

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 341

THE ADVOCATES ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

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Dodoma,
30th October, 2018

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CHAPTER 341

THE ADVOCATES ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 341

THE ADVOCATES ACT

An Act to provide for the law relating to advocates and for connected matters.

[1st JANUARY, 1955]

Ords. Nos.

25 of 1954

18 of 1957

Acts Nos.

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16 of 1963

39 of 1969

11 of 1971

22 of 1983

12 of 1990

9 of 1996

31 of 1997

4 of 2005

5 of 2007

G.Ns. Nos.

347 of 1961

433 of 1961

490 of 1962

154 of 1971

92 of 1975

515 of 1991

PART I

PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Advocates Act.

Interpretation Acts Nos. 16 of 1963; 39 of 1969 s. 2; 11 of 1971; Sch. 22 of 1983; Sch. 12 of 1990; Sch. 9 of 1996; Sch.	<p>2. In this Act, unless the context otherwise requires—</p> <p>“advocate” means any person whose name is duly entered as an advocate upon the Roll;</p> <p>“client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to retain or employ, and retains or employs or is about to retain or employ, an advocate and any person who is or may be liable to pay to an advocate any costs;</p> <p>“Committee” means the Advocates Committee established under section 4;</p> <p>“costs” includes fees, charges, disbursements, expenses and remuneration;</p> <p>“Council” means the Council of Legal Education established under section 5A;</p> <p>“East African country” means the United Republic of Tanzania, Kenya and Uganda;</p> <p>“Law Society” means the Tanganyika Law Society established under the Tanganyika Law Society Act;</p> <p>“Minister” means the Minister responsible for justice;</p> <p>“parastatal organisation” means—</p>
Cap. 307	<p>(a) a body corporate established by or under any written law other than the Companies Act;</p> <p>(b) a trade union registered under the Trade Unions Act;</p>
Cap. 212	<p>(c) a company registered under the Companies Act not less than fifty per <i>centum</i> of the issued share capital of which is owned by the Government, a local government authority or a parastatal organisation or, where the company is limited by guarantee, a company in respect of which the amount that the Government, a local government authority or a parastatal organisation has, as member, undertaken to contribute in the event of the company being wound up, is not less than fifty per <i>centum</i> of</p>

the aggregate amount which all the members have undertaken to contribute; and references in this paragraph to a parastatal organisation include references to any such company;

“practising certificate” means a certificate issued by the Registrar to an advocate, authorising him to practise as such within Tanzania, pursuant to the provisions of Part VI;

“Registrar” means the Registrar of the High Court;

“Remuneration Committee” means the Committee established under the provisions of Part VIII;

“Roll” means the list of advocates kept in accordance with the provisions of Part IV;

“taxing officer” means the taxing officer of the High Court.

Certain officers exempt from provisions of Act Acts Nos. 11 of 1966 s. 2; 11 of 1971; Sch. 4 of 2005 s.30 G.Ns.Nos. 347 and 433 of 1961; 490 of 1962.

Cap. 288
Cap. 287

3.-(1) Every officer to whom this section applies shall, in connection with the duties of his office, be entitled to practise as an advocate in the High Court or in any court subordinate thereto constituted under the Magistrates’ Courts Act and to perform any of the functions which, in England, may be performed by a member of the Bar as such or by a solicitor of the Supreme Court of Judicature as such, and provided, be subject to the provisions of this Act.

(2) The officers to whom this section applies are—

- (a) the Attorney-General, Parliamentary Draftsmen and State Attorneys, and any person duly qualified holding office in the Attorney-General’s Chambers;
- (b) the legal secretary Income Tax Department;
- (c) any person who is a holder of law degree and who is a solicitor in any District Council or Township Authority established under the Local Government (District Authorities) Act, and in any city or urban authority established under the Local Government (Urban Authorities) Act.

(d) the Registrar-General, Administrator-General, Public Trustee, Official Receiver, Commissioner for Lands and any person duly qualified holding office in the office of the Registrar-General, or of the Administrator-General, or of the Official Receiver or the Land Officer;

(e) any person duly qualified holding office in such parastatal organization as the Minister may, by order published in the *Gazette*, designate for the purposes of this section.

(3) For the purposes of this section “person duly qualified” means a person who is the holder of one of the professional qualifications set out in paragraph (a) of subsection (1) of section 8.

**PART II
ADVOCATES COMMITTEE**

Establishment
of Advocates
Committee
Acts Nos.
39 of 1969
s. 3;
22 of 1983
Sch.

4.-(1) There shall be established for the purposes of this Act a committee to be called the Advocates Committee consisting of—

- (a) a Judge of the High Court of the United Republic nominated by the Chief Justice;
- (b) the Attorney-General, or the Deputy Attorney-General or Director of Public Prosecutions;
- (c) a practising advocate nominated by the Council of the Law Society.

(2) During the temporary incapacity or absence from Tanzania of the member nominated by the Council of the Law Society, such Council may nominate any practising advocate to act as a temporary member in the place of such member until his recovery from incapacity or his return, as the case may be, or until the expiration of his period of office, whichever first occurs.

