

# THE MAGISTRATES' COURTS ACT, 1963

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## TANGANYIKA



No. 55 OF 1963

I ASSENT,

*Julius K. Nyerere*  
President

24<sup>TH</sup> DECEMBER, 1963

**An Act to establish Magistrates' Courts, to declare the jurisdiction of and to provide for appeals from such Courts, and for matters relating thereto, to declare the cases in which customary law is applicable, to repeal the Subordinate Courts Ordinance, the Justices of the Peace Ordinance and the Local Courts Ordinance, and to amend the Penal Code, the Criminal Procedure Code and certain other laws**

[1<sup>ST</sup> JULY, 1964.....] GN. 324/64

ENACTED by the Parliament of Tanganyika.

## PART I

## PRELIMINARY

1. This Act may be cited as the Magistrates' Courts Act, 1963, and shall come into operation on such date as the Minister shall, by notice in the *Gazette*, appoint (hereinafter referred to as the appointed day).

2. In this Act, unless the context otherwise requires—  
 "appropriate judicial authority" means the Chief Justice and any person appointed by the Chief Justice under section 3 to be, or to perform the functions of, the appropriate judicial authority for the relevant purpose;

"associate" means an associate judge;

"civil magistrate" means a resident magistrate, and such other magistrate as the Chief Justice may appoint, either generally or in respect of any proceeding or category of proceedings, to be a civil magistrate;

"Civil Procedure Code" means the (Indian) Code of Civil Procedure, 1908, as in force in Tanganyika;

"court of a resident magistrate" means a court established or deemed to be established under section 6;

"decision" includes a judgment, finding, acquittal, conviction, sentence or ruling;

"district court" means a court established by section 5;

"district magistrate" includes a resident magistrate;

- "existing law" means the law in force immediately before the appointed day, and includes a law enacted or made by an enactment or instrument passed or made before, and coming into operation on or after, that day;
- "local authority" means a municipal, town or district council;
- Cap. 299 "local court" means a local court established under the Local Courts Ordinance (hereby repealed);
- "magistrate" means a primary court, district or resident magistrate, and includes a civil magistrate and a supervisory magistrates,
- "magistrate's court" means a primary court, district court or court of a resident magistrate;
- "Minister" means the Minister for the time being responsible for legal affairs;
- "order" includes a writ warrant, summons or other process, and a decree, revisional or confirmatory order, and any other formal expression of the decision of a court;
- "primary court" means a court established by section 4;
- "Primary Courts Criminal Procedure Code" means the Code set out in the Third Schedule to this Act, as amended from time to time;
- "proceeding" includes any application reference, cause, matter, suit, trial, appeal or revision, whether final or interlocutory, and whether or not between parties;
- "registrar" means the Registrar of the High Court and includes any deputy or district registrar;
- "supervisory magistrate" means any person appointed by the Chief Justice under section 3 to be, or to perform the functions of, a supervisory magistrate for the relevant purpose.

Appoint-  
ment of  
appropriate  
judicial  
authorities  
and super-  
visory  
magistrates

### 3. The Chief Justice may appoint-

- (a) any judge, associate, registrar or magistrate to be, or to perform the functions of, an appropriate judicial authority;
- (b) any associate, registrar or magistrate to be, or to perform the functions of, a supervisory magistrate,

and may, by directions, make such appointment generally or in respect of specified provisions, courts or areas only.

## PART II

### ESTABLISHMENT AND CONSTITUTION OF MAGISTRATES' COURTS

Primary  
courts

4.-(1) There is hereby established in every district a primary court which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the district in which it is established.

(2) The designation of a primary court shall be the primary court of the district in which it is established.

District  
courts

5.-(1) There is hereby established in every district a district court which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the district in which it is established.



(2) The designation of a district court shall be the district court of the district in which it is established.

**6.-(1)** The Chief Justice may, by order in the *Gazette*, establish courts of a resident magistrate which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction in such areas as may be specified in such order.

Courts of a  
resident  
magistrate

(2) The designation of a court of a resident magistrate shall be that specified in the order establishing the same.

(3) The variation of the designation of a court of a resident magistrate, or of the area within which such court may exercise jurisdiction, shall not affect the jurisdiction of such court to continue the hearing of, or to determine any proceeding commenced therein prior to such variation.

**7.-(1)** A magistrate's court shall be duly constituted when held by a single magistrate, being-

Constitu-  
tion of  
magistrates'  
courts

- (a) in the case of a primary court, a primary court magistrate;
- (b) in the case of a district court, a district magistrate:

Provided that where jurisdiction is conferred on a district court only when held by a magistrate of a particular description, such court shall not be duly constituted for the exercise of such jurisdiction unless held by a magistrate of that description;

- (c) in the case of a court of a resident magistrate, a resident magistrate.

(2) Where two or more magistrates of the appropriate description are assigned to a particular magistrate's court, each may hold sittings of the court concurrently with the other or others.

(3) Notwithstanding the foregoing provisions of this section, the appropriate judicial authority may direct two or more magistrates of the appropriate description to sit for the hearing and determination of any proceeding or any category thereof, and in any such case the court shall not be duly constituted for such proceeding, or any proceeding of such category, unless it is composed of the number of magistrates so directed.

(4) In any case where any proceeding is directed to be heard and determined by two or more magistrates, the same shall be determined in accordance with the opinion of the majority, and if the court is equally divided the proceeding shall be dismissed.

**8.** In any proceeding in a magistrate's court in which any rule of customary law or Islamic law is in issue or relevant, the court may, and when directed by an appropriate judicial authority shall, sit with an assessor or assessors; and every such assessor shall be required, before judgment, to give his opinion as to all questions relating to customary law or Islamic law in issue in, or relevant to, the proceeding:

Assessors

Provided that in determining the proceeding the court shall not be bound to conform with the opinions of the assessors.

**9.-(1)** A magistrate's court may be held at any place within the local limits of its jurisdiction:

Place and  
times of  
sitting and  
distribution  
of business

Provided that-

- (a) a magistrate's court shall not be held at a place that is not regularly or customarily used for such a purpose unless public notice has previously been given of an intention to use the same for such a purpose; and

(b) the Chief Justice may, by order in the *Gazette*, authorize a district court to sit outside the district for which it is established when exercising its appellate, confirmatory or revisional jurisdiction.

(2) Subject to the proviso to subsection (1) of this section, a magistrate's court shall sit at such times and places as may be necessary for the convenient and speedy dispatch of the business of the court, and the distribution of business as between magistrates assigned to a court shall be arranged as may be convenient:

Provided that the appropriate judicial authority may give general or special directions relating to any of such matters.

(3) Notwithstanding the provisions of any other law, a magistrate's court may sit for the dispatch of any proceeding of a criminal nature on a Sunday or a public holiday.

Registers and returns

**10.**(1) Each magistrate's court shall keep such register or registers of all the proceedings entered, heard and determined in the court as may be prescribed:

Provided that where sittings of the court are regularly or customarily held at more than one place, a separate register or set of registers may be kept for each of such places, and proceedings heard and determined at any place other than a regular or customary place of sitting shall be entered in the principal register or registers of the court.

(2) Each magistrate's court shall submit returns of all proceedings entered, heard and determined in the court in accordance with the directions of the appropriate judicial authority.

Seals and stamps

**11.** Magistrates' courts shall use seals or stamps of such nature and pattern as the Chief Justice may direct.

Language of courts

**12.**-(1) The language of primary courts shall be Kiswahili.

(2) The language of courts of a resident magistrate and of district courts shall be either English or Kiswahili, as the magistrate holding such court shall direct:

Provided that, save in the exercise of its appellate, revisional or confirmatory jurisdiction by a district court (in which case the record and judgment may be in English or Kiswahili), the record and judgment of the court shall be in English.

Magistrates to sit in open court

**13.**-(1) Subject to the provisions of subsection (2) of this section, a magistrate shall not inquire into or try any offence, try any civil proceeding or hear any appeal unless he is sitting in open court.

(2) This section shall have effect subject to any law conferring power on a court or magistrate to sit *in camera* or otherwise to exclude persons and to any law relating to domestic proceedings, bastardy or juvenile courts.

### PART III

#### JURISDICTION AND POWERS OF, AND APPEALS, ETC., FROM PRIMARY COURTS

##### (a) *Jurisdiction and powers*

Jurisdiction of primary courts

**14.**-(1) A primary court shall have and exercise jurisdiction-

(a) in all proceedings of a civil nature-

(i) where the law applicable is customary law or Islamic law:

Provided that no primary court shall have jurisdiction in any proceedings-

- (A) affecting the title to or any interest in land registered under the Land Registration Ordinance; or
- (B) in which Islamic law is applicable by virtue of the provisions of the Marriage, Divorce and Succession (Non-Christian Asiatics) Ordinance; or
- (ii) for the recovery of civil debts, rent or interest due to the Republic, the Government or any municipal, town or district council, under any judgment, written law (unless jurisdiction therein is expressly conferred on a court or courts other than a primary court), right of occupancy, lease, sub-lease or contract, if the value of the subject matter of the suit does not exceed two thousand shillings, and any proceedings by way of counterclaim and set off therein of the same nature and not exceeding such value;

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Cap. 112

- (b) in all proceedings in respect of which jurisdiction is conferred on a primary court by the First Schedule to this Act;
- (c) in all proceedings in respect of which jurisdiction is conferred on a primary court by any other law.

(2) The Chief Justice may, by order published in the *Gazette*, confer upon a primary court jurisdiction in the administration of deceases' estates where the law applicable to the administration or distribution of, or the succession to, the estate is customary law or, save as provided in subsection (1) of this section, Islamic law.

(3) The Minister may, by order published in the *Gazette*, add to the First Schedule jurisdiction to administer or enforce any provision of any law which a district court has jurisdiction to administer or enforce (other than any such provision in respect of which jurisdiction is conferred on a district court only when held by a civil magistrate), and may amend or replace the same accordingly.

**15.-(1)** The practice and procedure of primary courts shall be regulated and, subject to the provisions of any law for the time being in force, their powers limited-

Powers,  
practice and  
procedure

- (a) in the exercise of their criminal jurisdiction, by the Primary Courts Criminal Procedure Code;
- (b) in the exercise of their civil jurisdiction, by the provisions of the Fourth Schedule to this Act, and, where the law applicable is customary law, by customary law in so far as it is not inconsistent with the provisions of the Fourth Schedule;
- (c) in the exercise of their jurisdiction in the administration of estates, by the provisions of the Fifth Schedule to this Act, and, in matters of practice and procedure, by rules of court for primary courts which are not inconsistent therewith; and the said Code and Schedules shall apply thereto and for the regulation of such other matters as are provided for therein.

(2) The Minister may make regulations prescribing the rules of evidence in primary courts. Subject to any such regulations, a primary court may accept such evidence as is pertinent and such proof as appears to be worthy of belief, according to the value thereof and notwithstanding any other law relating to evidence or proof in force in Tanganyika.

(3) In addition to any other powers and provisions in that behalf, a primary court shall have power, subject to rules of court-

- (a) to issue a summons for the attendance of any party to any Proceeding in the court;
- (b) to issue a summons to any person to attend before it for the purposes of giving evidence or of producing any document or thing relevant to any proceeding in the court, to issue a warrant for the arrest of any such person and his production before the court, to issue a commission for the examination of witnesses, and to take evidence on commission;
- (c) where it is of the opinion that the justice of any case so requires, to require any person present at the court, whether a party or summoned as a witness or not, to give evidence; and
- (d) if it is shown to the satisfaction of the court that any property which is in dispute in any case is in danger of being destroyed, hidden, wasted, damaged, alienated or otherwise injuriously dealt with, by any Person, the court may, Pending final determination of case, issue an injunction to restrain any such person from destroying, hiding, wasting, damaging, alienating or otherwise injuriously dealing with any such property, and may, if it deems fit, take the property into its own custody, and, if it is of a perishable character, sell or dispose of the same and retain the proceeds in the same manner as if they were the original property:

Provided that-

- (a) where, in any proceeding of a criminal nature, the exercise of any of the powers specified in this subsection is subject, in accordance with the Primary Courts Criminal Procedure Code, to any condition, such power may be exercised only subject to such condition being fulfilled; and
- (b) nothing in Paragraph. (c) of this subsection shall be construed as empowering a primary court to require any person accused in any Criminal proceedings to give evidence therein against his will.

(4) For the avoidance of doubts it is hereby declared that nothing in sections 29, 31, 32, 36, 38, 38A or 38B of the Penal Code shall apply to, or to any punishment imposed by, a primary court.

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*(b) Appellate and revisional jurisdiction of district courts*

**16.-**(1) Save as hereinafter provided-

- (a) in proceedings of a criminal nature, any person convicted of an offence by a primary court, or, where any person has been acquitted by a primary court, the Director of Public Prosecutions;
- (b) in any other proceedings, any party, if aggrieved by an order or decision of the primary court, may appeal therefrom to the district court of the district for which the primary court is established.

(2) No appeal shall be allowed-

- (a) in any case of an accused person convicted on his own plea of guilty, except against sentence or an order for the payment of compensation;
- (b) in any case in which a primary court has passed a sentence of a fine not exceeding thirty shillings only or made an order for the payment of compensation not exceeding thirty shillings only save with the leave of the district court;

Appeals  
from  
Primary  
courts

- (c) in any case where a person is convicted of an offence set out in the Schedule to the Minimum Sentences Act, 1963 (being an offence within the jurisdiction of primary courts), against any minimum sentence prescribed by section 4 of that Act, unless the accused is a first offender (within the meaning ascribed to that expression in that Act) and the value of the relevant property does not exceed one hundred shillings or unless such sentence includes an order for the imposition of corporal punishment and the appellant is a male under the age of sixteen years or over the age of forty-five years, or a female.

Acts 1963  
No. 29

(3) Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days after the date of the decision or order against which the appeal is brought:

Provided that-

- (a) the district court may extend the time for filing an appeal either before or after such period has expired; and
- (b) if application is made to the district court within the said period of thirty days, or any extension thereof granted by the district court, the district court may permit an appellant to state the grounds for his appeal orally and shall record the same and hear the appeal accordingly.

17. In the exercise of its appellate jurisdiction, a district court shall have power-

Power of  
district  
courts

- (a) to direct the primary court to take additional evidence and to certify the same to the district court, or, for reasons to be recorded in writing, itself hear additional evidence;
- (b) whether additional evidence is heard or taken or not, to confirm, reverse, amend or vary in any manner the decision or order appealed against (including power to substitute a conviction or a conviction and sentence for an acquittal), so however that the decision or order as altered shall not be in excess of the jurisdiction of the primary court:

Provided that no conviction or conviction and sentence shall be substituted for an acquittal, and no sentence shall be enhanced, unless the accused or convicted person, as the case may be, shall have first been given an opportunity of being heard;

- (c) to quash any proceedings (including proceedings which terminated in an acquittal) and, where it is considered desirable, to order the case to be heard *de nova* either before the court of first instance or some other primary court, or any district court, having jurisdiction:

Provided that-

- (i) the provisions of paragraph (b) of subsection (1), and subsection (2), of section 43 shall be applicable to such rehearing as if the case had been transferred; and
- (ii) where an order that any proceedings be quashed and the case be reared is made as aforesaid, no plea of *res judicata* or of *autrefois acquit* or of *autrefois convict* shall be entertained in respect of any order or decision in the proceedings so quashed;
- (d) to make any other decision or order which might have been made, or to exercise any power which might have been exercised, by the primary court.

Revisional  
jurisdiction

**18.**-(1) A district court may call for and examine the record of any proceedings in the primary court established for the district for which it itself is established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings.

(2) In the exercise of its revisional jurisdiction, a district court shall have all the powers conferred upon a district court in the exercise of its appellate jurisdiction other than the power to substitute a conviction, or a conviction and sentence, for an acquittal; and the provisions of the proviso to paragraph (c) of section 17 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of a district court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.

(3) In addition to the provisions of subsection (2) of this section, no order shall be made in the exercise of the court's revisional jurisdiction in any Proceeding of a civil nature increasing any sum awarded, or altering the rights of any party to his detriment (other than an order quashing proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of the lower court to the extent necessary to make it conform thereto) unless such party shall have first been given an opportunity of being heard.

(4) No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court; and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject of a revisional order under this section.

(5) Without prejudice to the provisions of subsection (1) of this section, a district court may exercise its powers of revision in any case where an offender is committed for sentence, or a sentence is submitted for confirmation, under the Primary Courts Criminal Procedure Code.

Jurisdiction  
over  
offenders  
committed  
for sentence-  
by primary  
courts

**19.**-(1) Where an offender is committed to a district court for sentence under the provisions of the Primary Courts Criminal Procedure Code, the district court shall have jurisdiction to inquire into the circumstances of the case and to deal with the offender in any manner in which he could have been dealt with by the district court if he had been convicted by the district court of the offence in question.

(2) If the district court imposes a sentence on the offender-

(a) the provisions of the Primary Courts Criminal Procedure Code and of this Part shall apply only with regard to an appeal against conviction as for any other case tried by a primary court; and

(b) the offender may appeal against such sentence to the High Court in the same manner and in the same circumstances as if he had been convicted by the district court, and the provisions of the Criminal Procedure Code relating to appeals against sentence from the district court to the High Court shall apply accordingly.

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(3) The district court may in its discretion postpone its inquiry under the provisions of, subsection (1) of this section until the expiration of the time for filing an appeal against conviction, and, if such appeal has

been filed before the district court commences such inquiry, the district court may in its discretion postpone such inquiry until final determination of such appeal or for such lesser period as the court may deem fit.

**20.**-(1) Where-

(a) an appeal has been filed by a person entitled to appeal to a district court; or  
 (b) a district court calls for the record of any proceedings under section 18,  
 the district court, or the primary court, may, for reasons to be recorded in writing-

(i) in the case of a person sentenced to imprisonment or committed in custody to the district court for sentence, order-

(A) that the person be released on bail with or without sureties pending the hearing of his appeal or the termination of the revisional proceedings; or

(B) that the execution of the sentence be suspended pending the hearing of his appeal or the termination of the revisional proceedings, in which case such person shall be treated as a remand prisoner pending the hearing of his appeal:

Provided that if the appeal is ultimately dismissed or the original sentence (being a sentence of imprisonment) is confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail, or during which the sentence has been suspended, shall be excluded in computing the term of imprisonment; and

(ii) in any other case, order that the execution of the decision or order appealed against shall be suspended pending the hearing of his appeal, or the termination of the revisional proceedings.

