendment of charge

(1) Where it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of

amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

Provided that

(a) where a charge is altered as aforesaid, the court shall thereupon call upon the accused person to plead to the altered charge;

(b) where a charge is so altered the accused person may demand that the witnesses or any of them be recalled and be further cross-examined by the accused person or his advocate and, in such last-mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination.

(2) An amendment may be made before a trial or at any stage of a trial before the close of the case for the prosecution.

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

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

140. The decision

(1) When the evidence and the addresses, if any, have been completed the court shall record a conviction or acquittal on each count of the charge, except in cases to which section 97 applies.

(2) Where the accused is convicted of an offence other than that charged the offence of which he is convicted shall be recorded.

(3) The court shall pass and record a sentence or order on each charge on which the accused is convicted.

(4) (*Repealed*)

141. 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 registrar, clerk or other officer of the court.

142. Order of acquittal bar to further procedure

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

PART 7 – OFFENCES TRIABLE IN SUPREME COURT

Preliminary Enquiry

143. Preliminary enquiry to be held

(1) Every offence triable only in the Supreme Court shall be the subject of a preliminary enquiry by a senior magistrate in accordance with this Part.

(2) The prosecutor shall make a complaint and the intended accused shall be provisionally charged with the offence concerned before the Magistrates' Court presided over by a senior magistrate, in accordance with the appropriate provisions of Part 3.

(3) Throughout the period of the preliminary enquiry, the intended accused shall remain subject to the jurisdiction of the said Magistrates' Court and shall be remanded from time to time for periods not exceeding 14 days at the discretion of the senior magistrate in custody or on bail.

144. Draft information prepared by the prosecutor

The prosecutor shall prepare and furnish to the senior magistrate and to the intended accused a draft information for the charge or charges contemplated by the prosecution.

145. Procedure to be followed by senior magistrate

(1) The senior magistrate shall not be bound to hold any formal hearing but shall consider the matter without delay in whatever manner and at whatever time or times as he shall consider fit.

(2) The senior magistrate shall decide whether the material presented to him discloses, if the same be not discredited, a *prima facie* case against the intended accused requiring that he be committed to the Supreme Court for trial upon information.

(3) The senior magistrate shall allow, but shall not require, the accused to make any statement or representation.

146. The decision

(1) The senior magistrate shall record his decision in writing and deliver copies to the prosecutor and the intended accused. The decision shall show clearly that the senior magistrate either authorises or does not authorise the laying of the proposed information against the intended accused. If the information is so authorised, a copy of the decision shall be sent by the senior magistrate to the nearest registry of the Supreme Court.

(2) If the information is not authorised, the intended accused shall be by the same decision immediately discharged from the jurisdiction of the Magistrates' Court and if in custody shall be forthwith released. If the information is authorised, the senior magistrate shall by the same decision remand him to a date specified for trial in the Supreme Court either in custody or on bail, regardless of whether he was previously remanded during the course of the preliminary enquiry in custody or on bail.

(3) The Public Prosecutor must file the information in the registry of the Supreme Court at least 7 days before the date specified for trial under subsection (2).

(4) Despite any other Act or law to the contrary, the Public Prosecutor may amend the information with the leave of the Supreme Court.

Initiation of Prosecutions in Supreme Court

147. Notice of trial

The Registrar of the Supreme Court shall endorse on or annex to every information filed by the Public Prosecutor in accordance with section 146(3), and to every copy thereof delivered to an officer of the court or police officer for service thereof, a notice of trial, which notice shall be in the following form, or as near thereto as may be –

"A.B.

Take notice that you will be tried on the information whereof this is a true copy at the Supreme Court ..... Registry at .....on the ....day of ....., 20......"

148. Copy of information and notice of trial to be served

(1) The Registrar shall deliver or cause to be delivered to the officer of the court or police officer serving the information a copy thereof with the notice of trial endorsed on the

same or annexed thereto, and, if there are more accused persons committed for trial than one, then as many copies as there are accused persons.

(2) The officer of the court or police officer aforesaid shall, as soon as practicable and 3 days at least before the day specified therein for trial, deliver to each accused person committed for trial the said copy of the information and notice and explain to him the nature and requirements thereof.

(3) When any accused person has been released from custody and cannot readily be found, the officer of the court or police officer shall leave a copy of the information and notice of trial with someone of his household for him at his dwelling house, and if no such person can be found, shall affix the same to the door of the dwelling house of the accused person.

149. Return of service

The officer serving the copy or copies of the information and notice or notices of trial shall forthwith make to the Registrar a return stating the approximate time, the date and manner of service thereof.

150. Postponement of trial

(1) It shall be lawful for the Supreme Court upon the application of the prosecutor or the accused person, if the court considers that there is sufficient cause for the delay, to postpone the trial of any accused person and to respite the recognizances of the complainant and witnesses, in which case the respited recognizances shall have the same force and effect as fresh recognizances to prosecute and give evidence would have had.