(3) During the temporary incapacity or absence from Tanzania of the High Court Judge nominated by the Chief Justice, the Chief Justice may nominate another Judge of the

High Court to act as a member of the Committee and such Judge may so act.

(4) The High Court Judge shall be the chairman of the Committee and shall preside at all meetings of the Committee, and in the absence from any meeting of the High Court Judge duly nominated by the Chief Justice either under subsection (1) or subsection (3), the Attorney-General, the Deputy Attorney-General or the Director of Public Prosecutions, shall be the chairman of the meeting.

(5) Two members of the Committee, one of whom shall be the Attorney-General or the Deputy Attorney-General, and the Director of Public Prosecutions shall form a quorum.

(6) Any question before the Committee shall be decided by a majority of votes of the members present and voting; in the event of equality of votes the chairman of the meeting shall, in addition to his deliberative vote as a member of the Committee, have a casting vote.

(7) Where the conduct of the member nominated by the Council of the Law Society is the subject matter of an application or allegation made under the provisions of section 13, such member shall be disqualified to sit as a member of, or vote at, any meeting during which such application or allegation is considered or determined by the Committee, and in any such case the Committee may nominate any practising advocate to act as a temporary member in the place of such nominated member for the purposes of such meeting.

(8) The Committee may appoint any public officer to be a secretary to the Committee.

Attorney-
General to fix
times and
places for
meetings of
Committee

5. Meetings of the Committee shall be held at such times and places as the Attorney-General shall fix.

**PART III
COUNCIL OF LEGAL EDUCATION**

Establishment
and procedure
of Council
Act No.
16 of 1963
s. 4

5A.-(1) There is hereby established a Council of Legal Education which shall consist of-

- (a) the Chief Justice or his representative;
- (b) the Attorney-General or his representative;
- (c) the Dean of the Faculty of Law of the University of Dar es Salaam or his representative; and
- (d) two practising advocates elected by the Law Society.

(2) The members of the Council elected by the Law Society shall hold office for such period, not exceeding three years, as the Law Society may determine and shall be eligible for re-election.

(3) The meetings of the Council shall be held at such times and places as the Chairman may determine.

(4) At any meeting of the Council three members thereof, of whom one shall be either the Chairman or the Attorney-General or his representative, shall constitute a quorum.

(5) Questions coming before the Council shall be determined by a majority of votes of the members present and voting but the Chairman shall have no casting vote.

(6) Subject to the provisions of this section the Council may regulate its own procedure.

Functions of
Council
Act No.
16 of 1963
s. 4

5B. The functions of the Council shall be to exercise the functions conferred upon it by or under this or any other law and to exercise general supervision and control over legal education in Tanzania for the purposes of this Act and to advise the Government in relation thereto.

Establishment
of Permanent
Secretariat
Act No.
5 of 2007
s.30

5C.-(1) There shall be a Permanent Secretariat which shall be responsible for the day to day administration and management of the Council.

(2) During the interim period, the Permanent Secretariat shall be responsible for allocation of law

graduates from accredited universities for purposes of undertaking practical legal training.

Cap.425 (3) The “interim period” referred to in Sub-section (2) means a period commencing from the date of coming into operation of the Law School of Tanzania Act, up to a date on which the conduct of practical legal training shall commence.

Functions of Permanent Secretariat in relation to Law school. Act No. 5 of 2007 s. 30

5D. The functions of the Permanent Secretariat shall be to provide logistical and technical support to the Council in monitoring and control of practical legal training programme in Tanzania.

PART IV ROLL OF ADVOCATES

Registrar to keep Roll of advocates

6. The Registrar shall keep, in accordance with the provisions of this Act and of any regulations made thereunder, a Roll of all advocates.

Roll and precedence of existing advocates

7. The Registrar shall enter upon the Roll the name of every person who is qualified to practise as an advocate in Tanzania; and the order of entry of such names shall be according to the precedence of such persons as between themselves.

Admission and enrolment of advocates Acts Nos. 16 of 1963 s. 3; 31 of 1997 Sch.; G.N. No. 395 of 1963

8.-(1) A person may apply to the Chief Justice to be admitted as an advocate-

(a) if he holds one of the following professional qualifications, that is to say-

- (i) if he is the holder of a degree in law granted after examination by the University of East Africa or the University of Dar es Salaam by such other university or other institution as may be recognised by the Council for the purposes of this section;

- (ii) if he is a legal practitioner (by whatever name called) and thereby has a right of audience before any court having unlimited jurisdiction in civil and criminal matters in any Commonwealth country or in any other country designated by the Minister for the purposes of this section;
 - (iii) if he is a Solicitor of the Supreme Court in England, Northern Ireland or the Republic of Ireland, a Writer to the Signet, a Solicitor in the Supreme Court of Scotland, or a person admitted or deemed to have been admitted as a solicitor under the Solicitors (Scotland) Act, 1933, of the United Kingdom, or if he is the holder of any similar qualification which is accepted by the Council as a professional qualification for the purposes of this subparagraph; and
- (b) subject to the provisions of subsection (2), if either-
- (i) he has complied with such requirements (whether relating to instruction or examination or otherwise) as to the acquisition of professional experience as may be specified in regulations made hereunder by the Council; or
 - (ii) he has been in continuous practice as an advocate in Kenya, Uganda or Zanzibar during the five years immediately preceding his application.