(2) Where a district court determines any appeal, revises any proceedings or passes sentence upon any person committed to it for sentence, it shall certify its decision or order to the primary court in which the proceedings originated, and the primary court shall thereupon make such orders as are conformable to the decision or order of the district court and, if necessary, the records shall be amended in accordance therewith.

(c) *Appellate and revisional jurisdiction of the High Court in relation to matters originating in primary courts*

**21.**-(1) Save as hereinafter provided-

(a) in proceedings of a criminal nature, any person convicted of an offence, or, in any case where a district court confirms the acquittal of any person by a primary court or substitutes an acquittal for a conviction, the Director of Public Prosecutions;  
 (b) in any other proceedings, any party,  
 if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court-

General provisions on appeal to, revision by, and committal for sentence to, district courts

Appeal, etc, from district courts in their appellate and revisional jurisdiction

Provided that the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.

(2) No appeal shall be allowed by the Director of Public Prosecutions on any question of fact against the decision or order of a district court confirming the acquittal of any person by a primary court, and, where the Director of Public Prosecutions appeals in any such case on a question of law, the decision or order of the High Court thereon shall have effect as a declaratory order only.

(3) Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the decision or order of which the appeal is brought:

Provided that the Director of Public Prosecutions may file an appeal in the High Court, and where he so files an appeal, he shall give notice thereof to the district court and the district court shall forthwith dispatch the record of proceedings in the primary court and the district court to the High Court.

(4) Upon receipt of a petition under this section, the district court shall forthwith dispatch the petition, together with the record of the proceedings in the primary court and the district court, to the High Court.

Powers of  
associates  
and  
registrars

**22.** Where an appeal against any decision or order of a district court in the exercise of its appellate or revisional jurisdiction is received in the High Court, an associate or registrar of that Court may-

- (a) give directions as to the time within which any further step in the proceedings shall be taken by the appellant or any other party (and may extend any such period) and, where the appellant fails to complete any such step within such time, may dismiss the appeal for want of prosecution; and
- (b) order fresh evidence to be recorded before the court of first instance or the district court, and to be certified to the High Court.

Composition  
of High  
Court on  
appeal

**23.-(1)** Appeals to the High Court under this Part shall be heard-

- (a) in any proceeding of a criminal nature, or to which sub-paragraph (ii) of paragraph (a) of subsection (1) of section 14 refers, by one judge, except where the Chief Justice directs that an appeal shall be heard by more than one judge or by a judge or judges and an associate;
- (b) in any other proceeding, by a divisional court composed of a judge and an associate, except where the Chief Justice directs that an appeal shall be heard by a divisional court composed of two or more judges and an associate or associates.

Any direction by the Chief Justice under this subsection may be given at any time before judgment.

(2) Where an associate sits for the hearing of an appeal under, or otherwise exercises jurisdiction in accordance with the provisions of, this Part, he shall have the powers and jurisdiction, protection and privileges of a judge of the High Court.

(3) If two or more persons hearing an appeal are equally divided, the appeal shall be dismissed.

(4) In any appeal to the High Court under this Part in which any rule of customary law is in issue or relevant, the High Court may refer any



question of customary law to a panel of experts constituted in accordance with rules made under this Act; but the High Court shall not be bound to conform with the opinion of such experts in determining the appeal.

24.-(1) Subject to the provisions of subsections (2) and (3) of this section, a judge of the High Court or an associate may, if satisfied that an appeal in any proceeding of a criminal nature has been lodged without sufficient ground of complaint, summarily reject the appeal.

Power to  
reject  
appeals  
summarily

(2) An associate shall not summarily reject an appeal under subsection (1) of this section in any case in which the appellant has been sentenced to imprisonment for a term exceeding six months, or to a fine exceeding two hundred and fifty shillings or, if the appellant is an adult, if he has been sentenced to undergo corporal punishment.

(3) An appeal in a proceeding of a criminal nature shall not be summarily rejected under subsection (1) of this section unless-

- (a) if the appeal is against sentence and is brought on the grounds that the sentence is excessive, it appears that there is no material in the circumstances of the case which could lead the court to consider that the sentence ought to be reduced;
- (b) if the appeal is against conviction, it appears that the evidence before the lower courts leaves no reasonable doubt as to the accused's guilt and that the appeal is without substance; or
- (c) if the appeal is against conviction and sentence, it appears that the evidence before the lower courts leaves no reasonable doubt as to the accused's guilt and that the appeal is without substance and that there is no material in the circumstances of the case which could lead the court to consider that the sentence ought to be reduced.

(4) A judge or an associate may, if satisfied that an appeal in any other proceeding is without substance, summarily reject the appeal.

25. In the exercise of its appellate jurisdiction under this Part, the High Court shall have power-

Powers of  
High Court  
on appeal

- (a) to take or to order some other court to take and certify additional evidence and, whether additional evidence is taken or not, to confirm, reverse, amend or vary in any manner the decision or order appealed against (including, without prejudice to the generality of the foregoing, power to substitute a conviction, or a conviction and sentence, for an order of the district court substituting an acquittal for a conviction, and power to make declaratory orders), so however that the decision or order as altered shall not be in excess of the jurisdiction of the court of first instance:

Provided that-

- (i) no conviction or conviction and sentence shall be substituted for an order of the district court substituting an acquittal for a conviction, and no sentence shall be enhanced, unless the accused or convicted person, as the case may be, shall have first been given an opportunity of being heard; and
- (ii) no declaratory order on an appeal by the Director of Public Prosecutions against a decision or order of a district court confirming the acquittal of a person in a primary court shall have effect as a conviction;

- (b) quash any proceedings (including proceedings which terminated in a decision or order of a district court substituting an acquittal for a conviction but not any such decision or order confirming an acquittal by a primary court) and, where it is considered desirable, order the case to be heard *de nova* either before the court of first instance or some other primary court or district court having jurisdiction:

Provided that where proceedings are quashed and an order for rehearing is made as aforesaid-

- (i) the provisions of paragraph (b) of subsection (1), and subsection (2), of section 43 shall be applicable to such rehearing as if the case had been transferred; and
- (ii) no plea of *res judicata* or *autrefois acquit* or *autrefois convict* shall be entertained in respect of any decision or order in the proceedings so quashed;
- (c) make any other decision or order which might have been made by the court of first instance.

Supervision **26.-**(1) The High Court shall exercise general powers of supervision over all courts in the exercise of their jurisdiction under this Part, and may at any time-

- (a) call for and inspect the record of any proceedings under this Part in a district court or primary court and may examine the records or register thereof; or
- (b) direct any district court to call for and inspect the records of any proceedings of the primary court established in its district and to examine the records and registers thereof,
- in order to satisfy itself, or that such district court shall satisfy itself, as to the correctness, legality and propriety of any decision or order and as to the regularity of any proceedings therein; and may-
- (c) itself revise any such proceedings in a district court; or
- (d) where it has exercised its appellate jurisdiction in relation to Proceedings which originated in a primary court between or against parties not all of whom were parties to the appeal, itself revise such proceedings in the primary court; or
- (e) direct the district court to revise any such proceedings in a primary court,

and all such courts shall comply with any such directions without undue delay.

(2) A supervisory magistrate may call for and inspect the record of any proceedings under this Part in a district court or a primary court and may examine the records or registers thereof for the purpose of satisfying himself as to the correctness, legality or propriety of any decision or order and as to the regularity of any proceedings therein; and may, in any case in which he considers that any decision or order is illegal or improper or any proceedings are irregular-

- (a) in the case of a district court, forward the record with a report to the High Court in order that it may consider whether or not to exercise its powers of revision; and

(b) in the case of a primary court, forward the record with a report to the district court with a direction to consider the proceedings and if it considers it appropriate so to do, to revise the same:

Provided that nothing in this subsection shall confer on a supervisory magistrate any power to call for, inspect, forward or report on any proceedings before a resident magistrate.

(3) Where a supervisory magistrate forwards any record to the High Court or a district court under this section, and pending the decision of such court, he may, for reasons to be recorded by him in writing on the record, order that the execution of the decision or order of the district court or primary court, as the case may be, be suspended and also in criminal proceedings, if the convicted person is in confinement, that he be released on bail with or without sureties:

Provided that where any sentence of imprisonment dealt with under this subsection is confirmed by the High Court or a district court or some other sentence of imprisonment substituted therefor, the time during which the convicted person has been released on bail, or the sentence was suspended and the convicted person treated as a remand prisoner, shall be excluded in computing the term for which he is sentenced.

27.-(1) In the exercise of its revisional jurisdiction under this Part, the High Court shall have all the powers conferred upon the High Court in the exercise of its appellate jurisdiction under this Part, other than the powers to substitute a conviction or a conviction and sentence for an order of the district court substituting an acquittal for a conviction or to make a declaratory order; and the provisions of the proviso to paragraph (b) of section 25 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of the High Court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.

Revision

(2) In addition to the provisions of subsection (1) of this section, no order shall be made in the exercise of the High Court's revisional jurisdiction under this Part in any proceedings of a civil nature, increasing any sum awarded or altering the rights of any party to his detriment (other than an order quashing proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of a lower court to the extent necessary to make it conform thereto) unless such party shall have first been given an opportunity of being heard.

(3) The powers of the High Court in its revisional jurisdiction may, in any proceeding of a civil nature in which the law applicable is customary law, be exercised either by a judge or an associate, or by a divisional court composed of one or more judges and one or more associates.

28.-(1) Where-

(a) an appeal to the High Court under this Part has been filed; or

(b) the High Court calls for the record of any proceedings or any record is forwarded to the High Court under section 26 the High Court, or the district court, may, for reasons to be recorded in writing-

(i) in the case of a person sentenced to imprisonment, order-

(A) that the person be released on bail with or without sureties pending the hearing of the appeal or termination of the revisionary proceedings;

General provisions on appeal to, and revision by, the High Court

(B) that the execution of the sentence be suspended pending the hearing of the appeal or the termination of the revisionary proceedings, in which case such person shall be treated as a remand prisoner during such period:

Provided that if the appeal is dismissed or the sentence (being a sentence of imprisonment) is confirmed or some other sentence substituted therefor, the time during which such person was released on bail, or during which the sentence has been suspended, shall be excluded in computing the term of the imprisonment; and

(ii) in any other case, order that the execution of the decision or order appealed against shall be suspended pending the hearing of the appeal or the termination of the revisional proceedings.

(2) Where the High Court determines any appeal or revises any proceedings under this Part, it shall certify its decision or order to the primary court in which the proceedings originated through the district court, and the primary court shall thereupon make such orders as are conformable to the decision or order of the High Court and, if necessary, the records shall be amended in accordance therewith.

*(d) Miscellaneous*

Appearance  
on behalf  
of parties  
in primary  
courts

**29.**-(1) No advocate or public prosecutor as such may appear or act for any party in a primary court.

(2) Subject to the provisions of subsections (1) and (3) of this section and to any rules of court relating to the representation of parties, a primary court may permit any relative or any member of the household of any party to any proceeding of a civil nature, upon the request of such party, to appear and act for such party.

(3) In any proceeding in a primary court to which a body corporate is a party (including proceedings of a criminal nature) a person in, the employment of the body corporate and duly authorized in that behalf, other than an advocate, may appear and act on behalf of that party.

Presence of  
parties at  
hearing of  
appeals and  
revision  
proceedings

**30.**-(1) Save where an appeal is summarily rejected by the High Court and subject to any rules of court relating to, substituted service, a court to which an appeal lies under this Part shall cause notice of the time and place at which the appeal will be heard to be given-

(a), to the parties or their advocates;

(b) in all proceedings of a criminal nature in the High Court, or in any such proceedings in the district court, in which he is an appellant or has served notice that he wishes to be heard, to the Director of Public Prosecutions:

Provided that no such notice need be given-

(i) to an appellant in any proceedings of a criminal nature who is in custody, who does not state in the petition both that he wishes to be present and that he is in a position to pay the expenses of his transfer to the place of hearing-,

(ii) to any party who has served notice on the appellate court that he does not wish to be present;

(iii) to any advocate unless the petition of appeal is signed by the advocate or the appellate court is otherwise informed that he is instructed to appear at the hearing;

(iv) to the Republic or the Director of Public Prosecutions except in the circumstances specified in paragraph (b) of this subsection.

(2) An appellant or other party, whether in custody or not, shall be entitled to be present at the hearing of an appeal under this Part:

Provided that where an appellant or other party is in custody, his right to be present at the hearing of the appeal shall, unless the court directs that his presence is desirable for the due determination of the appeal (in which case the expenses of transferring him to and from the place of hearing shall be borne by the Republic), be subject to his paying all expenses incidental to his transfer to and from the place where the court sits for the determination of the appeal.

(3) No party has any right to be heard either personally or by advocate before the High Court or a district court exercising their respective jurisdictions in revision under this Part:

Provided that-

- (a) the Court may, if it thinks fit, hear any party personally or by advocate; and
- (b) nothing in this subsection shall derogate from the provisions of the proviso to paragraph (b) of section 17, subsection (3) of section 18, paragraph (i) of the proviso to paragraph (a) of section 25, or subsection (2) of section 27.

**31.** Every appeal from a primary court or district court under this Part in proceedings of a criminal nature (other than an appeal from a sentence of fine or an order for the payment of compensation) shall abate on the death of the appellant.

Abatement  
of appeals  
on death

**32.-(1)** No proceedings in a primary court or district court under this Part, and no decision or order thereof, shall be set aside merely on the ground that the proceedings took place in the wrong district, unless it appears that such error has in fact occasioned a failure of justice.

Substantial  
justice  
to be done  
without  
undue  
regard  
to techni-  
calities

(2) No decision or order of a primary court or a district court under this Part shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, any process or charge, in the proceedings before or during the hearing, or in such decision or order, or on account of the improper admission or rejection of any evidence, unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.

(3) In the exercise of their respective jurisdictions under this Part, the High Court and district courts-

- (a) shall not refuse to recognize any rule of customary law on the grounds that it has not been established by evidence, but may accept any statement thereof which appears to it to be worthy of belief which is contained in the record of the proceedings in or before any lower court which has exercised jurisdiction in the case, or from any other source which appears to be credible, or may take judicial notice thereof;
- (b) subject to, any regulations made under subsection (2) of section 15, may accept such evidence as is pertinent and such proof as appears to be 'worthy of belief, according to the value thereof and notwithstanding any other law relating to evidence in force in Tanganyika;

- (c) shall not be required to comply or conform with the provisions of any rule of practice or procedure otherwise generally applicable in Proceedings in the appellate or revisional court, but may apply any such rule where it considers the application thereof would be advantageous to the exercise of such jurisdiction;
- (d) where there is any dispute or uncertainty as to any customary law, whether by reason of anything contained in the record of the proceedings in or before any lower court which has exercised jurisdiction in the case, the grounds of appeal, or otherwise, shall not be required to accept as conclusive or binding any evidence contained in the record but shall-
  - (i) in any case of dispute, determine the customary law applicable, and give judgment thereon, in accordance with what it conceives to be the best and most credible opinion or statement of such law, being an opinion or statement which is consistent with the provisions of such customary law as are undisputed; and
  - (ii) in any case of uncertainty, determine the appeal, and give judgment thereon, in such manner as accords as near as may be to the provisions of such customary law as are established and certain.

Service of  
process

**33.**-(1) Any summons, warrant or other process lawfully issued from a primary court or a district court in the exercise of its jurisdiction under this Part may be served or executed-

- (a) within any part of the district within which it exercises jurisdiction; or
- (b) within any other district, if the said summons, warrant or process is sent to the district court or primary court established for the district in which it is to be served or executed and endorsed by a magistrate or justice assigned to the court of issue with a certificate that any fees for service or execution and, in the case of any process requiring the attendance of witnesses, the reasonable expenses of such witnesses have been paid or tendered.

(2) An affidavit that a summons, warrant or other process has been served or executed pursuant to the provisions of subsection (1) of this section, or an endorsement that it has not or cannot be so served or executed, shall be made by the person by whom such service or execution was effected or attempted.

Execution of  
orders and  
process of  
other courts

**34.**-(1) Every primary court shall execute or cause to be executed any decision or order of any other court in Tanganyika directed to such primary court and shall cause to be executed or served every summons, warrant or other process issued by any such other court directed to it for execution or service, and generally shall give such assistance to any such other court as may be necessary.

- (2) Every district court shall-
  - (a) when so requested by some other district court, execute any decision or order of such district court or of the primary court established for the district for which such other district court is established and shall cause to be executed the summonses, warrants or other process thereof; and

- (b) execute or cause to be executed any decision or order of the High Court in the exercise of its jurisdiction under this Part directed to it. and execute and serve the summonses, warrants and other process of the High Court aforesaid directed to it.

#### PART IV

##### ORIGINAL JURISDICTION AND POWERS OF, AND APPEALS, ETC. FROM, DISTRICT COURTS AND COURTS OF A RESIDENT MAGISTRATE

###### (a) *Original jurisdiction and powers*

**35.**-(1) A district court shall have and exercise original jurisdiction-

Original jurisdiction of district courts

(a) in all proceedings of a criminal nature in respect of which jurisdiction is conferred on a district court by any law for the time being in force;

(b) in all such other proceedings under any written law for the time being in force (other than subsection (2) of this section) in respect of which jurisdiction is conferred on a district court by any such law:

Provided that—

- (i) where jurisdiction in any such proceeding as is referred to in paragraph (a) or (b) is conferred on a district court when held by a resident magistrate, a civil magistrate, or some other description of magistrate, a district court shall not have jurisdiction therein unless it is held by a resident magistrate, civil magistrate or magistrate of such description, as the case may be; and
- (ii) the jurisdiction of a district court in proceedings under any such law as is referred to in paragraph (b) of this subsection shall (subject to any express exception in any such law) be limited in the same cases and to the same extent as is provided in paragraph (b) of subsection (2).

