

LAWS OF THE NEW SUDAN

THE CODE OF CRIMINAL PROCEDURE, 2003

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(PROVISIONAL ORDER)

THE CODE OF CRIMINAL PROCEDURE, 2003

CHAPTER 1

PRELIMINARY PROVISIONS

1. Title and Commencement

This Code may be cited as “the Code of Criminal Procedure, 2003, and shall come into force on the date of Signature.

2. Repeal and Saving

As of the date of commencement of this Code the Code of Criminal Procedure 1994 shall be repealed: -

Provided that all proceedings and orders made or issued there under shall remain in force unless amended or repealed in accordance with the provisions of this Code.

3. Principles to be Observed.

It shall be observed in the application of this Code that every accused person shall have the right of a fair and speedy trial; that every accused person is presumed innocent until his guilt is proved beyond reasonable doubt; that no punishment shall be inflicted upon any person exceeding that prescribed by the law in force at the time such offence was committed and that no person shall be subject to cruel or inhuman treatment or punishment.

4. Trial of Offenses under The Penal Code and other laws.

All offences under the Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained, and all offenses against any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but shall be subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offence.

5. Definitions

(1) In this Code, unless the context otherwise requires, the following words and expressions shall have the meaning assigned to them respectively: -

- (a) “**Chairman**” means the Chairman of the Sudan People’s Liberation Movement (SPLM) and Civil Authority of the New Sudan (CANS).

- (b) **“Charge”** includes any head of charge when the charge contains more heads than one;
 - (c) **“Complaint”** means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person whether known or unknown has committed an offence, but it does not include a police report;
 - (d) **“Court”** Except where otherwise expressly stated the word “Court” means a Court established under this Code;
 - (e) **“Inquiry”** includes every inquiry (other than a trial) conducted under this Code by a Magistrate or Court but does not include an investigation conducted under Chapter XV by a Magistrate as provided in section 138;
 - (f) **“Investigation”** includes all proceedings under Chapter XV or section 138 for the collection of evidence;
 - (g) **“The Local Limits of Jurisdiction”** of a Magistrate or Court means the local limits of Region, County or Payam in which the Magistrate or Court ordinarily exercises his or its functions, but a Magistrate except in so far as his powers are limited by the terms of his appointment or otherwise may exercise his powers in any part of the New Sudan in which he happens to be;
 - (h) **“Officer in Charge of a Police Station”**, means the policeman for the time being in charge of the police station;
 - (i) **“Pleader”** means any person authorized under section 210 to act as a pleader in a criminal proceeding;
 - (j) **“Policeman”** means any member of the police force of whatever rank.
 - (k) **“Chief”** includes any chief, sub-chief or headman of a Village or Boma Payam or of any town, and any other person by whatever title known, and shall be appointed by the Government to perform functions similar to those of a policeman.
- (1) **“Take Cognizance”** means take notice in an official capacity.
 - (2) **“Illegal Omissions”** Words which refer to acts done shall include illegal omissions.
 - (3) **“Words to have same meaning as in Penal Code”** All words and expressions used and defined in the Penal Code shall have the meanings attributed to them by that Code.

6. Powers of Acting Officials.

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

7. Delegation of powers by the Chairman.

The Chairman may by order signed by him delegate all or any of the powers reserved to him under this Code and subject to any restriction or modification and either generally or in any particular case or classes of cases, to any person or persons whether he considers fit and proper.

CHAPTER II

CONSTITUTION OF CRIMINAL COURTS

8. Criminal Courts.

There shall be the following six classes of Criminal Courts in the New Sudan: -

- (a) High Court;
- (b) County Courts of Magistrates of the first class;
- (c) County Courts of Magistrates of the second class;
- (d) Payam Courts;
- (e) Regional Courts;
- (f) Chiefs Courts.

9. Constitution of High Courts.

A High Court shall consist of one or more Judges and shall be constituted by a warrant of establishment issued by the Chairman.

10. Ex-Officio Magistrates:

By virtue of his office every Judge of the Court of Appeal, High Court, County Court Judge of the first class shall be a Magistrate of the First Class.

10. A Constitution of Payam Courts.

The Chief Justice may constitute Payam Courts who shall have the powers: -

- (a) Provided for under section 20 of this code
- (b) Any other powers envisaged in its warrant of establishment provided for under section 20 of this Code.

11. Conferment of Temporary Powers.

The Chief Justice may confer temporary powers of a magistrate of the first or second class on any public servant or any other person when he thinks fit for exercising judicial function.

12. Subordination of Magistrates to High Court Judges

All Magistrates exercising their functions within any Region or Circuit shall be subordinate to the High Court Judge who shall, subject to any directions from the Chief Justice, distribute the business amongst the magistrates subordinate to him.

**CHAPTER III
POWERS OF CRIMINAL COURTS**

Description of offences Triable by Each Court,

13. Offences under Penal Code.

Subject to the other provisions of this Code, any offence under the Penal Code may be tried by any Court, by which such offences shown in the sixth column of the first Schedule to be triable or by any Court with more powers.

14. Offences under other Laws:

- (1) Any offence under any other law may be tried by any Court mentioned in that behalf in the law or by any Court with greater powers, but shall not be triable summarily unless it is explicitly so provided or unless it is provided that it may be tried by a Court of second class Magistrate.
- (2) When no Court is so mentioned it may be tried by any Court constituted under this Code but not summarily unless it is an offence not punishable with death or imprisonment for a term exceeding six months:
Provided that: -
 - (a) A Magistrate of the first class shall not try an offence punishable with imprisonment for a term which may exceed seven years or with fine exceeding LS.500;
 - (b) A Magistrate of the second class shall not try an offence punishable with imprisonment for a term which may exceed three years or with fine exceeding LS.250;
 - (c) An offence punishable with death shall be tried by a High Court.

15. Trial of Juvenile Offenders:

An offender who in the opinion of the Court is under eighteen years of age may be tried either summarily or non-summarily by the Court of a Magistrate of the first or second class for any offence not punishable with death.

16. Special Courts:

1. The Chief Justice may constitute special courts for the trial of juvenile offenders who are under eighteen years of age and he may prescribe the procedure to be followed by such courts.
2. The Chief Justice may convene a special Court to be presided over by a High Court Judge or any other senior judge to be assisted by two assessors for the trial of tribal or sectional fights involving capital offences.
3. A High Court Judge may convene a special Court presided over by a 1st Class Magistrate assisted by four assessors for the trial of tribal or sectional fights, disputes etc not involving capital offences.

Sentences, which may be passed by courts of various classes.

17. Powers of High Court:

A High Court may pass any sentence authorized by law.

18. Powers of the County Court of Magistrate of First Class:

- (1) The Court of a Magistrate of the first Class may pass the following sentences, when trying an offence non summarily namely: -
 - (a) imprisonment for a term not exceeding five years;
 - (b) fine not exceeding Ls300;
 - (c) whipping.
 - (d)detention under section 67 of the Penal Code.
- (2) When trying an offence summarily when it may pass the following sentences, namely: -
 - (i) imprisonment for a term not exceeding one year;
 - (ii) fine not exceeding Ls100;
 - (iii) whipping.

19. Powers of County Court of Magistrate of Second Class:

The County Court of a Magistrate of the Second Class may pass the following sentences, namely: -

- (a) imprisonment for a term not exceeding two years;
- (b) fine not exceeding Ls.200, 000;
- (c) whipping;
- (d) detention under section 67 of the Penal Code except when trying an offence summarily when it may pass the following sentences, namely: -
 - (a)imprisonment for a term not exceeding six months;
 - (b)fine not exceeding Ls.50, 000
 - (c)whipping.

20. Powers of Payam Court.

The Payam Court shall only try cases summarily and may pass the following sentences namely: -

- (a) imprisonment for a term not exceeding one year;
- (b) fine not exceeding Ls.100.

21. Combination of Sentences:

Any Court may pass any lawful sentence combining any of the sentences, which it is authorized by law to pass.

22. Imprisonment in Default of Payment of Fine:

Any criminal court may impose any term of imprisonment in default of payment of fine which is authorized by Sections 70 and 71 of the Penal Code in case of such default; provided that:

- (i) the term shall not be in excess of the powers of the Court under sections 18 to 21.
- (ii) in any case in which imprisonment imposed in default of payment of fine shall not exceed: -
 - (a) three years, if the magistrate is of the first class or six months if the case is tried summarily, and
 - (b) one year if the Magistrate is of the second class or three months if the case is tried summarily.

23. Sentences in Case of Conviction of Several Offences at one Trial:

- (1) When a person is convicted at one trial of two or more distinct offences, the Court may, subject to the provisions of section 74 of the Penal Code, sentence him for such offences to the several punishments prescribed therefore, which such Court is competent to inflict, such punishments, when consisting of imprisonment shall run consecutively unless the Court directs that such punishments shall run concurrently.
- (2) In cases falling under this section a Court shall not be limited by the provisions of sections 18, 19 and 20 of this Code.

Provided that, subject to the exception in section 70 of the penal Code, a Magistrate shall not impose consecutive sentences exceeding in the aggregate twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

24. Power to Direct Release on Probation:

- (1) When any person, not under eighteen years of age, is convicted by a Court of a Magistrate of the first or second class or by a Court of any greater powers, of an offence punishable with imprisonment for not more than seven years, or when any person under eighteen years of age or any woman is convicted by any such court as foresaid of an offence not punishable with death and if in either case no previous sentence of an imprisonment exceeding six months is proved against such a person during the period of five years preceding the present conviction or that a period of ten years has passed since he or she served the sentence in the case of any other previous sentence and it appears to the court regard being had to the age, character antecedents of the offender and to the circumstances in which the offence was committed that it is expedient that the offender be released on probation of good conduct, the Court may instead of sentencing him at once to any punishment direct that he be released on his entering into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years or as the Court may direct, and in the mean time to keep peace and be of good behaviour, and the Court may make it a condition of such bond that the victim be paid by or on behalf of the offender such damages for injury or compensation for loss caused by the offence, as the Court thinks reasonable.
- (2) The Court of Appeal, The High Court or the County Court may make any order under this section when exercising their powers under Chapter XXIV.

**CHAPTER IV
ARREST AND PROCESS**

A. Arrest.

25. When Police etc. may arrest.

Any policeman or chief may arrest: -

- (a) any person for whose arrest he has a warrant, or whom he is directed to arrest by a Magistrate under section 28 or 29 of this Code;
- (b) any person who has been concerned in an offence for which according to the third column of the first Schedule here to or under any other laws for the time being in force, the police may arrest without warrant, or against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exists of his having been so concerned;
- (c) any person the order for whose discharge from prison has been cancelled by the Court of Appeal, the High Court or the County Court Judge under section 91 or any person the suspension or remission of whose sentence has been cancelled by the Chairman under section 276.
- (d) any person whom he reasonably suspects to be designing to commit an offence for which the police may arrest without a warrant, if it appears to him that the commission of the offence cannot be otherwise prevented;

NOTE: *See Section 107.*

- (e) any person required to appear by a proclamation published under section 61;
- (f) any person found taking precautions to conceal his presence in suspicious circumstances or who being found in suspicious circumstances has no ostensible means of subsistence or cannot give a satisfactory account of himself;
- (g) any person in whose possession property is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such property.

NOTE: *For power of police to seize property suspected to be stolen see section 31.*

- (h) any person who obstructs a policeman while in the execution of his duty;
 - (i) any person who has escaped or attempts to escape from lawful custody;
 - (j) any person reasonably suspected of being a deserter from the SPLA or other regular Forces.
 - (k) any person who in his presence has committed or has been accused of committing any offence for which the police may not according to the third column of the First Schedule to this Code, arrest without a warrant if, on his demand such person refuses to give his name and address or gives a name or address which he believes to be a false one; and
- (1) Any person who has been placed under police supervision and whom he reasonably suspects to have committed or to be committing a breach of any of the restrictions mentioned in section 92B which are applicable to him.

26. When Police, Chief ... etc may Require Identification:-

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

27. When Private Person may Arrest.

Any private person may arrest: -

- a. any person for whose arrest he has a warrant or whom he is directed to arrest by a Magistrate under sections 28 or 29;
- b. any person who has escaped from his lawful custody;
- c. any person required to appear by a proclamation published under section 61;
- d. any person committing in his presence an offence for which the police are authorized to arrest without a warrant.

28. Arrest for an Offence in Magistrate's Presence.

Any Magistrate may arrest or direct the arrest of any person committing any offence in his presence and may thereupon commit the offender to custody.

29. Arrest by or in presence of Magistrate.

Any Magistrate may at any time arrest or direct the arrest in his presence of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

30. Resisting Endeavor to Arrest.

- (1) If a person liable to arrest resists the endeavor to arrest him or attempts to evade the arrest, the person authorized to arrest him may use all reasonable means necessary to effect the arrest.
- (2) Provided that this section shall not give the right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for a term which may extend to ten years.

31. Power to Seize Offensive Weapons:-

The 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 whom the person arrested is required by the warrant of arrest or by this Code to be produced.

32. Assistance to Arrest or Prevent Escape:-

Every person is bound to assist a Magistrate or other person reasonably demanding his aid in arresting or preventing the escape of any person whom such Magistrate or other person is authorized to arrest.

NOTE: *for punishment for omission to assist see section 162 of the Penal Code.*

33. Search of Place Entered by Person Sought to be Arrested:-

- (1) If anyone who is authorized to arrest any person has reason to believe that such person has entered into or is within any place, he may enter such place and there search for the person to be arrested.
- (2) The person residing in or being in charge of such place shall on demand allow free ingress thereto and afford all reasonable facilities for search.
- (3) If on demand such ingress is refused, the person authorized to make the arrest may effect an entry by force.

34. Pursuit of Offender into other Jurisdictions.

Any person authorized to effect the arrests of any other person may for the purpose of affecting the arrest pursue him into any part of the New Sudan.

35. No Unnecessary Restraint.

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

B. PROCEDURE AFTER ARREST.

36. Procedure after Arrest by Private Person.

- (1) Any person, except a policeman or a Magistrate making an arrest without a warrant or a Magistrate's order shall without unnecessary delay take the person arrested to the nearest police station or hand him over to a policeman.
- (2) If the arrested person appears to be one whom a policeman is authorized to arrest, the policeman shall re-arrest him; otherwise the arrested person shall be at once released.

37. Person arrested to be taken before Magistrate or Officer in charge of Police Station.

A policeman making an arrest without warrant or re-arrest under section 36 shall without unnecessary delay take or send the person arrested before a Magistrate competent under Chapter XV to take cognizance of the case or before the officer in charge of a police station.

38. Procedure when Offender has refused to give his Name and Address.

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

- (a) if he be found to have given his true name and address be released;
- (b) when his true name and address are ascertained be released on his executing a bond, with or without sureties, to appear before a Magistrate if and when required;
- (c) should his true name and address not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties, be forthwith forwarded to the nearest Magistrate competent under Chapter XV to take cognizance of the case.

NOTE: *For form of bond and bail-bond see Schedule 111, 19.*

39. Treatment of Arrested Person.

The arrested person shall not be subjected to any treatment against human dignity nor shall he be physically or morally abused; and he shall always be entitled to contact his advocate.

40. Police to Report Arrests.

Officers in charge of police stations shall immediately report to the Magistrate or the appropriate superior officer all cases of arrest without warrant within their respective Counties and Payams.

41. Search of Arrested Person.

(1) A policeman making an arrest or receiving an arrested person from a person by whom the arrest has been made shall search the arrested person or cause him to be searched and place in safe custody all articles, other than necessary wearing found upon him, and shall make a list thereof.

NOTE: *For disposal of such articles see sections 301 to 309:*

(2) When the arrested person is a woman the search shall not be made except by a woman.

42. Discharge of Arrested Person.

No person who has been arrested by a policeman or re-arrested under section 36 shall be discharged except on his own bond or on bail or under the special order of a Magistrate.

43. Register of Arrests.

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

**CHAPTER V
PROCESSES TO COMPEL APPEARANCE**

Summons.

44. Form of Summons.

(1) Every summons issued under this Code by a Court or Magistrate shall be in writing, in duplicate, signed or sealed by the presiding Magistrate of the Court or the Magistrate.

- (2) Such summons shall be served by a policeman, a retainer, chief or by any officer of the Court issuing it or other public servant who, under any rule for the time being in force, may be authorized to serve summons.

Note: (1) *A summons or warrant of arrest may be issued by any Magistrate Competent to inquire into an offence that is, by any Magistrate who has not been prohibited under section 135 (2) from holding the inquiry or the terms of whose appointment do not either expressly or impliedly limit his powers in this respect.*

(2) *See section 64 also.*

(3) *For forms of summons to accused person and witnesses see Schedule 111, 1 and 2 respectively,*

45. Service and Signature of Summons:-

- (1) The summons shall if practicable are served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.
- (2) The person served shall, if so required by, the serving officer, sign or seal a receipt therefore on the back of the other duplicate.

46. Service on Company.

Service of a summon on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation at any office of the corporation in the New Sudan.

47. Service when Person Summoned Cannot be Found.

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

48. Inability of Person Served to Sign or Seal.

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

49. Service of Summons outside Local Limits.

A summon requiring to be served outside the local limits of the jurisdiction of the Court or Magistrate issuing it shall ordinarily be sent in duplicate to a Magistrate, within whose jurisdiction the person summoned resides or is to be there served,

50. Proof of Service.

An affidavit or declaration purporting to be made before a Magistrate by the serving officer or by a witness to the service that a summon has been served and a duplicate of the summon purporting to be endorsed (in manner provided by section 15 or section 47) 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.

Warrant of Arrest

51. Form of Warrant of Arrest.

- (1) Every warrant of arrest issued under this Code by a Court or Magistrate shall be in writing, signed or sealed by the presiding Magistrate of the Court or the Magistrate.
- (2) Every such warrant shall remain in force until it is cancelled by the Court or Magistrate issuing it or until it is executed.

NOTE: (1) See *note to section 44*.
(2) *For form of warrant see Schedule 111, 3.*

52. Court may Direct Security to be Taken.

- (1) A Court or Magistrate issuing a warrant for the arrest of any person shall have discretion to direct by endorsement on the warrant that, if such person executed a bond with sufficient sureties for his attendance before the Court or Magistrate at a specified time and thereafter until otherwise directed, the person to whom the warrant is directed shall, on receiving security, release such person from custody.
- (2) The endorsement shall state: -
 - (a) the number of sureties;
 - (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and
 - (c) the time and place at which he is to attend.
- (3) Whenever security is taken under this section, the person to whom the warrant is directed shall forward the bond to the Court or Magistrate.

NOTE: *For form of endorsement of warrant see Schedule 111, 3*
And for forms of bond and bail-bond see Schedule 111, 18

53. Warrants, to Whom Directed.

- (1) A warrant of arrest shall ordinarily be directed to one or more policeman or Chiefs: but the Court or Magistrate issuing the warrant may, if its immediate execution is necessary and no policeman or Chief is immediately available, direct it to any other person or persons.
- (2) When a warrant is directed to more than one person it may be executed by all or by any one of them.

54. Re-Direction of Warrants.

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

55. Notification of Substance of Warrant.

The 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.

56. Person Arrested to be brought before Court without Delay.

The person executing a warrant of arrest shall subject to the provisions of section 52 as to security, without unnecessary delay bring the person arrested before the Court or Magistrate specified in the warrant.

57. Where and When Warrant may be Executed.

A warrant of arrest may be executed at any place and at any time in the New Sudan.

58. Warrant Forwarded for Execution outside Jurisdiction.

- (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court or Magistrate issuing it, such Court or Magistrate may, instead of directing such warrant as laid down in section 53, forward it by post or otherwise to any Magistrate within the local limits of whose jurisdiction it is to be executed.
- (2) Such Magistrate shall endorse his name thereon and if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

59. Warrant Directed to Policeman for Execution outside Jurisdiction.

When a warrant is to be executed beyond the local limits of the jurisdiction of the Court or Magistrate issuing it, the person to whom it is directed shall, unless he believes that delay would prevent its execution, take it for endorsement to Magistrate within the local limits of whose jurisdiction the warrant is to be executed.

60. Procedure on Arrest under Warrant outside Jurisdiction.

When a warrant of arrest is executed outside the local limits of the jurisdiction of the Court or Magistrate issuing it the person arrested shall, unless security is taken under section 52, be taken before a Magistrate within the local limits or whose jurisdiction the arrest was made. Such Magistrate shall, if the person arrested appears to be the same person intended by the Court or Magistrate which issued the warrant, either: -

- (a) Take security for his appearance in accordance with the provisions of Chapter XXX or as directed by any endorsement of the warrant under section 52 and forward the bond or bonds to the Court or Magistrate which issued the warrant,
- (b) Direct his removal in custody to such Court or Magistrate.

