CRIMINAL PROCEDURE AND EVIDENCE CODE

CHAPTER 8:01

Current Pages

Current Pages—(continued)

PAGE	L.R.O.
149–158	1/2010
159–160	1/2015
161–180	1/2010
181–182	1/2015
183–196	1/2010
197–198	1/2015
199–214	1/2010
215–218	1/2015
219–224	1/2010
225–226	1/2015
227–228	1/2010
229–230	1/2015
231–237	1/2010

CHAPTER 8:01

CRIMINAL PROCEDURE AND EVIDENCE CODE
INDEX TO SUBSIDIARY LEGISLATION

CHAPTER 8:01

CRIMINAL PROCEDURE AND EVIDENCE CODE

ARRANGEMENT OF SECTIONS

SECTION

SECTION

SECTION

SECTION

SECTION

SECTION

An Act to provide for the law relating to procedure and evidence in criminal proceedings and for incidental matters

36 of 1967
23 of 1968
24 of 1968
5 of 1969
30 of 1969
31 of 1969
32 of 1969
23 of 1970
33 of 1970
5 of 1971
51 of 1971
24 of 1972
18 of 1973
19 of 1977
30 of 1994
19 of 1995
18 of 1996
20 of 1996
9 of 1999
14 of 2010

[1ST FEBRUARY, 1968]

PART I

PRELIMINARY

Short title
14 of 2010

1.—(1) This Act may be cited as the Criminal Procedure and Evidence Code.

(2) This Act is hereinafter referred to as "this Code".

Interpretation
14 of 2010

2. In this Code, unless the context otherwise requires—

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

"character" includes reputation and disposition;

"complaint" means an allegation that some person known or unknown has committed an offence;

"court" means the High Court and any subordinate court;

"document" means anything in or on which information of any description is recorded, and includes—

(*a*) anything in or on which there is writing;

(*b*) anything is or on which there are marks, figures, symbols or perforations having meaning for a person qualified to interpret them;

(*c*) anything from which sounds, images or writing can be produced, with or without the aid of anything else;

(*d*) a map, a plan, drawing, photograph or similar thing;

(*e*) any disc, tape, soundtrack or other device on which sounds or other data, not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; and

(*f*) any film, negative, tape or other device on which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;

"evidence" means information of any description which facts tend to be proved, and includes—

(*a*) oral evidence, that is to say all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry; and

(*b*) documentary evidence, that is to say all documents produced for the inspection of the court;

"fact" includes—

(*a*) any thing, state of things, or relation to things capable of being perceived by the senses; and

(*b*) any mental condition of which any person is conscious;

"fact in issue" means any fact from which, either by itself or in connexion with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any proceeding necessarily follows;

"mental hospital" bears the meaning ascribed to that term in section 2 of the Mental Treatment Act; Cap. 34:02

"non-arrestable offence" means an offence for which a police officer requires a warrant to make an arrest;

"police officer in charge of a police station" means the senior police officer on duty at a police station at the time in question;

"police station" means any post or place appointed by the Inspector General to be a police station;

"preliminary inquiry" means an inquiry into a criminal charge held by a subordinate court with a view to the committal of the accused person for trial before the High Court;

"proclaimed person" or "proclaimed offender" means any person in respect of whom a proclamation has been published under section 106;

"Public Prosecutor" means the Director of Public Prosecutions, or, subject to his or her general or special instructions or to an Act of Parliament—

(*a*) persons in the public service acting as his or her subordinates; or

(*b*) such other legally qualified persons acting on instructions from the Director of Public Prosecutions;

"Registrar" means the Registrar of the High Court and includes a deputy Registrar and an Assistant Registrar;

"Resident Magistrate" means a Resident Magistrate appointed under section 111 of the Constitution;

"subordinate court" means any court of a magistrate or any other court subordinate to the High Court;

"summary committal procedure" means the procedure provided for in Part IX for the committal of an accused person by a subordinate court for trial before the High Court without the necessity for holding or completing a preliminary inquiry;

"summary trial" means a trial by a subordinate court under Part VII;

"Sunday" includes Saturday and public holiday;

"traditional or local court" means a traditional or local court provided for under section 110 of the Constitution.

Principle on which Code is to be applied

3. The principle that substantial justice should be done without undue regard for technicality shall at all times be adhered to in applying this Code.

Finding, etc., not to be set aside merely because proceedings in wrong place

4. No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceedings, in the course of which it was arrived at or passed, took place in a wrong Region, District or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Finding, etc., not to be reversed, etc., on account of errors not occasioning failure of justice
14 of 2010

5.—(1) Subject to section 3 and to the other provisions of this Code, no finding arrived at, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal of complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code unless such error, omission or irregularity has in fact occasioned a failure of justice.

(2) In determining whether any error, omission or irregularity has occasioned a failure of justice the court shall consider the question whether the objection could and should have been raised at an earlier stage in the proceedings.

(3) The important admission or rejection of evidence shall not, of itself, be a ground for the reversal or alteration of any decision in any case unless, in the opinion of the court before which an objection is raised—

(*a*) the accused would not have been convicted if such evidence had not been given or if there was no other sufficient evidence to justify the conviction; or

(*b*) it would have varied the decision if the rejected evidence had been received.

Trial of offences under Penal Code and other laws
14 of 2010
Cap. 7:01

6.—(1) Subject to any Act of Parliament establishing traditional or local courts, all offences under the Penal Code shall be inquired into and otherwise dealt with in accordance with this Code.

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

PART II

POWERS OF COURTS AND SPECIAL AREAS

Offences under Penal Code
Cap. 7:01

7. Subject to the other provisions of this Code, any offence under the Penal Code may be tried by the High Court.

8. [*Repealed by* 31 *of* 1969].

Offences under laws other than Penal Code

9.—(1) Any offence under any law other than the Penal Code shall, where any court is mentioned in that law or any other written law as having jurisdiction to try that offence, be tried by such court.

(2) Where no court is so mentioned, the offence may, subject to the other provisions of this Code, be tried by the High Court, by

any subordinate court or by any traditional or local court of competent jurisdiction.

Sentences and orders which High Court may pass
14 of 2010

10. The High Court may pass any sentence or order authorized by law.

Power of certain courts to pass sentence of imprisonment for protection of public
14 of 2010

11. Where a person, who is not less than twenty-one years of age—

(*a*) is convicted by the High Court or by a Resident Magistrate's court or by a court of a magistrate of the first grade of an offence punishable with imprisonment for a term of five years or more; and

(*b*) has been convicted on at least three previous occasions, since he attained the age of eighteen years, of offences punishable with imprisonment for a term of five years or more; and

(*c*) has been sentenced on at least two previous occasions to imprisonment, other than a suspended sentence which has not taken effect,

the court may, if satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial time, pass, in lieu of any other sentence, a sentence of imprisonment for a term of not less than five nor more than fourteen years, as the court may determine.

Combination of sentences

12. Subject to section 14 any court may pass any lawful sentence combining any of the sentences which it is authorized by law to pass.

General jurisdiction of subordinate courts
Cap. 7:01
19 of 1995
14 of 2010

13.—(1) A Resident Magistrate court and any court of a magistrate of the first or second grade may try any offence under the Penal Code or any other law other than—

(*a*) offences under sections 38, 39, 63, 208, 209 and 217 of the Penal Code; and

(*b*) attempts to commit or aiding, abetting, counselling or procuring the commission of any of the offences specified in paragraph (*a*).

(2) Notwithstanding subsection (1), offences under sections 133, 134 and 138 of the Penal Code shall not be tried by any court of the second grade magistrate. Cap. 7:01

(3) A court of the third grade magistrate may try any offence specified in the Second Schedule in respect of which the maximum sentence does not exceed the jurisdiction conferred on such court under section 14 (3). *Second Schedule*

(4) A court of a magistrate of the fourth grade may try any offence specified in the Third Schedule in respect of which the maximum sentence does not exceed the jurisdiction conferred on such court under section 14 (3).

(5) The Chief Justice may by notice published in the *Gazette* amend the Second Schedule and the Third Schedule.

Sentences which subordinate courts may pass
14 of 2010
Cap. 7:01

14.—(1) A Resident Magistrate's court may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term exceeding twenty-one years, authorized by the Penal Code or any other written law.

(2) A court of a magistrate of the first grade magistrate may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term not exceeding fourteen years, authorized by the Penal Code or any other written law.

Cap. 7:01

(3) A court of a magistrate of the second grade may pass a sentence of imprisonment for a term not exceeding ten years or a fine not exceeding K200,000 or both.

(4) A court of a magistrate of—

(*a*) the third grade may pass a sentence of imprisonment for a term not exceeding three years or a fine not exceeding K150,000 or both; and

(*b*) the fourth grade may pass a sentence of imprisonment for a term not exceeding twelve months or a fine not exceeding K100,000 or both.

(5) In addition to the powers conferred upon them by subsections (3) and (4), courts of magistrate of the second, third and fourth grade may also pass any sentence authorized by section 25 (5), (6), (7), (8) and (9) of the Penal Code.

Cap. 7:01

(6) Where in a trial by a subordinate court a person is convicted of an offence, if the court is of the opinion that greater punishment should be inflicted for the offence than it has power to inflict, the court may, for reasons to be recorded in writing on the record of the case, instead of dealing with him in any other manner, commit him to the High Court or to another subordinate court of higher grade than itself for sentence.

(7) A court committing a convicted person for sentencing by the High Court or another subordinate court of higher grade under subsection (6) shall, until sentence is passed, either admit him to bail or send him to prison for safekeeping, and the warrant of the subordinate court shall be sufficient authority to the officer in charge of any prison appointed for the custody of any prisoner committed for trial.

(8) Any person committed to the High Court or to another subordinate court for sentence under this section shall be brought before the Court to which he has been committed at the first convenient opportunity, and in any event not later than fourteen days; but failure to bring the accused before a higher court within the specified period shall not itself invalidate the proceedings.

(9) Where any person is brought for sentence before the High Court or a subordinate court in accordance with subsection (8), the High Court or the subordinate court, as the case may be, shall inquire into the circumstances of the case and shall thereafter proceed as if such person has been convicted by it of the offence in respect of which he has been committed.

(10) Notwithstanding subsection (6), where a person has been committed for sentence under that subsection and has appealed against his conviction, he shall be brought before the High Court for sentence at the time when such appeal is to be determined by the High Court, and where the appeal is dismissed or the finding altered, he shall thereupon be sentenced by the High Court.

(11) Where the High Court, on appeal against conviction, alters the finding, such person shall be deemed to be committed for sentence to the High Court on the offence found by the High Court to have been committed by such person.

Certain sentences to be confirmed on review by High Court before being given effect, etc.
14 of 2010

15.—(1) Where in any proceedings a subordinate court imposes—

(*a*) a fine exceeding "K1,000";

(*b*) Any sentence of imprisonment exceeding

(i) in the case of a Resident Magistrate's court, two years;

(ii) in the case of a Magistrate's court of the first or second grade, one year; or

(iii) in the case of a court of a magistrate of the third or fourth grade, six months;

(*c*) any sentence of imprisonment upon a first offender which is not suspended under section 340,

it shall immediately send the record of the proceedings to the High Court for the High Court to exercise powers of review under Part XIII.

(2) No person authorized by warrant or order to levy any fine falling within subsection (1) (*b*), and no person authorized by any warrant for the imprisonment of any person in default of the payment of such fine, shall execute or carry out any such warrant order until he has received notification from the High Court

that it has in exercise of its powers of appeal or review confirmed the imposition of such fine.

(3) An officer in charge of a prison or other person authorized by a warrant of imprisonment to carry out any sentence of imprisonment failing within subsection (1) (*c*) (i), (ii) or (iii) shall treat such warrant as though it had been issued in respect of a period of two years, one year or six months respectively, as the case may be, until such time as he shall receive notification from the High Court that it has in exercise of its powers of appeal or review confirmed that such sentence may be carried out as originally imposed.

(4) Nothing in this section shall affect or derogate from the powers of the High Court to reverse, set aside, alter or otherwise deal with any sentence of a subordinate court on review or appeal.

(5) When a subordinate court has passed a sentence or made an order falling within subsection (1) it shall endorse on the warrant or order that the sentence or order is one required to be submitted to the High Court for review and which part if any of the sentence or order may be treated as valid and effective pending such review.

(6) In this section "sentence of imprisonment" means a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of fine, costs or compensation or a combination of such sentences and includes a sentence of imprisonment the operation of which is suspended under section 339.

5 of 1969

Release on bail pending order of the High Court
14 of 2010

16.—(1) If a subordinate court imposes a sentence falling within section 15 (1) (*c*) or (*d*) the court imposing such sentence may on the application of the person sentenced release the person sentenced on bail pending the order of the High Court.

(2) If the person sentenced is released on bail under subsection (1), the term of imprisonment shall run from the date upon which such person begins to serve his sentence after confirmation by or other order of the High Court.

Sentences in cases of conviction of several offences at one trial
14 of 2010

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

(2) In the case of consecutive sentences it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is

competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) The aggregate of any terms of consecutive sentences of imprisonment imposed under subsection (2) by a—

(*a*) Resident Magistrate, shall not exceed twenty-one years;

(*b*) magistrate of the first grade, shall not exceed fourteen years;

(*c*) magistrate of the second grade, shall not exceed ten years;

(*d*) magistrate of the third grade, shall not exceed four years; and

(*e*) magistrate of the forth grade, shall not exceed two years.

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

Appointment of special areas

18. The President, in his discretion, may by order direct that any area in Malawi shall be a special area for the purposes of this Code.

Magisterial powers to officers in charge of special areas
23 of 1965

19. The Minister may by notice published in the *Gazette* confer upon any officer in charge of a special area all or any of the powers conferred or conferrable on a magistrate of the first, second, or third grade.

PART III

General Provisions

Arrest, how made
14 of 2010

20.—(1) In making an arrest a police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested, and shall inform the person that he is under arrest.

(2) Where the person to be arrested submits to the custody by word or action, the arrest shall be effected by informing the person that he is under arrest.

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

(4) This section shall not justify the use of a greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.

Information to be supplied on arrest
14 of 2010

20A.—(1) Subject to subsection (5), where a person is arrested, otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest at the time of the arrest or as soon as is practicable after his arrest.

(2) Where a person is arrested by a police officer, subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5), no arrest is lawful unless the person arrested is informed of the reason for the arrest at the time of, or as soon as is practicable after, the arrest.

(4) Where the person is arrested by a police officer, subsection (3) applies regardless of whether the reason for the arrest is obvious.

(5) Nothing in this section shall be deemed to require a person to be informed—

(*a*) that he is under arrest; or

(*b*) of the reason for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

(6) Where the person is arrested, the police officer shall promptly inform him that he has the right to remain silent, and shall warn him of the consequences of making any statement, but any omission by the police officer to inform the arrested person of this right shall not render the arrest unlawful.

Voluntary attendance at police station
14 of 2010

20B. Where, for the purpose of assisting with an investigation, a person attends voluntarily at a police station or at any other place where a police officer is present or accompanies a police officer to a police station or any other such place without having been arrested—

(*a*) he shall be entitled to leave at will, unless he is placed under arrest; and

(*b*) if he is placed under arrest, section 20A shall apply.

Arrest for further offence
14 of 2010

20C. Where a person has been arrested for an offence and is in custody in consequence of that arrest, and it appears to the police officer that if the person were released from that arrest he would be liable to arrest for some other offence, he shall be arrested for that other offence.

Additional rights of children and young persons on arrest
14 of 2010

20D.—(1) Where a child or a young person is arrested, such steps as are necessary shall be taken to ascertain the identity of a person responsible for his welfare.

(2) The person identified under subsection (1) shall be informed of the following—

(*a*) that the child or young person has been arrested;

(*b*) the reasons for his arrest; and

(*c*) the place where he is being held.

(3) The information under subsection (2) shall be given as soon as is practicable to do so.

(4) For purposes of this section, the persons who may be responsible for the welfare of the child or young person are—

(*a*) his parent or guardian;

(*b*) any other person or organization that has for the time being assumed responsibility for his welfare.

(5) If at the time of the arrest it appears that a supervision order as provided for under section 16 (1) (*e*) of the Children and Young Persons Act is in force in respect of the child or young person, the person responsible for his supervision shall also be informed as soon as it is reasonably practicable to do so as is described under subsection (2). Cap. 26:03

Search of place entered by person to be arrested 14 of 2010

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

(2) If entry to the place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant or for a police officer where a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, to enter the place and search therein.

(3) In order to effect an entrance under subsection (2), the police officer may break open an outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority or purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Powers to break open doors and windows for purposes of liberation

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

No unnecessary restraint

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

Search of arrested persons
14 of 2010

24.—(1) Whenever a person is arrested—

(*a*) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(*b*) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested may search such person and place in safe custody all articles, other than necessary wearing apparel and shoes, found upon him.

(2) In addition to the power to search an arrested person conferred under subsection (1), the police officer shall have power in any such case—

(*a*) to search the arrested person for anything which—

(i) may present a danger to himself or others;

(ii) he might use to assist himself escape from lawful custody;

(iii) may afford evidence of the commission or suspected commission of an offence whether within Malawi or elsewhere; or

(iv) is intended to be used, or is on reasonable grounds believed to be intended to be used, in the commission of an offence within Malawi or elsewhere;

(*b*) to enter and search any premises in which the person was when arrested or immediately before the arrest for evidence relating to the offence for which he has been arrested.

(3) A police officer may not search a person in the exercise of the power conferred by subsection (2), unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that subsection.

(4) The power to search conferred under subsection (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

Entry and search after arrest
14 of 2010

24A.—(1) Any police officer may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence, if he has reasonable grounds for suspecting that there is on the premises evidence that relates to that offence or to

some other arrestable offence which is connected with or similar to that offence.

(2) The police officer may seize and retain anything for which he may search under subsection (1).

(3) The power to search under subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to subsection (5), the powers conferred by this section may not be exercised unless a search warrant has been issued in respect of the premises.

(5) A police officer may conduct a search under subsection (1) before taking the person to a police station and without a search warrant if the presence of that person at a place other than a police station is necessary for the effective investigation of the offence.

(6) If the premises consist of two or more separate dwellings, the police officer may search—

(*a*) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and

(*b*) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(7) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the police officer shall make the record as part of his custody record.

(8) For the purposes of this section "premises" includes any—

(*a*) vehicle, vessel, aircraft or hovercraft;

(*b*) offshore installation; and

(*c*) tent or movable structure.

Power of police officer to search and detain aircraft, vessel or vehicle and persons in certain circumstances 14 of 2010

Cap. 7:01

25.—(1) Any police officer, or other person authorized in writing by the Inspector General of Police, may stop search and detain—

(*a*) any aircraft, vessel or vehicle in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found;

(*b*) any aircraft, vessel or vehicle which there shall be reason to suspect has been used or employed in the commission, or to facilitate the commission, of any offence under Chapters XXVI, XXVIII, or XXIX or section 328 of the Penal Code; or

(*c*) any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained,

and, where anything is found for which such search is being made, may seize such thing.

(2) No person shall be entitled to any damages or compensation for any loss of damage suffered by him in respect of the detention under this section of any aircraft, vessel or vehicle or of the seizure of anything found and seized under this section except where the police officer or authorized person acted without reasonable cause.

(3) For the purpose of this section the expressions "aircraft", "vessel" and "vehicle" respectively, include everything contained in, being on, or attached to any aircraft, vessel or vehicle, as the case may be, which forms part of the equipment of such aircraft, vessel or vehicle.

Mode of search of women and men
14 of 2010

26.—(1) Whenever it is necessary to search a woman, the search shall be made by another woman with strict regard to decency.

(2) Whenever it is necessary to search a man, the search shall be made by another man with strict regard to decency.

(3) The powers to search a person shall not be construed as authorizing a police officer to require a person—

(*a*) to remove any necessary wearing apparel in public;

(*b*) to remove any unnecessary wearing apparel in public where it will be unnecessary to do so.

Power to seize offensive weapons

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

Arrest by police officer without warrant
14 of 2010

28. Any police officer may, without an order from a magistrate and without a warrant, arrest—

(*a*) any person whom he suspects upon reasonable grounds of having committed an arrestable offence;

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

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

(*d*) any person who has been proclaimed as an offender under section 106;

(*e*) any person whom he suspects upon reasonable grounds of being a deserter from the Defence Force of Malawi and the Malawi Police Service;

(*f*) any person whom he finds lying or loitering in any highway, yard or other place during the night and whom he

suspects upon reasonable grounds of having committed or being about to commit a felony;

(*g*) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Malawi which, if committed in Malawi, would have been punishable as an offence and for which he is under any written law liable to be apprehended and detained in Malawi;

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

(*i*) any released convict committing a breach of any provision prescribed by section 343 or of any rule made thereunder;

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

(*k*) any person for whom he has reasonable cause to believe a warrant of arrest has been issued; and

(*l*) any person who is about to commit an arrestable offence or whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.

Arrest of vagabonds, habitual robbers, etc. 14 of 2010

29. Any police officer may without an order from a magistrate and without a warrant, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of an area policed from a police station under circumstances which afford reason to believe that he is taking such precautions with a view to committing an arrestable offence;

(*b*) any person within the limits of such station who cannot give a satisfactory account of himself; and

(*c*) any person who is by repute a habitual robber, house-breaker or thief or a habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to facilitate the committing of extortion habitually puts or attempts to put persons in fear of injury.

Procedure when police officer deputes subordinate to arrest without warrant

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

Refusal to give name and residence
14 of 2010

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

(2) When the true name and residence of such person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a magistrate or traditional or local court if so required.

(3) Where any person arrested under this section is not resident in Malawi, the bond shall be secured by a surety or sureties resident in Malawi.

(4) Should the true name and residence of such person not be ascertained within forty-eight hours from the time of arrest or should be fail to execute the bond or, if so required, to furnish sufficient sureties, he shall immediately be forwarded to the nearest magistrate or tradition or local court having jurisdiction in the case.

(5) Any police officer may arrest without a warrant any person who has committed a non-arrestable offence in his presence if reasonable grounds exist for believing that he could not be found or made answerable to justice unless he is arrested immediately.

Disposal of persons arrested by police officers
14 of 2010

32. A police officer making an arrest without a warrant shall, without unnecessary delay and in any event not later than forty-eight hours, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, take or send the person arrested before a magistrate or traditional or local court having jurisdiction in the case.

Powers to release and caution by the police
14 of 2010

32A.—(1) For any offence not amounting to a serious offence and not aggravated in degree, a police officer of the rank of sub-inspector and above may, orally or in writing, caution an arrested person against repetition of criminal conduct and then release him.

(2) A person arrested for an offence under subsection (1) may be cautioned and then released where there is enough evidence to warrant a prosecution if he voluntarily admits having committed the alleged offence.

(3) A child offender who voluntarily admits the commission of an offence under subsection (1) may be released on caution if his parent or guardian consents to disposal of the case in this manner and if the caution is administered in the presence of such parent or guardian.

(4) In exercising the discretion whether to caution and release a person arrested for an offence under this section, the police officer entitled to exercise of this power shall, inter alia, bear in mind—

(*a*) the petty nature of the offence;

(*b*) the circumstances in which it was committed;

(*c*) the views of the victim or complainant; and

(*d*) the personal consideration of the arrested person, including age and physical or mental infirmity, and in the case of a child his general character and family circumstances.

(5) The Chief Justice may by rules issue guidelines to the police on the exercise of the powers referred to in this section.

Arrest by private person
14 of 2010

33.—(1) Any private person may without a warrant, arrest anyone—

(*a*) who is in the act of committing an arrestable offence;

(*b*) whom he has reasonable grounds for suspecting to be committing an arrestable offence;

(*c*) whom he reasonably suspects of having committed a serious offence;

(*d*) who has been proclaimed an offender under section 106.

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

Disposal of person arrested by private person
14 of 2010

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

(2) If there is reason to believe that the arrested person comes under section 28, a police officer shall arrest him.

(3) If there is reason to believe that the arrested person has committed a non-arrestable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under section 31.

(4) If there is no sufficient reason to believe that the arrested person has committed any offence, he shall be released immediately.

Detention of persons arrested without warrant
14 of 2010

35.—(1) When any person has been taken into custody without a warrant for an offence, other than an offence punishable with death, the police officer in charge of the police station to which such person shall be brought may, in any case, and shall—

(*a*) if it does not appear practicable to bring such person before a subordinate court or a traditional or local court having jurisdiction to try such offence within forty-eight hours after he was so taken into custody, inquire into the case; and

(*b*) unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court or traditional or local court having jurisdiction at the time and place to be named in the bond.

(2) When the person is detained in custody he shall be brought before a subordinate court or traditional or local court having jurisdiction as soon as practicable and in any event not later than forty-eight hours after the arrest, or if that period expires outside ordinary court hours or on a day which is not a court day, the first court day after expiry.

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

Police to report apprehensions 14 of 2010

36. Police officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested within the limits of their respective areas, whether such persons have been admitted to bail or otherwise.

Offence committed in magistrate's presence

37. When any offence is committed in the presence of a magistrate he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by magistrate

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

Recapture of person escaping

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

Provisions of sections 21 and 22 to apply to arrests under section 39

40. Sections 21 and 22 shall apply to arrest under section 39 although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Assistance to magistrate or police officer 14 of 2010

41. Every person is bound to assist a magistrate or police officer reasonably demanding his aid—

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

(*b*) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any buoy, mark used in navigation, air-service, electricity supply, railway, telegraph or any public land-mark road, property or utility.

Security for keeping the peace
14 of 2010

42.—(1) Where a Resident Magistrate or a magistrate of the first or second grade is informed on oath that any person is likely—

(*a*) to commit a breach of the peace or disturb the public tranquility; or

(*b*) to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility,

the magistrate may, in the manner hereafter provided, require such person to show cause why he should not execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit to fix.

(2) Where any magistrate not empowered to proceed under subsection (1) or a traditional or local court has reason to believe that—

(*a*) any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility;

(*b*) the breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody,

such magistrate or traditional or local court may, after recording his or its reasons, issue a warrant for the arrest of such person, if he is not already in custody or before the magistrate or traditional or local court, and may send him before a magistrate empowered to deal with the case with a copy of his or its reasons.

Security for good behaviour from persons disseminating seditious matters, etc.
14 of 2010
Cap. 7:01
Cap. 7:01

43. Where a Resident Magistrate or a magistrate of the first or second grade has information that there is any person who either orally or in writing or in any other manner, disseminates or attempts to disseminate, or in any wise abets the dissemination of—

(*a*) any seditious matter, that is to say, any matter the publication of which is punishable under section 51 of the Penal Code; or

(*b*) any matter concerning a judge or magistrate which amounts to libel under the Penal Code,

such magistrate may, in the manner provided in this Code, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit to fix.

Security for good behaviour from vagrants and suspected persons
14 of 2010

44. Where a Resident Magistrate or a magistrate of the first or second grade receives information—

(*a*) that any person is taking precautions to conceal his presence and that there is reason to believe that such person is taking such precautions with a view to committing any offence; or

(*b*) that there is a person who has no visible means of subsistence, or who cannot give a satisfactory account of himself,

such magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one (1) year, as the magistrate thinks fit to fix.

Security for good behaviour from habitual offenders
14 of 2010

45. Where a Resident Magistrate or a magistrate of the first or second grade receives information that any person—

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

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

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

(*d*) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters XXXI, XXXIV or XXXVII of the Penal Code; or

Cap. 7:01

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

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

such magistrate may, in the manner hereinunder provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three (3) years, as the magistrate thinks fit to fix.

Order to be made
14 of 2010

46. Where a magistrate acting under section 42, 43, 44 or 45 deems it necessary to require any person to show cause under any such section, he shall make an order in writing setting forth—

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

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

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

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

Procedure in respect of person present in court
14 of 2010

47. If the person in respect of whom an order is made under section 46 is present in court, it shall be read over to him and the substance thereof shall be explained to him.

Summons or warrant in case of person not so present
14 of 2010

48.—(1) If such person is not present in court, the magistrate shall issue a summons requiring him to appear, or, when the person in respect of whom an order is made under section 46 is in custody, a warrant directing the officer in whose custody he is to bring him before the court.

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

Copy of order under section 46 to accompany summons or warrant
14 of 2010

49. Every summons or warrant issued under section 48 shall be accompanied by a copy of the order made under section 46, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the summons or warrant.

Power to dispense with personal attendance
14 of 2010

50. The magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by legal practitioner.

Inquiry as to truth of information
14 of 2010

51.—(1) When an order under section 46 has been read or explained under section 47 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 48, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) The inquiry under subsection (1) shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before sub-ordinate courts.

(3) For the purpose of this section the fact that the person is a habitual offender may be proved by evidence of general repute or otherwise.

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

Order to give security
14 of 2010

52.—(1) If upon an inquiry held under section 51 it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the magistrate shall make an order accordingly:

Provided that—

(*a*) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 46;

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

(*c*) if the person in respect of whom the inquiry is made is under the age of eighteen years, the bond shall be executed only by his sureties.

(2) Any person ordered to give security under this section may appeal to the High court, and the provisions of Part XIII relating to appeals shall apply to every such appeal.

Conditions of bonds

53. Where any person is required by any court to execute a bond, with or without sureties, and in such bond the person executing it binds himself to keep the peace or binds himself to be of good behaviour, the court may require that there shall be included in such bond one or more of the following conditions—

(*a*) a condition that such person shall remain under the supervision of some other person named in the bond during such period as may be specified therein;

(*b*) such conditions for securing such supervision as the court may think it desirable to impose; and

(*c*) such conditions with respect to residence, employment, associations, abstention from intoxicating liquor or with respect to any other matter whatsoever as the court may think desirable to impose.

Discharge of person informed against

54. If on an inquiry under section 51 it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Commencement of period for which security is required

55.—(1) If any person in respect of whom an order requiring security is made under section 46 or section 52, is, at the time such order is made, sentenced to or undergoing a sentence of

imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

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

Contents of bond

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

Power to reject sureties

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

Procedure on failure of person to give security
14 of 2010

58.—(1) If any person ordered to give surety under section 52 does not give such surety on or before the date on which the period for which such security is to be given commences, the magistrate who made the order shall, except in the case mentioned in subsection (2), issue a warrant directing him to be detained in prison until such period expires or until within such period he gives the required security.

(2) When such person has been ordered to give security for a period exceeding one year, the magistrate who made the order shall, if such person does not give such security, issue a warrant directing him to be detained in prison pending the orders of the High Court, and the proceedings shall forthwith be forwarded to such Court.

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

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

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

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

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

Power to release persons imprisoned for failure to give security
14 of 2010

59. Where a Resident Magistrate or a magistrate of the first or second grade is of the opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate shall make an immediate report of the case for the orders of the High Court, and such Court may, if it thinks fit, order such person to be discharged.

Power of High Court to cancel bond
14 of 2010

60. The High Court may at any time, for sufficient reason to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under any of the preceding sections of this Part by order of any court.

Discharge of sureties
14 of 2010

61.—(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Resident Magistrate or a magistrate of the first or second grade to cancel any bond executed under any of the provisions of this Part.

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

(3) Where such person appears or is brought before the magistrate, such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security; and every such order shall for the purposes of sections 56, 57, 58 and 59 be deemed to be an order made under section 52.

Police to prevent arrestable offences
14 of 2010

62. Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability prevent, the commission of any arrestable offence.

Information of design to commit such offences
14 of 2010

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

Arrest to prevent such offences
14 of 2010

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

Prevention of injury to public property, etc.
14 of 2010

65. A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any things mentioned in section 41 (*b*).

PART IV

PROVISIONS RELATING TO ALL CRIMINAL PROCEEDINGS

General authority of courts of Malawi

66. Every court has authority to cause to be brought before it any person who is in Malawi and is charged with an offence committed within Malawi or partly within and partly beyond Malawi or which according to law may be dealt with by it and to deal with the accused person according to its jurisdiction.

Powers of High Court 14 of 2010

67. The High Court may inquire into and try any offence subject to its jurisdiction at any place within Malawi:

Provided that—

(*a*) except where the High Court, for any special reason (to be recorded on the minutes of the proceedings), shall otherwise direct, no criminal case shall be brought under the cognizance of the High Court, unless the case shall have been previously investigated by a subordinate court, and the accused person shall have been committed for trial before the High Court, or unless the accused person has been committed for trial by summary committal procedure;

(*b*) a charge may be signed and filed in respect of any offence founded on the facts disclosed in the despositions or in respect of any offence whatsoever where the accused person has been committed for trial by summary committal procedure.

Place and date of sessions of the High Court

68.—(1) For the exercise of its original criminal jurisdiction the High Court shall hold sittings at such places and on such days as the Chief Justice may direct.

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

Ordinary place of inquiry and trial 14 of 2010

69. Subject to section 67 and to the powers of transfer conferred by sections 74 and 75 every offence shall ordinarily—

(*a*) be tried by the traditional or local court, if any, having jurisdiction in the case in question within the local limits of whose jurisdiction the offence was committed or the accused was apprehended or is in custody on a charge for the offence; or

(*b*) be inquired into or tried by the subordinate court nearest to the place at which the offence took place, or where the accused was apprehended or is in custody or has appeared in answer to a summons lawfully issued charging the offence.

High Court to decide in cases of doubt 14 of 2010

70.—(1) Where any doubt arises as to the subordinate court by which any offence should be inquired into or tried, any subordinate court entertaining such doubt may, in its discretion, report the circumstances to the High Court.

(2) Upon receiving a report under subsection (1), the High Court shall decide by which court the offence shall be inquired into or tried, and any such decision of the High Court shall be final and conclusive, except that it shall be open to an accused to show that no court in Malawi has jurisdiction in his case.

Court to be open and may be held on a Sunday
14 of 2010

71.—(1) All proceedings under this Code shall, except as otherwise expressly provided by any law for the time being in force, be carried on in an open court to which the public generally may have access:

Provided that—

(*a*) any court shall have power to hear any inquiry or trial or any part thereof, in closed court and to exclude any particular person from the court, if, in the opinion of the presiding judge or magistrate, it is expedient in the interests of justice or propriety or for other sufficient reason so to do;

(*b*) nothing in this section shall apply to—

(i) the proceedings of a juvenile court in accordance with the Children and Young Persons Act;

Cap. 26:03

(ii) any proceedings in the High Court relating solely to a person under the apparent age of eighteen years;

(iii) any proceedings in the High Court, other than the trial of a person of the apparent age of eighteen years or upwards, which the High Court, in its discretion, may think fit to conduct in closed court;

(iv) proceedings before a magistrate under section 83 (2), (3) and (4) or under section 84;

(v) the deliberation of a jury in the course of any proceedings;

(vi) any proceedings, other than an inquiry or trial, which the Chief Justice may, by writing, direct shall not be subject to this section.

(2) Where the presiding judge or magistrate is of the opinion that, for purpose of avoiding delay, expense or inconvenience which in the circumstances of the case would be unreasonable, a court should be held on a Sunday, such court may be so held and no finding, sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered only by reason of the fact that the same was made or passed on a Sunday.

Evidence of victims of sexual offences
14 of 2010

71A.—(1) Where a victim of a sexual offence is to give evidence in any proceedings under this Code, the court may, of its own motion, upon application made by a party to the proceedings, or a victim of a sexual offence, make one or more of the following orders—

(*a*) that the court close while evidence is being given by the witness in the proceedings, including evidence given under cross-examination, and that no person remain in or enter a room or place in which the court is being held, or remain within the hearing of the court, without its permission;

(*b*) that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates, but not so as to obstruct the view of the witness by the magistrate or the judge and jury;

(*c*) that the witness be accompanied by a relative or friend for the purpose of providing emotional support;

(*d*) that the evidence of the witness be given at a place outside the courtroom and transmitted to the courtroom by means of closed circuit television.

(2) Where the order is made under subsection (1) (*b*) or (*d*), the judge, in a trial by jury, shall cause a direction to be issued to the jury to the effect that—

(*a*) the procedure is a routine practice of the court;

(*b*) no adverse inference is to be drawn against the accused person as a result of the issue of these orders; and

(*c*) the evidence of the witness is not to be given any greater or lesser weight because of the use of such orders.