(2) A district court when held by a civil magistrate shall, in addition to the jurisdiction set out in subsection (1), have and exercise original jurisdiction in proceedings of a civil nature, other than any such proceedings in respect of which jurisdiction is conferred by written law exclusively on some other court or courts, but (subject to any express exception in any other law) such jurisdiction shall be limited-

- (a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed two hundred thousand shillings; and
- (b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed twenty thousand shillings.

**36.** A court of a resident magistrate shall have and exercise jurisdiction in all proceedings in respect of which jurisdiction is conferred by any law for the time being in force-

Original jurisdiction of courts of a resident magistrate

- (a) on a court of a resident magistrate; or
- (b) on a district court, or on a district court held by a resident magistrate or a civil magistrate, in the exercise of its original jurisdiction.

Powers,  
practice and  
procedure:  
original  
jurisdiction

**37.** Subject to the provisions of any law for the time being in force, the powers of district courts and courts of a resident magistrate shall be limited, and their practice and procedure regulated-

- (a) in the exercise of their original criminal jurisdiction, by the Penal Code and the Criminal Procedure Code;
- (b) in the exercise of their original civil jurisdiction, in accordance with the principles and provisions of the Civil Procedure Code, so far as the same shall be applicable and suitable.

*(b) Appellate and revisional jurisdiction, etc., of the High Court in relation to proceedings originating in district courts and courts of a resident magistrate*

Appeals,  
revision,  
etc.

**38.**(1) Subject to the provisions of any law for the time being in force, the provisions of the Criminal Procedure Code shall apply to appeals and the stating of cases in proceedings of a criminal nature from a district court or court of a resident magistrate, to the revision of proceedings of a criminal nature therein, and to such other proceedings in, or in relation to, such courts as may be provided for in that Code.

(2) Subject to the provisions of any law for the time being in force, all appeals, references, revisions and similar proceedings from, or in respect of, any proceeding of a civil nature in a district court or a court of a resident magistrate which are authorized by law shall lie to and be heard by the High Court.

Additional  
powers of  
supervision  
and revision

**39.**(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

- (a) shall exercise general powers of supervision over all district courts and courts of a resident magistrate and may, at any time, call for and inspect or direct the inspection of the records of such courts and give such directions as it considers may be necessary in the interests of justice; and all such courts shall comply with such directions without undue delay;
- (b) may, in any proceeding of a civil nature determined in a district court or a court of a resident magistrate, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit:

Provided that no decision or order shall be made by the High Court in the exercise of the jurisdiction conferred by paragraph (b) of this subsection, increasing any sum awarded or altering the rights of any part to his detriment, unless such party shall have first been given an opportunity of being heard.

(2) A supervisory magistrate may call for and inspect the record of any proceedings in a district court and may examine the records or registers thereof for the purpose of satisfying himself as to the correctness, legality or propriety of any decision or order and as to the regularity of the proceedings therein; and may, in any case in which he considers that any decision or order is illegal or improper or any proceedings are irregular, forward the record with a report to the High Court in order that it may consider whether or not to exercise its powers of revision:



Provided that nothing in this subsection shall confer on a supervisory magistrate any power to call for, inspect, forward or report on any proceeding before a resident magistrate.

(3) Where a supervisory magistrate forwards any record in any proceeding of a criminal nature to the High Court under this section, he may, for reasons to be recorded by him in writing on the record, order, that the execution of the decision or order of the court be suspended and also in criminal proceedings, if the convicted person is in confinement, that he be released on bail with or without sureties:

Provided that/where any sentence of imprisonment dealt with under this subsection is confirmed by the High Court, or some other sentence of imprisonment substituted therefor, the time during which the convicted person has been released, or the sentence was suspended and the convicted person treated as a remand prisoner, shall be excluded in computing the term for which he is sentenced.

*(c) Miscellaneous*

**40.**-(1) Nothing in this Part shall apply to any proceeding to which Part III applies. Application

(2) Nothing in sections 38 or 39 shall apply to or in relation to appeals from, or the stating of cases by, a district court or court of a resident Magistrate exercising extended powers conferred by order under section 13 of the Criminal Procedure Code, or, save as provided in section 15 of that Code, authorize the High Court or any supervisory magistrate to exercise any power of supervision or revision in relation to any such court.

**PART V**

TRANSFER

**41.**-(1) Where any proceeding has been instituted in a primary court, it shall be lawful, at any time before judgment, for-

- (a) the primary court, with the consent of the district court or court of a resident magistrate having jurisdiction, to transfer the proceeding to such district court or court of a resident magistrate or to, some other primary court; or
- (b) the district court or a court of a resident magistrate within any part of the local jurisdiction of which the primary court is established, to order the transfer of the proceeding to itself or to some other magistrate's court; or
- (c) the High Court to order the transfer of the proceeding to itself or to some magistrate's court,

in any case where-

- (i) it appears that the circumstances or gravity of the proceeding make it desirable that the same should be transferred; or
- (ii) there is reasonable cause to believe that there would be a failure of justice were the proceeding to be heard in the primary court; or
- (iii) the subject matter of the proceeding arose outside the local limits of the primary court's jurisdiction or is not within its jurisdiction, or in any case in which the law applicable is a customary law which is not a customary law prevailing within such first mentioned primary court's local jurisdiction; or

Transfer  
from  
primary  
court

- (iv) the proceedings seek to establish or enforce a right or remedy under customary law or Islamic law, or are an application for the appointment of an administrator of the estate of a deceased Person, and the court is satisfied that the law applicable is neither customary law nor Islamic law, or that the question whether or not customary law or Islamic law is applicable cannot be determined without hearing or determining the proceedings,

and shall record its reasons for making or ordering such transfer:

Provided that nothing in this subsection shall authorize-

- (a) the transfer by a Magistrate's court of any proceeding which is required by law to be commenced in a primary court except to some other primary court; or  
 (b) the transfer of any proceeding to a court which, however constituted, has no jurisdiction in respect of the subject matter thereof.

(2) A Primary court-

- (a) shall transfer to the district court of the district for which it is established any Proceeding of a criminal nature if the accused Person appears to be of unsound mind;  
 (b) if the accused person so elects, shall transfer to the district court of the district for which it is established any proceeding of a criminal nature in which the accused is charged with all offence punishable in the primary court by imprisonment for more than twelve months or, in the case of an adult, by corporal punishment.

An election under this section shall be exercised before the accused pleads to the charge.

(3) Where any proceeding of a criminal nature has been instituted in a Primary court, it shall be lawful, at any time before the accused Person gives evidence therein, for the Director of Public Prosecutions to order the Primary court to transfer the proceeding to, the district court of the district for which it is established,

(4) A primary court shall comply with all orders of the Director of Public Prosecutions, a district court, a court of a resident magistrate or the High Court under this section.

Transfer  
to primary  
court

42. Where any Proceeding in respect of which Primary courts have jurisdiction has been instituted in a district court, a court of a resident magistrate or the High Court, it shall be lawful, at any time before judgment, for such court (and, in the case of Proceedings instituted in a magistrate's court, the High Court) to order the transfer of the same to the Primary court having jurisdiction. Before making any such order, the district court, court of the resident magistrate or High Court, as the case may be, shall satisfy itself that the transfer of the proceeding will not be contrary to the interests of justice or cause undue inconvenience to the parties, and shall record its reasons for ordering such transfer.

Additional  
Provisions

43.-(1) Where any proceeding or matter is transferred from one court to another under the provisions of section 41 or 42-

- (a) the court from which the same is transferred may, subject in the case of a magistrate's court, to any directions in that behalf given by a superior court ordering the transfer, make such order as to the costs of the proceedings to date as it shall think fit;

(b) upon payment of any necessary fees additional to those paid in the court from which the case is transferred, the court to which the proceeding or matter is transferred shall commence the hearing de novo and proceed with the conduct and trial thereof in the same manner as if, in criminal proceedings, a complaint of facts constituting an offence had been duly made to the court, and, in civil proceedings, a plaint or other appropriate statement of claim therein had been duly filed in such court, and the proceeding, and any appeal from the decision thereof, shall be regulated in the same manner as if the proceeding had been commenced in the court to which the same have been transferred.

(2) Where any court transfers any proceeding of a criminal nature under, or in accordance with any order made under, this Part, it shall take security for the appearance of the accused person before the court to which the proceeding is transferred or, if it is appropriate, remand him in custody to be brought before such court; and any security taken for the appearance of the accused person shall be treated as if it had been taken by the court to which the proceedings are transferred.

(3) No appeal shall lie against the making of, or any refusal to make, an order under the provisions of section 41 or 42.

(4) The jurisdiction of a court under this Part may be exercised of its own motion or on the application of any party.

**44.** Nothing in this Part of this Act shall be construed as derogating from the provisions of any other law relating to the transfer of proceedings.

Saving of  
transfers  
under other  
laws

## PART VI

### JUSTICE OF THE PEACE, AND ADDITIONAL POWERS OF PRIMARY COURT MAGISTRATES

#### (a) *Appointment and powers of justices of the peace*

**45.**-(1) Every executive officer of a district council shall be a justice of the peace for the district in which such council has jurisdiction.

Appoint-  
ment

(2) The Minister may appoint any fit and proper person to be a justice of the peace for the district in which such person is ordinarily resident.

(3) Notwithstanding the provisions of subsection (1) or (2) of this section, the Minister may, by notice published in the *Gazette*, in any case in which he considers such an appointment to be desirable, appoint an executive officer or person appointed a justice under subsection (2) to be a justice of the peace for more than one district.

(4) In this section "executive officer" means the clerk to a district council and the clerk to a divisional committee of a district council, or such other person who is the chief executive officer of a district council or a divisional committee thereof, and any assistant executive officer of a district council or divisional committee thereof.

**46.** The appropriate judicial authority shall assign every justice to primary or district court house in the district for which he is appointed.

Assignment  
of justices  
to court  
houses  
Arrest by,  
or on  
order of,  
justice

**47.** A justice may arrest, or may order any person to arrest, any person who in his view commits a cognizable offence.

Justices may  
compel  
appearance  
persons  
accused

**48.**-(1) Where a complaint of facts which constitute an offence is made, either orally or in writing, to a justice, he shall examine the complainant and, if satisfied that there are sufficient grounds for so doing, issue a summons or a warrant for the purpose of compelling the appearance of the person accused:

Provided that a justice shall not, in the first instance, issue a warrant for the arrest of the person accused, unless he is satisfied that it is proper that such person should be detained in custody pending his trial or should give security for his appearance, or that the circumstances of the case render it unlikely that such person will appear in answer to a summons.

(2) The power to issue a warrant under this section includes power to issue a warrant of arrest authorizing a police officer to whom it is directed to release the person accused on his executing a bond for a specified sum with or without sureties, for his appearance before the court.

(3) Every summons and warrant issued under this section shall be in the prescribed form and shall be returnable before a magistrate's court at a court house in accordance with the directions of the appropriate judicial authority.

(4) Where a justice considers a complaint under this section, he shall enter the same, together with his decision whether or not to issue process, in the records and registers of the court house to which he is assigned; and if he issues process, he shall enter the charge in the register.

Persons  
arrested to  
be taken  
before  
court

**49.** Where any person is arrested by or on the orders of a justice under section 47, or any person otherwise arrested without warrant is brought before a justice, the justice shall, without unnecessary delay, either take him or cause him to be taken before a magistrate:

Provided that where-

(a) the justice is assigned to a court house in the vicinity and, for the time being, there is no magistrate in attendance thereat: and

(b) in accordance with the arrangements made for the despatch of judicial business in the district by the appropriate judicial authority, the proceedings will be further prosecuted at such court house,

the justice may, instead, enter the matter in the registers of the court house and exercise the powers conferred by paragraph (a) or (b) of section 50.

Powers of  
justices  
assigned to  
court  
houses

**50.** A justice may, if there is no magistrate in attendance at a court house to which he is assigned, exercise at the court house any of the following powers of a magistrate exercising jurisdiction at such court house: -

(a) to admit any, person arrested, with or without warrant, for any offence, other than murder or treason, to bail either with or without security or release him in his own bond, and to issue a warrant of arrest for any person in breach of a bond for his appearance;

(b) to remand in custody any person arrested, with or without warrant, for a reasonable time, not exceeding seven days at any one time, to some prison, lock-up or other place of security:

Provided that-

(i) a justice shall not remand any person in custody unless a case file is, or shall have been, opened for the matter and a

charge is, or shall have been, drawn up and signed by a magistrate, justice or police officer, containing such particulars as are reasonably necessary to identify the offence or offences; including law and the section, or other division thereof, under which the accused person, is charged; and

- (ii) a justice shall not remand any person in custody for more than seven days at any one time, nor, save where normal means of access to the nearest magistrate are interrupted, for more than an aggregate of twenty-eight days, without taking him before a magistrate;
- (c) to cause any person brought before a primary court under arrest to be taken before the district court;
- (d) to issue a summons compelling any person to appear to give evidence or to produce any thing in any proceeding to be heard in the court house or for the attendance of any party to such proceedings;
- (e) to endorse warrants of arrest and summons issued by courts outside the district in which he is sitting;
- (f) if it is shown to the satisfaction of the justice that any property which is in dispute in any case (whether of a civil or a criminal nature) is in danger of being destroyed, hidden, wasted, damaged, alienated or otherwise injuriously dealt with, by any person, and pending final determination of the case, to issue an injunction to restrain any such person from destroying, hiding, wasting, damaging, alienating or otherwise injuriously dealing with any such property, and, if he deems fit, to take the property into his own custody, and, if it is of a perishable character, sell or dispose of the same and retain the proceeds in the same manner as if they were the original property;

and may exercise any of the powers, functions and duties conferred by any other written law upon a justice, other than such as are conferred on a justice assigned to a district court house.

51. In addition to the powers herein before conferred on a justice, a justice assigned to a district court house--

- (a) may hear, take and record the confessions of persons in the custody of a police officer in the same manner as a magistrate may hear, take and record such confessions;
- (b) may exercise the powers conferred on a magistrate by section 80 of the Prisons Ordinance;
- (c) shall have and exercise the powers, functions and duties conferred on a justice assigned to a district court house by any other written law.

*(b) Additional powers of primary court magistrates*

52.-(1) A primary court magistrate shall be a justice of the peace for the district for which the Primary court to which he is assigned is established and, in his capacity as a justice, he is hereby assigned to every district courthouse therein.

(2) The exercise of the powers or functions of a justice by a primary court magistrate shall not be called in question solely on the grounds that, in the exercise of such powers or functions, he purported to act as a primary court magistrate.

Additional  
power of  
justices  
assigned to  
district  
court  
houses

Cap. 58

Primary  
court  
magistrates  
as justices

(c) *Miscellaneous*

- Confessions to justices      **53.** A confession made by a person in the custody of a police officer which is made in the immediate presence of a justice assigned to, a district court house may be proved in evidence in the same manner and to the same extent as a confession in the like circumstances in the immediate presence of a magistrate may be proved.
- Powers of persons arresting      **54.** Every justice exercising the power to arrest any person, and every person to whom any order or warrant to arrest any other person is given or directed, in accordance with the provisions of this Part, shall have and may exercise, in the exercise of such powers, all such powers and shall perform all such duties as are by law conferred or imposed upon police officers.
- Provisions relating to process      **55.** The provisions of paragraphs 10, 11 and 12 of the Primary Courts Criminal Procedure Code shall apply to process issued under this Part by justices assigned to primary court houses.
- Supervision of and instructions to justices      **56.**-(1) Justices shall be subject to the supervision of the magistrates exercising jurisdiction in the court houses to which such justices are assigned, and to the supervision of supervisory magistrates, and justices shall be obedient to the magistrates to whose supervision they are subject.  
(2) The appropriate judicial authority may, from time to time, issue instructions not inconsistent with any law for the time being in force for the guidance and control of justices in the exercise of their powers, functions and duties, and every justice shall comply with and obey such instructions.

**PART VII**

## MISCELLANEOUS

- Concurrent jurisdiction      **57.**-(1) Subject to the provisions of any law for the time being in force, where jurisdiction in respect of the same proceedings is conferred on different courts, each court shall have a concurrent jurisdiction therein:  
Provided that no civil proceedings in respect of marriage, guardianship or inheritance under customary law, or the incidents thereof, and no civil Proceedings in respect of immovable property, other than, proceedings relating to land held for a Government lease or a right of occupancy granted under the Land Ordinance or proceedings under section 22 or 23 of the Land Ordinance, shall be commenced in any court other than a Primary court unless the Republic or the President is a party thereto, or unless the High Court gives leave for such proceedings to be commenced in some other court.  
(2) Nothing in section 15 of the Civil Procedure Code shall require any proceedings of a civil nature to be commenced in a primary court.
- Cap. 113
- Certain issues not justiciable in primary courts      **58.** Where-  
(a) Proceedings to establish or enforce any right or remedy under customary law are instituted in a Primary court, or an application is made to a primary court on which jurisdiction in the administration of deceased estates has been conferred for the appointment of an administrator for the administration and distribution of the estate in accordance with customary law, and such proceedings or application are not rejected by the court of its own motion;  
or

(b) any proceedings have been transferred to a primary court and the reason or one of the reasons therefor is that the law applicable is customary law,

the issue whether or not customary law applies to any party, or person relevant, to the proceedings or application, or whether or not customary law is the law applicable, shall not be justiciable in such court, but the proceedings or application shall be heard and determined and decisions and orders made therein in accordance with customary law and this Act, and the primary court shall have jurisdiction accordingly:

Provided that-

- (a) nothing in this section shall apply to any issue as to the applicability of one of several customary laws; and
- (b) nothing in this section shall preclude any person from making application to some other court or authority having jurisdiction in that behalf for a transfer under this Act or, in the case of administration proceedings, for administration under the Probate and Administration Ordinance, 1961, or any other court or authority having appellate, supervisory or revisional jurisdiction, or power to make orders of transfer or relating to administration, from hearing and determining any such issue or making such decisions or orders as the circumstances of the case require.