(2) The Supreme Court may give such directions for the amendment of the information and the service of any notices as the court may deem necessary in consequence of any order made under subsection (1).

151. Information by Public Prosecutor

All informations drawn up pursuant to section 146(3) shall be in the name of and signed by or on behalf of the Public Prosecutor by the Deputy Public Prosecutor, an Assistant Public Prosecutor or a state prosecutor.

152. Form of information

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

"IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU (..... DISTRICT) The .....day of ....., 20 ..... the Court is informed by the Public Prosecutor that A.B. is charged with the following offence (or offences) – ".

PART 8 – *(Repealed)*

PART 9 – PROCEDURE IN TRIALS BEFORE SUPREME COURT

Procedure during trial

160. Information and plea

(1) The information shall be read and if necessary explained or interpreted to the accused person and the Registrar shall call upon him to plead thereto. If he pleads guilty the court shall hear his advocate and if the court is satisfied that the accused person understands the matter and intends to admit, without qualification, that he committed

the offence charged and that the case does not involve any issue which ought to be tried, the court may convict him on his plea.

(2) In any other event the court shall record the gist of the plea, or the fact that the accused person does not plead.

161. Opening

The prosecutor shall open the case by stating the nature of the offence and the evidence which he proposes to adduce.

162. Evidence for prosecution

(1) The witnesses for the prosecution shall then be examined.

(2) Subject to the other provisions of this section, all the persons who made statements which were considered at the preliminary enquiry shall be called as witnesses for the prosecution at the trial.

(3) If a person who made a statement has died or become incapable of testifying or if his attendance cannot be procured without unreasonable delay or expense his statement may be read as evidence.

(4) The prosecutor may, at any time not less than 7 days before the trial, give notice to the accused or his advocate that he does not intend to call an intended witness named in the notice. Such a person may then be summoned as a witness for the defence.

(5) The prosecutor may, at any time before closing his case, decide not to call an intended witness who is in attendance, in which case that person shall be called into court and released from further attendance unless the accused or his advocate desires to call him as a witness for the defence.

(6) Where documentary evidence has been furnished at the preliminary enquiry an additional witness may be called to prove the document.

(7) Where an affidavit, certificate or report has been received at the preliminary enquiry, the deponent or certifying officer may be called to support or amplify the contents of the document, or the accused person or his advocate may give written notice to the prosecutor that he wishes to cross-examine such deponent or officer. If the notice is given insufficient time, the document shall not be read unless the deponent or officer is present provided that, if such deponent or officer has become incapable of testifying or his attendance cannot be procured without unreasonable delay or expense, the court may admit the document and permit another witness with suitable qualifications to be called.

(8) Where two or more accused persons are defended by separate advocates, they may cross-examine the witnesses for the prosecution in the order in which their respective clients were charged.

163. Statements by the accused

Any statement by the accused person recorded before or during the preliminary enquiry may, if it is admissible, be admitted in evidence either for the prosecution or for the defence.

164. Procedure after close of prosecution

(1) If, when the case for the prosecution has been concluded, the judge rules, as a matter of law that there is no evidence on which the accused person could be convicted, he shall thereupon pronounce a verdict of not guilty.

(2) In any other case, the court shall call upon the accused person for his defence and shall comply with the requirements of section 88.

165. Opening defence

The accused person or, where he is so represented, his advocate may, if he so desires, open the case for the defence.

166. Evidence of accused

(1) If an accused person elects to give evidence he shall do so before any other defence witness is called.

(2) Where two or more accused persons are tried jointly, the one first charged shall make his election first and after he has given his evidence (if he so elects) the others shall do so successively in the order in which they were charged.

(3) An accused person who has elected not to give evidence and who considers that his position has been altered by the evidence or statement of a subsequent accused may re-elect and give evidence.

(4) An accused person who gives evidence may be further examined or cross-examined, on behalf of any other accused and may then be cross-examined on behalf of the prosecution.

167. Other defence witnesses

(1) The witnesses for the defence shall then be called.

(2) Any person who is in attendance may be called as a witness for the defence.

(3) No adjournment to procure the attendance of a witness shall be allowed unless the court is satisfied that his evidence would be material and –

(a) that he was summoned in sufficient time and that his absence is due to serious illness or other sufficient cause; or

(b) that the defence could not, with due diligence, have procured the issue and service of a summons in sufficient time.

168. Order of defence witnesses

(1) Where two or more accused persons are tried jointly, the witnesses called on behalf of the accused person first charged shall, so far as practicable, be examined first and witnesses called on behalf of the other accused person or persons shall be examined successively in the order in which the accused persons were charged.

(2) A witness called on behalf of an accused person may be examined or cross-examined on behalf of any other accused persons and may then be cross-examined on behalf of the prosecution.