Provided that the arrested person may be taken directly before the Court or Magistrate issuing the warrant if this course is more convenient having regard to conditions of time, place and other circumstances.

Proclamation and Attachment.

61. Proclamation to Appear:-

(1) If a County Court Judge has reason to believe, whether after taking evidence or not, that a person against whom a warrant has been issued by himself or by any Court or Magistrate within his County, has absconded or is concealing himself so that such warrant cannot be executed, the County Judge may publish a written proclamation requiring him to appear at a specified place and a specified time not less than thirty days from the date of publishing the proclamation.

(2) The proclamation shall be published as follows: -

- (a) It shall be broadcasted or published through any suitable means of information media or be publicly affixed in some conspicuous place in the village in which such person ordinarily resides.
- (b) It shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place in such town or village; and
- (c) A copy thereof shall be affixed to some conspicuous part of the County Court.

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

Notes: - (1) *For forms of proclamation see Schedule 111, 5 (Accused) and 6 (Witness)*

- (2) *A policeman or Chief may arrest a person proclaimed under this section without a warrant. So may a private person. See section 25 (e) and section 27©.*
- (3) *For record of evidence in absence of accused see section 230.*

62. Attachment of Property of Person Absconded.

- (1) The County Court Judge may at any time thereafter order the attachment of any property, movable or immovable or both, belonging to the proclaimed person;
- (2) Such order shall authorize any official named in it to attach any property belonging to such person within the County in which it is made by seizure or in any other manner in which for the time being property may be attached by way of civil process; and it shall authorize the attachment in like manner of any property belonging to such person outside the County when endorsed by the County Court Judge within whose County is situate.
- (3) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Court but it shall not be sold until the expiration of three months from the date of the attachment, unless it is subject to speedy and natural decay or the County Court Judge considers that the sale would be for the benefit of the owner, in either of which cases the County Judge may cause it to be sold whenever he thinks fit.

Note: - *For forms of order of attachment see Schedule 111, 7 (Accused) and 8 (Witness).*

63. Restoration of Attached Property.

If, within one year from the date of the attachment, any person whose property is or has been at the disposal of the Court under section 62 appears voluntarily or being arrested is brought before the County Judge and proves to his satisfaction that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that he had not heard such a notice of the proclamation as to enable him to attend within the time specified therein, such property, so far as it has not been sold, and the net proceeds of any part thereof which has been sold shall after satisfying all costs incurred in consequence of the attachment, be delivered to him.

Other Rules Regarding Processes

64. Issue of Warrant in Lieu of or in Addition to Summons.

- (1) A Court or Magistrate empowered by this Code to issue a summon for the appearance of any person may, after recording its or his reasons in writing, issue a warrant for his arrest in addition to or in lieu of the summons if:
 - (a) whether before or after the issue of such summons, the Court or Magistrate sees reason to believe that he has absconded or will not obey the summons; or
 - (b) at the time fixed for his appearance he fails to appear and the summons is proved to have been duly served in time to admit of his appearing and no reasonable excuse is offered for his failure.
- (2) A Court or Magistrate empowered by this Code to issue a warrant for the arrest of any person may issue a summon in place of a warrant if it or he thinks fit.

Note: - For forms of warrant see Schedule 111, 3 and 4.

65. Power to take Bond for Appearance.

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

66. Provision of this Chapter generally Applicable to Summons and Warrants.

The provisions contained in this chapter relating to summons and warrants and their issue, service and execution shall so far as the case may be applied to every summons and every warrant issued under this Code.

CHAPTER VI

MEANS TO SECURE THE PRODUCTION OR DISCOVERY OF DOCUMENTS AND OTHER THINGS AND FOR THE DISCOVERY AND LIBERATION OF PERSONS UNLAWFULLY CONFINED

67. Search in Pursuit

When any policeman, retainer or a Chief is pursuing any person suspected of having committed an offence for which a policeman may arrest without a warrant or is following the tracks of any such person and it appears to him probable that any property in respect of or by means of which the offence has been committed is in any place, he may enter such place and there search for and seize such property and the provisions of such-sections (2) and (3) of section 33 shall apply.

68. Summons to produce Document or other Things.

When a Court or Magistrate or an officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceedings under this Code by or before such Court, Magistrate or officer, the Court or Magistrate may issue a summons, or the officer a written order, to any person in whose possession or power the document or thing is believed to be, requiring, him to attend and produce it or to cause it to be produced at the time and place stated in the summon or order.

Notes: - (1) *For form of summons see Schedule 111,9.*

69. Issue of Search by Court.

Where for any reason it appears to a Court or Magistrate that it is impossible or inadvisable to proceed under the last preceding section or that a general search or inspection would further the purposes of any investigation, inquiry, trial or other proceedings under this Code, the Court or Magistrate may issue a search warrant authorizing the person to whom it is addressed to search or inspect generally or in the place or places mentioned in the warrant for any document or thing specified or for any purpose described in the warrant and to seize any such document or thing and to dispose of it in accordance with the terms of the warrant.

Notes: - *For form of warrant see Schedule 111, 10.*

70. Application for Search Warrant.

Where an investigation under this Code is being made by an officer in charge of a police-station, he may apply to any Court or Magistrate within the local limits of whose jurisdiction his station is situate for the issue of a search-warrant under section 69.

71. Search for Stolen Property etc.

Where upon information and after such inquiry, if any, as he thinks necessary a Magistrate has reason to believe that any place is used for the deposit or sale of stolen property or that there is kept or deposited in any place any property in respect of or by means of which an offence has been committed or which is intended to be used for any illegal purpose, he may issue a search-warrant authorizing any Magistrate or policeman or retainer or chief: -

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

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

Note: -*For form of warrant see Schedule 111, 11.*

72. Search for Person Wrongfully Confined:

- (1) When a Magistrate of the first or second class upon information and after such inquiry, if any, as he thinks necessary has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant authorizing the person to whom it is address to search for the confined person and to bring him before the Magistrate; upon the confined person being brought before him the Magistrate shall make such order as seems proper.

Note: *For form of warrant see Schedule 111, 12.*

- (2) Upon complaint made on oath to a Magistrate of the first or second class of the abduction for any unlawful purpose or of the unlawful detention of any person the Magistrate may after such inquiry, if any as he thinks necessary make an order for the production before himself of such person or for the immediate restoration of such person to his liberty or if such person is under fourteen years of age, to his parent, guardian or other person having lawful charge of him and may compel compliance with such order using such force as may be reasonably necessary.

Upon the production before him of such person the Magistrate shall make such order as seems proper.

Note: - *See section 289 of the Penal Code.*

73. Search To Be Made in Presence of Witnesses.

Searches under this chapter shall, unless the Magistrate owing to the pressing nature of the case otherwise directs, be made in the presence of two reliable witnesses to be summoned by the person to whom the search-warrant is addressed. A list of all things seized and of the places in which they are found shall be drawn up by the person carrying out the search and shall be signed or sealed by the witnesses.

74. Occupant of Place Searched May Attend.

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

75. Search of Persons Found in Place.

- (1) Where any person in or about a place which is being searched is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. Provided that if such person is a woman, the search shall not be made except by a woman.
- (2) A list of all things found on his person and seized shall be prepared and witnessed in the manner mentioned in section 73 and a witnessed copy of the list shall be delivered to the person searched, if he so requires.

76. Execution of Search Warrant Outside Jurisdiction.

Every person executing a search-warrant beyond the local limits of the jurisdiction of the Court or Magistrate issuing it shall before doing so apply to some Magistrate within the local limits of whose jurisdiction search is to be made and shall act under his directions.

77. Provisions as to Warrant of Arrest to Apply to Search Warrant.

The provisions of section 33 as to ingress and all other provisions hereinbefore contained as to warrants of arrest shall, so far as applicable, apply to search-warrants.

78. Magistrate May Direct Search in His Presence

Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.

79. Impounding of Documents etc.

Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

CHAPTER VII

Prevention of Crime, Security for Keeping Peace and Good Behaviour and of Police Supervision.

Note: *For general provisions as to bonds, see Chapter XXXI.*

80. Security On Conviction.

- (1) Whenever any person is convicted by a High Court or the County Court of a Magistrate of the first or second class of any offence involving or likely to cause a disturbance of the public tranquility or breach of the peace and such Court is of opinion that it is expedient to require such person to execute a bond for keeping peace and good behaviour, such Court may at the time of passing sentence on such person order him to execute a bond for a sum proportionate to his means and with or without sureties for keeping peace and good behaviour for any period not exceeding one year in the case of a County Court of a Magistrate of the first or second class, and may in lieu of or in addition to requiring such security, make an order of police supervision.
- (2) If the Court has not made any order under sub-section (1), the Court of Appeal or the High Court Judge may when exercising their powers under Chapter XXIV make such orders as the Court might have made under sub-section (1).

Notes (1) *For form of bond see Schedule III, 22: See also Section 89.*

(2) *For confirmation of and appeal against an order under this section see sections 252 and 253.*

81. Security in Other Cases.

Whenever a Magistrate of the first or second class is informed that any person is likely to commit a breach of peace or to disturb public tranquility or to do any illegal act which may probably cause breach of peace or disturb public tranquility, the Magistrate may issue a summons requiring such person to attend before the Court to execute a bond with or without sureties for keeping peace or refraining from illegal acts likely to disturb public tranquility for any period not exceeding one year or to show cause why he should not execute such bond and such summons may in addition to the foregoing or in substitution therefore require such person to show cause why an order of police supervision should not be made.

Note: *For form of summons see Schedule 1 1 1, 13.*

82. Security for good Behaviour From Habitual Offenders.

Whenever a Magistrate of the first or second class received information that any person within the local limits of his jurisdiction: -

- (a) habitually commits any offence punishable under Sections 304 to 315A. (Relating to kidnapping, abduction and forced labour) inclusive of the Penal Code; or
- (b) is by habit a robber, housebreaker or thief; or
- (c) is by habit a receiver of stolen property knowing the same to have been stolen; or
- (d) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property; or

- (e) habitually commits mischief, extortion or cheating or counterfeiting coin, notes or revenue stamps or attempts so to do; or
- (f) habitually commits or attempts to commit or abets the commission of offences involving breach of peace; or
- (g) is so desperate and dangerous as to render his being at large without security hazardous to the community.

Such Magistrate may issue a summons requiring such person to attend before the Court to execute a bond with sureties for his good behaviour for any period not exceeding two years or to show cause why he should not execute such bond, and such summons may in addition to the foregoing or in substitution therefore require such person to show cause why an order of police supervision should not be made.

Note: *For form of summons see Schedule 1, 1, 1, and 14.*

83. Warrant for Arrest May be issued if Breach of Peace is likely.

Whenever it appears to a Magistrate acting under section 81 or 82 upon the report of a policeman or upon other information (the sustenance of which report or information shall be recorded by the Magistrate) that there is reason to fear the commission of a breach of peace or disturbance of public tranquility and that such breach of peace or disturbance of public tranquility cannot be prevented otherwise than by the immediate arrest of any person, such Magistrate may at any time issue; a warrant for his arrest.

Note: - *For form of warrant see Schedule 1 1 1, 15.*

84. Summons or Warrant Under Sections 81, 82 or 83.

A Magistrate when issuing a summon or warrant under sections 81, 82 or 83 shall therein set forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required, and if it is desired if the information be true to make an order for police supervision shall call upon the person summoned or arrested to show cause why an order for police supervision should not be made.

Note: - *For forms of summons and warrant see Schedule 111, 13, 14, and 15.*

85. Inquiry as to Truth of Information.

- (1) When any person has appeared or is brought before the Magistrate in compliance with a summon or warrant under sections 81, 82 or 83, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary.

- (2) Such inquiry shall be made as far as practicable in the manner hereinafter laid down for conducting trials and recording evidence in non-summary trials before a Magistrate, except that: -
- (a) no charge need be framed nor shall any witness be re-called for cross-examination except with the permission of the Court ; and be
 - (b) the Magistrate may refuse to release on bail any person arrested under section 83 unless he executes a bond of the nature specified in the warrant of arrest but limited in time to the conclusion of the inquiry.

Note: - *When a person appears in answer to a summon under section 81 of 82 and the Magistrate considers it necessary to detain him in custody pending the conclusion of the inquiry, he must issue a warrant of arrest under section 83.*

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

86. Order to Give Security

- (1) If on inquiry under section 85 it is proved that it is necessary for keeping the peace or preserving public tranquility or maintaining good behaviour as the case may be that the person in respect of whom the inquiry is made should execute a bond with or without sureties or should in addition or in lieu of executing such bond be placed under police supervision the Magistrate shall make an order accordingly provided that 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 summons or warrant issued under sections 81, 82 or 83, and provided further that no person shall be placed under police supervision unless he was called upon in the summons or warrant aforementioned to show cause why he should not be placed under police supervision.

Notes: - *(1) For form of bond see Schedule 1 1 1, 22. See also section 89.*

(2) For appeal against order under this section see section 253.

- (2) Every order of police supervision made under sub-section (1) shall be submitted for confirmation to the Court of Appeal or the High Court Judge, as the case may be.

87. Discharge of person Informed Against.

If on an inquiry under section 85 it is not proved that it is necessary for keeping peace or preserving public tranquility or maintaining good behaviour as the case may be that the person in respect of whom the inquiry is made should execute a bond, or should in addition to or in lieu of executing such bond be placed under police supervision the, Magistrate shall make an entry on the record to that effect and if such person is in custody only for the purpose of the inquiry shall release him or if such, person is not in custody shall discharge him.

88 Commencement of Period for which security is required.

- (1) If any person in respect of whom an order requiring security is made under section 80 or section 86 is at the time such order is made subject to 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 Court or Magistrate for sufficient reasons fixes a later date.

89. Contents of Bond.

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

90. Imprisonment in Default of Security.

If any person ordered to give security under section 80 or section 86 does not give such security on or before the date of the commencement of the period for which such security is to be given, he shall 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 ordered.

Notes: - (1) *For appeal against the order to give security when a person is committed to prison under this section, see sections 253 and 254.*

(2) *For form of warrant of commitment to prison see Schedule 1 1 1, 30.*

91. Power to Release Persons Imprisoned for failure to give Security.

- (1) Whenever the Court of Appeal or High Court Judge or County Court Magistrate of first class is of opinion that any person imprisoned for failing to give security under this chapter may be released without hazard to the public or to any person, it or he may order such person to be discharged; provided that if the order to give security was made or confirmed by the Court of Appeal, or the High Court Judge the County Magistrate of first class shall not make the order of discharge without the consent of the Court of Appeal.
- (2) Whenever any person has been imprisoned for failure to give security under this chapter, the High Court Judge or first class Magistrate may make an order reducing the amount of the security or the number of sureties or the time for which security has been required; provided that if the order to give security was made or confirmed by the High Court, the Court of Appeal or the County Judge shall not make an order under this sub-section without the consent of the Court of Appeal.
- (3) An order under sub-section (1) hereof may direct the discharge of such person either without conditions or upon any conditions which such person accepts.
- (4) If any condition upon which any such person is discharged is in the opinion of the Court of Appeal or High Court the County Court, as the case may be, not fulfilled, it or he may cancel the order of discharge and thereupon such person shall be recommitted to prison until the expiry of the period for which he was originally ordered to give security, unless before that time he gives such security.

Notes: - (1) *A policeman, retainer or chief may arrest such person without a warrant. See section 25 (c).*

- (2) *The power given in this section is entirely independent of the right to appeal under sections 253 and 254 against an order, failure to comply with which has resulted in the imprisonment of the defaulter. This section gives no right to appeal and the powers given in it may be exercised by the Court of Appeal or the High Court or the County Court Judge of first class Magistrate on its or his own motion.*

92. Power to Cancel Bond.

The Court of Appeal, the High Court or the County Court of first class Magistrate may at any time cancel any bond for keeping peace or refraining from illegal acts likely to disturb public tranquility or for good behaviour executed under this chapter.

Provided that if the order was made or confirmed by the Court of Appeal, the High Court Judge or the County Court Magistrate of first class shall not cancel the bond without the consent of the Court of Appeal and that in any other case the, High Court or the County Court Magistrate of first class shall record in writing its or his reasons for canceling the bond.

Note: - See note (2) to section 91. The principle in both sections is the same.

POLICE SUPERVISION

92. A Period of Supervision.

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

92. B Restrictions while under supervision.

- (1) A person placed under police supervision under the provisions of this Code shall be subject to such of the following restrictions as the Court making an order for such supervision shall direct: -
 - (a) he shall be required to reside within the limits of any town or County chosen by himself and specified vision in the opinion of the Court can be adequately effected provided that on due cause being shown the Commissioner for the Interior may at any time substitute the order for such Payam or town another, Payam or Town chosen by the person under supervision and being a Payam or town in which in the opinion of the Commissioner for the Interior supervision can be adequately effected.
 - (b) save as provided in paragraph (a) hereof he shall not be permitted to transfer his residence to any other Payam or town without the written authority of the Police Inspector of the Payam within which he is resident and consent of the police inspector of the Payam within which he desires to reside and subject to such conditions as to duration and place of abode as the Police Inspector aforesaid may determine.
 - (c) he shall not go outside the limits of the Payam or town within which he resides without the written permission of the Police Inspector of such Payam or town; or
 - (d) he shall at all times keep the Police Inspector of the Payam or Town in which he resides informed of the house or place in which he is resident.
 - (e) he shall whenever called upon so to do by the police authority of the Payam or town report himself to the nearest police station.
- (2) In addition to the restrictions set out in sub-section (1) of this section a person placed under police supervision shall also be subject to the following restrictions if the Court making the order specifically so directs, viz: -

He shall not remain out of his house or place of abode as notified under sub-section (1) paragraph (d) hereof between the hours of 10 pm. - 5 am, except with the written permission of the Police Inspector in charge.

92. C Punishment for Breach of Restrictions.

Any person placed under police supervision who commits a breach of any of the restrictions mentioned in section 92B. Which are applicable to him shall be liable on conviction by a Court of a Magistrate of the first or second class to imprisonment for a period not exceeding six months or to a fine not exceeding LS60 or with both.

Residence Orders

92. D Powers to Make Residence Orders.

- (1) Whenever a Magistrate of the first class is informed that the presence of any person in any County is against the interest of public security, the Magistrate may issue a summon requiring such person to attend before the Court to show cause why he should not be ordered to reside elsewhere.
- (2) Upon the appearance of any such person the Magistrate shall proceed to inquire into the truth of the information and to take such further evidence as may appear necessary.
- (3) Such inquiry shall be made as far as practicable in the manner hereinafter laid down for conducting trials and recording evidence in non-summary trials before a Magistrate except that no charge need be framed nor shall any witness be recalled for cross-examination except with the permission of the Court.
- (4) If on such inquiry it is proved that it is necessary for preserving public security that the person in respect of whom the inquiry is made cease to reside in the Payam the Magistrate shall make an order accordingly and may in addition, with the consent of the Commissioner for the Interior, order the person to reside in some other specified Payam or Payams.

92. E Power of arrest and Restriction of Residence

- (1) The Commissioner for Interior may order the detention or restriction of residence of any person for ten days if he is satisfied from the activities of such a person, or his movements or conduct that he is about or is likely to commit an act which is harmful to security of the New Sudan or public order.
- (2) Any person who has been detained or whose residence has been restricted under subsection (1) of this section shall be informed forthwith of the reasons for his detention or the restriction of his residence.
- (3) With the consent of the National Security Council, the term specified in subject (1) of this section may be increased to two terms each of which shall not exceed three months after which the detained person shall be released.

- (4) The Chairman may order the release of any person detained under this section or the termination of the restrictions on his residence.

CHAPTER VIII UNLAWFUL ASSEMBLES

Note: - *For definition of “unlawful assembly” see section 115 of the Penal Code.*

93. Assembly To Disperse On Command of Magistrate Or Police

Any Magistrate or officer in charge of a police station may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

94. Use Of Civil Force To Disperse.

If, upon being so commanded, any such assembly does not disperse or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police station may proceed to disperse such assembly by force and may require the assistance of any male person, not being a military officer or soldier acting as such, for the purpose of dispersing such assembly and if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law. Any such person whose assistance is so required shall be bound to render such assistance.