Ord. 1961  
No. 35

59.-(1) Subject to the provisions of subsection (2) of this section, no magistrate shall act in his judicial office in any proceeding in which he has any pecuniary or personal interest.

Magistrates  
not to act  
if having  
an interest

(2) A magistrate shall not be incapable of acting in his judicial office in any proceeding by reason of his being as one of several rate payers or as one of any other class of persons liable, in common with others, to any rate, tax or duty, or to contribute to, or to be benefited by any rate, tax or duty which may be increased, diminished or in any way affected by that proceeding.

60.-(1) No-

- (a) magistrate holding a magistrate's court shall be liable to be sued in any court for any act done or ordered to be done by him in the exercise of his judicial duty;
- (b) justice shall be liable to be sued in any court for any act done or ordered to be done by him in the exercise of his functions or duty as a justice,

Non-  
liability  
to suit of  
magistrates,  
justices,  
etc., acting  
in good  
faith

whether or not such act is within the limits of his or the court's jurisdiction, if at the time of doing such act or making such order he believed in good faith that he had jurisdiction to do such act or make such order.

(2) No officer of a magistrate's court or other person required to execute the lawful orders of a magistrate or justice shall be liable to be sued in any court for the execution of any order issued or made by a magistrate or justice if he believed in good faith that the order was within the jurisdiction of the magistrate or justice by whom it was issued.

61. The power of the High Court to punish for contempt shall extend to upholding the authority of magistrates' courts.

Contempt

62.-(1) Where any person who wishes to appeal under the provisions of this Act against any decision or order in proceedings of a criminal

Appellants  
in prison  
or lock-up

nature is in prison or a lock-up established under section 64, he may present his petition of appeal to the officer in charge of the prison or lock-up, who shall forward the same to the court in which, but for the provisions of this section, the petition is required to be filed.

(2) For the avoidance of doubts it is hereby declared that nothing in this Act shall be construed as derogating from the right of any person convicted of an offence specified in the Schedule to the Minimum Sentences Act, 1963, to elect not to undergo corporal punishment pending appeal.

Acts 1963  
No. 29

District  
council  
to prepare  
lists of  
assessors

63. Every local authority shall, before the first day of March in each year, prepare and deliver to the district court a list of suitable person ordinarily resident within the area of its jurisdiction, and having knowledge of the customary law or laws prevailing in its area, who shall be liable to serve as assessors when so required by a court:

Provided that-

- (a) any person exempted from liability to serve as an assessor by section 251 of the Criminal Procedure Code, shall be exempted from liability to serve as an assessor under this section;
- (b) no person shall be disqualified from service as an assessor in respect of any proceeding in, which any rule of customary law is in issue or relevant by reason only that his name is not included in a list prepared under this section.

Lock-ups

64.-(1) The Minister for the time being responsible for home affairs may establish lock-ups for the reception of persons taken or remanded in custody, and for the safe keeping of persons sentenced to a term of imprisonment by a primary court pending their transfer to a prison.

(2) The Minister for the time being responsible for home affairs shall make arrangements for the administration and control of lockups and may authorize a local authority and its servants to administer and control lock-ups in its area:

Provided that every judge of the High Court, every supervisory magistrate, every district and primary court magistrate assigned to the district court or Primary court established for the district in which a lock-up is situated, and every justice of the peace appointed for such district shall be, and have the powers of, a visiting justice in relation to lock-ups.

(3) The Minister for the time being responsible for home affairs may make rules for the administration and control of lock-ups and the custody of persons detained therein, and the transfer of such persons to and from courts and prisons.

(4) The Minister for the time being responsible for home affairs may delegate his powers to establish lock-ups under this section to a Regional Commissioner.

Rules and  
directions

65.-(1) The Chief Justice may make rule of court, and give directions not inconsistent therewith, regulating and prescribe the practice and Procedure of magistrates' courts, the execution of the decisions and orders thereof and the functions and duties of members and officers of such courts, and regulating and prescribing the practice and procedure in hearing and determining appeals including the power



to strike out appeals in proceedings of a civil nature in the absence of the parties, the exercise of revisional jurisdiction and the manner of presenting appeals, and, otherwise for the purposes of this Act and the administration of magistrates' courts.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may-

- (a) regulate and prescribe costs, fees and allowances to witnesses;
- (b) prescribe forms;
- (c) authorize and make provision for the service of process issued by courts outside Tanganyika within Tanganyika, and authorize and make- provision for the service of process issued by magistrates' courts in Tanganyika outside Tanganyika;
- (d) authorize a primary court to exclude members of the public generally or any particular person from any open court in particular cases or particular categories of cases;
- (a) make provisions for the limitation of claims under customary law;
- (f) confer powers, functions or duties on any judge, associate, registrar or magistrate;
- (g) make different provision for any category, of whatever description, of courts.

(3) The Minister may make regulations for the constitution and composition of panels of experts in customary law and make provision therein for the appointment and remuneration of the members of such panels.

## PART VIII

### REPEALS, AMENDMENTS AND TRANSITIONAL

**66.**-(1) No person shall be charged with, tried for or Convicted of any offence contrary to customary law in respect of any act committed or omission on or after the appointed day.

Abortion of  
customary  
criminal  
law

(2) Subject to the provisions of this Part, subsection (2) of section 10 of the Interpretation and General Clauses Ordinance shall have effect as if the rules of customary law relating to offences were hereby repealed.

Cap.1

**67.**-(1) The laws set out in Part I of the Sixth Schedule to this Act are hereby repealed.

(2) The Penal Code, the Criminal Procedure Code and the laws set out in the first and second columns of Part IV of the Sixth Schedule to this Act are hereby amended in the manner specified in Parts II and III, and the third column of Part IV, respectively, of that Schedule.

(3) Notwithstanding the repeal of section 53A of the Local Government Ordinance, every order made thereunder and in force immediately before the appointed day, shall on and after that day be deemed to have been made under section 9A of the Judicature and Application of Laws Ordinance, 1961, and on or after the appointed day every such order shall have effect as if the provisions thereof whereby such order is declared to be binding only on Africans to whom the relevant customary law relates were omitted.

Cap. 333

Ord. 1961  
No. 57

- Cap. 361 (4) Notwithstanding the repeal of the Probation of Offenders (Local Courts) Ordinance, every order made thereunder and in force immediately before the appointed day shall continue of force and effect according to its tenor as if it had been made under the Probation of Offenders Ordinance and may be enforced, amended and discharged accordingly.
- Cap. 247
- Adaptation of existing laws
- 68.**-(1) Subject to the provisions of this section, to the Sixth Schedule to this Act and to any other law coming into operation on or after the appointed day, existing law shall be read in respect of any period commencing, or time, on or after the appointed day-
- (a) as if references to a subordinate court (other than express references to a court of a resident magistrate) were references to a district court established by, and to a court of a resident magistrate established or deemed to have been established under, this Act;
  - (b) as if references to a district court were references to a district court established by this Act;
  - (c) as if references to a court of a resident magistrate were references to a court of a resident magistrate established or deemed to have been established under this Act;
  - (d) as if references to a first, second or third class magistrate, or to any magistrate (other than references to a resident magistrate or primary court magistrate) were references to: a district magistrate and to a resident magistrate:
- Provided that not" in this paragraph shall be construed as so limiting the application of subsection (2) of section 53 of the Constitution of Tanganyika;
- C.A. Act I
- (e) as if references to a local court were references to a primary court established by this Act- and
  - (f) as if references to a justice of the peace were references to a justice of the peace appointed by or under this Act and assigned to a district court house.
- (2) For the purposes of subsection (1), references to a subordinate court shall be deemed to include references to a subordinate court of any class.
- (3) Notwithstanding the provisions of subsection (1) of this section, the references to a subordinate court or district court, and the references to a magistrate of whatever description, in the provisions of the laws set out in the Second Schedule to this Act, shall be read and construed in respect of any Period commencing, or time, on or after the appointed day, as references to a district court held by a civil magistrate, and a civil magistrate respectively.
- Existing courts of resident magistrates to continue Cap. 3
- Saving of Seals, stamps and lock-ups
- 69.** Subject to any order made under section 6, the courts of a resident magistrate established under the Subordinate Courts Ordinance and in being immediately before the appointed day, shall be deemed to have been established by order under the said section.
- 70.** -(1) On and after the appointed day, a district court and the court of a resident magistrate may continue to use the seals used by its predecessor immediately before that day, until new seals are provided

in accordance with section 11; and until now stamps are provided in accordance with section 11, the appropriate judicial authority may authorize the use by primary courts of stamps formerly used by a local court.

(2) Subject to the powers of the Minister for the time being responsible for home affairs and any delegate to disestablish any lock-up, on and after the appointed day, every place authorized by a Provincial or Regional Commissioner as a local court lock-up shall be deemed to have been established as a lock-up under section 64.

71.-(1) Notwithstanding the repeal of the Local Courts Ordinance-

- (a) any proceeding pending immediately before the appointed day in a local court (other than a local court of appeal) may be continued and concluded, and decisions and orders made therein and perfected, on and after that day in the primary court of the district within which such local court had local jurisdiction (or, if there are more than one such district, in such primary court as the appropriate judicial authority shall appoint);
- (b) any proceeding pending immediately before the appointed day in a local court of appeal or before a Regional Local Courts Officer may be continued and concluded, and decisions and orders made therein and perfected, on and after that day in the district court of the district within which the local court of first instance had local jurisdiction (or, if there are more than one such district, in such district court as the appropriate judicial authority shall appoint),

Matters  
pending  
before local  
courts  
and  
R.L.C.O.s

and every such primary court and district court shall have jurisdiction in such proceeding notwithstanding it is not conferred by any provision of any law other than this section:

Provided that-

- (i) where the hearing of any such proceeding has been commenced but not concluded before the appointed day by any person or persons, who or all of whom are not, on and after the appointed day, appointed to be a magistrate or magistrates of the appropriate description and assigned to the relevant court, or are otherwise not able to continue the hearing, the primary court or the district court, as the case may be, shall continue such proceeding from the point which had been reached immediately prior to the commencement of such hearing, and shall continue and conclude the same accordingly;
- (ii) a primary court shall not have jurisdiction, to, try any offence contrary to customary law unless the hearing shall have been commenced before the appointed day by a person holding, a local court who is appointed a primary court magistrate and is capable of continuing and concluding the hearing; but, in any other case, where a person is charged in a local court with an offence contrary to customary law, the primary court may charge him with the appropriate statutory offence (if such is, apart from this section, within its jurisdictions) or transfer the proceedings to a court having jurisdiction to hear and determine the same, or, if there is no appropriate statutory offence, discharge the person charged unless he is in custody for some statutory offence.

- (2) Every decision or order-
- (a) of a local court (including a local court of appeal); or
  - (b) of a Regional Local Courts Officer,
- which shall not have been fully executed or enforced before the appointed day, may be enforced and executed on and after that day, as if it were, in the case of a local court (including a local court of appeal), the decision or order of the primary court, and, in the case of a Regional Local Courts Officer, the decision or order of a district court.
- (3) Appeals in proceedings which originated in a local court (including proceedings to which subsection (1) of this section refer) shall lie-
- (a) from the decisions and orders of local courts (including local courts of appeal) and primary courts, to the district court established for the district in which the local court of first instance had jurisdiction (or, if there are more than one such district, to such district court as the appropriate judicial authority shall appoint) or in which the primary court has jurisdiction, as the case may be, in the same cases and subject to the same restrictions as, immediately before the appointed day, appeals lay from the relevant local court of appeal to the Regional Local Courts Officer;
  - (b) from the decisions and orders of Regional Local Courts Officers and district courts to the High Court in the same cases and subject to the same restrictions as, immediately before the appointed day, appeals lay from a Regional Local Courts Officer to the High Court,

and district courts and the High Court may exercise their respective powers therein, and the powers of supervision and revision, conferred by this Act in respect of such decisions and orders, and the proceedings in or before such courts, accordingly. The provisions of this subsection shall have effect in relation to the decisions and orders of and proceedings before primary courts and district courts, if such proceedings originated in a local court, notwithstanding the provisions of Part III of this Act relating to any right to appeal.

(4) Where more than one magistrate sits in a primary court or a district court for the purpose of completing the hearing of any proceeding to which subsection (1) of this section refers, such magistrates shall be deemed to have been directed so to sit by the appropriate judicial authority.

(5) For the purposes of this section and section 73, a Proceeding originating in a local court shall not include a proceeding in which a person is charged in a local court with an offence contrary to customary law, but, before the hearing thereof by some other court, the charge is changed to the appropriate statutory offence.

Matters  
pending  
subordinate  
courts

72.-(1) Notwithstanding the repeal of the Subordinate Courts Ordinance, any Proceeding Pending immediately before the appointed day in a district court or court of a resident magistrate established by that Ordinance (hereinafter in either case referred to as a subordinate court) may be continued and concluded, and decisions and orders made therein and Perfected, on and after that day by the district court established by, or the court of a resident magistrate established or deemed to have been established under, this Act, as the case may be, having the same local jurisdiction as the subordinate court enjoyed.

(2) Where any magistrate presiding in a subordinate court has before the appointed day commenced the hearing of any proceeding which he had jurisdiction to hear, he may, notwithstanding that jurisdiction in such proceeding is conferred by this Act only on a district court or a court of a resident magistrate when held by a magistrate of a particular description, continue and conclude such proceeding and make and perfect decisions and orders therein, as if he were a magistrate of such description; and no such proceeding, decision or order shall be impugned by reason only that the magistrate holding the court was not a magistrate of such description.

(3) Every decision or order of a subordinate court which shall not have been fully executed or enforced before the appointed day, may be executed and enforced after that day as if it were the decision or order of a district court or court of a resident magistrate established by or under this Act.

(4) The provision of this Act relating to appeals, supervision and revision, the Appellate Jurisdiction Ordinance, 1961, and the Appellate Jurisdiction Act, 1962, shall apply *mutatis mutandis* to the proceedings, No. 56 decisions and orders of subordinate courts as they apply to the proceedings, decisions and orders of district courts and courts of a resident magistrate established by or under this Act.

**73.**-(1) Subject to the provisions of this section, appeals in the High Court in proceedings originating in a local court shall be heard and determined by a divisional court constituted in the manner prescribed in Part III of this Act, save that-

- (a) where the hearing of the appeal has been commenced, but not concluded, before the appointed day, by a single judge, or by two or more judges, such judge or judges may continue and conclude the appeal, or
- (b) an appeal against a conviction for an offence whether contrary to a written law or to customary law, may be heard and determined by a single judge.

(2) Notwithstanding the repeal of the Local Courts Ordinance, the Chief Justice may appoint a suitable person to have and exercise the powers of a Local Courts Appeals Officer for the purposes of appeals to the High Court originating from local courts; and such person shall have and may exercise all the powers, functions and duties conferred on a Local Courts Appeals Officer by the Local Courts Ordinance in respect of such appeals.

(3) Subject to any order of the Chief Justice, any person who holds the office of Local Courts Appeals Officer immediately before the appointed day, shall, on that day, be deemed to have been appointed under subsection (2) of this section.

**74.** The appropriate judicial authority may give directions to all persons who cease to have any jurisdiction by reason, of the coming into operation of this Act, and to the members and clerks of local courts, for the delivery of all process, pleadings and records in their possession or under their control to persons who retain or upon whom is conferred any jurisdiction under this Act, and all such persons, members and clerks to whom such directions are addressed shall give effect thereto.

Proceedings  
in the  
High Court  
relating to  
proceedings  
originating  
in local  
courts

Directions

Saving of  
appeal  
laws and  
prerogative  
writs

**75.** Subject to the provisions of the Sixth Schedule to this Act, nothing in this Act shall derogate from the provisions of the Appellate Jurisdiction Ordinance, 1961, or the Appellate Jurisdiction Act, 1962, or from the power or jurisdiction of the High Court to issue any writ of mandamus, certiorari or prohibition to, or in respect of, any magistrate's court.

Interpreta-  
tion

**76.** The provisions of this Part of this Act shall have effect in addition to the provisions of section 10 of the Interpretation and General Clauses Ordinance.

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THE FIRST SCHEDULE

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(Section 14)

JURISDICTION OF PRIMARY COURTS

PART I

*Under the Penal Code*

Primary courts shall have jurisdiction to try any offence contrary to any of the following provisions of the

<i>Section</i>	<i>Offence</i>
84	Going armed in public.
85	Forcible entry.
86	Forcible detainer.
87	Affray.
89	Abusive language, brawling and threatening violence.
101	Threat of injury to persons employed in the public service.
109	Destroying evidence.
114 (1) other than paragraph (d) thereof.	Contempt of court.
114A	Preventing or obstructing service or execution of process.
116	Escape from lawful custody.
116A	Absence from extra-mural employment.
117	Aiding prisoners to escape.
118	Removal, etc., of property under lawful seizure.
124 in respect of the orders, warrants and commands of a primary court.	Disobedience of lawful orders.
134	Abduction of girls under sixteen.
135 (3)	Insulting the modesty of a woman.
166	Desertion of children.
167	Neglecting to provide food, etc., for children.
176 (2), (3) & (5)	Idle and disorderly persons (certain offences only).
180	Adulteration of food or drink intended for sale.
181	Sale of noxious food or drink
184	Fouling water.
228 (1)	Wounding.
233 (d)	Omitting to take precautions against probable danger from animal in possession.