(1A) The Council may exempt any person from all or any of the requirements specified under subparagraph (i) of paragraph (b) of subsection (1).

(2) Every application made under this section shall be by petition to the Chief Justice in such form and manner and on payment of such fee as may be prescribed.

(3) Upon an application being made under this section and upon proof to his satisfaction of the qualification and

suitability of the applicant, the possession by the applicant of an adequate knowledge of the language of the Court, and upon production of such testimonials as to character as he may require, the Chief Justice shall, unless cause to the contrary is shown to his satisfaction, by writing under his hand and in such manner and form as he may, from time to time, think fit, admit the applicant as an advocate.

(3A) There shall be endorsed on each certificate of admission issued by the Chief Justice words to the effect that the certificate in itself is not a licence to practise as an advocate.

(4) The Registrar, upon production of an admission certificate signed by the Chief Justice, and on payment to the Registrar of the prescribed fee, shall enter on the Roll the name of the person so admitted.

(5) Nothing in this section shall prejudice or affect the qualification or status of any person who immediately before the commencement of this Act was qualified to practise as an advocate according to the law then in force.

(6) All reports and communications under this section shall be absolutely privileged.

Precedence of
advocates
C.A.
Act No.
2 of 1962
4th Sch.

9. Advocates shall take precedence among themselves according to the order of entry of their respective names on the Roll:

Provided that, the Attorney-General shall take precedence over all other advocates:

And provided further that, any person admitted to the Roll, who was, immediately before his application for admission to the Roll, the holder of an office to which the provisions of section 3 apply, may be accorded by the Chief Justice, with the consent of the Committee, precedence commensurate with the period immediately preceding the date of such application during which he held any such office within Tanzania.

PART V
REMOVAL FROM AND RESTORATION TO THE ROLL

Meetings of
Committee
Act No.
39 of 1969

10. The Attorney-General may at any time, and shall, when requested to do so by the chairman of the Committee, convene a meeting of the Committee for the purpose of enquiring into any allegation of misconduct made against any advocate.

Information
upon which
Attorney-
General may
act
Act No.
39 of 1969
s.4

11. In the exercise of his power under section 10, the Attorney-General may act upon information which is brought to his notice in any manner whatsoever.

Authority of
Attorney-
General to
require
affidavit of
allegations of
misconduct

12. The Attorney-General may, instead of or in addition to summoning before the Committee any person who makes allegations of misconduct against any advocate, require that person to support such allegations by an affidavit setting out the facts on which he relies as proof of misconduct.

Powers of
Committee
Act No.
39 of 1969
s. 5

13.-(1) The Committee shall have jurisdiction to hear and determine-

- (a) any application by an advocate to procure the removal of his name from the Roll;
- (b) any application by any person to remove the name of any advocate from the Roll; or
- (c) any allegation of misconduct made against any advocate by any person.

(2) Where an application or allegation of misconduct is made under paragraph (b) or paragraph (c) of subsection (1), the Committee shall have power to require the advocate in respect of whom such application is made, or in respect of whom such allegation is made, to show cause why his name should not be removed from the Roll of advocates or to answer the allegation made, as the case may be:

Provided that, where, in the opinion of the Committee, an application under paragraph (b) of subsection (1), or an allegation under paragraph (c) of that subsection does not disclose a *prima facie* case, the Committee may refuse such application or may dismiss the allegation without requiring the advocate to whom the application or allegation relates to show cause why his name should not be removed from the Roll or to answer the allegation, as the case may be.

(3) On the hearing of an application under paragraph (b) of subsection (1) or any allegation under paragraph (c) of that subsection-

- (a) the Committee shall give the advocate to whom the application relates or against whom the allegation is made an opportunity to appear and be heard by it, and for that purpose shall, not less than seven days before the date fixed for the hearing, inform him of such date and of the particulars of the application or allegation, furnish to him a copy of any affidavit made in respect of the application or allegation, and notify him of the time and place when and where he may inspect and make a copy of any other document in the possession of the Committee which it deems relevant to the application or allegation;
- (b) the Committee may in the course of the hearing, hear such witnesses and receive such documentary evidence as in its opinion may assist it in coming to a conclusion as to the truth or otherwise of any allegation made against the advocate.

(4) Upon the conclusion of a hearing subsection (3) the Committee may, if it is satisfied of the truth of the allegations upon which an application under paragraph (b) of subsection (1) is founded or of any allegation of misconduct made against the advocate-

- (a) direct that the name of the advocate be removed from the Roll;
- (b) admonish the advocate; or
- (c) suspend the advocate from practising for such period as the Committee may direct.

(5) In any proceedings under this section the Committee shall have power to make any such order as to payment by any party of any costs or witness expenses as it may think fit, and any such order shall be deemed to be an order of the High Court and may be enforced in like manner.

(6) If in the course of any hearing before the Committee after the whole or any part of the evidence has been heard and recorded, there is for any reason a change of the members of the Committee, the Committee may act on the evidence so recorded before such change, or partly recorded before and partly recorded after such change, as the case may be, or the Committee may re-summon the witnesses and recommence the hearing:

Provided that, the advocate whose misconduct is the subject matter of the proceedings may, when the Committee resumes its proceedings after such change, demand that all the witnesses or any of them be re-summoned and reheard and shall be informed of such right by the Committee when it so resumes its proceedings.

