

CHAPTER 200

THE ECONOMIC AND ORGANISED CRIME CONTROL ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 200

THE ECONOMIC AND ORGANISED CRIME CONTROL ACT

An Act to make better provision for the control and eradication of certain crime and culpable non-criminal misconduct through the prescription of modified investigation and trial procedures, and new penal prohibitions, the provision of enhanced sanctions and new remedies, and for related matters.

[25th September, 1984]

[s. 1 (2)]

Acts Nos.

13 of 1984

12 of 1987

13 of 1988

10 of 1989

27 of 1991

3 of 1992

9 of 1995

17 of 1996

31 of 1997

G.N. No.

658 of 1998

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh200s1]1. Short title

This Act may be cited as the Economic and Organised Control Act.

[PCh200s2]2. Interpretation

(1) In this Act, unless the context otherwise requires—

"aircraft" means any machine that can derive support in the atmosphere from the reaction of the air other than the reaction of the air against the earth's surface;

"aircraft facilities" shall have the meaning ascribed to it in any subsidiary legislation made under the Civil Aviation Act *;

"appropriate judicial authority" means the Chief Justice and each judge of the High Court authorised in writing by the Chief Justice to exercise the functions of an appropriate judicial authority under this Act;

"bank" includes any financial institution by whatever title known and whether or not it provides banking services;

"business" includes a business not carried on for profit;

"carrier" means any person engaged in the transportation of passenger or property by land, air or sea, as a common contract or private carrier of freight, forwarder, and officers, agents or employees of such carrier;

"combination" means persons who collaborate in carrying out and furthering the activities or purposes of a criminal racket even though such persons may not know each other's identity or the membership combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation;

"confidence game" means any swindling operation whereby advantage is taken of the confidence reposed by the victim in the swindler;

"Court" means the High Court sitting as an Economic Crimes Court pursuant to section 3;

"criminal racket" means any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to an offence under this Act;

"dealer" means any person engaged in the business of distributing any goods for consumption or use by other at wholesale or retail, or the treatment or use of such goods for the purposes of manufacturing other goods for distribution by others;

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

"document" includes—

(a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols, perforations having a meaning for persons qualified or intended to interpret them; and

(b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced;

"economic offence" means any offence triable under this Act;

"enterprise" includes any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity, carrying on any business whether or not for profit;

"explosive materials" includes explosives, blasting agents, detonators any material used in the manufacture of explosives;

"firearm" means—

(a) any weapon which is capable of expelling, or is designed or may readily be convened to expel, a projectile by the action of an explosive;

(b) the frame or receiver of any such weapon;

(c) any firearm muffler or firearm silencer;

(d) any destructive device,

and includes an antique or domestically manufactured firearm;

"foreign commerce" means commerce between the United Republic, or any citizen of or any firm or body corporate established in the United Republic, and any foreign country, firm, person or body of persons;

"game" means a sport;

"importer" means any person engaged in the business of importing or bringing any article or thing of commercial value into the United Republic;

"internal trade" means commerce amongst the citizens, firms and other persons or bodies of persons, whether or not corporate, within the United Republic;

"Judge" means a Judge of the High Court;

"lay member" means a member of the Court other than a Judge;

"local government authority" means a city, municipality, town, district or village council, and includes a township authority and any committee or other body established by and for the purposes of a local government authority;

"magistrate" means a magistrate performing or authorised to perform any function for the purposes of this Act;

"manufacturer" means any person engaged in the business of manufacturing any article or thing of commercial value;

"member" means a member of the Court, and includes the Judge presiding over the proceedings of the Court;

"Minister" means the Minister responsible for legal affairs;

"motor vehicle" and "motor vehicle facilities" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers or passengers and property, whether publicly or privately owned;

"official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity;

"organised crime" means any offence or non-criminal culpable conduct which is committed in combination or from whose nature, a presumption may be raised that its commission is evidence of the existence of a criminal racket in respect of acts connected with, related to or capable of producing the offence in question;

"person" includes an individual, partnership, committee, association, corporation, and any other organisation or group of persons whether or not a body corporate;

"prosecuting officer" means a person so designated under section 27;

"public official" means any person holding any office, whether appointive or elective, in the Government of the United Republic or any agency of the United Republic;

"racket" means any combination of persons or enterprises;

"Regional Judicial Board" means the Board appointed under the Judicial Service Act; *

"Registrar" means the Registrar of the High Court;

"specified authority" means any department of the Government of the United Republic, a co-operative society, a local government authority or a parastatal organisation;

"sport" includes archery, athletics, bao, baseball, basketball, boxing, cards, chess, cricket, darts, dog-racing, draughts, football, hockey, horseracing, handball, netball, polo, squash, swimming, tennis, volleyball and any other game, play or sport, by whatever name called, involving bodily exercise or mental exertion, whether outdoor or indoor and whether played by amateurs or professionals;

"sports contest" means a sports competition of any kind;

"wildlife" and "wildlife resources" include resources which comprise wild mammals, wild birds, fish, and all other categories of wild creatures of any kind, and all types of aquatic and land vegetation upon which such wildlife resources are dependent.

(2) All offences created by or punishable under the First Schedule to this Act shall be referred to as economic offences.

(3) Except where the nature or circumstances of an offence indicate otherwise, where two or more persons are proved to have been jointly involved in the commission of an economic offence, or where it appears to the Court that the accused could not have committed the offence without the connivance or collaboration of a person or persons not known to the Court, the commission of the offence shall be deemed to have been organised, and the offence to be an organised crime for the purposes of sentence.

PART II

THE ECONOMIC CRIMES COURT (ss 3-19)

Constitution of the Court (ss 3-10)

[PCh200s3]3. Establishment of the Court

(1) The jurisdiction to hear and determine cases involving economic offences under this Act is hereby vested in the High Court.

(2) The High Court when hearing charges against any person for the purposes of this Act shall be an Economic Crimes Court.

[PCh200s4]4. Composition of the Court Act No. 12 of 1987 s. 2

The Economic Crimes Court shall consist of a Judge of the High Court and two lay members.

[PCh200s5]5. Qualification for and summoning of lay members Act No. 12 of 1987 s. 3

(1) The Regional Judicial Board shall at the beginning of each year compile and submit to the Registrar of the High Court as well as to the relevant District Registrar of the High Court a list containing the names of not more than ten persons who are resident in the region who may be summoned to be lay members of the Court.

(2) The Regional Judicial Board shall enlist persons who, in its opinion, are responsible and reasonable members of the community and are fit to perform the duties of the office of lay member.

(3) Every literate person of between the ages of thirty and sixty years who may serve as an assessor under the Magistrates' Court Act * shall be liable to serve as a lay member of the Court.

(4) The High Court shall select and summon two persons from among the list submitted by the Regional Judicial Board to be lay members for the purposes of each session or, if one case only is to be heard, for the purposes of the case concerned.

(5) Where a lay member becomes unable to sit on the Court after proceedings in any case have commenced, and such inability is expected to last unduly long, the proceedings may continue until the conclusion of that case or, if at a session, of all the other cases, notwithstanding the absence of that member.

(6) In selecting and summoning persons to be lay members the High Court shall take into account the nature of the economic offences involved, the standard of literacy of the persons for the purposes of understanding any technicalities involved in the offences charged, the region in which the offences took place and any other relevant human factor which may possibly affect the outcome of the trial.

[PCh200s6]6. Duration of service of lay members

(1) Subject to subsection (2), a person whose name is submitted by the Regional Judicial Board shall be eligible to serve on the Court for one calendar year, but he may be included in the list for the next following year.

(2) Every lay member shall hold office during good behaviour but may be removed from the list of lay members by the Chief Justice or the appropriate judicial authority for good cause.

(3) A person removed from office of a lay member while serving on the Court shall be disqualified from subsequent enlistment as a lay member of the Court.

(4) Every lay member selected immediately after the commencement of this Act shall be eligible to serve on the Court only until the 31st day of December, 1984, but may be reselected.

[PCh200s7]7. Oath of office Act No. 12 of 1987 s. 4

(1) Every lay member shall, prior to the commencement of each session or the proceedings in a single case, take and subscribe the oath prescribed in the Second Schedule of this Act, in the presence of a Judge of the High Court.

(2) Where any lay member has no religious belief or the taking of an oath is contrary to his religious belief, he may make and subscribe a solemn affirmation in the form of the oath prescribed, substituting the words "solemnly and sincerely affirm" for the word "swear" and omitting the words "so help me God".

(3) The record of the oath office shall after subscription by each member be kept as part of the record of the proceedings or session in respect of which the member is sworn.

[PCh200s8]8. Remuneration and expenses

(1) Every member of the Court and every person, other than counsel for the defence, discharging duties connected with proceedings before the Court shall be paid

such remuneration or allowances as the Minister may from time to time to time, by notice published in the Gazette, determine.

(2) The remuneration or allowances to be paid under subsection (1) shall be of such amount as may be sufficient to cover the cost of board, lodging, transport and travel likely to be incurred.

[PCh200s9]9. Seals of the Court

The Court shall use distinctive stamps and seals of such nature and pattern as the Chief Justice may direct.

[PCh200s10]10. Administration of the Court

(1) The Chief Justice shall make such manpower arrangements as he may consider appropriate for ensuring the smooth co-ordination of the affairs of the Court.

(2) For the purposes of this section, the Chief Justice may select public officers employed in the Judiciary Department and assign to them such duties as he may determine for the purposes of ensuring the proper and efficient functioning of the Court.

(3) The Chief Justice may, from time to time, issue such directions as he may determine for the guidance of all officers, or a category of them, in the performance of duties in relation to matters arising under or connected with this Act and such directions shall be under the hand of the Chief Justice.

Jurisdiction and Functions (ss 11-19)

[PCh200s11]11. Powers and duties of the Court Act No. 12 of 1987 s. 5

(1) The Court shall have power to inquire into economic offences alleged to have been committed, and to make such decisions and orders for the purposes of this Act as it may in each case find fit and just.

(2) Allegations of commission of any economic offence may be brought to the attention of the Court through—

(a) the reference by any court subordinate to the High Court, with copies of records being sent to the Director of Public Prosecutions, of any case involving economic offence or offences previously instituted before that court;

(b) the institution of proceedings before the Court by the Director of Public Prosecutions or by his representative duly appointed in accordance with section 82 of the Criminal Procedure Act. *

(3) Where the Court finds any accused person guilty of the economic offence charged it may pass such sentence on him as it deems fit and just in the circumstances of the case, subject to this Act, and explain to him his right of appeal.