<i>Section</i>	<i>Offence</i>
240	Common assault.
241	Assaults causing actual bodily harm.
247	Kidnapping.
253	Wrongful confinement.
265	Theft; and in addition- 268 Stealing cattle. 270 Stealing by persons in the public service. 271 Stealing by clerks and servants.
279	Killing animals with intent to steal.
280	Severing with intent to steal.
286	Robbery.
288	Assault with intent to steal.
292	Demanding property with menaces with intent to steal.
294	Housebreaking and burglary.
295	Entering dwelling house with intent to commit felony.
296	Breaking into building and committing felony-
297	Breaking into building with intent to commit felony.
299	Criminal trespass.
302	obtaining goods by false pretences.
304	Cheating.
311	Receiving stolen property, etc.
321	Setting fire to crops and growing plants.
325	injuring animals.
326(1)	Malicious injuries.
369	Personation.
381	Attempt to commit any of the offences which it has jurisdiction to try.
390	Soliciting or inciting the commission of an offence which it has jurisdiction to try.

**PART II**

*Under other laws*

Primary courts shall have jurisdiction to enforce the provisions of the laws set out in the first, second and third columns of the following table, and to try any offence contrary thereto, subject to any limitation set out opposite thereto in the fourth column:

Provided that where any such laws are of limited territorial application, only primary courts established within the area to which such laws apply shall have jurisdiction to enforce the same and to try offences contrary thereto.

1 Cap No.	2 <i>Law</i>	3 <i>Section, rule, by-law</i>	4 <i>Limitation</i>
Cap. 19	The Gambling Ordinance	Sections 3, 4 and 5.	
Cap. 72	The Native Authority Ordinance	Orders and rules continued in force by the Local Government Ordinance.	
Cap. 77	The Native Liquor Ordinance	Sections 18, 22, 26, 27, 32, 33, 34, 35, 36, 47 and 51 (1).	
Cap. 93	The Food and Drugs Ordinance	Sections 12, 17 and 26.	
Cap. 101	The Township Rules (Supp. 59, p. 16)	Rules 8, 10, 16, 17, 18, 20, 21, 23, 24, 25, 26, 27, 28, 31 (3), (4), (5) and (6), 47 (1) and (3), 62, 70, 80, 80A, 81, 83, 84 and 86.	
	The Township (Building) Rules (Supp. 59, p- 51)	Rules 62 and 64.	
	The Townships (Compulsory Education) Rules (Supp. 59, p. 98)	All the rules.	
Cap. 102	The Minor Settlements Ordinance	Section 25	In so far as it relates to rules only.

1 Cap. No.	2 Law	3 Section, rule, by-law	4 Limitation
	The Minor Settlement (General) Rules (Supp.59 , p. 29)	All the rules.	
	The Minor Settlement Rules 1935 (Supp. 59, p.38)	All the rules.	
	The Minor Settlement (Nuisances) Rules (Supp. 59, P. 39)	All the rules.	
Cap. 105	The Dar es Salaam City (streets) by-laws (Supp. 57, p. 83)	All the by-laws.	
Cap. 106	The Markets Ordinance	Rules and. by-laws made under section 4.	
Cap. 133	The Plant Protection Ordinance	Section 9.	
	The Plant Protection (Coconut) Rules (Supp. 60, p. 11)	All the rules.	
	The Plant Protection (Coffee) Rules (Supp. 60, P. 8)	All the rules.	
	The Plant Protection (Tobacco) Rules, 1934 (Supp. 60, P. 15)	All the rules.	
	The Plant Protection (Tobacco) Rules 1950 (Supp. 60, p. 15;	All the rules	
Cap. 134	The Cultivation of Noxious Plants (Prohibition) Ordinance	Section 2.	
Cap. 140	The Coconuts (Theft) Ordinance	The whole Ordinance.	
Cap. 153	The Animals (Protection) Ordinance	Section 3.	
Cap. 156	The Animal Diseases Ordinance	Sections 22 (2 (a), (b), (c) and (d), (3) and 34.	
	The Animal Diseases Regulation (Supp. 59, (3), (9), (10) and (12) p.23 and 36.	Regulations 29 (1), (2) and 36.	
Cap. 157	The animals (Native Live-stock) (Branding) (Supp.60,p. 6)	All the rules.	
Cap. 167	The Highways Ordinance	Sections 37 38, 39, 40, 41 42 43, 50 and 51	
Cap. 168	The Traffic Ordinance	Sections' 36: 51, 52, h, and 70, and rules 32, 43 (i), 69 and 70.	Only in so far as the offences are connected with bicycles.
Cap. 183	The Native Tax Ordinance	Sections 13 and 14.	
Cap. 207	The Itinerant Traders Ordinance	Sections 3 and I 1.	
Cap. 208	The Trades Licensing Ordinance	Sections 3, 12 and 29.	
Cap. 223	The Arms and Ammunition Ordinance	Sections 13 (1), 31 (1) and (2), 22 and 32.	Jurisdiction under section 22 only in so far as the offence relates to the manufacture of smooth bore muzzle-loading muskets, and under section 32 only in relation to offences set out in column 3.



1 Cap No.	2 Law	3 Section, rule, by-law	4 Limitation
	The Arms and Ammunition (Native Authorities) Regulations (Supp. 57, p. 35)	All the regulations.	
Cap. 302	The Fauna Conservation Ordinance	Sections 12 and (3), 13 (4), 18, 13 (1) and (3), 29, 30, 31, 33, 34 (1), (2), (3), (4), (5), (6), (8), (9), (10), and (12), 36, 49 and 53 (1), (2A), (2B) and (2C).	
Cap. 304	The public order Ordinance	Sections 4 and 8.	
CAP. 353	The Native Authority (Rating) and Local Government (Tax) Ordinance	The whole Ordinance.	
Cap. 355	The personal Tax Ordinance,	Sections 26, 27, 35 and 40.	
Cap. 362	The Cotton Ordinance	Sections 7, 10, 42 (1) and 48.	
Cap. 365	The intoxicating Liquors Ordinance	Sections 31, 32, 45, 46, 48, 52, 53, 54, 51, 71 and 76.	
Cap. 367	The Crops (Unlawful Possession Ordinance	The whole Ordinance.)	
Cap. 389	The Forests Ordinance	Sections 15 (1), (2) and 6 (4), 16 (1) and (2), 18, 22, 23, 26 (1), (2) and (3).	
	The Forests Rules, 1959 (supp. 59, P. 5)	Rules 9, 11 (2), 14, 15 (1) and 17.	
Cap. 422	The Stock Theft Ordinance,	Sections 3, 4, 5, 6 and 7.	
Act% No. 53	1962, The Produce Cess Act, 1962	Section 7.	

### THE SECOND SCHEDULE

(Section 68)

EXISTING LAWS IN WHICH CERTAIN REFERENCE ARE TO BE READ AS REFERENCE TO DISTRICT COURTS HELD BY A CIVIL MAGISTRATE, OR TO CIVIL MAGISTRATES

Cap. No.	Law	Provision
7	The Judgments Extension Ordinance	The whole Ordinance,
24	The Bankrupt Ordinance	Section 97.
27	The Administrator-General's Ordinance	Section 2.
81	The Apprenticeship Ordinance .	section 7.
101	The Townships Ordinance	Section 7.
	The Township (Building) Rules (Supp. 59, P. 51)	Rule 23.
112	The Marriage Divorce and succession (Non-Christian Asiatics) Ordinance	The whole Ordinance.
113	The Land Ordinance	Sections 22 and 23.
114	The Land (Law of Property and Conveyancing) Ordinance	Section 9.
162	The Shipping Ordinance	Section 91.
212	The Companies Ordinance	Sections 164, 165 and 166.
263	The Workmen's Compensation Ordinance	Section 3.
274	The District Courts (Separation and Maintenance) Ordinance	Section 2.
275	The Maintenance Orders (Enforcement) Ordinance	Section 2.
317	The Local Government (Rating) Ordinance	Sections 15, 23, 24 and 25.

Cap. No.	Law	Provision
336	The Public Health (Sewerage and Drainage) Ordinance	Section 21.
347	The Private Street Works Ordinance	Section 2.
364	The Matrimonial Causes Ordinance	Section 2.
399	The Mining (Mineral Oil) Ordinance	Section 8.
419	The Companies Ordinance	Sections 219, 220 and 221.
Ord. 1961 No. 35	The Probate and Administration Ordinance, 1961	The whole Ordinance,
Acts 1962 No. 42	The Rent Restriction Act	Section 2.

**THE THIRD SCHEDULE**

(Section 15)

THE PRIMARY COURTS CRIMINAL PROCEDURE CODE

*Part I-Introduction*

Interpretation and general

- 1-(1) In this Code, unless the context otherwise requires-
- "adult" means a person of the age of sixteen years and over;
- "bail" includes a bond in a person's own recognizance;
- "complaint" includes information laid by a Person in relation to, and accusing of an offence, a person arrested without warrant, and "complainant" includes a person who lays such
- "court" means the primary court having jurisdiction;
- "the district court" means the district court to which an appeal lies from the primary court having jurisdiction;
- "magistrate" means a primary court magistrate.
- (2) Where any evidence is required to be given on affirmation, or an interpreter is affirmed, he shall be affirmed in the prescribed form.

Part II-Powers of Primary Courts in Proceedings of a Criminal Nature

Powers of imprisonment, fine and corporal punishment

- 2.-(1) Subject to the provisions of any law for the time being in force, a court may, in the exercise of its criminal jurisdiction, in the cases 'in which such sentences are authorized by law, pass the following sentences: -
- (a) imprisonment for a term not exceeding twelve months;
- (b) a fine not exceeding one thousand shillings;
- (c) corporal punishment not exceeding twelve strokes:
- Provided that where a court convicts a person of an offence specified in the Schedule to the Minimum Sentences Act, 1963, which it has jurisdiction to hear, it shall have jurisdiction to pass the minimum sentence for such offence prescribed by section 4 or that Act, and to sentence the offender to undergo twenty-four strokes of corporal punishment in accordance with section 5 of that Act, notwithstanding that such sentences exceeds the limits prescribed in this subparagraph.
- (2) A court may order that any fine which it shall impose shall be paid at such time or times or by such installments, or in kind or otherwise as it shall think just, and in default of the payment of any fine or of any installment, as the same when due, the court may order that the amount of the fine or of the installment, as the case may be, shall be levied by the sale of any property belonging to the offender.
- (3) Where a court makes an order for the payment of a fine, it shall have the power to direct its sentence that in default of the payment of the fine the offender shall suffer such period of imprisonment as will satisfy the justice the case:

Provided that-

- (a) subject to the express provisions of any law for the time being in force, in no case shall such imprisonment exceed the maximum fixed by the
- | Amount  | Maximum period |
|---|----------------|
| Not exceeding Shs. 10/-                           | 14 days        |
| Exceeding Shs. 10/- but not exceeding Shs. 20/-   | 1 month        |
| Exceeding Shs. 20/- but not exceeding Shs. 100/.  | 3 months       |
| Exceeding Shs. 100/- but not exceeding Shs. 400/- | 4 months       |
| Exceeding Shs. 400/-                              | 6 months; and  |
- (b) such imprisonment, either by itself or together with such substantive imprisonment (if any) as may be imposed, shall not in any event exceed the maximum period of the substantive imprisonment prescribed for the offence.

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

(5) Where a primary of imprisonment is imposed by a court in default of the payment of a fine, that term shall, on the payment or levy of a part of such sum, be

3. Where a primary court convicts any adult of an offence and, on obtaining information as to the character and antecedents of such adult or as to the circumstances or prevalence as to the offence, the court is of the opinion that they are such that greater punishment should be imposed for the offence than the court has power to impose, the court may, instead of dealing with him in any other manner, commit the offender in custody to the district court for sentence.

Primary court may commit to district court for sentence

4.--(1) Where a court by which a person is convicted of an offence is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order discharging him absolutely or, the court thinks fit discharging him on his executing a bond with or without sureties in such sum\* as the court may think fit conditioned that during a period not exceeding one year he shall appear and receive sentence when called upon and in the meantime he shall keep the peace and be of good behavior.

Power to discharge absolutely or on conditions, and to promote reconciliation

(2) In the case of proceedings for common assault or for any other offence of a personal or private nature, the court may, if of opinion that the public interest does not demand the infliction of a penalty, promote reconciliation, and encourage and facilitate the settlement, in an amicable way, of the proceedings on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed.

5.- (1) A not where the justice of the case so requires, and shall, in any case where any law for the time being in force so requires, make orders-

Additional powers

(a) for the supervision of habitual offenders;

(b) for the payment of compensation not exceeding one thousand shillings or costs: Provided that nothing in this paragraph shall be construed as limiting the amount of compensation which a court may award where it convicts a person of an offence specified in the Schedule to the Minimum Sentences Act, 1963, which it has jurisdiction to hear;

(c) for the forfeiture of any property in the case of unlawful possession, or, where authorized by any other law for the time being in force, for the forfeiture of any property in the case of unlawful use or the forfeiture of any licence, permit other authorization;

(d) when any person is convicted by it of having stolen or having dishonestly or wrongfully obtained any property, for the restoration of such property, to the person appearing to the court to be the owner or entitled to the possession thereof;

(e) to any other effect (not herein before, provided) prescribed by the law under which a person is convict

(2) The power to make orders for the payment of costs includes power to order the complainant to pay costs in any case in which the court acquits or discharges an accused person of a false, frivolous or vexatious charge;

Provided that the court shall not have power to award costs against any person holding an office in the service of the Republic or of a local authority, the functions of whose office include the enforcement of any law in respect of which complaint is made

(3) Any compensation or costs awarded by a court under this paragraph may be order to be paid at such time or times or by such instalments as the court shall think just and in default of the payment of any compensation or costs or any installment of the same when due, the court may order that the amount of the compensation or costs or the installment, as the case may be, shall be levied by the sale of any property belonging to the person ordered to pay the compensation or costs.

(4) A court may order that any fine or any part of a fine imposed shall be paid by way of compensation to any person injured or aggrieved by the act or omission which constituted offence in respect of which such fine was imposed.

(5) No Payment of compensation out of a fine shall be made until after the expiration of the time prescribed for an appeal to a district court, or if an appeal be presented, before the decision on appeal.

(6) At the time of awarding any compensation in any subsequent civil proceedings relating to the same matter as the criminal proceedings in which compensation was awarded, any court hearing the civil proceedings shall take into account any compensation paid or recovered under an order made under this paragraph. compensation paid or recovered under an order made under this paragraph.

(7) Nothing in this Code shall be construed as derogating from the provision of the Probation of Offenders Ordinance.

Powers  
cumulative

6.- (1) Notwithstanding that the court discharges a convicted person under paragraph 4, it may make an order or orders under paragraph and, subject to the provisions of any law for the time being in force, it shall be lawful for a court to make any combination of the sentences or orders provided for in paragraphs 2 and 5 -

Provided that, where a court convicts a person of an offence specified in the Schedule to the Minimum Sentences Act, 1963, any order of corporal punishment shall not exceed twenty-four strokes.

(2) Where a court convicts an offender at one trial of two or more offences and sentences him to imprisonment for two or more of such offences, the punishments shall commence one after the other in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently:

Provided that the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction (including where it convicts a person of offences specified in the Schedule to the Minimum Sentences Act, 1963, the amount of imprisonment authorized by the proviso to sub-paragraph (1) of 2 of this Code), competent to impose

Confirma-  
tion of  
certain  
orders

7.- (1) Notwithstanding the foregoing provisions of this Part, no sentence or order of a primary court-

- (a) of imprisonment for a term exceeding six months;
- (b) of corporal punishment on an adult;
- (c) of supervision of an habitual offender;
- (d) of forfeiture in the exercise of its criminal jurisdiction,

shall be carried into effect unless it has been confirmed by the district court:

Provided that nothing in this sub-paragraph shall apply in any case where a person is convicted of an offence specified in the Schedule to the Minimum Sentence Act, 1963, and sentenced to the minimum term of imprisonment and corporal punishment prescribed by section 4 and subsection (1) of section 5 of that Act, or any lesser term or corporal punishment under subsection (2) of section 5 of that Act.

(2) For the purposes of sub-paragraph (1) of this paragraph, the aggregate of consecutive sentences of imprisonment (whether substantive or in default of payment of a fine) imposed in the case of convictions for two or more offences at one trial shall be deemed to be one sentence.

(3) Wherever a court makes an order which requires confirmation, the court may, in its discretion, release the offender on bail, with or without sureties, pending confirmation or such order as the district court may make; and where an offender who has been sentenced to a term of imprisonment which requires confirmation is released on bail, the term of imprisonment shall run from the date, on which he begins to serve his sentence after confirmation or other order by the district court:

Provided that where a court makes an order of corporal punishment on an adult, then whether or not it also makes an order for imprisonment at the same trial, it shall not release the person to whom the order applies pending confirmation, but shall, subject in the case of a person to whom an order of imprisonment applies to his right to make the election set out in sub-paragraph (4) of this Paragraph, remand him in custody.

- (4) If an offender who has been sentenced to a term of imprisonment which requires confirmation is not released on bail, he may elect either-
  - (a) to serve his sentence, pending confirmation or other order, from the date upon which he is sentenced by the court, in which case the term of imprisonment shall run from such date; or
  - (b) to postpone serving his sentence until the order is confirmed or other order is made by the district court, in which case such offender shall be remanded in custody pending such confirmation or other order and the term of his imprisonment shall run from the date he begins to serve his sentence.

#### *Part III-Warrants and Summonses*

Complaints

8.- (1) Where a complaint of facts which constitute an offence in respect of which primary courts have jurisdiction is made to a magistrate, the magistrate shall examine the complainant and, if satisfied that there are sufficient grounds for so doing, issue a summons or warrant of arrest for compelling the appearance of the person accused:

Provided that a magistrate shall not, in the first instance, issue a warrant for the arrest of the person accused unless he is satisfied that it is proper that such person should be detained in custody pending his trial or should give security for his appearance, or that the circumstances of the case render it unlikely that such person will appear in answer to a summons.

(2) The power to issue a warrant under this paragraph includes Power to issue a warrant for arrest authorizing a police officer to whom it is directed to release the Person accused on his executing a bond for a specified sum, with or without sureties, for his appearance before the court.

(3) Where a summons or warrant is issued under this paragraph, it shall be returnable before the court to which the magistrate by whom it is issued is assigned.

(4) Where a magistrate considers a complaint under this paragraph, he shall enter the same, together with his decision whether or not to issue process, in the registers of the court.