Note: - *For punishment for omitting to assist see section 162 of the Penal Code.*

95. Use of Military Force

If any such assembly cannot be otherwise dispersed and if it is necessary for the public security that it should be dispersed the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

96. Duty of Officer Commanding Troops Required by Magistrate To disperse Assembly.

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

- (2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force and do as little injury to person and property as may be consistent with dispersing the assembly and arresting and detaining such persons.

97. Power of Commissioned Military Officer to Disperse Assembly

When the public security is manifestly endangered by any such assembly and when no Magistrate can be communicated with, any commissioned officer in command of any troops may disperse such assembly by military force and may arrest and confine any persons forming part of it in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate he shall do so, and shall thenceforward obey the instructions of such Magistrate as to whether he shall or shall not continue such action.

97. A. Control of Assemblies and Processions:

- (1) The Chief Inspector of Police may direct the conduct of all meetings, assemblies and processions on the public roads or in the public streets or other public places, and prescribe the routes by which, and the time at which, such processions may pass.
- (2) The Chief Inspector of Police with the consent of the SPLM County Secretary may also, on being satisfied that it is intended by any person or class of persons to convene or conduct a meeting or assembly in any such road, street or place or to form a procession which would, in his opinion, if uncontrolled, be likely to cause a breach of the peace or annoyance to the public of any section thereof, require by special or general notice that such person or class of persons shall first obtain a license from him for the purpose.
- (3) On application for such license being made the Chief Inspector of Police with the consent of the SPLM County Secretary shall issue a license specifying the names of the licensees and defining the conditions on which such meeting, assembly or procession is permitted.
- (4) Notwithstanding the provisions or subsection (3) the SPLM County Secretary if satisfied at any time that the holding of any meeting, assembly or procession or of any class thereof is contrary to the interests of public security may by special or general notice prohibit the holding of such meeting, assembly or procession or any class thereof for such period as they may think fit.
- (5) The SPLM County Secretary may, with regard to the whole or any part of his County, by order direct that no meeting, assembly or procession shall take place on the public roads or streets or in other public places unless the necessary notice thereof has first been given in accordance with such conditions as may be prescribed by such order.

97. B. Unlawful Assembly

For the purpose of Section 115 to 126 of the Penal Code and Sections 93 to 97 A hereof, any meeting, assembly or procession: -

- (a) which is held without a license notwithstanding that subsection (2) of Section 97A, provides for the requirement of a license, or
- (b) which fails to comply with the conditions set out in any license applicable to it, issued under subsection (3) of Section 97A.
- (c) which, having been prohibited by the SPLM County Secretary or Chief Inspector of Police, takes place; or
- (d) which is held in contravention of any order made under subsection (5) of Section 97A;

is an unlawful assembly.

97. C. Closing of Coffeehouses and places of Public Resort in Time of disturbance.

- (1) If at any time the Chief Inspector of Police or his authorized representative is satisfied that an unlawful assembly riot or disturbance of the public tranquility is taking place or may reasonably be apprehended he may order all persons licensed to sell intoxicating liquor and the proprietors of all coffee-houses and of such other places of public resort, as may be specified in such order, to close their respective premises.
- (2) Such order shall specify the area within which, and the period for which, it shall have effect.
- (3) The Police may use such force as may be reasonably necessary to close and keep closed any such premises in accordance with the terms of such order.

98. Protection Against Prosecution for acts done under this Chapter.

- (1). No prosecution against any person for any act purporting to be done in good faith under this chapter, shall be instituted in any Criminal Court, except with the sanction of the Attorney General and;
- (2) Without prejudice to the above: -
 - (a) no Magistrate or policeman acting under this chapter in good faith,
 - (b) no officer acting under section 97 in good faith,
 - (c) No person doing any act in good faith in compliance with a requisition under section 94 or section 96, and
 - (d) no inferior officer or soldier doing any act in obedience to any lawful order, which he was bound to obey;

shall be deemed to have thereby committed an offence.

CHAPTER IX

PUBLIC NUISANCE

99. Conditional Order for Removal of Nuisance

- (1) Whenever a Magistrate of the first or second class considers on receiving a police report or other information and on taking such evidence, if any, as he thinks fit that an offence under sections 224, 225, 227, 229, or 230 of the Penal Code is being committed, such Magistrate may make a conditional order requiring the offender within a time fixed in the order to cease committing such offence and to amend or remove the causes thereof in such manner as in the order specified or to appear before himself in such manner as in the order specified or to appear before some other Magistrate of the first or second class at a time and place to be fixed by the order and apply to have the order set aside or modified in manner hereinafter provided.
- (2) No order duly made by a Magistrate under this section shall be called in question in any Court.

Note: - *For form of order under this section see Schedule 1 1 1, 16*

100. Service of Order.

- (1) The order shall if practicable be served on the person against whom it is made in manner herein provided for service of a summon.
- (2) If such order cannot be so served it may be served by registered letter through the post addressed to such person at his last known address or, if no such address is known, then by affixing a notice thereof in some conspicuous place in the town or village in or near which the nuisance or offence is being committed.

101. Person to Whom Order is addressed to Obey or Appear Before Magistrate.

The person against whom such order is made shall: -

- (a) perform within the time and in the manner specified in the order the act directed thereby, or
- (b) appear in accordance with such order and apply to have the order set aside or modified.

102. Consequences of Failing to Do So.

If such person does not perform such act or appear and apply to have the order set aside or modified he shall be liable to the penalty prescribed in that behalf in section 163 of the Penal Code, and the order shall be made absolute.

Note: - *For right to appeal against an order thus made absolute, see section, 253.*

103. Procedure where he Appears.

- (1) If he appears and applies to have the order set aside or modified, the Magistrate shall take evidence in the matter in the same manner as in a summary trial.
- (2) If the Magistrate is satisfied that the order with or without modification is reasonable and proper, he shall make it absolute with such modification, if any, as he shall think fit.
- (3) If the Magistrate is not so satisfied he shall cancel the order.

Note: - *For right to appeal against an order thus made absolute see section 253.*

104. Consequences of Disobedience to Order Made Absolute.

- (1) If the act directed by the order made absolute under sections 102 or 103 sub-section (2) is not performed within the time fixed and in the manner specified therein, the Magistrate may cause it to be performed and may recover the cost of performing it either by the sale of any building, goods or other property removed by his order or by seizure and sale of any other movable property of such person in manner hereinafter prescribed for the recovery of a fine.

Note: - *See Section 267.*

- (2) No suit shall lie in respect of anything done in good faith under this section.

105. Injunction Pending Inquiry:

- (1) If a Magistrate making an order under section 99, considers that immediate measures should be taken to prevent imminent danger or injury of serious kind to the public, he may issue an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury pending the determination of the matter.
- (2) In default of such person forthwith obeying such injunction or if notice thereof cannot by the exercise of due diligence be served upon him immediately, the Magistrate may himself use or cause to be used such means as he thinks fit to obviate such danger or to prevent such injury.
- (3) No suit shall lie in respect of anything done in good faith under sub-section (2) of this section.

106. Prohibition of Repetition or Continuance of Nuisance.

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

Notes (1) *See Section 233 of the Penal Code*

(2) *For form of order see Schedule 1 1 1, 17.*

CHAPTER X

**PREVENTIVE ACTION OF THE POLICE, CHIEFS
AND THE PUBLIC.**

107. Prevention by Police of Offences and Injury to Public Property.

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

Note: *The power to intervene includes power to arrest if the offence is one for which the police may arrest without a warrant and if it cannot otherwise be prevented or if the police are obstructed in the execution of their duty to intervene. See section 25 (d) and (h).*

108. Public to assist Magistrates etc.

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

Note: *For punishment for omitting to assist, see section 162 of the Penal Code.*

CHAPTER XI

DUTY OF THE PUBLIC AND CHIEF TO REPORT AND DUTIES OF CHIEFS TO INVESTIGATE CERTAIN MATTERS.

109. Public to give Information of Certain Matters.

Every person:

- (a) Who has reason to believe that any other person has committed suicide or has been killed by another or by an accident or of any kind whatsoever or that a dead body has been found or;
- (b) Who is aware of the commission or of the intention of any other person to commit any offence punishable under any of the following sections of the Penal Code, that is to say 96, 97, 98, 101, 105, 106, 107, 108, 109, 251, 252, 253, 253A, 279(2), 281, 284A, 305, 310, 324, 334, 336, 337, 338, 341, 342, 343, 374, 375, 388, 389, 396, 397, 338, 341, 342, 343, 374, 375, 388, 389, 396, 397, 398 and 399;

Shall, in the absence of reasonable excuse forthwith give information to the nearest Magistrate or policeman or a chief if not himself a chief.

110. Investigation by Chief on Receiving Information Under Paragraph (a) of Section 109.

- (1) A chief to whom information has been given under paragraph (a) of section 109 or who suspects the existence of such facts as are set out in paragraph (a) of section 109 shall after forwarding information to the officer in charge of the nearest police station proceed to the place where the body of the deceased is and shall there in the presence of two or more persons whom he shall summon for the purpose and who shall be bound to attend make an investigation and draw up a report of the apparent cause of death describing such wounds, fractures and other marks of injuries as may be found on the body and stating in what manner or by what weapon or instrument such marks appear to have been inflicted and such other information relating to the death as he can discover provided that when the officer in charge of the police station to whom information has been given under section 109 undertakes the investigation the chief so notified shall cease further to investigate save as directed by the officer.
- (2) Where practicable the chief making an investigation under the proceeding section shall be accompanied by a Medical Officer.
- (3) Where there is any doubt regarding the cause of death or where for any other reason the chief making the investigation considers it expedient to do so or where the Medical Officer attending such investigation so directs the body shall be taken to the nearest hospital or to some other convenient place for further examination as he thinks necessary.

- (4) Notwithstanding any Public Health Regulations the burial shall not take place except in case of necessity until leave has been obtained from a Magistrate.
- (5) In conducting the investigation the chief shall have the powers and duties of a police officer under sections 117 and 118 of this Code.
- (6) On completion of the investigation the chief shall forward his report and the record, if any, of his investigation to the nearest police station.
- (7) Nothing in this section shall operate to relieve any policeman from any obligation or duty conferred upon him under Chapter X11 of this Code to undertake and carry out any investigation.

110. A Chief Bound to Report Certain Matters.

Every chief shall forthwith communicate to the nearest Magistrate so competent or to the nearest policeman any information, which he may possess or obtain respecting: -

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property; or
- (b) the resort to or passage through his village, Buma or Payam of any person whom he knows or reasonably suspects to be a murderer, robber, escaped convict or person required to appear by a proclamation published under section 61 of this Code, or;
- (c) the occurrence within his village, Buma or Payam of the death of any person or the disappearance from such village, Buma or Payam of any person in circumstances which lead to a reasonable suspicion that the death or disappearance is the result of an offence committed in respect of such person; or
- (d) any matter likely to affect the maintenance of law and order or the prevention of crime or the safety of person or property respecting which the Chief Inspector of Police has directed him to report.

CHAPTER XII

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

Procedure in Cases where the police may arrest without a warrant.

111. First Information Report

- (1) When information is given to the officer in charge of a police station of facts pointing to the commission of an offence for which according to the third column of Schedule 1 the police are authorized to arrest without a warrant and which under the local limits of whose jurisdiction the police station is situated, he shall if it is given orally reduce the information or cause it to be reduced to writing in the prescribed form called the First Information Report and shall read it or cause it to be read over to the informant and every such information whether given in writing or reduced to writing as aforesaid shall be signed or sealed enter or cause to be entered the substance thereof in a book to be kept in the prescribed form called the Register of Informations. Provided that if the officer is satisfied that no public interest will be served by a prosecution he may refuse to accept the information and notify in writing the informant of his right to complain to a Magistrate under section 135.
- (2) When on any other grounds the officer in charge of a police station has reason to suspect the commission of such an offence, he shall enter or cause to be entered the grounds of his suspicion in a First Information Report and the substance thereof in the Register of Information.

Note: *See section 157 of the Penal Code for punishment for refusal to sign or seal statement made in giving information.*

112. Procedure in such Cases.

After complying with the provisions of section 111 the officer in charge of a police station shall act as follows: -

- (a) he shall send to the appropriate Magistrate, in the manner set out in section 113 the First Information Report.
- (b) he shall forthwith proceed to the spot to investigate the case and if the offender is not already in custody take such steps as may be necessary for his discovery and arrest, or he may depute a policeman subordinate to him to do so and to report to him. Provided that: -

- (i) In cases involving death or serious injuries of any person or, persons the officer in charge of the police station shall arrange, if possible, for a Medical Officer to examine the body or the person or persons injured, and if the officer or the policeman deputed by him under paragraph (b) so directs, the body or the person or persons injured shall be brought into the nearest hospital for such further examination as he or the Medical Officer considers necessary and notwithstanding anything in the Public Health Act the burial shall not take place except in case of necessity until leave has been obtained from a Magistrate;
- (ii) If the information is given against a person by name and the alleged offence is not of a serious character the officer need not make or direct the investigation on the spot; and
- (iii) If it appears to the officer that there is no sufficient ground or reason for entering upon the investigation he need not investigate the case;

But in cases (ii) or (iii) the officer shall record in the Register of Information and in his First Information Report to the Magistrate the reasons for his not fully complying with the requirements of paragraph (b), and if he deems it unnecessary to enter upon an investigation he shall notify the informant, if any, forthwith.

113. Manner of Submitting First Information Report.

- (1) Every First Information Report sent to a Magistrate shall be submitted through such officer of police if any as the Police Chief Inspector shall direct.
- (2) An officer through whom a First Information Report is submitted under the provisions of sub-section (1) of this section may give such instructions as he thinks fit to the officer submitting the report and shall after recording such instructions, if any, on the First Information Report pass the same to the Magistrate without delay.

114. Powers of Magistrate on Receiving First Information Report.

After receiving the first Information Report the Magistrate may;

- (a) give any direction to the police as to the conduct of the investigation; or
- (b) if he thinks fit, at once proceed or depute a Magistrate subordinate to him to proceed to hold an inquiry into or otherwise deal with the case as provided in Chapter XV; and in the event of the Magistrate deciding to proceed in accordance with this paragraph he shall forthwith inform the officer in charge of the police station of his intention so to do and thereupon the police shall act according to the directions of the Magistrate.

115. Case Diary to Be Kept By The Police.

- (1) Every officer in charge of a police station conducting an investigation under section 112 hereof or any officer or police deputed by the officer in charge of the police station to conduct such investigation shall keep a case diary in which he shall set forth in chronological order: -
 - (a) any information received by him in connection with the investigation;
 - (b) any action taken or inquiry made by him in the course of the investigation and the facts ascertained as a result thereof;
 - (c) any report made by any policeman acting under his instructions;
 - (d) the statement of any witness, if reduced to writing.
- (2) The First Information Report or a copy thereof shall in all cases be attached to and form part of the Case Diary.

116. Case Diary Not To Be Evidence

- (1) Save in so far as expressly permitted in this Code such Case Diary shall not be admissible evidence against any accused person in any inquiry or trial but :-
 - (a) any Magistrate or Court may in any inquiry or trial refer to the Case Diary to aid him or it in conducting the inquiry or trial;
 - (b) any Magistrate or Court may in any inquiry or trial use any relevant part of the Case Diary for the purpose of examining any witness whose testimony at the inquiry or trial is at variance with his statement entered in the Case Diary as to such variance with a view to testing his credibility;
 - (c) any relevant part of the Case Diary may be used by a policeman who made the same to refresh his memory if called as a witness.
- (2) Save to the extent to which the Case Diary is used for the purposes set out in paragraphs (b) and (c) of sub-section (1) of this section the accused or his agent shall not be entitled to call for or inspect such Diary or any part thereof.

117. Power of Police To Summon And Examine.

- (1) A policeman making an investigation under section 112 may require the attendance before him of any person being within the limits of his own or any adjoining police station whose evidence appears likely to be of assistance in the case, and may examine such person orally.
- (2) Such person shall be bound to attend and to answer truly the questions put to him save so far as his answers would tend to expose him to a criminal charge or to a penalty other than a charge of failing to give information under Chapter XI of this Code.

- (3) No person giving evidence in an investigation under section 112 shall be required to take an oath or sign his evidence if it be reduced to writing, nor shall such writing be used as evidence, unless expressly permitted under this Code.

Note : *See sections 151 and 156 of the Penal Code.*

118. No Inducement To Be Offered.

- (1) No policeman or person in authority shall make use of any threat or of any promise of an advantage towards any person in investigation under section 112 in order to influence the evidence he may give.
- (2) But no policeman or other person shall prevent any person by any caution or otherwise from making, in the course of the investigation any statement which of his own free will he may be induced to make.
- (3) Any statement given by a witness as a result of his being under influence shall not be accepted as evidence, and shall be without any other legal effect.

Note : *For the powers to secure evidence from one of several accused by the tender of a pardon in a Magisterial Inquiry or at the trial, see sections 232 and 233 : and see also section 285.*

119. Judicial Confession.

- (1) If any person in the course of an investigation under section 112 or at any time after the close of the investigation but before the commencement of any inquiry or trial confesses to the commission of an offence in connection with the subject matter of the investigation he may and when the confession is in respect of a serious offence or one which is triable only by a High Court shall be taken before a Magistrate when available for his statement to be recorded by such Magistrate in the Case Diary.
- (2) When a Magistrate records such confession in a Case Diary he shall do so in detail in his own handwriting in the presence of the person making the same and after reading over to him such record the Magistrate shall sign the same.
- (3) No Magistrate shall record any such confession unless after questioning the person making it and he is satisfied that it is made voluntarily;
- (4) No oath shall be administered to any person making judicial confession.
- (5) The record of such confession in the Case Diary if made by Magistrate in manner aforesaid shall be admissible as evidence against the person who made the same and if so admitted shall be read out in Court by the Magistrate conducting the inquiry or trial and it shall not be necessary to call as a witness the Magistrate who recorded the same provided that the Magistrate holding the inquiry or the Court trying the case may if he or the Court thinks fit either on the application of the accused or of its own motion call the Magistrate who recorded the confession as witness to the contents and to prove the circumstances in which it was recorded.

119. A Medical Examination of Suspect.

- (1) A person under arrest upon reasonable suspicion of having been concerned in an offence punishable with imprisonment may be required by any Magistrate or policeman to submit to a medical examination by a registered medical practitioner or, if no such practitioner is available, by a medical assistant.
- (2) Such a medical examination shall only be required if it is desirable in the interests of justice as tending to establish whether or not the person arrested is guilty of the offence suspected.
- (3) A person required to submit to a medical examination is entitled to have any doctor nominated by him present at the examination unless the time taken in securing his presence might defeat the purpose of the examination.

119. B Taking of Fingerprints and Photographs.

- (1) The fingerprints and or photograph of any accused person may be taken during his trial or while he is being interrogated or investigated if it were in the interest of such trial, interrogation or investigation that such fingerprints and photograph be taken.
- (2) Such fingerprints and photograph may be kept for a period of six months at the end of which they shall be destroyed unless the person concerned has been convicted of an offence.

120 Remand of Person in Custody.

- (1) Whenever it appears that an investigation under section 112 cannot be completed within 24 hours of the arrival of the accused or suspected person at the police station, the officer in charge of the police station shall release or discharge him under section 287 or forward him as soon as practicable to the nearest Magistrate competent under Chapter XV to take cognizance of the offence together with the Case Diary and if necessary a report on the investigation so far as it has proceeded.
- (2) Such Magistrate may from time to time on the application of the officer in charge of a police station and on production of the Case Diary authorize the remand of the person under arrest in such custody as he thinks fit for a time not exceeding fifteen days in the whole and shall record his reasons for so doing in the Case Diary.

Note : (1) *If the Magistrate refuses to authorize detention of the accused under arrest he must make an order of discharge under section 42, unless he takes bail.*

- (2) *If the police investigation is not completed within fifteen days and the Magistrate considers it advisable that the accused should be detained in custody pending further investigation, he may remand the accused as provided in section 236.*

**121. Procedure when police consider investigation should be terminated
Without inquiry or trial.**

If in the course of an investigation under section 112 it appears to the officer in charge of a police station by or under whom an investigation is being made that such investigation should be terminated without an inquiry or trial following he shall, after inferring in the Case Diary a summary of the case, submit it to a Magistrate who may order that the investigation be terminated or give such order as to the continuance of the investigation as he thinks fit and in either case order the release of any person under arrest in the investigation.