(4) Where the Court finds any accused person not guilty of the offence charged or of any alternative economic offence disclosed by the evidence adduced it shall forthwith acquit and order the release of that person.

[PCh200s12]12. Power to refer matters to other courts Act No. 12 of 1987 s. 6

(1) Where the Court decides that an alleged economic offence is in fact not an economic offence which it has jurisdiction to try, it shall order that proceedings in respect of that offence be instituted in such court as it may deem proper to order, but shall make

no order in relation to the accused person save for bail if an application is made in that behalf.

(2) Where the Court decides that it has no jurisdiction and makes an order under subsection(1), the accused shall be deemed to have been discharged for the purposes of proceedings before the Court, but the discharge shall not operate to preclude the arrest of the person for the purposes of proceedings in relation to him before an appropriate competent court in respect of the same facts on which he was brought before the Court.

(3) The Director of Public Prosecutions or any State Attorney duly authorised by him, may, in each case in which he deems it necessary or appropriate in the public interest, by certificate under his hand, order that any case involving an offence triable by the Court under this Act be tried by such court subordinate to the High Court as he may specify in the certificate.

(4) The Director of Public Prosecutions or any State Attorney duly authorised by him, may, in each case in which he deems it necessary or appropriate in the public interest, by certificate under his hand order that any case instituted or to be instituted before a court subordinate to the High Court and which involves a non-economic offence or both an economic offence and a non-economic offence, be instituted in the Court. [ss. (3A)]

(5) Where a certificate is issued under subsection (3), it shall be lodged in the court concerned, and shall constitute full authority for, and confer jurisdiction upon, the court in which it is lodged to try the case in question. [ss. (4)]

(6) Where a person tried by a court subordinate to the High Court pursuant to the preceding provisions of this section is found guilty by that court, the court shall impose on that person the sentence provided for by this Act. [ss. (5)]

[PCh200s13]13. Place of sittings

The proceedings of the Court shall be conducted in any building or room in which the sittings of the High Court are ordinarily held or, subject to the directions of the appropriate judicial authority, in such other place which is different from, but is fit for use as, a court room.

[PCh200s14]14. Disclosure of interest of member

(1) No member shall sit on the Court for the hearing and determination of any matter in which he has any interest other than that of seeing to the eradication of economic and organised crime through lawful means.

(2) A member who has an interest in the matter shall inform the presiding Judge of his interest before taking the oath for the purposes of the case, and the Judge shall cause a summons to be sent out for another person to replace that member.

[PCh200s15]15. Privilege of proceedings

(1) Save as is expressly provided by this Act no act or thing done or omitted by a member shall, if done or omitted bona fide in the exercise of his judicial functions under this Act, render such member criminally liable for such act or omission.

(2) Any advocate or other person appearing before the Court on behalf of a party shall have the same protection and immunity as an advocate has in appearing for a party in ordinary proceedings before the High Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Court as a witness shall have the same protection, and shall, in addition to the penalties provided by this Act, be subject to the same liabilities, in any civil or criminal proceedings, as a witness in ordinary proceedings in the High Court.

[PCh200s16]16. Decisions and verdicts Act No. 12 of 1987 s. 7

(1) All questions to be decided by the Court, other than the question whether or not the accused is guilty of any offence, shall be decided by agreement of the majority of the members and the reasons for any member differing from the views held by the majority of the members shall be stated by him in open court and be recorded by the Judge presiding over the proceedings, and shall form a part of the record of the Court in those proceedings.

(2) The decision whether or not the accused is guilty shall be made by the Judge presiding over the proceedings after—

- (a) summing up the evidence for the prosecution and the defence; and
- (b) requiring each of the lay members to state his opinion orally as to the case generally and as to any specific question of addressed to him by the Judge, and recording such opinion.

(3) The Judge shall not, in making the decision pursuant to subsection (2), be bound by the opinions of the lay members.

[PCh200s17]17. Reports from the Court

(1) The Registrar and each District Registrar shall at intervals of six months, prepare and submit to the Minister a report specifying—

- (a) the total number of economic offences brought before the Court for trial;
- (b) the number of each type of economic offences inquired into;
- (c) the number of persons tried for commission of each type of economic offence;
- (d) the orders made by the Court in the trial of each economic offence;
- (e) any recommendations for the control or eradication of any economic or other crime or crimes;
- (f) any other matter which the Minister may require the Registrar to report upon.

(2) The Court may, in any appropriate case, after the trial, submit a special report to the Minister—

- (a) concerning non-criminal or professional misconduct, abuse or misuse of office involving economic or organised criminal activity by any public official as the basis for a recommendation of his removal or disciplinary action being taken against him;
 - (b) regarding the state and conditions of economic and organised criminal activity within the area of the jurisdiction of the Court,
- and the Minister shall act upon the report in accordance with relevant law.

[PCh200s18]18. Contempt of the Court Act No. 12 of 1987 s. 8

- (1) Any person who—
- (a) wilfully disobeys any lawful order, process or requirement issued by the Court;

(b) publishes any proceedings or report of the Court or any part of it contrary to an order of the Court prohibiting publication;

(c) discloses or publishes a report of the evidence taken or deliberations of the Court held in camera or directed to be withheld from publication;

(d) within the premises in which any proceeding of the Court is being held or taken, or within the precincts of those premises, shows disrespect, in speech or manner, to or with reference to that proceeding;

(e) within the premises in which any proceeding of the Court is being held or taken, and in the face of the Court, conducts himself, in speech or manner, so as to be likely to threaten any witness or to disrupt the proceedings of the Court;

(f) with a view to preventing the giving of evidence or production of any thing before the Court, does any act intended or likely to intimidate a person summoned from giving evidence or producing the thing;

(g) with a view to punish or victimise a person, does any act to him after that person has given evidence or produced any thing before the Court, which injures or is likely to injure that person or his property;

(h) publishes anything in any manner which scandalizes or is intended or likely to scandalize the Court;

(i) wilfully publishes or does any thing which is intended or tends to prejudice the fair trial of any person before the Court,

commits an offence of contempt of the Court and shall be liable on conviction to imprisonment for five months or to a fine not exceeding three thousand shillings.

(2) Save as is provided in section 19, all offences of contempt against the Court shall be triable by the district court.

[PCh200s19]19. Power of the Court in relation to contempt

(1) When any offence under section 18 is committed in the face of the Court, the Court may cause the offender to be detained in custody, and at any time before the rising of the Court on the same day may take cognisance of the offence and sentence the offender to a fine of five hundred shillings or, in default of payment, to imprisonment for one month.

(2) Without prejudice to section 18, the Court shall have power to punish by fine or imprisonment such contempt of its authority as—

(a) misbehaviour of any kind by any person in its face or so near to it as to obstruct the administration of justice;

(b) misbehaviour of any of the officers of the Court in their official transactions;

(c) disobedience or resistance to its lawful authority.

PART III

INVESTIGATION OF ECONOMIC CRIMES (ss 20-27)

Investigation Process (ss 20-24)

[PCh200s20]20. Application of Criminal Procedure Act

(1) Except as is provided in this Part, and in any other written law creating an economic offence in respect of which the Court has jurisdiction by virtue of this Act, the investigation of all economic offences triable by the Court shall be conducted in

accordance with the provisions of the Criminal Procedure Act *, subject to the following provisions of this section.

(2) Where in relation to any offence which is an economic offence under this Act, the law creating the offence expressly provides for specific acts to be done in the process of investigation, those acts shall be done in accordance with that law to the extent only to which that law derogates from the provisions of the Criminal Procedure Act. *

(3) Where after the Court commences the hearing of any case it appears that some further investigations ought to be done in order for the Court to reach a just decision, the Court may, on its own instance or that of the prosecuting officer, adjourn the proceedings and order that investigations or further investigations be carried out into any matter or aspect of it and a report on the investigations be furnished to the Court within such time as it may specify.

(4) Where at the end of the trial the Court convicts the accused and decides that a custodial sentence be imposed, the period of adjournment for further investigations shall, if the accused person be in custody, be taken into account for the purposes of determining the length of the custodial sentence to be imposed.

[PCh200s21]21. Personnel for investigation

(1) The investigation of all economic offences reported to the police shall be conducted by police officers, with the assistance of such public officials or category of public officials as may be designated by the Director of Public Prosecutions after consultation with the Director of Criminal Investigation and by order published in the Gazette.

(2) Where in accordance with any other written law the investigation of any economic offence or category of economic offences, is ordinarily conducted by public officials other than police officers, then for the purposes of this Act the term "police officer" shall include any public officials in the discharge of functions in pursuance of this Act.

[PCh200s22]22. Search for and seizure of property Act No. 12 of 1987 s. 9

(1) Where a police officer is satisfied that there is reasonable ground of for suspecting that there is in any building, vessel, carriage, box, receptacle or place—

(a) anything with respect to which any economic offence has been committed;

(b) anything in respect of which there are reasonable grounds to believe that it will afford evidence as to the commission of any economic offence;

(c) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purposes of committing any offence,

and that any delay would result in the removal or destruction of that thing or danger to life, or property he may search, or issue a written authority to any police officer under him to search the building, vessel, carriage, box, receptacle or place.

(2) Whenever any search is made or any such written authority is issued the police officer concerned shall, as soon as practicable, report the issue of the authority, the grounds on which it is issued and the results of any search made under it, to a district magistrate within whose area of jurisdiction the search is to be made or was made.

(3) Where anything is seized after a search conducted pursuant to this section, the police officer seizing it shall—

(i) forthwith or as soon as it is practicable evaluate or cause the property to be evaluated so as to ascertain its value;

(ii) issue an official receipt evidencing such seizure and on which the value of the property as ascertained and bearing in addition to his signature, the signature of the owner of the premises searched and that of at least one independent person who witnessed the search;

(4) Where at any stage of the investigations it appears that anything seized is not related to any economic or other offence in respect of which any person is or is to be charged, the police officer in charge of the case shall forthwith cause the thing to be restored to its owner and shall in no case detain it longer than is necessary.