(3) Where an order is made under subsection (1) (*c*), the relative or friend accompanying the witness shall be visible to the parties and the court and, in a trial by jury, to the jury, while the witness is giving evidence.

(4) An order under this section may be made, varied or revoked on the court's own initiative or on the application of a party or witness.

Removal of person to another prison by warrant
14 of 2010

72. A magistrate may on the application of the Director of Public Prosecutions grant a warrant for the removal of any person detained by virtue of a warrant in a prison on any criminal charge to any prison specified in such application therein to be detained for further examination or for trial, or until released or removed therefrom in due course of law.

Transfer of case to another subordinate court before inquiry or trial and transfer of trial to another subordinate court
14 of 2010

73.—(1) Where an accused person appears before another subordinate court, the court—

(*a*) shall, if satisfied that it has no jurisdiction of transfer to try or inquire into the case; or

(*b*) may, if it is of the opinion that the case should be tried by or be inquired into by another subordinate court,

direct that the case be adjourned and transfered to any subordinate court which is competent to try or inquire into the case.

(2) The court directing an adjournment in accordance with subsection (1) shall order the accused person to appear before the court to which the case has been transfered at such time and place as may be appointed and state in the presence and hearing of the party or parties or in the case of an accused who is represented, in the presence of his legal practitioner then present, and the court may further order that, in the meantime, the accused person be—

(*a*) released unconditionally;

(*b*) committed to prison; or

(*c*) released upon his entering into a bond, with or without sureties, at the discretion of the court, for the purpose of ensuring his appearance at the time and place appointed before the court to which the case has been transfered:

Provided that no such adjournment shall be for a longer period than is reasonably necessary in the circumstances of the case, and shall not in any event exceed thirty days or, if the accused person is committed to prison, fifteen days; and the day following that on which the order is made shall be counted as the first day.

(3) A subordinate court may, on application or of its own motion, at any stage in an inquiry or trial, transfer such inquiry or trial, for hearing before itself at some other place.

Transfer to another magistrate after commencement of inquiry or trial
14 of 2010

74.—(1) Where, in the course of any inquiry or trial before a magistrate, the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial or inquiry by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to the Resident Magistrate in charge of the region who shall, in accordance with section 73 (2), make such order for the transfer of the case as he deems to be necessary or expedient.

(2) Where, in the course of any inquiry or trial before a Resident Magistrate in charge of a region, the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate, he shall stay and submit the case with a brief report thereon to the High Court which shall, in accordance with section 73 (2), make such order for the transfer of the case as it may deem to be necessary or expedient.

Power of High Court to change venue
14 of 2010

75.—(1) Where it is made to appear to the High Court that—

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

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

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

(*d*) an order under this section will be for the general convenience of the parties or witnesses; or

(*e*) an order under this section is expedient in the interest of justice or required by any provision of this Code,

it may make an order in accordance with subsection (2).

(2) For the purposes of subsection (1), the High Court may order—

(*a*) that any offence be inquired into or tried by any court not empowered under the preceding provisions of this Part but in other respects competent to inquire into or try such offence; and

(*b*) that any particular criminal case or class of cases be transferred from a criminal court to any other such criminal court of equal or superior jurisdiction.

(3) In making an order under this section, the High Court may act either on the report of the subordinate court or on the application of a party interested or on its own motion.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall be supported by affidavit.

(5) Any accused making an application under this section shall give to the Director of Public Prosecutions notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where an accused makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, on condition that he will, if convicted, pay the costs of the prosecution.

Director of Public Prosecutions 14 of 2010

76.—(1) The Director of Public Prosecutions shall in accordance with, and subject to, section 99 of the Constitution, have vested in him the right and be entrusted with the duty of prosecuting all crimes and offences against the laws of Malaŵi.

(2) Any officer, legal practitioner or other person appointed to be a public prosecutor under section 79 shall, in carrying out his duties as such, be under the direction and control of the Director of Public Prosecutions and be bound to conform to any direction which may be given to him by the Director of Public Prosecutions.

Power to enter discontinuance
14 of 2010

77.—(1) In any criminal proceedings, and at any stage thereof before judgment is pronounced, the Director of Public Prosecutions may enter a discontinuance, either by stating in court or informing the court in writing, that the State intends that the proceedings shall not continue, and thereupon—

(*a*) if the discontinuance is entered before the accused person is called upon to make his defence, he shall be discharged immediately in respect of the charge for which the discontinuance is entered, and if the accused person—

(i) has been committed to prison, he shall be released; or

(ii) is on bail, his recognizances shall be discharged,

but such discharge of an accused person shall not operate as a bar to any subsequent proceedings commenced once against him within six months of the discharge, on account of the same facts;

(*b*) if the discontinuance is entered after the accused person is called upon to make his defence, he shall be acquitted.

(2) If the accused person is not before the court when a discontinuance in respect of a charge against him is entered in accordance with subsection (1) the Registrar or clerk of such court shall forthwith cause a notice in writing of the entry of the discontinuance to be given to—

(*a*) the keeper of the prison in which the accused person may be detained; or

(*b*) if the accused person has been committed for trial, the subordinate court by which he was so committed; and such subordinate court shall forthwith cause a similar notice in writing to be given to—

(i) any witnesses bound over to prosecute and give evidence, and their sureties, if any; and

(ii) the accused person and his sureties, in case he shall have been granted bail.

78. [*Repealed by* 14 *of* 2010].

Power to appoint public prosecutors
14 of 2010

79.—(1) The Director of Public Prosecutions may, by writing under his hand, appoint generally, or in any case or any class of cases, any person employed in the Public Service or such other legally qualified person to be a public prosecutor.

(2) Every public prosecutor shall be subject to the express directions of the Director of Public Prosecutions.

Powers of public prosecutors
14 of 2010

80. A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under inquiry, trial or appeal; and if any private

person instructs legal practitioner to prosecute in any such case a public prosecutor may conduct the prosecution, and the legal practitioner so instructed shall act therein under the directions of the public prosecutor.

Withdrawal from prosecution in trials before subordinate courts 14 of 2010

81. In any trial before a subordinate court any public prosecutor may, with the consent of the court or on the instruction of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal—

(*a*) if it is made before the accused is called upon to make his defence, he shall be discharged, but such discharge of an accused shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(*b*) if it is made after the accused is called upon to make his defence, he shall be acquitted.

Permission to conduct prosecution 14 of 2010

82.—(1) Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorized by the Director of Public Prosecutions in his behalf shall be entitled to do so without permission.

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as is provided by section 81, and that section shall apply to any withdrawal by any such person or officer.

(3) Subject to any law for the time being in force, any person conducting the prosecution may do so personally or by legal practitioner.

Mode of instituting proceedings 14 of 2010

83.—(1) Proceedings may be instituted—

(*a*) by the making of a complaint before a magistrate;

(*b*) by bringing before a magistrate a person who has been arrested without warrant;

(*c*) by a public prosecutor or a police officer signing and presenting a formal charge to a magistrate.

(2) A complaint under subsection (1) (*a*) may be made by any person who believes from reasonable cause that an offence has been committed.

(3) When a magistrate has received a complaint under subsection (1) (*a*), he shall at once examine the complaint upon oath, and the substance of the examination shall be reduced to writing and signed by both the complainant and the magistrate.

(4) If the magistrate sees reason to doubt the truth of a complaint made under subsection (1) (*a*), he may record his reason

for doubting the truth of the complaint and may then postpone the issue of process for compelling the attendance of the person complained against and either inquire into the case himself or direct some police officer to make inquiries for the purpose of ascertaining the truth or falsehood of the complaint and report to him the result of such inquiries.

(5) The magistrate may dismiss a complaint made under subsection (1) (*a*) if, after examining the complaint and recording his examination and considering the result of the inquiry under subsection (4), there is in his judgment no sufficient ground for proceeding, and he shall record his reasons for dismissal.

(6) If the magistrate considers that there are sufficient grounds for proceeding with a complaint made under subsection (1) (*a*), or upon the bringing before him of an accused arrested without warrant under subsection (1) (*b*), the magistrate shall forthwith draw up and charge containing a statement of the offence with which the accused is charged.

Issue of summons or warrant

84.—(1) Upon a formal charge having been completed in accordance with section 83, the magistrate may, in his discretion, issue either a summons or a warrant to compel the attendance of the accused before a subordinate court having jurisdiction to inquire into or try the offence alleged to have been committed.

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

(3) Any summons or warrant may be issued on Sunday.

Form and contents of summons
14 of 2010

85.—(1) Every summons issued by a court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such court or by such other officer as the Chief Justice may from time to time, by rule, direct.

(2) Every summons shall—

(*a*) be directed to the person summoned, and shall require him to appear at a time and place to be mentioned in the summons before a court having jurisdiction to inquire into and deal with the complaint or charge;

(*b*) contain a statement of the offence with which the person summoned is charged, and shall also contain the particulars of such offence.

Penalty for non-attendance of accused
14 of 2010

86. Any accused summoned to attend before a court who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the

court after being ordered to attend, shall be liable by order of the court to a fine of K50,000.

Service of summons

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

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

Service when person summoned cannot be found
14 of 2010

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

Procedure when service cannot be effected as before provided

89. If service in the manner provided by section 87 or section 88 cannot by the exercise of due diligence be affected, the serving officers shall affix one of the duplicates of the summons to some conspicuous part of the house in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government

90. Where the person summoned is in the service of the Government, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by section 87 and shall return it to the court under his signature with the endorsement required by that section. Such signature shall be evidence of the service.

Service of summons on company, etc.
14 of 2010

91.—(1) Service of a summons on a company incorporated in Malawi or on any other body corporate not being a company referred to in subsection (2) shall be effected in one of the following manners that is to say—

(*a*) by serving it on the company secretary, local manager or other principal officer of the company or body;

(*b*) by delivering it to an adult person employed by such company or body at its registered office in Malawi; and

(*c*) by sending it in a registered letter addressed to the chief officer of the company or body in Malawi.

(2) Service of a summons on a company incorporated outside Malawi which has established a place of business within Malawi shall be effected by serving it on one of the person whose names and addresses have been filed with the registrar of companies as being authorized to accept service of process on behalf of the company under section 311 of the Companies Act.

Cap. 46:03

Proof of service

92.—(1) Where the officer who has served a summons is present at the hearing of the case, in the absence of other proof of service, he may give evidence on oath of that fact and the manner in which he effected such service.

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

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

Power to dispense with personal attendance of accused
14 of 2010

93.—(1) Whenever a magistrate issues a summons in respect of any offence other than a felony, he may, if he sees reason so to do, and shall when the offence with which the accused is charged is punishable—

(*a*) with a fine only; or

(*b*) with both a fine and imprisonment for a term not exceeding three months; or

(*c*) with a fine or imprisonment for a term not exceeding three months,

dispense with the personal attendance of the accused, provided that the accused pleads guilty in writing or appears by legal practitioner.

(2) The magistrate inquiring into or trying any case may in his discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in a manner hereinafter provided.

(3) A magistrate shall not impose a sentence of imprisonment without the option of a fine, except in the presence of the accused.

(4) If a magistrate imposes a fine on an accused whose personal attendance has been dispensed with under this section, the magistrate shall specify the time within which such fine must be paid, and if such fine is not paid within the time prescribed for such payment the magistrate may forthwith issue a summons calling upon such accused to show cause why he should not be committed

to prison for such term as the magistrate may then prescribe; and if such accused does not attend upon the return of such summons the magistrate may forthwith issue a warrant and commit such accused to prison for such term as the magistrate may then fix.

(5) If a previous conviction, not admitted in writing or through his legal practitioner is alleged against an accused whose attendance has been dispensed with under this section, the magistrate may adjourn the proceedings and direct the personal attendance of the accused, and if necessary, enforce such attendance in accordance with section 95.

(6) The Chief Justice may, make rules for the better carrying out of this section.

Warrant after issue of summons

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

Summons disobeyed 14 of 2010

95.—(1) If an accused person does not appear at the time and place mentioned in a summons and his personal attendance has not been dispensed with under section 93, the court may issue a warrant to arrest him and cause him to be brought before the court.

(2) A warrant under subsection (1) shall not be issued unless the court is satisfied that the accused has been served with the summons.

Form, contents and duration of warrant of arrest 14 of 2010

96.—(1) Every warrant of arrest shall be issued in the prescribed form, and shall be signed by the judge or magistrate issuing the warrant and shall bear the seal of the court.

(2) Every warrant shall contain a statement of the offence with which the person against whom it is issued is charged and shall also contain the particulars of such offence and every warrant shall name or otherwise described such person, and it shall order the person or persons to whom it is directed to arrest the person against whom it is issued and bring him before the court issuing the warrant or before some other court having jurisdiction in the case to answer the charge therein mentioned and to be further dealt with according to law.

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

Court may direct security to be taken 14 of 2010

97.—(1) Any court issuing a warrant for the arrest of any person in respect of any offence other than genocide, murder, treason or rape may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until

otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(*a*) the number of sureties;

(*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

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

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court.

Warrants, to whom directed
14 of 2010

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

Effect of addressing warrant to more than one officer or person

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

Execution of warrant directed to police officer

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

Notification of substance of warrant

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

Person arrested to be brought before the court without delay
14 of 2010

102. The police officer or other person executing a warrant of arrest shall, subject to the provisions of section 97 as to security, without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

Where warrant of arrest may be executed
14 of 2010

103. A warrant of arrest may be executed at any place in Malawi and on any day including Sunday.

Procedure on arrest of person
14 of 2010

104.—(1) When a warrant of arrest is executed, the person arrested shall unless the court which issued the warrant is within thirty kilometres of the place of arrest, or is nearer than any other subordinate court, or unless security is taken under section 97, be taken before the subordinate court nearest to the place of arrest.

(2) The magistrate presiding over such subordinate court shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal in custody to such court.

(3) If the person has been arrested for an offence, other than genocide, murder, treason or rape, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been endorsed under section 97 on the warrant and such person is ready and willing to give the security required by such direction, the magistrate shall take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

(4) Nothing in this section shall be deemed to prevent a police officer from taking security under section 97.

Irregularities in warrant
23 of 1968
14 of 2010

105.—(1) Any irregularity or defect in the substance or form of a variance between it and the written complaint or charge, or between either and the evidence produced on the part of the prosecution at any enquiry or trial, shall not affect the validity of any proceedings at or subsequent to the hearing of the case.

(2) Where the irregularity or defect and any such variance appears to the court to be such that the accused has been thereby deceived or misled, the court may, at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or grant him bail.

Proclamation for person absconding
14 of 2010

106. (1) If any court has reason to believe, whether after taking evidence or not, that any person against whom a warrant of arrest has been issued by it—

(*a*) has absconded; or

(*b*) is concealing himself so that such warrant cannot be executed,

such court may publish a written proclamation requiring him to appear at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The court shall publish the proclamation as follows—

(*a*) it shall be publicly read in some conspicuous place of the town, village or area in which such person ordinarily resides, or if such person has no ordinary place of residence in Malawi, in which he was last known to be residing;

(*b*) it shall be affixed to some conspicuous part of the house in which such person ordinarily resides or to some conspicuous place of the area, town or village in which he was last known to be residing;

(*c*) a copy thereof shall be affixed to some conspicuous part of the court house.

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

Attachment of property of proclaimed person
14 of 2010

107.—(1) The court issuing the proclamation under section 106 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person as is appearance at the place and time specified in the proclamation.

(2) Such order shall be in writing and shall authorize the attachment of any property belonging to the proclaimed person.

(3) If the property ordered to be attached is a debt or movable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf; or

(*d*) by all or any two of such methods as the court thinks fit.

(4) If the property ordered to be attached is immovable, attachment under this section shall be made—

(*a*) by taking possession; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person, or to anyone on his behalf; or

(*d*) by all or any two of such methods as the court thinks fit.

(5) If the property ordered to be attached consists of livestock, or is of a perishable nature, the court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the court.

(6) The Chief Justice may make rules—

(*a*) prescribing the powers, duties and liabilities of a receiver appointed under this section; and

(*b*) for the better regulation of the attachment process.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Government; but it shall not be sold until the expiration of six months from the date of attachment unless it is subject to speedy and natural decay, or the court considers that the sale would be for the benefit of the owner, in either of which cases the court may cause it to be sold when it shall think fit. The purchaser of any property so sold shall acquire a good title to it.

Restoration of attached property 14 of 2010

108.—(1) Any proclaimed person may apply for the delivery of property which is or has been at the disposal of Government under within two years of the date of the attachment, he appears voluntarily or is arrested and brought before the court by whose order the property was attached or the High Court.

(2) If the proclaimed person proves to the satisfaction of the court that—

(*a*) he did not abscond or conceal himself for the purpose of avoiding execution of the warrant; and

(*b*) he had not such notice of the proclamation as to enable him to attend within the time specified in the warrant,

such property, or, if the same has been sold, the net proceeds of the sale, or, if part of the property has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying all costs incurred in consequence of the attachment, be delivered to him.

(3) Any person whose application under this section for the delivery of property or the proceeds of the sale of the property, as the case may be has been rejected by any court may appeal to the High Court, and the provisions of Part XIII relating to appeals shall apply to any such appeal.

Power to take bond for appearance 14 of 2010

109. Where any person for whose appearance or arrest any court is empowered to issue a summons or warrant is present in such court, the court may require such person to execute a bond, with or without sureties, for his appearance in such court.

Arrest for breach of bond for appearance

110. When any person who is bound by any bond taken under this Code to appear before a court does not so appear, such court may issue a warrant directing that such person be arrested and produced before it.

Power of court to order prisoner to be brought before it 14 of 2010

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

(2) The officer in charge of prison, on receipt of the order under subsection (1), shall comply with it in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose of court attendance.

Provisions of this Part generally applicable to summonses and warrants 14 of 2010

112. The provisions contained in this Part relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Power to issue search warrant 14 of 2010

113.—(1) Where a police officer applies for a search warrant, he shall—

(*a*) state the ground on which he makes the application and the law under which the warrant will be issued;

(*b*) specify the premises, ship, aircraft, carriage, box or receptacle which it is desired to enter and search; and

(*c*) identify, so far as is practicable, the articles or persons to be sought.

(2) An application for a search warrant shall be made *ex-parte*, and shall be supported by information in writing.

(3) The police officer making the application shall answer on oath any question that the court hearing the application may put to him.

(4) A search warrant shall authorize an entry on one occasion only.

Search warrant 14 of 2010

113A.—(1) A court may issue a warrant authorizing a police officer to enter and search any premises, ship, aircraft, carriage, box or receptacle if, on application made by a police officer, the court is satisfied that there are reasonable grounds for believing that—

(*a*) an offence has been committed;

(*b*) there is material on any premises, ship, aircraft, carriage, box or receptacle specified in the application which is likely to be of substantial value, whether by itself or together with other material, to the investigation of the offence; and

(*c*) the material does not consist of or include items subject to legal privileges.

(2) If the police officer finds the material in respect of which a search warrant is issued under subsection (1), he shall seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

Execution of search warrant

114. Every search warrant may be issued on any day including Sunday between the hours of sunrise and sunset, but the court may, by the warrant, in its discretion, authorize the police officer or other person to whom it is addressed to execute it at any hour.

Persons in charge of closed place to allow entry

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

(2) If entry into, or departure from, such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 21 or 22.

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, section 26 (1) shall be observed.

Detention of property seized

116.—(1) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

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

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

Provisions applicable to search warrants

117. Section 96 (1) and (3) and sections 98, 99, 100, 103, 104 and 105 shall, so far as may be, apply to all search warrants issued under section 113.

Bail in certain cases
14 of 2010

118.—(1) When any person, other than a person accused of an offence punishable with death, is arrested or detained without warrant by a police officer, or appears or is brought before a subordinate court, and is prepared at any time while in the custody of such police officer or at any stage of the proceedings before such subordinate court to give bail, such person may be released on bail by such police officer or such subordinate court, as the case may be, on a bond, with or without sureties.

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

(3) The High Court may, either of its own motion or upon application, direct that any person be released on bail or that the amount of, or any condition attached to, any bail required by a subordinate court or police officer be reduced or varied.

(4) A magistrate may direct that the amount of, or any condition attached to, any bail by a police officer be reduced or varied.

(5) No application for a direction that any person in custody pending proceedings in a subordinate court be released on bail shall be entertained by the High Court unless such subordinate court has first refused to direct such release.

Bail bond
14 of 2010

119.—(1) Before any person is released on bail, a bond for such sum as the police officer or court, as the case may be, thinks sufficient, shall be executed by such person and, where sureties are ordered, by one or more sufficient sureties.

(2) The bond under this section shall be on condition that the person released shall attend at the time and place mentioned in the bond, and that he shall continue so to attend until otherwise directed by the police officer or court.

(3) The bond may, as the police officer or court thinks fit, contain additional conditions relating to, among others—

(*a*) the prohibition of, or control over, the movements of the person released;

(*b*) the prohibition of, or control over, communication by the released person with witnesses for the prosecution;

(*c*) the supervision the released person should undergo while on bail;

(*d*) the prohibition against the commission of offences by the released person while on bail; and

(*e*) the prohibition against obstruction of the course of justice by the released person while on bail.

Discharge from custody

120.—(1) As soon as the bond has been executed the person for whose appearance it has been executed shall be released, and when he is in prison the court shall issue an order of release to the officer in charge of the prison, and such officer on receipt of the order shall release him.

(2) Nothing in this section or in section 118 shall be deemed to require the release of any person liable to be detained for some matter other than in respect of which the bond was executed.

Deposit in place of, or in addition to, bond
14 of 2010

121.—(1) When any person is required by any police officer or court to execute a bond, with or without sureties, such police officer or court may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or property to such amount or value as the police officer or court may require in place of, or in addition to, executing such a bond; and such amount or value shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) Where any money or property has been deposited in accordance with subsection (1) and it is proved to the satisfaction of a court that the depositor has not fulfilled the conditions upon which such money or property was deposited, the court shall record the grounds of such proof and may call upon the depositor to show cause why such money or property should not be forfeited, and if sufficient cause is not shown or if the court is satisfied that the depositor has absconded or cannot be traced the court may order such money or property to be forfeited.

Power to order sufficient bail when that first taken is insufficient

122. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do may commit him to prison until the trial or until the court shall see fit to admit him to bail upon a fresh bond.

Discharge and death of sureties
14 of 2010

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

(2) On such application being made the magistrate shall issue a warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the magistrate shall direct the bond to be discharged either wholly or so far as it relates to the applicant or applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so may commit him to prison until the trial or until the court shall see fit to admit him to bail upon a fresh bond.

(4) Where a surety to bond before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to admit him to bail upon a fresh bond.

Person bound by bond absconding may be committed

124. If it is made to appear to any court, by information upon oath, that any person bound by bond is about to leave Malawi, the court may cause him to be arrested and may commit him to prison until the trial, unless the court shall see fit to admit him to bail upon a fresh bond.

Forfeiture of bond

125.—(1) Whenever it is proved to the satisfaction of the court that any condition of a bond taken under this Part has not been complied with, the court shall record the grounds of such proof

and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid or if the court is satisfied that the person so bound has absconded or cannot be traced, the court may proceed to recover the penalty by issuing a warrant for the attachment and sale of the movable property belong to such person, or his estate if he be dead.

(3) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the court, which issued the warrant, to imprisonment for six months.

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

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

(6) All orders made under this section by any magistrate shall be appealable to and may be reviewed by the High Court.

Offences to be specified with necessary particulars
14 of 2010

126. Every charge shall contain, and shall be sufficient if it contains—

(*a*) a statement of the specified offence or offences with which the accused is charged; and

(*b*) particulars of such offence or offences.

Joinder of counts in a charge and joinder of two or more accused in one charge
30 of 1969
14 of 2010

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

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

(3) Where, before trial, or at any stage of the trial, the court is of opinion that—

(*a*) an accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same charge; or

(*b*) for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in a charge,

the court may order a separate trial of any count or counts of such charge.

(4) The following persons may be joined in one charge and may be tried together, namely—

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

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

(*c*) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code or of any other written law) committed by them jointly within a period of twelve months; Cap. 7:01

(*d*) persons accused of different offences committed in the course of the same transaction; 30 of 1969

(*e*) persons accused of any offence under Chapters XXVI to XXXI, inclusive, of the Penal Code and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by any such offence committed by the first-named person, or of abetment or of attempting to commit either of such last-named offences; Cap. 7:01

(*f*) persons accused of any offence relating to counterfeit coin under Chapter XXXVII of the Penal Code, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment or of attempting to commit any such offence. Cap. 7:01

128. The following provisions shall apply to all charges and notwithstanding any rule of law or practice, a charge shall, subject to this Code, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Code— Rules for the framing of charges 14 of 2010

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

(ii) the statement of the offence be short and shall describe the offence in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by written law, shall contain a reference to the section, regulation, by-law or rule of the written law creating the offence;

(iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, giving reasonable information as to the commission of the offence and avoiding as far as possible the use of technical terms;

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

(v) such forms as the Chief Justice may by rule prescribe or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances of each case;

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

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

(ii) it shall not be necessary in any count charging an offence constituted by a written law, to negative any exception or exemption from, or qualifications to, the operation of the law creating the offence;

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

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

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

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

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

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

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

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

(*h*) where any person is charged with an offence and such person would, if convicted thereof, be liable, under the provision of any law, to an enhanced punishment by reason of a previous conviction for any offence, the charge shall not

contain any reference to such previous conviction, and he shall be liable to such enhanced punishment if such previous conviction is proved after he has been convicted of the offence with which he is charged;

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

(*j*) when a person is charged with any offence under section 283, 286, 287 or 288 of the Penal Code it shall be sufficient to specify the gross amount of the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular times or exact dates.

Cap. 7:01

Previous conviction or acquittal of same offence 23 of 1968

129. Where an act or omission constitutes an offence under two or more written laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under any one of such laws, but shall not, while a conviction or acquittal of an offence by a court has not been set aside, be liable to be tried again on the same facts for substantially the same offence:

Provided that a person convicted or acquitted of an offence may afterwards be tried for any distinct offence with which he might have been charged under section 127 at the trial at which he was so convicted or acquitted.

Consequences supervening and not known at time of former trial

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

Pleas that accused has been previously acquitted or convicted of same offence 14 of 2010

131.—(1) A accused against whom a charge has been filed may plead that he has been previously convicted or acquitted by a court of the same offence.

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

(3) If the court holds that the plea is true in fact, the accused shall be discharged.

(4) For a plea under subsection (1) to succeed, the earlier conviction or acquittal relied on by the accused must have been by a court of competent jurisdiction and the proceedings must not have been *ultra vires*.

Where original court was not competent to try subsequent charge

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

Inquiry by court as to unsoundness of mind
23 of 1968
14 of 2010

133.—(1) When in the course of a trial or preliminary inquiry the court has reason to believe that the accused may be of unsound mind so as to be incapable of making his defence, the court shall adjourn the trial or inquiry for such period, not exceeding one month, as the court may deem fit, and shall thereafter—

(*a*) order that during such adjournment the accused shall be kept in custody or at such other appropriate place as the court may direct, for observation and treatment;

(*b*) direct that a medical practitioner examine the accused and inquire into his mental condition, with particular reference to his capability of making his defence, and report to the court thereon, and the medical practitioner shall comply with such direction and his report shall on its mere production be admissible in evidence as proof of its contents;

(*c*) the court shall forward to the medical practitioner with its the reasons for its giving such directions.

(2) If at the time and place to which the hearing shall be adjourned such report is not, or has not been, furnished to it, the court may, without requiring any attendance before it of the accused, adjourn the trial or inquiry for such further period, not exceeding fourteen days, as may appear to it necessary to enable such report to be so furnished.

(3) If at the time and place to which the hearing or the further hearing shall be adjourned, such report is, or has been, furnished to the court, it shall consider the same. Copies of the report shall be supplied by the court to the prosecution and to the accused or his legal practitioner either at the hearing, or, if practicable, before it. The court may in its discretion cause the medical practitioner who furnished the report to be summoned to give oral evidence at the hearing. If upon consideration of the report and of any evidence which may have been adduced upon the question of the mental condition of the accused by or on behalf of the prosecution or the accused the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence it shall adjourn further proceedings in the case to a then unspecified time and place.

(4) If the case is one in which bail may be taken, the court may release the accused on sufficient security being given that he will be

properly taken care of and prevented from doing injury to himself or any other person, and for his appearance before the court or such other officer as the court may appoint in that behalf.

(5) If the case is one in which bail ought not to be taken, or if sufficient security be not given, the court shall make a reception order for the admission of the accused to a mental hospital. No person admitted to a mental hospital under a reception order made under this subsection may be discharged from such hospital without the sanction of the court unless a discontinuance has been entered discontinuing the proceedings in the course of which such order was made. If such a discontinuance has been entered a copy of the discontinuance order shall be served on the Secretary for Health and the person detained may be discharged from the mental hospital upon an order in writing by the Secretary for Health or by three of the visitors of the mental hospital one of whom shall be a medical practitioner.

(6) Whenever any preliminary inquiry or trial is postponed the court may at any time resume the preliminary inquiry or trial and to appear or be brought before such court, when, if the court considers him capable of making his defence, the preliminary inquiry or trial shall proceed. But if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

23 of 1968 (7) Any question arising under this section in any proceedings held before the High Court shall be determined by the judge and not by a jury.

(8) If the trial is one before the High Court, and the High Court has reason to believe that the accused may be of unsound mind so as to be incapable of making his defence at any time after the accused has been given in charge of a jury, the High Court may order the jury to be discharged from giving a verdict on the count or counts in the charge when it makes any adjournment under this section.

(9) Notwithstanding the discontinuance pursuant to this section, the Secretary for Health shall furnish to the court monthly reports in the prescribed form on the status of the person detained until such person is discharged from hospital.

(10) Where it appears that there is sufficient reason to believe that an accused is of unsound mind and incapable of conducting his defence, the court may, if the accused is not represented by a legal practitioner and the court considers that the interest of justice so requires, assign a legal practitioner to act on behalf of the accused.

Defence of insanity at preliminary inquiry

134. When the accused appears to be of sound mind at the time of the preliminary inquiry, the court, notwithstanding that it is alleged that at the time when the act was committed in respect of which the accused is charged he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case and, if the accused ought, in the opinion of the court, to be committed for trial, the court shall so commit him.

Defence of insanity on trial
14 of 2010

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

(2) When such special finding is made the court shall make a reception order for the admission of the accused to a mental hospital and the court may, if it thinks fit, make a further order, with or without limitation of time, restricting his discharge from such mental hospital without the sanction of the Minister.

(3) Any question arising under this section in any proceedings held before the High Court shall be determined by the jury and not by the judge. 23 of 1968

Certificate of medical officer as to sanity to be evidence

136. If, while an accused is detained in a mental hospital under a reception order made under section 133 (4), the medical officer in charge of such mental hospital certifies to the court that he is satisfied that the accused can properly be tried, he shall remit the accused to prison to be brought before the court at such time as the court appoints to be dealt with according to law and the certificate of such medical officer shall be receivable in evidence. The medical officer shall forward a copy of such medical certificate to the officer in charge of the prison to which he remits the accused and such certificate shall be sufficient authority for the reception of the accused into such prison and for his detention until he is so dealt with by the court. The court may in its discretion cause the medical practitioner to be summoned to give oral evidence at the hearing. On the arrival of the accused at the prison the order made under section 133 (4) shall cease to have effect. When the accused is brought before the court, if the court considers him capable of making his defence, the preliminary inquiry or trial shall proceed. If the court considers the accused to be still incapable of making

his defence, it shall act as if the accused were brought before it for the first time.

Authority and effect of reception orders made under section 133 or 135 Cap. 34:02

137. Subject to sections 133 (4) and 135, a reception order made thereunder shall have the same authority and effect as a reception order lawfully made under section 20 of the Mental Treatment Act and the court by which any such order as aforesaid is made may give such directions as it thinks fit for the conveyance of the accused to whom the order relates to a place of safety and his detention therein pending his admission to the mental hospital.

Procedure where accused does not understand proceedings

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

Mode of delivering judgment 23 of 1968 14 of 2010

139.—(1) The judgment in every trial, other than a jury trial, in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court, either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties; but the whole judgment shall be read out by the presiding judge or magistrate if he is requested to do so either by the prosecution or defence.

(2) The accused shall, if in custody, be brought up or, if not in custody, be required by the court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only; but if the court intends to acquit the accused it may dispense with his attendance.

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

(4) Nothing in this section shall be construed to limit in any way the provisions of section 5.

Contents of judgments 23 of 1968 14 of 2010

140.—(1) Every judgment shall, except as otherwise expressly provided by this Code, be in writing and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the presiding officer.

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced. Cap. 7:01

(3) In the case of an acquittal the judgment shall state the offence of which the accused is acquitted.

(4) The requirements of this section, other than the requirements that judgments be in writing and signed, shall not apply to any judgment given in accordance with the verdict of a jury.

Copy of judgment, etc., to be given to accused on application 14 of 2010

141. On the application of the accused a copy of the judgment or, when he so desires, a translation in a language he understands, if practicable, shall be given to him without delay. There shall be payable for such copy such fee, if any, as may be prescribed.

Costs against accused or private prosecutor 14 of 2010

142.—(1) It shall be lawful for a judge or a magistrate to order any person convicted before him of an offence to pay to the public as the case may be, such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed.

(2) A judge or magistrate who acquits or discharges a person accused of an offence may, if the prosecution for such offence was originally instituted on summons or warrant issued by a court on application of a private prosecutor, and the judge or magistrate considers that the prosecutor had no reasonable grounds for making his complaint, order such private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit.

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 144.

(4) In this section—

"public prosecutor" means any person prosecuting for or on behalf of the State and any public prosecutor appointed under section 79;

"private prosecutor" means any prosecutor other than a public prosecutor.

Order to pay costs appellable 14 of 2010

143. An appeal shall lie from any order awarding costs under section 142 if made by a magistrate to the High Court and if by a judge to the Supreme Court of Appeal. The appellate court shall have power to make such order regarding the costs of the appeal as it shall deem reasonable.

Costs and compensation to be specified in order, how recoverable 14 of 2010

144.—(1) Sums allowed for costs under section 142 or any compensation awarded shall in all cases be specified in the judgment of the court.

(2) If the person who has been ordered to pay the costs or compensation fails to pay, he shall, in default of seizure and sale

levied in accordance with section 330, be liable to imprisonment in accordance with the scale laid down in section 29 of the Penal Code, unless such costs or compensation be sooner paid.

Cap. 7:01

Power of court to award expenses or compensation out of fine

145.—(1) Whenever any court imposes a fine, or confirms on appeal, review or otherwise a sentence of fine, or a sentence of which a fine forms part, the court may, when giving judgment, order the whole or any part of the fine recovered to be applied—

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

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

Payment of amount awarded under section 145, etc.

146.—(1) If the fine referred to in section 145 is imposed in a case which is subject to appeal no such expenses or compensation shall be paid out of the fine before the period allowed for presenting the appeal has elapsed, or, if an appeal is presented, before the decision of the appeal.

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

Property found on accused person

147. Where, on the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

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

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

Restitution of stolen property

Cap. 7:01

14 of 2010

148.—(1) If any person guilty of an offence mentioned in Chapters XXVI to XXXII, inclusive, of the Penal Code, in stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property, is prosecuted to conviction, the property shall be restored to the owner or his representative.

(2) In every case referred to in this section, the court before which such offender is convicted shall have power to award, from time to time, writs of restitution thereof in a summary manner.

(3) Where goods have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not vest in the person who was the owner of the goods, or his

personal representative, by reason only of the conviction of the offender.

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

(5) The operation of any order made under this section shall, before which the conviction takes place directs to the contrary in any case in which the title to the property is not in dispute, be suspended until the time for appeal has elapsed and in any case where an appeal is lodged, until the determination of the appeal.

(6) Where the operation of any order made under this section is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

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

(8) Any person aggrieved by an order made under this section may appeal to the High Court, and upon the hearing of such appeal the High Court may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed.