Rules governing Committee Act No. 39 of 1969 s. 6

14.-(1) The Committee, with the approval of the Chief Justice, may from time to time make rules for regulating the making, hearing and determination of applications to the Committee under this Part.

(2) For the purposes of any application made to it under this Part, the chairman of the Committee may administer oaths and may issue summonses under his hand directing any person named therein to attend at the time and place therein mentioned to give evidence or to produce documents therein specified or to do both.

Cap. 16

(3) Every proceeding before the Committee under section 13 shall, for the purposes of Chapter XI of the Penal Code, be deemed to be judicial proceeding.

Disobedience to summons and refusal to give evidence

15. If any person upon whom a summons issued under the provisions of section 13 has been served refuses or omits without sufficient cause to attend at the time and place mentioned in the summons, or refuses without sufficient cause to answer fully and satisfactorily to the best of his

knowledge and belief all questions put to him by or with the concurrence of the Committee, or refuses or omits without sufficient cause to produce any documents in his possession or under his control which are mentioned in the summons, he shall be liable on conviction to a fine not exceeding one thousand shillings:

Provided that, no person giving evidence before the Committee shall be compellable to incriminate himself, and that every such person shall, in respect of any evidence given by him or any document he is required to produce, be entitled to all the privileges to which a witness in a trial before the High Court is entitled in respect of evidence given by him or a document he is required to produce before such court.

Repealed

16.–21. [Repealed by Act No. 39 of 1969 s. 7.]

Disciplinary powers of Judges and High Court apart from inquiry by Committee

22.-(1) Nothing in this Act contained shall supersede, or interfere with the powers vested in the Chief Justice or any of the Judges of the High Court to deal with misconduct or offences by advocates.

(2) Without prejudice to the generality of the foregoing subsection, notwithstanding that no inquiry may have been made by the Committee—

(a) the Chief Justice or the High Court shall have power, for any reasonable cause to admonish any advocate or to suspend him from practising during any specified period or make an order of removing his name from the Roll;

(b) any Judge of the High Court shall have power to suspend any advocate in like manner temporarily, pending a reference to, or disallowance of such suspension by, the High Court;

(c) any advocate aggrieved by any decision or order of the Chief Justice or a judge of the High Court made in pursuance to paragraph (a), may, within thirty days of such decision or order appeal—

(i) in the case of a decision or order by a judge of the High Court, to the Advocates' Committee; and

(ii) in the case of a decision or order of the Chief Justice, to the Court of Appeal:

Provided that, where the decision or order appealed against was made by a judge of the High Court nominated by the Chief Justice to be a member of the Advocates' Committee under section 4(1)(a) of this Act, such judge shall not sit at the hearing of the appeal by the Committee, and in such case, the Chief Justice may nominate another judge of the High Court as provided under subsection (3) of section 4 of this Act; and save further that in an appeal to the Court of Appeal against a decision or order of the Chief Justice the latter shall not sit to hear the appeal.

Repealed

23. [Repealed by Act No. 39 of 1969 s. 7.]

Orders of High Court to be noted on Roll and copy to be sent to other East African countries
Act No. 39 of 1969 s. 8

24.-(1) Where, in proceedings under or by virtue of this Act, any advocate is admonished, or an order is made by the Committee removing his name from the Roll, or suspending him from practice, or as to the payment by him of costs, the Registrar shall cause a note of the effect of such admonition or order to be entered against the name of the advocate on the Roll and, where the order so directs, shall remove his name from Roll.

(2) The Registrar shall send to the Supreme Court or High Court, as the case may be, of each East African country a certified copy of every order (including orders made on appeal) made under or by virtue of this Act as to removal of the name of an advocate from the Roll, as to replacing the name of an advocate on the Roll or as to suspending an advocate from practice.

Appeals Acts Nos. 39 of 1969 s. 9; 12 of 1990 Sch.

24A.-(1) Any advocate aggrieved by any decision or order of the Committee under this Act may, within thirty days of such decision or order, appeal to the High Court against such decision or order.

(2) On any appeal under this section the High Court may affirm, reverse or vary the decision or order appealed against, and may in addition thereto exercise all the powers conferred upon the High Court by the Civil Procedure Code, in relation to an appeal from civil suits.

Cap.33

(3) In any appeal under this section the Committee shall be made a party thereto and shall have a right to be represented at the hearing and to oppose the appeal.

(4) Every appeal under this section shall be heard by a full bench of the High Court composed of not less than three Judges:

Provided that, where the proceedings concern a decision or order made by a judge of the High Court under paragraph (a) of subsection (2) of section 22 such judge shall not sit to hear the appeal before the full bench of the High Court.

(5) [Omitted].

Reciprocal
enforcement
of suspensions
and striking off
in East African
countries
Act No.
9 of 1996
Sch.