(5) Any person who being empowered by law to order, authorise or conduct the search of a building, vessel, carriage, box, receptacle or place, exercises such power without having a reasonable ground commits offence of abuse of office in terms of section 96 of the Penal Code. *

(6) Where in the course of a search conducted under this section any premises or part of such premises are put under the custody of the police, then at least two locks or padlocks shall be fixed to the external doors of such premises, and the keys for one lock or padlock shall be kept by the owner or occupier of the premises or his agent who shall be specified for the purpose.

[PCh200s23]23. Disposal and forfeiture of property Act No. 12 of 1987 s. 10

(1) Where before the institution or determination of proceedings before the Court it appears to the Inspector-General of Police or a person authorised by him in writing, or

to the Court, that any property seized under this Act or put in evidence in proceedings before the Court is subject to speedy decay or that for any other reasonable cause it is necessary that it be sooner disposed of, the Inspector-General of Police or the Court, as the case may be, may cause or order that, subject to subsection (8), that property be destroyed, disposed of or dealt with in such manner as inspector General of Police or the Court may specify.

(2) Where, before the institution or determination of proceedings, any property is destroyed, disposed of or dealt with in any other manner, other than the manner referred to in section 24(4), in pursuance of subsection (1), a certificate signed by the Inspector-General of Police or any person authorised by him in writing shall in the absence of proof to the contrary be conclusive evidence of the reasons, the manner and the circumstances in and the value for, which the property was disposed of or dealt with, and shall be considered to be the rightful value of the property for the purposes of this Act.

(3) Where a person is convicted of an economic offence and the Court is satisfied that any property which was in his possession or under his control at the time of his apprehension—

- (a) was used for the purposes of committing or facilitating the commission of the offence; or
- (b) was intended by him to be used for that purpose; or
- (c) was otherwise involved in the commission of the offence; and
- (d) was so used or involved in the commission of the offence with the knowledge or consent of its owner,

the Court shall make an appropriate order under subsection (1).

(4) Where the Court is satisfied that any property which was in the possession of a person charged with but acquitted of an economic offence, at the time of his apprehension—

(a) was used for the purposes of committing or facilitating the commission of the offence; or,

(b) was otherwise involved in the commission of the offence, whether or not it was so used or involved in the commission of the offence with the knowledge or consent of the owner, the Court shall, subject to subsection (5) make an order in respect of the property under subsection (3).

(5) Where the person charged with but acquitted of an economic offence as referred to under subsection (4) is not the owner of the property, no order shall be issued in respect of the property unless the owner, if he is not charged, is given an opportunity to show cause why an order by the court in respect of the property should not be issued, and if he is not before the court and his whereabouts cannot immediately be ascertained, the court may order the Inspector General to issue a notice in terms of subsection (2) of section 24 and the provisions of subsections (3), (4), (5) and (6) of that section shall apply as if that owner had absconded.

(6) Facilitating the commission of an offence shall be taken, for the purposes of this section, to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(7) An order under subsection (3) shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall, if not already in their possession, be taken into the possession of the police.

(8) Where the Court makes an order under subsection (3) in respect of any property, the property may be kept or sold, and the same or the proceeds of its sale shall be paid into and form part of the Consolidated Fund.

(9) Where before or after the determination of proceedings before the Court any property seized or put in evidence is sold or disposed of in any other manner, except where the property is sold or disposed of in any other manner in a shop or through any other public marketing utility or organ, no public official having any duty to perform in connection with the sale of any property under this Act shall directly or indirectly purchase or bid for the property.

(10) No property disposed of or in respect of which an order is made by the Court under subsection (3) shall be sold by public auction.

(11) For the purposes of this section "property" includes not only the property originally in the possession or under the control of the accused person but also any property into or for which that original property is converted or exchanged, and anything acquired by such conversion or exchange, whether before or after the accused was apprehended.

[PCh200s24]24. Disappearance of suspect Act No. 12 of 1987 s. 11

(1) Where the Inspector-General of Police is satisfied that any person under arrest or liable to be investigated, searched or arrested in connection with any reasonable

suspicion of the commission of an economic offence or who is on bail during trial or pending appeal for an economic offence has absconded to any place outside the United Republic or, within the United Republic, concealed himself so that he may not be searched, arrested or otherwise investigated as to the alleged commission of the economic offence in question, the Inspector-General of Police may cause investigation measures to be taken in relation to the premises and the property previously in the possession, occupation or under the control of the suspect but abandoned by reason of his abscondence.

(2) Where, upon the completion of measures taken in pursuance of subsection (1), the commission of an economic offence is revealed for which the suspect would have been prosecuted before the Court but for his abscondence, the Inspector-General of Police shall, by publication in the Gazette, give notice to the general public of not less than twenty-one clear days, that he intends to submit the property before the Court for it to make orders in relation to the property or other goods involved.

(3) Upon the expiration of the period of the notice under subsection (2), the Inspector-General of Police shall prepare and lodge with the Court a certificate stating—

- (a) the name of the absconding suspect;
- (b) the address of his deserted residence or the premises involved;
- (c) the details of the property abandoned involving or in respect of which an economic offence is alleged to have been committed; and
- (d) a sketch of the evidence envisaged to be relied upon by the prosecution where the suspect is found and charged before the Court.

(4) If upon receipt of certificate lodged with it in pursuance of subsection (3) and after considering any representations made after the notice was given, the Court is satisfied that the evidence envisaged to be relied upon as revealed to the Court would have been sufficient to disclose a criminal offence connected with the absconded suspect, it shall proceed to make orders such as may be made under section 23(3) in respect of the property or part of the property or goods left by the absconded suspect.

(5) Where an absconded suspect subsequently returns to the United Republic or reveals his whereabouts within the United Republic, he may be arrested and charged with the economic offence with which he would have been charged had he not previously absconded.

(6) Notwithstanding any written law for the time being in force in the United Republic and whether or not the absconded suspect subsequently reappears in the United Republic, no action, claim or demand of any kind shall be instituted in any Court against any person in relation to any property or goods forfeited or disposed of by an order of the Court in pursuance of the provisions of this section.

The Decision to Prosecute (ss 25-27)

[PCh200s25]25. D.P.P. to be informed of occurrences and to give directions

(1) In this part the term "Director of Public Prosecutions" includes any public official or officials specified by the Director of Public Prosecutions by notice published in the Gazette to whom he has delegated any of his functions for the purposes of this Part of this Act.

(2) Whenever—

(a) a police officer in charge of the conduct of criminal investigations in a region; or

(b) any person in charge of a department of Government or other public authority empowered by any written law to conduct investigations into any offence or category of offences triable under this Act,

is informed of the occurrence of an economic offence in the region or any other area within which he or his department or public authority has jurisdiction, he shall forthwith communicate to the Director of Public Prosecutions, in addition to any other person whom he is required by law to communicate, any intelligence affecting or relating to the occurrence and to investigations connected with any economic offence arising from it.

(3) The Director of Public Prosecutions may whenever it is necessary in his opinion for a successful completion of investigations in any case the occurrence of which has been previously communicated to him, give such directions and advice on the matter as he may deem appropriate or proper in the circumstances.

[PCh200s26]26. Consent of D.P.P. for prosecutions

(1) Subject to the provisions of this section, no trial in respect of an economic offence may be commenced under this Act save with the consent of the Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall establish and maintain a system whereby the process of seeking and obtaining of his consent for prosecutions may be expedited and may, for that purpose, by notice published in the Gazette specify economic offences the prosecutions of which shall require the consent of the Director of Public

Prosecutions in person and those the power of consenting to the prosecution of which may be exercised by such officer or officers subordinate to him as he may specify acting in accordance with his general or special instructions.

(3) The Director of Public Prosecutions shall have and may exercise in relation to prosecutions under this Act the same power which is conferred on him in respect of public and private prosecutions by the Criminal Procedure Act. *

[PCh200s27]27. Responsibility for the conduct of prosecutions

(1) All prosecutions before the Court shall be conducted by persons, designated as prosecuting officers, specified in subsection (2) or appointed as such under subsection (3) of this section.

(2) The following persons are hereby specified as prosecuting officers, that is to say—

- (a) all law officers;
- (b) all State Attorneys of every rank; and
- (c) all police officers of or above the rank of Assistant Superintendent of Police.

(3) The Director of Public Prosecutions may by notice published in the Gazette, appoint—

- (a) any legally qualified person, or category of legally qualified persons, employed in the public service; or
- (b) any other person or category of persons,

to be a prosecuting officer or officers generally or in respect of any proceeding or category of proceedings under this Act.

PART IV

PROCEDURE PRIOR TO AND DURING TRIAL BEFORE THE COURT (ss 28-56)

Preliminary Procedure (ss 28-38)

[PCh200s28]28. Application of Criminal Procedure Act

Except as is provided in this Part to the contrary, the procedure for arraignment and for the hearing and determination of cases under this Act shall be in accordance with the provisions of the Criminal Procedure Act *.

[PCh200s29]29. Procedure on arrest Act No. 12 of 1987 s. 12

(1) After a person is arrested, or upon the completion of investigations and the arrest of any person or persons, in respect of the commission of an economic offence, the person arrested shall as soon as practicable, and in any case within not more than forty-eight hours after his arrest, be taken before the district court within whose local limits the arrest was made, together with the charge upon which it is proposed to prosecute him, for him to be dealt with according to law, subject to this Act.

(2) Whenever a person is brought before a district court pursuant to subsection (1), the magistrate concerned shall read over and explain to the accused person the charge or charges set out in the charge sheet in respect of which it is proposed to prosecute the accused, but the accused person shall not be required to plead or make any reply to the charge.

(3) After having read and explained to the accused the charge or charges the magistrate shall address to him the following words or words to the like effect:

"This is not your trial. If it is so decided, you will be tried later in the High Court sitting as an Economic Crimes Court, and the evidence against you will then be adduced. You will then be able to make your defence and call witnesses on your behalf".

(4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail—

(a) between the arrest and the committal of the accused for trial by the Court, is hereby vested in the district court and the court of a resident magistrate if the value of any property involved in the offence charged is less than ten million shillings;

(b) after committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court;

(c) after the trial has commenced before the Court, is hereby vested in the Court;

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court.