Note: The provisions of this section are without prejudice to the power of the police to release an arrested person under section 42.

**122. Procedure when police consider that investigation should be terminated upon
inquiry or trial.**

- (1) If in the course of an investigation under section 112 it appears to the officer in charge of a police station by or under whom an investigation is being made that such investigation discloses reasonable grounds of suspicion against any person of having committed an offence and that an inquiry or trial should begin he shall after entering in the Case Diary a summary of the case submit to a Magistrate competent under Chapter XV to take cognizance of the offence the Case Diary and the final Police Report.
- (2) The documents sent to a Magistrate under sub-section. (1) hereof shall be submitted through such officer of police as the Chief Inspector of Police shall direct and such officer may on receiving such documents instead of forwarding them to the Magistrate remit them to the officer in charge of the police station with directions for such further investigation as he considers necessary after recording such directions in the Case Diary but otherwise they shall be forwarded forthwith to the Magistrate.
- (3) If on receipt of the documents referred to in sub-section (1) of this section it appears to the Magistrate that he should begin any inquiry or trial he shall fix a day therefore and make any necessary orders and direct the officer in charge of the police station as to any action to be taken by him.
- (4) If on receipt of the documents referred to in sub-section (1) of this section it appears to the Magistrate that further investigation is necessary before the inquiry or trial is begun he shall give such directions as he shall think fit after entering the same in the Case Diary.

122. A Bonds for Attendance of Accused and Witnesses.

- (1) If under the provisions of section 122 (3) the Magistrate fixes a date for an inquiry or trial the officer in charge of the police station shall subject to any orders or directions of Magistrate :-
 - (a) require the complainant if any and all persons likely to be required as witnesses to execute bonds without sureties to appear before the Magistrate as thereby directed and to prosecute or give evidence as the case may be in the matter of the inquiry or trial;
 - (b) arrange for the accused whether in custody or on bail to be before the Magistrate on the date fixed for the inquiry or trial.
- (2) A copy of each bond executed under sub-section (1) of this section shall be handed to one of the persons executing the same and the originals shall be forwarded to the Magistrate for filing with the Case Diary.
- (3) If any person required to execute a bond under this section refuses to do so, he may be forwarded to the Magistrate who may order his detention until he executes the bond or until the hearing of the case is concluded.

Note: *For form of bond to prosecute or give evidence see Schedule 111, 21.*

122. B Application to and directions by Magistrate in the course of investigation.

- (1) The officer in charge of a police station may at any stage in the course of an investigation under section 112 submit the Case Diary to a Magistrate in order to receive directions as to the further conduct of the investigation.
- (2) Any Magistrate of the first or second class and any confirming or appellate authority may at any time during the course of the investigation order the immediate submission of the Case Diary either to himself or to any Magistrate subordinate to him.
- (3) The Attorney General may at any time during the course of the investigation order the immediate submission of the Case Diary either to himself or to any of his subordinate legal staff.

122. C Procedure in cases where the police may not arrest without a warrant.

- (1) When any information is received by an officer in charge of a police station of facts pointing to the commission of an offence for which the police may not arrest without a warrant he shall enter the substance of the information in the Register of Informations and either in a First Information Report or in such other report as may be prescribed in respect of such offence and thereupon refer the information, if other than a public servant acting in the exercise of his public duties, and send the First Information Report or such other report to the proper Magistrate, and the Magistrate on receipt thereof shall give such orders and directions as he considers necessary: Provided that if the officer is satisfied that no public interest will be served by a

prosecution he may refuse to accept the information and notify in writing the informant of his right to complain to a Magistrate under section 135.

- (2) No investigation into such matter shall be made by any police officer or policeman without the order of a Magistrate unless the circumstances appear to be such that the delay which would be caused by submitting such a report may seriously prejudice the interests of justice, in which case the investigation may be commenced forthwith but a report shall be sent as soon as possible to a Magistrate giving the reasons for the action taken and on the receipt of such a report the Magistrate may give such orders or directions as he thinks fit.
- (3) Any investigation into such a matter undertaken by a police officer or policeman either by direction of a Magistrate under sub-section (1) or (2) of this section or without such direction under sub-section (2) of this section shall be conducted in such manner and with such powers as are set out in the preceding sections of this chapter save that no arrest of a suspected person shall be made without a warrant.

122. D Procedure on Receiving Information of a Death in Certain Circumstances.

- (1) When information is received by an officer in charge of a police station that a dead body has been found or when he is informed or suspects that any person has :-
 - (a) committed suicide, or
 - (b) been killed by another person or an animal or by an accident of any kind whatsoever.

He shall if he has reason to believe that an offence has been committed proceed under this chapter as the case may be; if he has no reason to believe that an offence has been committed he shall nevertheless enter the information or his suspicion in a First Information Report and shall then forward the First Information Report to a Magistrate of the first or second class and forthwith proceed to the spot where the body of such deceased person is and open an investigation as to the cause of death and keep a record of the investigation in a Case Diary.

- (2) The investigation shall be carried out in accordance with the provisions of sections 112, 115, 117 and 118 of this chapter.
- (3) On completion of the investigation he shall forward the Case Diary to the Magistrate aforesaid and the Magistrate shall after making a record of the same in the Case Diary, make a finding as to the cause of death. The Magistrate shall at his further investigation (if any) be at liberty to take statements on oath or not on oath as he shall think fit.
- (4) Where the officer or the Magistrate aforementioned at any stage of his investigation, suspects that an offence punishable under the Penal Code has been committed he shall then continue his investigation in accordance with the provisions of this chapter as the case may be and not under this section.

CHAPTER XII - A

POWER OF THE ATTORNEY GENERAL IN INVESTIGATION

122. E Procedure of Investigation

- (1) Subject to the provisions of this Code, where the Attorney General or his representative is satisfied on his own knowledge or upon information received that there is reason to believe or suspect that an offence has been committed, he or his representative may undertake investigation on the matter or authorize any other person, not being a magistrate, to undertake such investigation.
- (2) The person undertaking investigation under sub-section (1) above shall have all the powers of a policeman investigating an offence under this Code.
- (3) Where an investigation is commenced or completed under such-section (1) above, no magistrate or policeman shall undertake or continue any investigation of the same offence except with the prior approval of the Attorney General.
- (4) If the person undertaking the investigation required for the purposes of the investigation the assistance of the officer in charge of a police station such officer shall offer, the required assistance.

CHAPTER XIII PROCEEDINGS IN PROSECUTIONS

123. Place of Inquiry and Trial.

Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction :-

- (a) the offence was wholly or in part committed, or some act forming part of the offence was done; or
- (b) some consequence of the offence has ensued; or
- (c) some offence was committed by reference to which the offence is defined; or
- (d) some person against whom, or property in respect of which, the offence was committed is found, having been transported there by the offender or by some person knowing of the offence.

Illustrations:

- (a) A posts in Wau a letter addressed to B in Yei threatening to accuse B of an offence in order to extort money from him.
- (b) A stabs B at Wau and B dies ten days in Yei in consequence of the wound.
- (c) A in Wau abets an offence committed by B at Yei.
- (d) A abducts B at Wau and carries him to Yei where he is found.
- (e) A steals property at Wau and the property is taken by B, who knows it to be stolen, to Yei where it is found.

In all the above cases A may be tried either at Wau or at Yei.

124. Place of Inquiry or trial when scene of offence is uncertain.

When it is uncertain in which of several local areas an offence was wholly or in part committed, the offence may be inquired into or tried by a Court having jurisdiction over any of such local areas.

125. Offences committed elsewhere than in a place Where Penal Code is in force.

Every offence which by virtue of section 4 of the Penal Code 2003 may be punished under that Code although committed outside the New Sudan, may be dealt with as if it has been committed at any place in the New Sudan at which the offender may be found,.

126. Powers of the High Court or County Court Judge in Cases of Doubt.

The High court or the County Court Judge shall, where it is doubtful which is the competent Court within its or his jurisdiction under section 123, direct by what Magistrate an inquiry shall be made or before what Court a trial shall take place within a Circuit or County.

127. Power to Transfer Cases.

(1) The High Court or the County Court Judge may, whenever it appears to it or to him that such transfer will promote the ends of justice or will be in the interest of public tranquility, transfer any case from one court within the Circuit or County to another at any stage of the proceedings.

(2) The Chief Justice may make such transfer from any court to another.

128. Power to issue Summons or warrant for offence committed beyond Local Jurisdiction.

When a County Court Judge of the first or second class has reason to believe that any person within the local limits of his jurisdiction has committed outside such limits, an offence which cannot under the provisions of section 123 or any other law for the time being in force be inquired into or tried within such local limits but is under any law for the time being in force triable in the New Sudan, he may inquire into the offence as if it had been committed within such local limits and compel such person in the manner hereinbefore provided to appear before him and send such person to a Magistrate having jurisdiction to inquire into the offence or, if the offence is bailable may take a bond with or without sureties for his appearance before such Magistrate.

129. Proceedings before wrong court not to be invalid.

No proceedings before any Court nor any order passed nor judgement delivered therein shall be invalid by reason of the fact that according to the rules contained in this chapter such proceedings ought to have been taken before some other Court.

CHAPTER XIV

**SANCTIONS NECESSARY FOR THE INITIATION
OF CERTAIN PROCEEDINGS**

130. Prosecution for Contempt of Lawful Authority of Public Servants.

- (1) No Magistrate or Court shall take cognizance:
 - (a) of any offence punishable under sections 148 to 163 (inclusive) of the Penal Code 2003, except with the previous sanction or on the complaint of the public servant concerned or of some public servant to whom he is subordinate;
 - (b) of any offence punishable under sections 166, 169, 170, 171, 172, 175, 176, 177, 185, 186, 187, 190, 191 or 192 A of the same Code, when such offence is committed in or in relation to any proceedings in any Court, except with the previous sanction or on the complaint of such Court or of the President of the Court or of the County Judge or of any Court to which such Court is subordinate ;
 - (c) of any offence described in section 405 or punishable under sections 410 or 413 of the same Code, when such offence has been committed by a party to any proceedings in any Court in respect of a document produced or given in evidence in such proceedings, except with the previous sanction or on the complaint of such Court or of the President of the Court or of the County Judge or of any Court to which such Court is subordinate ;
 - (d) of any offence punishable under section 284A of the Penal Code, 2003 or of failing to give information of such an offence except with the previous sanction of the SPLM County Secretary.
- (2) In clauses (b) and (c) of sub-section (1) the term “Court” includes every Civil, Criminal or Customary Law Court.
- (3) The provisions of sub-section (1), with reference to the offences named therein, apply also to the abetment of such offences and attempts to commit them.
- (4) The sanction referred to in this section may be expressed in general terms and need not name the accused person; but it shall so far as practicable specify the place where and the occasion on which the offence was committed.
- (5) When sanction is given in respect of any offence referred to in this section, the Magistrate or Court taking cognizance of the case may frame a charge of any other offence which is disclosed by the facts.
- (6) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate.

131. Trial of Offences Against the New Sudan Authority.

No person shall be brought to trial under section 4 or the sections falling under Chapters 1X to X1 (inclusive) of the Penal Code or under any other law without previous written sanction of the Chairman or of the person whom he authorizes to give such sanction, and the Chairman may, by order, constitute a special court for the trial of any person accused under the above-mentioned sections of the Penal Code or any other law.

132. Cases In Which Death Sentence Shall Not Be Passed Against an Accomplice.

Subject to any special provisions in respect of any offences referred to in the preceding section, no death sentence or sentence of confiscation of property shall be passed against any person if the only evidence against him is that of an accomplice or accomplices in the offence.

133. Prosecution for Defamation and Offences Against Marriage.

No Magistrate or Court shall take cognizance of any offence falling under Chapter XXVI of the Penal Code or under sections 425 to 426 inclusive) of the same Code, except upon a complaint made by the person aggrieved by such offence.

134. Prosecution For Adultery Or Enticing A Married Woman.

No Magistrate or Court shall take cognizance of an offence under sections 427, 428 or 429 of the Penal Code, except upon a complaint made by the husband of the woman or, in his absence, by a person who had care of such woman on his behalf at the time when such offence was committed.

CHAPTER XV

INITIATION OF JUDICIAL PROCEEDINGS BEFORE A MAGISTRATE.

135. Cognizance of Offences By Magistrates.

- (1) Subject to the provisions of Chapters XIII and XIV and to any limitation in the terms of his appointment under section 11, any Magistrate may take cognizance of any offence:-
 - (a) when an arrested person is brought before him under Section 37 or Section 38;
 - (b) upon receiving a first information report under Section 112 or Section 122 or a Case Diary under Section 120;
 - (c) at any time when the Case Diary has been sent to him under Section 121, or Section 122 or Section 122B.
 - (d) upon receiving a complaint of facts which constitute the offence;

- (e) if from information received from any person other than a policeman or from his own knowledge he has reason to believe or suspect that an offence has been committed.
- (2) Notwithstanding sub-section (1) of this section, it shall be lawful for the County Judge within the local limits of his jurisdiction to direct that any Magistrate subordinate to him shall not take cognizance of any particular case.

136. Examination of Complainant.

A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant on oath and reduce his complaint and the substance of the examination to writing, and the writing shall be signed or sealed by the complainant if he is able so to do:

Provided that when the complaint is made in writing and signed by a public servant acting or purporting to act in the execution of his official duties, the Magistrate may, if he thinks fit, and shall when the complaint is made by a Court under Section 278, proceed with the inquiry into or trial of the case without examining the complainant under this section.

Note: *See section 157 of the Penal Code for punishment for refusal to sign or seal by complainant.*

137. Transfer of Case By Magistrate.

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

138. Investigation.

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

139. Magistrate May Refuse To Proceed.

A Magistrate taking cognizance of an alleged offence may refuse to proceed with the case if after examining the complainant (if any) and considering the result of any investigation held under Chapter XII or section 138 there is in his opinion no sufficient ground for proceeding. He shall thereupon briefly record his reasons for so refusing.

Note : *If the accused is in custody or on bail he must be discharged when the Magistrate refuses under this section to proceed. See Sections 148 (2) and 159 (2).*

140. Inquiry or Trial

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

Note : *A Magistrate of the second class may, subject to the provisions of Chapters XIII and XIV and of section 135 hold a magisterial inquiry into any offence. If he is not competent to try the case he should on completion of the inquiry stay proceedings and refer the case as directed by section 237.*

141. Processes.

(1) Process to compel the attendance of the accused person shall ordinarily be a summons or a warrant, as in the opinion of the Magistrate, a summons or a warrant should be issued according to the fourth column of the First Schedule in the first instance.

Note: *See section 64.*

(2) When by law any process fee or other fees are payable no process shall continue until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

Note : *For form of summons to accused person, see Schedule 111,1.*

142. Power To Dispense With Personal Attendance of accused.

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

CHAPTER XVI

SUMMARY TRIALS BY MAGISTRATES

Note : *For general provisions as to the conduct of inquiries and trials see Chapter XXI I.*

142. A What Cases May Be Tried Summarily.

Every Magistrate of the first or second class or Payam Judge respectively may try summarily the offences specified in that behalf in the second Schedule.

143 Procedure in Summary Trial.

The procedure in a summary trial shall be the same as that in a non-summary trial except in so far as it is modified by this chapter.

144 Record in summary Trial.

- (1) In summary trials the Magistrate need not record the evidence of the witnesses or frame a formal charge, but he shall enter in a form to be prescribed the following particulars:-
 - (a) the serial number
 - (b) the name, nationality, residence, occupation and age of the accused;
 - (c) the name, nationality, residence and occupation of the complainant (if any);
 - (d) the offence complained of and the offence (if any) proved, with the value of the property in respect of which the offence has been committed;
 - (e) the date and place of commission of the offence and the date of arrest;
 - (f) the date of the report or complaint;
 - (g) the names of the witnesses for the prosecution and defence;
 - (h) the plea of the accused and his examination (if any);
 - (i) the finding and, in the case of a conviction a brief statement of the reasons therefore;
 - (j) the sentence or other final order, and
 - (k) the date on which the proceedings terminated.
- (2) The record shall be in English and any other language prevalent in the area and shall be signed or sealed by the Magistrate.

145

If at any time after the commencement of a summary trial the offence alleged appears to be one not triable summarily by the Magistrate or if he is of opinion that the offence cannot be adequately punished on summary conviction by him, he shall stay the proceedings and shall either submit the case under section 237 or hold a magisterial inquiry or, if he is competent to do so, try the case non-summarily.

CHAPTER XVII

Trials by Magistrates Non Summarily.

Notes:- (1) *A Payam Magistrate may only try summarily.*

(2) *This chapter lays down the procedure where the Magistrate acts with the knowledge or on the assumption that the case is one for trial by a Magistrate. Provision is made in section 149 (2) for the transformation of the trial into a magisterial inquiry, followed by commitment to a High Court, if it appears in the course of the trial that the case is in fact one that should be so dealt with.*

146 Procedure in Non-Summary Trial by Magistrate

The procedure laid down in this chapter shall be observed by Magistrates in the trial of cases non summarily.

147. Evidence for Prosecution.

- (1) When the accused appears or is brought before him, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.
- (2) The Magistrate shall ascertain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and shall summon to give evidence before himself such of them as he thinks necessary.
- (3) The accused shall be at liberty to cross-examine the witnesses for the prosecution and, if does so, may re-examine them.

Note:- *For forms of summons to witness see Schedule 111, 2.*

148. Discharge of Accused.

- (1) If upon taking all the evidence referred to in section 147 and making such examination (if any) of the accused as the Magistrate thinks necessary for the purpose of enabling him to explain any circumstances appearing in the evidence against him, the Magistrate finds that no case against the accused has been made out which if un-rebutted would warrant his conviction, the Magistrate shall discharge him.

Notes :- *See section 218*

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

149. Charge to be framed when offence appears to Have been committed.

- (1) If when such evidence and examination have been taken and made or at any previous stage of the case the Magistrate, is of opinion that there is ground for presuming that the accused has committed an offence, which such Magistrate is competent to try and which in his opinion could be adequately punished by him, he shall frame a charge under his hand declaring with what offence the accused is charged and shall then proceed as hereinafter provided.
- (2) If at any stage before the signing of judgement in the trial of a case under this chapter it appears to the Magistrate that the case is one which ought to be tried by a High Court, he shall in like manner frame a charge against the accused and in so far as he has not already done so, shall complete the procedure laid down in Chapter XVIII for inquiry into cases triable by a High Court down to the framing of the charge. The Magistrate shall thereafter observe the procedure prescribed in the said chapter to be followed after the framing of the charge.

Note :- *If a Magistrate of the second class starts a trial under this chapter and finds that the case is one which in his, opinion should be tried by a Magistrate of the first class he will stay proceedings and refer the case as directed by section 237. A Magistrate of the second class will always have power to commit for trial to a High Court See section 156.*

150. Plea

- (1) If the Magistrate is of opinion that the offence is one which, having regard to section 149, he should try himself the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has any defense to make.
 - (2) If the accused pleads guilty, the Magistrate shall record the plea and may in his direction convict him thereon.

Note :- *The Magistrate must before convicting on a plea of guilty satisfy himself that the accused has clearly understood the meaning of the charge in all its details, and essentials and also the effect of his plea. On accepting a plea of guilty it may be necessary to examine the record of any proceedings taken before the trial and to call witnesses whose evidence appears in such proceedings; the Court may do this under section 219.*

151. Defense.

- (1) If the accused pleads not guilty or makes no plea, he shall be required to state whether he wishes to cross-examine any witness and if so which of the witnesses for the prosecution whose evidence has been taken.

If he says he does so wish, the witnesses named by him shall be recalled and after cross-examination and re-examination (if any) they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any) they also shall be discharged. The accused shall then be called upon to enter upon his defense and produce his evidence.

- (2) If the accused puts in any written statement, the Magistrate shall file it with the record.
- (3) The complainant or prosecutor may cross-examine any witnesses produced for the defense and the accused may re-examine them.

152. Process for Compelling attendance of Witness and Production of Evidence at Instance of Accused.

- (1) The accused may after entering upon his defense apply to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or the production of any document or other thing and the Magistrate shall issue such process unless for reasons to be recorded by him in writing he considers that the application is made for the purpose of vexation or delay or of defeating the ends of justice.
- (2) Before summoning any witness for attendance in accordance with an application from the accused, the Magistrate, may order the deposit in the Court of any reasonable expenses to be incurred for the attendance of that witness except expenses for his transport, which are borne by the Government.