(9) In this section the word "goods" includes all chattels, personal (other than things in action and money) emblements, industrial growing crops, and, where there is a contract for sale, things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

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

Disposal of property
14 of 2010

149.—(1) At any time in the course of, or after the conclusion of, an inquiry or trial, the court may make such order as it thinks fit for the disposal, by destruction, forfeiture, confiscation, delivery to any person claiming to be entitled to possession thereof, or in any other manner, of any property or documents produced before it or

in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) When the High Court makes such order and cannot through its own officers conveniently carry out such order, the High Court may direct that the order be carried into effect by a subordinate court.

(3) When an order is made under this section, such order shall not (except where the property is livestock or is subject to speedy and natural decay) be carried out until the period allowed for appealing against such order has expired or, when an appeal is brought within such period, until such appeal has been disposed of.

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

When offence proved is included in offence charged
14 of 2010

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

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

Alteration of charge, etc.
5 of 1971
14 of 2010

151.—(1) Every objection to any charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later.

(2) Where at any stage of the trial before the court complies with section 254, or call on the accused for his defence under section 313, as the case may be, it appears to the court—

(*a*) that the charge is defective either in substance or form;

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

(*c*) that the accused desires to plead guilty to an offence other than the offence with which he is charged,

the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or

addition of a new charge as it thinks necessary to make in the circumstances of the case, unless, having regard to the merits of the case, such amendments cannot be made without injustice.

(3) Where a charge is so amended, a note of the order for amendment shall be endorsed on the charge and the charge shall be treated for the purposes of the proceedings in connexion therewith as having been filed in the amended form.

(4) Every such new or altered charge shall be read and explained to the accused.

(5) The court shall thereupon call upon the accused to plead to the altered charge and to state whether he is ready to be tried on such new or altered charge.

(6) If the accused declares that he is not ready, the court shall duly consider the reasons he may give and, if proceeding immediately with the trial is not likely in the opinion of the court to prejudice the accused in his defence or the prosecution in the conduct of the case, the court may, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

(7) If the new or altered charge is such that proceeding immediately with the trial is likely in the opinion of the court to prejudice the accused or the prosecution, the court may direct a new trial or adjourn for such period as is necessary.

(8) Where a magistrate decides to proceed with the new or altered charge without directing a new trial he shall, save where he is of the opinion that the presence of a witness cannot be obtained without an amount of delay or expense which, in the circumstances of the case, he considers unreasonable, re-summon all or any witness for re-cross-examination if so requested by the accused.

(9) If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has already been obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

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

Person charged with any offence may be convicted of attempt

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

Alternative verdicts in various offences involving the homicide of children
14 of 2010

153.—(1) When a woman is charged with the murder of her child, being a child under the age of twelve (12) months, and the court is of opinion or the jury finds, as the case may be, that she, by any willful act or omission, caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for section 230 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

Cap. 7:01

(2) When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 149 or section 150 of the Penal Code (relating to the procuring of abortion), and the court is of opinion or the jury finds, as the case may be, that he is not guilty of murder, manslaughter or infanticide or of an offence under section 149 or section 150 of the Penal Code, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

Cap. 7:01

Cap. 7:01

(3) When a person is charged with killing an unborn child and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under either section 149 or section 150 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Cap. 7:01

(4) When a person is charged with the murder or infanticide of any child or with killing an unborn child and the court is of opinion or the jury finds, as the case may be, that he is not guilty of any of the said offences, but that he is guilty of the offence of concealment of birth or the offence of abandonment of child at birth, he may be convicted of the offence of concealment of birth or the offence of abandonment of child at birth although he was not charged with it.

Alternative verdict in charge of manslaughter from driving of motor vehicle
23 of 1968
14 of 2010
Cap. 69:01

154. When a person is charged with manslaughter in connexion with the driving of a motor vehicle by him and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence, but that he is guilty of an offence under section 126, 127 or 128 of the Road Traffic Act, or under any law in substitution therefor, he may be convicted of that offence although he was not charged with it.

Alternative verdict in charges of rape and kindred offences
23 of 1968
14 of 2010
Cap. 7:01

155.—(1) When a person is charged with rape and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 137, 138, 141 and 157 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(2) When a person is charged with an offence under section 157 of the Penal Code and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 138 and 139 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Cap. 7:01

(3) When a person is charged with the defilement of a girl and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 137 and 141 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Cap. 7:01

Person charged with burglary, etc., may be convicted of kindred offence
23 of 1968
Cap. 7:01

156. When a person is charged with an offence mentioned in Chapter XXIX of the Penal Code and the court is of opinion or the jury finds, as the case may be, that he is not guilty of any other offence mentioned in the said Chapter, he may be convicted of that other offence although he was not charged with it.

Alternative verdicts in charges of stealing and kindred offences

157.—(1) When a person is charged with stealing anything and—

(*a*) it is proved that he received the thing knowing the same to have been stolen, he may be convicted of the offence of receiving although he was not charged with it;

(*b*) it is proved that he obtained the thing in any such manner as would amount, under the Penal Code or any other law for the time being in force, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it;

Cap. 7:01

(*c*) the facts proved amount to an offence under section 329 of the Penal Code, he may be convicted of the offence under that section although he was not charged with it.

Cap. 7:01

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

Construction of sections 150 to 157

158. Sections 150 to 157, inclusive, shall be construed as being in addition to, and not in derogation of, any other written law and the other provisions of this Code, and sections 152 to 157,

inclusive, shall be construed as being without prejudice to the generality of sections 150 and 151.

Person charged with misdemeanour not to be acquitted if felony proved, unless court so directs
14 of 2010

159.—(1) Where in any trial for a misdemeanour the facts proved in evidence amount to a felony the accused shall not be acquitted of the misdemeanour.

(2) No person tried for a misdemeanour under subsection (1) shall be liable afterwards to be prosecuted for a felony on the same facts, unless the court shall think fit, in its discretion, without recording a verdict, to direct such person to be prosecuted for the felony.

(3) Where the court directs that the person be prosecuted for the felony under subsection (2), the person may be dealt with as if previously he was not put on trial for the misdemeanour.

160. [*Repealed by* 14 *of* 2010].

Promotion of reconciliation
14 of 2010

161. In all cases a court may, without formality, promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, on terms of payment of compensation or other terms approved by the court and may thereupon order the proceedings to be stayed or terminated.

PART IVA

Pre-Trial Custody Time Limits

Pre-trial custody time limits
14 of 2010

161A. An accused person may be held in lawful custody in relation to an offence while awaiting the commencement of his trial in accordance with the periods specified under this Part.

Interpretation
14 of 2010

161B. In this Part, unless the context otherwise requires, "lawful custody" means custody sanctioned by a court order pending trial.

Reckoning of time
14 of 2010

161C.—(1) For the purposes of this Part, time shall run upon the expiry of forty-eight hours after the arrest of an accused person, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry.

(2) Notwithstanding subsection (1), where an accused person is in lawful custody in relation to one offence and is subsequently charged with another offence not arising on the same facts or in the course of the same transaction, the time in relation to the subsequent offence shall run from the date when the accused person is charged with the offence.

161D. The maximum period that a person accused of an offence triable in a subordinate court may be held in lawful custody pending commencement of his trial in relation to the offence shall be thirty days.

Custody time limit for offences triable in subordinate courts
14 of 2010

161E. The maximum period that a person accused of an offence triable in the High Court may be held in lawful custody pending his committal for trial to that Court under Part VIII or Part IX of this Code in relation to that offence shall be thirty days.

Custody time limit in relation to committal proceedings
14 of 2010

161F. Where a person accused of an offence triable in the High Court is committed to the High Court for trial, the maximum period that he may be held in lawful custody pending commencement of his trial in relation to that offence shall be sixty days.

Custody time limit for offences triable in the High Court
14 of 2010

161G. The maximum period that a person accused of treason, genocide, murder, rape, defilement and robbery may be held in lawful custody pending commencement of his trial in relation to that offence shall be ninety days.

Custody time limit for serious offences
14 of 2010

161H.—(1) The prosecution may, at least seven days before the expiry of the custody time limit imposed under this Part, make an application to the subordinate court or the High Court, as the case may be, for extension or further extension of that time limit.

Extension of custody time limit
14 of 2010

(2) Upon an application under subsection (1), the subordinate court or the High Court, as the case may be, may extend or further extend the custody time limit imposed under this Part if it is satisfied that there is good and sufficient cause for doing so.

(3) Any extension or extensions of custody time limits under this section shall not exceed in total a period of thirty days.

161I. At the expiry of a custody time limit or of any extension thereof, the Court may of its own motion or on application by or behalf of the accused person or on information by the prosecution, grant bail to an accused person.

Bail on expiry of custody time limit
14 of 2010

161J. Nothing in this Part shall preclude an accused person in lawful custody from otherwise applying for bail under any other law during the subsistence of a custody time limit.

Application of general law on bail
14 of 2010

PART V

Mode of Taking and Recording Evidence in Inquiries and Trial

162. Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Code shall be taken in the

Evidence to be taken in presence of accused
14 of 2010

presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his legal practitioner, if any.

Manner of recording evidence before magistrate 14 of 2010

163. In inquiries and trials, other than trials under section 159, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner—

(*a*) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate, or in his presence and hearing under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;

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

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

Interpretation of evidence to accused or his legal practitioner 14 of 2010

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

(2) If he appears by legal practitioner and the evidence is given in a language other than the language of the court, and not understood by the legal practitioner, it shall be interpreted to such legal practitioner in the language of the court.

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

Cases heard by one magistrate continued by another magistrate 14 of 2010

165. (1) Subject to subsections (2) and (3) respectively, wherever any magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the succeeding magistrate may act on the evidence so provided by his predecessors, or partly recorded by his predecessor and partly himself, or he may re-summon the witnesses and after recording the reasons for the first mentioned magistrate's ceasing to exercise jurisdiction recommence the inquiry or trial.

(2) In any trial the succeeding magistrate shall, save where he is of the opinion that the presence of a witness cannot be obtained without an amount of delay or expense which, in the circumstances of the case, he considers unreasonable, re-summon and release the witness or any of them if so requested by an accused.

(3) The High Court may, whether there be an appeal or not, set aside an conviction passed on evidence not wholly recorded by the

magistrate before whom the conviction was heard, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

Sentence by one magistrate of person convicted by another magistrate

166. Whenever any magistrate who has presided at any trial which has resulted in the conviction of the accused, ceases to exercise jurisdiction before sentence has been passed, and is succeeded, whether by virtue of an order of transfer under this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the magistrate so succeeding may sentence the accused or may make any order in such case which he could have made if he himself had convicted the accused.

Record of evidence in High Court and subordinate courts

167. The Chief Justice may from time to time, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the High Court and subordinate courts and the judges and magistrates, as the case may be, shall take down the evidence or the substance thereof, in accordance with such rules.

PART VI

Evidence in Criminal Proceedings

Application of this Part

168. This Part shall apply to all criminal proceedings in or before the High Court and all subordinate courts.

When a fact said to be proved, disproved and not proved
2 of 1968

169.—(1) A fact is said to be proved when, after considering the matters before it, the court or jury, as the case may be, either believes it to exist or to have existed or considers its existence at the relevant time so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists or existed.

(2) A fact is said to be disproved when, after considering the matter before it, the court or jury, as the case may be, either believes that it does not exist or did not exist or considers its non-existence at the relevant time so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist or did not exist at the relevant time.

(3) A fact is said to be not proved when it is neither proved nor disproved.

(4) "Sufficient evidence" when used in relation to a fact means evidence by reason of which the court or jury, as the case may be, regards such fact as proved, unless and until it is disproved. 5 of 1969

Presumptions
23 of 1968

170.—(1) Whenever it is provided by this Code that the court or jury, as the case may be, may presume a fact, it may either regard

such fact as proved, unless and until it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Code that the court or jury, as the case may be, shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

(3) When one fact is declared by this Code to be conclusive proof of another, the court or jury, as the case may be, shall on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

(4) A court or jury, as the case may be, may presume the existence of any fact which it thinks likely to have happened, regard being had to the course of natural events, human conduct and public and private business, in relation to the facts of a particular case.

Relevancy of facts

171.—(1) Subject to any other law, evidence may be given in any proceeding of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others.

(2) Facts are relevant which—

(*a*) though not themselves in issue, are so connected with a fact in issue as to form part of the same transaction, whether they occurred at the same time and place or at different times and places;

(*b*) are the occasion, the cause or the effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction;

(*c*) show or constitute a motive or preparation for any fact in issue or relevant fact;

(*d*) in so far as they are necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of persons by whom any such fact was transacted;

(*e*) though not otherwise relevant—

(i) are inconsistent with any fact in issue or relevant fact;

(ii) by themselves or in connexion with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable;

(*f*) show the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill

towards any particular person, or show the existence of any state of body or bodily feeling, when the existence of any such state of mind or body or such bodily feeling is in issue or relevant;

(*g*) where there is a question as to the existence of any right or custom, show or constitute—

(i) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;

(ii) particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from;

(*h*) when there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, show that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned;

(*i*) when there is a question whether a particular act was done, show the existence of any course of business, according to which it naturally would have been done.

(3) The conduct of any person is relevant in reference to any fact in issue, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto. When the conduct of any person is relevant, any statement made to him, or in his presence and hearing, which affects such conduct, is relevant. Subject to any other provisions of this Code relating to the relevancy of statements, the expression "conduct" in this subsection does not include statements, unless those statements accompany and explain acts other than statements.

(4) Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence anything said, done or written by one of such persons in reference to their common intention after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Admissibility of evidence

172.—(1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant, and not otherwise.

(2) If the fact to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first-mentioned unless the party undertakes to give proof of such fact and the court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the court may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved or require evidence to be given of the second fact before evidence is given of the first fact.

Statement of person who cannot be called as witness

173. A statement, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, is itself a relevant fact—

(*a*) when the statement was made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in a case in which the cause of that person's death comes into question and whether the person who made it was or was not, at the time when the statement was made, under expectation of death and whatever may be the nature of the criminal proceeding in which the cause of his death comes into question;

(*b*) when the statement was made by such person in the ordinary course of business and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty, or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him;

(*c*) when the statement was against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;

(*d*) when the statement gave the opinion of such person as to the existence of any public right or custom, or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;

(*e*) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge and when the statement was made before the question in dispute was raised;

(*f*) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased persons belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;

(*g*) when the statement is contained in any deed, will or other document which relates to any transaction by which any right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence; and

(*h*) when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Relevancy of statements made in special circumstances
23 of 1968
14 of 2010

174.—(1) A statement contained in any entry in a book of account, regularly kept in the course of business, is a relevant fact whenever it refers to a matter into which the court has to inquire, but such statement shall not alone be sufficient evidence to charge any person with liability.

(2) An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

(3) A statement of fact in issue or relevant fact, made in a published map or chart generally offered for public sale or in a map or plan made under the authority of the Government, as to matters usually represented or stated in such maps, charts or plans, is itself a relevant fact.

(4) When the court or jury, as the case may be, has to form an opinion as to the existence of any fact of a public nature, any statement of it—

(*a*) made in a recital contained in any Act; or

(*b*) in the notification by or on behalf of the Government published in the *Gazette*; or

(*c*) in any printed paper purporting to be a Government *Gazette* or publication of similar effect,

is a relevant fact.

23 of 1968

(5) When a court or jury, as the case may be, has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be published under the authority of the Government of such country and to contain any such law and any report of any ruling of the courts of such country contained in a book purporting to be a report of such ruling are relevant.

Proof of facts by written statement
14 of 2010

175.—(1) In any criminal proceeding, a written statement by any person shall, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The said conditions are—

(*a*) the statement purports to be signed by the person who made it;

(*b*) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true;

(*c*) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(*d*) none of the other parties, within seven days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section:

Provided that the conditions mentioned in paragraphs (*c*) and (*d*) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section—

(*a*) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(*b*) the court may, of its own motion or on the application, made before or at the hearing, of any party to the proceedings require that person to attend before the court to give evidence.

(4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing.

(5) A document required by this section to be served on any person may be served—

(*a*) by delivering it to him or to his legal practitioner;

(*b*) by addressing it to him and leaving it at his usual or last known place of abode or place of business or, in a case where he has given an address for service, at that address;

(*c*) by sending it in a prepaid registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business, or, in a case where he has given an address for service, at that address; or

(*d*) in the case of a body corporate by serving it in one of the manners prescribed for the service of a summons upon such body corporate by section 91.

(6) Section 101 of the Penal Code (false statements by any person lawfully sworn as a witness or as an interpreter in any judicial proceedings) shall apply in relation to the making by any person of a written statement tendered in evidence by virtue of this section as it applies in relation to the making of an oral statement by a person lawfully sworn as a witness. Cap. 7:01

176.—(1) Evidence of a confession by the accused shall, if otherwise relevant and admissible, be admitted by the court notwithstanding any objection to such admission upon any one or more of the following grounds (however expressed) that such confession was not made by the accused or, if made by him, was not freely and voluntarily made and without his having been unduly influenced thereto. Confessions 23 of 1968

(2) No confession made by any person shall be admissible as evidence against any other person except to such extent as that other person may adopt it as his own.

(3) Evidence of a confession admitted under subsection (1) may be taken into account by a court, or jury, as the case may be, if such court or jury is satisfied beyond reasonable doubt that the confession was made by the accused and that its contents are materially true. If it is not so satisfied, the court or the jury shall give no weight whatsoever to such evidence. It shall be the duty of the judge in summing up the case specifically to direct the jury as to the weight to be given to any such confession.

(4) Nothing in this section except subsection (2) shall apply to any confession made by an accused at his trial or in the course of any preliminary inquiry relating thereto.

Evidence of persons who are seriously ill

177.—(1) Notwithstanding the provisions of this Code, a magistrate shall take a statement on oath of a person who—

(*a*) is sufficiently proven "to be seriously" ill;

(*b*) is certified by a medical practitioner that he is unlikely to recover from such illness;

(*c*) is liable and willing to give material information in respect of an offence or an accused person; and

(*d*) it is impracticable to examine or take his deposition in accordance with this Code.

(2) The magistrate shall, on taking the statement under subsection (1)—

(*a*) give the reasons for taking such statement;

(*b*) record the names of witnesses, if any;

(*c*) indicate the date and place of taking such statements; and

(*d*) sign such statement.

(3) The statement taken under this section may be read in evidence for or against an accused upon proof of death or infirmity, as the case may be, of the person who made such statement:

Provided that—

(*a*) the statement may be read before the magistrate who took it;

(*b*) it is proved to the satisfaction of the court that reasonable notice of the intention to take the statement was given to the party against whom it is proposed to be read in evidence; and

(*c*) the party against whom the statement is proposed to be read in evidence had an opportunity, if he were to be present, himself or by his legal practitioner, to cross-examine the person who made such statement.

Relevancy of certain evidence for proving in subsequent proceeding the truth of facts stated therein 14 of 2010

178.—(1) Evidence given by a witness in criminal proceedings, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent criminal proceeding or in a later stage of the same proceeding the truth of the facts which it states, when such evidence is the evidence of a witness conditionally bound over to attend under section 278, and his attendance has not been duly required, or when the witness is dead, or is absent from Malawi, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, in the circumstances of the case, the court considers unreasonable.

(2) Subsection (1) shall apply on condition that—

(*a*) the proceeding was between the same prosecutor and accused;

(*b*) the adverse party in the first proceeding had the right and opportunity to cross examine; and

(*c*) the question in issue were substantially the same in the first as in the second proceedings.

(3) For the avoidance of possible doubt, it is declared that a preliminary inquiry and any trial for any offence charged in any charge by the Director of Public Prosecutions on such inquiry are stages of the same criminal proceedings.

Admissibility of photographs, plans

179. A photograph or plan relating to any matter which is relevant to the issue in any proceedings shall be admissible in evidence at any stage of such proceedings if the evidence of any person who is a competent and compellable witness in such proceedings and upon whose indications or observations such photograph or plan was taken or prepared is given either before or after such photograph or plan is put in by the party tendering such evidence.

Admissibility of the reports of experts
5 of 1969
24 of 1972
20 of 1975
14 of 2010

180.—(1) Whenever any facts ascertained by any examination, including the examination of any person or body, or by any process requiring any skill in pathology, bacteriology, biology, chemistry, medicine, physics, botany, astronomy or geography or any body of knowledge or experience sufficiently organized or recognized as a reliable body of knowledge or experience and the opinions thereon of any person having that skill are or may become relevant to the issue in any criminal proceedings, a document purporting to be a report of such facts and opinions, by any person qualified to carry out such examination or process (in this section referred to as an "expert") who has carried out any such examination or process shall, subject to subsection (5), on its mere production by any party to those proceedings, be admissible in evidence therein to prove those facts and opinions if one of the conditions specified in subsection (3) is satisfied.

(2) The Minister of Health may by notice appoint any person for the time being holding the office of Chief Clinical Officer, Senior Clinical Officer or Clinical Officer to be a medical expert for the purposes of this section. A person so appointed shall be deemed qualified to carry out medical examinations and post-mortem examinations.

(3) The conditions referred to in subsection (1) are—

(*a*) that the other parties to the proceedings consent; or

(*b*) that the party proposing to tender the report has served on the other parties a copy of the report and, by endorsement on the report or otherwise, notice of his intention to tender it in evidence and none of the other parties has, within seven (7) days from such service, served on the party so proposing a notice objecting to the report being tendered in evidence under this section.

The provisions of section 175 (5) shall apply to service under this subsection.

(4) Notwithstanding that a report may be admissible as evidence under this section—

(*a*) the party by whom or on whose behalf a copy of the report was served may call the author thereof to give evidence;

(*b*) the court may, of its own motion or on the application, made before or at the hearing, of any party to the proceedings

(i) summon the expert, if in Malawi, to give oral evidence;

(ii) if the expert is not in Malawi, cause written interrogatories to be submitted to him for reply.

Any such interrogatories and any reply thereto purporting to be a reply from such expert shall, subject to all just exceptions, likewise be admissible in evidence.

(5) The admissibility of any report under subsection (1) shall not be affected by any neglect or failure of the expert concerned to appear in answer to any summons or to answer any interrogatories under subsection (4) if it is shown to the satisfaction of the court that he is dead, absent from Malawi, incapable of giving evidence, cannot be found, is being kept out of the way by the adverse party or his attendance cannot be obtained without any amount of delay or expense which, in the circumstances of the case, the court considers unreasonable, but save as aforesaid the court may refuse to admit in evidence the report of an expert who fails to attend court or reply to interrogatories after having been required to do so under subsection (4).

(6) Nothing in this section shall—

(*a*) affect the admissibility of evidence under the provisions of sections 173, 175, 177, 178 or sections 204 to 208 (inclusive);

(*b*) be deemed to affect any provision of this or any other written law under which any certificate or other document is made admissible in evidence and the provisions of this section shall be construed in addition to, and not in substitution of, any such provision.

181.—(1) A previous conviction may be proved in any legal proceeding against any person by producing a record or extract of such conviction and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted. How previous convictions may be proved

(2) A record or extract of a conviction shall consist of a certificate in such form, if any, as may be prescribed containing the substance and effect only (omitting any formal part of the charge and conviction) and purporting to be signed, in the case of a conviction by the High Court, by the Registrar of the High Court or other officer having the custody of the records of the court and, in the case of any other conviction, by the clerk or other officer having custody of the records of the court by which such conviction was made.

(3) A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(4) The mode of proving a previous conviction authorized by this section shall be in addition to and not in exclusion of any other authorized mode of proving such a conviction.

(5) A conviction made before the day upon which this section came into operation may be proved in the same manner as if it had taken place after such day.

182.—(1) No fact of which the court or the jury, as the case may be, will take judicial notice need be proved. Judicial notice 23 of 1968 14 of 2010

(2) A court or a jury, as the case may be, shall take judicial notice of the following facts—

(*a*) all Acts enacted by the Parliament of Malawi and all subsidiary legislation made under those Acts;

(*b*) all Acts of Parliament of the United Kingdom, Orders in Council, laws, statutory instruments or subsidiary legislation now or heretofore in force in Malawi;

(*c*) the course of proceedings of Parliament, and of local government authorities established under Chapter XIV of the Constitution and of other authorities in Malawi established under law for the purpose of making laws including subsidiary legislation;

(*d*) the accession to office, name, titles, functions and signature of the President;

(*e*) the accession to office, names, titles, functions and signature of the persons filling for the time being any public

office in any part of Malawi if the fact of their appointment to such office is notified in the *Gazette*;

(*f*) the seals of all the courts of Malawi duly established and all seals which any person is authorized to use by any Act or other written law;

Cap. 18:05

(*g*) public holidays declared under the Public Holidays Act;

(*h*) the territories of the commonwealth;

(*i*) the existence, title and national flag of every state or sovereign recognized by the Government;

(*j*) the divisions of time and the geographical divisions of the world;

(*k*) the commencement, continuance and termination of between the State of Malawi and any other state or body of persons;

(*l*) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process and of all legal practitioners and other persons authorized by law to appeal or act before it; and

(*m*) the rule of the road on land or water.

(3) In all cases as are mentioned in subsection (2) and also on matters of public history, literature, science or art, the court or jury, as the case may be, may resort for its aid to appropriate books or documents of reference.

(4) If the court or jury, as the case may be, is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Proof by formal admission
14 of 2010

183.—(1) Subject to this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecution or the accused, and the admission of any such fact under this section shall be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section—

(*a*) may be made before or at the proceedings;

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

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

(*d*) if made on behalf of a defendant who is an individual, shall be made by his legal practitioner;

(*e*) if made before the trial by a defendant who is an individual, must be approved by his legal practitioner either at the time it was made or subsequently.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal, review or retrial).

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

(5) In this section "director", in relation to any statutory body within the meaning ascribed to that term by section 2 of the Statutory Bodies (Control of Contracts) Act, being a body corporate whose affairs are managed by its members, means a member of that body corporate. Cap. 18:07

Hearsay evidence not admissible, etc. 14 of 2010

184.—(1) Oral evidence must, in all cases whatever, be direct, that is to say—

(*a*) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

(*b*) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

(*c*) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; and

(*d*) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

(2) For purposes of subsection (1)—

(*a*) the opinions of experts expressed in any treatise commonly offered for sale, and grounds upon which such opinions are held, may be proved by the production of such treatises, if the author is dead or cannot be found or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable; and

(*b*) if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for inspection.

Previous judgments relevant to bar a second trial

185. The existence of any judgment, order or decree which by law prevents any court from holding a trial is a relevant fact when the question is whether such court ought to hold such trial.

Relevancy of certain judgments conferring legal character, etc.

186.—(1) A final judgment, order or decree of a competent court or in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

(2) Any judgment, order or decree as is mentioned in subsection (1) is conclusive proof—

(*a*) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

(*b*) that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(*c*) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declares that it ceased or should cease; and

(*d*) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares it had been or should be his property.

(3) Judgments, orders or decrees, other than those mentioned in subsection (1) are relevant if they relate to matters of a public nature relevant to the inquiry; but except as provided in any other written law such judgments, orders or decrees are not conclusive proof of that which they state.

(4) Judgments, orders or decrees, other than those mentioned in section 185 and subsections (1) and (2) of this section are irrelevant unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Code.

(5) Any party to a proceeding may show that any judgment, order or decree which is relevant under section 185, or under this section, and which has not been proved by the adverse party, was delivered by a court not competent to deliver it or was obtained by fraud or collusion.

Burden of proof
23 of 1968

187.—(1) The burden of proving any particular fact lies on the person who wishes the court or jury, as the case may be, to believe

in its existence, unless it is provided by any written law that the proof of such fact shall lie on any particular person:

Provided that subject to any express provision to the contrary in any written law the burden of proving that a person who is accused of an offence is guilty of that offence lies upon the prosecution.

(2) The burden of proving any fact necessary to be proved in order to enable any person to give evidence of another fact is on the person who wishes to give such evidence.

Burden of proving that case of accused comes within exceptions and facts especially within his knowledge 23 of 1968 14 of 2010

188.—(1) Where a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him; but so however that—

(*a*) such burden shall be deemed to be discharged if the court or jury, as the case may be, is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist; and

(*b*) the accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused in respect of that offence.

(2) Nothing in this section shall—

(*a*) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the accused is charged; or

(*b*) impose on the prosecution the burden of proving that the circumstances or facts described in subsection (1) do not exist; or

(*c*) affect the burden placed upon an accused to prove a defence of intoxication or insanity.

Burden of proving death, partnership, etc.

189.—(1) When the question is whether a man is alive or dead and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

(2) When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

(3) When the question is whether persons are partners, landlord and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand or have ceased to stand to each other in those relationships respectively is on the person who affirms it.

(4) When the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

(5) Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Opinions of experts
2 of 1968
20 of 1975
14 of 2010

190.—(1) When the court or the jury, as the case may be, has to form an opinion upon a point of foreign law, or of science or art, or as to the identity of handwriting or fingerprints, the opinions upon that point of persons specially skilled in such foreign law, science, art or anybody of knowledge or experience sufficiently organized or recognized as a reliable body of knowledge or experience or in questions as to identity of handwriting or fingerprints are relevant facts. Such persons are called experts.

(2) Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.

(3) The Minister of Health, in his discretion, may by notice published in the *Gazette* appoint any person for the time being holding the office of Chief Clinical Officer, Senior Clinical Officer or Clinical Officer to be a medical officer for the purposes of this subsection and any such officer shall conduct such post-mortem examinations as the Minister may direct and any opinion stated by such officer touching upon any such examination or matters arising therefrom, shall be receivable in evidence as the opinion of an expert.

Opinions as to handwriting, customs, tenets, etc.
23 of 1968

191.—(1) When the court or the jury, as the case may be, has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact. A person shall be held to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

(2) When the court or the jury, as the case may be, has to form an opinion as to the existence of any general custom or right, including customs or rights common to any considerable class of persons, the opinions as to the existence of such custom or right, of persons who would be likely to know of its existence, if it existed, are relevant.

(3) When the court or the jury, as the case may be, has to form an opinion as to—

(*a*) the usages and tenets of any body of men or family;

(*b*) the constitution and government of any religious or charitable foundation; or

(*c*) the meaning of words or terms used in particular areas or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

(4) When the court or the jury, as the case may be, has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject is a relevant fact:

Provided that such an opinion shall not be sufficient to prove a marriage in prosecutions under section 162 of the Penal Code. 30 of 1969 Cap. 7:01

(5) Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Character of the accused 14 of 2010

192.—(1) In criminal proceedings, the fact that the accused is of good character is relevant.

(2) Subject to section 193, in criminal proceedings the fact that the accused has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

(3) Notwithstanding subsection (2), a conviction for any offence becomes relevant after conviction in the case under trial, for the purpose of affecting the sentence to be imposed by the court.

(4) Subsections (1), (2) and (3) do not apply to cases in which the bad character of any person is a fact in issue.

(5) A previous conviction is relevant as evidence of bad character.

(6) Except as expressly provided in this Code, evidence of character may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition were shown.

Evidence by accused for the defence
23 of 1968
14 of 2010

193.—(1) Every accused shall be a competent witness for the defence at every stage of the proceedings, whether charged solely or jointly with any other person; but an accused shall not be called in pursuance of this section except on his own application or by a court under section 256 or 314.

(2) An accused called as a witness in pursuance of this section, or in pursuance of section 255 (1) or 314—

(*a*) may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

(*b*) shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that he is then charged, or is of bad character, unless—

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

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

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

(3) Every accused called as witness in pursuance of this section, or pursuance of section 255 (1) or 314, shall unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

Evidence of *alibi*
14 of 2010

193A.—(1) As early as is reasonably practicable and in any event prior to the commencement of the trial, the defence shall notify the prosecution of its intent to enter the defence of *alibi*.

(2) The notification under subsection (1) shall specify the place or accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the *alibi*.

(3) Failure by the defence to provide notification of the defence of *alibi* as required by this section shall not limit the right of the accused at any time during trial to rely on such defence.

Evidence by husband and wife of an accused

194. A husband or wife of an accused shall be a competent and compellable witness for the prosecution or for the defence at every stage of any proceedings:

Provided that such husband or wife shall not be called as a witness for the defence except upon the application of the accused.

Summons for witness
5 of 1969

195. If it is made to appear that evidence material to any criminal cause or matter before, or pending before, any court can be given by, or is in the possession of, any person, it shall be lawful for a police officer of the rank of Assistant Superintendent or above, or the Registrar of the High Court, or the magistrate having cognizance of such cause or matter, to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

Warrant for witness who disobeys summons
14 of 2010

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

Warrant for witness in first instance
14 of 2010

197. If the court is satisfied by evidence on oath that a person summoned as a witness under section 195 will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be specified in the warrant.

Mode of dealing with witness arrested under warrant

198. When any witness is arrested under a warrant the court may, on his furnishing security by recognizance to the satisfaction of the court or of a police officer of the rank of Assistant Superintendent or above for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained for production at such hearing.

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

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

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

Penalty for non-attendance of witness 14 of 2010

200.—(1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine of K10,000.

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

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of fifteen (15) days unless such fine is paid before the end of the said term.

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

Power to summon material witness present 14 of 2010

201.—(1) Subject to subsection (2), any court may, of its own motion at any stage of any inquiry, trial or other proceeding under this Code, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

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

(3) In exercising the powers conferred on it under subsection (1), the court shall be governed by the interests of justice and, in particular shall avoid taking over the prosecution of the case.

Refractory witnesses 14 of 2010

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

(*a*) refuses to be sworn; or

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

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

(*d*) refuses to sign his deposition, without in any such case offering any sufficient excuse for such refusal or neglect,

the court may adjourn the case for a period not exceeding eight days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

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

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

(4) Nothing in this section shall apply to the accused, if having elected to give evidence, he refuses or neglects to be sworn or to answer any question or to do any other thing required of him in pursuance of section 255, 256, or 314.

Power to take evidence in absence of accused
14 of 2010

203.—(1) If it is proved that an accused has absconded, and that there is no immediate prospect of arresting him, the court competent to try him or commit him for trial for the offence complained of may, in his absence, examine the witnesses produced on behalf of the prosecution, and record their depositions.

(2) Depositions taken under subsection (1) may, on the arrest of the accused be given in evidence against him on the inquiry into or trial for the offence with which he is charged if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case, would be unreasonable.

(3) If it appears that an offence punishable with death or imprisonment for a term of not less than seven years has been committed by some person or persons unknown, the High Court may direct that any magistrate shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence if the deponent is dead or incapable of giving evidence or beyond the limits of Malawi.

Issue of commission for examination of witness within Malawi
14 of 2010

204.—Whenever in the course of any proceeding under this Code the High Court or a subordinate court is satisfied that the examination of a witness is necessary in the interests of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the High Court or subordinate court may issue a commission to any magistrate to take the evidence of such witness.

Duties of magistrate to whom commission issued

205. The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial.

Parties may examine witness
14 of 2010

206.—(1) The parties to any proceeding under this Code in which a commission under section 204 is issued may respectively forward any interrogatories in writing which the court directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any party mentioned in subsection (1) may appear before the magistrate by his legal practitioner, or if not in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

Return of commission

207. After any commission issued under section 204 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court by which it was issued and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Examination of witnesses outside Malawi
14 of 2010

Cap. 4:03

208.—(1) Whenever in the course of any proceedings under this Code the High Court is satisfied that the examination of a witness outside Malawi is necessary in the interests of justice, the High Court may issue an order for the examination of such witness to a court of competent jurisdiction outside Malawi under, and in accordance with, the Evidence by Commissions Act, or any other time being in force relating to the taking of evidence in criminal proceedings outside Malawi.

(2) Whenever in the course of any proceedings under this Code before a magistrate it appears that the examination of a witness outside Malawi is necessary in the interests of justice, such magistrate shall apply to the High Court, stating the reasons for the application, and the High Court may issue an order under subsection (1) for the examination of such witness.

Adjournment of proceedings

209. Where a commission is issued under section 204 or an order is made under section 208, the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission or of compliance with the order.