(5) After a person is committed to remand prison by a district court or after the investigations have been completed but before the suspect is arrested, the police officer, or other public official in charge of the relevant criminal investigations under this Act, shall forthwith cause the statements in quintuplicate of persons intended to be called as witnesses at the trial to be properly typed out, conveniently compiled and sent, along with the police case file, to the Director of Public Prosecutions or any other public official designated by him in that behalf.

(6) If the Director of Public Prosecutions or that other public official, after studying the police case file and the statements of the intended witnesses, is of the view that the evidence available is insufficient to warrant mounting a prosecution, or it is otherwise inadvisable to prosecute, he shall immediately enter nolle prosequi; unless he has reason to believe that further investigations can change the position, in which case he shall cause further investigations to be carried out.

(7) If the Director of Public Prosecutions or that other public official, after studying the police case file and the statements of the intended witnesses, decides that the evidence available, or the case as such, warrants putting the suspect on trial, he shall draw up, or caused to be drawn up, an information in accordance with law, and when signed by him, submit it, together with three copies each of the statements of witnesses sent to him under subsection (5), in the registry of the High Court.

(8) After an information is filed in the High Court, the Registrar shall endorse on or annex to it and to every copy of information, notice of trial, and cause a copy each to

be delivered to the district court in which the accused was first presented, as well as to the Director of Public Prosecutions or other officer filing the information.

[PCh200s30]30. Committal for trial by Court

(1) Upon receipt of the copy of the information and the notice, the district court shall summon the accused person from remand prison or, if not yet arrested order his arrest and appearance before it, deliver to him, or to his counsel a copy of the information and notice of trial delivered to it under section 29(8), and commit him for trial by the Court; and the committal order shall be sufficient authority for the person in charge of the remand prison concerned to remove the accused person from prison on the specified date and to facilitate his appearance before the Court.

(2) The Registrar of the High Court shall be responsible for summoning all witnesses for the prosecution as well as those intended to be called by the defence.

[PCh200s31]31. The information Act No. 4 of 1991 Sch.

(1) Every information shall contain such particulars as are necessary to give reasonable information as to the nature of the offence or offences including a statement of the law and the section, or other division of it, under which the accused person is charged.

(2) Every information shall be brought in the name of the Republic.

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

(4) The following persons may be joined in one information 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 aiding or of an attempt to commit the offence charged;

(c) persons accused of different offences committed in the course of the same transaction.

[PCh200s32]32. Address of the accused to be recorded

After the accused person has pleaded guilty to the charge read to him in the court under this section the court shall obtain from him his permanent address and shall record and keep it.

[s. 31A]

[PCh200s33]33. Admission by accused

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

(2) After an accused person pleads guilty to the information, the Court shall require the prosecuting officer to give a brief description of the actual facts and other particulars constituting the offence which the accused person admits to have committed, and at the end ask the accused person whether or not he agrees with the facts and particulars and what alterations, if any, he would like to be made.

(3) After the particulars of the offence or offences which the accused person admits to have committed have been settled, the Court shall convict the accused person of the offence or offences which he admits, and then proceed to pass sentence on him. Except that where the Court is satisfied that it is desirable that the passing of the sentence be deferred it may for reasons to be recorded, defer the same until some other time.

[s. 32]

[PCh200s34]34. Denial by accused

Where the accused person does not admit the truth of the information or of any economic offence it in, the Court shall enter a plea of not guilty to that information or offence and proceed to the preliminary hearing in accordance with section 35, after which the Court shall hear the evidence of the witnesses for the prosecution and, if he so wishes, of the accused person and his witnesses; but where, during the preliminary hearing or the trial, the accused admits the truth of the information, or of any economic offence in it, the Court shall follow the procedure prescribed in section 33.

[s. 33]

[PCh200s35]35. Preliminary hearing

(1) Notwithstanding the provisions of any other written law, if an accused person pleads not guilty, the Court shall as soon as practicable hold a preliminary hearing in open court in the presence of the accused and, where the accused is represented, his advocate, and of the prosecuting officer to establish matters relating to the charge which are not in dispute so as to promote a fair and expeditious trial.

(2) At the conclusion of the preliminary hearing held under this section the Judge shall prepare a memorandum of the matters agreed as not disputed, read it over and explain it to the accused in a language that he understands, and have it signed by the accused and, if represented, his advocate and by the prosecuting officer and then filed.

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

(4) Wherever possible, the accused person shall be tried during the sessions of the Court at which he is charged, and if a case be adjourned after the preliminary hearing to a date more than a month later due to the absence of witnesses or any other cause, nothing in this section shall be read as requiring the same Judge who held the preliminary hearing under this section to preside at the trial.

(5) The Minister may, after consultation with the Chief Justice, make rules to be published in the Gazette for the better carrying out of the purposes of this section and without prejudice to the generality of the power of the Minister, the rules may provide for—

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

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

[s. 34]

[PCh200s36]36. Bail Acts Nos. 12 of 1987 s. 13; 10 of 1989 Sch.; 27 of 1991 Sch.; 17 of 1996 Sch.

(1) After a person is charged but before he is convicted by the Court, the Court may on its own motion or upon an application made by the accused person, subject to the following provisions of this section, admit the accused person to bail.

(2) Notwithstanding anything in this section contained no person shall be admitted to bail pending trial, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced.

(3) A certificate issued by the Director of Public Prosecutions under subsection (2) shall take effect from the date it is fixed in court or notified to the officer in charge of a police station, and shall remain in effect until the proceedings concerned are concluded or the Director of Public Prosecutions withdraws it.

(4) The Court shall not admit any person to bail if—

(a) it appears to it that the accused person has previously been sentenced to imprisonment for a term exceeding three years;

(b) it appears to it that the accused person has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded;

(c) the accused person is charged with an economic offence alleged to have been committed while he was released on bail by a court of law;

(d) it appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety;

(e) the offence for which the person is charged involves property whose value exceeds ten million shillings, unless that person pays cash deposit equivalent to half the value of the property, and the rest is secured by execution of a bond;

(f) if he is charged with an offence under the Dangerous Drugs Act *.

(5) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely–

(a) execution of a bond to pay such sum of money as is commensurate to the monetary value and the gravity of the offence concerned:

Provided that where the offence for which the person is charged involves property whose value is ten million shillings or more, the court shall require that cash deposit equal to half the value be paid and the rest be secured by execution of a bond;

(b) appearance by the accused before the Court on a specified date at a specified time and place;

(c) surrender by the accused to the police of his passport or any other travel document; and

(d) restriction of the movement of the accused to the area of the town, village or other area of his residence.

(6) The Court may, in addition to the mandatory conditions prescribed in subsection (4) impose any one or more of the following conditions, namely–

(a) requiring the accused to report at specified intervals to a police station or other authority in his area of residence;

(b) requiring the accused to abstain from visiting a particular locality or premises, or association with certain specified persons;

(c) any other condition which the Court may deem fit to impose in addition to the preceding conditions,

which appear to the Court to be likely to result in the appearance of the accused for the trial or resumed trial at the time and place required or as may be necessary in the interest of justice or for the prevention of crime.

(7) For the purposes of this section, "the Court" includes every court which has jurisdiction to hear a petition for and grant bail to a person under charges triable or being tried under this Act.

[s. 35]

[PCh200s37]37. Change of circumstances after grant of bail Act No. 12 of 1987 s.

14

Where an accused person has been admitted to bail and circumstances arise which, if the accused person had not been admitted to bail would, in the opinion of a law officer or a prosecuting officer, justify the Court in refusing bail or in requiring bail of a greater amount, the court which granted the bail may, on the circumstances being brought to its notice by a law officer or prosecuting officer issue a warrant for the arrest of the accused person and, after giving the accused person an opportunity of being heard may commit him to remand prison to await trial, but the accused person may appeal to the court

against the order of the magistrate, and the Court may, on resumption of the trial, confirm the order or readmit him to bail for the same or varied conditions and on such an increased amount as the Court may think just.

[s. 36]

[PCh200s38]38. Arrest of persons contravening bail provisions Act No. 12 of 1987

s. 15

(1) A police officer may arrest without warrant any person who has been admitted to bail—

(a) if the police officer has reasonable ground for believing that person is likely to break the condition that he will appear at the time and place required or any other condition on which he was admitted to bail, or has cause to suspect that person is breaking or has broken any such other condition; or

(b) on being notified in writing by any surety for that person that the surety believes that that person is likely to break the first mentioned condition and for that reason the surety wishes to be relieved of his obligation as a surety.

(2) A person arrested under subsection (1)—

(a) shall unless he is arrested within the period of twenty-four hours immediately preceding an occasion on which he is required by virtue of the condition of his bail to appear before the Court, be brought as soon as practicable after his arrest before a magistrate who, after giving him an opportunity to be heard, may commit him to remand prison; and

(b) in the excepted case shall be brought before the Court for resumption of trial,

and when the court next sits it shall first consider the question of the alleged contravention of bail conditions by the accused person.

(3) Where the Court is satisfied that a person arrested in accordance with subsection (1) was preparing for or was in the act of leaving any area to which he was restricted by the Court as a condition of his bail, or was leaving the United Republic, it shall not consider any appeal or petition by the accused for any further bail in the same case.

(4) Where a person admitted to bail absconds or fails to appear before the court before which he is required to appear on the date fixed and conceals himself so that a warrant of arrest may not be executed—

(a) the trial in respect of that person before such court shall continue, irrespective of the stage of trial when the accused absconds, after sufficient efforts have been made to trace him and compel his attendance; and

(b) such of the property, movable or immovable, involved in the alleged commission of the economic offence or in respect of which the economic offence is alleged to have been committed may, if the economic or other criminal offence is disclosed to be connected with the absconded or untraced accused, be forfeited to the United Republic as if the accused were an absconded suspect in terms of section 24.

[s. 37]

Procedure During Trial (ss 39-45)

[PCh200s39]39. Expedition of actions

(1) Upon the conclusion of the preliminary hearing the Court shall in all proceedings take all necessary measures to ensure the early and just determination of cases brought before it.

(2) The Director of Public Prosecutions may in any proceeding before the Court file a certificate stating that in his opinion the case is of immense or general public importance; and the certificate shall forthwith be brought to the attention of the Court.

(3) Upon receipt of a certificate filed pursuant to subsection (2) the Court shall assign the case for preliminary hearing or for trial, as the case may be, as soon as practicable, conduct its hearing and determination, and cause the trial to be expedited in every way.