Note:- *For form of summons to witness see Schedule III,2.*

153. Procedure on Acquittal or Conviction.

- (1) If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal!
- (2) If in any such case the Magistrate finds the accused guilty, he shall announce his finding and shall thereafter, if the accused has not previously called any witness to character, call upon him to produce such witnesses if he so desires and he wishes to make a statement in mitigation of punishment. The record of the accused's previous convictions (if any), if such record has not already been put in evidence, shall be produced and if necessary proved by the police and the Magistrate shall then pass sentence upon the accused according to law.

154. Absence of Complainant

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

155. Frivolous or Vexatious Accusation.

If, in any case instituted by complaint as defined in this Code or upon information given to a member of the police force or a Magistrate and heard under this chapter, the Magistrate discharges or acquits the accused and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may in his discretion by his order of discharge or acquittal direct the complainant or informant to pay to the accused, or to each of accused where there are more than one, such compensation not exceeding LS10 as the Magistrate thinks fit and may award a term of imprisonment not exceeding thirty days in the aggregate in default of payment, and the provisions of sections 72 and 73 of the Penal Code, 2003 shall apply as if such compensation were a fine.

Provided that before making any such direction the Magistrate shall :-

- (i) record and consider any objection which the complainant or informant if present at the hearing may urge against the making of the direction, and
- (ii) if he directs any compensation to be paid, state in writing in his order of discharge or acquittal his reasons for awarding the compensation.

Note:- *Compensation awarded under this section may be recovered as if it were a fine. See section 313.*

CHAPTER XVIII

**MAGISTERIAL INQUIRES AND COMMITMENT
FOR TRIAL TO A HIGH COURT**

Note:- *Sections 158 to 172 (inclusive) in this Chapter lay down the procedure where the Magistrate acts with the knowledge or on the assumption that the case is for trial by a High Court, or where a Magistrate of the Payam Court holds an inquiry into a case which he is not competent to try. Provision is made (section 161) for the transformation of the inquiry when made by a Magistrate of the first or second class into a trial by such Magistrate while a Magistrate of Payam Court will, if the offence is not triable by himself, submit the case under section 237 on completion of the inquiry to a Magistrate of the first or second class for trial or commitment.*

Section 172A of this Chapter gives a Magistrate of the first or second class power summarily to commit for trial to a High Court on the statements recorded in the Case Diary without hearing witnesses but otherwise informing the accused of the case against him and assisting him to prepare his defense. The object of this summary committal procedure is to shorten the time an accused awaits trial, and to save witnesses and Magistrate the time and trouble taken up by the ordinary procedure. Provided that the summary committal procedure set out in Section 172A of this Chapter shall be followed unless the offence is one punishable with death or when it is prejudicial to the ends of justice by reason of the number of the accused or the uncertainty of the evidence.

156. Commitment for Trial

No person shall be tried by a High Court except after having been committed for trial by a Magistrate of the first or second class and on the charges framed on committal as altered or added to by the Court under section 195.

157. Ordinary and Summary Commitment for Trial

The procedure laid down in sections 158 to 172 (inclusive) in this chapter is the ordinary procedure of commitment for trial by a High Court. It is also the procedure to be followed by a Magistrate of the Payam Court when holding an inquiry into a case, which he is not competent to try. The summary committal procedure laid down by section 172A of this chapter shall be followed unless the offence is punishable with death will is prejudice the accused.

158. Taking of Evidence Produced

- (1) When the accused appears or is brought before him the Magistrate shall proceed to hear the complainant (if any) and to take all such evidence as may be produced in support of the prosecution or on behalf of the accused or as may be called for by the Magistrate.
- (2) The Magistrate shall ascertain from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and shall summon to give evidence before himself such of them as he thinks necessary.
- (3) If the complainant or prosecution or the accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded by him in writing he deems it unnecessary to do so.
- (4) The accused may cross-examine the witnesses for the prosecution and in such case the complainant or prosecutor may re-examine them, and in like manner the complainant or prosecutor may cross-examine any witnesses produced for the defense and the accused may re-examine them.
- (5) The accused shall be at liberty to reserve his defense until the trial by the High Court.

159. When Accused Person to be Discharged.

- (1) If, upon taking all the evidence referred to in section 158, and making such examination (if any) of the accused as the Magistrate thinks necessary for the purpose of enabling, him to explain any circumstances appearing in the evidence against him, the Magistrate finds that there are no sufficient grounds for committing the accused for trial to a High Court or for the trial of the accused by himself or some other Magistrate he shall record his reasons and discharge him.

Note :- See Section 218.

- (2) The Magistrate may discharge the accused at any previous stage of the case if for reasons to be recorded he considers the charge to be groundless.

160. Transformation of Inquiry into Trial.

If, after such evidence and examination (if any) have been taken and made or at any previous stage of the inquiry, the Magistrate is of opinion that the case is not one that should be tried by a High Court but that there is ground for presuming that the accused has committed an offence which should be tried by himself or some other Magistrate, he shall if he had jurisdiction, proceed himself to try the accused under Chapter XVI or Chapter XVII as the case may be or shall stay proceedings and submit the case to the proper Magistrate as laid down in section 237.

161. Procedure Thereupon.

When pursuant to the last preceding section the Magistrate decides to try the accused himself under Chapter XVII, he shall forthwith frame a charge under his hand against the accused and shall proceed in manner laid down in the said Chapter as upon the framing of a charge in a non-summary trial by a Magistrate.

162. Framing of Charge and Submission to a Superior Magistrate.

- (1) If, after such evidence and examination (if any) have been taken and made, the Magistrate being a Magistrate of the first or second class is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand declaring with what offence the accused is charged.
- (2) If the Magistrate holding the inquiry is a Magistrate of the Payam Court, he shall proceed as laid down in section 237.

163. Charge to be explained and Copy furnished to Accused.

So soon as the Charge has been framed in accordance with section 162 (1), it shall be read and explained to the accused and a copy of it shall if he so requires be given to him free of cost.

164. List of the defense Witnesses at the trial.

- (1) The accused shall be required at once to give in orally or in writing a list of the persons (if any) whom he wishes to be summoned to give evidence at his trial.
- (2) The Magistrate may in his direction allow the accused to give in any further list of witnesses at a subsequent time.

165. Power of Magistrate to examine such witnesses.

The Magistrate may in his discretion summon and examine any witness named in any list given to him under section 164.

166. Order of Commitment.

- (1) If the Magistrate after hearing the witnesses summoned under section 165 is satisfied that there are no sufficient grounds for committing the accused, he may cancel the charge and discharge the accused or he may proceed as laid down in section 160.
- (2) If the Magistrate deems it unnecessary to summon and examine the witnesses named in any list given him under section 164 or if after hearing such witnesses he is still satisfied that there are sufficient grounds for committing the accused, he shall make an order committing the accused for trial to a High Court and shall briefly record his reasons for the commitment.

167. Summons to witnesses for Defense when Accused is Committed.

When the accused has given any list of witnesses under section 164 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself to appear before the Court to which the accused has been committed.

Provided that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay or defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witnesses is material, and if he is not so satisfied may refuse to summon the witnesses (recording his reasons for such refusal) or may before summoning them require such sum to be deposited as he thinks necessary so defray the expense of obtaining the attendance of the witnesses.

168. Bonds of Complainants and Witnesses.

Complainants and witnesses for the prosecution and defense whose attendance at the trial is necessary and who appeared before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the trial to prosecute or give evidence, as the case may be.

Note:- For form of bond see Schedule 111, 21

169. Detention in Custody in Case of Refusal to Execute Bond.

If any complainant or witness refuses to execute the bond above directed, the Magistrate may detain him in custody until he executes the bond or until his attendance at the trial is required when the Magistrate shall send him in custody to the High Court.

170. Charge Etc. To Be Forwarded.

When the accused is committed for trial the Magistrate shall send the charge, the record of the inquiry and any weapon or other thing, which is to be produced in evidence to the court, which is to try the case.

171. Power to Summon Supplementary Witnesses.

- (1) The committing Magistrate or in the absence of such Magistrate any other Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of trial and bind them over in manner herein before provided to appear and give evidence.
- (2) Such examination shall if possible be taken in the presence of the accused and if not so taken the record thereof shall be read over to the accused before the trial.
- (3) A copy of such record shall, if the accused so requires, be given to him free of cost.

172. Custody of Accused Pending Trial

The Magistrate shall, subject to the provisions of this Code regarding the asking of bail commit the accused by warrant to custody until the end of the trial.

Note:- For form of warrant see Schedule 111, 29.

172. A Summary Commitment for Trial.

- (1) A Magistrate of the first or second class may summarily commit a person for trial to a High Court by means of the following procedure, conducted in the presence of the accused :-
 - (a) the Magistrate shall inform the accused of the offence of which he is accused and explain ;
 - (b) the Magistrate shall read out, or order to be read out, all statements recorded in the Case Diary which are relevant to the accusation, whether they were against or in favour of the accused, giving the names of the persons who made the statements, and any statements in the Case Diary made by the accused but omitting anything which is legally inadmissible in evidence and shall mark what is read out;
 - (c) the Magistrate shall show and explain to the accused anything else which is admissible in evidence, including plans and medical reports;
 - (d) the Magistrate may call any witness to give evidence, whether he was a person whose statement has been recorded in the Case diary or any other person.

NOTE:- *Police who have relevant evidence to give not recorded as statements in the Case Diary should be called here.*

- (e) the Magistrate shall then ask the accused if he has any other witnesses and what is the gist of the evidence they can give, and the Magistrate may hear such witnesses and shall do so if there appears to be a reasonable chance that their evidence may lead to the discharge of the accused;
- (f) the Magistrate shall invite the accused to make a statement and to answer questions, informing him at the same time that he is not obliged to do so.

NOTE:- *This must not be used to obtain admissions from the accused for use against him, but it is to enable the accused to satisfy the Magistrate that there is no case against him and so obtain his discharge, or to enable his defense to be fully brought out at the trial.*

- (2) If after the procedure set out in sub-section (1) the Magistrate finds that there is no case against the accused he shall discharge him.
- (3) If the Magistrate finds that there is no case against the accused for trial by a High Court but that there is a case for trial by himself or some other Magistrate he shall try the accused or submit the case to the proper Magistrate.
- (4) If the Magistrate finds that there is a case against the accused for trial by a High Court he shall frame the charge or charges and read and explain them to the accused, and give the names of the witnesses who will be called for the prosecution, and ask the accused what other witnesses he requires for the defense; the Magistrate shall summon all such witnesses unless he considers that a witness can give no material evidence; the Magistrate shall inform the accused of the probable date of the trial.
- (5) At the trial, except for good reason to be recorded by the Court, no witness other than one whose statement has been read out under sub-section (1) (b) or who has given evidence under sub-section (1) (d) shall be called for the prosecution unless a statement has been taken from him previously and read to the accused by a Magistrate.
- (6) If there is a prosecutor or a pleader for the defense they shall be allowed to address the Magistrate in that order before he makes his findings.

CHAPTER XIX TRIALS BY HIGH COURTS

173. Commitment Necessary.

No person shall be tried by a High Court unless he has been committed for trial to such Court as provided in Chapter XVIII.

174. Commencement of Trial.

- (1) When a High Court is ready to commence the trial the accused shall appear or be brought before it and the charge shall be read out in Court and explained to him and he shall be asked whether he is guilty of the offence or offences charged.
- (2) If the accused pleads guilty the plea shall be recorded and he may in the discretion of the Court be convicted thereon; provided that if the offence charged is punishable with death the presiding Magistrate shall enter a plea of not guilty on behalf of the accused.

NOTE:- See note to section 150, (2)

175. Plea of Not Guilty or no Plea.

If the accused pleads not guilty or makes no plea or if the presiding Magistrate enters a plea of not guilty on behalf of the accused the Court shall proceed to try the case.

176. Opening Case for Prosecution.

- (1) The prosecutor (if any) shall open his case by reading from the Penal Code or other law the description of the offence charged and stating shortly by what evidence he expects to prove the guilt of the accused.
- (2) The prosecutor or if there is no prosecutor the Court shall then examine the witnesses for the prosecution who may be cross-examined by the accused or his pleader and thereafter examined by the prosecutor or the Court, as the case may be.

177. Examination of Accused at Inquiry to be read.

After the witnesses for the prosecution have been heard the examination of the accused duly recorded by or before the committing Magistrate shall be produced and read out in Court.

178. Procedure After Conclusion of Evidence for Prosecution.

- (1) After the reading of the examination of the accused, the accused shall be examined as provided in section 218. After that he shall be asked whether he means to call witnesses other than to character.
- (2) If the accused says that he does not intend to call any witness other than to character, the prosecutor (if any) may sum up his case against the accused and the Court shall then call upon the accused to enter upon the defense.

Provided always that the Court may, after hearing the summing up (if any) if it considers that the evidence against the accused or any of several accused is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect, of such accused without calling upon him or them to enter upon' the defense. Such accused shall thereupon be discharged and the Court shall then call upon the remaining accused (if any) to enter upon the defense.

(3) If the accused or any one of several accused says that he intends to call any witness other than to character, the Court shall call upon the accused to enter upon the defense.

Provided always that the Court may, before calling upon the accused to enter upon the defense, call upon the prosecutor to sum up his case against any one or more of the accused against whom it considers that the evidence is not sufficient to justify the continuation of the trial and, after hearing the summing up (if any), may in its discretion record a finding of not guilty in respect of any of such accused or call upon any of them to enter upon his or their defense.

NOTE:- *Sub-sections (2) and (3) lay down the ordinary procedure in trials, the provision to them lay down a procedure to be followed in exceptional cases where the Court thinks it unnecessary to call upon all or some of the accused for their defense. Sub-section (2) deals with cases where no witnesses other than witnesses to character are called for the defense of any of the accused. Sub-section (3) deals with cases where witnesses other than witnesses to character are intended to be called for the defense of all or some of the accused: in such cases the normal procedure is that the prosecutor does not address the Court a second time until all the evidence for all the accused has been presented and the accused or their advocates have addressed the Court, but the proviso to sub-section (3) enables the Court to intervene with an acquittal and so shorten the proceedings. This power should however not be exercised in cases coming under sub-section (3) unless the case as regards those whom it is desired so to acquit is quite clear or for other special reasons and cannot be exercised except after giving the prosecutor an opportunity of summing up his case against the person or persons whom it is intended so to acquit.*

A prosecutor who sums up his case against any accused persons under sub-section (3) has the same right of reply under section 181 after the witnesses for the defense have been heard against those of the accused whom the Court does not acquit under this sub-section as if he had not already summed up his case.

179. Defense.

When the Court calls upon the accused to enter upon the defense the accused or his pleader may open his case stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and, after their cross-examination and re-examination (if any), the accused may make a statement in his defense and he or his pleader may sum up his case.

180. Right of Accused as to Examination And Summoning of witnesses.

The accused shall be allowed to examine any witness not previously named by him if such witness is in attendance, but he shall not, except as provided in section 198, be entitled as of right to have any witness summoned other than the witness named in the list or lists delivered to the Magistrate by whom he was committed for trial.

NOTE:- (1) *See section 164.*

(2) *For the powers of the Court to summon any material witness or to examine any person present or to re-call for re-examination any witness already examined see section 219.*

181. Prosecutor's Right of Reply.

If the accused or any of the accused calls any witness other than to character the prosecutor shall be entitled to reply. And, if the accused has called only witnesses for character, the prosecutor may at the close of the case for the defense adduce evidence of previous convictions of the accused.

Provided that in any case with the leave of the Court the prosecutor may be heard in reply on a point of law or, where none of the accused has called evidence other than to character but any of them has introduced new matter in his statement to the Court, on such new matter.

NOTE:- *The introduction of new matter might be a ground for the exercise by the Court of its powers under section 21.*

182. Consideration of Finding.

When the case for the defense and the prosecution reply (if any) are concluded and the Court does not desire to put any further questions to the accused, the Court shall be closed to consider its findings.

183. Announcement of Finding.

After the Court has made its finding the Court shall be re-opened and the finding announced.

184. Procedure on Finding of Guilty.

If the finding is guilty the accused shall, if he has not previously called any witnesses to character, be asked whether he wishes to call any such witnesses and after such witnesses (if any) have been heard he shall be asked whether he desires to make any statement in mitigation of punishment.

After the accused has made his statement (if any) in mitigation of punishment the prosecution shall, unless such evidence has already been given, produce evidence of any previous convictions of the accused.

185. Sentence.

The Court shall then again be closed to consider the sentence and after it has determined the sentence the Court shall be re-opened and the sentence announced.

186. Recommendation to Mercy.

The Court may in any case in recording the sentence make a recommendation for mercy but in such case shall give the reasons for its recommendation.

Note:- *And see section 244.*

187. Opinion of Majority to Prevail.

In all cases where the opinions of the members of the Court differ, the opinion of the Majority shall prevail.

188. Every Member to give Opinion.

Every member of a Court shall give his opinion on every question, which the Court has, to-decide. He shall give his opinion as to the sentence even though he was in favour of acquittal.

189. Order of Taking Opinions.

The opinions of the members of the Court shall be taken in succession beginning with the junior member.

190. Dissent of Member to be Reduced to Writing.

The dissent of any member of a Court from the finding together with his reasons thereof shall be reduced to writing and submitted with the record to the confirming or appellate authority but shall not form part of the record nor shall such dissent be mentioned in the judgement.

CHAPTER XX CHARGES

Note:- *see Schedule 111, 43.*

191. Charge to State Offence.

- (1) Every charge under this Code shall state the offence with which the accused is charged.
- (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only;
- (3) If the law, which creates the offence, does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.
- (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.
- (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.
- (6) The charge shall be written in English or when necessary in any other language prevalent in the area.

192. Particulars as to Time, Place and Person.

- (1) The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.
- (2) When the accused is charged with criminal breach of trust or criminal misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of a single offence.
- (3) When the accused is charged with falsification of accounts under section 415 of the Penal Code it shall be sufficient to allege a general intent to defraud without naming any particular person intended to be defrauded to be the subject of the fraud or any particular day on which the offence was committed.

193. When Manner of Committing Offence must be stated.

When the nature of the case is such that the particulars mentioned in sections 191 and 192 do not give the accused sufficient notice of the matter with which he is charged the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations :

- (a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.
- (b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.
- (c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

194. Effect of Errors.

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

Illustrations :

- (1) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court or the confirming authority may infer from this that the omission to set out the manner of the cheating is not material.
 - (a) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no knowledge to which of them the charge referred and offered no defense. It may be inferred from such facts that the omission to set out the manner of the cheating was in this case a material error.
 - (b) A is charged with the murder of B on 21st January 2000. In fact the murdered person's name was B and the date of the murder was the 30th January, 2000. A was never charged with any murder but one and had heard the inquiry before the Magistrate, which referred exclusively to the case of B. It may be inferred from these facts that A was not misled and that the error in the charge was immaterial.
- (2) A was accused of murdering B on the 20th January 2000 and B (who tried to arrest him for that murder) on the 21st January, 2000. He was, upon a charge tried for referring to the murdered man as 'B' the murder of 'B'. The witnesses present in his defense were witnesses in the case of B. It may be inferred from this that A was misled and that the error was material.

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

- (1) When any person is committed for trial without a charge the Court may frame a charge against him.

- (2) Subject to the provisions of this code as to the joinder of charges and the separate trial of distinct offences any Court may at any time before judgement is pronounced frame a new charge or additional head of charge or amend any charge which is erroneous or defective; provided always that a High Court shall not frame a charge or head of charge based on facts of which evidence has not been taken at the magisterial inquiry.
- (3) Every charge or head of charge so framed, added or amended shall be read and explained to the accused and his plea thereof shall be taken.

196. When Court may Proceed with Trial Immediately after Framing, Altering or adding to Charge.

If the charge as revised under section 195 is such that proceeding immediately with the trial is not likely in the opinion of the Court to prejudice the accused in his defense of the prosecutor (if any) in the conduct of the case, the Court may in its discretion forthwith proceed with the trial as if the charge so revised had been the original charge.

197. When New Trial may be Directed, or Trial Suspended.

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

199. Recall of witnesses when Charge Revised.

For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately, except in the cases mentioned in sections 200, 201, 202, 203 and 296.

Illustration.

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

200. Offences of like Character may be Charged Together.

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

201. Acts Forming the Same Transaction.

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

Note:- *In passing sentence the Court must nevertheless have regard to section 74 of the Penal Code.*

Illustrations.