9. Where-

(a) a person has failed to appear in answer to a summons;

(b) a summons has been issued, but the court has reason to apprehend that the person to whom it has been issued will not appear in answer to the summons,

a magistrate may issue a warrant of arrest, and where a person commits an act of contempt in the face of the court, the court may either order his arrest forthwith or issue a warrant of arrest.

Additional powers to issue warrant

10.-(1) Every summons shall be in the prescribed form and shall be issued in duplicate. One copy of the summons shall be signed, if so required by the person serving the same, by the person on whom it is served or with whom it is left, and returned to the court.

Summons

(2) Wherever possible the summons shall be served on the person to be summoned personally, but where such person cannot be found, it may be served by leaving it with some adult male member of his family, or with some adult male servant residing with him, or with his employer. Every such other person with whom a summons is left shall take such steps as may be reasonable and necessary to serve the person to be summoned.

11.-(1) Every warrant of arrest shall be in the prescribed form.

Warrants

(2) A warrant of arrest shall constitute authority to the person to whom it is directed, to all officers of the court to which the magistrate by whom it is issued is assigned, and to all police officers, to take the person in respect of whom it is issued into custody and to produce him before the said court, and, subject to the provisions of this Code, every such person shall have and may exercise, in the execution thereof, all such powers and shall perform all such duties as are by law conferred or imposed upon police officers.

(3) A person executing a warrant shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

(4) Every warrant of arrest shall remain in force until it is executed or until it is canceled by the court to which the magistrate by whom it was issued is assigned:

12.-(1) Process issued under the foregoing provisions of this Part may be served or executed at any place in Tanganyika, but if it is to be served or executed outside the local limits of the jurisdiction of the court by which it is issued, it shall first be sent or taken to a magistrate's court within the local limits of the jurisdiction of which it is to be served or executed and there endorsed by a magistrate or justice; and shall not be served or executed unless it is so endorsed.

Service outside local jurisdiction

(2) When a warrant of arrest has been executed outside the local limits of the court by which it is issued, the person arrested shall, unless the court which issued the warrant is nearer than a magistrate within whose local limits the arrest was made, or unless security is taken under sub-paragraph (2) of paragraph 8, be taken before a magistrate within the local limits of whose jurisdiction the arrest was made; and such magistrate shall direct his removal in custody to the court which issued the warrant unless he admits him to bail and forwards the bond to the court which issued the warrant.

13.-(1) A magistrate may, if satisfied upon affirmation that there is reasonable ground for believing that anything upon, by or in respect of which an offence has been committed, or anything which is necessary to the conduct of an investigation into any offence, is to be found on any premises or in any vessel or vehicle within the local limits of its jurisdiction, issue a search warrant in the prescribed form authorizing any person or persons named therein to search such premises, vessel or vehicle and, if anything searched for be found, to seize it and take it before the court, where it may be detained until the conclusion of the case, including any appeal, reasonable care being taken for its preservation.

Search warrants

(2) A search warrant under this section shall be executed only between the hours of 6.30 a.m and 6.30 p.m.

(3) Any person residing in any premises, or in charge of any premises, vessel or vehicle, in respect of which a search warrant has been issued shall allow any person executing such warrant free ingress thereto and shall afford all reasonable facilities for making a search therein, and where free ingress cannot be obtained the person executing the warrant may use such force as may be necessary to enter such premises, vessel or vehicle and in order to effect such entry and search may break open any window or door.

(4) At the conclusion of the case, including any appeal, the court shall direct the property to be returned to the person from whom it was seized, unless the court sees fit, or is authorized or required by law, to dispose of it otherwise.

*Part IV-Remand and Bail*

Power to  
grant bail  
or remand  
in custody

**14.**-(1) Where any person is brought before a court under arrest, or has been remanded in custody, or at any stage of the proceedings whilst a person is in custody, the court may either admit him to bail or remand him or further remand him in custody until the determination of the proceedings:

Provided that where a person is brought before a court under arrest and the court has - jurisdiction to try the offence for which such person is arrested, it shall cause him to be taken before the district court.

(2) Nothing in the proviso to sub-paragraph (1) shall preclude primary court magistrate from exercising in relation to such person, at a where, any of the powers conferred upon a justice under Part VI of this Act.

Remands

**15.** No person shall be remanded-

- (a) in Prison Custody for more than fifteen days at any one time; or
- (b) in custody in a lock-up for more than seven days at any one time; or
- (c) in the custody of any other person or place for longer than is necessary to hold him and convey him to a prison or lock-up, and, in any event, for longer than seven days at any one time.

Bail

**16.**(1) A person may be released on bail with or without sureties.

(2) The amount of the bail shall be fixed according to the circumstances of the case but shall not be excessive.

(3) Before any person is released on bail he, and if a surety or sureties are required, his surety or sureties, shall enter into a bond in the prescribed form and in the amount fixed. It shall be a condition of the bond that the person who is released shall attend at the time and place mentioned in the bond and that he shall continue to attend until the proceedings are completed:

Provided that the court may order or permit a person hereby required to execute a bond to deposit a sum of money or property with the court instead of executing the bond.

(4) In any case in which-

- (a) the court is satisfied that a person released on bail is about to leave Tanganyika; or
- (b) the sureties represent to the court that they cannot, any longer, be responsible for the appearance of the person released; or
- (c) there is some mistake in the bond, or it appears that the sureties were or have become insufficient; or
- (d) the person released fails to appear in accordance with a bond or deposit in that behalf,

the court may issue a warrant of arrest for the Person released and when he is brought before the court, either remand him in custody or release him on further or other bail.

Forfeiture

**17.**-(1) Where, any Person released on bail fails to appear in accordance with a bond or deposit in that behalf, the court may forfeit the bond of the person released or his sureties or the sum or Property deposited by him or them, or any part thereof, and in the case of a bond the forfeiture shall have effect as an order of the court for the Payment of the sum specified in the bond or the part thereof forfeited, and may be executed accordingly:

Provided that the court shall not forfeit any bond given by, or any money or Property deposited by, any surety without first giving him an opportunity to be heard against such order.

Provisions  
re bail to  
apply to  
bail after  
conviction

**18.** The provisions of this Part of this Code relating to bail and forfeiture shall also apply where bail is granted by a primary court after it has convicted any person of an offence.

*Part V-Courts which may try Offences*

Courts  
which  
may try  
offences

**19.**(1) Subject to the Provisions of this Act, an offence shall be tried by the court within the local limits of the jurisdiction of which-

- (a) the offence was committed; or
- (b) the accused was apprehended or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging him with the offence; or
- (c) if the offence was committed on a journey, any part of the journey lay; or
- (d) if it is uncertain in which of several local areas in which the offence was committed, any ingredient of the offence occurred; or

by a court having jurisdiction under the foregoing Provisions of this paragraph to try some other offence with which it is appropriate or convenient that such first-mentioned offence should be tried, or by a court to which the proceedings have been transferred under, or by an order made under, Part V of this Act:

Provided that nothing in this paragraph shall be construed as conferring jurisdiction on primary courts to the exclusion of the High Court or any other category of magistrate's court.

(2) Where any doubt arises as to the primary court by which any offence shall be tried? it shall be referred to the appropriate judicial authority whose decision shall be binding on all magistrates' courts.

#### Part VI-Trial of Offences

##### 20-(1) Where-

(a) a magistrate issues process under paragraph 8; or

(b) any person is brought before a court under arrest,

the magistrate shall enter the fact in the registers of the court and, in the case of any offence in respect of which primary courts have jurisdiction, open a case file and, unless a written charge is signed and presented by a police officer, draw up and sign a charge with such particulars as are reasonably necessary to identify the offence or offences, including the law and the section, or other division thereof, under which the accused person is charged.

Charge  
to be  
drawn up

(2) Every charge shall be brought in the name of the Republic acting on the complaint of the complainant who shall also be named.

(3) A charge may contain more than one offence if the offences charged are founded on the same facts or form part of a series of offences of the same or similar character, but where more than one offence is contained in the same charge it shall be separately stated.

21. At any time before the accused person gives evidence at the trial, the court may amend a charge or add new offences to it. But where the court amends or adds to a charge, the accused person may require any witness who has previously given evidence to be recalled, and may put relevant questions to such witness.

Additions or  
amendment  
to charges

22.-(1) A complainant may, with the consent of the court, withdraw his complaint at any time before the accused person gives evidence at the trial, and where the court gives its consent to the withdrawal of the complaint, it shall withdraw the charge and, unless the accused person is remanded in custody on some other charge, discharge him.

With-  
drawal

(2) The discharge of an accused person under this paragraph shall be without prejudice to the institution of new proceedings for the same offence.

(3) Nothing in this paragraph shall be construed as derogating from power of the Director of Public Prosecutions to enter a *nolle prosequi* in any proceedings.

23. The court may adjourn the hearing of any proceedings from time to time as the occasion may require.

Adjourn-  
ment

24. Where a complainant fails to appear at the time and place appointed for the hearing of any charge, the court may dismiss the charge and acquit the accused person, unless it shall think it proper to adjourn the hearing to some other day:

Appearance

Provided that the court shall not dismiss the charge or acquit the accused person unless he is present at the time and place appointed or is in lawful custody.

25. Trials in primary courts shall be conducted in the presence of the accused.

Presence of  
accused

26.-(1) Where any evidence is given in a language not understood by the accused, it shall be interpreted to him in open court in a language understood by him.

Interpreta-  
tion of  
evidence

(2) Before entering upon the duties of his office, an interpreter shall be affirmed:

Provided that a regular court interpreter who has been affirmed generally shall not require to be affirmed in each proceeding.

27.-(1) At the commencement of the trial, and immediately after the court has made any amendment or addition to the charge, the court shall read and, if necessary, explain the charge to the accused person.

Charge to  
be read

(2) After reading the charge, the court shall either itself state the facts on which it is founded or require the complainant to state shortly such facts.

(3) After the charge has been read and if necessary, explained to the accused person and a statement of the facts has been made, the accused shall be asked whether or not he agrees the charge is true.

(4) Where the charge contains more than one offence, the procedure prescribed in this paragraph shall be followed separately for each offence.

28.-(1) If the accused person admits the truth of the charge (or any offence therein), his admission shall be recorded as nearly as possible in his own words and then read over to him. Any amendments or corrections by the accused shall also be recorded.

Accused  
admits  
offences

(2) The magistrate and, if an interpreter is employed, the interpreter, shall sign the admission of the accused person and the magistrate shall invite the accused person also to sign it.

(3) The court shall then convict the accused person of the offences which he admits and proceed to pass sentence on him:

Provided that where the court is satisfied that it is desirable that the passing of sentence be deferred, it may for reasons to be recorded, defer the same, until some other time.

Accused  
denies  
offences

**29.** Where the accused does not admit the truth of the charge (or of any offence therein), the court shall enter a plea of not guilty to such charge or offence and proceed to hear the evidence of the complainant and his witnesses and, if he so wishes, of the accused person and his witnesses:

Provided that where, during the trial, the accused admits the truth of the charge (or of any offence therein) the court shall follow the procedure prescribed in paragraph 28.

Evidence  
and  
examina-  
tion

**30-(1)** The evidence shall be given in such order as the court directs:

Provided that-

(a) without prejudice to the power of the court to recall him, the complainant shall give evidence first; and

(b) subject to the Provisions of item (c) of this proviso, if the accused person wishes to give evidence, he shall give such evidence before his witnesses; and

(c) the accused person shall be afforded an opportunity, of giving evidence in rebuttal of any evidence given, after he himself has given evidence, by the complainant, the complainant's witnesses or witnesses called by the court.

(2) The evidence of the complainant, the accused person and an other witnesses shall be given on affirmation save in the case of a child of tender years, who, in the opinion of the court, does not understand the nature of the affirmation.

(3) The court and the accused person may put relevant questions to the complainant and his witnesses.

(4) The court and the complainant may put relevant questions to the accused's witnesses and, if he gives evidence, to the accused person.

(5) The accused person and the complainant may, with the consent of the court, put questions to witnesses called by the court.

(6) The magistrate shall record the substance of the evidence of the complainant, the accused person and the witnesses, and after each of them has given evidence shall read his evidence over to him and record any amendments or corrections. The magistrate shall certify at the foot of such evidence, that he has complied with this requirement.

Dismissal of  
charge

**31.** At any stage of the proceeding, the court may, if satisfied that the accused person has no case to answer, dismiss the charge and acquit the accused

Judgment  
and verdict

**32.-(1)** After all the evidence has been heard, the court shall proceed to pass judgment and convict, or acquit and discharge, the accused accordingly.

(2) Every judgment shall contain the point or points for decision, the decision thereon and the reasons for such decision, and shall be dated and signed by the magistrate.

Alternative  
verdicts

**33-(1)** A person charged with an offence may be convicted of-

(a) an attempt to commit such offence;

(b) another offence if the first-mentioned offence consists of a number of particulars, a combination of some of which constitute the other offence,

if the relevant matters are proved and such attempt or such other offence are within the court's jurisdiction.

(2) Where a person is charged with stealing anything and the court is of opinion that he is not guilty of that offence, but that he is guilty of an offence in respect of that thing under one of the section 302, 304 or 311 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(3) Where a person is charged with an offence under section 302 or section 304 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of stealing the thing in respect of which he is charged, he may be convicted of that offence although he was not charged with it.

(4) Where a person is charged with an offence under section 302 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 304 of the Penal Code, he may be convicted of that offence although he was not charged with it; and where a person is charged with an offence under section 304 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section of the Penal Code, he may be convicted of that offence although he was not charged with it.



(5) When a person is charged under section 311 of the Penal Code with the offence of receiving anything and the court is of opinion that he is not guilty of that offence but that he is guilty of retaining the thing, and when a person is charged, under the said section with the offence of retaining anything and the court is of opinion that he is not guilty of that offence but that he is guilty of receiving the thing then he may be convicted under the provisions of the said section of retaining or receiving, " the case may be, although he was not so charged-

(6) where a person is charged with an offence under one of the section 294 to 297 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of any other offence under another of those sections, he may be convicted of that other offence although he was not charged with it-

34. After conviction the court shall consider the question of sentence. The court may hear such evidence, on affirmation, as it thinks necessary to assist it to determine the sentence to be passed. Sentence

35. The court shall draw up a warrant of committal in the prescribed form in the case of every person sentenced to a term of imprisonment or corporal punishment and in the case of a conviction for an offence specified in the Schedule to the Minimum Sentences Act, 1963, the warrant shall be endorsed under the hand of the magistrate with a statement that the person convicted was convicted of a scheduled offence. Warrant

**THE FOURTH SCHEDULE**

(Section 15)

PROVISIONS RELATING TO THE CIVIL JURISDICTION OF PRIMARY COURTS

1. Subject to the provisions of this Act, proceedings of a civil nature shall be heard and determined- Courts by which proceedings to be heard

(a) if they relate to immovable property, by a court within the local jurisdiction of which the property is situated;

(b) in any other case, by a court within the local jurisdiction of which the cause of action arose or the defendant is ordinary resident, or by a court to which proceeding have been transfer under, or by an order made under, Part V of this Act:

Provided that nothing in this paragraph shall be construed as conferring jurisdiction on primary court, to the exclusion of the High Court, any other category of magistrates court or any tribunal established by law:

2. In the exercise of it customary law jurisdiction, a primary court shall apply the customary law prevailing within the area of its local jurisdiction or, if there is more than one such law, the law applicable in the area in which the act, transaction or matter occurred or arose, unless it is satisfied that some other customary law is applicable; but it shall, subject to rules of court, apply the customary law prevailing within the area of its local jurisdiction in matters of practice and procedure to the exclusion of any other customary law- Customary law

3-(1) A primary court, in proceedings of a civil nature, may- Powers

- (a) award any amount claimed;
- (b) award compensation;
- (c) order the recovery of possession of land;
- (d) order the restitution of any property;
- (e) order the specific performance of any contract;
- (f) make orders in the nature of an injunction, both mandatory and prohibitive;
- (g) order the payment of any costs and expenses incurred by a successful party or his witnesses;
- (h) promote reconciliation and encourage and facilitate the settlement, in an amicable way, of the proceedings, on such terms as are just;
- (i) make any other order which the justice of the case may require.

(2) Any amount, including compensation or costs, awarded by a primary court under this paragraph may be ordered to be paid at such time or times or by such instalments, or in kind or otherwise as the court shall think just and, in default of the payment of any such amount or any installment of the same when due, the court may order that such amount or such installment, as the case may be, shall be levied by attachment and sale of any attachable property belonging to, and any salary accrued or to become due to, the person against whom the order was made.

(3) For the purposes of this paragraph, "attachable property" shall not be deemed to include-

- (a) the necessary wearing apparel, cooking utensils, bed and bedding of the judgment debtor and of his wife and children;
- (b) the manual tools of artisans or of agriculturists;

- (c) the salary or wages of any person to the extent of-
- (i) the whole of the salary or wages, where the salary or wage does not exceed eighty shillings monthly;
  - (ii) eighty shillings, where the salary or wage exceeds eighty shillings monthly but does not exceed one hundred and fifty shillings monthly;
  - (iii) two-thirds of any salary or wage which exceeds one hundred and fifty shillings monthly;
- (d) any fund or allowance declared by law to be exempt from attachment or sale in execution of a decision or order.
- Execution 4. A primary court may, on the application of the party entitled to the benefit of such order in any civil proceedings, request a district court to take steps for the arrest and detention of any person who has failed to comply with an order for the payment of any amount, including compensation or costs, made by *such* prima court, and, upon receiving any *such* request, the district court shall have such jurisdiction and powers to order the arrest and detention of such person and otherwise for the execution of such order as if an application were made for the arrest and detention in the civil prison of a judgment debtor in accordance with the Provisions of the Civil Procedure Code.