[s. 38]

[PCh200s40]40. Dismissal of charge

At any stage of the proceedings the Court may, if satisfied that the accused person has no case to answer, dismiss the charge and acquit the accused person.

[s. 39]

[PCh200s41]41. Procedure on close of case for the prosecution

(1) Where after the prosecution closes its case the Court finds that the evidence for the prosecution establishes a case sufficient to require the accused person to defend himself against the economic offence charged, it shall so inform the accused person and require him to adduce evidence in his defence.

(2) Where the Court is satisfied that the evidence adduced by the prosecution up to the close of its case is not sufficient to found a conviction of the economic offence charged, but that it established a case in relation to a cognate offence which is an economic offence and for which the accused person may be convicted in the alternative, or if the case for the prosecution establishes other economic offences in addition to that charged, the Court shall inform the accused of its finding and require him to defend himself against the offence established by the prosecution instead of the offence charged, or against those other economic offences established by the evidence as well as the offence charged.

(3) An accused person who elects to give evidence in his defence may do so either on oath or without taking the oath, but shall in either case be subject to cross-examination by the prosecution as well as the Court.

(4) Where an accused person who is required to defend himself elects with no apparent excuse not to say anything and, in addition, not to call any witness or witnesses, an inference adverse to him may be drawn, and the Court as well as the prosecution may comment on his failure to give evidence in his defence.

[s. 40]

[PCh200s42]42. Procedure on defence of alibi

(1) Where a person charged with an economic offence intends to rely upon an alibi in his defence he shall first indicate to the Court the particulars of the alibi at the preliminary hearing.

(2) Where an accused person does not raise the defence of alibi at the preliminary hearing, he shall furnish the prosecution with the particulars of the alibi he intends to rely upon as a defence at any time before the case for the prosecution is closed.

(3) If the accused raises a defence of alibi without having first furnished the particulars of the alibi to the court or to the prosecution pursuant to this section, or after the case for the defence has opened, the Court may, in its discretion, accord no weight of any kind to the defence.

[s. 41]

[PCh200s43]43. Judgment and sentence Acts Nos. 12 of 1987 s. 16; 10 of 1989 Sch.

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

(2) Every judgment shall contain the point or points for decision, the decision on the point or points and the reasons for the decision, and shall be dated and signed by the majority of the members of the Court hearing the case who are in agreement as to the decisions reached.

(3) Where on a question to be decided by a majority of the members of the Court, any member holds a view which is different from that of the majority, he shall state in open court his reasons for his difference and they shall be recorded by the Judge presiding over the proceedings and be also read out as part of the judgment.

(4) If, at any stage of the proceedings, the court acquits the accused, it shall require him to give his permanent address for service in case there is an appeal against his acquittal, and the court shall record or cause it to be recorded.

[s. 42]

[PCh200s44]44. Alternative verdicts

(1) When a person is charged with an economic offence and the Court is of the opinion that he is not guilty of that offence but is guilty of any other economic offence cognate to the one charged, the Court may convict that person of that other economic offence although he was not charged with it.

(2) Where the Court is of the opinion that, in addition to the economic offence charged, an accused person is guilty of any other economic offence or offences with which he could justly have been charged, it may, if it has previously complied with the provisions of section 41(2), convict that person of the other economic offence or offences, if it would have been just at law to charge him with the offence or offences together with the one with which he is charged; save that previous non-compliance with section 42(2) shall not invalidate a subsequent conviction under this section.

[s. 43]

[PCh200s45]45. Orders in respect of property

(1) Where the Court convicts a person of any economic offence, it may make any order in respect of the property of that person such as it has power to make in respect of property under section 23.

(2) Notwithstanding the generality of subsection (1) the Court shall not make an order for the forfeiture of the property of any person convicted of an economic offence if the property in question or any part of it is not proved to have been involved at all in the commission or facilitation of the offence; and any such property or any part of it shall be disposed of in accordance with subsection (3) as if the owner or person in respect of whom it had been seized had been acquitted.

(3) Where the Court acquits a person of any economic offence it shall order that any property in respect of which he was charged or which was involved in the charge or the value of that property be restored to him.

(4) The Minister shall make regulations providing for the better and just disposal of property under this section and, without prejudice to the generality of the power of the Court such regulations may provide for the manner of the disposal of forfeited property as well as property in relation to which no orders of forfeiture are made or intended to be made by the Court.

[s. 44]

Provisions regarding Evidence (ss 46-56)

[PCh200s46]46. Application of Evidence Act

Except as is expressly provided otherwise in this Act, the rules of procedure for the education, reception and evaluation of evidence and the manner of proving relevant facts in any proceedings under this Act shall be as is provided by the Evidence Act *.

[s. 45]

[PCh200s47]47. Manner of obtaining and sources of evidence

(1) Subject to compliance with the principles prescribed by this section, the Court may obtain or hear any evidence which is pertinent to the inquiry before it from such person or persons and in such manner as it deems necessary and just.

(2) Subject to compliance with the principles prescribed by this section, the Court may receive any evidence which is worth of belief and is relevant and valuable for the just determination of the inquiry whether or not the evidence in question is evidence within the meaning of the term under the Evidence Act *.

(3) For the purposes of determining whether or not to hear or receive any evidence or whether or to what extent, any evidence received be relied upon in reaching its decision on any matter, the Court shall take into account and be guided by the principle that—

(a) no person should be involved in finally determining, or be regarded as a witness whose evidence may be relied upon in finally determining, any issue where that person has any kind of personal interest in the determination;

(b) a person shall not be tried for any offence unless he is previously fully informed of the intended accusation;

(c) every person charged before the Court shall, unless he becomes disruptive or absconds, be afforded a reasonable opportunity to defend himself including facilitating the attendance and appearance of his witness or witnesses, without which opportunity he shall not be condemned;

(d) the Court shall not do or omit to do any act or thing the doing or omission of which would impute bias against or for any side in its decision.

[s. 46]

[PCh200s48]48. Evidence on oath or affirmation

(1) The evidence to be adduced by all parties and their witnesses in any trial or proceeding before the Court shall be given on oath or affirmation, except for a child of the apparent age of or below fourteen years, who, in the opinion of the Court does not understand the nature of the oath or affirmation.

(2) Depending on whether the person to give the evidence belongs to any religion or to none, the alternative forms of the oath and affirmation to be taken by all persons prior to giving any evidence before the Court for the purposes of this Act shall be as prescribed in the Second Schedule to this Act.

(3) Any person who, after taking the oath or affirmation, proceeds to give any false testimony or which he knows to be untrue in any material particular shall be guilty of the offence of perjury and punishable for it by the Court in accordance with the provisions of the Penal Code * relating to that offence.

[s. 47]

[PCh200s49]49. Evidence in presence of accused and examination

(1) The evidence shall be given in such order as the Court directs and, subject to section 50, the evidence for the prosecution shall be given in the presence of the accused person.

(2) Notwithstanding subsection (1)–

(a) without prejudice to the power of the Court to recall them, witnesses for the prosecution shall give evidence first;

(b) subject to paragraph (c), if the accused person wishes to give evidence, he shall give it before his witnesses do so; and

(c) the accused person shall be afforded an opportunity of giving evidence in rebuttal of any evidence given, after he himself has given evidence, by the witnesses for the prosecution or witnesses called on the instance of the Court.

(3) The Court as well as the accused person or the person appearing for him may put relevant questions to the witnesses for the prosecution.

(4) The Court and the prosecuting officer may put relevant questions to the witnesses of the accused person and, if he gives evidence, to the accused person.

(5) The accused person, or the person appearing for him, and the prosecuting officer may, with the consent of the Court, put questions to witnesses called by the Court.

(6) The Judge shall record the substance of the evidence of the witnesses for the prosecution, the accused person and his witnesses, and after each of them has given evidence the Judge and the lay members shall each affix his signature at the foot of the evidence.

[s. 48]

[PCh200s50]50. Evidence in absence of accused

(1) The Court may allow evidence to be given before it in the absence of the accused person if—

(a) it considers that by reason of his disruptive conduct in the face of the Court it is not practicable for the evidence to be taken in his presence; or

(b) he cannot be present for reasons of health, other than mental health, but is represented by an advocate, or a friend or relative and has consented to the evidence being given in his absence; or

(c) after being admitted to bail he absconds or conceals himself such that a warrant of arrest in relation to him may not be executed, and the Court proceeds in accordance with section 38(4)(b).

(2) Where an accused person conducts himself so disruptively in the face of the Court that the trial cannot proceed in an orderly manner, the Judge may cause him to be removed to another part of the court building and to remain there while the trial is in progress, and afford him an opportunity, at reasonable intervals, of learning of the trial proceedings through his advocate or other representative.

(3) A disruptive accused person removed from the court room shall, when informed of the trial proceedings, be informed also of the continuing opportunity for him to return to the court room during the trial upon his assurance of good behaviour; and he may be summoned to the court room at appropriate intervals and have the offer to permit him to remain there repeated in open court at each such interval.

(4) For the purposes of this Act, and the avoidance of doubt, the Court may deliver judgment in the absence of the accused person if he conducts himself so disruptively such that a judgment may not be conveniently delivered in his presence.

[s. 49]

[PCh200s51]51. Interpretation of evidence Act No. 12 of 1987 s. 17

(1) Where any evidence is given in a language not understood by the accused person, it shall be interpreted to him before the Court in a language understood by him.

(2) Before entering upon the duties of his office, an interpreter shall be sworn or affirmed by the court.

[s. 50]

[PCh200s52]52. Refractory witnesses

(1) Where in any proceedings arising under this Act, the Court is satisfied that a person summoned as a witness in the proceedings is, without lawful cause, refusing to comply with an order to answer any question put to him, to testify or provide other information, including producing any document, record, recording or other material, it may upon such refusal or when the refusal is brought to its attention, summarily order him to be confined at a suitable place until such time as the witness may be willing to answer the question, give testimony or provide such information.

(2) Confinement of a witness under this section shall last for the duration of the trial of the case concerned.

(3) Any person confined under this Act may appeal against the order of confinement to the Court of Appeal.

(4) A person may be granted bail pending the determination of his appeal; but no bail shall be granted if it appears that the appeal is frivolous, vexatious or taken for delaying tactics.