- (a) A, an accountant, commits criminal breach of trust and to conceal his offence falsifies his accounts. A may be separately charged with and tried at one trial for criminal breach of trust (section 350 of the Penal Code) and falsification of accounts (section 415 of the Penal Code.)
- (b) A commits robbery on B and in doing so voluntarily causes hurt to him. A may be separately charged with and tried at one trial for offences under sections 278, 334 and 336 of the Penal Code.

202. When it is Doubtful on which Occasion Offences has been Committed.

If a series of acts is of such a nature that it appears that an offence was committed on one of several occasions but it is doubtful whether the facts which can be proved will show on which occasion an offence was committed, the accused may be charged with having committed an offence alternatively on one or other of such occasions.

Note :- *For form of judgement on conviction in the alternative see section 243 (3), See also section 75 of the Penal Code.*

Illustration.

A states on oath before the Magistrate that he saw B hit C with a club. Before another Court a states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

NOTE:- *For form of charge see Schedule 111, 43B(3).*

For form of judgement on conviction in the alternative see section 248(4). See also section 75 of the Penal Code.

203. When it is Doubtful what Offence has been Committed.

If a single act or series of acts is of such a nature that if it is doubtful which of several different offences the facts which can be proved will constitute, the accused may be charged with having committed all or any one or more of such offences and any number of such charges be tried together, or he may be charged in the alternative with having committed one or more of the said offences.

NOTE:- *For form of judgment on conviction in the alternative see section 248 (4). See also section 75 of the Penal Code.*

Illustration.

A is accused of an act which may amount to theft or receiving stolen property or criminal breach of trust. He may be charged (a) with theft and receiving stolen property and criminal breach of trust or (b) with theft or receiving stolen property or criminal breach of trust alternatively or (c) with one or two of these offences omitting the others or other of them.

204. When Person Charged with One Offence May Be Convicted of Another.

- (1) If in the case mentioned in section 203 the accused is charged with one offence and it appears in evidence that he committed a different offence with which he might have been charged under the provisions of that section, he may be convicted of the offence, which he is shown to have committed although he was not charged with it.
- (2) When the accused is charged with an offence, he may be convicted of having attempted to commit that offence although the attempt is not separately charged.

205. Conviction of Lesser Offence Where Greater Charged.

- (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitute a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.
- (2) When a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

206. What Persons May Be Charged Jointly.

The following persons may be charged and tried jointly namely:-

- (a) persons accused of the same offence committed by them in the same transaction;
- (b) persons accused of an offence and persons accused of abetment or of an attempt to commit the same offence;

- (c) persons accused of more than one offence of the same or similar character committed by them jointly;

NOTE :- See Section 200.

- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of offences which include theft, extortion or criminal misappropriation and persons accused of receiving or retaining or assisting in the disposal or concealment of property, the possession of which has been transferred by offences committed by the first-named persons, or abetment of or attempting to commit any of the last named offences;
- (f) persons accused of offences under sections 353 and 356 of the Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence;
- (g) persons accused of any offence under Chapter XVI or XVII of the Penal Code relating to counterfeit coin or notes or revenue stamps and persons accused of any other offences under the said Chapters relating to the same coin or note or the same revenue stamp or of abetment of or attempting to commit any such offence; and
- (h) persons accused of offences committed during a fight or series of fights one arising out of another, and persons accused of abetting any of these offences; the provisions contained in the former part of this chapter shall, so far as may be, apply to all such charges.

Illustrations.

- (a) A and B are accused of the same murder. A and B may be charged and tried together for the murder.
- (b) A and B are accused of housebreaking by night in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with housebreaking by night and B alone with the charge of murder.
- (c) A and B are both charged with theft and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be tried together on a charge charging both with the one theft and B alone with the two other thefts.

CHAPTER XXI
PREVIOUS ACQUITTALS OR CONVICTIONS

207. Person Once Convicted Or acquitted Not To Be Tried for the same Offence

- (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of that offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence and the same facts, or for any other offence for which a different charge from the one made against him might have been made under section 203 or of which he might have been convicted under section 204.
- (2) A person convicted of any offence constituted by any act causing consequences, which together with such act constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened or were not known to the Court to have happened at the time when he was convicted.
- (3) A person acquitted or convicted of any offence constituted by any acts may notwithstanding such acquittal or conviction be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Illustrations:

- (a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant or upon the same facts with the theft simply or with criminal breach of trust.
- (b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with and tried for robbery;
- (c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.
- (d) A is charged before a High Court and convicted of the culpable homicide not amounting to murder of B. A may not while the conviction remains in force afterwards be tried on the same facts for the murder of B.
- (e) A is charged by a Magistrate of the first class with and convicted by him of voluntarily causing hurt to B. A may not while the conviction remains in force afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within sub-section (2).
- (f) A is charged by a Magistrate of the second-class with and convicted by him of theft of property from the person of B. A may be subsequently charged with and tried for robbery on the same facts.
- (g) A, B, and C are charged by a Magistrate of the first class with and convicted by him of robbing D. A, B, and C may afterwards be charged with and tried for brigandage on the same facts.

208. Previous Acquittal or Conviction, When To Be Proved.

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

CHAPTER XX II

**GENERAL PROVISIONS AS TO INQUIRIES, TRIALS AND
OTHER JUDICIAL PROCEEDINGS**

209 Courts To Be Open.

The place in which any Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them;

Provided that the presiding Magistrate may if he thinks fit order at any stage of any inquiry into or trial of any particular case that the public generally or any particular person shall not have access to or be or remain in such place.

NOTE :- The provision enables the presiding Magistrate to exclude witnesses from the Court.

210. Pleaders.

Any advocate authorized generally to practice in the Criminal Courts of the New Sudan may appear and act as pleader in any criminal proceedings, and any Court may as regards any particular proceedings before it and the County Judge may as regards any particular proceeding before any Court in his County authorize any other person to act as pleader, provided that no professional advocate not authorized generally to practice in the Criminal Courts of the New Sudan shall appear in any criminal proceedings without the sanction of the president of the Court of Appeal.

211. Prosecutions, by Whom Conducted.

Prosecutions may be conducted by the Attorney General or any person appointed by him to represent him, or by the complainant or a pleader appointed by him.

Provided that the Attorney General may intervene to remove the conduct of the prosecution from the complainant or his pleader and in such case the Attorney General shall direct by whom the prosecution shall be conducted.

212. Right To Be Defended By Pleader.

Every person accused before any Criminal Court may as of right be defended by a pleader:-

Provided that in the case of serious offences if the accused is a pauper the Attorney General, on application by the accused and if satisfied that it is necessary in the interest of Justice, shall appoint an advocate to defend the accused and pay all or part of the costs.

213. General Procedure In Inquiries and Trials By Magistrates.

Except as otherwise provided in this Code the general order of procedure in inquires and trials before a Magistrate shall, so far as may be, be the same as provided in Chapter XIX of trials by High Courts.

214. Oaths.

Every witness giving evidence in any inquiry or trial under this Code shall take an oath or make a solemn affirmation that he will speak the truth, the whole truth and nothing but the truth;

Provided that the evidence of any person, who by reason of youth or ignorance or otherwise is in the opinion of the Court unable to understand the nature of an oath, may be received without the taking of an oath or making of an affirmation 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.

215. Nature of Evidence.

Evidence shall be admitted in every judicial proceeding under this Code in accordance with reason and justice with a view to ascertaining the truth without unfair treatment of the accused or the witnesses and in particular:-

- (a) nothing shall be admitted as evidence which does not tend directly or indirectly to prove or disprove the charge, and
- (b) the evidence produced shall be the best obtainable in the circumstances of the case.

216. Protection of witnesses.

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

217. Taking and Recording of Evidence.

- (1) Save as otherwise provided in this Code all evidence in every inquiry and trial shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

NOTE:- See Section 141 A.

- (2) Save as otherwise provided in this Code the evidence of each witness and the examination and statement (if any) of the accused shall be recorded in writing in English or when necessary, in any other language prevalent in the area.
- (3) The record shall ordinarily be in the form of a narrative and not in the form of question and answer, but in the discretion of the presiding Magistrate any particular question and answer may be taken down in full.
- (4) The record of any statement or examination of the accused shall be read over. The record of the evidence of a witness shall be read over upon the application of the witness or the accused. If any objection is made to the record it shall be corrected, if wrong, or a note made of the objection.
- (5) After recording the evidence of a witness the presiding Magistrate shall also record or cause to be recorded such remarks as he thinks material respecting the demeanor of such witness whilst under examination.

218. Power to Examine The Accused.

- (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the Court may at any stage of an inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary and shall for the purpose aforesaid question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defense.
- (2) The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Court may draw such inference from such refusal or answers as it thinks just.
- (3) The answers given by the accused may be taken into consideration in the inquiry or trial and put in evidence for or against him in any other inquiry into or trial for any other offence, which such answers may tend to show that, he had committed.
- (4) No oath shall be administered to the accused.

219. Power To Summon Material Witnesses or Examine Persons Present.

Any Court may at any stage of any inquiry, trial or other judicial proceedings under this Code summon any person as a witness or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined; and the 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.

220. Admissibility of Evidence of Witness in Subsequent Proceedings:-

- (1) The evidence of a witness given on oath and duly recorded in any judicial proceeding under this Code may in the discretion of the Court be read and accepted as evidence in any such subsequent proceedings against the same accused or in a later stage of the same proceedings, if the witness is dead or cannot be found or is incapable of giving evidence or if his presence cannot be obtained without an amount of delay, expense or inconvenience which the Court considers unreasonable in the circumstances of the case, provided that the questions in issue are substantially the same on each occasion and that if the witness is a witness for the prosecution, the accused had the right and opportunity to cross-examine the witness.

Illustration:

Where 'A' is tried and convicted for causing grievous hurt to 'B' and 'B' subsequently dies of his injuries 'A' may be tried again for murder (see section 207). 'B's' evidence at the first trial may be used in the second trial, 'B' being dead and the question in issue at each trial substantially the same.

Note :- *The power of dispensing with the attendance of a living and capable witness is very exceptional and should be used with great discretion.*

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

Note :- *The power given by sub-section (2) enables a Court when it thinks that a witness had told the truth at a previous stage and is lying before it to ignore the evidence given before it and rely on the evidence given previously.*

221. Admissibility of Statement by the Accused.

Where there are several accused, the statements of each made in answer to examination under section 179 may be taken into consideration by the Magistrate or Court and shall be admissible for or against himself and any of the other accused at the same or any subsequent stage of the same proceedings, provided that such statement made by one of the accused shall not be admitted at the trial of the other accused unless the accused person who made such statements was being tried jointly with the other accused and the statements were made in the presence of the other accused.

Note:- *The statements made admissible in evidence by this section should not be given under weight in as much as they are not made on oath and are not subject to cross-examination. Where the accused that has made statements incriminating the other accused is not on trial with them he should be called as a witness in the usual way. When the evidence of one accused is an essential part of the case for the prosecution or defense of another, the accused should be tried separately (see section 238 and note thereto). An exception may be made when persons are being jointly tried by virtue of section 206 (h) for offences connected within the same Act.*

222. Language not understood by Accused.

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

223. Interpreter Bound to Interpret Truthfully.

When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

224. View.

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

225. Commissions to take Evidence.

- (1) Whenever in the course of any judicial proceeding, under this Code it appears to a Magistrate of the first class or to a High Court that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable, such Magistrate or Court may dispense with his attendance and may issue a commission, to any Magistrate of the first or second class within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.
- (2) When in such a case the proceedings are before a Magistrate of the second or Payam Court, the Magistrate may apply to a Magistrate of the first class who shall have power if he thinks fit to issue a commission for the examination of the witness.

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

226. Examination of Witness on Commission.

- (1) The Magistrate or Court issuing such commission may send any interrogatories in writing submitted by the prosecution or the defense or prepared by himself which he deems relevant to the questions at issue, to the Magistrate to whom the commission is directed who shall examine the witness upon such interrogatories.
- (2) The prosecutor and the accused may appear in person or by pleader before such Magistrate and examine, cross-examine or re-examine as the case may be such witness provided that if the accused is in custody he shall not be entitled to appear in person.

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

226. A Evidence taken Abroad by Interrogatories.

- (1) Whenever in the course of any judicial proceedings under this Code it appears to a Magistrate of the first class or to a High Court that for the purpose of ascertaining the nature, source or other attribute of identification of any article the examination of a witness who is abroad is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable, such Magistrate or Court after hearing the prosecutor if any and the accused or his advocate may dispense with his attendance and may settle such interrogatories in writing to be answered by such witness as may be necessary for the aforesaid purpose.
- (2) The interrogatories settled by the Magistrate or Court under sub-section (1) may be answered by affidavit duly sworn by the witness in question or in such other manner as a County Judge or in his absence, the High Court or the Court of Appeal may order.

227. Return of Commission.

After any commission issued under section 225 has been duly executed it shall be returned together with the deposition of the witness examined there under to the Court which issued; the commission, the return thereto and the deposition shall be open at all reasonable times to inspection by the prosecution or defense and subject to all just exceptions may be read in evidence in the case and shall form part of the record. Any deposition so taken may also be received in evidence at any subsequent stage of the same case before another Court.

228. Deposition of Medical Witness.

- (1) The evidence of any physician of the New Sudan Civil Authority taken on oath before a Magistrate in the presence of the accused may be read in evidence in any inquiry trial or other proceedings under this Code although he is not called as a witness.
- (2) The Court may if it thinks fit summon such physician to appear before it as a witness.
- (3) A written report by any such physician may at the discretion of the Magistrate or Court be admitted in evidence for the purpose of providing the nature of any injuries received by and the physical cause of the death of any person who has been examined by him; provided that on the admission of such report the same shall be read over to the accused and he shall be asked whether he disagrees with any statement therein and any such disagreement shall be recorded by the Court and provided further that if by reason of any such disagreement or otherwise it appears desirable for the ends of justice that such physician shall attend and give evidence in person the Magistrate or Court shall summon such physician to appear as a witness.

229. Report of Scientific Expert.

Any document purporting to be a report under the hand of any expert in bacteriology, physiology, biology, pathology, chemistry or other branch of scientific knowledge in the service of the New Sudan Civil Authority upon any matter or thing duly submitted by him for examination or analysis and report in the course of any proceedings under this Code may be used as evidence in any inquiry, trial or other proceeding under this Code.

230. Record of Evidence in the Absence of Absconding 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 or commit for trial such person for the offence alleged may in his absence examine any witnesses produced on behalf of the prosecution and record their depositions. Any such deposition may on the arrest of such person be given in evidence against him at the inquiry into or trial for the offence with which he is charged if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable.

231. Record of Evidence when Offender is Unknown.

If it appears that an offence punishable with death or imprisonment for ten years and upwards has been committed by unknown person or persons, any Magistrate of the first class may hold an inquiry and examine any witness who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence if the deponent is dead or incapable of giving evidence or beyond the limits of the New Sudan.

231. A Stay of Proceedings by the Attorney General.

At any time after completion of an investigation under this Code into any alleged offence and before the commencement of any inquiry or trial resulting there from, the Attorney General may by writing under his hand inform the Magistrate who has taken cognizance of such offence, that he does not, in respect of all or any of the alleged offences, intend to prosecute the person or any one or more of the persons accused; and at any stage in any inquiry or at any stage before the finding in any trial. The Attorney General may by similar writing inform the Magistrate or Court conducting such inquiry or trial that he does not in respect of all or any of the offences alleged or charged intend to prosecute the person or any one or more of the persons accused; thereupon, in every such case, all proceedings in respect of any such offence alleged or charged shall be stayed and the person or persons accused shall be discharged of and from the same.

232. Tender of Pardon.

- (1) In the case of any offence triable exclusively by a High Court or punishable with imprisonment for a term which may extend to seven years, the County Judge or, with the sanction of the County Judge, the Magistrate inquiring into the offence may at any time, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making full and true disclosure of the whole of the circumstances within his knowledge relating to such offence and the connection therewith of every other person concerned whether as principal or abetter in the commission of the offence.
- (2) Every person accepting a tender under this section shall be examined as a witness at the magisterial inquiry.
- (3) Every person accepting a tender under this section shall be committed for trial if the offence which he appears to have committed is one which under this Code exclusively triable by a High Court or in the opinion of the committing Magistrate ought to be so tried.
- (4) Such person shall, subject to the provisions of this Code as to bail, be detained in custody until the termination of the trial.
- (5) Every Magistrate who tenders a pardon under this section shall record his reasons for so doing.
- (6) The Court trying a person who has accepted a tender of pardon shall, if the accused pleads that he has complied with the conditions on which the tender of pardon was made, record the plea and proceed with the trial, and shall find whether or not the accused has complied with the conditions of the pardon and if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code pass judgement of acquittal.

233. Power to Direct Tender of Pardon during Trial.

At any time after the commencement of the trial of any offence such as is mentioned in section 232 but before judgement is passed the court before which the trial takes place may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence tender a pardon to such person on the same condition as mentioned in the said section.

234. When Pardon may be Revoked.

- (1) When a pardon has been tendered under section 232 or section 233 and any person who has accepted such tender has either willfully concealed something essential by giving false evidence not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter; provided that such person shall not be tried jointly with any of the other accused persons and it shall be necessary for the prosecution to prove that he did not comply with the condition on which the tender was made.
- (2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him at such trial.

235. No Influence to be used to Induce Disclosure.

- (1) Except as provided in sections 232 and 233 no policeman or other person in authority shall influence an accused person by means of torture, threat, enticement or any other means to induce him to disclose or withhold any matter within his knowledge.
- (2) Any statement given by the accused as a result of such influence shall not be accepted as evidence against him or against any other person and shall be without any legal effect.

236. Power to Postpone or Adjourn Proceedings.

- (1) If due to the absence of a witness or any other, reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the Court may if it thinks fit by order in writing stating the reasons therefore from time to time, postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may by a warrant remand the accused, if in custody.
- (2) Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time;

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

NOTE : *For form of warrant see Schedule 111,28.*

237. Procedure by Magistrate In Cases of Which He Cannot Dispose.

- (1) If in the course of an inquiry or trial before a Magistrate the evidence appears to him to warrant a presumption that the case is one that should be tried or committed for trial by some other Magistrate, he shall stay proceedings and submit the case with a brief report explaining its nature to any Magistrate of the first or second class to whom he is subordinate or to such other Magistrate of like powers as the High Court or County Judge may direct.
- (2) The Magistrate to whom the case is submitted may either try the case himself (if he has jurisdiction so to do) or commit the accused for trial or refer it for trial on commitment to any Magistrate subordinate to him having jurisdiction.
- (3) If any such case, the Magistrate to whom the case is submitted or referred considers that the accused should be committed for trial, he shall follow the procedure laid down in Chapter XVIII save that he shall not be bound to take again any of the evidence already recorded.
- (4) If in any such case the Magistrate decides that the case should be tried, the trial shall be begun afresh.

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

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

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

239. Transfer of case to Magistrate's Successor and Replacement of member of Court.

- (1) Whenever any Magistrate after having heard and recorded the whole or any part of the evidence in an inquiry or a trial is succeeded or temporarily replaced in his office by another Magistrate the Magistrate so succeeding may act on the evidence so recorded or partly recorded by his predecessor and partly recorded by himself; or he may of his own motion or on the reasonable demand of the accused re-summon all or any of the witnesses or recommence the inquiry or trial.
- (2) Whenever in the course of a trial before a Payam Court established under section 10 (a) if any member of the Court is unable to continue to act, the County Court Judge may nominate another member to take his place and the trial shall be continued without the evidence already heard and recorded being re-heard; provided that the Court may of its own motion or on the reasonable demand of the accused re-summon all or any of the witnesses or recommence the trial.

240. Reference on Points of Law.

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

241. Procedure when accused does not Understand Proceedings.

If the accused though not insane cannot understand the proceedings, the Court may proceed with the inquiry or trial; but if the accused is ultimately convicted the proceedings shall be forwarded with a report of the circumstances of the case to the County Judge or if the trial was before the County Judge to the High Court and if by the High Court to the Court of Appeal and the County Judge or the High Court or Court of Appeal shall pass thereon such order as he or it thinks fit.