Who may testify

210. All persons shall be competent to testify unless the court considers that they are prevented from understanding the

questions put to them, or from giving rational answers to those questions, by immature or extreme old age, disease, whether of mind or body, or any cause of the same kind, subject however in the case of persons of immature age to section 6 of the Oaths, Affirmations and Declarations Act, relating to the reception of their unsworn evidence. Cap. 4:07

211. A witness who is unable to speak may give his evidence in any manner in which he can make it intelligible, as by writing or by signs; but such writing must be written, and the signs made, in open court. Evidence so given shall be deemed to be oral evidence. Dumb witnesses 14 of 2010

212. Subject to this Code and any other law for the time being in force, no particular number of witnesses shall in any case be required for the proof of any fact. Number of witnesses

213. The order in which witnesses are produced and examined shall be regulated by Parts VII to X inclusive and, subject thereto, by the discretion of the court. Order of examination of witnesses

214.—(1) The examination of a witness by the party who calls him shall be called his examination-in-chief. Examination, cross-examination and re-examination 14 of 2010

(2) The examination of a witness by the adverse party shall be called cross-examination.

(3) The examination of a witness subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

(4) Subject to this Code, a witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

(5) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(6) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(7) When a witness is cross-examined, he may in addition to the questions elsewhere in this Part referred to, be asked any questions which tend—

(*a*) to test his veracity;

(*b*) to discover who he is and what is his position in life;

(*c*) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to

expose him to a penalty or forfeiture. When any such question relates to a matter relevant to the proceeding, section 228 shall apply thereto.

Court to decide when questions shall be asked and when witness compelled to answer
23 of 1968
14 of 2010

215.—(1) If any question asked under section 214 (7) relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the court shall have regard to the following considerations—

(*a*) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court or jury, as the case may be, as to the credibility of the witness on the matter to which he testifies;

(*b*) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court or jury, as the case may be, as to the credibility of the witness on the matter to which he testifies;

(*c*) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(*d*) the court or jury, as the case may be, may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

(2) No such question as is referred to in subsection (1) may properly be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

(3) The court may forbid any question or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

(4) The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Cross-examination of persons summoned to produce a document

216. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Leading questions

217.—Any person suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When leading questions may be asked

218.—(1) In any trial before the High Court leading questions must not, if objected to by the adverse party, be asked in examination-in-chief or in re-examination, except with the permission of the Court.

(2) In any trial before a subordinate court leading questions must not, if objected to by the adverse party, be asked in examination-in-chief or in re-examination.

(3) The High Court or a subordinate court shall permit leading question as to matters which are introductory or undisputed, or which have, in its opinion, already been sufficiently proved.

(4) Leading questions may be asked in cross-examination without permission of the court in trials before the High Court and subordinate courts.

Evidence as to matters in writing and cross-examination as to previous writings
14 of 2010

219.—(1) Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to document which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts that have been proved which entitle the party who called the witness to give secondary evidence of it; but a witness may give oral evidence of statements made by other persons about the contents of documents if such statements are themselves relevant facts.

(2) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Communication during marriage

220. A husband shall not be compelled to disclose any communication made to him by his wife during their marriage and a wife shall not be compelled to disclose any communication made to her by her husband during their marriage.

221.–222. [*Repealed by* 14 *of* 2010].

Judges, magistrates, police and revenue officers

223.—(1) No judge or magistrate shall, except upon the special order of some court to which he is subordinate, be compelled to answer any questions as to his own conduct in court as such judge or magistrate, or as to anything which came to his knowledge in court as such judge or magistrate; but he may be examined as to other matters which occurred in his presence while he was so acting.

(2) No magistrate or police officer shall be compelled to disclose the source or origin from which he received any information as to the commission of any offence, and no revenue officer shall be compelled to disclose the source or origin from which he received any information as to the commission of any offence against the public revenues.

Professional communications
14 of 2010

224.—(1) No legal practitioner shall at any time be permitted, unless with his client's consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of such employment.

(2) Nothing in this section shall protect from disclosure—

(*a*) any such communication in furtherance of any illegal purpose; and

(*b*) any fact observed by a legal practitioner in the course of his employment as such, showing that any crime or fraud had been committed since the commencement of his employment.

(3) It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client and the obligation referred to in this section continues after the employment has ceased.

(4) This section applies to interpreters and to the clerks and servants of a legal practitioner.

Privilege not waived by volunteering evidence
14 of 2010

225. If a party to any proceedings give evidence he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 224 and if any such party calls as a witness any such legal practitioner as is mentioned in section 224, he shall be deemed to have consented to such disclosure only if he questions such legal practitioner on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal practitioner
23 of 1968
14 of 2010

226. No person shall be compelled to disclose to the court or to the jury any confidential communication, which has taken place between him and any legal practitioner advising or representing him unless he has offered himself as a witness or its giving evidence upon being required to do so under section 256 (1) or section 314

in which case he may be compelled to disclose any such communication as may appear to the court necessary to be known in order to explain any evidence which he has given and no other.

Production of documents another person having possession would refuse
14 of 2010

227. No person shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Witness not excused from answering question on ground that answer will incriminate
14 of 2010

228. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue upon the ground that the answer to such question will incriminate, or may tend directly or indirectly to incriminate, such witness, or that it will expose such witness to a penalty or forfeiture of any kind, or that it may establish or tend to establish that he owed a debt or is otherwise subject to a civil suit:

Provided that no such answer which a witness shall be compelled to give may subject him to any arrest or prosecution or be proved against him in any subsequent criminal proceeding, except a prosecution for giving false evidence by such answer.

Exclusion of evidence to contradict answers to questions testing veracity

229. When a witness has been asked and has answered a question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict his answer; but, if he answers falsely, he may afterwards be charged with giving false evidence:

Provided that—

(*a*) if a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction;

(*b*) if a witness is asked a question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Question by party to his own witness if hostile
14 of 2010

230. The court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness
14 of 2010

231.—(1) The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him—

(*a*) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(*b*) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(*c*) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

(2) A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Evidence tending to corroborate evidence of relevant fact admissible

232.—(1) When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

(2) Evidence of a statement made at the time when, or shortly before, or shortly after an offence is alleged to have been committed and directly relating to a fact relevant in the case is admissible if it was made by a person who is a witness and if such statement is used for showing its consistency with his evidence.

Former statements of witness may be proved to show consistency of later testimony as to same fact

233. In order to show the consistency of the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connexion with proved statement relevant under section 173 or 178

234. Whenever any statement, relevant under section 173 or 178 is proved, all matters may be proved either in order to contradict or to collaborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been if that person had been called as a witness and had denied upon cross- examination the truth of the matter suggested.

Refreshing memory
14 of 2010

235.—(1) A witness may, with the permission of the court, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or as soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

(3) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a

copy of such document if the court is satisfied that there is sufficient reason for non-production of the original.

(4) An expert may refresh his memory by reference to professional treatises.

(5) A witness may also testify to facts mentioned in any such documents as are mentioned in this section although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the documents.

(6) Subject to the provisions of this Code or any other written law to the contrary, any writing referred to under this section must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Giving as evidence document called for and produced on notice

236. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing is requires him to do so.

Using as evidence document production of which was refused on notice

237. When a party has refused to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

Court's power to put questions or order production 14 of 2010

238.—(1) The judge or magistrate may, in order to discover or obtain proof of relevant facts—

(*a*) ask any question it pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant;

(*b*) order production of any document or thing,

and neither party shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question.

(2) Notwithstanding subsection (1)—

(*a*) any judgment entered under this section must be based upon facts declared by this Code to be relevant, and duly proved;

(*b*) this section shall not authorize any judge or magistrate to—

(i) compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or to produce under section 193 (2) or under sections 219 to 227, inclusive, if the question were asked or the documents were called for by the adverse party;

(ii) ask any question which it would be improper for any person to ask under section 229;

(iii) dispense with primary evidence of any document, except in the cases hereinbefore excepted.

239. [*Repealed by* 23 *of* 1968].

No new trial for improper admission or rejection of evidence

240. The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the court before such objection is raised that, independently of the evidence objected to and admitted, there evidence to justify the decision or that, if the rejected evidence had been received, it ought not to have varied the decision.

Production of document

241.—(1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility and the validity of any such objection shall be decided by the court.

(2) The court, if it sees fit, may inspect the document or take other evidence to enable it to determine its admissibility.

(3) If, for the purpose of subsection (2), it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the content secret, unless the document is to be given in evidence; and if he disobeys such directions, he shall be held to be in contempt of court.

Accomplice
14 of 2010

242. An accomplice shall be a competent witness against an accused person; and a conviction shall not be set aside merely because it proceeds upon the uncorroborated testimony of an accomplice:

Provided that the court shall take recognizance of the fact that it is unsafe to convict an accused on the uncorroborated evidence of an accomplice, and shall weigh the evidence, and if it comes to the conclusion that the evidence of the accomplice, although uncorroborated, is true, it may be used as a basis of a conviction.

What evidence is to be given when a statement forms part of a conversation, document, etc.

243. When any statement of which evidence is given forms part of a longer statement or of a conversation or of an isolated document, or is contained in a document which forms part of a book or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, book or series of letters or papers as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement and the circumstances in which it was made.

Corroboration in cases of sedition, perjury, etc. Cap. 7:01

244.—(1) No person shall be convicted of an offence under section 51 of the Penal Code (which relates to seditious offences) on the uncorroborated testimony of one witness.

(2) No person shall be convicted of committing perjury or subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Rules relating to documentary evidence 14 of 2010

245.—(1) The Chief Justice may make rules relating to documentary evidence in criminal proceedings under this Code.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), such rules may provide for—

(*a*) the admission of documentary evidence in criminal proceedings under this Code;

(*b*) the manner in which documentary evidence is to be proved;

(*c*) notices for the production of documentary evidence;

(*d*) the proof of public and private documents and copies thereof;

(*e*) presumptions to be made regarding documentary evidence;

(*f*) the exclusion of oral evidence by documentary evidence;

(*g*) the weight to be given to any particular documentary evidence; and

(*h*) such other matters regarding documentary evidence as may be considered necessary.

PART VII

Procedure in Trials Before Subordinate Courts

Summary trial procedure

246.—(1) The procedure prescribed in this part shall be observed in trials by subordinate courts whether resulting from a complaint under section 83 (2) or a charge under section 83 (1) or (4).

(2) Other relevant provisions of this Code shall apply to trials before subordinate courts, except in so far as express provision is made in this part which in inconsistent with such other relevant provisions.

Absence of complainant or prosecutor 51 of 1971 14 of 2010

247.—(1) When proceedings have been instituted under section 83 and, at the time fixed for the hearing of the case or the time to which a hearing is adjourned, the complainant or the prosecutor, as the case may be, is either absent or unable or unwilling to proceed with the case against the accused, the court, if it is satisfied that the complainant or prosecutor has had reasonable notice of the time and place fixed for the hearing, shall, unless it considers there is good reason to adjourn the hearing, discharge the accused.

(2) A discharge under subsection (1) shall not operate as a bar to any subsequent proceeding against the accused commenced within twelve months of the date of the discharge on account of the same facts after which period the discharge shall become absolute and operate as an acquittal for all purposes.

(3) If the Court is not satisfied as provided in subsection (1) or considers that there is a good reason for adjournment, the court shall adjourn the hearing.

Absence of accused
14 of 2010

248.—(1) If, upon the day fixed for trial or the day to which the hearing or further hearing is adjourned, the accused shall not appear and, in the case of proceedings originating by summons, it appears to the court by evidence on oath that the summons was duly served a reasonable time before the time appointed for appearing, the court may, instead of directing the issue of a warrant of arrest under section 95, proceed with the hearing or further hearing as if the accused were present:

Provided that no sentence of imprisonment, other than a sentence in default of payment of a fine, shall be imposed on any person under this subsection.

(2) If the court convicts the accused in his absence, it may set aside such conviction upon being satisfied that such absence was due to causes over which he had no control and that he had a probable defence on the merits.

(3) If the accused who has not appeared as is mentioned in subsection (1) is charged with felony, or if the court, in its discretion, refrains from convicting or acquitting the accused in his absence, the court shall issue a warrant for the apprehension of the accused and cause him to be brought before the court.

Withdrawal of complaint

249. If a complaint, at any time before a final order is passed in any proceeding conducted by him after complaint made under section 83 (2), satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused.

Adjournment
14 of 2010

250.—(1) The court may in its discretion, before or during the hearing of any case, adjourn the hearing to a time and place to be then stated to the parties.

(2) Where the court adjourns the hearing of a case under subsection (1) it may—

(*a*) release the accused, without security or upon his entering into a bond with or without sureties, at the discretion of the court, conditioned for his appearance at the time and place so stated; or

(*b*) commit the accused to prison.

(3) If the accused—

(*a*) has not been committed to prison, the adjournment under subsection (1) may, with the consent of the parties, be for any period not exceeding three months or, in the absence of the consent of the parties, for a period not exceeding thirty days;

(*b*) has been committed to prison, the adjournment under subsection (1) shall not be for more than fifteen days.

(4) The day following that on which any adjournment is made under subsection (3) shall be counted as the first day of the

(5) Where a court adjourns any proceedings for a period exceeding the maximum period for which in the circumstances an adjournment may be granted in conformity with subsection (3), the adjournment shall not of itself affect the validity of the proceedings or the power of the presiding magistrate to continue to hear and determine the case.

(6) The High Court may, on the application of the court or of either party, or of its own volition, give such directions as it deems necessary for the resumption of adjourned proceedings.

Plea of guilty

251.—(1) When an accused appears or is brought before a court, a charge containing the particulars of the offence of which he is accused shall be read and explained to him and he shall be asked whether he admits or denies the truth of the charge.

(2) If the accused admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him and he may be convicted and sentenced thereon:

Provided that before a plea of guilty is recorded, the court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification the truth of the charge against him.

Plea of not guilty
14 of 2010

252. If the accused does not admit the truth of the charge or does not plead, the court shall proceed to hear the case as hereinafter provided.

Rules relating to plea bargaining
14 of 2010

252A.—(1) The Chief Justice may make rules that shall permit parties to enter into plea bargaining where appropriate.

(2) For the purposes of this section "plea bargaining" means the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval and it includes—

(*a*) the defendant pleading guilty to a lesser offence; or

(*b*) the defendant pleading guilty to only one or more counts of a charge.

Evidence for the prosecution 14 of 2010

253.—(1) In cases where section 252 applies, the court shall proceed to hear the complainant or the public prosecutor and to take all such evidence as is produced in support of the prosecution.

Cap. 4:07

(2) Witnesses for the prosecution, shall be sworn or affirmed in accordance with the Oaths, Affirmations and Declarations Act before they are examined.

Procedure on close of case for prosecution 14 of 2010

254.—(1) If, upon taking all the evidence referred to in section 253 and any evidence which the court may decide to call at that stage of the trial under section 201, the court is of opinion that no case is made out against the accused sufficiently to require him to make a defence, the court shall deliver a judgment in the manner provided for in sections 139 and 140 acquitting the accused.

(2) If, when the evidence referred to in subsection (1) has been taken, the court is of opinion that a case is made out against the accused sufficiently to require him to make a defence in respect of the offence charged or some other offence which such court is competent to try and in its opinion it ought to try, it shall consider the charge recorded against the accused and decide whether it is sufficient and, if necessary, shall amend the same, subject to section 151.

(3) The charge, if amended, shall be read to the accused, and he shall be asked whether he admits the truth of the charge or has any defence to make.

(4) If the accused does not admit the truth of the charge as amended or if no amendment is made, the accused shall be informed by the court that he has the right to remain silent or to give evidence upon oath and if he elects to give evidence upon oath, he shall be asked whether he has any witness to examine or other evidence to adduce in his defence.

Case for the defence 14 of 2010

255.—(1) After the procedure under section 254, the court shall then hear the accused and his witnesses and his other evidence, if any.

Cap. 4:07

(2) The witnesses for the defence shall be sworn or affirmed in accordance with the Oaths, Affirmations and Declarations Act before they are examined.

(3) The accused shall, without further process, at any time while he is making his defence be allowed to recall and re-examine any witness present in the court or its precincts.

(4) If the accused, whether before or after giving evidence, applies to the court to issue any process for—

(*a*) compelling the attendance of a prosecution witness for cross-examination or re-examination or his witness for examination;

(*b*) production of any document or other thing, the court shall issue such process unless it considers that such application should be refused on the ground that it is for the purpose of the vexation or delay or defeating the interests of justice, in which case grounds shall be recorded by the court in writing.

(5) The court may, before summoning a witness pursuant to an application made under subsection (4), require that his reasonable expenses incurred in attending court for the purpose of trial shall be met by the accused and shall be deposited at the court.

Evidence for the defence 14 of 2010

256.—(1) When the court is satisfied that the defence should proceed then, after such address, if any, as the accused or his legal practitioner shall elect to make at the opening of the case, the accused shall, from the witness box, or such other place as the court may see fit to direct, and upon oath, or giving an affirmation, give his evidence and answer any question or produce anything lawfully put to or required of him by the court or in cross-examination.

(2) If the accused elects to give evidence and thus becomes a witness in his own defence but refuses or neglects to—

(*a*) be sworn;

(*b*) give evidence;

(*c*) answer any question lawfully put to him by the court or in cross-examination; or

(*d*) produce any document or thing which he is required to produce,

such refusal or neglect may be commented upon by the prosecution and may be taken into account by the court in reaching its decision.

(3) Where an accused elects to call witnesses other than himself on his behalf, he shall do so after he himself has been called as a witness.

Evidence in reply

257. If the accused adduces evidence in his defence introducing new matter which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecution to adduce evidence in reply to rebut the said matter.

Addresses 14 of 2010

258.—(1) The prosecution shall be entitled, but shall not be required, to address the court before calling evidence.

(2) At the close of the evidence for the prosecution, the accused or his legal practitioner may address the court for the purpose of

submitting that a case has not been made out against the accused sufficiently to require him to make a defence and the prosecution shall have the right to reply to such submission.

(3) When the accused is called upon to make a defence, he or his legal practitioner may—

(*a*) before producing his evidence, open his case stating the law on which he intends to rely; and

(*b*) if the accused gives evidence or witnesses are examined on his behalf, sum up his case.

(4) The prosecution shall have the right to reply on the whole case.

The decision
14 of 2010
Cap. 7.01

259.—(1) The court having heard both the prosecution and the accused and their witnesses and evidence shall, subject to section 37 of the Penal Code, deliver a judgment in the manner provided for in sections 139 and 140 either acquitting or convicting him.

(2) If the court acquits the accused, the court shall record the acquittal and shall forthwith release the accused unless if the accused is held on another charge.

(3) If the court convicts the accused the court shall record the conviction and pass sentence or make an order against him according to law either forthwith or on such day as the court may appoint.

(4) A judgment signed under section 140 or a copy thereof certified by the court or its clerk shall be sufficient evidence in any court for the purposes of section 185 of the conviction or acquittal.

Evidence for arriving at proper sentence
14 of 2010

260.—(1) The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed.

(2) Evidence that the court may receive under subsection (1) may, in addition to the evidence of the accused or the prosecution, include the evidence by or on behalf of the victim of the offence and any relevant reports to enable the court assess the gravity of the offence.

Prosecution time limits for trials in subordinate courts
14 of 2010

261.—(1) Subject to subsections (2) and (3), the trial of any person accused of an offence triable by a subordinate court, other than any other offence punishable by imprisonment of more than three (3) years, shall—

(*a*) be commenced within twelve months from the date the complaint arose; and

(*b*) be completed within twelve months from the date the trial commenced.

(2) Where the person who committed the offence is at large, the period prescribed by subsection (1) within which to commence the trial shall run from the date the person is arrested for the offence.

(3) Where the cause of the failure or delay to complete the trial prescribed by subsection (1) is not attributable to any conduct on the part of the prosecution, the court shall order such extension of time as it consider necessary to enable the completion of the trial.

(4) A person accused of an offence shall not be liable to be tried, or continue to be tried, for the offence of his trial is not commenced or has not been completed within the period prescribed by subsection (1), and in such case the accused shall stand discharged of the offence at the expiry of such period.

Rules relating to procedure in subordinate courts
14 of 2010

261A. The Chief Justice may make rules relating to trials before subordinate courts and such rules may provide for—

(*a*) adjournments;

(*b*) receiving evidence before sentencing; and

(*c*) disclosure of information of such other matters as may be considered necessary.

Part VIII
Provisions Relating to the Committal of Accused Persons for Trial before the High Court

Power to commit for trial

262. Any magistrate may commit any person for trial to the High Court.

Court to hold preliminary inquiry

263. Whenever a charge has been brought against a person of an offence not triable by a subordinate court or as to which the subordinate court is of the opinion that it is not suitable to be disposed of upon summary trial, a preliminary enquiry shall be held according to the provisions hereinafter contained by a subordinate court:

Provided that no such preliminary enquiry shall be held in any case where the certificate of the Director of Public Prosecutions is produced to a subordinate court in accordance with Part IX.

Charge to be read to accused, etc.

264. At the commencement of a preliminary enquiry the magistrate shall read the charge to the accused but the accused shall not be required to make any reply thereto.

Depositions
14 of 2010

265.—(1) When the accused charged with an offence described under section 263 comes before a subordinate court, on summons or warrant or otherwise, the court shall, in his presence, take down in writing, or cause to be so taken down, the statements on oath of

witnesses, who shall be sworn or affirmed in accordance with the Oaths, Affirmations and Declarations Act. Cap. 4:07

(2) Statements of witnesses so taken down in writing are termed depositions.

(3) The accused may put questions to each witness produced against him and the answer of the witness thereto shall form part of such witness's depositions.

(4) If the accused does not employ a legal practitioner, the court shall, at the close of the examination of each witness for the prosecution, ask the accused whether he wishes to put any question to that witness.

(5) The deposition of each witness shall be read over to such witness and shall be signed by him and the magistrate.

Variance between evidence and charge 14 of 2010

266.—(1) No objection to a charge, summons or warrant for the defect in substance or in form, or for variance between it and the evidence of the prosecution, shall be allowed.

(2) If the variance to a charge, summons or warrant under subsection (1) appears to the court to be such that the accused has been thereby deceived or misled, the court may, on the application of the accused, adjourn the inquiry and allow any witness to be recalled, and allow such questions to be put to him as by reason of the terms of the charge may have been omitted.

Remand 14 of 2010

267.—(1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceeding, the court considers it necessary or advisable to adjourn the inquiry, the court may from time to time by warrant remand the accused for a reasonable time, not exceeding fifteen days at any one time, to some prison or other place of security.

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

(3) The court may on a remand admit the accused to bail if the charge is one in respect of which bail may be granted by that court.

Provisions as to taking statements or evidence of accused 14 of 2010

268.—(1) If, after examination of the witnesses called on behalf of the prosecution, the court considers that on the evidence as it stands there are sufficient grounds for committing the accused for trial, the magistrate shall frame a charge under his hand declaring with what offence or offences the accused is charged and shall read the charge to the accused and explain the nature thereof to him in simple language, and address to him the following words or words to the like effect

"This is not your trial. You will be tried later in another court and before another judge and a jury, where all the witnesses you

have heard here will be produced and you will be allowed to question them. You will then be able to address the court and to give evidence on oath and to call any witnesses on your own behalf. Unless you wish to reserve your defence, which you are at liberty to do, or you do not wish to say anything pursuant to exercising your right to remain silent, you may now either make a statement not on oath, or give evidence on oath, and if you do, you may also call witnesses on your own behalf. If you give evidence on oath you will be liable to cross-examination. Anything you may say whether on oath or not will be taken down and may be used in evidence at your trial.".

(2) Before the accused makes any statement in answer to the charge, or gives evidence, as the case may be, the magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding any such promise or threat.

(3) Everything which the accused says, either by way of statement or evidence, shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.

(4) When the procedure under subsections (1), (2) and (3) is made conformable to what he declares is the truth, the record thereof shall be attested by the magistrate, who shall certify that such statement or evidence was taken in his presence and hearing and contains accurately the whole statement made, or evidence given, as the case may be, by the accused. The accused shall sign or attest by his mark such record. If he refuses, the court shall add a note of his refusal and the record may be used as if he had signed or attested it.

Evidence and address in defence 14 of 2010

269.—(1) Immediately after complying with the requirements of section 268 relating to the statement or evidence of the accused, and whether the accused has or has not made a statement or given evidence, the court shall ask him whether he desires to call witnesses on his own behalf.

(2) The court shall take the evidence of any witnesses called by the accused in like manner as in the case of witnesses for the prosecution, and every such witness, not being merely a witness to the character of the accused, shall, if the court be of opinion that his evidence is any way material to the case, be bound by bond to appear and give evidence at the trial of such accused.

(3) If the accused states that he has witnesses to call, but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused, the court may adjourn the enquiry and issue process, or take other steps, to compel the attendance of such witnesses and on their attendance shall take their depositions and bind them by bond in the same manner as witnesses under subsection (2).

(4) In any preliminary enquiry under this Part the accused or his legal practitioner shall be at liberty to address the court—

(*a*) after examination of the witnesses called on behalf of the prosecution;

(*b*) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused;

(*c*) if the accused elects—

(i) to give evidence or to make a statement and witnesses for the defence are to be called; or

(ii) not to give evidence or to make a statement, but to call witnesses,

immediately after the evidence of such witnesses.

(5) If the accused or his legal practitioner addresses the court in accordance with subsection (4) (*a*) or (*c*) the prosecution shall have the right to reply.

(6) Where the accused reserves his defence or elects to exercise the right to remain silent, or at the conclusion of any statement in answer to the charge or evidence in defence, as the case may be, the court shall ask him whether he intends to call witnesses at the trial other than any whose evidence has been taken under this section, and, if so, whether he desires to give their names and addresses so that they may be summoned. The court shall thereupon record the names and addresses of any such witnesses whom he may mention.

Discharge of accused
14 of 2010

270.—(1) If, at the close of the case for the prosecution or after hearing any evidence in defence, the court considers that the evidence against the accused is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts.

(2) Nothing in this subsection shall prevent the court either forthwith, or after such adjournment of the enquiry as may seem expedient in the interests of justice, proceeding to investigate any other charge upon which the accused may have been summoned or otherwise brought before it, or which in the cause of the charge so

dismissed as aforesaid, it may appear that the accused has committed.

Commitment for trial 14 of 2010

271. If, at the close of the case for prosecution or hearing any evidence in defence, the court considers the evidence sufficient to put the accused on trial, the court shall commit him for trial to the High Court and shall, until the trial, either admit him to bail or send him to prison for safe-keeping. The warrant of such first-mentioned court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial.

Conflict of evidence

272. Where there is a conflict of evidence, the court shall consider the evidence to be sufficient to put the accused on his trial if the evidence against him is such as, if uncontradicted, would raise a probable presumption of his guilty, notwithstanding that it is contradicted in material points by evidence in favour of the accused, unless the court, for reasons to be recorded in the proceedings, shall see fit to deviate from this rule.

Committal to next sessions

273. All persons committed for trial by a subordinate court shall be committed for trial at the next convenient sessions of the High Court.

Summary adjudication

274. If, at the close of or during the inquiry, it shall appear to the subordinate court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to Part VII, hear and finally determine the matter:

Provided that in every such case the accused shall be entitled to have recalled for cross-examination all or any of the witnesses for the prosecution.

Complainant and witnesses to be bound over

275. When the accused is committed for trial before the High Court, a subordinate court committing him shall bind by bond, with or without surety or sureties, as it may deem requisite, the complainant and every witness to appear at the trial to give evidence, and also to appear and give evidence, if required, at any further examination concerning the charge which may be held by direction of the Director of Public Prosecutions.

Refusal to be bound over 14 of 2010

276. If a person refuses to enter into a bond under section 275, the court may commit him to prison or into the custody of any officer of the court, there to remain until after the trial, unless in the meantime he enters into a bond; but if afterwards from want of sufficient evidence or other cause, the accused is discharged, the

court shall order that the person imprisoned for so refusing be also discharged.

Accused entitled to copy of depositions 14 of 2010

277.—(1) A person who has been committed for trial before the High Court shall be entitled at any time before the trial to have a copy of the depositions.

(2) The court shall at the time of committing him for trial inform the accused of the effect of this provision.

Binding over of witnesses conditionally

278.—(1) Where a person charged before a subordinate court with an offence triable before the High Court is committed for trial, and it appears to such subordinate court, after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before it is unnecessary by reason of anything contained in any statement by the accused or the evidence of the witness being merely of a formal nature, the subordinate court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the High Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally.

(2) Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Director of Public Prosecutions or the person committed for trial may be given notice at any time before the opening of the sessions of the High Court to the committing subordinate court and at any time thereafter to the Registrar of the High Court that he desires the witness to attend the trial, and then such court or Registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his bond.

(3) The subordinate court shall, on committing the accused for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he must take for the purpose of enforcing such attendance.

(4) Any documents or articles produced in evidence before the subordinate court by any witness whose attendance at the trial is stated to be unnecessary in accordance with this section and marked as exhibits shall, unless in any particular case the subordinate court otherwise orders, be retained by the subordinate court and forwarded with the depositions to the Registrar of the High Court.

Transmission of records to High Court and Director of Public Prosecutions 14 of 2010

279. In the event of committal for trial the written charge (if any), the depositions, the statement of the accused, the bond of the accused, the complainant and the witness and any documents or things which have been put in evidence, shall be transmitted without delay by the committing court to the Registrar of the High Court, and an authenticated copy of the written charge, the depositions and the statement of the accused shall also without delay be transmitted to the Director of Public Prosecutions.

Power of Director of Public Prosecutions to direct further investigation and to order further depositions 14 of 2010

280.—(1) If, after receipt of the authenticated copy of the written charge, the depositions and the statement of the accused provided for by section 279, and before the trial before the High Court, the Director of Public Prosecutions shall be of the opinion that further investigation is required before such trial, it shall be lawful for him to direct that the original depositions be remitted to the court which committed the accused for trial, and such court shall thereupon reopen the case and after taking the depositions of such witnesses as may have been called as a result of such further investigation, dispose of the case in accordance with sections 268 to 278 inclusive.

(2) If, after receipt of the authenticated copy of the depositions and statement of the accused and before the trial before the High Court, the Director of Public Prosecutions shall be of opinion that there is, in any case committed for trial, any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Director of Public Prosecutions may make any application to the subordinate court which committed the accused for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided.

Return of depositions with a view to summary trial 14 of 2010

281.—(1) If, before the trial before the High Court the Director of Public Prosecutions is of opinion, upon the record of the committal proceedings received by him, that the case is one which may suitably be tried by a subordinate court, he may cause the court record to be returned to the court which committed the accused, and thereupon the case shall be reopened, tried and determined in the same matter as if such person had not been committed for trial.

(2) In every case falling under subsection (1) the accused shall be entitled to have recalled for cross-examination or further cross-examination all or any of the witnesses for the prosecution.

Filing of a charge 14 of 2010

282.—(1) The Director of Public Prosecutions shall forthwith after receipt of the authenticated copy of the depositions referred to in section 279 draw up and sign a charge in accordance with this

Third Schedule

Code in the form set out in the Third Schedule, which shall be filed in the Registry of the High Court, unless a judge makes an order to the contrary pursuant to section 281.

(2) In any charge filed under subsection (1), the Director of Public Prosecutions may charge the accused with any offences which in his opinion are disclosed by the depositions either in addition to, or in substitution for, the offences upon which the accused has been committed for trial.

Notice of trial

283. The Registrar or his deputy shall endorse on or annex to every charge filed under section 282, and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial, which notice shall specify the particular sessions of the High Court at which the accused is to be tried on the said charge. Such notice shall be in the form set out in the Third Schedule or as near thereto as may be.

Third Schedule

Copy of charge and notice of trial to be served 14 of 2010

284.—(1) The Registrar shall deliver or cause to be delivered a charge and to the officer of the court, or police officer serving the charge, a copy of the charge with the notice of trial endorsed thereon or annexed thereto; and if there are more persons committed for trial than one, then as many copies as there are such persons and the Registrar shall deliver or cause to be delivered to the officer of the court or police officer as many copies of the charge with the notice of trial endorsed thereon or annexed thereto as there are such persons.

(2) The officer of the court or police officer shall, as soon as possible after receipt of the charge and notice of trial under subsection (1), and at least three (3) days before the date of trial, serve the copy of the charge and notice of trial on the person or persons committed for trial, and shall explain to him or them the nature and exigency thereof.

(3) Where any accused person who has been admitted to bail cannot readily be found—

(*a*) the officer of the court or police officer shall leave a copy of the charge and notice of trial with someone of the accused's household at his dwelling house, or with a surety for his bail; and

(*b*) if no such person mentioned in paragraph (*a*) can be found, the officer of the court or police officer shall affix a copy of the charge and the notice of trial to the outer or principal door of the dwelling house or dwelling houses of the accused or of any surety for his bail.

(4) Nothing in this section shall prevent any person committed for trial and in custody at the opening of or during any sessions of

the High Court, for being tried thereat if he agrees to be so tried and no special objection is made on the part of the prosecution.

Return of service
14 of 2010

285. The officer serving the copy or copies of the charge and notice and notices of trial under section 284 shall forthwith make to the Registrar a return of the mode of service thereof.

Postponement of trial before commencement
14 of 2010

286.—(1) The High Court may, upon application of the prosecution or the accused, if it considers that there is sufficient cause for the delay, postpone any trial of the accused to the subsequent sessions of the High Court.

(2) Where the High Court postpones a trial under subsection (1) it may—

(*a*) direct that the trial be held before itself sitting at some other convenient place;

(*b*) respite the bonds of the complaint and witnesses;

(*c*) release the accused unconditionally, or commit him to prison, or release him upon his entering into a bond with or without sureties, at its discretion, for the purposes of ensuring his appearance at the time and place directed by the court for trial.

(3) Any bond respited under subsection (2) (*b*) shall have the same force and effect as a fresh bond to prosecute and give evidence at any subsequent sessions would have had.

Directions as to service of notices
14 of 2010

287. The High Court may give such directions for the service of any notices which the Court may deem necessary in consequence of any order made under section 286.

Part IX

Summary Committal Procedure for Trial of Persons before the High Court

Interpretation

288. In this Part, unless the context otherwise requires—

"Director of Public Prosecutions" means the person holding that office or a State Advocate acting under the direction of that person;

"summary procedure case" means any case certified under section 289 as a proper case for trial before the High Court after summary committal procedure.

Certifying of case as a summary procedure case

289. Notwithstanding anything contained in Part VIII, in any case where a person is charged with an offence, the Director of Public Prosecutions may issue a certificate in writing that the case is a proper one for trial by the High Court as a summary procedure case and such case shall, upon production to a subordinate court of such certificate, be dealt with by the subordinate court in accordance with this Part.

No preliminary inquiry in summary procedure case
14 of 2010

290.—(1) A subordinate court shall not hold a preliminary inquiry as is referred to in Part VIII in respect of any case in which the Director of Public Prosecutions has issued a certificate under section 289 and the prosecution has produced such certificate to a subordinate court.

(2) The subordinate court before which the accused is brought shall, upon production of the certificate and whether or not a preliminary inquiry has already been commenced, forthwith commit the accused for trial before the High Court upon such charge or charges as may be specified in the certificate.

(3) Upon the committal of the accused for trial under this section, the court shall ask him whether he intends to call witnesses at the trial and, if so, whether he desires to give their names and addresses so that they may be summoned and the court shall thereupon record the names and addresses of any such witnesses whom he may mention.

Record to be forwarded
14 of 2010

291. Upon the committal of the accused for trial in a summary procedure case the record of the proceedings, including, in any case where a preliminary inquiry has been commenced, any depositions taken and any exhibits produced, shall be transmitted without delay by the committing court to the Registrar of the High Court and an authenticated copy of the record shall also be transmitted without delay to the Director of Public Prosecutions.

Filing of a charge
14 of 2010

292.—(1) The Director of Public Prosecutions shall, unless he had entered a discontinuance, forthwith after receipt of the authenticated copy of the record in a summary procedure case as mentioned under section 291, draw up and sign a charge in accordance with this Code, which shall be filed in the registry of the High Court, or enter a discontinuance.

(2) In the charge drawn up under subsection (1), the Director of Public Prosecutions may alter or redraft the charge or charges against the accused or frame an additional charge or charges against him.

(3) Sections 283 to 287 inclusive shall apply with suitable modification to a charge filed under this section as they do to a charge filed under section 282.

(4) For the purposes of entering a discontinuance, the "Director of Public Prosecutions" shall not include a "State Advocate".