(5) An appeal from an order for confinement under this section shall be disposed of as soon as practicable, but in no case shall it remain undetermined for more than thirty days from the day of its filing.

[s. 51]

[PCh200s53]53. Protection of witnesses

Where he is satisfied on reasonable grounds that there is any danger or real possibility of danger of interference with any case under this Act through interference with or threats of harm to any witness or potential witness, the Inspector-General of Police may, on his own motion or after consultation with the Director of Public Prosecutions, arrange for the provision of security for the witness or potential witnesses concerned and, if necessary, the family or families of that witness or potential witness or witnesses.

[s. 52]

[PCh200s54]54. Immunity of witnesses

(1) Without prejudice to the provisions of the provisions of any written law conferring a right to refuse to disclose official secrets, where in any proceeding arising under this Act, any witness refuses to answer any question on the ground that the answer to it may incriminate him, or to testify or provide other information on the ground that the information is privileged or he is not authorised to disclose it, and the Court is of the opinion that such is not the case, the Court may make an order requiring the witness to answer the question, testify or provide that other information.

(2) Where a witness is required to do so pursuant to subsection (1), he may not refuse to comply with the order requiring him to answer a question, to testify or to

provide that other information, save that no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, other than a prosecution for perjury, giving a false statement or otherwise failing to comply with the order.

(3) Where it appears to any party to any proceedings arising under this Act that any person who has been or may be summoned as a witness by him or the adverse party—

(a) has refused or is likely to refuse to answer any question to testify or provide other information on the basis of his privilege against self-incrimination; or

(b) where the information is privileged, that the information to be produced from that person may be necessary to the public interest,

that party may request that an order be made under subsection (1) compelling the person to answer a question, to testify or to provide such other information.

(4) Where a person is required to answer any question, to testify or give such other information pursuant to subsection (3), the provisions of subsection (2) as to immunity shall apply to him in relation to his testimony.

[s. 53]

[PCh200s55]55. Depositions to preserve testimony Act No. 12 of 1987 s. 18

(1) Where upon application by any party to any proceedings under or arising under this Act, it appears to the Count or the district court, as the case may be that due to exceptional circumstances it is in the interest of justice that the testimony of a prospective witness for any party be taken and preserved, it may, at any time after proceedings have

been instituted and after giving notice to the parties, order that the testimony of that witness be taken by deposition, and that any document or other thing not privileged be produced by that witness at that time and place. After the deposition has been subscribed by him the Court or the district court, as the case may be may discharge the witness.

(2) The party on whose application a deposition is to be taken shall give to every other party reasonable notice of the time and place for taking the deposition, stating the name and address of every person to be examined; and such other party may apply showing sufficient cause for extension or abridgment of the time or change of the place for taking the deposition. Any person having custody of an accused person or control over him shall be notified of the time and place set for the examination, and shall produce him or permit him to be present at the examination and in the presence of the witness.

(3) An accused person may appear with or be represented by his counsel during the examination of a witness for the purpose of this section.

(4) Where any witness being deposed has made a previous statement which is in the possession of the party calling for the deposition, that party shall make that statement available to the accused person for his examination and use at the taking of the deposition unless the statement is not one which that party would be required to make available to the accused person if the witness were testifying at the trial.

(5) All depositions for the purposes of this section shall be taken before any magistrate named by the court making the order for the taking of the deposition.

(6) At the trial or upon any hearing subsequent to the taking of a deposition, a part or the whole of a deposition, so far as it is admissible under the rules of evidence, may be used, if it appears that—

- (a) the witness is dead; or
- (b) the witness is outside the United Republic, unless the absence of the witness appears to be or to have been procured by or with the connivance of the party offering to use the deposition; or
- (c) the witness is unable to attend or testify because of sickness or infirmity; or
- (d) the witness is present but refuses to testify concerning the subject of the deposition or part of it.

(7) Any deposition may be used at the trial or hearing to contradict or impeach the testimony of the deponent as a witness.

(8) Where only a part of a deposition is offered in evidence by a party, any adverse party may require him to offer the whole of the deposition which is relevant to the part offered, and any party may offer other parts.

(9) Objections may be made to receiving in evidence a deposition or part of it in the same manner and to the same extent, subject to the provisions of this Act, as they are made in criminal trials before the High Court.

[s. 54]

[PCh200s56]56. Litigation concerning sources of evidence

(1) In every proceeding arising under this Act every party shall be entitled to apply that evidence be rejected on the ground of its source or the manner in which it was obtained.

(2) Evidence shall be rejected, or its admissibility shall depend on its being independently corroborated if it is proved to have been obtained—

(a) through torture, threats or fraud;

(b) after the commission by the person offering it or his agent of an unlawful act,

save that no evidence shall be rejected on the allegation only that it was unlawfully obtained.

(3) No confession which is tendered as evidence shall be rejected on the ground only that a promise, threat or inducement was or has been held out to the person confessing unless the Court is of the opinion that the promise, threat or inducement, as the case may be, could have occasioned the making of an untrue admission.

[s. 55]

PART V

OFFENCES AND PENALTIES (ss 57-62)

[PCh200s57]57. Offences under this Act

(1) With effect from the 25th day of September, 1984, the offences prescribed in the First Schedule to this Act shall be known as economic offences and triable by the Court in accordance with the provisions of this Act.

(2) The Minister may, by order published in the Gazette, and with the prior approval by resolution of the National Assembly, amend or otherwise alter the First Schedule to this Act but no offence shall be removed from the First Schedule under this section except by an Act of Parliament.

[s. 56]

[PCh200s58]58. Application of Penal Code

(1) The jurisdiction of the Court for the purposes of this Act shall extend to the same extent and apply in the same manner and respects as the jurisdiction of the courts of law in the United Republic does for the purposes of the Penal Code *.

(2) Except where it is expressly stated otherwise in the preceding provisions of this Act or in the substantive statement of any one economic offence, the general rules as to criminal responsibility contained in Chapter IV of the Penal Code *, as well as the provisions of Chapter V of the Penal Code regarding parties to offences, shall apply in respect of offences for the purposes of this Act.

[s. 57]

[PCh200s59]59. Prohibition of transfer of advantage or property involved in economic offence

(1) Where the Attorney-General is satisfied that any person has in his possession or to his credit any property or advantage involved in or arising out of the commission by any person of an economic offence, he may, by notice addressed to that person or to any other person to whom the property or advantage or the proceeds or value is believed to have been transferred or conveyed by that person or his agent, direct that person to whom the

notice is addressed not to transfer, dispose of or part with the possession of the sum of money, property or other advantage specified in the notice, and every such notice shall remain in force and be binding upon the person to whom it is addressed and every other person to whom the money, property or other advantage may pass by operation of law for a period of six months from the date of the notice or, where proceedings for an offence under this Act or any other written law in relation to the property or other advantage have been commenced against any person, until the determination of those proceedings; save that the Minister may in any case, by order under his hand, extend that period for such further period or periods as he may specify.

(2) Any person who has been served with a notice under subsection (1) and who, in contravention of such notice, transfers, disposes of or parts with the possession of the money, property or other advantage specified in the notice, is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding fifteen years.

(3) A person prosecuted for an offence under subsection (2) shall be acquitted if he satisfies the Court that—

(a) the money, property or other advantage concerned was delivered to a police officer, or to some other person as directed in the notice; or

(b) the money, property or other advantage was produced to a court and has been retained by that court; or

(c) the notice was subsequently withdrawn by the Attorney-General by notification in writing.

[PCh200s60]60. Punishment for proved crimes

(1) Except where a different penalty, measure or penal procedure is expressly provided in this Act or in the statement of an offence, upon the conviction of any person of any economic or other offence falling under the penal jurisdiction of the Court, the Court may impose in relation to any person, in addition to any order respecting property, any of the penal measures prescribed by this section, but not any other.

(2) Subject to subsection (3), any person convicted of an economic offence shall be liable to imprisonment for a term not exceeding fifteen years, or to both that imprisonment and any other penal measure provided for in this Act.

(3) In considering the propriety of the sentence to be imposed the Court shall comply with the principle that—

(a) a proved offence which is in the nature of an organised crime or one that is endangering the national economy or public property, in the absence of mitigating circumstances, deserves the maximum penalty;

(b) any other economic offence may be sentenced with a sentence that is suitably deterrent; and

(c) children and young persons shall be sentenced in accordance with the provisions of the Children and Young Persons Act *.

(4) Where a person is convicted and sentenced to a term of imprisonment, or is to serve a sentence of imprisonment after failing to pay a fine, he shall serve the term as a common prisoner and the provisions of the Prisons Act *, shall apply in respect of his imprisonment as if he had been sentenced by the High Court as ordinarily constituted.

(5) Every order made by the Court under this Act which authorises the forfeiture of property shall be sufficient authority for the Inspector-General of Police to seize all property or other interest declared forfeited upon such terms and conditions as the Court shall see fit to impose.

(6) If any forfeited property, right or other interest is not exercisable or capable of transfer for value by an agency of the United Republic it shall expire, and shall not revert to the person from whom the forfeiture is intended to divest it.

(7) The provisions of any written law relating to the disposition of property, or the proceeds from the sale of property, or the remission or mitigation of forfeitures for violation of customs and excise laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred or alleged to have been incurred, under this section, so long as they are applicable and not inconsistent with the purposes and provisions of this Act.

(8) Such duties as are imposed upon the Commissioner for Customs or any of the person in relation to the disposition of property under customs, excise and taxation legislation shall, in relation to matters arising from offences or proceedings under this Act, be performed by the Inspector-General of Police who shall dispose of all such property as soon as is commercially feasible, making due provision for the rights of innocent persons and in accordance with this Act.

[s. 59]

[PCh200s61]61. Orders for compensation, restitution, etc.

(1) Where the Court is satisfied that the commission of the economic offence of which a person is convicted involved or caused or is likely to cause any injury or damage to any person, body of persons or other authority or to the property or interest in the property of any person, body of persons or other authority, the Court may—

(a) order that the person convicted pay such compensation for the injury or damage concerned as it may deem just;

(b) order the person convicted or any other person concerned to divest himself of any direct or indirect interest in any enterprise;

(c) impose such a restriction as it may consider reasonable on the future activities or investments of the person convicted or any other person, including but not limited to, prohibiting any person from engaging in the same type of endeavour as the enterprise engaged in, the activities of which facilitated or were connected to the commission of the economic offence in question, or do otherwise after internal trade or foreign commerce; or

(d) order the dissolution or reorganisation of any enterprise, making due provision for the rights of innocent persons; or

(e) make any other order in respect of the convicted person or his property, for the purpose of providing for adequate restitution of any public property or interest injured or damaged, and for the better control, averting, reduction or eradication of economic and organised crime.