**CHAPTER XXIII
JUDGEMENT**

242. Language and Mode of Delivering Judgement.

- (1) The judgement in every trial in a Criminal Court shall be written in English and it may be written in any language prevailing in the area if necessary, and the judgement shall be pronounced or the substance of it explained in open Court either immediately after the termination of the trial or at some subsequent time of which due notice shall be given;

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

- (2) If the accused is in custody he shall be brought up to hear judgement delivered, if he is not in custody he shall be required to attend to hear judgement delivered unless his presence is dispensed with by the presiding Magistrate.

243. Contents of Judgement.

- (1) Subject to the provisions as to summary trials contained in Chapter XVI every judgement shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed or sealed by the presiding Magistrate in open Court at the time of pronouncing it.
- (2) If the judgement is a judgement of conviction it shall specify the offence of which and the section of the Penal Code or other law under which the accused is convicted and the punishment to which he is sentence.

If the sentence is one of imprisonment the Court may if, having regard to the nature of the offence and the antecedents of the offender, it think fit, recommend that he shall be given special treatment.

- (3) When it is doubtful upon which of several occasions an offence was committed the Court shall distinctly express the same and pass judgement in the alternative.

NOTE: *See section 203 and Penal Code section 75.*

- (4) When it is doubtful which of several offences the facts proved constitute, the Court shall distinctly express the same and pass judgement in the alternative.

NOTE: *See section 203 and Penal Code section 75.*

- (5) If the judgement is a judgement of acquittal it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

244. Reason for not Passing Death Sentence to be stated.

If the accused is convicted of an offence punishable with death and the Court sentences him to any punishment other than death, the Court shall in its judgement state the reasons why sentence of death was not passed.

245. Sentence of Death.

When a person is sentenced to death, the sentence shall direct that the neck hang him till he is dead.

246. Cases in which Appeal Lies.

When a judgement of conviction is one from which an appeal lies, the presiding Magistrate shall inform the convicted person that he has a right to appeal and of the period within which if he desires to appeal his petition is to be presented.

247. Court not to Alter Judgement.

No Court when it has signed its judgement shall alter or review the same, except as provided in sections 271 (1) and 281 or to correct a clerical error.

248. Copy of Judgement etc. to be given to Accused on Application.

On the application of the accused, a copy of the judgement or when he so desires a translation in his own language if practicable shall be given to him without delay. Such copy shall be given free of cost.

NOTE: *See section 314.*

249. Original Judgement to be Filed.

The original judgement shall be filed with the record of the proceedings.

**CHAPTER XXIV
REFERENCE FOR CONFIRMATION,
APPEAL AND REVISION**

250. Submission for Confirmation of Judgement of Court.

Every judgement of a High Court passing a death sentence or a sentence of imprisonment for life shall be submitted to the Court of appeal for confirmation.

251. Right of Convicted Person to Present Petition of Appeal to Confirming Authority.

When a judgement of conviction is submitted for confirmation under section 250 the convicted person may submit to the confirming authority by way of petition of appeal a statement in writing of his reasons why such judgement or an order under section 80 should not be confirmed.

252. Appeals in Cases other than those Provided for under Section 250.

Every person convicted by a High Court other than in the two cases set out in section 250 may submit an appeal to the Court of Appeal. The appeal shall be by a petition in writing showing the reasons for appeal against the judgment or the order made by such Court under section 80 of this Code.

253. Jurisdiction of the Court of Appeal.

- (1) The Court of Appeal is competent to deal with appeals on points of law against decisions made by High court under sections 252 and 253 if the judgement against which appeal is made was based on contravention, wrong application or misinterpretation of the law or if there is a procedural defect affecting the judgement.
- (2) In addition to the powers conferred upon it by the proceeding section, a Court of Appeal is competent to deal with all appeals and applications for revision against decisions by a High Court Judge whether made in his appellate or original jurisdiction.

254. Presentation of the Appeal to the Appellate Authority.

- (1) An appeal by petition in writing shall lie to the County Judge :-
 - (a) by the convicted person from every judgement of the Court of a Magistrate of the second class or of the Payam Court Judge whereby a sentence is passed in excess of the penalties which such Magistrates are empowered to award under sections 19 and 20 when trying offences summarily;
 - (b) by the person against whom the order is made by a Magistrate of the second class under sections 80, 86, or 299 or from every order made absolute under sections 102 or 103 of this Code.
- (2) An appeal by petition in writing shall lie to the Magistrate of the First Class by the convicted person from any judgement of a Payam Court.

255. Petition of appeal When and How Presented.

- (1) Every petition of appeal under section 251 or 254 shall be presented within seven days after the passing of sentence or the making of the order appealed against;

Provided that if the appellant has been committed to or detained in prison under the provisions of sections 90, he may present a petition of appeal against the order to give security within seven days of the commencement of the imprisonment or detention.

- (2) If the appellant is in prison he may present his petition to the officer in charge of the prison that shall forward it to the appropriate authority.

256. Powers of Confirming or Appellate Authority.

- (1) The Court of Appeal upon a judgement being submitted to it for confirmation or an appeal from the High Court and the High Court from the county Court when an appeal is submitted it from the County Court Judge and the County Court Judge or a Magistrate of the first class as the case may be after receiving a petition of appeal from Payam Court may call for the record of proceedings and exercise the following Powers:-
- (a) he may confirm the finding and the sentence, if any;
 - (b) he may confirm a finding of guilty and alter the sentence by remitting the punishment in whole or in part or by commuting a sentence of imprisonment into a sentence of imprisonment for a shorter period and a fine or into a sentence of fine only, or in case in which the conditions of section 24 are fulfilled, may direct that the offender be released on his entering into such a bond as is provided for and subject to such conditions as are set out in section 24, and the Court of Appeal may commute a sentence of death into a sentence of imprisonment and fine or into a sentence of imprisonment only or of fine only.
 - (c) He may alter a finding of guilty of one offence to a finding of guilty of another offence of which the Court could on the charge and evidence before it have found the offender guilty, provided that such offence is not punishable with any greater punishment than is prescribed for the offence of which the Court found the offender guilty, and thereupon he shall if necessary alter the sentence so as to make it conform to the punishment prescribed for the offence mentioned in the altered finding and may in so doing exercise all or any of the powers of alteration provided in paragraph (b);
 - (d) He may send back the finding whether of guilty or not guilty or the sentence for revision once only, and if the finding only is sent back for revision the Court shall have power without any direction to revise and if it thinks fit to increase the sentence awarded (if any) or if there has been no sentence to award one; provided always that it shall not be lawful for any Court on revision to receive any additional evidence unless expressly authorized by the Court of Appeal, the High Court or the County Judge as the case may be;
 - (e) He may refuse confirmation of the finding whether of guilty or not guilty, the refusal of confirmation of a finding shall have the effect of annulling the proceedings so far as they relate to that finding and upon refusal of confirmation of a finding of guilty the accused shall be released, but such refusal of confirmation shall not prevent his subsequent retrial if ordered by a competent authority;

Provided always that upon refusing to confirm a finding the Court of appeal or the High Court or the County Court Judge or a First Class Magistrate, as the case may be, may order either a re-trial of the case by same or another Court and on the same or another charge framed by him or a resumption of the original trial for the purpose of hearing fresh evidence or of further examining all or any of the witnesses at the original trial and of giving a fresh judgement, and may also order such previous preliminary investigation or inquiry as he may think proper;

- (f) He may substitute a finding of not guilty for a finding of guilty;
- (g) He may while exercising any of the foregoing powers amend, annul or add any consequential order as may be just or proper;
- (h) He may confirm or annul any recommendation for special treatment or make such recommendation in any case in which none has been made.

(2) The Court of Appeal or the High Court or the County Court Judge, as the case may be upon an order under section 80 being submitted to him for confirmation, and the County Court Judge after receiving a petition of appeal under section (254) and sending for the record of the proceedings, may exercise the following powers, that is to say:-

- (a) he may confirm the order.
- (b) if the order was made under sections 80 or 86 he may annul the order or reduce the amount of the security or the number of the sureties or the term for which security has been required or he may postpone the enforcement of the order to give security; and if he annuls the order any bond already executed under sections 80 or 86 shall forthwith become void;
- (c) if the order was made under section 299 or was an order made absolute under sections 102 or 103, he may annul the order or vary it in such manner as he thinks fit.

NOTE : *For form of warrant of Commitment to prison on alteration of sentence, see Schedule 11 , 37 and 38,*

257. Powers of Revision.

- (1) The Court of Appeal may on its own motion call for and examine the record of any criminal proceedings before any court, and High Court may in like manner call for and examine the record of any criminal proceedings before a County court Judge or Magistrates Courts and the County Judge may in like manner call for and examine the record of any proceedings before a 2nd class Magistrate or Payam Court within his County for the purpose of satisfying itself or himself as to the correctness, legality, or propriety of any finding, recorded or passed or as to the regularity of the proceedings of the court.

- (2) The Court of Appeal, a High Court, a County Court Judge, as the case may be, shall have in respect of the proceedings, the record of which is called for under this section, all the powers of an appellate authority under section 256, provided that no order shall be made under this sub-section for the revision of any finding of not guilty or of any sentence with a view to its being increased or for the retrial or the resumption of the trial of any person who has been acquitted unless the record of the proceedings was called for within three months of the date of the delivery of the judgement.
- (3) The Court of Appeal the High Court, the Court of a County Judge, as the case may be, shall have the power to confirm, annul, alter or send back for revision or substitute any other order as it may think just and proper and for any order made in any proceedings the record of which is called for under this section and to which the provisions of section 256 are not applicable.
- (4) When proceedings under this section are called for, the Court of Appeal, the High Court, or the Court of a County Judge may, within three months from the date on which it was dealt with by a lower court by confirmation or otherwise, annul any order made and exercise all the powers provided in section 256 as if a petition of appeal has been submitted under sections 251 or 254 of this code;

Provided that no confirmation or other order made by the court may be annulled if more than three months have elapsed since it was made.

258. Power of Confirming Authority to Pass Interim Order.

Whenever the record of a case comes before the Court of Appeal the High Court or the County Judge under the provisions of this Chapter, the Court of Appeal, the High Court or the County Court Judge, as the case may be, may by an order in writing order that a person in confinement be released on bail or on his own bond pending any further proceedings or order or that an acquitted person be re-arrested.

259. Sentence to Take Effect Pending Appeal or Confirmation.

A sentence other than of death shall take effect notwithstanding an appeal or a submission for confirmation provided that.

- (i) where a warrant has been issued under section 267 no sale shall take place until the sentence has been confirmed or the appeal decided, and
- (ii) where an order for release under section 258 has been made the time during which the convicted person has been so released shall be excluded in computing the period of any sentence, which he has ultimately to undergo.

260. Accused to be heard on Appeal.

The Court of Appeal, or the High Court or the County Court may in exercising their powers under this Code hear the accused or the complainant or the prosecutor either in person or by agent, and the accused is entitled to be heard in person or by agent if the court decides to increase the sentence or alter it to his detriment.

261. Non-Interference with the Finding, Sentence or Order in Certain Cases.

The Court of appeal in exercising the powers of confirmation or appeal, and the High Court, the Court of a County Judge in exercising its power of appeal, shall not interfere with any finding, sentence or other orders of the court on the ground only that evidence has been wrongly admitted or that there has been a technical irregularity in procedure if the accused has not been prejudiced in his defense and the finding, sentence or order is correct.

262. Vacancies in Court to which Judgement is sent back.

Whenever a finding or sentence is sent back by the confirming or appellate authority under this chapter and owing to death, transfer or the cause it is impossible to reconstitute the Court as originally constituted the President of Court of Appeal, the High Court Judge or the County Court Judge as the case may be shall nominate a Magistrate or Magistrates to fill the vacancy or vacancies.

263. Prohibition of Hearing on Appeal.

No Magistrate shall take part in any appeal against a finding, judgement or order made by him or in the making of which he participated.

**CHAPTER XXV
EXECUTION**

264. Execution of Death Sentence.

When a person is sentenced to death, the Magistrate or President of the Court shall issue a warrant committing him to prison pending confirmation of the sentence by the Court of Appeal and the Chairman. When the sentence has been confirmed or altered, the President of the Court of Appeal shall issue such warrant to the officer in charge of the prison as may be necessary to cause the sentence as confirmed or altered to be carried into effect.

NOTE: *for forms of warrant see Schedule 111, 33 and 34.*

265. Stay of Execution of Death Sentence on a Pregnant or Suckling woman or on the Aged.

Subject to the Provisions of section 65 of the penal code 2002.

- (1) No death sentence shall be executed on any person who has reached the age of seventy. Whenever the officer in charge of Prison discovers that a person sentenced to death has reached the age of seventy, he shall stay the execution of the death sentence and report the case to the President of the Court of Appeal;
- (2) If a woman sentenced to death is found to be pregnant, the officer in charge of Prisons shall order the execution of the sentence to be postponed and shall report the case to the President of the Court of Appeal after full investigation as to how this came to be the case;
- (3) In the case referred to in subsections (1) and (2) the President of the Court of Appeal shall re-submit the case together with the report of officer in charge of Prison and any other investigation he may have ordered, to the Chairman for reconsideration of the original confirmation order;
- (4) If the death sentence is confirmed once more, the execution of the death sentence on the pregnant (or suckling) woman shall be postponed until after two years from the date of birth if the child remained alive.

266. Execution of Sentence of Imprisonment.

- (1) When an accused person is sentenced to imprisonment the Court passing the sentence shall forthwith issue a warrant committing him to prison and shall forward the warrant and the convicted person to the prison in which he is to be confined.
- (2) Every such warrant shall be directed to the official in charge of the prison or other place in which the prisoner is to be confined and shall be lodged with the official in charge of such prison or place.

NOTE : *Form of warrant see schedule 111, 35.*

267. Warrant for Levy of Fine.

- (1) When an offender is sentenced to pay a fine the Court passing the sentence may, in its discretion although the sentence directs that in default of payment of the fine the offender shall be imprisoned, issue a warrant for the levy of the amount :-
 - (a) by the seizure and sale of any movable property belonging to the offender, or
 - (b) by the attachment of any debts due to the offender, or
 - (c) with the consent of the SPLM County Secretary in which any land or other immovable property of the offender is situated, by the attachment and sale of such property.

- (2) A warrant for seizure and sale of the movable property of an offender shall be addressed to a Magistrate within the local limits of whose jurisdiction it is to be executed. When execution is to be enforced by attachment of debts or by sale of immovable property, the warrant shall be sent for execution to any Civil Court competent to execute decrees for the payment of money in civil suits and such Court shall follow the procedure in force for the execution of such decrees and shall out of the proceeds of the execution pay the costs thereof and retain and ad valorem fee of five per centum.

NOTE : *For forms of warrant see schedule 111,41 and 42.*

268. Who May Issue Warrant.

Subject to the provisions of section 264 a warrant for the execution of any sentence or other order of a Criminal Court may be issued by the Magistrate who, or the presiding Magistrate of the Court which, passed such sentence or order or by his successor in office, provided that, if in any case it is not possible without delay or inconvenience for a warrant to be issued as aforesaid, the warrant may be issued by the County Court Judge, High Court or the Court of Appeal.

269. Powers of Court when Offender Sentenced to Fine Only.

- (1) When an offender has been sentenced to a fine only with or without a sentence of imprisonment in default of payment of the fine, the Court or any person authorized by section 268 to issue a warrant may exercise all or any of the following powers, that is to say:-
- (a) allow time for payment of the fine;
 - (b) direct that the fine be paid by installments;
 - (c) postpone the issue of a warrant under section 267;
 - (d) without postponing the issue of a warrant under section 267, postpone the sale of any property seized under such warrant;
 - (e) postpone the execution of sentence of imprisonment in default of payment of the fine.

Any order made in the exercise of such powers may be made subject to the offender giving such security as the authority making the order thinks fit by means of a bond with or without sureties, and such bond may be conditioned either for the payment of the fine in accordance with the order or for the appearance of the offender as required in the bond or both.

- (2) In like manner the Court or any person authorized as aforesaid may order that the execution of the sentence of imprisonment upon an offender who has been committed to prison in default of payment of a fine be suspended and that he be released but only subject to the offender giving security as set forth in subsection (1).

- (3) In the event of the fine or any installment thereof not being paid in accordance with an order under this section the authority making the order may enforce payment of the fine or of the balance outstanding by any means authorized in this chapter and may cause the offender to be arrested and may commit or re-commit him to prison under the sentence of imprisonment in default of payment of the fine.

NOTES :

- (1) *Payment of a fine by the sureties to a bond discharges the offender as if he had paid it himself.*
- (2) *See Sections 69 to 72 of the Penal Code, 2002.*
- (3) *For form of warrant of commitment to prison in default of payment of a fine, see Schedule 111,36.*

270. Execution of Sentence of Whipping.

- (1) When the accused is sentenced to whipping, the sentence shall be executed at such place and time as the Court may direct.
- (2) The whipping shall be inflicted in the presence of the official in charge of the prison unless the Magistrate orders it to be inflicted in his own presence.
- (3) No sentence of whipping shall be executed by installments.

271. Stay of Execution of Sentence of Whipping.

- (1) If before the execution of a sentence of whipping it appears to the Magistrate or official present that the offender is not in a fit state of health to undergo the sentence, he shall stay the execution; and the Magistrate who passed the sentence may either after taking a medical opinion again order the execution of the sentence or substitute it for any other sentence which he could have passed at the trial.
- (2) If during the execution of a sentence of whipping it appears to the Magistrate or official present that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped and the remainder of the sentence be remitted.
- (3) In either case the Magistrate, if not present, shall be informed of the stay of execution.

272. Execution of Sentence on Escaped Convict.

When, sentence of imprisonment is passed on an escaped convict, such sentence shall take effect after he has suffered imprisonment for a further period equal to that, which at the time of his escape remained un-expired of his former sentence.

273. Sentence on An Offender Already Sentenced for Another Offence.

When a person already undergoing a sentence of imprisonment is sentenced to imprisonment, such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

274. Return Of Warrant on Execution of Sentence.

When a sentence has been fully executed, the officer executing it shall return the warrant to the Court in which the trial took place with an endorsement under his hand certifying the manner in which the sentence has been executed.

**CHAPTER XXVI
PARDONS, SUSPENSIONS, REMISSIONS AND
COMMUTATIONS OF SENTENCES**

275. Power to Pardon.

The Chairman may remit the whole or part of the sentence and he may drop the conviction of any person for any offence.

276. Power to Suspend or Remit Sentences.

- (1) When any person has been sentenced to punishment for an offence, the Chairman may at any time without conditions or upon any conditions, which the person sentenced, accepts suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.
- (2) If any condition, on which a sentence has been suspended or remitted is in the opinion of the Chairman not fulfilled, the Chairman may cancel the suspension or remission and if the convicted person has been released from prison before the period of his imprisonment has expired he may be re-arrested without warrant by any policeman or chief or retainer and may be re-committed to prison by any Magistrate of the First or Second class to serve the un-expired portion of his sentence and in calculating such un-expired portion the time during which the convicted person has been at large shall be excluded from the calculation.
- (3) A condition, on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted or one independent of his will.
- (4) A Committee consisting of the President of the Court of Appeal the Commissioner of Interior and the Attorney General shall be established and shall be charged with the duty of considering and reporting to the Chairman upon the case of every prisoner in respect of whom a recommendation for suspension or remission of sentence has been submitted to the Chairman prior to consideration by the Chairman.

NOTE : *For form of warrant of commitment after remission of part of sentence see Schedule 111, 37.*

276. A Lapse of Convictions after Execution of Sentence:-

If any person is convicted of an offence, such conviction shall lapse automatically:-

- (i) after five years since the sentence was executed or served if such sentence did not exceed six months imprisonment or LS60 fine and if the person convicted was not convicted of any illegal act during these five years;
- (ii) after ten years since the sentence was executed or served if such sentence exceeded that specified in subsection (i) above and the person convicted was not convicted of any illegal act during these ten years.

276. B Conviction of Persons under Eighteen Years to Lapse.

The conviction of any person under eighteen years of age, before any court of any offence not punishable with death or life imprisonment shall lapse and have no consequence once the sentence was executed or served and such conviction may be noted for record purposes only.

277. Power to Commute Punishment.

The Chairman may without the consent of the person sentenced commute a sentence of death into any other sentence allowed by law or a sentence of imprisonment into one of fine.

CHAPTER XXVII.