(3) Where two or more accused persons are defended by separate advocates, a witness shall be examined first by the advocate for the accused person on whose behalf he was called and may be examined or cross-examined by the advocates for the other accused person or persons in the order in which their respective clients were charged.

169. Rebutting evidence

If the evidence for the defence introduces new matter which the prosecution could not, with reasonable diligence, have foreseen the court may allow the prosecution to adduce evidence in reply to rebut such matter. A witness called in rebuttal may be a previous witness recalled or a new witness.

170. Final addresses

After the close of the evidence for the defence and in rebuttal, if any, the addresses to the court shall be in the following order –

(a) the prosecutor may address the court;

(b) the accused person or if he is so represented, his advocate may address the court, and if more than one, in the order in which their respective clients were charged.

171. Verdict of judge
The judge shall then consider his verdict upon each count of the information against each accused person in the case and may retire or adjourn the proceedings for this purpose.

171A. Delivery of verdict
Upon reaching his verdict upon each count of the information against each accused person, the judge shall deliver the same in open court and the accused person shall be acquitted or convicted accordingly.

172. Incapacity of accused
If the accused becomes incapable of remaining at the bar, the trial may be discontinued.

173. (*Repealed*)

174. View by court
If in the course of a trial the judge considers it expedient that the court should have a view of any place or thing, the judge may direct that view to be had.

175. – 186. (*Repealed*)

Procedure after verdict

187. Procedure on conviction
(1) If the accused person is convicted upon any count of the information, the judge shall pass sentence according to law.

(2) If the judge considers it inexpedient to pass sentence immediately, he shall remand the accused in custody for such period, or at liberty on such conditions, as he thinks fit.

(3) Where an accused person is sentenced to a term of imprisonment a warrant of committal stating the sentence shall be drawn up forthwith under the seal of the court and delivered to the officer having custody of the accused person.

188. Procedure on acquittal
(1) Subject to subsection (2) when an accused person is acquitted, he shall forthwith be released from custody in the courtroom.

(2) If a police officer on duty at or near the courthouse thinks it expedient to detain the accused person in custody for his own safety or the avoidance of public demonstration or disorder, the accused may be detained in custody for such period as may be deemed necessary for such purpose.

PART 10 – SENTENCES AND THEIR EXECUTION

189. Warrant in case of sentence of imprisonment
A warrant under the hand of the judicial officer by whom any person has been sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within the Republic, shall be issued, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant.

190. Warrant in case of other custodial sentence
A warrant under the hand of the judicial officer shall be similarly issued in the case of a custodial sentence other than imprisonment.

191. Liability of several persons jointly convicted

Where several persons are prosecuted before any court under 1 complaint and are convicted, each person shall be individually responsible for the fine imposed upon him, and for such part of the costs as shall have been apportioned to him by such court.

192. Payment of fine

(1) Whenever a court sentences any convicted person to pay any sum as a fine or for costs, such court may at any time –

(a) allow time for payment;

(b) extend such time;

(c) direct payment to be made by instalments;

(d) allow further time for the payment of any instalment;

(e) vary the instalment;

(f) order that payment be made by deduction from his wages.

(2) If the convicted person fails to pay any instalment within the time fixed for payment and does not obtain further time or a variation of the order, execution shall forthwith be issued for the recovery of all the instalments then remaining unpaid in the same manner as if, after the conviction no order had been made for the payment of the sum by instalments.

193. Warrant for levy of fine, etc.

(1) When a court orders money to be paid by any person for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the real and personal property of such person by distress and sale under a warrant of the court. If he shows sufficient personal property to satisfy the order, his real property shall not be sold.

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

(3) All sums realised by execution under this section shall be applied in the first instance to the payment of –

(i) the costs of execution;

(ii) the fine; and

(iii) the costs due by such offender in virtue of the conviction or order.

(4) A warrant under this section may be executed by the distress and sale of any property belonging to such person wherever found in the Republic.

194. Objection 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 193 may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property. Such notice shall set out shortly the nature of the claim which such person (hereinafter referred to as "the objector") makes to the whole or part of the property attached, and shall certify the value of the property claimed by him. Such value shall be deposed to upon 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 the stay of execution proceedings.

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

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

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

(6) If, upon investigation of the claim, the court is satisfied that the property was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the person ordered to pay the money at such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or partly on his own account and partly on account of some other person, the court shall make an order releasing the property wholly or to such extent as it thinks fit, from attachment.

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

(8) Nothing in this section shall 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.

195. Committal 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 family, or (by his confession or otherwise) that he has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may if it considers fit, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

196. Payment in full after committal

Any person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorised (if any), to the person in whose custody he is and that person shall thereupon discharge him, unless he is in custody for some other matter.

197. Part payment after committal

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

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

198. Who may issue warrant

Every warrant for the execution of any sentence may be issued either by the judicial officer who passed the sentence or by another judicial officer of the same court.