THE FIFTH SCHEDULE

(Section 15)

PART I

*Powers of Primary Courts in Administration Cases*

- Jurisdiction. 1.-(1) The jurisdiction of a primary court in the administration of deceaseds' estates, where the law applicable to the administration or distribution of, or the succession to, the estate is customary law or Islamic law, may be exercised in cases where the deceased at the time of his death, had a fixed place of abode within the local limits of the court's jurisdiction:
- Provided that nothing in this paragraph shall derogate from the jurisdiction of a primary court in any proceedings transferred to such court under Part V of this Act.
- (2) A primary court shall not appoint an administrator of a deceased's estate-
- Cap. 27 (a) in respect of an estate to which the provisions of the Probate and Administration Ordinance, 1961 are applied or of which a grant of administration has been made under that Ordinance, or of which the administration is undertaken by the Administrator-General under the Administrator-General's Ordinance; or
- (b) where the gross value of the estate does not exceed Shs. 1000/-, unless the court is of the opinion that such an appointment is necessary to protect the creditors or beneficiaries.
- Power of courts 2. A Primary court upon which jurisdiction in the administration of deceaseds' estates has been conferred may-
- (a) either of its own motion or on application by any person interested in the administration of the estate, appoint one or more persons interested in the estate of the deceased to be the administrator or administrators thereof, and, in selecting any such administrator, shall, unless for any reason it considers it inexpedient so to do, have regard to any wishes which may have been expressed by the deceased;
  - (b) either of its own motion or on application by any Person interested in the administration of the estate, where it considers that it is desirable so to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under sub-paragraph (a);
  - (c) revoke any appointment of an administrator for good and sufficient cause and require the surrender of any document evidencing his appointment;
  - (d) make orders as to the administration of the estate, and, in particular but without prejudice to the generality of the foregoing, as to the law to be applied on the distribution of the estate and as to advertising for creditors;
  - (e) require an administrator to sign an undertaking to administer the estate faithfully;
  - (f) required an administrator to give security for the due administration of the estate;
  - (g) make orders as to the payment of the share in the estate of any minor or other person under a disability to a relative or other suitable person for the maintenance or otherwise for the use of such minor or person under a disability, or with the consent of the Public Trustee, to the Public Trustee;
  - (h) make any order which it has power to make under this Act m. cases of a civil nature.
- Conflict 3. Where the High Court has directed that the Probate and Administration ordinance shall apply to an estate of which an administrator has been appointed by a primary court, the primary court shall, upon receiving notice to that effect from the High Court, revoke the appointment of such administrator and require the surrender of any document evidencing his appointment.

4. Where any appointment of an administrator is revoked by a primary court-
- (a) all payments *bona fide* made to the administrator before the revocation thereof shall, notwithstanding such revocation be a legal discharge to the person making the same;
  - (b) the administrator who shall have acted may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which an administrator may lawfully make.

Consequences of revocation

**PART II**

*powers and duties of Administrators appointed by Primary Courts*

5. An administrator appointed by a primary court shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration, and shall, thereafter, distribute the estate of the deceased to the persons or for the purposes entitled thereto, and, in carrying out his duties, shall give effect to the directions of the primary court.

General duties of administrator

6. An administrator may bring and defend proceedings on behalf of the estate.

Proceedings

7. The receipt of an administrator shall constitute a good discharge to all debtors paying their debts and to all persons delivering the property of the deceased to such an administrator.

Receipts

8. An administrator who misapplies the estate of the deceased or subjects it to loss or damage shall be liable to make good such loss or damage, and an administrator who occasions loss to the estate by neglecting to get in any part of the property of the deceased shall be liable to make good the amount.

Loss

9. If an administrator makes inquiries, which in the circumstances of the case are reasonable, as to the debts of the deceased, he shall not be obliged to advertise for creditors unless so directed by the primary court,

No obligation to advertise

10. An administrator who distributes the assets in discharge of such lawful claims as he knows of and, after not less than three months after the death of the deceased, distributes the remaining assets among the persons or for the purposes entitled thereto, and who gives effect or complies with the directions of the court (if any), shall not be liable for those assets to any person of whose claim he had no notice at the time of such distribution,

Distribution

Provided that nothing in this paragraph shall prejudice the right of any creditor to follow assets in the hands of persons receiving the same.

11. After completing the administration of the estate, and, if the primary court so orders, at any other stage of the administration, an administrator shall account to the primary court for his administration.

Account

**THE SIXTH SCHEDULE**

(Section 67)

**PART I-LAWS REPEALED**

- Cap. 3 The Subordinate Courts Ordinance.
- Cap. 4 The justices of the Peace Ordinance.
- Cap. 299 The Local Courts Ordinance.
- Cap. 361 The Probation of Offenders (Local Courts) Ordinance.
- Acts 1962 No. 16 The Local Courts (Minister for justice and Regional Local courts officers) Act, 1962.

**PART II**

*Amendments to the Penal Code*

1. Section 5 is amended as follows: -
  - (a) by deleting the definition "judicial proceeding" and by substituting therefor the following new definition: -  
 "judicial proceeding" includes any proceeding had or taken in or before any court, and any proceeding had or taken in or before any tribunal, commission or person in which or before whom evidence may be taken on oath,"; and
  - (b) in the definition -person employed in the public service by deleting the words "including a native tribunal" in the second Paragraph ( iii ).
2. Section 26 is amended by deleting subsection (1) and by substituting therefor the following new subsection: -
  - (1) When any person is sentenced to death, the sentence shall direct that he shall suffer death by hanging".

3. Section 28 is amended by deleting the word "Where" in the first line, and by substituting therefor the words and commas "Subject to the provisions of the Minimum Sentences Act, 1963, where"

4. Section 99 is amended by deleting paragraph (1) and by substituting therefor the following new paragraph: -

"(1) not being a judicial officer, assumes to act as a judicial officer:

Provided that nothing in this Paragraph shall be deemed to prohibit any customary arbitration or settlement by the tribal elders in any matter arising out of any common assault or other offence of a personal or private nature or any minor civil dispute at customary law if such arbitration or settlement is conducted in the manner recognized by customary law; or"

5. Subsection (1) of section 102 is amended by deleting the words "or under any other sanction authorized by law" in the second paragraph and by substituting therefor the words "or otherwise"

6. Section 114 is amended as follows: -

(a) by inserting, immediately after the word "document" in the fifth line of paragraph (b) of subsection (1), the words "or other thing";

(b) by inserting, immediately before the words "makes use" in the first line of paragraph (d) of subsection (1), the words "publishes, prints or";

(c) by deleting paragraph (h) of subsection (1) and by substituting therefor the following new paragraphs:--

"(h) wrongfully retakes possession of any land or other property from any person who has recently obtained judgment from a court for the recovery of possession of such land or property; or

(hh) wrongfully retakes possession of any child from any person who has obtained the custody of such child under an order of the court; or

(hhh) having the means to pay any sums by way of compensation or costs or other-wise in civil or criminal proceedings awarded against him by a primary court, wrongfully refuses or neglects after due notice to make such payment in accordance with any order for payment whether by instalments or otherwise; or", and

(d) by adding, immediately below subsection (3), the following new subsection:-

"(4) Paragraph (b) of subsection (1) shall have effect in relation to proceedings in a primary court in which evidence is not given on oath or affirmation as if the references to a person having been sworn or affirmed included a reference to a person having been required by the court to give evidence in those proceedings.-

7. Section 144 is amended by deleting the proviso to the last paragraph.

### PART III

#### *Amendments to the Criminal Procedure Code*

1. Section 2 is amended by deleting the definition "subordinate court" and by substituting therefor the following new definition:-

" subordinate court' means a district court established by, and a court of a resident magistrate established or deemed to have been established under, the Magistrates Courts Act, 1963;"

2. The following new section is added, immediately below section 2--

"Limitation of applica- 2A.-(1) Subject to the provisions of subsection (2) of this section, tion of Code nothing in this Code shall apply to any primary court or primary to primary courts court magistrate, or to the High Court, a district court or a supervisory magistrate in the exercise of their respective appellate supervisory, revisional or other jurisdictions and powers under Part III of the Magistrates' Courts Act, 1963.

(2) Notwithstanding the provisions of subsection (1) of this section-

(a) the references to a court in sections 26, 30, 31, 34 and 143, and the reference to a subordinate court in section 214, shall include references to a primary court;

(b) the reference to a magistrate in section 40 shall include a reference to a primary court magistrate;

(c) the Director of Public Prosecutions, and any person lawfully authorized by him, may exercise Any of the powers conferred on him by section 80A and 81 in respect of proceedings in a primary court or proceedings in the High Court or a district court under Part III of the Magistrates' Courts Act, 1963;

Provided that nothing in this paragraph shall be construed as derogating from the provisions of section 29 of the Magistrates' Courts Act, 1963;

(d) the provisions of sections 139, 140, 141 and 142 shall apply to, and the High Court may exercise jurisdiction under sections 123 (3), 348 and 349 in respect of, primary courts.

(3) In this section, 'primary court', 'district court' and 'Supervisory magistrate' have the meanings respectively assigned to those expressions in the Magistrates' Courts Act, 1963."

3. Section 4 is repealed and replaced by the following new section:-

"Offences under Penal Code 4. Subject to the other provisions of this Code, any offence under the Penal Code in the fifth column of Part A of the First Schedule hereto, to be triable by a subordinate court, by a subordinate court."

4. Section 5 is amended by deleting subsection (2) and by substituting therefor the following new subsection: -

"(2) Where no court is so mentioned, it may, subject to the other provisions of this Code, be tried by the High Court or, where such offence is shown in the fifth column of Part B of the First Schedule hereto to be triable by a subordinate court, by a subordinate court."

5. Section 5A is amended as follows:-

(a) in subsection (2), by deleting the words and comma "either remit the case for sentence to the court which committed the offender, or"; and

(b) in subsection (3), by deleting paragraphs (a) and (c).

6. Sections 7, 8 and 9 are repealed and replaced by the following new section:-

"Sentences which a subordinate court may pass 7-(1) A subordinate court may, in the cases in which such sentences are authorized by law, pass the following sentences:-

(a) imprisonment for a term not exceeding three years:

Provided that where a court convicts a person of a scheduled offence, it may, if such sentence is authorized by law, pass a sentence of imprisonment for such offence for a term not exceeding five years;

(b) a fine not exceeding three thousand shillings;

(c) corporal punishment.

(2) Notwithstanding the provisions of subsection (1) of this section-

(a) a sentence of imprisonment-

(i) for a scheduled offence, which exceeds the minimum term of imprisonment prescribed in relation to that offence by subsection (2) of section 4 of the Minimum Sentences Act, 1963, by more than six months;

(ii) for any other offence, which exceeds twelve months;

(b) a sentence of corporal punishment-

(i) for a scheduled offence which exceeds thirty-two strokes;

(ii) for any other offence, which exceeds twelve strokes;

(c) a sentence of a fine or order for the payment of money (other than an order made under section 6 of the Minimum Sentences Act, 1963), exceeding one thousand shillings,

(other than a sentence passed or order made by a senior resident magistrate) shall not be carried into effect, executed or levied until the record of the case, or a certified copy thereof has been transmitted to, and the sentence or order has been confirmed by, the High Court.

(3) Subsection (2) of this section shall apply in relation to a sentence of imprisonment whether such sentence is a substantive sentence of imprisonment or a combination of a sentence of imprisonment in default of a payment of a fine and a substantive sentence of imprisonment.

(4) In this section 'scheduled offence' has the meaning ascribed to that expression in the Minimum Sentences Act, 1963."

Acts 1963  
No. 29

7. Section 10 is amended as follows:-

(a) by inserting, immediately after the word "imprisonment" in the third line of the proviso to subsection (1), the commas and words ", otherwise than for an offence specified in the Schedule to the Minimum Sentences Act, 1963,"; and

(b) by deleting the words, figures and comma "sections 7, 8, and 9" in the first and second lines of subsection (2), and by substituting therefor the word and figure "section 7".

8. Section 11 is amended by adding, immediately below subsection (5), the following new subsection: -

"(6) Where a Person is convicted of an offence specified in the Schedule to the Minimum Sentences Act, 1963, the provisions of this section shall have effect subject to section 7 of that Act."

9. Section 13 is amended by deleting the words "first class magistrate", in the first line of paragraph (a) of subsection (1), and by substituting therefor the words "resident magistrate"

10. Section 43 is repealed.

11. Section 78 is amended by deleting paragraph (b).

12. Section 79 is repealed.

13. Section 80A is amended by deleting subsection (6).

14. Section 158 is repealed.

15. Section 159 is amended by deleting the words and figures "or section 158" in the first and second lines of subsection (1).

16. Section 160 is amended by deleting the words and figures "or section 158" in the second line.

17. Section 190 is amended by deleting the words "other than a native court" in the first and second lines and by substituting therefor the words "other than a primary court"

18. Section 313 is amended by deleting subsection (2) and by substituting the following new subsections:-

"(2) Except with the leave of the High Court, no appeal shall be allowed in cases in which a subordinate court has passed a sentence of a fine not exceeding one hundred shillings only, or of corporal punishment only imposed on a person under sixteen years of age, or from a sentence of imprisonment in default of the payment of a fine if no substantive sentence of imprisonment has been passed,

(3) No sentence which would not otherwise be liable to appeal shall be appealable on the ground that the person convicted is ordered to find security to keep the peace."

19. Section 328 is repealed,

20. Section 329 is amended by deleting subsection (5).

21. The First Schedule is amended by deleting the expressions "Subordinate court of a first class magistrate", "Subordinate court of a first or second class magistrate" and "Any magistrate" wherever they occur in the fifth column thereof, and by substituting therefor the expression "A subordinate court"

#### PART IV

##### Miscellaneous Amendments

1.	2.	3.
Cap. 1	The Interpretation and Subsection (1) of section 2 is amended- General Clauses Ordinance	(a) by adding the following new definitions in their appropriate alphabetical order: - " 'Civil magistrate' means a resident magistrate, and any other person appointed a civil magistrate under the Magistrates' Courts Act, 1963; 'Customary law' means any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any Tanganyika African community and accepted by such community - general as having the force of law, including any declaration or modification of customary law made or deemed to have been made under section 9A of the Judicature and Application of Laws Ordinance, 1961, but does not include any rule or Practice to which the proviso to subsection (3) of section 9 of the Judicature and Application of Laws Ordinance, 1961, refers; and references to native law or to native law and custom shall be similarly construed;
	Acts 1963 No. 55	
	Ord. 1961 No. 57	

1.	2.	3.
		'District magistrate' includes a resident magistrate;
		'Magistrate' in any written law enacted or made on or after the day appointed for the commencement of the Magistrates' Courts Act, 1963, means a resident magistrate a district magistrate and a primary court magistrate;
		'Resident magistrate' includes a senior resident magistrate; "
		(b) by inserting, in the definition "Judge", immediately after the words "acting Judge" the words "but not - an associate judge";
		(c) by inserting in the definition "oath", immediately before the word "allowed", the words "required or"
Cap. 2	The Indian Acts (Application) Ordinance.	Section 9 (1) is amended-
		(a) by inserting, before paragraph (a), the following new paragraph:- "(aa) at the end of section 15 there were added the following new sentence: - "For the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade.";
		(b) by inserting immediately after the word "himself" in the fifteenth line of section 22 of the Code as set out in paragraph (a), the following; or (c) of his own motion, such resident magistrate may at any stage before evidence has been taken in the suit transfer the suit for trial by himself";
		(c) by inserting, immediately after the brackets and letter "(B)" in the Proviso to the said section 22, the following "or (c)"
Cap. 9	The Records (Disposal) Ordinance	Section 2 is amended by deleting the words "subordinate court" in the fourth line, and by substituting therefor the words and symbols "magistrates' courts (including former local courts)".
Cap. 13	The Children and Young Persons Ordinance	(1) Section 21 is amended by deleting the words "to the High Court" in subsection (4). (2) Section 24 is amended by deleting the full stop at the end of subsection (1), substituting therefor a colon and by adding the following new proviso: - "Provided that no such order shall be made unless the manager of the approved school to which the offender is to be committed has informed the court that he has a vacancy which may be filled by the person in respect of whom it is proposed to make the order." (3) Add the following new section immediately below section 42:- "Applica- 43.-(1) The Chief Justice tion to may, by order published primary in the <i>Gazette</i> , extend any courts provisions of this Ordinance which relate to subordinate courts to

1.	2.	3.
Cap. 17	The Corporal Punishment Ordinance	<p>primary courts or to any primary court or category of primary courts.</p> <p>(2) Where the Chief Justice extends such provisions aforesaid to any primary court he may, by rules, modify any of the provisions of this Ordinance relating to procedure, appeals or revision in order to bring the same into conformity with the provisions in that behalf contained in the Magistrates' Courts Act, 1963.</p> <p>Acts 1963 No. 55</p> <p>(1) Section 4 is amended by deleting the colon at the end of the substantive provisions thereof, substituting a full stop and deleting the proviso.</p> <p>(2) Section 15 is amended by deleting subsection (t) and by substituting the following new subsection:-</p> <p>"(1) No sentence of corporal punishment shall be inflicted until a medical officer, or if none is available the highest medically qualified person available other than a medical officer, has, after examination of the offender, certified that he is physically fit to undergo the sentence imposed upon him, and no sentence of corporal punishment on an adult shall be inflicted except in the presence of a medical officer or such person aforesaid and in the presence of a district magistrate, administrative officer or prison officer not below the rank of Assistant Superintendent."</p>
Cap. 22	The Fugitive Criminals Surrender Ordinance	<p>(1) Section 2 is amended by deleting the definition "Magistrate" and by substituting therefor the following new definition:-</p> <p>" 'Magistrate' means a resident magistrate; "</p> <p>(2) Section 7 is amended by deleting the words "or by an administrative officer" in the first line of paragraph (b).</p> <p>(3) Section 19 is amended by deleting the words "or by an administrative officer" where they occur in the second and twentieth and twenty-first lines and the words "or administrative officer" in the fourth line.</p>
Cap. 39	The Expulsion of Undesirables Ordinance	<p>Subsection (1) of section 2 is amended by inserting, immediately after the word "felony" in the first line of paragraph (a), the words "by a court other than a primary court"</p>
Cap. 77	The Native Liquor Ordinance	<p>Subsection (1) of section 41 is amended by deleting the word "magistrate" in the first line, and by substituting therefor the words "district or primary court magistrate"</p>
Cap. 98	The Mental Diseases Ordinance	<p>Section 9A is amended by deleting the words "administrative officer" where, so ever they occur therein, and by substituting therefor the words "justice"</p>