Statement, etc., to be supplied to accused
14 of 2010

293. In every summary procedure case the prosecution shall, not less than twenty-one clear days before the date fixed for the trial of the case, furnish to the accused or his legal practitioner, if any, and to the Registrar of the High Court a list of the persons whom it is intended to call as witnesses for the prosecution at the trial and a statement of the substance of the evidence of each witness which it is intended to adduce at the trial.

PART X

TRIALS BEFORE THE HIGH COURT

Trial before the High Court
33 of 1970
20 of 1996
14 of 2010

294.—(1) Subject to subsection (2) all criminal trials before the High Court shall be by jury. A jury shall, except where otherwise specially provided, consist of twelve persons.

(2) The Minister may, by Order published in the *Gazette* direct that any case or class of cases shall be triable by the High Court without a jury, and in any such case or class of case instead of the procedure set out in this Part the High Court shall, with any necessary modifications, follow the procedure set out in Part VII for trials before subordinate courts.

Qualifications and liability to serve as a juror
20 of 1996

295. Every person between the ages of twenty-one and sixty shall, subject to the exceptions contained in section 296, be qualified and liable to serve as a juror at any trial before the High Court.

Exemptions from liability for jury service
14 of 2010

296. The following persons are exempt from liability to serve as jurors, that is to say—

(*a*) members of the Cabinet and Ministers;

(*b*) Judges, Magistrates and officers of the court including traditional or local courts;

(*c*) Members of Parliament;

(*d*) police officers and persons holding public offices in the Ministry of Justice;

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

(*f*) medical practitioners, registered dentists, apothecaries, registered pharmacists, veterinary surgeons and nurses in active practice;

(*g*) legal practitioners in active practice;

(*h*) officers and others in the Defence Force of Malawi on full pay;

(*i*) persons exempted from personal appearance in court under written law for the time being in force;

(*j*) persons upon whom a court in Malawi has imposed a sentence of death or of imprisonment for any term exceeding six (6) months such sentence not having been set aside, or reduced to imprisonment for a term of less than six months on appeal or review;

(*k*) persons with mental infirmity;

(*l*) other persons exempted by the Minister by notice published in the *Gazette* from liability to serve as jurors.

Preparation of lists of jurors
20 of 1996

297.—(1) The Registrar shall, in accordance with such directions as may, from time to time, be given by the Chief Justice, prepare and maintain a jury list for the whole Malawi containing names and addresses of all persons who are qualified and liable to serve as jurors and who have a place of residence in Malawi.

(2) The Registrar may, in accordance with such directions as may be given by the Chief Justice, revise the list of jurors under this section, and for such purpose may amend or delete any name or address appearing therein or add any new name or address thereto.

Summoning of jurors
14 of 2010

298. —(1) The Registrar, ordinarily seven days at least before the day fixed for the holding of any sessions of the High Court shall summon from among the persons whose names appear on the lists of jurors not less than twenty persons to provide jurors for the trial which are intended to take place at such sessions.

(2) Every summons to a juror shall be in writing and shall require his attendance as a juror at a time and place to be mentioned therein.

Excusing from attendance

299. The High Court may for reasonable cause excuse any person from attendance as a juror at any particular sessions, and may, if it shall think fit, at the conclusion of any trial, direct that jurors who have served at such trial shall not be summoned to serve again as jurors for a period not exceeding twelve months.

Penalty for non-attendance
14 of 2010

300. Every person summoned as a juror who, without lawful excuse, fails to attend as required by the summons, or who, having without having obtained the permission of the High Court, or who fails to attend after adjournment of the High Court after being ordered to attend, shall be guilty of an offence and liable to a fine of K20,000.

Want of qualification ground for challenge but not for avoiding trial

301. If any person summoned as a juror is not qualified or liable to serve as a juror, or is exempt from service, such want of qualification or exemption shall be a good cause of challenge and the person so summoned shall be discharged on such challenge or on his own application if the High Court is satisfied as to the fact of such want and so directs; but no such want of qualification or exemption, if not submitted to the High Court before such person is sworn, shall afterwards be accepted as a ground for impeaching any verdict given by a jury upon which such person has served.

When accused to be tried
14 of 2010

302.—(1) Every accused person shall be tried at the sessions then in progress, or, failing that, at the next convenient sessions.

(2) The High Court, in its discretion, on the application of the prosecution or the accused, by motion in open court may postpone the trial of any person charged at any sessions to the next or subsequent sessions.

(3) All charges upon which persons are tried before the High Court shall be brought in the name of the Republic of Malaŵi and shall be in accordance with the form in the Third Schedule and shall be signed by the Director of Public Prosecutions or by some other persons authorized by him in that behalf and in the latter case the words "by authority of the Director of Public Prosecutions" shall be prefixed to the signature.

Third Schedule

Prosecution time limits for trials in the High Court
14 of 2010

302A.—(1) Subject to subsections (2) and (3), the trial of any person accused of an offence triable by the High Court other than any other offence punishable by imprisonment of more than three (3) years, shall—

(*a*) be commenced within twelve months from the date the complaint arose; and

(*b*) be completed within twelve months from the date the trial commenced.

(2) Where the accused person is at large the period prescribed by subsection (1) within which to commence the trial shall run from the date the person is arrested for the offence.

(3) Where the cause of the failure or delay to complete the trial within the period prescribed by subsection (1) is not attributable to any conduct on the part of the prosecutions, the court shall order of time as it considers necessary to enable the completion of the trial.

(4) A person accused of an offence shall not be liable to be tried, or continue to be tried, for the offence if his trial is not commenced or has not been completed within the period prescribed by subsection (1), and in such case the accused shall stand discharged of the offence at the expiry of such period.

Commencement of trial in the High Court: plea and directions hearing
14 of 2010

303.—(1) When the High Court is ready to start trial, the accused shall appear or be brought before it in order to conduct a plea and directions hearing.

(2) The purpose of the plea and directions hearing shall be to ensure that all necessary steps have been taken in preparation for trial and to provide sufficient information for a trial date.

(3) At the plea and directions hearing, the charge shall be read out and explained to the accused, and he shall be asked whether he admits or denies the truth of the charge.

(4) Where the accused admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him and he may be convicted and sentenced thereon.

(5) Where the accused denies the truth of the charge the Court shall enter a plea of not guilty and the prosecution and the defence shall inform the court of—

(*a*) the issues in the case;

(*b*) issues, if any, as to the mental or medical condition of the accused or any witness;

(*c*) the number of witnesses whose evidence will be given, either orally or in writing;

(*d*) the defence witnesses under paragraph (*c*) whose statements have been served and whose evidence the prosecution will accept to be given in writing;

(*e*) any additional witnesses who may be called by the prosecution and the evidence that they are expected to give;

(*f*) exhibits and schedules which are to be admitted by mutual consent;

(*g*) the order and pagination, if any, of the papers, to be used by the prosecution at the trial and the order in which the prosecution witnesses are likely to be called;

(*h*) any application to submit pre-recorded interviews with a child witness as evidence-in-chief;

(*i*) any other significant matter which might affect the proper and convenient trial of the case, and whether any additional work needs to be done by the parties;

(*j*) availability of witnesses and estimated length of trial;

(*k*) availability of defence legal practitioner,

and any other matters for further directions.

(6) The High Court may give such directions as it considers necessary and make such further orders to secure the proper and efficient trial of the case.

(7) Unless the court otherwise directs, each party shall, at least seven days before the date of trial, confirm to the court that all such directions and orders have been fully complied with.

(8) The Chief Justice may make rules providing for the conduct of plea and direction hearing.

Selection of jurors
18 of 1996
20 of 1996
14 of 2010

304.—(1) If the accused does not admit the truth of the charge, the High Court shall enter a plea of not guilty and shall then, either forthwith or after such adjournment as it may order, proceed to choose the jurors as hereinafter directed for the trial of the case.

(2) The High Court shall by ballot choose twelve jurors from among those summoned to serve as jurors at the sessions, and the ballot shall be conducted by such method as the Chief Justice may, from time to time, direct.

(3) The accused, or his legal practitioner or the prosecution, may object to any juror so chosen on any ground and the objections shall be allowed if the High Court considers it well-founded.

(4) If the High Court is satisfied that an objection is well-founded, it shall chose another of those summoned in the place of the person to whom such objection was made. Such other person shall be chosen from those whose names are on the same list as the person to whom objection has been made.

Jurors to be sworn and foreman appointed
14 of 2010

305.—(1) At the commencement of every trial, every juror shall swear that he shall listen to the evidence, and give a true verdict, in accordance with the evidence, to the best of his skills and knowledge without fear, favour or affection.

(2) When the jurors have been sworn they shall appoint one of their number to be foreman.

(3) If the majority of the jury do not agree on the appointment of a foreman within such time as to the High Court seems reasonable, the High Court shall appoint a foreman.

Duties of foreman

306. The foreman shall preside over any deliberation of the jury and ask any information from the High Court that is required by the jury or any of the jurors and shall announce the verdict of the jury.

Court to inform the jury about the charge

307. The jury having been sworn, and a foreman having been elected or appointed, the jury shall be informed of the charge against the accused.

Provision in case of death, illness, or non-attendance of juror
14 of 2010

308.—(1) Where, in the course of a trial of any person for an offence, any member of the jury dies or is discharged by the court by reason of illness, default of attendance or for any other reason, the High Court may order the trial to be proceeded with in like manner as if the full number of jurors had continued to serve on

the jury, and any verdict returned by the remaining jurors in which not less than eight of such jurors concur shall be of equal validity as if it had been returned by a jury consisting of the full number of jurors.

(2) If more than four jurors are prevented from attending or absent themselves, the proceedings shall be stayed, the jury shall be discharged and a new trial shall be held before a fresh jury.

Keeping jury together
14 of 2010

309.—(1) After the accused has been put in charge of the jury, the jury shall be kept in some convenient place in court apart by themselves until the judge has summed up the evidence and has left the case with the jury.

(2) If the High Court adjourns during the hearing of the case, either during the sitting or at the end of a day's sitting, the High Court may either allow the jury to disperse, or may direct that they be removed in charge of an officer of the High Court or some other proper to some convenient place, there to take refreshments at their own expense and rest, until the High Court reassembles, and such officer shall be sworn that he will not permit any person except himself to speak to or to communicate with the members of the jury without the leave of the High Court.

(3) If, after the case has been left with the jury, they desire to withdraw for the purpose of considering their verdict, then the jury shall be kept by an officer of the High Court in some convenient place apart by themselves, but they shall be allowed reasonable refreshments at their own expense, with the power also to retire alone for personal purposes, until they are agreed upon their verdict or are discharged therefrom by the High Court; and the officer shall be sworn that he will suffer none to have access to them nor speak to them himself, except to ask whether they, or at least eight of them are agreed upon their verdict or to communicate between them and the High Court.

Postponement of trial and the effect of order postponing trial or order for separate trial
14 of 2010

310.—(1) When before or at any stage of a trial or a separate trial the High Court is of opinion that the postponement of the trial or a separate trial is expedient the High Court may make such order as to postponement of the trial or a separate trial as appears necessary.

(2) Where an order is made for the postponement of a trial or an order is made for a separate trial—

(*a*) the High Court may order the jury to be discharged from giving a verdict on any count or counts the trial of which is postponed or is ordered to take place separately;

(*b*) the procedure or the separate trial of a count shall be the same in all respects as if the court has been found in a separate

charge, and the procedure on the postponed trial shall be the same in all respects (provided that the jury, if any, have been discharged) as if the trial had not commenced; and

(*c*) the High Court may make such order as releasing the accused on bail, and as to the enlargement of bonds and otherwise as the High Court thinks fit.

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

The prosecution to open its case and examine witnesses
14 of 2010

311.—(1) When the jury has been sworn the prosecution may open his case by stating briefly the nature of the offence charged and the evidence by which he proposes to prove the guilt of the accused.

(2) The prosecution shall then examine their witnesses.

(3) A person who has not given evidence at a preliminary inquiry or whose statement of evidence has not been furnished under section 293 or section 175 shall not be called as a witness by the prosecution at any trial unless the accused or his legal practitioner and the Registrar, have been previously served with reasonable notice in writing of the intention to call such person, stating the person's name and address and the substance of the evidence intended to be given:

Provided that—

(*a*) no notice need be given under this subsection if the accused waives his right thereto;

(*b*) nothing in this subsection shall apply to any person summoned as a witness under section 180.

Recorded statement or evidence of accused may be put in as evidence
14 of 2010

312. The statement or evidence of the accused recorded by the committing magistrate under section 268 may be put in by the prosecution and read as evidence.

Close of case for the prosecution
14 of 2010

313.—(1) If, when the case for the prosecution is closed, and upon hearing any evidence which the High Court may decide to call at that stage of the trial under section 201, the High Court is of the opinion that no case is made out against the accused sufficiently to require him to make a defence, the High Court shall discharge the jury and record an acquittal.

(2) If, when the case for the prosecution is closed, and any evidence called under section 201 has been taken, the High Court is of the opinion that a case is made out against the accused sufficiently to require him to make a defence, the High Court shall inform the accused that he has the right to remain silent or to give

evidence on oath, and thereupon call on him to enter his defence and to give evidence.

(3) Any question arising under this section in any proceedings held before the High Court shall be determined by the judge and not by the jury.

The defence
14 of 2010

314.—(1) Where the accused elects to give evidence, he may then open his case stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution.

(2) The accused shall thereupon from the witness box, or such other place as the High Court may direct, and upon oath, give his evidence and answer any questions or produce anything lawfully put to, or required of him by the High Court or in cross-examination.

(3) If the accused elects to give evidence and thus becomes a witness in his own defence, but refuses or neglects to—

(*a*) be sworn;

(*b*) give evidence;

(*c*) answer any question lawfully put to him by the High Court or in cross-examination;

(*d*) produce any document or thing which he is lawfully required to produce,

such refusal or neglect may be commented upon by the prosecution and may be taken into account by the jury in reaching its verdict.

(4) Where an accused elects to call witnesses other than himself, his evidence shall be taken before that of any other witness for the defence.

(5) After the accused and his witness, if any, have been called after the examination, cross-examination and re-examination, if any, the accused or his legal practitioner may sum up his case.

Additional witnesses for the defence

315. The accused shall be allowed to examine any witness not previously bound over to give evidence at the trial, if such witness is in attendance, or if his attendance may be procured without unreasonable expense, delay or inconvenience, but he shall not be entitled as of right to have any witness summoned other than the witnesses whom he named to the subordinate court committing him for trial as witnesses whom he desired to be summoned.

Evidence in reply
14 of 2010

316. If the accused adduces evidence in his defence introducing new matter which the prosecution could not by the exercise of reasonable diligence have foreseen, the High Court may allow the prosecution to call evidence to rebut the said matter.

Summing up by the accused or his legal practitioner and reply by prosecution
3 of 1968
14 of 2010

317.—(1) If the accused has called no witness other than himself, the prosecution may, if he wishes, reply upon the whole case immediately before the accused or his legal practitioner is afforded the opportunity to sum up his case.

(2) If, and only if, the accused has called any witness other than himself, the prosecution may, after the accused or his legal practitioner has been afforded the opportunity to sum up his case, reply upon the whole case.

(3) The accused, or his legal practitioner, or the prosecution may Court on any point of law raised for the time in the case by either party in his summing up or in commenting upon evidence in reply.

View by the High Court
14 of 2010

318. During any trial and at any stage thereof prior to the close of the evidence, the High Court may adjourn for the purpose of inspecting any place, or anything which it is not possible or convenient to bring into court, the inspection of which may be material to the proper determination of the proceedings in question and, if the High Court sees fit, may permit evidence to be given at such place or in the vicinity of such thing.

Summing up to jury
14 of 2010

319. When, in a trial by a jury, the case on both sides is closed, the judge shall sum up the law and evidence in the case.

Duties of judge in trials by a jury
14 of 2010

320.—(1) In a trial by a jury it is the duty of a judge—

(*a*) to preside over and control the proceedings in accordance with the provisions of this Code and any other relevant written law;

(*b*) to decide all questions of law arising in the course of the trial including questions as to the admissibility of evidence;

(*c*) to decide all questions upon the meaning and construction of all documents given in evidence at trial;

(*d*) to decide on all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*e*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of

fact or upon any question of mixed law and fact relevant to the proceedings.

Duty of jury

321. It is the duty of the jury to consider the evidence and, subject to any direction of the judge, return a true verdict.

Jury to consider evidence
14 of 2010

321A.—(1) After the summing up by a judge the jury shall consider the evidence, and for that purpose may retire.

(2) Subject to section 309, except with the leave of the High Court, no person other than a juror shall speak or hold any communication with any member of the jury while the jury are considering their verdict.

Effect of plea of guilty prior to verdict by jury
14 of 2010

321B. If at any time after the accused is given in charge but before the verdict of the jury has been finally communicated to the judge the accused pleads guilty to any charge against him the judge may convict him of such charge as if the accused had pleaded guilty thereto before he had been given in charge of the jury and the jury shall be discharged from giving its verdict thereon.

Verdict of majority of not less than eight to be verdict of jury
20 of 1996
14 of 2010

321C. In the event of any of the jurors, after reasonable consultation, dissenting from the remainder, the verdict of a majority consisting of not fewer than eight jurors or, in any case to which section 308 applies, the verdict of the eight remaining jurors, shall be taken to be the verdict of the jury.

Court may direct further consideration

321D. If in any case it seems to him for any reason to be desirable, the judge may direct a jury to consider its verdict further.

How verdict to be given, etc.
20 of 1996
14 of 2010

321E.—(1) The verdict of the jury shall in all cases be given in open court by the foreman in the presence of all the jury and of the accused and shall thereupon be recorded by the judge, who shall before taking the verdict ask the jurors if they are all or, if not all, not fewer than eight are, agreed thereon and whether they find the accused person guilty or not guilty of each of the offences charged against him and the jury shall pronounce a general verdict of guilty or not guilty thereon.

(2) When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict and it shall stand as ultimately amended.

(3) Unless otherwise ordered by the High Court, the jury shall return a verdict on all charges on which the accused is tried and the judge may ask them such questions as are necessary to ascertain what their verdict is on each charge, and such questions and the answers to them shall be recorded.

Failure of jury to agree
14 of 2010

321F.—(1) When it sufficiently appears to the High Court that a jury cannot agree upon a verdict, and that there is not such a majority agreeing as may be taken as a verdict of the jury as hereinbefore provided, the High Court shall discharge such jury and shall as soon as is convenient cause a new jury to be empanelled and sworn and charged with any accused and the charge against such accused may be tried as if such first jury had not been empanelled.

(2) If it sufficiently appears to the High Court that the new jury cannot reach a verdict, and that there is not such a majority agreeing as may be taken as a verdict of the jury as herein before provided, the High Court shall acquit the accused.

Judgment to be in accordance with verdict of jury
14 of 2010

321G. When the verdict of the jury is unanimous, or there is such a majority agreeing as may be taken as a verdict as herein before provided, the judge shall give judgment in accordance with that verdict.

Calling upon the accused before passing sentence
14 of 2010

321H. If the accused is convicted or if the accused pleads guilty, it shall be the duty of the judge before passing sentence to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings.

No stay, etc., of judgment for irregularity of certain grounds
14 of 2010

321I. No judgment shall be stayed or reversed on the ground of any objection based on alleged irregularity or defect which, if stated after the charge was read over to the accused, or during the trial, might have been cured by amending the charge, nor for any informality in swearing the jurors, witnesses or any of them.

Evidence in arriving at a proper sentence
14 of 2010

321J.—(1) Where a verdict of guilty is recorded, the High Court may, after judgment but before passing sentence, receive such information or evidence as it thinks fit, in order to inform itself as proper to the proper sentence to be passed.

(2) The information or evidence that the court may receive under subsection (1) may, in addition to the evidence of the accused or the prosecution, include information or evidence by or on behalf of the victim of the offence and any relevant reports to enable the court assess the gravity of the offence.

Rules relating to procedure in the High Court
14 of 2010

321K. The Chief Justice may make rules relating to trials in the High Court and such rules may provide for—

(*a*) disclosure of information of such matters as may be considered necessary;

(*b*) adjournments;

(*c*) receiving of evidence before sentencing; and

(*d*) any other matter falling within the functions, duties and powers of the court.

PART XI

CONSIDERATION BY HIGH COURT AND SUBORDINATE COURTS OF OTHER OFFENCES ADMITTED BY THE ACCUSED

Consideration of other offences admitted by accused
14 of 2010

322.—(1) Where an accused has been convicted of any offence the court may, with the consent of the prosecution and on application by the accused that the court take into consideration in deciding his sentence, other untried offences of a like character which are on record and to which the accused admits having committed, take such other offences into consideration in deciding the sentence, if the court is satisfied that the accused freely and voluntarily admits having committed such other offences.

(2) If the court takes such other untried offences into consideration in deciding the sentence, the court shall record the date, place and nature of such other offences so admitted and the accused shall be deemed to have been convicted by the court of such other offences, unless the conviction of the offence with which he was charged is set aside on appeal or review.

PART XII

SENTENCES AND THEIR EXECUTION

Sentence of death

323. When any person is sentenced to death, the sentence shall direct that he shall suffer death in the manner authorized by law.

Accused to be informed of right to appeal
14 of 2010

324. When an accused is sentenced to death, the court shall inform him that he has a right to appeal the period within which, if he wishes to appeal, his appeal should be preferred.

Authority for detention
14 of 2010

325. A certificate, in the prescribed form, signed by the Registrar that the sentence of death has been passed and naming the person so sentenced shall be sufficient authority for the detention of such person.

Record and report to be sent to President
14 of 2010

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

(2) The President shall communicate to the said judge, or his successor in office, the terms of any decision which he may have reached in the matter, and such judge shall cause the tenor and substance thereof to be entered in records of the Court.

(3) Subject to section 89 of the Constitution, the President shall under his hand in accordance with section 89 (2) of the Constitution issue—

(*a*) a death warrant;

(*b*) an order for the sentence of death to be commuted; or

(*c*) a pardon,

to give effect to his decision.

(4) Where the sentence of death is to be carried out, the warrant shall state the place where and the time when the execution is to be held, and shall give directions as to the place of burial of the body of the person executed.

(5) Where the sentence of death is commuted for any other punishment, the order shall specify that other punishment.

(6) Where the person sentenced is pardoned, the pardon shall state whether the pardon is free, or to what conditions, if any, it is subject.

(7) The warrant, or order, or pardon of the President shall be sufficient authority in law to all persons to whom the same is directed, to carry out the direction therein given in accordance with the terms thereof.

Procedure where a woman convicted of capital offence alleges she is pregnant
14 of 2010

327.—(1) In every case where a woman is convicted of an offence punishable with death, the court shall, before sentence is passed on her, inquire as to whether she is pregnant.

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

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

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

Sentence of death not to be passed on pregnant woman

328. Where a woman convicted of an offence punishable with death is found to be pregnant in accordance with section 327, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.

Warrant in case of sentence of imprisonment
14 of 2010

329.—(1) A warrant signed by a judge or magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Malawi, shall be issued by the sentencing judge or magistrate and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant not being a sentence of death.

Cap. 7:01

(2) Subject to section 35 of the Penal Code every sentence shall be deemed to commence from, and to include, the whole of the day of the date on which it was pronounced except where the court pronouncing such sentence otherwise directs or where otherwise provided in the Code.

Recovery of fine, penalty, etc.

330. When a court orders money to be paid by an accused or by a prosecutor or complainant for fine, penalty, restitution, compensation, costs, expenses or otherwise, the money may be levied by seizure and sale of the movable or immovable property of the person ordered to pay as if it were money payable under a judgment and the Sheriffs Act, with any necessary modifications, shall apply to such seizure and sale.

Cap. 3:05

Suspension of execution of sentence of imprisonment in default of fine
14 of 2010

331. Where a convicted person has been sentenced to a fine only and to imprisonment in default of payment of a fine, and whether or not a warrant of seizure and sale has been issued under section 330, the court may suspend the execution of the sentence of imprisonment and may release the convicted person upon his executing a bond, with or without sureties, as the court thinks fit, conditioned for his appearance before such court on a day not being more than thirty days from the time of executing the bond.

(2) Where a convicted person fails to pay a fine specified under or before the day appointed by the court, the court may, subject to the other provisions of this Code, direct the sentence of imprisonment to be carried into execution forthwith.

Order for payment of money on non-recovery of which imprisonment may be imposed
14 of 2010

332.—(1) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be imposed, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in section 331, and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

(2) The court may in its discretion direct that any money to which this section applies may be paid by instalments at such times

and in such instalments as the court may deem fit; but in default of payment of such instalments the whole amount outstanding shall become and be immediately due and payable, and all the provisions of this Code and of the Penal Code applicable to a sentence of fine and imprisonment in default of payment of a fine shall apply. Cap. 7:01

(3) A warrant of commitment to prison in respect of the non-payment of any sum of money by a person to whom time has been allowed for payment under subsection (1), or who has been allowed to pay by instalments under subsection (2), shall not be issued unless the court shall first make inquiry as to his means in his presence.

(4) After making inquiry in accordance with subsection (3), the court may, if it thinks fit, instead of issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the instalments or the time at which the instalments were, by the previous order of the court, directed to be paid, as the case may be.

(5) For the purpose of enabling inquiry to be made under subsection (3), the court may issue a summons to the person ordered to pay the money to appear before it and, if he does not appear in obedience to the summons, may issue a warrant for his arrest or, without issuing a summons, issue in the first instance a warrant for his arrest.

Commitment for want of seizure and sale

333. If the officer having the execution of a warrant of seizure and sale reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to go to prison for a time specified in the warrant, unless the money and all expenses of the seizure and sale, commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

Payment in full after commitment 14 of 2010

334. Any person committed to prison for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorized, if any, into court or to the person in whose custody he is, and that person shall thereupon discharge him if he is in custody for no other matter.

Part payment after commitment 14 of 2010

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

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of subsection (1)

shall, on application being made to him by such prisoner, at once take him before a court, and such court shall certify the amount by which the term of imprisonment originally imposed is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances.

(3) If any sum paid in part satisfaction of the sum adjudged to be paid exceeds the proportion as calculated in accordance with subsection (1), the court shall certify the amount by which such sum exceeds such proportion and such amount shall be refunded to the person who paid the same.

Who may issue warrant
14 of 2010

336. Subject to section 326, every warrant for the execution of any sentence may be issued either by the judge or magistrate who passed the sentence or by his successor in office or by such other court exercising jurisdiction in the area concerned as may be specified by the Chief Justice by notice.

Orders where punishment not appropriate, absolute or conditional discharge, probation, etc.
5 of 1969
23 of 1970
14 of 2010

337.—(1) Where in any trial for an offence, the court thinks that the charge is proved but is of the opinion that, having regard to the youth, old age, character, antecedents, home surroundings, health or mental condition of the accused, or to the fact that the offence has not previously committed an offence, or to the nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may—

(*a*) without proceeding to conviction, make an order dismissing the charge, after such admonition or caution to the offender as to the court seems fit;

(*b*) convict the offender, and if probation is not appropriate, make an order either discharging him absolutely or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein;

(*c*) where the court considers it expedient to release the offender on probation—

(i) if the offender express his willingness to comply with the order, after or without convicting the offender, make a probation order; or

(ii) convict the offender and direct that he be released on his entering into such bond as is referred to in section 53, with or without sureties, and, in addition to any other condition, subject to the condition that, during such period (not exceeding three years) as the court may direct, he shall appear and receive sentence when called upon and in the meantime shall keep the peace and be of good behavior.

(2) An order made under subsection (1) (*a*) shall, for the purpose of reverting or restoring stolen property and of enabling the court to make any order under sections 147 and 148 have the like effect as a conviction.

(3) An order discharging an offender conditionally under subsection (1) (*b*) is in this Code referred to as an order for conditional discharge, and the period specified in any such order is referred to as the period of conditional discharge.

(4) A probation order made under subsection (1) (*c*) (*i*) shall be made in accordance with section 4 of the Probation of Offenders Act and shall have effect in accordance with that Act. In this Code a bond entered into under subsection (1) (*c*) (ii) is referred to as a probation bond and the period of a probation order or probation bond is referred to as the probation period. The provisions of sections 123 and 125 shall, with any necessary modifications, apply to probation bonds. Cap. 9:01

(5) Before making an order for conditional discharge or acting under subsection (1) (*c*) the court shall explain to the offender in ordinary language that—

(*a*) if he commits another offence during the period of conditional discharge or the probation period; and

(*b*) in the case of a probation order or probation bond, if he fails in any respect to comply therewith,

he will be liable to be sentenced or convicted and sentenced for the original offence.

(6) Where, under section 341, a person conditionally discharged is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

Security for keeping the peace

338.—(1) A person convicted of an offence may, instead of or in addition to, any punishment to which he is liable, be ordered to enter into a bond with or without sureties, in such amount as the court thinks fit, that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such bond, with sureties if so directed, is entered into.

(2) The imprisonment under subsection (1) for not entering into the bond shall not extend for a term longer than one (1) year, and shall, together with the fixed terms of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

(3) The provisions of sections 123 and 125 shall, with any necessary modifications, apply to bonds under this section.

Suspended sentence
5 of 1969
18 of 1973
23 of 1990
9 of 1999
14 of 2010

339.—(1) When a person is convicted of any offence the court may pass sentence of imprisonment but order the operation thereof to be suspended for a period not exceeding three years, on one or more conditions, relating to compensation to be made by the offender for damage or pecuniary loss, or to good conduct, or to any other matter whatsoever, as the court may specify in the order.

(2) When a person is convicted of any offence, not being an offence the sentence for which is fixed by law, the court may, if it is of the opinion that the person would be adequately punished by a fine or imprisonment for a term not exceeding twelve months, fine the person or sentence the person to a term of imprisonment not exceeding twelve months but the court may, as the case may be, order the suspension of the payment of the fine or operation of the sentence of imprisonment on condition that the person performs community service for such number of hours as the court may specify in the order.

Imprisonment of first offenders
5 of 1969
14 of 2010

340.—(1) Where a person is convicted by a court of an offence and no previous conviction is proved against him, he shall not be sentenced for that offence, otherwise than under section 339, to undergo imprisonment, not being imprisonment to be undergone in default of the payment of a reasonable fine, unless it appears to the court, on good grounds, which shall be set out by the court in the record, that there is no other appropriate means of dealing with him.

(2) The provisions of sections 15 and 16 shall apply to a sentence of imprisonment imposed by a subordinate court under subsection (1) to the extent specified in such sections.

Consequences of breach of conditions
5 of 1969
14 of 2010

341.—(1) If any condition of—

(*a*) an order for conditional discharge or a probation bond under section 337; or

(*b*) an order under section 339,

is not complied with the court may summon the offender to attend court or, if it is satisfied that his attendance is not likely otherwise to be secured, may order his arrest and, on his appearance before the court, may commit him to undergo the term of imprisonment already imposed or, as the case may be, may deal with him for the offence for which the order was made or the bond was entered into in any manner in which the court could have dealt with him if he had just been convicted by that court of that offence:

Provided that the court may in its discretion grant an order further suspending the operation of the sentence subject to such conditions as might have been imposed at the time of the passing of the sentence.

(2) The forfeiture of a probation bond under section 125 for failure to comply with any condition other than the condition requiring the offender to appear and receive sentence when called

upon shall not affect the continuation in operation of the bond for the purpose of this section in relation to the probation period.

(3) If, during any period of conditional discharge or suspension of a sentence or during a probation period, the person discharged, sentenced or released on probation, as the case may be, is convicted of an offence by any other court such other court may commit him in custody or release him on bail until he can be brought before the court by which the order for conditional discharge, suspended sentence or probation bond was made and, it if does so, shall send to the court a copy of the judgment of that other court.

Person twice convicted may be subjected to police supervision
14 of 2010

342.—(1) When any person, having been convicted of any offence punishable with imprisonment for a term of three years or more, is again convicted of an offence punishable with imprisonment for a term of three years or more, the court may, if it thinks fit, at the time of passing sentence or imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a term not exceeding five years from the date of his release from prison:

Provided that where any person has been released from imprisonment on licence, any period of police supervision to which such person is subject shall not start to run until after the expiry of the period of such release on licence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may be made by the High Court when exercising its powers to review.

Requirements from persons subject to police supervision

343.—(1) Every person subject to police supervision, and who is at large in Malawi shall—

(*a*) report himself personally once in each month to the officer in charge of the police station nearest to his place of residence at such time as may be directed by such police officer, or as may been prescribed by rules under this section; and

(*b*) notify the place of his residence and any change of such residence at such time and place and in such manner and to such person as may be prescribed by rules under this section.

(2) The Minister may make rules for carrying out this section.

Failure to comply with requirements under section 343
14 of 2010

344.—(1) Any person subject to police supervision who is at large in Malawi and who refuses or neglects to comply with any requirement prescribed by section 343 or by any rule made thereunder shall be guilty of an offence and shall be liable to imprisonment for six months.

(2) It shall be a defence to any charge under this section if it shall be made to appear to the court before which the charge shall be brought that the person so charged did his best to act in conformity with the law.

Errors and omission in orders and warrants

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

PART XIII

APPEALS AND REVIEW

Appeal to High Court
5 of 1969
14 of 2010

346.—(1) Save as hereinafter provided, any person aggrieved by any final judgment or order, or any sentence made or passed by any subordinate court may appeal to the High Court.

5 of 1969

(2) An appeal under subsection (1) may be upon a matter of fact as well as on a matter of law.

(3) Save as provided in subsection (4), no appeal shall lie against a finding of acquittal made by a subordinate court.

(4) The Director of Public Prosecutions may appeal to the High Court against any final judgment or order, including a finding of acquittal of any subordinate court, if, and only if, he is dissatisfied upon a point of law; and the provisions of this Part shall apply to an appeal under this subsection with such modifications as the circumstances may require.

Number of judges on appeal
14 of 2010

347.—(1) An appeal from a subordinate court shall be heard by one judge of the High Court except where, in any particular case, the Chief Justice directs that an appeal be heard by two or more judges of the High Court.

(2) The direction made by the Chief Justice under subsection (1) may be given before the hearing of the appeal or any time before judgment is delivered.

(3) If, on the hearing of the appeal, the court is equally divided in opinion, the appeal shall be dismissed.

348. [*Repealed by* 14 *of* 2010].

Limitation of appeals
14 of 2010

349.—(1) No appeal to the High Court shall be entertained from any finding, sentence or order unless the appellant shall have given notice in writing to the High Court of his intention to appeal

within ten days of the date of the finding, sentence or order appealed

Provided that—

(*a*) where an appellant in custody delivers to any person in whose custody he has a notice in writing of his intention to appeal, for transmission to the High Court, he shall be deemed to have given such notice to the High Court;

(*b*) if an appellant is unrepresented and states his intention to appeal in the court by which the finding, sentence or order was made and at the time thereof, such statement shall be deemed to be a notice in writing to the High Court of his intention to appeal.

(2) If the appellant, at the time when he gave notice of his intention to appeal, asked for a copy of the finding, sentence or order appealed against, the appellant shall enter a petition, in accordance with section 350, within thirty days of the date of his receipt of such copy, or his appeal shall not be entertained.

(3) If the appellant, at the time when he gave notice of his intention to appeal, did not ask for a copy of the finding, sentence or order appealed against, the appellant shall enter a petition in accordance with section 350, within thirty days of the date of the finding, sentence or order appealed against, or his appeal shall not be entertained.

(4) Notwithstanding the other provisions of this section, the High Court may, for good cause, admit an appeal although the periods of limitation prescribed in this section have elapsed.

Petition of appeal
14 of 2010

350.—(1) Every appeal to the High Court shall be made in the form of a petition in writing presented by the appellant or his legal practitioner, setting out the grounds of appeal.

(2) Where the appellant is represented by a legal practitioner, the petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred, and shall be accompanied by two copies.

(3) If the appellant is in custody, he may present his petition of appeal to the person in whose custody he is, who shall thereupon forward such petition to the Registrar of the High Court.

Summary dismissal of appeal
14 of 2010

351.—(1) On receiving the petition under section 350, the High Court shall peruse the same and may, if it considers that the appeal is vexatious or frivolous or otherwise raises no sufficient ground which would enable the appeal to succeed, dismiss the appeal summarily.