(2) In making an order under subsection (1) involving the attachment of the property of any person, the Court shall comply with the provisions of section 48 of the Civil Procedure Code *.

(3) An order made under subsection (1) shall be filed by the person or authority in whose favour it is made in the district court having jurisdiction over the area in which the convicted person, or the person against who it is made, ordinarily resides or in which the property concerned is situate, and upon being so filed the order shall be deemed to be a decree passed by the district court and may be executed in that same manner as if it were a decree passed under the provisions of the Civil Procedure Code * and the district court shall have jurisdiction to execute the decree notwithstanding that the value of the property or the amount of the compensation awarded exceeds the pecuniary jurisdiction of the district court.

(4) For the purposes of this section, the Court may at any time pending the determination of any proceedings, upon the application of the prosecution or of any other person or authority injured in his business or property by reason of the acts of the accused person, enter such restraining orders, prohibitions or injunctions, or take such other actions including the acceptance of satisfactory performance bonds, as it may deem just.

(5) Where an application is made under subsection (4) for the exercise by the Court of its powers under that subsection, the Court shall not make any order in favour of the applicant unless he proves the damage or injury and his own non-contribution to its occurrence or causation.

[PCh200s62]62. Right of appeal Act No. 12 of 1987 s. 19

(1) A person aggrieved by a decision of the Court may appeal to the Court of Appeal of the United Republic in accordance with established law in that behalf.

(2) Where a court subordinate to the High Court hears and determines a case the decision of which aggrieves a party, the appeal against that decision shall first be made to the High Court.

[s. 61]

PART VI

MISCELLANEOUS PROVISIONS (ss 63-66)

[PCh200s63]63. Regulations

The Minister may make regulations providing for anything which is required or may be provided for under this Act, and generally for the better carrying out of the purposes and provisions of this Act.

[s. 62]

[PCh200s64]64. Amends certain laws

[Amendment of certain written laws.]

[s. 63]

[PCh200s65]65. Repeal

[Repeal of Acts Nos. 9 and 10 of 1983.]

[s. 64]

[PCh200s66]66. Consequential and transitional provisions Act No. 9 of 1983

(1) Notwithstanding the repeal of the Economic Sabotage (Special Provisions) Act, where immediately prior to the commencement of this Act, the Tribunal had—

(a) commenced the hearing of any case relating to an economic sabotage offence, it shall continue the hearing until it determines the proceedings in that case,

(b) adjourned the hearing of any case relating to an economic sabotage offence, it shall resume the hearing on the fixed or earlier date and proceed to further hear and determine the proceedings in that case,

but the Tribunal shall not take a plea or pleas in respect of any fresh case not brought before the commencement of this Act.

(2) The repeal of the Economic Sabotage (Special Provisions) Act, shall not—

(a) affect the previous operation of that Act or anything duly done or suffered under it;

(b) revive anything not in force or existing at the time immediately before the commencement of this Act;

(c) affect any right, privilege, or obligation or liability acquired, accrued, or incurred under the repealed Act; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any economic sabotage or other offence committed and triable under the repealed Act.

FIRST SCHEDULE

ECONOMIC OFFENCES

(Section 57(1))

1. Bribery and corruption Act No. 3 of 1992 Sch.

A person is guilty of an offence under this paragraph who commits any offence under the Prevention of Corruption Act. *

2. Offences under Cap. 329 G.N. No. 658 of 1998

A person is guilty of an offence under this paragraph who commits an offence under the Prevention of Corruption Act *, other than an offence under section 4 of that Act.

3. Hoarding commodities Act No. 12 of 1987 s. 20

(1) A person, whether or not licensed to carry on the business of selling commodities of any description, is guilty against this paragraph of the offence of hoarding commodities if, not being a manufacturer or producer of the commodities—

(a) he is found in possession of commodities which are in demand by the public in the locality concerned of a value exceeding one million shillings in circumstances in which it can be inferred that they are not displayed or stocked for lawful sale or use or available for purchase by any persons offering the lawful price; or

(b) he sells or offers any commodity for sale at a price or subject to a term or condition which is unlawful or which, having regard to all relevant circumstances, is unreasonable; or

(c) in the course of carrying on the business of selling any commodity, he engages in any trade practice with is intended or likely—

(i) to create an artificial shortage in the supply of any commodity; or

(ii) to aggravate an actually existing shortage in the supply of any commodity; or

(iii) to cause an unlawful increase or decrease in the official or commercially accepted price of any commodity; or

(iv) to adversely affect the fair distribution of any commodity amongst the purchasing population of the area concerned.

(2) For the purposes of this paragraph—

(a) a person shall be deemed to have in stock any commodities of any description in any place if he is the owner of any amount or quantity of such commodities;

(b) "person" includes any employee or agent of such person (whether or not the employment agency would be such at law), and where such employee or agent is charged with an offence under this paragraph the provisions of subparagraph (3) shall apply mutatis mutandis to the employee or agent as they apply where the person charged, the employer or, as the case may be, the agent;

(c) whether or not licensed to carry on business a person shall be deemed to be carrying on the business of selling commodities of any description if, at that time when the offence is alleged to have been committed or at any reasonable period preceding or succeeding the date when the offence is alleged to have been committed, he had possession of an amount or quantity of such commodities in circumstances in which it may reasonably be inferred that such commodities were intended by him to be sold by him or he had held himself out as being a seller of those commodities.

(3) Where a person is charged with an offence under this paragraph, it shall be a good defence for him to prove that—

(a) there was no shortage in the supply of the commodity or commodities concerned in the locality in question;

(b) the stocking of the amount or quantity of commodities concerned was not intended or likely to create any shortage in the supply of the commodities or to have any other adverse effect on the distribution of the commodities in the locality;

(c) the commodities found in any premises under his control or management did not belong to him and that he had no right to dispose of any of the commodities in any way and that he did, at the earliest possible opportunity, advise the authorities investigating the matter of the identity of the owner;

(d) the commodities owned by him or which he had the right to dispose of had at the time when they were found in his possession, been lawfully sold or otherwise lawfully disposed of to another person;

(e) the commodities in stock were for his own lawful use or were being used in connection with his lawful business; or

(f) he had kept them in store as a reasonable precaution, taken in the interests of his own household, against probable imminent future shortage or famine, or in order to meet a requirement of any future event reasonably important to him.

(4) The standard of proof by the accused of any of the facts or circumstances set out in subparagraph (3) shall be on a balance of probabilities.

(5) The Court may, in addition to any other penal measure it may impose, order the forfeiture of all the commodities of the same description as the commodities to which the charge relates and held in stock by such person on the date on which the offence was committed, unless any other person satisfies the Court that any of those commodities belonged to him and not to the accused, and that that other person is himself not guilty of an offence under this paragraph.

4. Leading organised crime Act No. 12 of 1987 s. 20

(1) A person is guilty of the offence of leading organised crime who—

(a) intentionally or wilfully organises, manages, directs, supervises or finances a criminal racket;

(b) knowingly incites or induces others to engage in violence or fraud or intimidation for the purposes of promoting or furthering the objects of a criminal racket;

(c) knowingly furnishes advice, assistance or direction in the conduct, financing, execution or management of the business or affairs of a criminal racket with intent either to reap profit or other benefit from such act or to promote or further the criminal objectives of the criminal racket; or

(d) being a public official, and in violation of his official duty, or not being a public official but in collusion with such a public official, intentionally promotes or furthers the objectives of a criminal racket by inducing or committing any act or omission.

(2) A person shall not be convicted of an offence under this paragraph on the basis of accountability as an accomplice unless he aids or participates in the contravention of this paragraph in one of the ways specified.

5. Hoarding of money

(1) A person is guilty of an offence under this paragraph if he is found in possession of an amount of liquid money which—

(a) considering the circumstances of its acquisition, possession and actual, potential or intended use, is unnecessary; or

(b) considering its potential or intended use would or is likely to facilitate interference with or disruption of the normal or ordinary circulation of money within the national economy; or

(c) considering all factors relevant to the person concerned and the business in the carrying on of which he requires the use of liquid money, would or is likely to be used for unlawful purposes.

(2) Where a person is charged with an offence under this paragraph, it shall be a good defence for him to prove on a balance of probabilities that—

(a) there is no bank or other financial institution within the locality at which he could bank or keep his money without inconveniencing his business;

(b) the money found in his possession had been reasonably recently withdrawn from a financial institution or other person for the purposes of discharging his obligations to any person within a reasonably short time after the withdrawal;

(c) the money had been reasonably recently obtained from a lawful business or transaction and is intended to be banked or securely kept with a financial institution or other person not within a reasonable distance from the premises or business centre of the accused person; or

(d) that the money in question is not his own, and that the owner would not himself be found guilty of an offence under this paragraph.

6. Fraudulent schemes, games and artifices, theft of public property, etc.

Any person who, pursuant to a scheme or artifice to defraud—

(a) by means of false or fraudulent pretences, representations, promises or material omissions; or

(b) by means of false pretences, representations, or deception to gain the confidence of any person,

knowingly obtains from any person any benefit, is guilty of an offence under this paragraph.

7. Persons conveying or having possession of goods suspected of having been stolen or unlawfully acquired Act No. 12 of 1987 s. 20

(1) Any person who—

(a) on being detained as a result of the exercise of the power conferred by section 24 of the Criminal Procedure Act, or section 22 of this Act, is found in possession of, or conveying in any manner, anything which may be reasonably suspected of having been stolen or otherwise unlawfully acquired; or

(b) is found by any police officer in possession of or having control over any property which may, having regard to all the circumstances, be reasonably suspected of having been stolen or otherwise unlawfully acquired,
may if the value of the thing or the property concerned exceeds one million shillings be charged with being in possession of, or conveying, or having control over as the case may

be the property which is suspected of having been stolen or otherwise unlawfully acquired and shall, if he fails to satisfy the Court that he did not steal or otherwise unlawfully acquire the property, be guilty of the offence with which he is charged and be liable, on conviction, to imprisonment in accordance with this Act.