25.-(1) If any advocate who is also an advocate or legal practitioner, (by whatsoever name or style designated, of, or is entitled to practise as such in, any reciprocating Commonwealth country) is suspended from practice in such country by order of a competent court or other competent authority of or in such country, a note of such suspension shall be entered by the Registrar against the name of the advocate on the Roll, and thereupon such advocate shall be suspended from practice as an advocate in Tanzania for the period for which his suspension from practice in such country remains effective, or until the note of such suspension is deleted in accordance with the provisions of subsection (3) of this section, as the case may be.

(2) If the name of any such advocate as aforesaid is, by order of a competent court or other competent authority of or in any reciprocating Commonwealth country made otherwise than on the application or at the request of the advocate himself, removed or struck from or off the Roll or list of advocates or legal practitioners of such country, or if by any such order as aforesaid, made otherwise than on the application or at the request of the advocate himself, such advocate is disbarred, or otherwise disentitled to practise as an advocate or legal practitioner, by whatsoever name or style designated, in such country, the name of such advocate shall be removed from the Roll by the Registrar.

(3) Notwithstanding anything in this Act contained the Chief Justice may, if he thinks fit, either on his own

initiative or on the recommendation of the Committee at any time—

- (a) order that a note of the suspension from practice of any advocate in an reciprocating Commonwealth country shall not be entered by the Registrar against the name of the advocate on the Roll;
- (b) order that the name-
 - (i) of any advocate which by order of a competent court or other competent authority of or in any reciprocating Commonwealth country made otherwise than on the application or at the request of the advocate himself has been removed or struck from or off the roll or list of legal practitioners of such country;
 - (ii) of any advocate who by any such order as in subparagraph (i) of this paragraph is disbarred or otherwise disentitled to practice as an advocate or legal practitioner, by whatsoever name or style designated in such country, shall not be removed from the Roll by the Registrar;
- (c) order the Registrar to replace on the Roll the name of any advocate whose name has been removed from the Roll in accordance with the provisions of this section; or
- (d) order the Registrar to delete from the Roll any note of the suspension from practice of any advocate in an East African country entered against the name of such advocate on the Roll.

(4) If in any case to which the provisions of this section apply the name of an advocate is restored to the Roll or list of advocates or legal practitioners in any East African country, or if he otherwise becomes entitled again to practise as aforesaid in such country, his name shall, subject to the provisions of this Act, be replaced on the Roll by the Registrar.

(5) In this section, the expression “reciprocating commonwealth country” means any Commonwealth Country in respect of which the Minister declares, by order published in the *Gazette*, that he is satisfied that reciprocal effect will be given under the law of that country to any order made under this Act for the suspension of advocates from practice or the removal of their names from the Roll.

Effect of disciplinary action

26. Where under any provision of this Act the name of an advocate has been removed from the Roll or an advocate has been suspended from practice, his practising certificate (if any) shall be deemed forthwith to have been cancelled, or, in the case of suspension for a period less than the unexpired period to which his practising certificate relates, to have been suspended for such lesser period.

Limitation of time for certain applications to remove name from Roll

27. Subject as hereinafter provided, no advocate shall be liable to have his name removed from the Roll on account of any defect in his admission and enrolment, unless the application to remove his name from the Roll is made within six months after the date of his enrolment:

Provided that, this section shall not apply to any case where fraud is proved to have been committed in connection with the admission or enrolment.

Persons suspended or disbarred may apply for variation of order Act No. 39 of 1969 s. 10

28.-(1) Subject to the provisions of subsection (2), any person who, in accordance with the provisions of this Act or otherwise by the High Court, has been suspended from practising during a specified time or whose name has been removed from the Roll, may apply to the High Court for an order, in the former case, to set aside the order or to reduce the period of suspension and, in the latter case, to set aside the order or for re-admission.

(2) The right to apply under subsection (1) shall be subject to the following limitations-

- (a) in the case of an order of suspension, no application shall be made until after the expiration of two years from the date of such order or of half the period of suspension, whichever is the less,

and when an application has been made and determined no further application shall be made until after the expiration of two years from the date of such determination; and

- (b) in the case of an order removing a name from the Roll, no application shall be made until after the expiration of two years from the date of such order and when an application has been made and determined, no further application shall be made until after the expiration of two years from the date of such determination and, in the case of subsequent applications, until after the expiration of two years from the date of the determination of the last previous application:

Provided that, in the event of any new material fact coming to light since the making of the original order of suspension or removal from the Roll, which fact might have influenced the Court or the Committee in making the order, the person affected may, at any time, apply to a Judge in Chambers for permission to apply for reconsideration of the original order, and if the Judge is of the opinion that such fact should be placed before the Court or the Committee which made the original order, whether or not he considers that such fact would have influenced the original decision, he may grant such application, and where such application is granted—

- (a) if the original order was an order made by the High Court, the High Court shall proceed to reconsider the order;
- (b) if the original order was an order made by the Committee, the Committee shall proceed to reconsider the order.

Application by
petition
supported
by affidavit
and
served on
Attorney-
General

29.-(1) Every application under section 28 shall be by petition and shall be accompanied by a supported affidavit setting forth the grounds upon which the applicant relies.

(2) A copy of such petition and affidavit shall be served upon the Attorney-General not less than seven days before the day of hearing.