199. Errors and omissions in orders and warrants

The court may at any time amend any defect in substance or in form in any order or warrant and no omission or error as to time and place or defect in form in any order or warrant issued under this Code shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that it is therein mentioned or may be inferred therefrom that it is founded on a specified conviction or judgment which does in fact sustain the same.

PART 11 – APPEALS FROM MAGISTRATES' COURT AND SUPREME COURT

Appeals from Magistrates' Court and Supreme Court

200. Appeals to Supreme Court and Court of Appeal

(1) Any person convicted on a trial held by the Magistrates' Court may appeal to the Supreme Court:

Provided that –

(a) where such person has pleaded guilty he may appeal only on the point of the legality of the sentence

(b) there shall be no appeal against a sentence of fine not exceeding VT2,000 (notwithstanding a term of imprisonment in default of the payment of fine) where no substantive sentence of imprisonment has also been passed.

(2) Any person convicted on a trial held by the Supreme Court may appeal to the Court of Appeal:

Provided that where such person has pleaded guilty there shall be no appeal except–

(a) where the sentence exceeds imprisonment for six months; or

(b) on the point of the legality of the sentence only.

(3) The Public Prosecutor may appeal to the Supreme Court on a point of law against any judgment of the Magistrates' Court.

(4) The Public Prosecutor may appeal to the Court of Appeal on a point of law against any judgment of the Supreme Court exercising original jurisdiction.

201. Procedure on appeal

(1) Every appeal shall be brought by notice in writing which shall be lodged with the registrar of the court to which the appeal is made (hereinafter called "the appeal court") within 14 days after the date of the order or sentence appealed against.

(2) Such notice shall be signed or marked by the appellant or, if the appellant is represented by an advocate, the notice may be signed by such advocate.

(3) Within 14 days after filing his notice of appeal under subsection (1), the appellant shall lodge with the said registrar a memorandum of appeal.

(4) Every memorandum of appeal shall be signed or marked by the appellant or signed by his advocate and shall contain particulars of the matters of law or of fact in regard to which the court appealed from (hereinafter called "the trial court") is alleged to have erred; except by leave of the appeal court the appellant shall not be permitted on the hearing of the appeal to rely on any ground of appeal other than those set forth in the memorandum:
Provided that nothing in this subsection shall restrict the power of the appeal court to make such order as the justice of the case may require.

(5) If a memorandum is not lodged within the time prescribed by subsection (3), the appeal shall be deemed to have been withdrawn but nothing in this subsection shall be deemed to limit or restrict the power of the appeal court to extend time.

(6) The appeal court shall have power to extend any time herein provided for the taking of any necessary step in appeal, as it may consider fit.

(7) An application for an extension of time for lodging a memorandum of appeal under subsection (3) shall be filed with the registrar of the appeal court together with a memorandum of appeal in conformity with subsection (4).

(8) An appellant may at any time after he has filed a notice or memorandum of appeal or made an application for an extension of time abandon the appeal by giving notice in writing thereof to the registrar of the appellate court and upon such notice being given, the appeal shall be deemed to have been dismissed.

(9) The appeal court or a judge thereof may at any time assign an advocate to the appellant in any appeal in which it appears desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to be represented.

202. Appellant in prison

(1) If the appellant is in prison, he shall be considered to have complied with the requirements of section 201 if he gives to the officer in charge of the prison notice of his intention to appeal and the particulars required to be included in the memorandum of appeal within the times prescribed by that section.

(2) Such officer shall forthwith record the date of receipt of such notice of memorandum and shall forward the same to the registrar of the appeal court.

203. Sending for record

After the filing of the memorandum of appeal, if the record of the case is not already in the appeal court, the registrar shall send for such record.

204. Summary rejection of appeal

(1) When a memorandum of appeal has been lodged, the appeal court shall peruse the same together with the record of the case and if it considers that there is not sufficient ground for interfering, it may notwithstanding the provisions of section 201 reject the appeal summarily:

Provided that no appeal shall be rejected summarily except in the case mentioned in subsection (2) unless the appellant or his advocate has had the opportunity of being heard in support of the same.

(2) Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to the appeal court that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction

was right or lead the appeal court to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the appeal court certifying that it has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(3) Whenever an appeal is summarily rejected notice of such rejection shall forthwith be given to the Public Prosecutor and to the appellant or his advocate.

205. Fixing of appeal

If the appeal court does not dismiss the appeal summarily, the appeal shall be set down for hearing by the registrar on a date to be fixed by him.

206. Order of registrar to be served on respondent

The order of the registrar fixing the date of the appeal together with a copy of the notice and memorandum of appeal shall be served upon the respondent and, where the respondent is the Public Prosecutor, upon the Public Prosecutor, not later than 7 clear days before the day fixed for the hearing.