(2) Before dismissing an appeal under this section, the court shall call for the record of the case to satisfy itself that the petition indeed raises no sufficient grounds.

Notice of time and place of hearing
14 of 2010

352. Where an appeal has not been dismissed summarily under section 351, the High Court shall cause notice to be given to the parties of the time and place at which such appeal shall be heard, and shall furnish both parties with a copy of the proceedings and of the grounds of appeal.

Powers of the High Court
5 of 1969
14 of 2010

353.—(1) The High Court shall, after giving notice to the parties under this section send for the record of the case, if such record is not already in court.

(2) After perusing the record of the case and after hearing the appellant or his legal practitioner if he appears, the court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal by any aggrieved person from a conviction—

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

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

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

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

(*c*) in an appeal by the Director of Public Prosecutions from a finding of acquittal—

(i) if the finding of acquittal was arrived at without the defence having been called, remit the case to the subordinate court with a direction to proceed with the trial and to call on the defence;

(ii) in any other case, convert the finding of acquittal into one of conviction and either make an order under section 337, 338 or 339 or pass sentence or remit the case to the subordinate court for sentence, and in any of the cases mentioned in this subsection the court may make any amendment or any consequential or incidental order that may appear just and proper.

(3) Where the appellant does not appear at the hearing of an appeal, the court may—

(*a*) if the appellant is the Director of Public Prosecutions, dismiss the appeal; or

(*b*) if the appellant is the convicted person, adjourn the case.

(4) Nothing in this section shall authorize the High Court to impose a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than the trial court could have imposed.

(5) When any person is acquitted of the offence with which he was charged but is convicted of another offence, whether charged with such offence or not, the High Court may, if it reverses the finding of conviction, itself convert the finding of acquittal into one of conviction.

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

(7) Where the Director of Public Prosecutions indicates to the High Court that he does not wish to be heard in support of a conviction appealed against, he shall be required to give reasons to the court and the High Court may allow the appeal summarily and the appellant notwithstanding that the date fixed for hearing has not arrived.

(8) The High Court may itself hear evidence relating to the previous convictions of any appellant.

Orders conformable to judgment or order
14 of 2010

354.—(1) When a case is decided on appeal by the High Court, it—

(*a*) itself make such orders as are conformable to its judgment or order and copies of such judgment and order, and of the orders conformable thereto, shall in due course be transmitted to the court by which the conviction, sentence or order appealed from was recorded or made; or

(*b*) certify its judgment or order to such court which shall thereupon make such orders as are conformable to that judgment or order.

(2) If any amendment of the record is necessary by reason of any judgment or order made under subsection (1), it shall be made by the subordinate court.

Stay of execution and admission to bail pending appeal

355.—(1) Subject to this Code, neither a notice of intention to appeal given under section 349 nor a petition of appeal under section 350 shall operate as a stay of execution of any sentence or order, but the subordinate court which passed the sentence or made the order, or the High Court, may order that any such sentence or order be stayed pending the hearing of an appeal and if the appellant is in custody that he may be released on bail, with or without sureties, pending such hearing.

(2) If the appeal is ultimately dismissed and an original sentence of imprisonment confirmed, or some other sentence of imprison-

ment substituted therefore, the time during which the appellant has been released on bail shall be excluded in computing the term of imprisonment to which he is finally sentenced.

Additional evidence
14 of 2010

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

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

(3) Unless the High Court otherwise directs, the accused or his legal practitioner shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

Abatement of appeals
14 of 2010

357. Every appeal from a subordinate court, except an appeal from a sentence of fine, shall finally abate on the death of the appellant.

358. [*Repealed by* 24 *of* 1968].

Admission to bail pending appeal

359. The High Court may in its discretion in any case in which an appeal to the Supreme Court of Appeal is filed grant bail pending the hearing of an appeal.

Power of High Court to call for records for review

360. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of reviewing the proceedings and satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Power of Resident Magistrates to call for records of lower courts and to report to the High Court
14 of 2010

361.—(1) Any Resident Magistrate may call for and examine the record of any criminal proceedings before a subordinate court of the first, second, third or fourth grade, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior subordinate court.

(2) If any Resident Magistrate acting under subsection (1) considers that any finding, sentence or order of the subordinate court of the first, second, third or fourth grade is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the High Court.

Powers of the High Court on review
19 of 1997
14 of 2010

362.—(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been forwarded under section 361, or which otherwise comes to its knowledge, the High Court, by way of review, may exercise the same powers as are conferred upon it on appeal by sections 353 (2) (*a*), (*b*) and (*c*), and 356.

(2) No order made in exercise of the powers conferred in this section shall be made to the prejudice of an accused unless he has first had an opportunity of being heard either personally or by a legal practitioner in his own defence.

(3) The proceedings by way of review may take place notwithstanding—

(*a*) that an appeal lies from the finding made, or sentence imposed, in the proceedings under review; and

(*b*) that the time limited for the bringing of such appeal has not elapsed—

(i) the time limited for the bringing of an appeal against the finding made, or the sentence imposed, in such proceedings has elapsed; or

(ii) the accused has declared in writing that he does not intend to appeal against either such finding or such sentence.

(4) The exercise of the High Court of its powers of review under this section in relation to any proceedings shall not operate as a bar to any appeal which may lie against the finding made, or the sentence imposed, in such proceedings:

Provided, however, that such review shall operate as a bar to such appeal if the proceedings by way of review took place in open court and the accused had an opportunity of being heard either personally or by a legal practitioner.

Discretion of Court as to hearing parties
14 of 2010

363.—(1) The High Court may, if it thinks fit, when exercising powers of review, hear any party either personally or by a legal practitioner.

(2) No party has any right to be heard either personally or by a legal practitioner before the High Court when exercising its powers of review but nothing in this subsection shall be deemed to affect section 362 (2).

Part XIV

Miscellaneous

Rules relating to duties of court officials, interpreters, etc.

364.—(1) The Chief Justice may make rules of Court providing for the performance of their duties in connexion with proceedings under this Code by court officials, interpreters and other persons.

(2) Without derogating from the powers conferred by subsection (1), such rules may provide among other things for the occasions upon which interpreters shall be required to take oaths, or make affirmations, for the purposes of proceedings in the High Court or subordinate courts.

Rules relating to community service
9 of 1999
14 of 2010

364A.—(1) The Chief Justice may make rules relating to the imposition and performance of community service pursuant to an order made under section 339 (2).

(2) Without derogating from the powers conferred by subsection (1), such rules may provide for—

(*a*) the procedure before, during and after imposing an order to perform community service;

(*b*) the regulation of hours to be performed by the person ordered to perform community service;

(*c*) the appointment of a national committee on community service;

(*d*) the appointment of national coordinators and regional coordinators of community service; and

(*e*) such other matters as are necessary for the proper administration and execution of an order to perform community service.

Shorthand notes, and electronic records of proceedings
14 of 2010

365. Shorthand notes may be taken, and electronic records be made, of the proceedings at the trial of any person before the High Court and a transcript of such notes or records shall be made if the court so directs, and such transcript may for all purposes be deemed to be the official record of the proceedings at such trial.

Copies of proceedings
14 of 2010

366. If any person affected by any judgment or order passed in any proceedings under this Code desires to have a copy of the judgment or order or any deposition or other part of the record, he shall on applying for such copy be furnished therewith upon payment of such fee as may be prescribed by the Chief Justice from time to time.

Forms

367. The Chief Justice may by notice published in the *Gazette* prescribe the forms which are to be used for the purposes of this Code.

Allowances to jurors, complainants and witnesses
14 of 2010

368.—(1) The Minister may, in consultation with the Chief Justice, make rules providing for the payment of allowances to jurors, complainants and witnesses for attending before a court for the purposes of any inquiry, trial or other proceeding under this Code.

(2) Subject to any rules made under subsection (1) a court may order payment on the part of the Government of the reasonable expenses of any juror, complainant or witness for so attending.

Part XV

Savings and Consequential Amendments

Savings
Cap. 14:03
Cap. 14:02
Cap. 69:01

369. This Code shall be in addition to and not in derogation of the Restriction and Security Orders Act, the Preservation of Public Security Act and the Road Traffic Act.

370. [*Repealed by* 14 *of* 2010].

Application of Code to criminal proceedings in any traditional or local court

371.—(1) The Chief Justice may by notice published in the *Gazette* from time to time specify that any provisions of this Code shall apply to criminal proceedings in any traditional or local court and such provisions shall so apply.

(2) Except as expressly provided for in this Code, by any notice under subsection (1), or by any other written law, no provision of this Code shall apply to any criminal proceeding in any traditional or local court.

FIRST SCHEDULE

14 of 2010

ARRESTABLE OFFENCES

Part I

Offences Under the Penal Code

Explanatory Note —The entries in the Second Column of this Schedule headed "Offence" are not intended as definitions of the offences described in the several corresponding sections of the Penal Code or even as abstract of these sections, but merely as references to the subject of the section, the number of which is given in the First Column.

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
21.	Aiding, abetting counselling or procuring the commission of an offence	May arrest without warrant if arrest for the offence aided, abetted, counselled or procured offence may be made without warrant but not otherwise

Division 1—Offences Against Public Order

CHAPTER VII—TREASON AND OTHER OFFENCES AGAINST THE REPUBLIC

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
38.	Treason	May arrest without warrant
39.	Misprision of treason	ditto
40.	Promoting war etc, against groups	May arrest without warrant
41.	Inciting to mutiny	ditto
42.	Aiding in acts of mutiny	Shall not arrest without warrant
43.	Inducing desertion	ditto
44. (1)	Aiding prisoner of war to escape	May arrest without warrant
(2)	Permitting prisoner of war to escape	Shall not arrest without warrant
46. (1)	Importing, etc, prohibited publications	Shall not arrest without warrant
(2)	Possessing prohibited publications	ditto
48. (1)	Failing to deliver prohibited publications to police	May arrest without warrant
51. (1)	Seditious offences	Shall not arrest without warrant
(2)	Possessing seditious publications	ditto
(10)	Using or attempting to use a confiscated printing machine	ditto
(11)	Printing or publishing a newspaper in contravention of an order made under section 51 (2)	ditto
54.	Administering or taking oath to commit capital offence	May arrest without warrant
55.	Administering or taking other oaths	ditto
56. (1)	Compelling another person to make an oath	ditto
(2)	Being present at and consenting to the administration of an oath	ditto
59. (1)	Unlawful drilling	May arrest without warrant
(2)	Being unlawfully drilled	ditto
60.	Publishing false reports	Shall not arrest without warrant

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
60A.	Communication of false statements, etc., which may be published generally outside Malawi	Shall not arrest without warrant
	CHAPTER VIII—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILITY	
61.	Defamation of foreign dignitaries	Shall not arrest without warrant
62.	Foreign enlistment	ditto
63	Piracy	May arrest without warrant
65.	Managing unlawful society	ditto
66.	Being member of unlawful society	ditto
	CHAPTER IX—UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY	
71.	Unlawful assembly	May arrest without warrant
71.	Riot	ditto
76.	Rioting after proclamation	ditto
77.	Obstructing proclamation	ditto
78.	Rioters destroying buildings	ditto
79.	Rioters damaging buildings	ditto
80.	Riotously preventing sailing of ship	ditto
81.	Prohibition of carrying offensive weapons without lawful authority or reasonable excuse	May arrest without warrant subject to the provisions of subsection (3) of the section
82.	Forcible entry	May arrest without warrant
83.	Forcible detainer	ditto
84.	Committing affray . . .	ditto
85.	Challenging to fight a duel	Shall not arrest without warrant
86.	Threatening violence . . .	May arrest without warrant
87.	Proposing violence at assemblies	ditto
88.	Intimidation	ditto
89.	Assembling for purpose of smuggling	ditto

Division II—Offences against the Administration of Lawful Authority

CHAPTER X—CORRUPTION AND THE ABUSE OF OFFICE

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
90.	Official corruption	Shall not arrest without warrant
91.	Extortion by public officers	ditto
92	Receiving property to show favour	ditto
93.	Officer discharging duties in respect of property in which he has a special interest	ditto
94.	False claim by officials	ditto
95.	Abuse of office	ditto
96.	False certificates by public officers	May arrest without warrant
97.	Unauthorized administration of oaths	ditto
98.	False assumption of authority	ditto
99.	Personating public officers	ditto
100.	Threat of injury to persons employed in public service	ditto

CHAPTER XI—OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

103.	False statements by interpreters	Shall not arrest without warrant
104.	Perjury or subornation of perjury	ditto
105.	Fabricating evidence	ditto
106.	False swearing	ditto
107.	Deceiving witnesses	ditto
108.	Destroying evidence	ditto
109.	Conspiracy to defeat justice and interference with witnesses	ditto
110.	Compounding penal actions	ditto
111.	Compounding felonies	ditto
112.	Advertising for stolen property	ditto
113.	Offences relating to judicial proceedings	ditto

CHAPTER XII—RESCUES, ESCAPES AND OBSTRUCTING OFFICERS OF COURTS OF LAW

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
114.	Rescue	
	(*a*) if person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for without warrant or not life . .	May arrest without warrant
	(*b*) if person rescued is imprisoned on a charge or under sentence for any other offence	ditto
115.	Escape	ditto
116.	Permitting prisoners to escape	ditto
117.	Aiding prisoners to escape	ditto
118.	Removal, etc., of property under lawful seizure	ditto
119.	Obstructing court officers . .	ditto

CHAPTER XIII—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

120.	Frauds and breaches of trust by public officers	Shall not arrest without warrant
121.	Neglect of official duty . .	ditto
122.	False information to person employed in public service	May arrest without warrant
123.	Disobedience of statutory duty	Shall not arrest without warrant
124.	Soliciting persons to break the law	May arrest without warrant
125.	Soliciting public officers, etc., to fail to carry out their duties	ditto

Division III—Offences to the Public in General

CHAPTER XIV—OFFENCES RELATING TO RELIGION

127.	Insult to region of any class	May arrest without warrant
128.	Disturbing religious assemblies	ditto
129.	Trespassing on burial places	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
130.	Uttering words with intent to wound religious without warrant or not feelings . .	Shall not arrest without warrant
131.	Hindering burial of dead body, etc.	May arrest without warrant
	CHAPTER XV—OFFENCES AGAINST MORALITY	
132.	Rape	May arrest without warrant
134.	Attempted rape	ditto
135.	Abduction	ditto
136.	Abduction of girl under sixteen years	ditto
137. (1)	Indecent assault on females	ditto
(3)	Insulting the modesty of a woman.	ditto
137A.	Indecent practices between females	ditto
138. (1)	Defilement of girl under sixteen years	ditto
(2)	Attempted defilement of girl under sixteen years	ditto
139.	Defilement of an idiot or imbecile	ditto
140.	Procuration	ditto
141.	Procuring defilement by threats or fraud or administering drugs	ditto
142.	Householder permitting defilement of girl under sixteen years on his premises	ditto
143.	Detention with intent or in brothel	ditto
145.	Male person living on earnings of prostitution or persistently soliciting	Shall not arrest without warrant
146.	Woman aiding, etc., for gain prostitution of another woman	May arrest without warrant
147.	Keeping a brothel	ditto
147A.	Promoting prostitution, etc. .	ditto
148.	Conspiracy to defile	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
149.	Attempt to procure without warrant or not abortion . .	May arrest without warrant
150.	Woman attempting to procure her own abortion	ditto
151.	Supplying drugs or instruments to procure abortion	ditto
153.	Unnatural offences	ditto
154.	Attempt to commit unnatural offences	ditto
155.	Indecent assault on boys under fourteen years	ditto
155A.	Indecent assault against idiots and imbeciles	ditto
156.	Indecent practices between males	ditto
157. (1)	Incest by males Proviso: if female person is under the age of sixteen years	ditto
(3)	Attempt to commit incest . .	ditto
158.	Incest by females	ditto
	Chapter XVI—Offences Relating to Marriage and Domestic Obligations	
161.	Fraudulent pretence of marriage	Shall not arrest without warrant
162.	Bigamy	ditto
163.	Dishonestly or fraudulently going through ceremony of marriage	ditto
164.	Desertion of children	ditto
165.	Neglecting to provide food, etc., for children	ditto
166.	Master not providing for servants or apprentices . .	ditto
167.	Child stealing	May arrest without warrant
	Chapter XVII—Nuisance Offences Against Health and Convenience	
168.	Committing common nuisance	Shall not arrest without warrant

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
169.	(3) Keeping common gaming house	Shall not arrest without warrant
	(4) Being found in common gaming house	ditto
170.	Keeping or permitting the keeping of a common betting house	ditto
171.	(1) Carrying on a lottery	ditto
	(2) Printing or publishing advertisement relating to a lottery	ditto
176.	Organizing, managing or conducting pools	ditto
177.	Chain letters	ditto
179.	Trafficking in obscene publications	May arrest without warrant
180.	Being an idle or disorderly person	ditto
181.	Conduct likely to lead to breach of peace	Shall not arrest without warrant
182.	Use of insulting language . .	ditto
183.	Nuisances by drunken persons.	ditto
	(1) Found drunk and incapable	May arrest without warrant
	(2) Riotousor disorderly behaviour or in possession of a firearm while drunk	ditto
184.	Being a rogue or vagabond	ditto
191.	(1) Wearing uniform without authority	ditto
	(2) Bringing contempt on uniform	ditto
	(3) Importing or selling uniform without authority . . .	ditto
192.	Doing any act likely to spread infection of dangerous disease . . .	ditto
193.	Adulteration of food or drink intended for sale . . .	ditto
193A.	Importation of adulterated food or drinks	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
194.	Selling, or offering or exposing for sale, noxious without warrant or not food or drink	May arrest without warrant
195.	Adulteration of drugs intended for sale	ditto
195A.	Importing of adulterated drugs	ditto
196.	Selling adulterated drugs . .	ditto
197.	Fouling water of public spring or reservoir	ditto
198.	Making the atmosphere noxious to health	Shall not arrest without warrant
199.	Carrying on offensive trade	ditto
	CHAPTER XVIII—DEFAMATION	
200.	Libel	Shall not arrest without warrant
	Division IV—Offences Against the Person	
	CHAPTER XIX—MURDER AND MANSLAUGHTER	
208.	Manslaughter	May arrest without warrant
209.	Murder	ditto
	CHAPTER XIX A—GENOCIDE	
217.	Genocide	May arrest without warrant
	CHAPTER XXI—OFFENCES CONNECTED WITH MURDER AND SUICIDE	
223.	Attempted murder	May arrest without warrant
224.	Attempted murder by convict	ditto
225.	Being accessory after the fact to murder	ditto
226.	Sending written threat to murder	ditto
227.	Conspiracy to murder . .	ditto
228.	Aiding suicide	ditto
229.	Attempted suicide	ditto
230.	Infanticide	ditto
231.	Killing unborn child	ditto
232.	Concealing the birth of a child	ditto
232A.	Abandonment of child at birth	ditto

CHAPTER XXII—OFFENCES ENDANGERING LIFE OR HEALTH

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
233.	Disabling in order to commit felony or without warrant or not misdemeanour	May arrest without warrant
234.	Stupefying in order to commit felony or misdemenour . .	ditto
235.	Acts intended to cause grievous harm or to prevent arrest	ditto
236.	Preventing escape from wreck	ditto
237.	Intentionally endangering safety of persons travelling by railway	ditto
238.	Doing grievous harm	ditto
239.	Attempting to injure by explosive substances	ditto
240.	Administering poison with intent to harm	ditto
241.	Wounding and similar acts. .	ditto
242.	Failing to provide necessaries of life	Shall not arrest without warrant

CHAPTER XXII—OFFENCES ENDANGERING THE ENVIRONMENT

245A.	Offences endangering the environment	May arrest without warrant

CHAPTER XXIII—CRIMINAL RECKLESSNESS AND NEGLIGENCE

246.	Rash and negligent acts . .	May arrest without warrant
247.	Other negligent acts causing harm	ditto
248.	Dealing in poisonous substances in negligent manner	ditto
249.	Endangering safety of persons travelling by railway	ditto
250.	Exhibiting false light, mark or buoy	ditto
251.	Conveying person by water for hire in unsafe or over loaded vessel	ditto
252.	Causing danger of obstruction in public way or line of navigation	ditto

CHAPTER XXIV—ASSAULTS

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
253.	Common assault	Shall not arrest without warrant
254.	Assault occasioning actual bodily harm	May arrest without warrant
255.	Assaulting person protecting wreck	ditto
256.	Various assaults	ditto

CHAPTER XXV—OFFENCES AGAINST LIBERTY

260.	Kidnapping	May arrest without warrant
261.	Kidnapping or abducting in murder a person	ditto
262.	Kidnapping or abducting with intent to confine a person . .	ditto
263.	Kidnapping or abducting in order to subject person to grievour's hurt, slavery, etc. . . .	ditto
264.	Wrongfully concealing or keeping in confinement a kidnapped or abducted person	ditto
265.	Kidnapping or abducting child under fourteen years with intent to steal from its person . .	ditto
266.	Punishment for wrongful confinement	ditto
267.	Buying or disposing of any person as a slave	ditto
268.	Habitually dealing in slaves	ditto
269.	Unlawful compulsory labour	ditto

DIVISION V—Offences Relating to Property

CHAPTER XXVI—THEFT

278.	Theft	May arrest without warrant
279.	Stealing wills	ditto
280.	Stealing postal matter, etc	ditto
281.	Stealing cattle, etc. . . .	ditto
282.	Stealing from the person in a dwelling-house, in transit, etc	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
283.	Stealing by persons in the without warrant or not public service	May arrest without warrant
284.	Negligence by public officer in preserving money, etc. . .	ditto
286.	Stealing by clerks and servants	ditto
287.	Stealing by director or officers of companies	ditto
288.	Stealing by agents, etc. . .	ditto
289.	Stealing by tenants or lodgers	ditto
290.	Stealing after previous conviction	ditto
	CHAPTER XVII—OFFENCES ALLIED TO STEALING	
291.	Concealing registers	May arrest without warrant
292.	Concealing wills	ditto
293.	Concealing deeds.	ditto
294.	Killing animals with intent to steal	ditto
295.	Severing with intent to steal	ditto
296.	Fraudulent disposal of mortgaged goods	ditto
297.	Fraudulently dealing with ore or minerals in mines	ditto
298.	Fraudulent appropriation of mechanical or electrical power	ditto
298A.	Fraudulent appropriation of water	ditto
298B.	Fraudulent appropriation of telecommunication services	ditto
299.	Unlawfully using vehicle, animals, etc..	ditto
	CHAPTER XXVIII—ROBBERY AND EXTORTION	
300.	Robbery	May arrest without warrant
	Robbery with violence. . .	ditto
302.	Attempted robbery	ditto
	Attempted robbery with violence	ditto
303.	Assault with intent to steal	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
304.	Demanding property by without warrant or not written threats	May arrest without warrant
305.	Threatening with intent to extort —	
	In certain specified cases . .	ditto
	In other cases	ditto
306.	Procuring execution of deeds, etc., by threats	ditto
307.	Demanding property with menaces with intent to steal	ditto
	CHAPTER XXIX—BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES	
309.	Housebreaking	May arrest without warrant
310.	Entering dwelling-house with intent to commit felony . .	ditto
311.	Breaking into building and committing felony	ditto
312.	Breaking into building with intent to commit felony	ditto
313.	Being found armed, etc., with intent to commit felony . .	ditto
	If offender has been previously convicted of a felony relating to property	ditto
314.	Criminal trespass	ditto
	If the property upon which offence committed is building used as human dwelling or as a place of worship or as a place for custody of property . .	ditto
316.	Unauthorized user of land and premises	Shall not arrest without warrant
317.	(4) Damaging or unlawfully removing detained aircraft, vessel or vehicle	ditto
	CHAPTER XXXI—FALSE PRETENCES	
319.	Obtaining property by false pretence	May arrest without warrant
319A.	Fraud other than false pretence	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
319B.	Evasion of liability by false without warrant or not pretence	May arrest without warrant
319C.	Making off without payment	ditto
319D.	Passing valueless cheques . .	ditto
320.	Obtaining execution of a security by false pretence	ditto
321.	Cheating	ditto
322.	Obtaining credit, etc. by false pretence	ditto
323.	Conspiracy to defraud	ditto
324.	Frauds on sale or mortgage of property	ditto
325.	Pretending to tell fortunes . .	ditto
326.	Obtaining registration, etc., by false pretence	ditto
327.	False declaration for passport	ditto

Chapter XXXII—Receiving Property Stolen or Unlawfully Obtained and Like Offences

328.	(1) Receiving or retaining stolen property	May arrest without warrant
	(2) Receiving property unlawfully obtained, converted or disposed of	ditto
329.	Failing to account for possession of property suspected to be stolen or unlawfully obtained. . .	ditto
331.	Receiving goods stolen outside Malawi.	ditto
331A.	Money laundering	ditto

Chapter XXXIII—Frauds by Trustees and Persons in a Position of Trust, and False Accounting

332.	Fraudulently disposing of trust property	May arrest without warrant
333.	Directors and officers of corporations fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts . .	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
334.	False statements by without warrant or not officials of corporations	May arrest without warrant
335.	Fraudulent false accounting by clerks or servants	ditto
336.	False accounting by public officer	ditto
336A.	Fraudulent trading by a company	ditto

Division VI—Malicious Injuries to Property

CHAPTER XXXIV—OFFENCES CAUSING INJURY TO PROPERTY

337.		Arson	May arrest without warrant
338.		Attempt to commit arson	ditto
339.		Setting fire to crops or growing plants	ditto
340.		Attempting to set fire to crops or growing plants	ditto
341.		Casting away a ship	ditto
342.		Attempt to cast away a ship	ditto
343.		Killing or wounding animals in the case of certain animals . .	ditto
		In any other case	ditto
344.	(1)	Destroying or damaging property in general	ditto
	(2)	Destroying or damaging an inhabited house or a vessel with explosives	ditto
	(3)	Destroying or damaging river bank or wall, or navigation works, or bridges	ditto
	(4)	Destroying or damaging wills or registers	ditto
	(5)	Destroying or damaging wreck	ditto
	(6)	Destroying or damaging railways	ditto
	(7)	Destroying or damaging property of special value	ditto
	(8)	Destroying or damaging deeds or records	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
345.	Attempt to destroy or damage property by use of without warrant or not explosives . .	May arrest without warrant
346.	Communicating infectious disease to animals	ditto
347.	Removing boundary marks with intent to defraud	ditto
348.	Removing or injuring survey or boundary marks	ditto
349.	Injuring or obstructing railway works, etc.	ditto
350.	Threatening to burn any building, etc., or to kill or wound any cattle	ditto

Division VII—Forgery, Coining, Counterfeiting and Similar Offences

CHAPTER XXXVI—FORGERY

351.	Forgery (where no special punishment is provided) . .	May arrest without warrant
357.	Forgery of a will, document of title, security, cheque, etc. . .	ditto
358.	Forgery of judicial or official document	ditto
359.	Forgery etc., of stamps . .	ditto
360.	Uttering false document . .	ditto
361.	Uttering cancelled or exhausted document	ditto
362.	Procuring execution of document by false pretence	ditto
363.	Obliterating or altering the crossing on a cheque	ditto
364.	Making or executing document without authority	ditto
365.	Demanding property upon forged testamentary instrument . .	ditto
366.	Importing or purchasing forged notes	ditto
367.	Falsifying warrant for money payable under public authority	ditto
368.	Permitting falsification of register or record	ditto

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
369.	Sending false certificate of with out warrant or not marriage to Registrar	May arrest without warrant
370.	Making false statement for insertion in register of births, deaths or marriages	ditto
	CHAPTER XXXVII—OFFENCES RELATING TO COIN AND TO BANK AND CURRENCY NOTES	
372.	Counterfeiting coin	May arrest without warrant
373.	Making preparation for coining if the offence is committed with respect to coin of a foreign sovereign state	ditto
374.	Making or having in possession paper or implements for forgery.	ditto
375.	Clipping current coin . .	ditto
376.	Melting down currency . .	ditto
378.	Being in possession of clippings	ditto
379.	Uttering counterfeit coin . .	ditto
380.	Repeated uttering of counterfeit coin	ditto
381.	Uttering metal or coin not current as coin	ditto
382.	Selling articles bearing designs in imitation of currency . .	ditto
383.	Exporting counterfeit coin. .	ditto
385.	Being in possession, etc., of die or paper used for purpose of making revenue stamps . .	ditto
386.	Being in possession, etc., of die or paper used for postage stamps	ditto
	CHAPTER XXXIX—COUNTERFEITING TRADE MARKS	
388.	Counterfeiting, etc., trade mark	Shall not arrest without warrant

CHAPTER XL—PERSONATION

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
389.	Personation in general . .	May arrest without warrant
	If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property	ditto
390.	Falsely acknowledging deeds, recognizances, etc.	ditto
391.	Personation of a person named in a certificate	ditto
392.	Lending, etc., certificate for purposes of personation . .	ditto
393.	Personation of person named in a testimonial of character	ditto
394.	Lending, etc., testimonial of character for purposes of personation	ditto

CHAPTER XLI—SECRET COMMISSIONS AND CORRUPT PRACTICES

396.	Corrupt practices	Shall not arrest without warrant
397.	Secret commissions on Government Contracts . .	ditto

Division VIII—Attempts and Conspiracies to Commit Crimes and Accessories After the Fact

CHAPTER XLII—ATTEMPTS

401.	Attempt to commit a felony or misdemeanour	According as to whether or not the offence is one for which the police may arrest without a warrant
402.	Attempt to commit a felony punishable with death or imprisonment for fourteen years or upwards	May arrest without warrant
403.	Neglecting to prevent commission or completion of a felony	Shall not arrest without warrant

CHAPTER XLIII—CONSPIRACIES

1	2	3
Section	*Offence*	*Whether the police may arrest without warrant or not*
404.	Conspiracy to commit a felony	May arrest without warrant
405.	Conspiracy to commit a misdemeanour	According as to whether or not the offence is one for which the police may
406.	Conspiracy to effect certain without a warrant specified purposes	Shall not arrest without warrant

CHAPTER XLIV—ACCESSORIES AFTER THE FACT

407.	Being an accessory after the fact to a felony	May arrest without warrant
409.	Being accessory after the fact to a misdemeanour	Shall not arrest without warrant

PART II

OFFENCES UNDER OTHER LAWS

EXPLANATORY NOTE: The entries in the Third Column of this Part of this Schedule headed Offences are not intended as definitions of the offences described in the several corresponding sections of the laws referred to in the Second Column or even as abstracts of those number of which is given in the First Column.

1	2	3	4
Section	*Law*	*Offence*	*Whether the police may arrest without warrant or not*
3.	Hijacking Act, Cap. 7:03	Offences against aircraft	May arrest without warrant
10.	Hijacking Act, Cap. 7:03	Offences against motor vehicles, trains and vessels	ditto
3.	Witchcraft Act, Cap. 7:02	Trial by prohibited ordeal.	ditto
4.	Witchcraft Act, Cap 7:02	Charging persons with witchcraft	Shall not arrest without warrant
5.	Witchcraft Act, Cap. 7:02	Employment of witch finder	ditto
6.	Witchcraft Act, Cap. 7:02	Pretending witchcraft	ditto

1 *Section*	2 *Law*	3 *Offence*	4 *Whether the police may arrest without warrant or not*
7.	Witchcraft Act, Cap 7:02	Chiefs and headmen permitting etc., prohibited trials by ordeal	May arrest without warrant
8.	Witchcraft Act, Cap. 7:02	Profession of witchcraft illegal . .	ditto
9.	Witchcraft Act, Cap. 7:02	Using charms, lots, etc.	Shall not arrest without warrant

SECOND SCHEDULE

PART A

OFFENCES TRIABLE BY SUBORDINATE COURTS OF THE THIRD GRADE
OFFENCES UNDER THE PENAL CODE

Section	*Offence*
43.	Inducing soldiers or policemen to desert
47.	Offences in relation to publications importation of which is prohibited (whole)
60.	Publication of false news likely to cause fear and alarm to the public
71.	Unlawful assembly
81.	Prohibition of carrying offensive weapons without lawful authority or reasonable excuse
82.	Forcible entry
83.	Forcible detainer
84.	Fighting in public
85.	Challenging to fight a duel
86.	Threatening violence
88.	Intimidation (whole)
89.	Assembling for the purpose of smuggling
98.	False assumption of authority
99.	Personating public officers
100.	Threat of injury to persons employed in public service
107.	Deceiving witnesses
108.	Destroying evidence
113.	Offences relating to judicial proceedings
114.	Rescue (paragraph (*c*) only)
115.	Escape

Section	*Offence*
116.	Permitting prisoners to escape
118.	Removal, etc., of property under lawful seizure
119.	Obstructing court officers
122.	False information to person employed in the public service
123.	Disobedience of statutory duty Insult to religion of any class
128.	Disturbing religious assemblies
129.	Trespassing on burial places
130.	Writing or uttering words with intent to wound religious feelings
131.	Hindering burial of dead body, etc.
135.	Abduction of girls under sixteen years
137.	Insulting the modesty of a woman (subsection (3) only)
141.	Procuring defilement of women by threats or fraud or administering drugs
143.	Detention with intent or in brothel
145.	Male person living on earnings of prostitution or persistently soliciting
146.	Woman aiding, etc., for gain prostitution of another woman
147.	Brothels
164.	Desertion of children
165.	Neglecting to provide food, etc., for children
166.	Master not providing for servants or apprentices
168.	Common nuisance
169.	Gaming houses
170.	Betting houses
171.	Lotteries
174.	Exemption of private lotteries
177.	Chain letters
179.	Traffic in obscene publications
180.	Idle and disorderly persons
181.	Conduct likely to cause a breach of the peace
182.	Use of insulting language
183.	Nuisances by drunk persons, etc.
184.	Rogues and vagabonds
185.	Removal orders
189.	Penalty for failing to comply with removal order, etc.
190.	Review of removal order
191.	Wearing uniform without authority prohibited
192.	Negligent act likely to spread disease dangerous to life
193.	Adulteration of food or drink intended for sale
194.	Sale of noxious food or drink
195.	Adulteration of drugs
196.	Sale of adulterated drugs

Section	*Offence*
197.	Fouling water
198.	Fouling air
199.	Offensive trades
241.	Wounding and similar acts (whole)
246.	Reckless and negligent acts
247.	Other negligent acts
248.	Dealing in poisonous substances in negligent manner
249.	Endangering safety of persons traveling by railway
251.	Conveying person by water for hire in unsafe or overloaded vessel
252.	Danger or obstruction in public way or line or navigation
253.	Common assault
254.	Assaults occasioning actual bodily harm
256.	Other aggravated assaults
269.	Unlawful compulsory labour
278.	General punishment for theft (as read with sections 270 to 277 inclusive)
281.	Stealing cattle
294.	Killing animals with intent to steal
299.	Unlawful use of vehicles, animals, etc.
303.	Assault with intent to steal
314.	Criminal trespass
316.	Unauthorized user of land and premises
319.	Obtaining by false pretences
321.	Cheating
322.	Obtaining credit by false pretences
325.	Pretending to tell fortunes
326.	Obtaining registration, etc., by false pretence
327.	False declaration for passport
328.	Receiving property unlawfully obtained (subsection (2) only as read with subsection (3))
329.	Person suspected of having or conveying stolen property
337.	Arson (whole)
338.	Attempts to commit arson
339.	Setting fire to crops
340.	Attempting to set fire to crops, etc.
344. (1)	Malicious damage (subsection (1) only)
347.	Removing boundary marks with intent to defraud
348.	Willful damage, etc., to survey and boundary marks
349.	Penalties for damage, etc., to railway works
386.	Paper and dies for postage stamps
389.	Personation in general Personation of a person named in certificate
392.	Lending, etc. certificate for personation

Section	*Offence*
393.	Personation of person named in a testimonial of character
394.	Lending, etc., testimonial for personation
400.	Attempts, provided that a person may only be tried for an attempt to commit an offence which the court has power to hear
403.	Neglect to prevent a felony

Offences under Other Laws

CONVICTED PERSONS (EMPLOYMENT ON PUBLIC WORKS) ACT (CAP. 9:03)
The whole

POLICE ACT (CAP. 13:01)
Section
26. Penalty for disobeying order or violating conditions of a permit issued under section 25
27. Unlawful assemblies Section
28. Penalty for any violation of an order prohibiting meetings and processions
29. Prohibition of weapons at assemblies, meetings and processions

RESERVATION OF PUBLIC SECURITY ACT (CAP. 14:02)
The whole All regulations made thereunder

FIREARMS ACT (CAP. 14:08)
The whole
All regulations made thereunder

LOCAL GOVERNMENT (CAP. 22:01)
Elections and membership
By-laws

CHIEFS ACT (CAP. 22:03)
The whole

PUBLIC HEALTH ACT (CAP. 34:01)
The whole
All rules and regulations made thereunder

TAXATION ACT (CAP. 41:01)
The whole
All rules made thereunder

CUSTOMS AND EXCISE ACT (CAP. 42:01)
Section:
142 Smuggling

BUSINESSES LICENSING ACT (CAP. 46:01)
The whole

HIDE AND SKIN TRADE ACT (CAP. 50:02)
The whole
All rules made thereunder
Section: Offence

INTOXICATING LIQUOR ACT (CAP. 50:03)
The whole
All rules made thereunder

REGULATION OF MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT ACT (CAP. 55:01) [*Repealed by* 6 *of* 2000]
The whole
FOREST ACT (CAP. 63:01)
The whole
All rules made thereunder
PLANT PROTECTION ACT (CAP. 64:01)
The whole
All rules made thereunder
NOXIOUS WEEDS ACT (CAP. 64:02)
The whole
TOBACCO ACT (CAP. 65:02)
The whole
All rules made thereunder
PROTECTION OF ANIMALS ACT (CAP. 66:01)
The whole
CONTROL AND DISEASES OF ANIMALS ACT (CAP. 66:02)
The whole
All regulations made thereunder
NATIONAL PARKS AND WILDLIFE ACT (CAP. 66:07)
FISHERIES ACT (CAP. 66:05)
The whole
All rules made thereunder
ROAD TRAFFIC ACT (CAP. 69:01)
Traffic (Certificate of Fitness) regulations: (G.N. 40/1964(M))
The whole
Road Traffic (Public Service Vehicles) (Operations) Regulations: (G.N. 41/1964(M))
The whole
Road Traffic (Speed Limits) Regulations: (G.N. 43/1964(M)
The whole
Road Traffic (Test Certificates) Regulations: (G.N. 44/1964(M)
The whole
Road Traffic (Traffic Signs) Regulations: (G.N. 51/1964(M))
The whole
Road Traffic (Construction, Equipment and Use) Regulations: (G.N. 56/1964(M))
The whole
Road Traffic (Driving Licence) Regulations: (G.N. 57/1964(M))
The whole
Road Traffic (Insurance) Regulations: (G.N. 76/1964(M)
The whole
Road Traffic (Road Service and Private Carriers Permits) (Application and Issue) Regulations: (G.N. 100/1964(M))
The whole
Road Traffic (Seating Capacity) Regulations: (G.N. 101/1964(M))
The whole
Road Traffic (Registration and Licensing) Regulations: (G.N. 164/1964s(M))
The whole
Road Traffic (Bicycles) Regulations: (G.N. 84/1968))
The whole
Road Traffic (Prescribed Offences and Penalties) Regulations (G.N. 22/1999))

Road traffic (Driving Instructors and Schools) Regulations: (G.N. 52/1964(M))
The whole
Road Traffic (International Circulation) Regulations: (G.N. 45/1964(M))
The whole
Road Traffic (Miscellaneous) Regulations: (G.N. 175/1964(M)
The whole
Road Traffic (Motor Cycles) (Protective Helmets) Regulations: (G.N. 264/1965)
The whole
Road Traffic (Carriage of Dangerous Cargo) Regulations: (G.N. 230/1966)
The whole

PART B

OFFENCES TRIABLE BY SUBORDINATE COURTS OF THE FOURTH GRADE
OFFENCES UNDER THE PENAL CODE

Section	*Offence*
21.	Aiding, abetting, counselling or procuring the commission of an offence which the court can try
43.	Inducing soldiers or policemen to desert
84.	Fighting in public
84.	Challenging to fight a duel
84.	Threatening violence
89.	Assembling for purpose of smuggling
115.	Escape from lawful custody
168.	Committing common nuisance
180.	Being an idle or disorderly person
197.	Fouling water of public spring or reservoir
197.	Fouling air
197.	Carrying on offensive trade
253.	Common assault
269.	Unlawful compulsory labour
278.	Theft, provided that the value of the thing stolen does not exceed K5,000
295.	Severing with intent to steal, provided that the value of thing severed does not exceed K5,000
344. (1)	Destroying or damaging property in general
349.	Injuring or obstructing railway works, etc.
401.	Attempts to commit offence which court can try
	Offences under Other Laws Any offence punishable with a fine or with imprisonment for a period not exceeding six months with or without a fine.