Hearing in
open
Court

30. The petition shall be heard in open court and the petitioner and the Attorney-General may appear or be represented.

Hearing of
petition and
decision
thereon

31. The High Court at the hearing of the petition may require any statement made by or on behalf of the petitioner to be verified on oath or may require further evidence either orally or by affidavit in respect of any specified matters or after hearing the petitioner and the Attorney-General in reply may adjourn the determination of the petition for a period not exceeding two years and may require to be supplied at a specified time or times during the adjournment with any such information relating to the petition as the Court may think necessary; or the Court may-

(a) in the case of an application to set aside the order of suspension or to reduce the period of suspension-

- (i) set aside the order of suspension;
- (ii) reduce the period of suspension for a specified time or to a specified date; or
- (iii) decline to make any order; and

(b) in the case of an application to set aside an order removing a name from the Roll or for re-admission-

- (i) set aside the original order; or
- (ii) direct the Registrar to re-admit the petitioner either forthwith or at some future date; or
- (iii) decline to make any order; and

(c) make such order relating to the Roll and otherwise as the Court thinks fit.

Costs where
application
unsuccessful

32. Where the High Court, in the case of an application to have an order of suspension set aside or to have the period of suspension reduced, refuses to make an order setting aside or reducing the period of suspension and, in the case of an application to have an order removing a name from

the set aside or for re-admission, declines to make any order setting aside or for re-admission, the High Court may direct that the applicant do pay to the Attorney-General his taxed costs or such sum in lieu of taxed costs as the Court may specify.

Proceedings under this Part in addition to other remedies

33.-(1) No proceedings, whether civil or criminal, and whether pending or terminated, shall be a bar to any proceedings under this Part based on the same or substantially the same facts as those to which such civil or criminal proceedings relate and no such proceedings, howsoever determined, shall in any way derogate from the power of the High Court to admonish an advocate, or make an order removing his name from the Roll or suspending him from practice or from the powers of the High Court or a judge under the provisions of section 22.

(2) No proceedings under this Part, whether pending or terminated, shall be a bar to any civil or criminal proceedings or other remedy based on the same or substantially the same facts as those to which the proceedings under this Part relate.

**PART VI
PRACTISING CERTIFICATES**

Registrar to issue practising certificates

34. It shall be the duty of the Registrar to issue in accordance with the provisions of this Part certificates authorising the advocates named therein to practise as advocates.

Application for practising certificates Act No. 31 of 1997 Sch.

35.—(1) Every advocate applying for a practising certificate shall-

- (a) deliver or send to the Registrar a written declaration in the prescribed form in duplicate stating the name and place of business of the applicant and the date of his admission and signed by the applicant or his partner;
- (b) pay to the Registrar the prescribed fee; for the practising certificate; and

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(c) pay into the funds of the Law Society the annual subscription for the current year prescribed under the Tanganyika Law Society Act.

(2) The Registrar shall cause all the particulars contained in the declaration to be entered in a register kept for that purpose, and any person may inspect such register during office hours without payment.

(3) Subject to the provisions of section 36, the Registrar, if satisfied that-

- (a) the name of the applicant is on the Roll and he is entitled to practice in Mainland Tanzania;
- (b) he has paid his annual subscription for the current year into the funds of the Law Society;
- (c) he has paid the prescribed fees for the practising certificate;
- (d) he has paid for the business licence; and
- (e) if he is employed or committed otherwise than as an advocate, he has obtained approval from his employer or such other principal to practise as an advocate,

shall, after the expiration of six days from the delivery to him of the declaration, deliver to the applicant or his agent upon demand a practicing certificate in such form as may be prescribed.

(4) If in any case, not being a case to which section 36 applies, the Registrar on application duly made to him refuses or neglects to issue a practising certificate, the applicant may apply to a Judge of the High Court who may make such order in the matter, including an order for payment of costs by or to either the Registrar or the applicant, as shall be just.

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(5) Notwithstanding the provisions of the Business Licensing Act every business licence granted to an advocate under that Act shall expire on the thirty first day of December next following the date of issue.

Discretion of
Chief Justice to
Refuse
certificate in
special cases

36.-(1) In any of the following cases, that is to say, where an advocate-

- (a) applies for a practising certificate, having neglected to obtain such a certificate within six

months after the expiration of the last certificate issued to him;

- (b) applies for a practising certificate whilst he is an undischarged bankrupt; or
- (c) having been suspended from practice or had his name removed from the Roll, first applies for a practising certificate after the expiration of his suspension or after his re-admission to the Roll, as the case may be,

he shall, unless the Chief Justice otherwise orders, give to the Registrar, at least six weeks before the application is made, notice of his intention to make the application, and the Chief Justice in his discretion may refuse the application.

Adjudication in
bankruptcy to
suspend
practising
certificates

37.-(1) An adjudication in bankruptcy of an advocate shall operate immediately to suspend the practising certificate (if any) of such advocate for the time being in force, and such suspension shall continue in operation until the certificate expires or the adjudication in bankruptcy is annulled, and an office copy of the order annulling the adjudication has been served upon the Registrar or the suspension is terminated by order of the Registrar or the Chief Justice under subsection (2), (3), (4) or (5), whichever shall first happen

(2) At any time before the certificate would, apart from any suspension hereunder, have expired, and (in the case of adjudication in bankruptcy) notwithstanding that the adjudication has not been annulled, such advocate may apply to the Registrar to terminate the suspension, and the Registrar, in his discretion, may decide to terminate by order the suspension unconditionally or subject, to such terms and conditions as he may in his discretion think fit or may refuse the application.