1.	2.	3.
Cap. 117	The Registration of Documents Ordinance	<p>of the peace, assigned to a district court house' in the first instance, and thereafter the words "such justice"</p> <p>Subsection (2) of section 8 is amended by adding, immediately below paragraph (1), the following new paragraph:-</p> <p>"(m) a document disposing, or evidencing the disposition, of land in accordance with customary law if the law applicable to the disposition is customary law and the land is subject neither to a Government lease nor a right of occupancy granted under the Land Ordinance."</p>
cap. 189	The Stamp Ordinance	<p>Add the following new section below section 57: -</p> <p>"Instruments tendered in primary courts 57A.-(1) Notwithstanding the foregoing Provisions of this Ordinance or of section 70-</p> <p>(a) where any instrument chargeable with duty is tendered in evidence in a primary court, the primary court may admit it in evidence without examination or, if the court examines the same and it appears that it is not duly stamped, may, instead of impounding the same, order that it be presented for adjudication and, if necessary, stamped within such period as the court may specify and pending such adjudication and stamping may refuse to admit it in evidence;</p> <p>(b) where a primary court has admitted in evidence any instrument which is not duly stamped, a district court or the High Court, in the exercise of their respective jurisdictions under Part III of the Magistrates' Courts Act, 1963, may instead of impounding the same, order it to be presented for adjudication and, if necessary, stamped, within such period as the court may specify and, if it is not stamped in accordance with such adjudication, may, in its discretion, exclude the instrument from evidence in the proceedings,</p> <p>and, where a court so orders, the instrument may be adjudicated upon and stamped within such period.</p>

1.	2.	3.
		(2) If an instrument to which an order made under this section relates is not presented for adjudication and stamped in accordance therewith within the period specified, the instrument may be seized on the order of the court and impounded."
Cap. 214	The Sale of Goods Ordinance	Section 60 is amended by adding, immediately below subsection (4), the following new subsection:- "(5) Nothing in this Ordinance shall affect any customary law relating to contracts for sale, or the sale, of goods."
Cap. 747	The Probation of Offenders Ordinance	(1) Section 2 is amended by deleting the definitions "court" and "subordinate court" and by adding the following new definition:- " 'magistrate' includes a primary court magistrate; " (2) Section 3 is amended by deleting the words "subordinate court" in the second line of subsection (1) and by substituting therefor the words "a primary court, a district court or a court of a resident magistrate" (3) Section 4 is amended by deleting the full stop at the end of subsection (2), substituting therefor a colon, and by adding the following new proviso:- "Provided that no order shall be made requiring a probationer to reside in an institution unless the manager of the institution consents to receive him." (4) Section 55 is amended by inserting, immediately after the words "Penal Code" the words and comma "or the Primary Courts Criminal Procedure Code, as the case may be"
Cap. 333	The Local Government Ordinance	Section 53A is repealed.
Cap. 366	The Employment Ordinance	Subsection (1) of section 133 is amended by deleting the word "magistrate" in the first line, and by substituting the words and symbols "district magistrate (whether or not he is a civil magistrate)".
Cap. 402	The Tanganyika Military Forms Ordinance	Subsection (1) of section 2 is amended by deleting paragraph (b) of the definition "civil court" and by substituting therefor the following new paragraph: - "(b) a local or native court established outside Tanganyika; "
Cap. 431	The Age of Majority Ordinance	Subsection (1) of section 3 is amended by deleting the full stop at the end of paragraph (c), by substituting therefor a semi-colon and the word "or", and by adding the following new paragraph:- "(d) when the law applicable is customary law, any rule of customary law which prescribes any age or condition as conferring capacity for any purpose."
Ords. 1961 No.1	The Law of Contract Ordinance	Section 1 is amended by adding, immediately below subsection (2), the following new subsection:-

1.			3. "(3) Nothing in this Ordinance' other than section 23 hereof, shall affect any customary law; and in relation to any Matter in which the law applicable is customary law, the provisions of the said section 23 shall be in addition to any relevant rule of customary law and the references to a law in the said section 23 shall be deemed to be references to the Ordinances and Acts of Tanganyika and the Acts of the Common Services Organization."
Ords. 1961 No. 35	The Probate and Administration Ordinance, 1961	Acts 1963 No. 55	(1) The proviso to subsection (1) of section 88 is amended by deleting the last three lines thereof and by substituting therefor the words and symbols have been commenced in, a primary court, unless the Proceedings have been transferred to such district court under section 41 of the Magistrates, Courts Act, 1963." (2) Subsection (3) of Section 88 is repealed.
Ords. 1961 No. 55	The Appellate Jurisdiction Ordinance, 1961	Acts 1963 No. 55	(1) Subsection (1) of section 7 is amended by inserting, immediately after the words "High Court" in the first line of paragraph (c), the words "or the Court of Appeal". (2) Subsection (2) of section 7 is amended by deleting the full Stop at the end thereof, substituting a semi-colon therefor, and by adding the following new paragraph:- "(C) no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act, 1963, unless the High Court certifi- that a point of law of general public importance is involved in such decision or order." (3) Section 8 is amended by deleting subsection (4) and by substituting therefor the following new sub-sections: - "(4) An appeal shall lie to the Court of Appeal from any order of the High court awarding costs under section 173 of the Criminal Procedure Code, and the Court of Appeal shall have power to give such costs of the appeal as it shall deem reasonable. (5) Any person sentenced by the High Court in pursuance of the provisions of section of the criminal Procedure Code may, with the leave of the Court of Appeal, appeal to the Court of Appeal against such sentence, unless it is one fixed by law; Provided that if the High Court imposes a sentence which the court which committed the offender had power to impose, no appeal shall lie against such sentence. (6) Either party- (a) to proceedings under Part X of the Criminal Procedure Code may appeal to the Court of Appeal on a matter

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| Ords. 1961<br>No. 57 | The Judicature and<br>Application of Laws<br>Ordinance, 1961 | <p>of law (not including severity of sentence) but not on a matter of fact;</p> <p>(b) to proceedings of a criminal nature under Head (c) of Part III of the Magistrates Courts Act, 1963, may, if the High Court certifies that a point of law of general public importance is involved, appeal to the Court of Appeal:</p> <p>Provided that where the order appealed against is a declaratory order, the determination of the Court of Appeal thereon shall also have effect as a declaratory order only</p> <p>(1) Section 6 is repealed and replaced by the following new section:-</p> <p>"Jurisdiction of Magistrates courts      6. Subject to the provisions of any written law and to the limits of its jurisdiction, a magistrate's court shall exercise its jurisdiction in accordance with the laws with which the High Court is required by this Ordinance to exercise its jurisdiction and with such other laws as shall be in force in Tanganyika from time to time, and applicable to the proceedings before it, but no magistrate's court shall exercise any jurisdiction or Powers that are by any such law conferred exclusively on the High Court as such or on a court of record."</p> <p>(2) Section 9 is repealed and replaced by the following new section:-</p> <p>"Applicability of customary law      9 -(1) Customary law shall be applicable to, and courts shall exercise jurisdiction in accordance therewith in, matters of a civil nature-</p> <p>(a) between members of a community in which rules of customary law relevant to the matter are established and accepted, or between a member of one community and a member of another community if the rules of customary law of both communities make similar provision for the matter; or</p> <p>(b) relating to any matter of status of, or succession to, a person who is or was a member of a community in which rules of customary law relevant to the matter are established and accepted; or</p> |

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(c) in any other case in which, by reason of the connection of any relevant issue with any customary right or obligation, it is appropriate that the defendant be treated as a member of the community in which such right or obligation obtains and it is fitting and just that the matter be dealt with in accordance with customary law instead of the law that would

otherwise be applicable;

except in any case where it is apparent, from the nature of any relevant act or transaction, manner of life or business, that the matter is or was to be regulated otherwise than by customary law.

Provided that-

(i) where, in accordance with paragraph (a), (b) or (c) of this subsection customary law is applicable to any matter, it shall not cease to be applicable on account of any act or transaction designed to avoid, for an unjust purpose, the applicability of customary law; and

(ii) nothing in this subsection shall preclude any court from applying the rules of Islamic law in matters of marriage, divorce, guardianship, inheritance, waqf, and similar matters in relation to members of a community which follows that law.

(2) It is hereby declared for the avoidance of doubts that-

(a) a person may become a member of such a community as is referred to in subsection (1), notwithstanding he was hitherto a member of some other community (and whether or not any customary law is established or accepted in such other community), by his adoption of the way of life of the first-mentioned community or his acceptance by such community as one of themselves, and such adoption or acceptance

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may have effect either generally or for particular purposes;

(b) a person may cease to be a member of a community by reason of his adoption of the way of life of some other community (whether or not any customary law is established or accepted in such other community) or acceptance by some other community as one of themselves, but shall not be treated as having ceased to be a member of a community solely by his absence therefrom.

(3) In any proceedings where the law applicable is customary law, the court shall apply the customary law prevailing within the area of its local jurisdiction, or if there is more than one such law, the law applicable in the area in which the act, transaction or matter occurred or arose, unless it is satisfied that the proper customary law to be applied is some other law:

Provided that the court shall not apply any rule or Practice of customary law which is abolished, prohibited, punishable, declared unlawful or expressly or impliedly disappplied or superseded by any Ordinance or Act of Tanganyika or Act of the Common Services Organization.

(4) For the avoidance of doubts it is hereby declared that the reference to an Ordinance or Act of Tanganyika in subsection (3) shall not include any law or practice (other than any such Ordinance or Act or Act of the Common Services Organization) applied to, or enforceable in, Tanganyika in accordance with the Provisions of section 2 of the Indian Acts (Application) ordinance, of subsection (1) of section 2 of the Land (Law of Property and Conveyancing) Ordinance, or of subsection (2) of section 2 or section 7 of this Ordinance, or any English Act declared to be in force by order made under section 10 of the

Cap. 2

Cap. 114

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Land (Law of Property  
and Conveyancing) Ordinance."

(3) Add the following new section below section 9:-  
"Declaration and modification of customary law  
9A.-(1) A district council may, and where the Minister so requires, shall record in writing a declaration of what in the opinion of the council is the local customary law relating to any subject either as applying throughout the area of the council or in any specified part thereof, and submit such declaration to the Minister.

(2) A district council may, if in the opinion of the council it is expedient for the good government and welfare of the area, submit for the consideration of the Minister a recommendation for the modification of any local customary law, whether or not a declaration has been recorded and an order made under the provisions of this section in respect of such local customary law, relating to any subject either as applying throughout the area of the council or in any specified part thereof.

(3) If the Minister is satisfied that a declaration recorded under subsection (1) accurately records the local customary law with respect to the subject to which it relates, or that a modification recommended under subsection (2) is expedient and that such local customary law or modification is not incompatible in its terms or by necessary implication with any written law, he may by order direct such declaration or such modification to be the local customary law in respect of the subject and within the area to which it relates and shall cause such declaration or modification to be published in such manner as he may deem expedient.

(4) Notwithstanding the foregoing provisions of this section, no declaration or modification shall include any provision purporting to declare any act or omission criminal, and the Minister may amend any declaration deemed to have

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3. been made under this section in order to remove any such provision.  
(5). In this section-  
'district council': means a district council established under the Local Government Ordinance;  
Cap. 333 'Minister' means the Minister for the time being responsible for legal affairs.
- (4) The proviso to paragraph 1 (c) of Part I of the Schedule (as set out in section 5 of the Validation (Magisterial and Other Powers) Act, 1962) is amended by deleting the words "or other magistrate of the first class"
- Acts 1962 No. 62
- C.A. Act 7 The Disqualification (National Assembly, etc.) Act, 1962 The Schedule to the Act is amended by inserting, in paragraph 2 immediately after the word and comma "Judge," the words and comma "Associate Judge,"
- C.A. Act 8 The Official Oaths Act, 1962 (1)- The following new section is added immediately below section 11:-  
"Oath of 11A. The Oath of a justices of Justice of the Peace shall the peace be taken by every person who becomes or is appointed a justice of the peace, before he exercises the functions of that office:  
Provided that nothing in this section shall apply to a magistrate who, by virtue of his office as such, is also a justice of the peace."  
(2) The First Schedule to the Act is amended by adding at the end thereof the following new oath:-  
"Oath of a Justice of the Peace  
I - - - - - do swear that I will well and truly serve the Republic of Tanganyika in the office of Justice of the peace and that office, I will do right functions of that office, I will do right to all manner of persons to the best of my ability and power in accordance with the laws and customs of the Republic.  
So help me God.  
Kiapo cha Milinzi Amani  
Mimi,  
naapa kwamba nitaitumikia vema na kwa moyo thabiti Jamhuri ya Tanganyika katika kazi zangu za Milinzi Amani na kwamba katika kutimiza wajibu wa cheo hicho, nitawatendea haki watu wote kufuata mila, desturi na sheria za Jamhuri. Ewe Mwenyezi Mungu, nisaidie."  
(3) Part I of the Second Schedule to the Act is amended as follows:-  
(a) by adding, immediately above the item referring to the Registrar of the High Court the following new item: -  
"Associate Judge - Before the Chief Justice" -  
(b) by deleting the items referring to ~ magistrate and an administrative officer, and by substituting therefor the following new items: -



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C.A. Act 9	The Appellate Jurisdiction Act, 1962	<p>"District Magistrate.....Before a Judge of the High Court or a resident magistrate- primary Court Magistrate- - Before a district magistrate."</p> <p>(1) Subsection (1) of section 3 is amended by deleting the word "On" in the first line and by substituting therefor the words and comma "Subject to the provisions of any law enacted after this Act, on"</p> <p>(2) The following new section is added immediately below section 7 : -</p> <p>"Provi-- 7A.-(1) Where any sions where person wishes to appeal there is against a judgment of an appeal primary court both to the both to the district court on any question the district court and to the High Court on a question relating to the High interpretation of the Constitution, he shall first court pursue his appeal to the district court - and where an appeal is' filed in the district court, no appeal to the High Court shall be admitted until such first-mentioned appeal is determined or withdrawn.</p> <p>(2) where, upon the hearing by a district Court of any appeal, any question arises relating to the interpretation of the Constitution, the court shall proceed with the hearing of such appeal and determine the same in respect of all questions other than those relating to the Constitution.</p> <p>(3) Where an appeal lies from the same judgment of a primary court both to the district court and to the High Court, the district court shall have power to direct that the execution of its judgment shall be suspended, or, if no such direction is given, and it is appropriate that security be given, that the person in whose favour such judgment is given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the court, for the due performance of any judgment which the High Court shall think fit to make on an appeal from such judgment of the primary court:</p> <p>Provided that the district court shall have power, in special cases, either to reduce the security to such an amount as to the court may appear just or to dispense with the security."</p>

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C A. Act 10	The Judicial Act, 1962	Service
		<p>(1) Section 2 is amended by deleting the definitions "judicial office" and "judicial officer" in subsection (1) and by substituting therefor the following now definitions:-</p> <p>" 'judicial office, means an office specified in subsection (2) of section 53 of the Constitution and an office declared by Parliament to be an office to which that section applies and for the avoidance of doubt, it is hereby declared that it includes any such office aforesaid notwithstanding that an Act of Parliament makes provision relating thereto inconsistent with the provisions of paragraph (a) or (b) of subsection (1) of the said section 5a; and "judicial officer" means a person who holds or acts in any such office."</p> <p>(2) The following new section is added immediately below section 2-</p> <p>"Additional judicial offices 2A. The office of associate judge is hereby declared to be a judicial office to which section 53 of the Constitution applies."</p> <p>(3) The Act is amended by adding, immediately below Part IV thereof, the following new Part:-</p> <p>"PART IVA:- <i>Special Provisions Relating to Primary Court Magistrates</i></p> <p>Interpretation 21A. In this Part- 'the Minister' means the Minister for the time being responsible for legal affairs; 'the Special Commission' means the commission established by section 21B.</p> <p>Establishment of Special Commission and Boards. 21B.-(1) There is hereby established a Commission for matters relating to primary court magistrates which shall consist of-</p> <p>(a) the Chief Justice, who shall be Chairman;</p> <p>(b) the puisne judge for the time being serving as a member of the Judicial Service Commission</p> <p>(c) two other members appointed by the Minister.</p>

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Appointment  
and removal  
etc., of  
primary  
court magis-  
trates

(2) The Minister may make regulations constituting boards in each region for the purposes of exercising such functions as may be conferred on a board under this Act, and may make appointment or provide for the making of appointments thereto in accordance with such regulations.

21C.-(1) Notwithstanding the provisions paragraph (b) of subsection, (1) of section 53 of the Constitution, or the other provisions of this Act, the power to exercise disciplinary control over persons holding or acting in the office of primary court magistrate, to terminate appointments and to remove such persons from office, is vested in the Special Commission:

Provided that the Special Commission shall not terminate such an appointment or remove a primary court magistrate from office without the consent of the President.

(2) The President may delegate the power to consent to the termination of an appointment or the removal of a primary court magistrate from office to the Minister.

(3) In relation to the office of primary court magistrate and to persons appointed to hold or act in that office, this Act shall have effect subject to subsection (1) of this section and as if-

(a) the President were empowered to delegate the functions of making appointments (including confirmation of appointments) to the Minister and of promotion to the Special Commission;

(b) the Special Commission were empowered to delegate their functions to a board established under this Part;

(c) the references to the Judicial Service Commission (other than the references in sections 3, 18 and 23) were references to the

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Special Commission and the references to functions conferred on the Judicial Service Commission by section 53 of the Constitution were references to functions conferred on the Special Commission by this section;

- (d) the references to a delegate were references to the Minister, the Special Commission and a board to whom functions are so delegated."

Passed in the National Assembly on the fourth day of December, 1963.

  
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Clerk of the National Assembly