207. Powers of appeal court

(1) After hearing the appellant or his advocate if he appears and the respondent, if he appears, the appeal court, may, if it considers that there is not sufficient ground for interfering, dismiss the appeal, or may –

(a) in an appeal against conviction or sentence or both –

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction; or

(ii) alter the finding, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence; or

(iii) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence;

(b) in an appeal from any other order, alter or reverse such order;

and in either case may make any amendment or any consequential or incidental order as to costs or otherwise that may appear just and proper.

(2) In any appeal by the Public Prosecutor, the Court may –

(a) quash the judgment appealed from and order the accused to be retried by a court of competent jurisdiction;

(b) reduce or increase the sentence or alter the nature of the sentence without altering the finding;

(c) make no alteration of the finding and sentence appealed from.

(3) An appellant whether in custody or not shall be entitled to be present at the hearing of his appeal.

208. Handing down judgment and certification of orders

(1) When a case is decided on appeal by the appeal court, it shall certify its judgment or order to the trial court by which the conviction, sentence or order appealed against was recorded or passed.

(2) The trial court shall thereupon make such orders as are conformable to the judgment or order of the appeal court and, if necessary, the record shall be amended in accordance therewith.

(3) In an appeal to the Court of Appeal there shall ordinarily be given one judgment which may be given by the senior member of the court present at the hearing of the appeal

or by such other judge present at the hearing of the appeal as the senior member may direct:

Provided that –

(a) if any judge dissents from the judgment of the court it shall not be obligatory on him to sign the same; and

(b) separate judgments shall be given if the court is of the opinion that it is convenient that there should be separate judgments.

(4) The judgment of the Court of Appeal or of any judge present at the hearing of the appeal shall be delivered in open court either at the hearing of the appeal or at any subsequent time of which notice shall be given by the registrar to the parties to the appeal or their representatives.

(5) The judgment of the Court of Appeal or of any judge present at the hearing of the appeal may be read in open court by any judge, whether present at the hearing of that appeal or not or by the registrar.

209. Release from custody or suspension of sentence pending appeal

(1) After the entering of an appeal by a person entitled to appeal, the trial court which convicted or sentenced such person may order that he be released from custody on bail subject to such conditions as the court may consider fit.

(2) An application for release from custody on bail under this section may be heard in chambers. In the Supreme Court such application shall be by motion served on the Public Prosecutor. In the Magistrates' Court such application may be made without formal process to any magistrate.

(3) If the appeal is ultimately dismissed and the original sentence confirmed or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released from custody on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.

210. Further evidence

(1) In dealing with an appeal, the appeal court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by the trial court.

(2) When the additional evidence is taken by the trial court, such court shall certify such evidence to the appeal court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the appeal court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

211. Costs of appeal how recovered

When the appeal court has allowed costs of appeal, such costs when taxed by the registrar shall be recovered by execution in the trial court.

212. Appeals to be final

Every appeal from a trial court to an appeal court shall be final.

PART 12 – CIVIL CLAIMS IN CRIMINAL PROCEEDINGS

213. Court may hear civil claim against person charged with criminal offence

(1) A court may hear and give judgment on a civil claim within its jurisdiction against a person charged before it with a criminal offence.

(2) A civil claim heard pursuant to subsection (1) shall directly arise from the alleged act or giving rise to the charge of an offence against the accused person.

214. Claims to be in writing and court to hear claimant and witnesses

(1) A civil claim made pursuant to section 213 shall be made in writing.

(2) The court may hear the claimant and any witnesses he may call concerning his claim and permit him to cross-examine any witnesses for the prosecution and defence.

(3) The court may likewise hear the accused person and any witnesses he may call in defence of the civil claim and permit him to cross-examine the witnesses of the claimant.

215. Claim not to be made if instituted in civil court

A person who has instituted proceedings in the civil court shall not bring proceedings in respect of the same matter under section 213(1).

216. Appeals

Either the civil claimant or defendant may appeal against a decision of the court in accordance with the Courts Act [Cap. 122].*

217. Procedure

The procedure to be adopted in civil claims before the criminal court shall be provided for in accordance with section 30 of the Courts Act [Cap. 122].*

PART 13 – *(Repealed)*

PART 14 – SUPPLEMENTARY PROVISIONS

Irregular Proceedings

221. Error or omission in charge or other proceedings

(1) Subject to the provisions herein before contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the summons, warrant, charge, information, order, judgment or other proceedings under this Code, unless such error, omission or irregularity has in fact occasioned a substantial wrong or miscarriage of justice.

(2) In determining whether any error, omission, or irregularity has occasioned a substantial wrong or miscarriage of justice the court shall have regard to the question whether the subject could and should have been raised at an earlier stage in the proceedings.

222. Distress not illegal etc. for defect or want of form

No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

Enquiries as to Sudden Deaths

**Editor's Note: Cap. 122 has since been repealed. The provision in the Judicial Services and Courts Act [Cap. 270] equivalent to section 30 is section 66.*

223. Senior magistrate empowered to hold inquest

(1) Any senior magistrate, and any person specially empowered in that behalf by the Chief Justice shall be empowered to hold inquests.