**PROCEEDINGS IN CASES OF CERTAIN OFFENCES
AFFECTING ADMINISTRATION OF JUSTICE**

278. Procedure in Cases mentioned in Section 130.

- (1) When any Criminal or Civil Court is of opinion that any offence referred to in section 130, is committed before it or brought under its notice in the course of any judicial proceedings should be inquired into or tried, such Court, after making any preliminary inquiry which it thinks fit, may send the case for inquiry or trial to the nearest Magistrate of the first or second class and may send the accused in custody or take sufficient security for his appearance before such Magistrate, and may bind any person to appear and give evidence at such inquiry or trial.
- (2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made and recorded under section 136.
- (3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case might have been transferred that an appeal is pending against the decision arrived at in the judicial proceedings out of which the matter has arisen, he may if he thinks fit adjourn the hearing of the case until such appeal is decided.

279. Procedure in Certain Cases of Contempt.

- (1) When any such offence as is described in sections 151, 155, 156, 157, or 166 of the Penal Code, 2003 is committed in the view or presence of any Civil or Criminal Court, the Court may instead of proceeding under section 278, cause the offender to be detained in custody; and at any time before the end of the court on the same day if it thinks fit take cognizance of the offence and sentence the offender to fine not exceeding Ls10 and in default of payment to imprisonment for a term which may extend to one month, unless such fine be sooner paid.
- (2) Nevertheless no Criminal Court shall impose a sentence under this section, which it is not competent to impose under the provisions of Chapter 111, and no Payam Court shall impose a sentence under this section, which it is not competent to impose under this Code.

NOTE : *For form of warrant of commitment see Schedule 111, 39.*

280. Record in Cases of Contempt.

- (1) When any Court takes cognizance under section 279 of an offence it shall record the fact constituting the offence with the statement (if any) made by the offender as well as the finding and sentence.
- (2) If the offence is under section 166 of the Penal Code, 2003 the record shall show the nature and stage of the judicial proceedings in which the Court was interrupted or insulted while sitting and the nature of the interruption or insult.

281. Discharge of Offender on Submission or Apology.

When any Court has under section 279 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court or on apology being made to its satisfaction.

282. Imprisonment or Commitment to Officer's Custody of Person Refusing to Answer or Produce Document.

If any witness or any person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce and does not offer any reasonable excuse for such refusal, the Court may for reasons to be recorded in writing sentence him to imprisonment or by warrant under the hand of the presiding Magistrate commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime he consents to be examined and to answer or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 278 or section 279.

Note:- *For form of warrant of commitment by presiding Magistrate see Schedule 111, 40.*

283. Appeals from Convictions in Contempt Cases.

Any person sentenced by any Court under section 279 or section 282 may, notwithstanding anything hereinbefore contained, appeal to the Court or authority to which judgement or orders made in that Court are appealable or are sent for confirmation.

**CHAPTER XXVIII
LUNATICS**

284. Person Incapable of Making his Defense By reason of Unsoundness of Mind.

- (1) When in the course of an inquiry or trial there is reason to believe that the accused is of unsound mind and consequently incapable of making his defense, the inquiry or trial shall be adjourned and the accused shall be referred for examination by one or more specialized physicians who shall report the result of such examination to the authority conducting the inquiry or trial.
- (2) If the unsoundness of mind is established the inquiry or trial shall be further adjourned until such time as the accused shall have sufficiently recovered to make his defense and in the meantime, subject to any general or special regulations or order to be issued or passed by the Court of Appeal the accused shall be placed in such custody as the Court or the Magistrate conducting the inquiry thinks desirable.
- (3) If in the opinion of the Court or the Magistrate the circumstances permit of it, the custody may subject as aforesaid be that of any relatives or friends of the accused willing to take charge of him. In such case the court or Magistrate may if it or he thinks fit take security from the custodians that the lunatic shall be properly taken care of and that he shall be prevented from doing injury to himself or to any other person and for his production at such time and place as the Court or Magistrate may from time to time direct.

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

285. Person of Unsound Mind doing an Act which but for such Unsoundness would be an Offence.

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

**CHAPTER XXIX
COMPOUNDING OF OFFENCES**

286. Compounding Offences.

- (1) The offences punishable under the sections of the Penal Code 2003 described in the first two columns of the table next following may subject to the subsequent provisions of this section be compounded by the persons mentioned in the third column of that table:-

PART 1.

OFFENCE	Section of Penal Code Applicable	Person by whom the Offence may be Compounded
Causing hurt Assault or use of criminal force.	273, 277 296, 297	The person to whom the hurt is caused The person assaulted or to whom criminal force is used
Criminal misappropriation and breach of trust.	245, 348	The person in possession of the property or owner of the property misappropriated.
Mischief, when the only loss or damage caused is loss or damage to a private person.	364, 365	The person to whom the loss or damage is caused.
Criminal trespass House-trespass	386 387	The person in possession of the property trespassed upon.
Criminal breach of contract of service.	231A	The person with whom the offender has contracted.
Adultery. Enticing or taking with a criminal intent a married woman	427, 428 429	The husband of the woman.

Defamation	431	The person defamed.
Printing or engraving etc., matter knowing it to be defamatory.	434	The person defamed.
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	435	The person defamed
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	437	The person intimidated.
Insult intended to provoke a breach of the peace.	439	The person insulted.

PART II

Giving an uncovered cheque.	362B	The person in favour of whom the cheque was drawn.
Endorsement, delivery and acceptance to cheque.	362C	The person suffering injury by endorsement
Grievous hurt on provocation.	276]	
Grievous hurt without provocation.	278]	The person to whom the hurt is caused.
Hurt or grievous hurt, by act endangering life or safety.	284	
Wrongfully restraining or confining and person.	287, 288	The person restrained or confined.
Assault on woman.	299	The woman assaulted
Unlawful compulsory labour.	311	The person compelled to labour.
Mischief by killing or maiming animal etc.	366, 367	The person to whom loss was caused by the mischief.
Mischief in relation to water supply, when the only loss or damage caused is loss or damage to a private person.	368	The person to whom loss or damage is caused.
House trespass to commit an offence (other than theft) punishable with imprisonment.	390	The person in possession of the house trespassed upon.
Uttering words or making gestures intending to insult the modesty of a woman.	440	The woman whom it is intended to insult.

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

- (3) When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound the offence.
- (4) The offences mentioned in Part 1 of the foregoing table may be compounded without the leave of any authority at any time before the accused person has been convicted by a Court of a Magistrate or committed for trial to a High Court.

The offences mentioned in Part II of the foregoing table may be compounded before the Court of a Magistrate has convicted the accused person or committed for trial only with the consent of a Magistrate who has jurisdiction to try the accused person for the offence or to commit him for trial.

After a commitment for trial an offence shall not be compounded except :-

- (a) with the leave of the committing Magistrate where the trial has not commenced, or
- (b) with the leave of the court trying the case where the trial has commenced and has not been concluded.

After a trial whether before a Magistrate or a Court has been concluded an offence shall not be compounded except with the leave of the authority to whom an appeal would lie or who has power to send for the proceedings under section 257.

- (5) The compound of an offence under this section shall have the effect of an acquittal of the accused.
- (6) No offence shall be compounded except as provided by this section.

CHAPTER XXX

BAIL

287. When Bail to be Granted.

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

287. A Release on Bail or Bond for Offences Punishable With fine only

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

288. When Bail May be taken in respect of Non-Bailable Offences.

- (1) Persons accused of an offence punishable with death shall not be released on bail.
- (2) Persons accused of an offence punishable with imprisonment for a term exceeding ten years shall not ordinarily be released on bail; nevertheless the Court or Magistrate may upon application made release on bail a person accused as aforesaid if it or he considers:-
 - (a) that by reason of the granting of bail the proper investigation of the offence would not be prejudiced nor a serious risk of the accused escaping from justice be occasioned; or
 - (b) that there are no reasonable grounds for believing that the accused committed the offence, but that there are sufficient grounds for further inquiry.

289. Power of County Judge to Direct Release on Bail.

Subject to the provisions of section 288 (1), the County Court Judge may in any case direct that any person be admitted to bail.

290. Power to Arrest Person Released on Bail

Any Court or Magistrate may at any subsequent stage of any proceedings under this Code cause any person who has been released under the preceding sections of this chapter to be re-arrested and may commit him to custody.

291. Power of County Court Judge to order Reduction of Bail.

The County Court Judge may in any case direct that the bail required by an officer in charge of a police station or Magistrate be reduced.

292. Bond of Accused and Sureties.

Before any person is released under the proceeding sections of this chapter he shall execute a bond for such sum of money as the officer in charge of the police station or the Court or Magistrate or the County Court Judge, as the case may be, he thinks sufficient on condition that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or Magistrate or the County Court Judge and if he is released on bail the sureties shall execute the same or another bond or other bonds conditioned to the same effect.

Note:- For form of bond and bail see Schedule 111, 20.

293. Discharge from Custody.

- (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, if he is in prison, the Court or Magistrate admitting him to bail shall issue an order of release to the official in charge of the prison and such official on receipt of the order shall release him.
- (2) Nothing in this section, or section 287 or section 288 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

293. A Other Provisions Relating to Bail Guarantee of Good Behaviour.

On the conviction of any person as an idle person or as a vagabond the Court shall have power in addition to or in substitution for any other punishment to order the convict to enter into a bond in such a sum as the Court shall think fit that he will be of good behaviour for a period not exceeding one year and in default of his entering into such bond the court shall have power to order him to be imprisoned in lieu thereof until the period for which he was ordered to give such bond expires or until he gives the bond to the Court requiring it in addition to any other punishment which may be adjudged to him.

293. B Court may Release Person Imprisoned for Failure To give Security.

Whenever the Court is of opinion that any person imprisoned for failing to give security under Chapter XXVIII of Penal Code whether by the order of the Magistrate of such Court or that of his predecessor or of subordinate Magistrate, may be released without hazard to the Community or to any other person he may order such person to be discharged.

293. C Court may vary Order as to Security.

Wherever any person has been imprisoned for failing to give security under section 293A the court or any superior Court may make an order reducing the amount of the security or the time for which the security has been required.

CHAPTER XXXI

GENERAL PROVISIONS AS TO BONDS

294. Deposit instead of Bond.

When any person is required by any Court or Magistrates or officer in charge of police station to execute a bond with or without sureties, such Court or Magistrate or officer may except in the case of bonds to be executed under Chapter VII, permit him to deposit a sum of money to such amount as the Court or Magistrate or officer may think fit in lieu of executing such bond.

295. Bond required from a Minor.

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

296. Amount of bond not to be excessive. Sufficient sureties may be Required when those first taken are insufficient.

- (1) The amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.
- (2) If, through mistake, fraud or otherwise, insufficient sureties have been accepted or if the sureties afterwards become insufficient, the Court or a Magistrate may issue a warrant for the arrest of the person on whose behalf the sureties executed the bond and, when such person appears, the Court or Magistrate may order him to find sufficient sureties and on his failing to do so may make such order as in the circumstances is just and proper.

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

- (a) in the case of an offender released on probation under Section 24, an order requiring him to appear on a date to be stated therein before the appropriate Court and receive sentence;
- (b) in the case of a person ordered to give security for good behaviour under Section 80 or Section 86, an order committing him to prison for the remainder of the period for which he was originally ordered to give security or until he finds sufficient sureties;
- (c) in the case of a person accused of an offence and released, on bail under Section 52 or Chapter. XXX, an order committing him to prison until he is brought to trial or discharged.

297. Discharge of Sureties.

- (1) All or any sureties to a bond may at any time apply to the Court which caused the bond to be taken or to a Magistrate of the first or second class to discharge the bond either wholly or so far as relates to the applicants.
- (2) On such application the Court or Magistrate shall issue a warrant for the arrest of the person on whose behalf the bond was executed and upon his appearance shall discharge the bond either wholly or so far as relates to the applicants and shall require such person to find other sufficient sureties and, if he fails to do so, may make such order as in the circumstances is just and proper.

NOTE:- See note to Section 296.

298. Discharge of Surety's Estate.

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

NOTE:- See note to Section 296.

299. Procedure on Forfeiture of Bond.

- (1) Whenever it is proved to the satisfaction of the Court, by which a bond has been taken, or of the Court of a Magistrate of first or second class or when the bond is for appearance before a court, to the satisfaction of such court that a bond has been forfeited, the Court shall record the grounds of such proof and may call upon any person bound by the bond to pay the penalty thereof or to show cause why it should not be paid.
- (2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same from such person or from his estate if he is dead in the manner laid down in section 267 for the recovery of fines.

NOTE:- *The surety's estate is only liable if the surety dies after the bond is forfeited. See section 298.*

- (3) If the penalty is not paid and cannot be recovered in manner aforesaid the person bound shall be liable by order of the Court, which issued the warrant under section 267, to imprisonment for a term which may extend to six months.
- (4) The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

NOTE:- (1) For forms see Schedule 111, 24, 25, 26, 27, 31, 32 and 42.

(2) *for appeal against an order made by Magistrate under this section see Section 253.*

300. Arrest on Breach of Bond for Appearance.

When a person who is bound by any bond to appear before a Court or Magistrate does not so appear, the Court or Magistrate may issue a warrant for his arrest.

**CHAPTER XXXII
DISPOSAL OF PROPERTY**

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

when any property regarding which any offence appears to have been committed or which appears to have used for the commission of any offence is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial and, if the property is subject to speedy or natural decay, may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

302. Order for Disposal of Property after Trial.

- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person appearing to be entitled to the possession thereof or otherwise if any movable property or document produced before it or in its custody for recording which any offence appears to have been committed or which has been used for the commission of any offence.
- (2) When an order is made under this Section in a case in which an appeal lies or which requires confirmation, such order shall not (except when the property is an animal or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed or when such appeal is presented within such period until appeal has been dispose of or until the order is confirmed, provided that the Court may in any case make an order under the provisions of sub-section (1) for the delivery of any property to any person appearing to be entitled to the possession thereof on his executing a bond with or without sureties to the satisfaction of the Court to restore such property to the Court, if the order made under this section is modified or set aside by the appellate or confirming authority.

NOTES:- *For power to make orders for the temporary custody or destruction of animals, which have been cruelly treated or billed, see section 240 of the Penal Code.*

303. Order made may take form of Reference to County Court Judge.

In lieu of itself passing an order under Section 302 the Court may direct the property to be delivered to the County Court Judge, who shall in such case deal with it as if it had been seized by the police and the seizure had been reported to him as a Magistrate in manner mentioned in Section 307.

304. Payment to innocent Purchaser of Money found on Accused.

When any person is convicted of any offence which includes or amounts to theft or receiving stolen property and it is proved that other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by the purchaser be delivered to him.

305. Destruction of defamatory and other matter.

- (1) On a conviction under the Penal Code, under Sections 235, 434, 435, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the Court or remain in the possession or power of the person convicted.
- (2) The Court may, in like manner, on a conviction under the Penal Code, under sections 217, 218, 219, 220, 221, 222, or 223, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

306. Power to Restore Possession of Immovable Property.

- (1) Whenever a person is convicted of an offence attended by criminal force or show of force or criminal intimidation and it appears to the Court that thereby any person has disposed of any immovable property, the court may if it thinks fit order such person to be restored to the possession of the same.
- (2) No such order shall prejudice any right or interest to or in such immovable property, which any person may be able to establish in a civil suit.

307. Procedure upon seizure of Stolen or taken Property under Section 41.

- (1) The seizure by any policeman of property taken under Section 41 or alleged or suspect to have been stolen or found in circumstances which create suspicion of the commission of an offence shall be forthwith reported to Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery to the person entitled to the possession thereof on such conditions (if any) as the Magistrate thinks fit.

NOTE:- See Section 315.

- (2) If the person entitled to the possession of such property is unknown, the Magistrate may detain it and shall in such case issue a public notice in such form as he thinks fit specifying the articles of which such property consists and requiring any person who may have a claim there to, to appear before him and establish his claim within six months from the date of such notice.

308. Procedure where no Claimant appear within six months.

If no person within such period establishes his claim to such property and if the person in whose possession such property was found is unable to show that it was lawfully acquired by him, such property shall be at the disposal of the Civil Authority and may be sold under the orders of the County Court Judge; at any time within two years from the date of the property coming into the possession of the police the County Court Judge may direct the property or the proceeds of the sale of the property to be delivered to any person proving his title thereto on payment by him of any expenses incurred by the Civil Authority in the matter.

309. Power to sell Perishable Property.

If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 307 and 308 shall as nearly as may be practicable apply to the ten per cent of the proceeds of such sale.

**CHAPTER XXXIII
MISCELLANEOUS**

310. Expenses of Complainants and Witnesses.

Subject to any rules made by the Court of Appeal any Criminal Court may if it thinks fit order payment on the part of the Civil Authority of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceedings before such Court under this Code.

311. Power of Court to pay expenses or Compensation out of Fine.

- (1) Whenever under any law in force for the time being a Criminal Court imposes a fine, the Court may when passing judgement order the whole or any part of the fine recovered to be applied:-
 - (a) in defraying expenses incurred in the prosecution;
 - (b) in compensation for the injury caused by the offence committed, where substantial compensation is in the opinion of the Court recoverable by civil suit;

- (c) in compensating an innocent purchaser of any property in respect of which the offence was committed who has been compelled to give it up;
 - (d) in defraying expenses incurred in medical treatment of any person injured by the accused in connection with the offence.
- (2) If the fine is imposed in a case, which is subject to appeal or requires confirmation, no such payment shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the decision of the appeal or before the sentence is confirmed

312. Payments to be taken into Consideration in Subsequent Suit.

At the time of awarding compensation in any subsequent civil suit relating to the same matter the Court shall take into consideration any sum paid or recovered as compensation under section 311.

313. Moneys Ordered to be Recoverable as Fines.

Payment of any money (other than a fine) payable by virtue of any order made under this Code may be enforced as if it were a fine.

314. Copies of Proceedings.

If any person affected by a judgement or order passed by a Criminal Court desires to have a copy of any order or deposition or other part of the record, he shall on applying for such copy be furnished therewith; provided that the application is made within a period of six months from the date of judgement or order affecting the applicant and that he pays such fee for copy as may, from time to time be laid down, unless the Court or the confirming or appellate authority in any case for some special reason directs the copy to be furnished without fee.

315. Power of Police to Seize Property suspected to be Stolen.

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

316. Powers of Superior Officers of Police.

Any Superior Officer or any other officer of police may exercise the same powers, throughout the local area to which he is appointed, as may be exercised by an officer in charge of a police station without the limits of his station.

317. Compensation to Persons Groundlessly Arrested.

When any person causes the arrest of another person and it appears to a Magistrate of the first or second class by whom the case is inquired into or tried that there was no sufficient grounds for causing such arrest, the Magistrate may in his discretion direct the person causing the arrest to pay to the arrested person or each of the arrested persons, if there are more than one, such compensation not exceeding LS10,000 the Magistrate thinks fit and may award a term of imprisonment not exceeding thirty days in the aggregate in default of payment, and the provisions of section 72 and 73 of the Penal Code shall apply as if such compensation were a fine.

Provided that, before making any such direction the Magistrate shall:-

- (a) record and consider any objection which the person causing the arrest, if present, may urge against the making of the direction; and
- (b) if he directs any compensation to be paid, state in writing his reasons for awarding the compensation.

NOTE:- *Compensation awarded under this section may be recovered as if it were a fine See section 313.*

318. Forms.

- (1) The forms set forth in the Third Schedule, with such variation as the circumstances of each case require, may be used for the respective purpose therein mentioned and if used shall be sufficient.
- (2) The President of the Court of Appeal may from time to time alter or cancel any of the forms set forth in the Third Schedule or may prescribe new forms which shall have effect as if they were included in the Third Schedule or may prescribe new forms which shall have effect as if they were included in the Third Schedule.

319. Power to Make Rules as to Fees.

The President of the Court of Appeal may from time to time make, alter or annual any rules prescribing fees to be charged for any act or thing done under this Code.

320. Case in which Magistrate is Personally Interested.

No Magistrate shall try or commit for trial or sit as a member of a Court which tries any case to or in which he is a party or personally interested without the consent of the County Court Judge or in the case of County Court Judge of the High Court, or in case of the High Court Judge, the Court of Appeal.

EXPLANATION: A Magistrate shall not be deemed to be a party to or personally interested in any case within the meaning of this section by reason only that he is concerned therein in a Public capacity or by reason only that he has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred or made or held an inquiry in connection with the case.

321. Public Servant Concerned in Sales not to Purchase or bid for Property.

A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

NOTE: *See section 160 of the Penal Code.*

Given under my hand this day of Year, 2003 A.D

**Dr. John Garang deMabior
Chairman
SPLM/CANS**