(2) For the purposes of this paragraph "unlawfully acquired" means acquired in circumstances which constitute a criminal offence under any written law and also means acquired—

(a) as consideration of any sale, barter or other disposition of any property so unlawfully acquired; or

(b) by way of purchase with funds, the whole or any part of which was so unlawfully acquired.

(3) In proceedings for an offence under this paragraph—

(a) the accused shall not be entitled to acquittal by reason only of the fact that, on the evidence before the Court, he could have been charged with, or convicted of, theft or other like offence, which is not an economic offence, in respect of the property; save that an accused person convicted of an offence under this paragraph in respect of any property shall not be charged with or be convicted of an offence of stealing or other like offence, which is not an economic offence, in respect of the property; save that an accused person convicted of an offence under this paragraph in respect of any property shall not be charged with or be convicted of an offence of stealing or other like offence, which is not an economic offence, in respect of the same property;

(b) where the Court is satisfied that the accused was detained by a police officer in the exercise of the power conferred by section 25 of the Criminal Procedure Act, or section 22 of this Act, the Court may presume that the property found in his possession or being conveyed by him may reasonably be suspected of having been stolen or otherwise unlawfully acquired by him.

8. Unlawful sale of designated goods

(1) A person is guilty of an economic offence, under this paragraph who, not being an authorised trader in terms of section 2 of the Regulation of Trade Act, sells or offers for sale any designated goods of any description contrary to the provisions of that Act.

(2) A person is guilty of an economic offence under this paragraph who, being a supplier or distributor of designated goods in accordance with the provisions of the Regulation of Trade Act, 1980, sells or distributes designated goods to a person who is not an authorised trader, contrary to section 4 of the Regulation of Trade Act.

9. Authorisation of unlawful supply of designated authority goods

(1) Any person who, being in authority, knowingly and without lawful excuse, causes or procures a supplier or distributor to supply designated goods to a person who is not an authorised trader for purposes of resale, or to supply designated goods in inordinate amounts or quantities to any authorised trader, is guilty of an offence under this paragraph.

(2) A person shall be deemed to be in authority if, being the holder of any elective or appointive office in any specified authority, he gives a direction, suggestion or advice whether or not in writing, to a supplier or distributor in connection with the disposition, of

any designated goods in the manner referred to in subparagraph (1), and the said supplier or distributor acts in accordance with the direction, suggestion or advice.

(3) An amount or quantity of designated goods shall be deemed to be inordinate if—

(a) where the supply is done once, the amount or quantity is in excess of the amount or quantity ordinarily supplied or sold to the majority of the other purchaser of the same goods in the same locality with the same right, financial ability and willingness to purchase the goods in question; or

(b) where the supply is done on more than one occasions, the frequency of such occasions is extraordinary compared to the frequency at which the same goods are supplied over a given period to other purchasers in the locality with the same right, financial ability and willingness to purchase the goods in question.

(4) It shall be a good defence for a person charged with an offence under this paragraph if he satisfies the Court that there existed any circumstances which constituted a reasonable or lawful excuse for his action or that his action was motivated by anything that was beneficial to the public interest.

10. Occasioning loss to a specified authority Act No. 12 of 1987 s. 20

(1) Any person who whether or not he is an employee of a specified authority by any wilful act or omission, or by his negligence or misconduct, or by reason of his failure to take reasonable care or to discharge his duties in a reasonable manner, causes any specified authority to suffer a pecuniary loss or causes any damage to any property owned by or in the possession of any specified authority, is, notwithstanding any written law to

the country, guilty of an offence under this paragraph, if the monetary value of the loss or damage exceeds one million shillings.

(2) A specified authority shall, for the purposes of subparagraph (1), be deemed to have incurred a pecuniary loss notwithstanding—

(a) that it has received or is entitled to receive any payment in respect of such loss under any policy of insurance; or

(b) that it has been otherwise compensated, or is entitled to be compensated, for that loss.

(3) For the avoidance of doubt it is hereby declared that where any person charged with stealing anything, or with any other offence under any written law, in relation to a specified authority, is acquitted, he may be subsequently charged and tried for an offence under this paragraph even if the subsequent charge under this paragraph is based on the same acts or omissions upon which the previous charge was based.

(4) Where the Court convicts a person of an offence under this paragraph, it shall, in addition to any other penal measure it imposes, order such person to pay to the specified authority compensation of an amount not exceeding the amount of the actual loss incurred by the specified authority and in assessing such compensation the court shall have regard to any extenuating circumstances it may consider relevant.

(5) Where an order is made under subparagraph (4), the specified authority in whose favour such order is made may file an authenticated copy of the order in the district court having jurisdiction over the area over which the Court has jurisdiction, and upon being so filed the order shall be deemed to be a decree passed by that district court and

may be executed in the same manner as if it were a decree passed under the provisions of the Civil Procedure Code *, and the district court shall have jurisdiction to execute that decree notwithstanding that the amount of the compensation awarded exceeds the pecuniary jurisdiction of the district court.

11. Offences relating to prohibited, restricted and uncustomed goods Acts Nos. 12 of 1987 s. 20; 13 of 1988 Sch.

A person is guilty of an offence under this paragraph who commits any offence contrary to sections 146 and 147 of the Customs (Management and Tariff) Act *—

(a) which is beyond the statutory power of the Commissioner of Customs to compound; or

(b) which, considering the circumstances of its commission, the Commissioner of Customs is of the opinion, which he shall certify to the Director of Public Prosecutions, that it is unsuitable to compound; or

(c) which the Director of Public Prosecutions considers is unsuitable to compound and informs the Commissioner of Customs of his opinion.

12. Interfering with a necessary service *

A person is guilty of an offence under this paragraph who damages, hinders, interferes with or does any act which is likely to damage, hinder or interfere with, or the carrying on of a necessary service contrary to section 3(d) of the National Security Act.

13. Using firearms, etc.

Any person who, in the commission of any offence, other than assault or robbery or any other offence punishable with death or imprisonment of life, uses a firearm or any explosive materials is guilty of an offence under this paragraph.

14. Offences against conservation of wildlife Act No. 10 of 1989 Sch.

A person is guilty of an offence under this paragraph who—

- (a) unlawfully captures, hunts or traps of animals in a game reserve or game-controlled area;
- (b) unlawfully deals in trophies or in Government trophies;
- (c) is found in unlawful possession of weapons in certain circumstances;
- (d) is found in unlawful possession of a trophy,

contrary to sections 13, 14, 17, 38, Part VI, sections 70 and 78 of the Wildlife Conservation Act, * or contrary to section 16 of the National Parks Act. *

15. Unlawful prospecting, etc.

A person is guilty of an offence under this paragraph who unlawfully prospects or mines for minerals, contrary to the provisions of the Mining Act. *

16. Offences in relation to gemstones

A person is guilty of an offence under this paragraph who commits any offence under the Gemstone Industry (Development and Protection) Act.

17. Offences in relation to diamonds Act No. 12 of 1987 Sch.

A person is guilty an offence under this paragraph who commits an offence under the Diamond Industry Protection Act * other than an offence against any subsidiary legislation made under the Act.

18. Theft of mail matter

(1) Any person who, whether or not an employee or officer of the Tanzania Posts Corporation—

(a) embezzles any letter, postal card, package, bag or mail or any article or thing contained in it, intended to be or being conveyed by mail or carried or delivered by any carrier, messenger, agent or other person acting on behalf of the postal authorities, or forwarded through or delivered from any Post office or its station; or

(b) steals, abstracts or removes from any such letter, package, bag or mail, any article or thing contained in it, is guilty of an offence under this paragraph.

(2) Where the Court convicts a person of an offence under this paragraph, it shall make an order for the complainant such as it is empowered to make in respect of the offence of occasioning loss to a specified authority, and the provisions of paragraph 7 of this Schedule in relation to the order for compensation shall apply mutatis mutandis to the order compensation under this paragraph.

19. Possession of arms or ammunition Acts Nos. 9 of 1995 s. 65; 31 of 1997 Sch.

A person is guilty of an offence under this paragraph who is found in unauthorised possession of arms or ammunition contrary to the provisions of the Arms and Ammunition Act *.

20. Act No. 10 of 1989 Sch; G.N. No. 658 of 1998

(1) A person is guilty of an offence under this paragraph who disrupts, damages, hinders or interferes with a property which is used or is intended to be used for the purpose of providing a necessary service.

(2) If the offence—

(a) is committed under the circumstance which is likely to result in danger to human life the offender shall be liable to imprisonment to a term of not less than twenty years but not more than a term of thirty years;

(b) is committed under the circumstance which is not likely to result in danger to human life the offender shall be liable to imprisonment to a term of not less than fifteen years but not more than a term of twenty years.

(3) In this paragraph, "necessary service" includes any—

(a) service relating to installation, transmission, supply or distribution of electricity or telecommunication;

(b) fire service;

(c) sewerage, rubbish disposal or other sanitation service;

(d) health, hospital or ambulance service;

(e) service relating to the supply or distribution of water, gas or petroleum;

(f) road, railway, bridge, underground tunnel, car park, ferry, pontoon, any airfield, harbour or dock;

(g) pipeline which is used for the supply of water or fuel.

SECOND SCHEDULE

OATHS AND AFFIRMATIONS

(Sections 7 and 48(2))

A: Oath of a Lay Member

The oath to be taken and subscribed by a lay member of the Court is as follows:

"I, having been summoned to serve as a member of the Economic Crimes Court in the Resident Magistrate's Court for region, do hereby swear that I will freely, and without fear or favour, affection or ill will discharge the functions of the member of the Court, and I will do justice in accordance with the Economic and Organised Crime Control Act".

SO HELP ME GOD

.....

Signature of Member

Sworn/affirmed before me this day of 20.....

.....

Resident Magistrate-in-Charge

B: Oath or Affirmation of Witnesses

The alternative forms of the oath and affirmation of witnesses are as follows:

Christians: "I swear that I shall do my best to tell the truth

SO HELP ME GOD".

Muslims: "Wallah, Billahi, Ta Alahi:

I solemnly affirm that I shall do my best to tell the truth".

Hindu: "I solemnly affirm that I shall do my best to tell the truth".

Others: "I solemnly affirm that I shall do my best to tell the truth".