THIRD SCHEDULE

FORM 1

CHARGE BY DIRECTOR OF PUBLIC PROSECUTIONS FOR FILING IN HIGH COURT

IN THE HIGH COURT OF MALAWI

The ..... day ..... of 20 .....
Sessions holden at ..... on the ..... day of ..... 20 ....., it is stated to the Court by the Director of Public Prosecutions on behalf of the Republic of Malawi that "A.B." is charged with the following offence or offences:

FORM 2

FORM OF NOTICE OF TRIAL IN THE HIGH COURT OF MALAWI

To: "A.B."

TAKE NOTICE that you will be tried on the charge whereof this is a true copy at the Sessions of the High Court to be held at

on the ..... day of ..... 20 .....

.....
Registrar

SUBSIDIARY LEGISLATION

APPOINTMENTS OF PUBLIC PROSECUTORS

G.N. 85/1962

deemed to be made under s. 79

[*made under s.* 85 *of the Criminal Procedure Code,* 1929 (*now repealed*)]

All police officers of or above the rank of sub-inspector have been appointed to be public prosecutors in all criminal cases before subordinate courts in Malaŵi.

NOTE

A number of appointments of named persons have been made out are not published here.

CRIMINAL PROCEDURE (PLEAS OF GUILTY IN WRITING) RULES

G.N. 14/1959
242/1963

deemed to be made under s. 93

[*made under s.* 100 *of the Criminal Procedure Code,* 1929 (*now repealed*)]

1. These Rules may be cited as the Criminal Procedure (Pleas of Guilty in Writing) Rules. Citation

2.—(1) A Subordinate Court shall not accept a plea of guilty in writing under section 93 of the Code unless the Court is satisfied that a document containing— Conditions for acceptance of plea of guilty in writing

(*a*) a notification of the effect of section 93 of the Code and of these Rules; and

(*b*) a concise statement of such facts relating to the charge as will be placed before the Court by or on behalf of the Prosecutor if the accused pleads guilty without appearing before the Court, has been served upon the accused with the summons.

(2) Such document shall be in the form set out in the Schedule with such variations as the circumstances of each case may require.

3. Before accepting a plea of guilty and convicting the accused in his absence, the Court shall cause the notification and statement of facts aforesaid, including any submission received with the notification which the accused wishes to be brought to the attention of the Court with a view to mitigation of sentence to be read out before the Court. Notification and statement to be read in court

Statement of other facts on behalf of Prosecutor not permitted

4. If the Court proceeds under section 93 of the Code to hear and dispose of the case in the absence of the accused the Court shall not permit any statement to be made by or on behalf of the Prosecutor with respect to any facts relating to the offence charged other than the statement of facts aforesaid, except on a resumption of the trial after any adjournment for the purpose of procuring the personal attendance of the accused.

r. 2

SCHEDULE

Statement to be Served with Summons

In the Court at

Case No. 20 .....

To ..... (Insert name of accused person)

It will not be necessary for you to attend personally before the Court in answer to the attached summons if before the day appointed therein for your appearance—

(*a*) you state clearly in the space provided below that you wish to plead guilty to the charge, and that you agree that the facts herein below stated are correct; and

(*b*) you sign your name at the end of this document (or if you cannot sign your name you thumb print it in the presence of a witness); and

(*c*) you return this document either by post or otherwise to the Court above mentioned.

Statement of Facts

1. Plea .....

2. Whether the facts above stated are correct .....

3. Any facts in mitigation of sentence which you wish to draw to the attention of the Court should be stated here .....

.....

.....

Signature of accused person: .....
(*or thumbprint of accused person*)
Witness: .....

CRIMINAL PROCEDURE AND EVIDENCE (DOCUMENTARY EVIDENCE) RULES

ARRANGEMENT OF RULES

[Subsidiary] *Criminal Procedure and Evidence* (*Documentary Evidence*) *Rules*

G.N. 7/1968

CRIMINAL PROCEDURE AND EVIDENCE (DOCUMENTARY EVIDENCE) RULES

under s. 245

Citation

1. These Rules may be cited as the Criminal Procedure and Evidence (Documentary Evidence) Rules and shall apply to documentary evidence in criminal proceedings in or before the High Court and all subordinate courts.

Interpretation

2. In these Rules, unless the context otherwise requires—

"bank", "banker", and "bankers' books" bear the meanings ascribed respectively, to those terms in section 2 of the Bankers' Books Evidence Act.

Cap. 4:05

Proof of contents of documents; primary and secondary evidence defined

3.—(1) The contents of documents may be proved either by primary or secondary evidence.

(2) In these Rules "primary evidence" means the document itself produced for the inspection of the court. Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it; where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where there are all copies of a common original, they are not primary evidence of the contents of the original.

(3) In these Rules "secondary evidence" means—

(*a*) certified copies given under these Rules;

(*b*) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(*c*) copies made from or compared with the original;

(*d*) counterparts of documents as against the parties who did not execute them; or

(*e*) oral accounts of the contents of a document given by some person who has himself seen it.

(4) Documents must be proved by primary evidence except in the cases hereinafter mentioned.

(5) Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

(*a*) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or any persons out of each of, or not subject to, the process of the court or of any person legally bound to produce it, and when, after the notice mentioned in rule 4 such person does not produce it;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved in which case such written admission is admissible;

(*c*) when the original has been destroyed or lost or is in the power of a person not legally bound to produce it, and who refuses to or does not produce it after reasonable notice or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*) when the original is of such a nature as not be easily movable;

(*e*) when the original is a public document within the meaning of rule 7;

(*f*) when the original is a document of which a certified copy is permitted by these Rules, or by any other law in force in Malawi, to be given in evidence;

(*g*) where the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection:

Provided however that evidence as to such general result may be given only by a person who has examined them and is skilled in the examination of such documents.

(6) Oral admissions as to the contents of a document are not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under these Rules or unless the genuineness of a document is in question.

Notice to produce

4. Secondary evidence of the contents of the documents referred to in rule 3 (5) (*a*) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his legal practitioner, such notice to produce it as is prescribed by law, and

if no notice is so prescribed, then, such notice as the court considers reasonable in the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the court thinks fit to dispense with it—

(*a*) when the document to be proved is itself a notice;

(*b*) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(*c*) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(*d*) when the adverse party or his legal practitioner has the original in court;

(*e*) when the adverse party or his legal practitioner has admitted loss of the document; and

(*f*) when the person in possession of the document is out of reach of, or not subject to, the process of the court.

Proof of signature and handwriting in certain circumstances

5. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that persons handwriting must be proved to be in his handwriting.

Comparison of signature, writing or seal with others

6.—(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person:

Provided that no court shall under this subrule direct any accused to write anything unless he has elected, or had been required by the court, to give evidence in his own defence.

(3) A refusal by an accused to comply with a direction given under subrule (2) shall be deemed a refusal to give evidence under section 256 or 313, as the case may be.

(4) This rule applies also, with any necessary modifications, to finger prints.

Public documents and private documents

7.—(1) The following documents are public documents—

(*a*) documents forming the acts or records of the Acts—

(i) the sovereign authority;

(ii) official bodies and tribunals; and

(iii) public bodies, legislative, judiciary and executive whether of Malawi or of any other country;

(*b*) public records kept in Malawi of private documents;

(*c*) documents other than documents specified in paragraph (*a*) or paragraph (*b*) which are public documents within the meaning of the Authentication of Documents Act. Cap. 4:06

(2) All documents, other than those specified in subrule (1) are private documents.

Certified copies of public documents

8.—(1) Every public officer having the custody of a private document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees, if any, therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and official title and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who, in the ordinary course of his official duty, is authorized to deliver such certified copies, shall be deemed to have the custody of such documents within the meaning of this rule.

(3) Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of public documents

9. The following public documents may be proved as follows—

(*a*) Acts, orders or notifications of the Government—

(i) by the records of the ministries or departments, certified by the respective heads thereof;

(ii) by any documents purported to be printed by order of the Government; or

(iii) by published laws or abstracts or by copies purporting to be printed by order of the Government;

(*b*) Acts of the executive or the proceedings of the legislature of the Commonwealth or foreign country by journals published by their authority of commonly received in that country as such, or by a copy certified under the seal of the country or sovereign or by recognition thereof in some law of Malawi;

(*c*) the proceedings of a local or municipal body in Malawi by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority by such a body; and

(*d*) if a public document within the meaning of the Authentication of Documents in a manner provided for in the Act. Cap. 4:06

Evidence of certain United Kingdom Acts and proclamations, etc

10. Sufficient evidence of any Act, proclamation, order, rule or regulation issued in the United Kingdom by or under the authority of the sovereign, Parliament or the Government of the United Kingdom, or by the Privy Council, may be given as follows—

(*a*) by the production of a copy of the official *Gazette* of the United Kingdom purporting to contain such Act, proclamation, order, rule or regulation;

(*b*) by the production of a copy of such Act, proclamation, order, rule or regulation purporting to be printed under the authority of the legislature of Malawi or printed in the United Kingdom by, or under the superintendence or authority of, the Printer to the Government of the United Kingdom or the Stationery Office therefore; or

(*c*) by the production in the case of any proclamation, order, rule or regulation issued by such sovereign or by the Privy Council, of a copy of extract purporting to be certified to be true by the Clerk of Privy Council or by anyone of the Privy Council.

Any copy or extract made in pursuance of this rule may be in print or in writing or partly in print and partly in writing. No proof shall be required of the handwriting or official position of any person certifying in pursuance of this section to the truth of any copy of or any extract from any proclamation, order, rule or regulation.

Presumption as to genuineness of certified copy

11.—(1) A court shall presume every document purporting to be a certificate, certified copy of other documents, which is by law declared to be admissible as evidence or any particular facts, and which purports to be duly certified by any officer in Malawi, to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) A court shall also presume that any officer by whom any such documents purports to be signed or certified held, when he signed it, the official character which he claims in such document.

Presumption as to documents produced as record of evidence

12. Whenever a document is produced before any court, purporting to be a record or memorandum of any evidence given in a judicial proceeding or before any officer authorized by law to take evidence required by law to be reduced to writing and purporting to be signed by any judge or magistrate, or by any such officer as aforesaid, the court may presume that such document is genuine and that the evidence was the evidence actually given, may take oral evidence of the proceedings and the evidence given; and shall not be precluded from admitting any such document merely by reason of the absence of any formality required by law:

Provided always that an accused person is not injured as to his defence on the merits.

Presumption as to *Gazettes*, newspapers, private Acts, etc.

13. A court shall presume the genuineness of every document purporting to be the *Gazette* or Government *Gazette* of any country of the Commonwealth, or to be a newspaper or journal or to a copy of a private Act of Parliament printed by a Government Printer or in any of the manners mentioned in rule 10, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody. Documents are said to be in proper custody if they are in the place which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have a legitimate origin or if the circumstances of the particular case are such as to render such an origin probable.

Presumptions as to maps or plans made by authority of Government

14. The court shall presume that maps or plans purporting to be made by the authority of the government were so made, and are accurate.

Presumption as to collections of laws and reports of decisions

15. The court shall presume the genuineness of every book purporting to be printed or published under the authority of the government of any country, and to contain any of the laws of that country; and of every book purporting to contain reports of decisions of the courts of such country.

Presumption as to due execution, etc., of documents not produced

16. The court shall presume that every document, called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

Presumption as to documents twenty years old

17. When any document, purporting to or proved to be twenty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that persons

handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed. Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Presumption as to certain books

18. The court may presume that any book to which it may refer for information on matter of public or general interest, and that any published map or chart. The statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages

19. The court may presume that a message, forwarded from a telegraphic office to the person to whom such message purports to be addressed, corresponds with the message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to powers of attorney

20. The court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public, or any court, judge, magistrate, or representative of any Government of the Commonwealth, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records

21. The court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of the Commonwealth is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of any government of the Commonwealth in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Private documents executed outside Malawi Cap. 4:06

22. A court shall presume that a private document purporting to be a document executed out of Malawi was executed and is duly authenticated if it purports to be authenticated in accordance with the provisions of the Authentication of Documents Act relating to the authentication of such a private document.

Proof of execution of documents required by law to be attested

23.—(1) If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

(2) If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

(3) The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

(4) If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

(5) An attested document not required by law to be attested may be proved asif it were unattested.

(6) This rule shall not apply to any document sufficiently authenticated under section 4 of the Authentication of Documents Act or authenticated by a notary public admitted to practice as such in accordance with the Legal Education and Legal Practitioners Act. Cap. 4:06 Cap. 3:04

Evidence of terms of contracts, grants, etc., reduced to form of a document

24.—(1) When the terms of the contract or a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required to be reduced to the form of a document, no evidence served as mentioned in rule 25 shall be given in proof of the terms of such contract, grant or other disposition of property or of such manner except the document itself, or secondary evidence of its contents in case in which secondary evidence is admissible under the provisions hereinbefore contained:

Provided that—

(*a*) when a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved;

(*b*) wills admitted to probate in Malawi may be proved by the probate.

(2) The statement in any document whatever of a fact, other than the facts referred to in this rule, shall not preclude the admission of oral evidence as to the same fact.

(3) Where there more originals than one, one original only need be proved.

(4) This rule applies to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Exclusion of evidence of oral agreement

25. When the terms of any such contract, grant or other disposition of property or any matter required by law to be reduced to the form of a document, have been proved according to rule 24, no evidence of any oral agreement or statement shall be admitted as between the parties to any instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms:

Provided that—

(*a*) any fact may be proved which would invalidate any document, or which would entitle any person to any degree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law;

(*b*) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the court have regard to the degree of formality of the document;

(*c*) the existence of any separate oral agreement constituting a condition precedent to the attaching or any obligation under such contract, grant or disposition of property, may be proved;

(*d*) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contracts, grants of disposition of property is law required to be writing or has been registered according to the law in force for the time being as to the registration of documents;

(*e*) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved if the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract; and

(*f*) any fact may be proved which shows in what manner the language of the document is related to the existing facts.

Exclusion of evidence to explain, etc.

26.—(1) When the language used in a document is on its face so ambiguous or defective as to be wholly incapable of explanation in

the nature of things, evidence may not be given of facts which would show its meaning or supply its defects.

(2) When the facts are such that the language used might have been meant to apply to anyone, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show to which of those persons or things it was intended to apply such facts.

Evidence as to document unmeaning in reference to existing facts, etc.

27.—(1) When language used in a document is plain in itself but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

(2) When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show to which of those persons or things it was intended to apply.

(3) When the language used in a document applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to meaning of illegible characters, etc

28. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Who may give evidence of agreement varying terms

29. Persons who are not parties to a document, or their representatives in interest, may give evidence of facts tending to show a contemporaneous agreement varying the terms of a document.

Saving of provisions relating to wills

30. Nothing in rules 24 to 29 inclusive, shall be taken to affect any of the provisions of any law for the time being in force in Malaŵi as to the construction of wills.

G.N. 12/1936

CRIMINAL PROCEDURE (POLICE SUPERVISION) RULES

deemed to be made under s. 343

[*made under s.* 325 *of the Criminal Procedure Code,* 1929 (*now repealed*)]

Citation

1. These Rules may be cited as the Criminal Procedure (Police Supervision) Rules.

Notification of place of residence

2. Every person subject to police supervision under section 242 of the Code (hereinafter referred to as a released convict) shall, not less than fourteen days before the date on which he is entitled to be released, inform the officer in charge of the prison in which he may for the time being be confined, of the place at which he intends to reside after his release.

Identity card

3. On his release from prison every such released convict shall be issued by the officer in charge of the police in the District with an identity card, in the form set out in the Schedule, in which shall be filled in the several particulars specified respecting such released convict.

Amendment of endorsement

4. Subject to such directions as the Commissioner of Police may give, any police officer of or above the rank of Assistant Superintendent may, as circumstances require, amend any endorsement in respect of the place at which, or the person to whom such released convict is required to report.

Intended change of residence

5. Whenever any such released convict intends to change his place of residence from the place specified at the time of his release to any other place he shall notify the officer in charge of the nearest police station not less than fourteen days before he so changes his residence, of the fact of such intention and the place at which he thereafter intends to reside. Such officer shall, if necessary and subject to the general directions of the Commissioner of Police, amend the endorsement in such released convicts identity card to accord with the change in residence,

Notification of intended change of residence

6. Whenever any released convict intends to change his place of residence from any place at which he may at any time be residing under rule 5, he shall notify any intended change of residence in the manner, in that rule, provided.

Arrival at new residence

7. Every such released convict shall, within forty-eight hours of his arrival at the place of changed residence notified under rule 5

or 6, notify the fact of his arrival at the place and to the person last endorsed on his card, and thereafter shall continue to report himself as required.

Notification of report to be made in person

8. Every notification or report required to be made by any released convict shall be made by him in person:

Provided that if from illness any released convict is prevented from making in person any notification or report required by these Rules, he may do so in any one of the following ways—

(*a*) in person, to any senior officer of the Government residing nearest the place of his residence;

(*b*) in person, to the Chief exercising jurisdiction in the area which he resides; or

(*c*) by oral communication sent by a messenger, and production of the identity card to the person whose name or office is endorsed on his card.

Notification under rule 8 proviso (*a*) or (*b*)

9. In any case where a report has been made under paragraph (*a*) or (*b*) of the proviso to the last preceding rule, it shall be incumbent on the person receiving such report to inform the officer to whom such released convict should have reported, as soon as may be convenient, of the fact and date of such report.

Identity card to be produced

10. On the occasion of every notification or report required to be made under these Rules, the identify card issued to the released convict making such notification or report shall be produced.

Surrender of card at the end of term

11. At the end of the term of police supervision ordered by the court the released convict shall surrender his card to the person to whom he last reported for transmission to the Commissioner of Police.

Rules to be annexed to card

12. A copy of these Rules shall be annexed to each identity card issued to a released convict.

r. 3 SCHEDULE

Page 1	Page 2
	General Description
Police Station	Tribe or Nationality
Prison number	District of origin
Name	Chief
Aliases	Headman
	Village
Court in which order made	Sex Age
	Height Marks or scars
Criminal Court File No.	
Police Case File No.	
Offence convicted under with section of law	
Sentence last served	Signature of Police Officers issuing certificate

Page 3 Alteration of address		Page 4		
From	To	Place	Date	Signature of Officer to whom report made
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

		Page 5	
		Prison from which released	
		Date released from prison	
		Term of notification of address	
		Date of Expiry of order	
		Address on release	
		Space for photograph when available	Right thumb impression

CRIMINAL PROCEDURE (FORMS) NOTICE

Index of Forms

Form XXVI	Warrant of commitment
Form XXVII	Warrant of commitment on failure to pay costs and compensation
Form XXVIII	Summons to enforce payment of a fine
Form XXIX	Warrant of arrest for failure to answer summons to inquiry as to means
Form XXX	Bond to keep the peace and to be of good behaviour
Form XXXI	Bond to appear and receive sentence
Form XXXII	Bond to appear and receive sentence
Form XXXIII	Order for release of person in custody
Form XXXIV	Warrant to levy money by distress and sale

G.N. 4/1968
59/1968
107/1968
73/1969

CRIMINAL PROCEDURE (FORMS) NOTICE

under s. 367

Citation

1. This Notice may be cited as the Criminal Procedure (Forms) Notice.

Prescription of forms

2. The following forms are hereby prescribed as the forms which may be used, with such variations as the circumstances of each case may require, for the respective purposes under the Criminal Procedure and Evidence Code mentioned therein—

FORM I

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

ORDER TO SHOW CAUSE WHY A BOND SHOULD NOT BE ENTERED INTO

(SECTION 46 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas it has made to appear to me by credible information that it is necessary to require ..... of ..... to show cause why he should not

execute a bond to $\frac{\text{keep the peace*}}{\text{be of good behaviour*}}$;

And Whereas

(*a*) the substance of the information received is that .....
.....;

(*b*) the amount of the bond to be executed is the sum of K .....;

(*c*) the term for which the said bond is to be in force is
..... $\frac{\text{months*}}{\text{years*}}$;

(*d*) the sureties required are in number and of a character and class to be approved by the officer in charge of the .....
..... Police Station.

NOW IT IS HEREBY ORDERED that the said ..... of ..... do appear before this Court on the ..... day of ..... , 20 ....., at ..... o'clock in the ..... noon to show cause as aforesaid.

Dated this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Delete as appropriate

FORM II

REPUBLIC OF MALAWI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO APPEAR TO SHOW CAUSE

(SECTIONS 48 AND 49 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To ..... of .....

Whereas your presence is necessary to show cause why you should not be ordered to execute a bond in pursuance of the Order of this Court made on the ..... day of ..... (a copy of which Order accompanies this summons) you are hereby required to appear before this Court on the ..... day of ..... at ..... o'clock in the ..... noon.

Herein Fail Not.

Dated this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

(*N.B.*—This summons must be accompanied by a copy of the Order made under section 46).

FORM III

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO KEEP THE PEACE

(SECTIONS 42 AND 56 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to execute a bond in the sum of K..... to keep the peace for the period of ..... from the execution of these presents upon the conditions hereinafter appearing;

And Whereas it is a condition of this bond that ([1])

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This ..... day of ..... 20 .....

Signature

([2]) [We hereby bind ourselves jointly and severally in the sum of K ..... to answer that the above-named will keep the peace during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ..... at .....

(*Resident*) *Magistrate*

([1]) Here insert any conditions which have been imposed under section 53.

([2]) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM IV

REPUBLIC OF MALAWI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO BE OF GOOD BEHAVIOUR

(SECTIONS 42, 43, OR 44 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to execute a bond in the sum of K..... *to be of good behaviour/*to keep the peace for the period of ..... from the execution of these presents upon the conditions hereinafter appearing;

And Whereas it is a condition of this bond that ([1])

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the government the said sum.

This ..... day of ..... 20 .....

Signature

([2]) [We hereby bind ourselves jointly and severally in the sum of K ..... to answer that the above-named will *be of good behaviour/ *keep the peace during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ..... at .....

(*Resident*) *Magistrate*

*Delete as appropriate

([1]) Here insert any conditions which have been imposed under section 53.

([2]) Sureties are necessary under sections 44 and 45 and may be required under section 43. Where sureties are not required the part of this form contained in square brackets should be deleted.

FORM V

REPUBLIC OF MALAWI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE OR TO BE OF GOOD BEHAVIOUR

(SECTION 58 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

Whereas ..... of ..... appeared before me on the day of ..... in obedience to a summons calling upon him to show cause why he should not execute a bond for K .....

to $\frac{\text{*keep the peace}}{\text{*be of good behaviour}}$

And Whereas an Order was then made requiring the said .....

to execute such bond $\frac{\text{*with}}{\text{*without}}$ sureties for a period of .....

and he has failed to comply with the said Order.

This is to empower and require you the said Officer in Charge to receive the said ..... together with this warrant, and detain him safely to keep in custody for the said period of .... unless and until he tender the said security, in which event you shall forthwith make report of the matter to this Court; and return this your warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the court, this day ..... of ..... 20 ...

(Seal) (*Resident*) *Magistrate*

*Delete as appropriate

FORM VI

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS/CHARGE SHEET

(SECTIONS 83 AND 84 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Accused

Name: ..... Tribe: .....

Sex: ..... Village: .....

Age: ..... Chief and District: .....

To: ..... above-named.

Whereas your presence is necessary to answer the charge(s) hereunder set out you are hereby required to appear in person before this Court on the ..... day of ..... 20 ..... at ..... o'clock in the ..... noon.

And Herein Fail Not.

Dated this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

OFFENCE (SECTION AND LAW)

.....

.....

.....

PARTICULARS OF OFFENCE

.....

.....

.....

OFFENCE (SECTION AND LAW)

.....

.....

.....

Criminal Procedure (*Forms*) *Notice*

PARTICULARS OF OFFENCE

.....

.....

.....

Police Station ..... Public Prosecutor .....

Date ..... (*Resident*) *Magistrate* .....

FORM VII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO ENFORCE PAYMENT OF A FINE

(SECTION 93 (3) OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: .....

Whereas on the ..... day of ..... 20 ..... you were convicted of the offence of ..... and were ordered to pay a fine of K..... by ..... and whereas the whole amount of K ..... remains unpaid.

You are hereby required to pay the said amount of K ..... appear before this Court on the ..... day of ..... 20 ..... at ..... o'clock in the ..... noon to show cause why you should not be committed to prison for such term as the Court may then prescribe.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM VIII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF ARREST FOR FAILURE TO APPEAR AFTER NON-PAYMENT OF FINE

(SECTION 93 (3) OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the .....

Whereas ..... of ..... was on the ..... day of ..... 20 ..... convicted of the offence of ..... and was ordered to pay a fine of K.....

And Whereas the whole amount of K..... remains unpaid, And Whereas the said ..... failed to answer a summons to appear in this Court to show cause why he should not be committed to prison for failing to pay the said fine.

You are hereby directed to arrest the said ..... and to produce him before this Court in execution of this warrant, unless the said ..... shall sooner pay you the said sum of K ..... which you shall pay forthwith to this court.

And Herein Fail Not.

(Seal) (*Resident*) *Magistrate*

FORM IX

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF ARREST OF PERSON CHARGED

(SECTIONS 96, 98, AND 99 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

[Subsidiary] *Criminal Procedure* (*Forms*) *Notice*

To all Police Officers

Whereas ..... of ..... is charged as follows—

OFFENCE (SECTION AND LAW)

.....
.....
.....

PARTICULARS OF OFFENCE

.....
.....
.....

you are hereby directed to arrest the said ..... and to produce him before this Court in execution of this warrant.

And Herein Fail Not.

Dated this ..... day of ..... 20 .....

(*Resident*) *Magistrate*

(SECTION 97 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

This warrant may be endorsed as follows:

If the said (insert name of person arrested) ..... shall give bail in the sum of K ..... without sureties or shall give bail with one sufficient surety in the sum of K ..... , or shall give bail with two sufficient sureties each in the sum of K..... to attend before this Court on the ..... day of ..... and to continue so to attend until otherwise directed, he shall be released.

Dated this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM X

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

PROCLAMATION REQUIRING THE APPEARANCE OF AN ACCUSED PERSON AND ORDER ATTACHING HIS PROPERTY

(SECTIONS 106 AND 107 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: .....

Whereas this Court has reason to believe that ..... of ....., against whom a warrant of arrest for ..... has been issued, has absconded or is concealing himself so that such warrant cannot be executed.

Proclamation is hereby made that the said ..... is required to appear before this Court at ..... o'clock in the ..... noon on the ..... day of ..... next to answer the said charge.

*And it is hereby ordered that the property belonging to the said ..... be attached and all persons concerned are hereby authorized to attach the following property belonging to the said .....

LIST OF PROPERTY

.....

.....

.....

.....

Dated this ..... day of ..... 20 .....

at: .....

(Seal) (*Resident*) *Magistrate*

*When attachment is not ordered, strike out this part.

FORM XI

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SEARCH WARRANT

(SECTION 113 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To .....

Whereas it has been proved on oath to this Court that the following articles(s) ..... being article(s) by or in respect of which the offence of .... has been committed or which are necessary to the investigation into such offence, are in fact, or according to reasonable suspicion in the* .....

[Subsidiary] *Criminal Procedure* (*Forms*) *Notice*

This is to authorize and require you to enter upon and search the said premises and, if discovered, to take possession of the said article(s) and produce the same forthwith before this Court returning; this warrant with an endorsement certifying the manner of its execution.

Given under my hand this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Here set out the building, ship, aircraft, carriage, box, receptacle or place.

FORM XII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BAIL-BOND AFTER ARREST TAKEN BY A COURT OR BY A POLICE OFFICER

(SECTIONS 118 AND 119 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

I,.....of.....

being charged with the offence of ..... and being required to appear before the above-named Court on the ..... day of ..... next do hereby bind myself to attend the said Court on the date named and to continue so to attend until my trial be concluded, and, should I fail to do so, I bind myself to forfeit to the Government the sum of K .....

Signature and address .....

This ..... day of ..... , 20 .....

SURETIES

We jointly and severally declare ourselves and each of us sureties for the appearance of the said ..... as above set out, and in case of his making default therein we hereby bind ourselves severally to forfeit to the Government the sum of K .....

Signature and address .....

This ..... day of ..... , 20 .....

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....

Entered into before me this ..... day of ..... 20 ....

(Seal) (*Resident*) *Magistrate*

FORM XIII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

DEPOSIT OF PROPERTY IN LIEU OF, OR ADDITIONAL TO, BAIL BOND

(SECTION 121 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To ..... of .....

The receipt is hereby acknowledged of .... deposited in lieu of, or additional to, a bail bond.

You are hereby warned that if you fail to attend at the above-named Court on the ..... day of ..... next and thereafter until your trial is concluded, the above property will be liable to forfeiture.

Dated this ..... day of ..... 20 ....., at .....

.....

Signature of Police Officer or Officer of the Court receiving the deposit

---

FORM XIV

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO FORFEIT DEPOSIT IN LIEU OF, OR ADDITIONAL TO, BOND

(SECTION 121 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To .....

Whereas it has been proved to the satisfaction of the Court that the conditions upon which you on the ..... day of ..... deposited ([1]) ..... at ..... have not been complied with in that you ([2]) .....

.....

.....

.....

You are hereby required to appear before this Court on the ..... day of ..... next at ..... in the ..... noon to show cause why the said property should not be forfeited.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

([1]) State here the money or property deposited.

([2]) Here insert the manner in which the conditions of the deposit have not been complied with.

FORM XV

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO PAY PENALTY OF BOND

(SECTION 125 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To .....

Whereas it has been proved to the satisfaction of the Court that the conditions of the bond entered into by you in the amount of K ..... on the ..... day of ..... have not been complied with in that you* .....
.....
.....
.....
.....

You are hereby required to pay the said amount of K ..... or to appear before this Court on the ..... day of ..... next at ..... o'clock in the ..... noon to show cause why the sum of K..... should not be paid.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

* Here insert the manner in which the conditions of the bond have not been complied with.

FORM XVI

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF ATTACHMENT AND SALE TO ENFORCE A BOND

(SECTION 125 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the ..... District.

Whereas ..... has failed to comply with the conditions of his bond in that behalf and has by such default forfeited to the Government the sum of K..... secured by the said bond.

This is to authorize and require you to attach any movable or immovable property of the said ..... that you may find within the District of ..... by seizure and detention, and, if the said amount be not paid within ..... days hereof to sell the property so attached or so much thereof as may be sufficient to realize the amount aforesaid by public auction, and forthwith to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM XVII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO A WITNESS*

(SECTION 195 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To .....

Whereas complaint has been made that ..... of ..... has committed the offence of

You are hereby summoned to appear before this Court on the ..... day of ..... next at ..... o'clock in the ..... noon to testify what you know concerning the matter of the said complaint, and so on from day to day until the trial be concluded.

Given under my hand the seal of the Court, this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate/ Police Officer**

*Only police officers of the rank of Assistant Superintendent or above may issue a summons to a witness.

FORM XVIII

REPUBLIC OF MALAŴI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT TO COMPEL ATTENDANCE OF A WITNESS

(SECTION 196 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the ..... District.

Whereas ..... of ..... was duly summoned to appear before this Court on the ..... day of

....., 20 ..... to give evidence at the trial of the above-mentioned case, but has failed, without sufficient excuse shown to the Court, to appear in obedience to the summons.

This is to authorize you to arrest the said ..... and bring him/her before this Court on the ..... day of ..... next to be examined regarding the said case.