(2) For the purposes of this Part the word "coroner" shall mean either a senior magistrate or a person specially empowered to hold inquests.

224. Investigation in case of violent death

(1) Whenever an officer in charge of a police station is informed that a person –

(a) has committed suicide; or

(b) has been killed by another, or by an animal, or by machinery, or by an accident; or

(c) has died under circumstances raising a reasonable suspicion that somebody has committed an offence; or

(d) has died in prison or in a mental hospital or while in the custody of the police,

he shall forthwith proceed to the place where the body is lying and shall then and there make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body and stating in what manner or by what weapon or instrument, if any, such injury appears to have been inflicted. The report shall be signed by such police officer and shall be forthwith forwarded to a coroner.

(2) Should the coroner be satisfied on the face of such police officer's enquiry and report that there is no suspicion whatever that the death is due to a crime or to foul play, he shall order that the dead body of the person may be buried without examination by a medical officer. In such cases, his order shall be sufficient authority to the civil status officer to register the death.

(3) When there is any suspicion that the death may not be due to natural causes or when for any reason the coroner considers it expedient so to do, he shall with a view to a post-mortem examination being made, order the body to be forwarded to a government medical officer, or if such medical officer is not available, then to any medical practitioner appointed by the coroner who shall draw up a report and forward the same to the coroner:

Provided that if the coroner considers it necessary so to do, he may order the government medical officer or the medical practitioner appointed by him to proceed to the spot where the body is lying to investigate the matter before performing the post-mortem examination.

(4) After considering the report of the medical officer or practitioner the coroner may order that the body be buried or may make such order as to him may seem fit before ordering that the body be buried.

(5) Should a coroner not be available the police officer shall send his report to a judge of the Supreme Court who shall have all the powers of a coroner under this Part.

(6) Should a judge not be available the police officer shall send his report direct to the chief medical officer or other government medical officer who shall have all the powers of a coroner under this Part.

(7) The coroner, judge or medical officer as the case may be, shall forward to the Public Prosecutor the report of the police officer and of the post mortem examination if one has been held, together with his own report and any further information bearing upon the case.

(8) The Public Prosecutor may require a coroner to hold an inquest into the cause of death and the circumstances connected therewith.

(9) Such coroner shall hold such inquest as far as possible in conformity with the procedure laid down by law for the holding of commissions of inquiry.

(10) The coroner shall make or cause to be made such local inspections as circumstances may require and may make or cause to be made a physical examination of any person as circumstances may require. The coroner may order a post-mortem examination, and, for the purpose of such examination, may order the body of any person who has been already interred to be exhumed.

225. Finding

When the coroner has heard the evidence tendered by or on behalf of the Public Prosecutor, he shall give his findings as to the cause of death.

226. Court not to express any opinion on the evidence

The coroner shall not express any opinion as to the guilt or innocence or otherwise of any person who may have been called to give evidence at the inquest, even if that person has not volunteered to give evidence therein.

227. When inquest obligatory

The Public Prosecutor shall be bound to require a coroner to hold an inquest –

(a) where a person had died in prison or while in the custody of the police;

(b) where a person has died under circumstances raising a reasonable suspicion that the death of that person might be due to a crime or foul play, unless a police investigation has already been instituted.

Directions for the Production of a Person
(otherwise known as the remedy of *habeas corpus*)

228. Power to issue directions

(1) The Supreme Court may whenever it considers fit direct –

(a) that any person within the Republic be brought up before the Court to be dealt with according to law;

(b) that any person illegally or improperly detained in public or private custody within the Republic be set at liberty;

(c) that any prisoner detained in any prison situate within the Republic be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;

(d) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the responsible authority for trial or to be examined touching any matter pending before such court-martial or commissioners, respectively;

(e) that any prisoner within the Republic be removed from one custody to another for the purpose of trial; and

(f) that the person of a defendant within the Republic be brought in on a return to a warrant of arrest.

(2) Rules to regulate the procedure in cases under this section may be prescribed by the Judicial Committee.

Miscellaneous Provisions

229. Swearing of affidavits

Affidavits and declarations to be used before the Supreme Court may be sworn and declared before a judicial officer, notary public or advocate not acting in the proceedings concerned.

230. Shorthand notes of proceedings

Shorthand notes may be taken of the proceedings at the trial of any person before the Supreme Court, and a transcript of such notes shall be made if the court so directs, and such transcript shall for all purposes be the official record of the proceedings at such trial.

231. Copies of proceedings

If any person affected by any judgment or order passed in any criminal proceedings desires to have a copy of the judgment or order or other part of the official record, he shall on applying for such copy be furnished therewith free of cost.