(3) If the Registrar shall refuse the application to terminate the suspension subject to any terms or conditions, such advocate may appeal against such decision to the Chief Justice who may either affirm the decision of the Registrar or, by order, vary any terms or conditions imposed by the Registrar or terminate the suspension unconditionally or subject to such terms and conditions as he may think fit.

(4) When the practising certificate of an advocate has become suspended by virtue of his adjudication in bankruptcy or by virtue of an order of the Chief Justice, the Registrar shall forthwith cause a notice of such suspension to be entered against the name of such advocate in the Roll.

(5) When the suspension of the practising certificate of an advocate has been terminated by annulment of the adjudication in bankruptcy of the advocate and service upon the Registrar of an office copy of the order annulling the adjudication or by order of the Registrar or Chief Justice under this section the Registrar shall forthwith cause a note of the termination of the suspension to be entered against the name of such advocate in the Roll.

Date and period of validity of practising certificates

38.-(1) Every practising certificate shall, subject as hereinafter provided, take effect on the day on which it is issued by the Registrar:

Provided that, every practising certificate issued between the first day of January and the first day of February in any year to an advocate who held a valid practising certificate on the thirty-first day of December of the preceding year shall have effect for all purposes from the first day of January in that year.

(2) Every certificate shall continue in force from the day on which it has been taken or takes effect in accordance with this section until the thirty-first day of December next following (both days inclusive) and shall then expire.

(3) The Registrar shall cause to be entered upon the Roll a note of the date of issue to any advocate of a practising certificate.

**PART VII
PRIVILEGES, RESTRICTIONS AND OFFENCES IN
CONNECTION WITH PRACTICE**

Qualifications for practising as advocate Act No. 31 of 1997 Sch.

39.-(1) Subject to the provisions of section 3, no person shall be qualified to act as an advocate unless—

- (a) his name is on the Roll;
- (b) he has in force a practising certificate; and
- (c) he has a valid business licence,

and a person who is not so qualified is in this Part referred to as an “unqualified person”.

(2) Notwithstanding anything to the contrary contained in this Part, the Chief Justice may, upon payment to the High Court of the prescribed fee admit to practise as an advocate for the purpose of any one case any of the persons mentioned in subsection (1) of section 8 who has come or intends to come to Tanzania for the purpose of appearing in such case.

(3) The fee prescribed for the purposes of subsection (2) may relate to the case as a whole or to any day on which such case continues or both.

(4) Any person who is admitted to practise as an advocate for the purpose of any one case under the provisions of subsection (2) shall be deemed to be subject to the provisions of this Act as if he were an advocate.

Rights of
practising
advocate
C.A.
Act No.
2 of 1962
4th Sch.
Cap. 11

40. Every advocate who has in force a practising certificate may practise as an advocate in the High Court or in any court subordinate thereto constituted under the Magistrates’ Courts Act and may perform any of the functions which, in England, may be performed by a member of the Bar as such or by solicitor of the Supreme Court of Judicature as such.

Unqualified
Person not to
act as advocate

41.-(1) No unqualified person shall act as an advocate, or agent for suitors or, as such, issue out any summons or other process, or commence, carry on or defend any action, suit or other proceeding in the name of any other person or in his own name, in any court of civil or criminal jurisdiction, or act as an advocate in any cause or matter, civil or criminal.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence against this Act and of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly, and shall be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting, and shall, in addition to any other penalty or forfeiture and any

disability to which he may be subject, be liable on conviction to a fine not exceeding two thousand shillings.

Penalty for pretending to be advocate Act No. 31 of 1997 Sch.

42. Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description, or uses any title which corresponds to the title of a legal practitioner in any Commonwealth country, implying that he is qualified to acts as an advocate, shall be liable on conviction to a fine not exceeding one million shillings or twelve months imprisonment or both.

Penalty for unqualified persons preparing certain instruments Act No. 31 of 1997 Sch.

43.-(1) Any unqualified person who, unless he proves that the act was not done for, or in expectation of, any fee, gain or reward, either directly or indirectly, draws or prepares any instrument—

- (a) relating to movable or immovable property or any legal proceeding;
- (b) for or in relation to the formation of any limited liability company whether private or public;
- (c) for or in relation to the making of a deed of partnership or the dissolution of a partnership,

shall be liable on conviction to a fine not exceeding one million shillings or twelve months imprisonment or both and shall be incapable of maintaining any action for any costs in respect of the drawing or preparation of such instrument or any matter connected therewith.

- (2) This section shall not extend to—
 - (a) any public officer drawing or preparing instruments in the course of his duty; or
 - (b) any person employed merely to engross any instrument, application or proceeding.