Given under my hand the seal of the Court, this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM XIX

REPUBLIC OF MALAWI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT TO COMPEL ATTENDANCE OF A WITNESS

(SECTION 197 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: All Police Officers of the ..... District.

Whereas complaint has been made that ..... of ..... has committed the offence of ..... and it has been made to appear that ..... of ..... can give evidence concerning the said offence;

And Whereas the Court is satisfied by evidence on oath that the said ..... will not of $\frac{\text{his}}{\text{her}}$ own accord attend as witness on the hearing of the said complaint.

This is to authorize and require you to arrest the said ..... and bring $\frac{\text{him}}{\text{her}}$ before this Court on the ..... day of ..... next to be examined regarding the offence complained of.

Given under my hand the seal of the Court, this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

Criminal Procedure (*Forms*) *Notice* **[Subsidiary]**

FORM XX

REPUBLIC OF MALAWI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

COMMITMENT ON ADJOURNMENT OR REMAND

(SECTIONS 250 AND 267 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

Whereas ..... stands charged with the offence of ..... these are to command you to lodge the said ..... in the prison at ..... and to keep him safely there until the ..... day of ..... next when you shall bring the said ..... before this Court at ..... o'clock in the ..... noon.

Given under my hand this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

Further Remands

Date	*Remanded to*	*Signature of (Resident) Magistrate*
.....		
.....		
.....		
.....		

[Subsidiary]

Criminal Procedure (*Forms*) *Notice*

FORM XXI

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

CAUTION TO THE ACCUSED BEFORE COMMITTAL FOR TRIAL AND THE ACCUSED'S STATEMENT, OR EVIDENCE, IF ANY

(SECTION 268 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

The charge against you is (*a*) ..... and I inform you that this is not your trial. You will be tried later in another court and before another judge, where all the witnesses you have heard here will be produced and you will be allowed to question them. You will then be able to address the court and to give evidence on oath and to call any witnesses on your own behalf. Unless you wish to reserve your defence, which you are at liberty to do, you may now either make a statement not on oath or give evidence on oath, and may call witnesses on your behalf. If you give evidence on oath you will be liable to cross-examination. Anything you may say whether on oath or not will be taken down and may be used in evidence at your trial. And I give you clearly to understand, that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to you to induce you to make any confession of your guilt. But whatsoever you shall now say may be given in evidence on your trial, notwithstanding any such promise or threat.

The accused in reply states (or electing to be sworn is duly sworn and states)—

.....

.....

.....

.....

.....

I read over the above to the accused who agrees that it is correct and that he has nothing to add to it and I certify that the above statement or evidence was taken in my presence and hearing and contains accurately the whole statement made, or evidence given, by the accused.

Signature or mark of accused
Witness to mark

.....
Signature of (*Resident*) *Magistrate and date*

I ask the accused whether he desires to call any witness
He replies—(*b*) .....

.....
Signature of (*Resident*) *Magistrate and date*

(*a*) The Magistrate reads and explains the charge in simple language.

(*b*) The depositions of the accused's witnesses are not to be taken on this sheet, only his answer to the question.

FORM XXII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF COMMITMENT ON COMMITTAL FOR TRIAL

(SECTION 271 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

These are to command you to lodge .... who is accused of the offence of ..... in the prison at ..... and keep him there safely until his trial at the next Sessions at ..... when you shall bring him before the High Court.

Given under my hand on the ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

FORM XXIII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO GIVE EVIDENCE

(SECTION 275 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

I, ... of .... do hereby bind myself to attend at the next Sessions of the High Court and then and there to give evidence in the matter of a charge of ..... against ..... and, in case of making default herein, I bind myself to forfeit to the Government the sum of K .....

This ..... day of ..... 20 .....

.....

Signature

Entered into before me this ..... day of ..... 20 .....

(*Resident*) *Magistrate*

FORM XXIV

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO A JUROR

(SECTION 298 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: .....

You are hereby summoned to attend and act as a juror in the High Court at ..... on the ..... day of next at ..... o'clock in the forenoon.

Given under my hand this ..... day of ....., 20 .....

Registrar of the High Court

FORM XXV

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

AUTHORITY FOR DETENTION OF PERSON SENTENCED TO DEATH

(SECTION 325 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: The Officer in Charge of the Central Prison at Zomba.

I, ..., Registrar of the High Court of Malawi, hereby certify that ..... of ..... District, was on the ..... day of ..... 20 ..... convicted before the High Court of the offence of murder contrary to section 209 of the Penal Code and was sentenced to suffer death in the manner authorized by law.

This certificate shall be your authority to detain the said ..... in the Central Prison, Zomba, until you shall receive the further order of the President.

Given under my hand this ..... day of ....., 20 ....

Registrar of the High Court

FORM XXVI

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF COMMITMENT

(SECTION 329 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

Whereas.....of.....

was [*this day] [[16]*on the ..... day of ..... 20 .....] convicted before this Court of the offence of .....

under section ..... of the ..... and was sentenced to ..... *(*a*) imprisonment *with/*without hard labour;

*(*b*) a fine of K..... or in default of payment to imprisonment *with/*without hard labour;

*And Whereas of the said fine *the whole/*the sum of K ..... remains unpaid.

You are hereby required to receive the said ..... into your custody in the said prison together with this warrant and there carry the aforesaid sentence into effect according to law subject as hereafter specified.

Unless confirmation of the said sentence shall sooner be communicated to you by ..... you are required to release the prisoner at the expiration of the period appropriate in the case of a sentence of ..... months' imprisonment.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Delete as appropriate

FORM XXVII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF COMMITMENT ON FAILURE TO PAY COSTS AND COMPENSATION

(SECTION 332 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at .....

Whereas on the ..... day of ..... 20 ..... lodged a complaint against .....

And Whereas the Court acquitted / discharged the said accused and made an order that the * ..... should pay to the *..... the sum of K .....

by way of costs (and compensation) or in default be imprisoned for a period of .....

And Whereas of the said sum the whole (or the sum of K .....) remains unpaid, you are hereby required to receive the said ..... into your custody in the said prison together with this warrant and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court on this ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Insert "complainant" or "accused" as the case requires.

FORM XXVIII

REPUBLIC OF MALAWI

In the $\frac{\text{Resident Magistrate's}}{\text{Grade Subordinate}}$ Court at .....

Case No ..... of 20 .....

The Republic *versus*

SUMMONS TO ENFORCE PAYMENT OF A FINE

(SECTION 331 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: .....

Whereas on the ..... day of ..... 20 ....., you were convicted of ..... the offence of .... and were ordered to pay a fine of K ..... and were allowed until the ..... day of ..... 20 ..... to pay—

*(*a*) an installment of K .....

*(*b*) the whole amount of the fine.

And Whereas the said amount of K ..... has not been paid.

You are hereby required to appear before this Court on the ..... day of ..... 20 .... at ..... o'clock in the forenoon to be present at an inquiry as to your means.

Given under my hand and the seal of the Court on the ..... day of ..... 20 .....

(Seal) (*Resident*) *Magistrate*

*Delete where inappropriate.

[Subsidiary] *Criminal Procedure* (*Forms*) *Notice*

FORM XXIX

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT OF ARREST FOR FAILURE TO ANSWER SUMMONS TO INQUIRY AS TO MEANS

(SECTION 332 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the .....

Whereas ..... of ..... was on the ..... day of ..... 20 ..... convicted of the offence and was ordered to pay a fine of K .....

And Whereas the whole amount of K ..... remains unpaid. And Whereas the said ..... failed to answer a summons to appear in this Court to be present at an inquiry as to his means.

You are hereby directed to arrest the said ..... and to produce him before this Court in execution of this your warrant, unless the said ..... shall sooner pay you the said sum of K ..... which you shall pay forthwith to this Court.

And Herein Fail Not.

(Seal) (*Resident*) *Magistrate*

FORM XXX

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO KEEP THE PEACE AND TO BE OF GOOD BEHAVIOUR

(SECTION 338 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to enter into a bond in the sum of K ..... to keep

the peace and to be of good behaviour for the period of ..... from the execution of these presents upon the conditions hereinafter appearing .....;

And Whereas it is a condition of this bond that ([1])—

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This ..... day of ..... 20 .....

Signature

([2]) [We hereby bind ourselves jointly and severally in the sum of K ..... to answer that the above-named will keep the peace and be of good behaviour during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ....., at .....

(*Resident*) *Magistrate*

(1) Here insert any conditions which have been imposed under section 338.

(2) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM XXXI

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO APPEAR AND RECEIVE SENTENCE

(SECTION 337 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to enter into a bond in the sum of K ..... to appear and receive sentence when called upon and in the meantime to keep the peace and to be of good behaviour for the period of .....

from the execution of these presents upon the conditions hereinafter appearing;

And Whereas it is a condition of this bond that ([1])—

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This ..... day of ..... 20 .....

Signature .....

([2]) [We hereby bind ourselves jointly and severally in the sum of K ..... to answer that the above-named will keep the peace and be of good behaviour during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ....., at .....

(*Resident*) *Magistrate*

([1]) Here insert any conditions which have been imposed under section 337.

([2]) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM XXXII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

BOND TO APPEAR AND RECEIVE SENTENCE

(SECTION 339 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, ... have been called upon to enter into a bond in the sum of K ..... to appear and receive

sentence *on the ..... day of .....20 ..... / *when called upon

And Whereas it is a condition of this bond that ([1])—

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This ..... day of ..... 20 .....

Signature: .....

([2]) [We hereby bind ourselves jointly and severally in the sum of K ... . to answer that the above-named will keep the peace and be of good behaviour during the said term.

First Surety:	*Second Surety:*
Name	.....
Address	.....
.....	.....
Occupation	.....]

Entered into before me this ..... day of ..... 20 ....., at .....

(*Resident*) *Magistrate*

* Delete where inappropriate.

([1]) Here insert any conditions which have been imposed under section 337.

([2]) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM XXXIII

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

ORDER FOR RELEASE OF PERSON IN CUSTODY

To the Officer in Charge of the Prison at .....

Whereas on the ..... day of ..... 20 ....of....., in the District of ..... , was ordered by the Court to be acquitted and set at liberty, this is to require you, forthwith to release the said ..... from custody.

Given under my hand on the ..... day of ..... 20 .....

(*Resident*) *Magistrate*

[Subsidiary] *Criminal Procedure* (*Forms*) *Notice*

FORM XXXIV

REPUBLIC OF MALAWI

In the Resident Magistrate's / Grade Subordinate Court at .....

Case No ..... of 20 .....

The Republic *versus*

WARRANT TO LEVY MONEY BY DISTRESS AND SALE

(SECTION 330 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: All Police Officers of the ..... District.

Whereas ..... was on the ..... day of ..... ordered by this Court to pay sum of K ..... as* .....

And Whereas the said ..... has not paid the said sum or any part thereof:

This is to authorize and require you to make distress by seizure of any movable or immovable property belonging to the said ..... which may be found within the ..... District; and, if within ..... days of such distress the said sum be not paid, to sell by public auction the property distrained, or so much thereof as shall be sufficient to satisfy the said sum and thereupon return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this ..... day of ....., 20 .....

(Seal) (*Resident*) *Magistrate*

* Here insert whether fine, penalty, compensation, costs, expenses or otherwise.

CRIMINAL PROCEDURE AND EVIDENCE (JURORS AND WITNESSES ALLOWANCES) RULES

G.N. 72/1969
29/1996

under s. 368

Citation

1. These Rules may be cited as the Criminal Procedure and Evidence (Jurors and Witnesses Allowances) Rules.

Interpretation

2. In these Rules unless the context otherwise requires—

"claimant" means a juror, complainant, or witness who claims to be entitled to an allowance under these Rules;

"juror" means a person who attends the High Court in response to summons to a juror issued in pursuance of the Code;

"Registrar" means the Registrar of the High Court;

"witness" means a person who attends a court to give evidence in any criminal proceedings.

Attendance allowance

3.—(1) A juror, complainant or witness who attends court for the purpose of any criminal proceedings shall be entitled to an attendance allowance in accordance with the scale contained in the Schedule hereto for each day of such attendance:

Schedule

Provided that if, in the opinion of the Registrar or magistrate, hardship would be caused, in any special case, the scale may be increased at his discretion.

(2) An attendance allowance shall be paid in respect of the time a claimant is necessarily detained and for the time reasonably occupied in travelling.

(3) No additional allowance shall be paid merely because the claimant attends more than one case on the same day.

Travelling allowances
G.N. 29/1996

4.—(1) Claimants shall, in addition to an attendance allowance, be entitled to travelling allowances as follows—

(*a*) Claimants travelling by air, rail or public conveyance shall receive a refund of the actual fare paid, and those travelling by hired transport, if the journey would not, in the opinion of the Registrar or Magistrate, have been more reasonably performed by air, rail or public conveyance, a refund of the actual cost of such hired transport, but not exceeding the equivalent charge per kilometer in accordance with current rates used by the Plant and Vehicle Hire Organization, in relation to the type of the motor vehicle used, provided that such cost is, in the opinion of the Registrar or Magistrate, fair and reasonable;

(*b*) Witnesses using their own transport, provided that the journey could not, in the opinion of the Registrar or Magistrate have been more reasonably performed by air, rail or public

conveyance, shall receive payment for each mile traveled each way between the court and their place of residence at the equivalent rate of travel allowances for motor vehicles, motor cycles, and pedal cycle prescribed from time to time for civil servants.

(2) When two or more modes or routes of travel are reasonably available, the one entailing the least expense shall be allowed for, and when a journey is performed by air, rail or public conveyance a refund will only be made of the fare of the class by which the claimant might ordinarily be expected to travel.

(3) No travelling allowance shall be paid to any claimant residing within two miles of the court, unless, owing to physical disability, a conveyance for such claimant is necessary.

Subsistence allowance

5. In addition to an attendance allowance and a travelling allowance, a claimant shall be paid a subsistence allowance for each day during which he is necessarily detained and for the time reasonably occupied in travelling, such sum not being less than 3s.0d: nor more than 15 s Od. as the Registrar or Magistrate may consider reasonable.

Night allowance G.N. 29/1996

6. Where a claimant is necessarily detained overnight from his place of residence, he shall, in addition to any other sums payable under these Rules, be paid expenses necessarily incurred by him for lodging for that night upon production of such evidence of the expenditure as the Registrar or Magistrate may require.

Object of expenses and allowances

7.—(1) The allowances payable under rules 4, 5 and 6 are intended to cover the bare necessary out-of-pocket expenses incurred—

(*a*) in travelling to and from the court; and

(*b*) on food and lodging during the time a claimant is travelling or is necessarily detained in connexion with criminal proceedings.

(2) The Registrar or Magistrate may require a claimant to verify his claim by receipted vouchers or other evidence relating to any such expenses.

Method of payment

8. Claims for allowances relating to attendance at the High Court shall be made to the Registrar. Such claims relating to attendance at the court of a Magistrate shall be made to that Magistrate. All such claims shall be made immediately after the close of the hearing of the criminal proceedings:

Provided that payment may be made at any time if, in the opinion of the Registrar or Magistrate, hardship would be caused to any claimant if payment were deferred until after the criminal proceedings.

Civil Servants

9. Civil servants who attend a court to give evidence or act as jurors in any criminal proceedings shall be paid travelling and subsistence allowances equivalent to the allowances to which they, when travelling on duty, are entitled under the Malawi Public Service Regulations but shall not be entitled to any attendance allowance.

SCHEDULE r. 3

ATTENDANCE ALLOWANCE G.N. 29/1996

1. Allowances to Witnesses—	
(*a*) Professional persons, owners, directors, and managers of business, and persons in receipt of a salary or income exceeding K30,000 per annum	In the discretion of the Court, not exceeding K100 per day
(*b*) Persons whose salary or income exceed K20,000 but does not exceed K30,000 per annum	In the discretion of the Court, not exceeding K75 per day
(*c*) Other person	In the discretion of the Court, not exceeding K50 per day
2. Allowances to Jurors	K100 per day

NOTICE APPLYING CERTAIN PROVISIONS OF THE CODE TO CRIMINAL PROCEEDINGS IN ALL TRADITIONAL OR LOCAL COURTS

G.N. 161/1970

under s. 371

The Minister has applied to all Traditional or Local Courts the provisions of the Code set out hereunder—

Section	77	relating to	Discontinuance by Director of Public Prosecutions
”	81	”	Withdrawal of prosecutions
”	152	”	Conviction of attempt
”	153	”	Alternatives verdicts
”	158	”	Construction of sections 152 and 153
”	176	”	Confessions

"	179	"	Admissibility of photographs and plans
"	180	"	Admissibility of medical reports
"	181	"	Admissibility of scientific reports
"	194	"	Evidence of husband or wife of accused
"	337	"	Conditional or absolute discharge, probation of offenders, etc.
"	339	"	Suspended sentences
"	340	"	Imprisonment of first offenders
"	341	"	Consequence of breach of conditions.

G.N. 241/1971

NOTICE APPLYING PROVISIONS OF SECTION 322 OF THE CODE TO CRIMINAL PROCEEDINGS IN CERTAIN TRADITIONAL OR LOCAL COURTS ONLY

under s. 371

The Minister has applied to the Traditional Courts specified hereunder the provisions of section 322 of the Code—

(*a*) the Southern Regional Traditional Court;

(*b*) the Central Regional Traditional Court;

(*c*) the Northern Regional Traditional Court;

(*d*) any Urban Traditional Court; and

(*e*) any Grade A. 1 Traditional Court.

CRIMINAL PROCEDURE AND EVIDENCE CODE

G.N. 43/1995
7/1996

CRIMINAL PROCEDURE (SELECTION OF JURORS) ORDER

under s. 297

Citation

1. This Order may be cited as the Criminal Procedure (Selection of Jurors) Order.

Division of Malawi into areas for selection of jurors

2. The areas into which Malawi is divided for the selection of jurors for the purpose of section 297 of the Code shall be the areas specified in the Schedule to this Order.

G.N. 43/1995
7/1996

SCHEDULE (para. 2)

AREAS FOR SELECTION OF JURORS

1. Each area of a Traditional Authority as designated under the Chiefs Act.
2. The areas of jurisdiction of a City Council, a Municipal Council and a Town Council.

CRIMINAL PROCEDURE (TRIALS WITHOUT JURY) ORDER

G.N. 8/1996
8/1997
3/2008

under s. 294 (2)

1. This Order may be cited as the Criminal Procedure (Trials Without Jury) Order. Citation

2. The cases or class of cases specified in the Schedule hereto shall be triable in the High Court without a Jury, and in any such case or class of cases instead of the procedure set out in Part X of the Criminal Procedure and Evidence Code, the High Court shall, with any necessary modifications follow the procedure set out in Part VII of the Criminal Procedure and Evidence Code for trials before subordinate courts. Trials without jury

SCHEDULE para. 2

1. All offences under the Customs and Excise Act.
2. All offences under the Exchange Control Act.
3. All offences under the Taxation Act.
4. All offences under Chapter XIX of the Penal Code.
5. All offences under Chapter XXXIII of the Penal Code.

COMMUNITY SERVICE (GENERAL) RULES

G.N. 34/2000

under s. 364A

PART I

PRELIMINARY

1. These Rules may be cited as the Community Service (General) Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"Community Service Officer" means a Community Service Officer appointed under rule 9;

"form" means a form prescribed under these rules;

"National Committee" means the Malawi National Committee on Community Service established under rule 3;

"National Coordinator" means the National Coordinator for Community Service appointed under rule 8;

"Supervisor" means the person referred to in rule 11.

PART II

ORGANIZATION AND STRUCTURE

Establishment of National Committee

3.—(1) There is hereby established the Malawi National Committee on Community Service.

(2) The National Committee shall consist of—

(*a*) a chairperson who shall be a judge appointed by the Chief Justice;

(*b*) a deputy chairperson who shall be the Principal Secretary to the Ministry of Justice or his representative;

(*c*) the Attorney-General or his representative;

(*d*) the Inspector General of Police or his representative;

(*e*) the Principal Secretary for Social Welfare, Children and Women Affairs or his representative;

(*f*) the Principal Secretary for Local Government or his representative;

(*g*) the National Coordinator;

(*h*) the Chief Commissioner of Prisons or his representative;

(*i*) the Chief Resident Magistrate's or their representatives;

(*j*) such other persons as may be appointed by the Chief Justice or co-opted by the National Committee from time to time—

(i) to represent organizations which have an interest in the well-being or reformation of prisoners; or

(ii) on account of their special skills or interest which may assist the National Committee.

Functions of National Committee

4. The functions of the National Committee shall be—

(*a*) to advise the Chief Justice on community service;

(*b*) to issue guidelines on community service to those concerned with the administration of justice and those concerned with supervising offenders placed on community service;

(*c*) to conduct workshops and seminars for those concerned with implementation of community service; and

(*d*) generally, to supervise, coordinate, promote and develop community service throughout Malawi.

Meetings of National Committee

5.—(1) The National Committee shall meet at such times and places as may be determined by the Chairperson.

(2) The procedure at any meeting of the National Committee shall be as directed by the Chairperson.

(3) In the absence of the Chairperson, the Deputy Chairperson or any other member elected by the persons present, shall preside at meetings.

(4) A quorum at a meeting of the National Committee shall be constituted by any five members.

Appointment of Committees

6. For the better exercise of its functions, the National Committee may appoint—

(*a*) an executive committee in accordance with rule 7; and

(*b*) such other committees as it deems fit and which shall exercise such functions as the National Committee may direct.

Executive Committee

7.—(1) The executive committee appointed by the National Committee shall consist of—

(*a*) a chairperson, who shall be the Chairperson of the National Committee or, in his absence, the Deputy Chairperson of the National Committee;

(*b*) the National Coordinator;

(*c*) Regional Coordinators;

(*d*) such other members as the National Committee; and

(*e*) any person whom the Executive Committee may from time to time co-opt.

(2) Subject to the control of the National Committee, the functions of the Executive Committee shall be—

(*a*) to carry out the regular and ordinary functions as may be directed by the National Committee; and

(*b*) to carry out such other functions as may be directed by the National Committee; and

(*c*) to report on its activities at every meeting of the National Committee.

(3) Notwithstanding the appointment of the Executive Committee or the vesting of any functions of the Executive Committee, the National Committee may amend or rescind any of the decisions of the Executive Committee.

National Coordinator

8.—(1) The Chief Justice shall, in consultation with the Chairperson of the National Committee, appoint a person to be the National Coordinator for Community Service.

(2) The National Coordinator shall—

(*a*) subject to the directions of the National Committee, coordinate, promote and develop community service throughout Malawi;

(*b*) liaise with the magistrates courts and all those concerned with the operation and promotion of community service in order to achieve an effective and efficient system of community service throughout Malawi;

(*c*) attend meetings of the National Committee;

(*d*) supervise the day to day work of the Regional Coordinators and Community Service Officers; and

(*e*) generally, coordinate community service throughout Malawi.

Community Service Officers

9.—(1) The Chief Justice shall, on the recommendation of the National Executive Committee, appoint a suitable number of persons in the Judiciary to be Community Service Officers who shall nevertheless remain subject to the general administration and discipline of the Judiciary.

(2) A Community Service Officer shall, subject to the directions and guidance of the National Coordinator, promote, organize and foster community service within the area or district for which he is appointed.

(3) A Community Service Officer shall assist the magistrate courts in his area or district in the implementation of community service and shall act on the directions and advice of the Chief Resident Magistrate within whose region he has responsibilities.

District Committee

10.—(1) Every magistrate in a district shall appoint as many district committees as may be possible and convenient to implement community service in that district.

(2) The district committee shall consist of—

(*a*) the Community Service Officer;

(*b*) the Public Prosecutor;

(*c*) the Officer-in-Charge of Police or his representative;

(*d*) the District Administrator for the District;

(*e*) the officer-in-charge of the Prison within the District concerned or his representative;

(*f*) the Social Welfare Officer for the District concerned;

(*g*) members of the Court Users Committee not reflected in (*a*) to (*f*) above.

(3) A District Committee shall identify local institutions or other places which are suitable and willing to receive and supervise persons placed on community service and shall generally endeavour to promote and develop community services within its District.

Supervisor

11.—(1) The person in charge of an institution or place where an offender has been directed to perform community service shall supervise the performance of the community service concerned.

(2) A supervisor shall—

(*a*) allocate work to the offender concerned as specified in the court order or, where no details have been specified, shall allocate such work as he considers suitable at the institution or place concerned;

(*b*) generally, monitor the performance of the work concerned and, where practicable and possible, shall offer instruction and guidance to the offender concerned in the performance of the work;

(*c*) keep records and submit returns relating to the community service performed as may be directed by the clerk of court or Community Service Officer;

(*d*) exercise a discretion in regard to requests by the offender for leave of absence and generally as to the administration of community service in accordance with such guidelines as may be issued by the National Committee and such advice as may be given by the local Community Service Officer or the National Coordinator;

(*e*) advise the Community Service Officer or clerk of the court of any unresolved problems encountered in connexion with the community service rendered at his institution so that they may be resolved.

(3) Where practical or possible a supervisor shall arrange for counselling of the offender where a request in this regard has been made:

Provided that any such counselling shall not count as part of the time requires to be spent by the offender on performing community service.

Part III

Administration

Preliminary requirements to making an Order

12. Before making a Community Service Order the court shall—

(*a*) undertake an inquiry as to the general suitability of the offender for community service;

(*b*) explain the aims and objects of a community service order to the offender, the duties of the offender expected thereunder, his rights to the court for any variation or revocation of the order and the consequences of any breach or non-compliance therewith;

(*c*) ascertain whether or not the offender is willing to render community service and have regard to his attitude in finally determining whether to make the order;

(*d*) ascertain whether a suitable institution or place is available for reception and supervision of the offender in respect of the proposed community service.

Distribution of the order

13. Upon making a Community Service Order, the court shall cause a copy to be—

(*a*) given to the offender concerned;

(*b*) submitted to the person in charge of the institution or place where the community service is to be performed; and

(*c*) given to Community Service Officer for the area.

Contents of an order

14. A Community Service Order shall specify—

(*a*) the number of hours required to be worked;

(*b*) the days on which work is to be performed;

(*c*) the starting and finishing times of the work;

(*d*) the place where the work is to be performed; and

(*e*) any other special terms or conditions of the community service order.

Application for amendment or revocation

15.—(1) An application for the amendment or revocation of Community Service Order shall be made in writing and lodged with the court which made the order.

(2) Where an offender making an application for an amendment or revocation requires assistance in making a written application the clerk of court shall assist the offender.

(3) An application shall—

(*a*) specify the name of the offender and shall refer to the criminal record book number of his conviction;

(*b*) specify the grounds upon which the amendment or revocation is based and in the case of an amendment, the nature of the amendment being sought;

(*c*) be accompanied by any observation or recommendations which may have been made by the Community Service Officer or the supervisor of the community service concerned.

(4) The clerk of the court shall fix a date, time and place for the hearing of the application and shall serve—

(*a*) a notice of the hearing on the Director of Public Prosecutions or his representative, Community Service Officer and the offender or, if he is a minor, his parent or lawful guardian;

(*b*) a copy of the application on the public prosecutor and the offender, if he is a minor, his parent or lawful guardian where either such person has not himself made the application.

(5) At the hearing of the application the applicant, the Director of Public Prosecutions or his representative and the Community Service Officer shall be entitled to be heard by the court and, in addition, the court may require the supervisor of the institution or place of community service or any other interested person to attend and to assist the court in determining the issue before the court.

(6) Notwithstanding the provisions of subrules (1) to (4) where subsequent to the making of a Community Service Order, the offender is appearing before a court in connexion with other criminal proceedings, an application for the amendment or variation of the Community Service Order may be made verbally to the court by or on behalf of the offender or the public prosecutor.

Breach of Community Service Order

16.—(1) Where a magistrate has reason to believe, from information on oath or otherwise, that an offender has failed to comply with a Community Service Order imposed on him, the magistrate may issue an order in the form set out in Part I of Form CS/7 requiring the offender to appear before the magistrate court which made the order.

(2) Where a magistrate considers it necessary for the purposes of an order referred to in subrule (1) that the offender concerned—

(*a*) should be arrested, he may issue an order in the form set out in Form CS/8 directing the arrest of the offender; or

(*b*) should be further detained, he may issue an order in the form set out in Form CS/9, directing the further detention of the offender for a period not exceeding fourteen days.

(4) Any Order issued in terms of subrule (2) shall be sufficient authority to arrest or detain the offender, whichever may be applicable in terms of the order.

Forms and returns

17. Unless otherwise prescribed in these rules, the forms and returns to be used in connexion with the administration of community service shall be as prescribed from time to time by the National Committee with such variations as the circumstances may require.

Condonation or variation of Part III

18. A court may, in appropriate circumstances condone any failure to comply with the provisions of this Part or may permit or direct such variations as may be appropriate and no Community

Service Order or any document or revocation thereof shall be invalid on the grounds alone of any such condonation or variation.

SCHEDULE FORM CS/1

COMMUNITY SERVICE (GENERAL) RULES

COMMUNITY SERVICE ORDER

PLACEMENT OF AN OFFENDER ON COMMUNITY SERVICE

Filed by: Clerk of Court

Copies: 1. Retain at sentencing court.

2. Send to coordinating body for community service (district/region provincial as necessary).

3. Send to head of institution where service is to be performed.

CASE NUMBER:	
First offender (tick one): yes/no	Has offender served C.S. before? yes/no
Total hours ordered:	Date ordered:
Date work to start:	Completion period:

Offender's Surname:	Middle initials(s):
First name:	
Address:	Nationality:
Village:	Traditional Authority:
District:	Marital Status:
Date of birth[1]:	Educational level:
Sex: (tick one) male/female	Occupation:

Court:	Judicial Officer's name:
Address:	Phone:
Offence[2]:	Estimated custody time[3]:

[1] If date of birth is unknown, fill in year of birth. If year is also unknown, write juvenile or adult.

[2] Include chapter/section number from Penal Code whenever possible.

[3] Sentencing judge should estimate the custody time the offender would serve if community service were not an option. If the offence would not normally involve custody (but rather a fine, probation, etc.), enter none in this box.

FORM CS/2

COMMUNITY SERVICE (GENERAL) RULES

DAILY RECORD OF COMMUNITY SERVICE WORK PERFORMED BY THE OFFENDER

Filed by: Supervisor of offender, on a daily basis
Copies: Retain at host institution

Offender's surname	
First name	
Middle initials	
Offender's address	
Case number	
Name of institution	
Address	
Task assigned to offender	

Date	*Time of arrival*	*Time of departure*	*Hours worked*	*Supervisor*	*Offender's signature or thumbprint*
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	

Date	*Time of arrival*	*Time of departure*	*Hours worked*	*Supervisor*	*Offender's signature or thumbprint*
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	
				Name ..... *Signature*	

FORM CS/3

COMMUNITY SERVICE (GENERAL) RULES

COMMUNITY SERVICE REPORT OF DEFAULT BY OFFENDER

Filed by: Controller at community service institution
Copies: To Clerk of Court
Copies: To Clerk of Court at .....

Offender's surname	
First name	
Middle initials	
Offender's address	
Case number	
Name of institution	
Address	

This is to advise that the above-named offender has defaulted his/her community service for the following reasons (give details, e.g. failed to report for work, persistently late for work, failed to perform work properly)—

.....

.....

The action I have taken so far is as follows (give details, e.g. I have warned him/her that the matter is being referred to the court, I have continued to give him/her work, I have sent him/her home, I have advised the community service officer—

.....

.....

I request that the matter be brought before the court with the community service being cancelled if the court sees fit.

Date: ..... Signature: .....

Full name: .....

.....

Controller of Institution

FORM CS/4

COMMUNITY SERVICE (GENERAL) RULES

COMMUNITY SERVICE REPORT FOR VARIATION OF CONDITIONS

Filed by: Controller at community service institution
Copies: To Clerk of Court.
Copies: To Clerk of Court at .....

Offender's surname	
First name	
Middle initials	
Offender's address	
Case number	
Name of institution	
Address	

This is to request that the conditions of the community service order imposed on the offender be varied as follows (give details, e.g. "Offender presently directed to work on Monday, Tuesday, Wednesday, but I request this be varied to Thursday, Friday, Saturday", or "Offender's present work hours are 6 p.m. to 8 p.m., but I request this be varied to 7 p.m. to 9 p.m.'')—

.....

.....

.....

.....

In the meantime the action I have taken is as follows (give details, e.g. I have informally authorized the offender to change his days or times as follows)—

.....

.....

.....

I request that the matter be brought before the court as soon as possible.

Date: ..... Signature: .....

Full name: .....

.....

Controller of Institution

FORM CS/5

COMMUNITY SERVICE (GENERAL) RULES

REPORT OF COMPLETION OR TERMINATION OF COMMUNITY SERVICE ORDER

Filed by: Controller at community service institution

Copies: 1. To Clerk of Court

2. To community service coordinating body (district/regional as necessary).

Copies: To Clerk of Court at .....

Offender's surname	
First name	
Middle initials	
Offender's address	
Case number	
Name of institution	
Address	

Results of community service order:

Offence for which community service was performed	
Commencement date of community service	
Total number of hours offender was required to work	
Total number of hours actually worked by offender	
Date community service completed or terminated	

Reasons why community service came to an end (*tick applicable item or items*)

Offender satisfactorily completed all hours of work stipulated by the court	
Offender committed further offences and was arrested by the police	
Offender referred back to the sentencing court because of a breach of the community service condition(s) laid down by the court	
Offender fell ill and was admitted to a clinic or hospital	
Offender was injured at the institution and was admitted to a clinic or hospital	
Community service was terminated for reasons other than those listed above (*state reasons overleaf*)	

If the job was being done by a paid worker, what would be the rate of pay per hour?

Date: ..... Signature: .....

Full name: .....

.....

Controller of Institution

FORM CS/6

COMMUNITY SERVICE (GENERAL) RULES

GRID OF HOURS

Duration	*Hours*
1 month	40 Hours
2 months	80 hours
3 months	120 hours
4 months	160 hours
5 months	200 hours
6 months	240 hours
7 months	280 hours
8 months	320 hours
9 months	360 hours
10 months	400 hours
11 months	440 hours
12 months	480 hours

FORM CS/7

COMMUNITY SERVICE (GENERAL) RULES

ORDER IN TERMS OF SECTION 364A OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE

(CAP. 8:01)

To .....

Name of Offender

of: .....

Address of Offender

WHEREAS a Community Service Order was made against you by the High Court/ Magistrate Court, (.....) on the ..... day of ..... 20 ..... which requires you to perform Community Service at ..... AND WHEREAS from the information received it appears that you have failed to comply with the Order in the following respects—

.....

Set out particulars of the alleged breach

.....

.....

YOU ARE REQUIRED to appear before the Magistrate Court ..... on the ..... day of ..... at ..... to show cause why you should not be dealt with according to law.

Date: ..... Signature: .....

Magistrate at

.....

Magistrate Court

FORM CS/8

COMMUNITY SERVICE (GENERAL) RULES

ORDER FOR ARREST IN TERMS OF SECTION 364A CRIMINAL PROCEDURE AND EVIDENCE CODE

(CAP. 8:01)

To the Officer-in-Charge—Malawi Police

This is to direct you to arrest the offender (name) ..... of (address) ..... and to bring him/her before a magistrate of this court as soon as possible and in any case not later than 48 hours after his/her arrest so that the arrest of his /her further detention may be determined.

Date: ..... Signature: .....

Magistrate at

.....

Magistrate Court

FORM CS/9

COMMUNITY SERVICE (GENERAL) RULES

(CAP. 8:01)

ORDER FOR DETENTION IN TERMS OF SECTION 364A OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE

(CAP. 8:01)

To the Officer-in-Charge—Prison

This is to direct you to detain the offender (name) .....
of (address) .....
unless he is admitted to bail or otherwise lawfully released, until—

(*a*) he is brought before the court on the date and time fixed for the inquiry referred to in Part I of this order, or

(*b*) the expiry of a period of 14 days from the date specified below; whichever is the sooner.

Date: ..... Signature: .....

Magistrate at
.....
Magistrate Court

Extended to: ..... Signature: .....

Magistrate at
.....
Magistrate Court