232. Forms

Such forms as the Chief Justice may from time to time approve, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

233. Expenses of witnesses etc.

Subject to any law any court may order payment by the Republic of the reasonable expenses of any complainant, witness or interpreter attending before such court for the purposes of any trial or other proceeding under this Code.

234. Court fees

(1) Subject to subsection (2) no fees shall be levied in the registry of any court in any criminal proceedings under this Code.

(2) Where a civil claim (other than a claim falling within the provisions of section 64 of the Employment Act [Cap. 160]) is made in the course of criminal proceedings under Part 12 of this Code, the prescribed court fees applicable to civil matters shall be levied.

SCHEDULE

(section 1)

COGNISABLE OFFENCES

Note: The entries in the second column of this schedule, headed "Offence" are not intended as definitions of the offences described in the several corresponding sections of the Penal Code or even as abstracts of those sections, but merely as references to the subject of these sections, the number of which is given in the first column.

Section	***Offence***	***Whether the Police may arrest without warrant***
Attempts and Conspiracy		
28(4)	Attempted offence	May arrest without warrant if arrest for the offence attempted may be made without warrant, but not otherwise
29(4)	Conspiracy to commit an offence	May arrest without warrant if arrest for the offence conspired at may be made without warrant, but not otherwise
Participation In Criminal Offences		
30	Aiding, counselling or procuring the commission of an offence	May arrest without warrant if arrest for the offence aided, counselled or procured may be made without warrant, but not otherwise
34	Acting as accessory after the principal fact	May arrest without warrant if arrest for the offence may be made without warrant, but not otherwise
35	Inciting or soliciting the commission of an offence.	May arrest without warrant if arrest for the offence incited or solicited may be made without warrant, but not otherwise
Offences Against Public Order		
59(1)	Treason	May arrest without warrant
60	Incitement to mutiny	May arrest without warrant
61	Communication of secrets	May arrest without warrant
62	Sabotage	May arrest without warrant
64	Seditious conspiracy	May arrest without warrant
65(1)	Seditious statements	May arrest without warrant
66(1)	Seditious publications	May arrest without warrant
69	Unlawful assembly	May arrest without warrant
70	Riot	May arrest without warrant
71	Forcible entry	May arrest without warrant
72	Forcible detainer	May arrest without warrant
73(1)	Corruption and bribery of officials	May arrest without warrant
Misleading Justice		
75	Perjury	Shall not arrest without warrant
76	False statements	Shall not arrest without warrant
77	Fabricating evidence	Shall not arrest without warrant
78	Destroying evidence	Shall not arrest without warrant
79	Conspiracy to defeat justice	Shall not arrest without warrant
80	False statements by interpreter	Shall not arrest without warrant
81	Deceiving witnesses	Shall not arrest without warrant
82(1)	Offences relating to judicial proceedings	Shall not arrest without warrant
Escapes and Rescues		
83	Rescue from lawful custody	May arrest without warrant
84	Escape from lawful custody	May arrest without warrant
85	Aiding prisoners to escape	May arrest without warrant
86	Removal of property under lawful seizure	May arrest without warrant
87	Obstructing court officers	May arrest without warrant
Offences Relating to Religion		
88	Insult to religion of any class	Shall not arrest without warrant
89	Disturbing religious assemblies	Shall not arrest without warrant
Offences Against Morality		

Section	***Offence***	***Whether the Police may arrest without warrant***
91	Rape	May arrest without warrant
92	Abduction	May arrest without warrant
93(1)	Indecent matter	May arrest without warrant
94(1)	Indecent act in public place	May arrest without warrant
95(2)	Incest	May arrest without warrant
96(1)	Sexual intercourse with girl under care and protection	May arrest without warrant
97(1) and (2)	Unlawful sexual intercourse	May arrest without warrant
98	Indecent assault	May arrest without warrant
99	Homosexual acts	May arrest without warrant
100	Gross indecency	May arrest without warrant
101	Prostitution	May arrest without warrant
Offences Against the Person		
102	Slavery	May arrest without warrant
103	Abandonment of incapable person	May arrest without warrant
104(2)	Duty to provide the necessaries of life	May arrest without warrant
105	Kidnapping	May arrest without warrant
106(1)	Intentional homicide	May arrest without warrant
107	Intentional assault	If penalty (a) applies, shall not arrest without warrant; if penalty (b), (c) or (d) applies, may arrest without warrant
108	Unintentional harm	If penalty (a) applies, shall not arrest without warrant; if penalty (b) or (c) applies, may arrest without warrant
113	Killing unborn child	May arrest without warrant
114	Criminal nuisance	Shall not arrest without warrant
115	Threats to kill person	May arrest without warrant
116	Aiding suicide	May arrest without warrant
117(1) and (2)	Abortion	May arrest without warrant
118	False imprisonment	May arrest without warrant
119	Endangering transport	May arrest without warrant
Offences Against Reputation		
120	Criminal defamation	Shall not arrest without warrant
121	Abusive or threatening language	Shall not arrest without warrant
Offences Against Property		
125	Theft, misappropriation and false pretences	May arrest without warrant
126	Offences resembling theft	May arrest without warrant
127	Obtaining credit fraudulently	May arrest without warrant
128	Fraud by trustee	Shall not arrest without warrant
129	False statement by promoter	Shall not arrest without warrant
130	False accounting	Shall not arrest without warrant
131	Receiving property dishonestly obtained	May arrest without warrant
132	Demanding money etc. with menaces	May arrest without warrant
133	Malicious damage	May arrest without warrant
134	Arson	May arrest without warrant

Section	***Offence***	***Whether the Police may arrest without warrant***
135	Wrecking	May arrest without warrant
136(1)	Maltreatment of animals, birds or fish	Shall not arrest without warrant
137	Robbery	May arrest without warrant
138	Extortion	May arrest without warrant
140	Forgery	May arrest without warrant
141	Uttering forged documents	May arrest without warrant
142	Counterfeit currency	May arrest without warrant
143(1)	Unlawful entry	May arrest without warrant
144	Criminal trespass	Shall not arrest without warrant
145	Piracy	May arrest without warrant
146(1) and (3)	Hijacking	May arrest without warrant
147	Obscene publications	Shall not arrest without warrant
148	Idle and disorderly	Shall not arrest without warrant
149	Unlawful carriage of weapons by night	Shall not arrest without warrant
150	Unlawful discrimination	Shall not arrest without warrant
151	Witchcraft	Shall not arrest without warrant

Table of Amendments (since the Revised Edition 1988)

1	*Amended by Acts 13 of 1984, 8 of 2003, 37 of 2021*
18(1)	*Amended by Act 13 of 1984*
23A–23Q excluding 23O	*Inserted by Act 13 of 1984*
26(2)	*Amended by Act 13 of 1984*
28	*Repealed by Act 8 of 2003*
30-32	*Repealed by Act 8 of 2003*
34	*Amended by Act 13 of 1984*
35(1)	*Amended by Act 13 of 1984*
35(2),(3)	*Substituted by Act 13 of 1984*
35(4)	*Inserted by Act 13 of 1984*
36(1)	*Amended by Act 13 of 1984*
48(1)	*Amended by Act 13 of 1984*
76(2)	*Inserted by Act 13 of 1984*
85(1)	*Amended by Act 13 of 1984*
86(1),(2)	*Substituted by Act 13 of 1984*
86(3)	*Inserted by Act 13 of 1984*
86(3)	*Renumbered to 86(4) by Act 13 of 1984*
86(4)	*Repealed by Act 13 of 1984*
89(2)(c),(f)	*Amended by Act 13 of 1984*
98(1)	*Amended by Act 13 of 1984*
98(2)	*Substituted by Act 13 of 1984; amended by Act 13 of 1989*
103	*Amended by Act 13 of 1984*
113	*Repealed by Act 13 of 1984*
118 & 119	*Repealed by Act 14 of 2006*
121(2)	*Amended by Act 13 of 1984*
124(2)(e),(f)	*Amended by Act 13 of 1984*
129 (& heading)	*Amended by Act 13 of 1984*
132(1),(2)	*Amended by Act 8 of 2003*
139(1)	*substituted by Act 13 of 1984*
139(3),(4)	*Inserted by Act 13 of 1984*
140(4)	*Repealed by Act 13 of 1984*
146(3)	*Substituted by Act 8 of 2003*
146(4)	*Inserted by Act 8 of 2003*
149	*Amended by Act 13 of 1984*
150(2)	*Amended by Act 13 of 1984*
151	*Amended by Act 8 of 2003*
153	*Amended by Act 13 of 1984*
156(1),(3)	*Amended by Act 13 of 1984*
157(2)	*Repealed by Act 13 of 1984*
153 – 159 (Part 8)	*Repealed by Act 13 of 1989*
171	*Substituted by Act 13 of 1989*
171A	*Inserted by Act 13 of 1989*
173	*Repealed by Act 13 of 1989*
178	*Substituted by Act 13 of 1984;*
179	*Amended by Act 13 of 1984;*
175 - 180	*Repealed by Act 13 of 1989*
181 - 186	*Repealed by Act 13 of 1984*
187(1)	*Substituted by Act 13 of 1989*
200(1),(2),(4)	*Amended by Act 13 of 1984*
201(7) (8), (9)	*Inserted by Act 13 of 1984*
208(heading)	*Substituted by Act 13 of 1984*
208(3),(4),(5)	*Inserted by Act 13 of 1984*
218 – 220 (Part 13)	*Repealed by Act 8 of 2003*
221(1)	*Substituted by Act 13 of 1989*
227	*Amended by Act 13 of 1984*
233	*Amended by Act 13 of 1989*
234	*Substituted by Act 13 of 1984*