(3) For the purposes of this section and section 44, the expression “instrument” does not include—

- (a) a will or other testamentary instrument;
- (b) an agreement under hand only which does not and is not intended to operate as a deed under the Land Act ;
- (c) a letter of power of attorney; or
- (d) a transfer of stock or shares containing no trust or limitation thereof.

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Instruments to be endorsed with name and address of drawer

44.-(1) Every person who draws or prepares any instrument in contravention of section 43 shall endorse or cause to be endorsed thereon his name and address; and any such person omitting so to do or falsely endorsing or causing to be endorsed any of the said requirements shall be liable on conviction to a fine not exceeding two hundred shillings.

(2) It shall not be lawful for any registering authority to accept or recognise any instrument unless it purports to bear the name of the person who prepared it endorsed thereon.

Offences by bodies corporate

45. If any act is done by a body corporate or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognised by law as qualified, to act as an advocate, such body corporate shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings, and, in the case of an act done by any director, officer or servant of such body corporate, he shall, without prejudice to the liability of the corporation, be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings.

Power to exclude touts from precincts of courts

46.-(1) The Chief Justice may, by order under his hand exclude from the precincts of the High Court or any court subordinate thereto any person declared by him to be a tout for such period as may be specified in such order:

Provided that, no such order shall be made unless the person concerned shall have had opportunity of showing cause against such order.

(2) No person in respect of whom any order has been made under subsection (1) shall, while such order is in force, enter or remain within the precincts of the High Court or any court subordinate thereto without leave of a judge for special cause.

Acting as tout prohibited

47. Any person who, on behalf of any advocate, or for his own account, acts as a tout shall be liable to a fine not exceeding one thousand shillings and to imprisonment for a term not exceeding six months.

Offence of, and penalty for, inducing clients to abandon their advocates

48. Any person who induces or attempts to induce any client or prospective client of any advocate to cease to be the client of such advocate in order to become the client of the advocate whom such person serves as secretary, clerk or messenger or in any other capacity, shall be liable to a fine not exceeding one thousand shillings and to imprisonment for a term not exceeding six months.

**PART VIII
REMUNERATION OF ADVOCATES**

Power to make general orders as to remuneration of advocates

49.-(1) For the purposes of this Part, there shall be a Committee to be known as the Remuneration Committee which shall consist of five advocates elected by the Law Society of whom three shall form a quorum.

(2) The Chief Justice or the Remuneration Committee may make orders prescribing and regulating in such manners as he or it may think fit the remuneration of advocates in regard to both contentious and non-contentious business.

(3) Any order made under the provisions of this section shall be submitted to the President for approval together with, in the case of an order made by the Chief Justice, the observations, if any, of the Remuneration Committee, and in the case of an order made by the Remuneration Committee, the observations, if any, of the Chief Justice.

(4) Any order made and submitted under the provisions of this section shall, if approved, be published in the *Gazette* and shall come into force on the date of such publication or such later date as may be specified in such order.

Scales of rates of commission and percentage

50. Any order made under section 49 may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode

and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say—

- (a) the position of the party for whom the advocate is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, charger or chargee, and the like;
- (b) the place where, and the circumstances in which, the business or any part thereof is transacted;
- (c) the skill, labour and responsibility involved therein on the part of the advocate;
- (d) the number and importance of the documents prepared or perused, without regard to length.

Security for payment of remuneration and regulating interest

51. An order made under section 49 may authorise and regulate-

- (a) the taking by an advocate from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any such order; and
- (b) the allowance of interest.

Taxation of bills of costs

52. As long as any order made under section 49 is in operation the taxation of bills of costs of advocates shall, subject to the subsequent provisions of this Part with respect to agreements as to remuneration, be regulated by that order.

Agreements with respect to remuneration for non-contentious business

53.-(1) Whether or not any order is in force under section 49, an advocate and his client may, either before or after or in the course of the transaction of any non-contentious business by the advocate, make an agreement in writing as to the remuneration of the advocate in respect thereof.

(2) The agreement may provide for the remuneration of the advocate by a gross sum, or by commission, or percentage, or by salary, or otherwise and it may be made on the terms that the amount of the remuneration therein stipulated for shall, or shall not include all or any disbursements made by the advocate in respect of searches, plans, travelling, stamps, fees or other matters.

(3) The agreement shall be signed by the person to be bound thereby or his agent in that behalf.

(4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of an advocate:

Provided that, if on any taxation of costs the agreement is relied on by the advocate and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the High Court and if on that certificate it appears just to the High Court that the agreement should be cancelled, or the amount payable thereunder reduced, the High Court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as it thinks fit.

Powers to make agreements as to remuneration for contentious business

54. Whether or not any order is in force under section 49 an advocate may make an agreement in writing with his client as to his remuneration in respect of any contentious business done or to be done by him, providing that he shall be remunerated either by a gross sum or by salary, or otherwise.

Miscellaneous provisions as to agreements with respect to costs of contentious business

55.-(1) An agreement made pursuant to section 54—

(a) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof:

Provided that, the client shall not be entitled to recover from any other person under any order for the payment of any costs to which the agreement relates more than the amount payable by him to his advocate in respect thereof under the agreement; and

(b) shall be deemed to exclude any claim by the advocate in respect of the business to which it relates other than-

- (i) a claim for the agreed costs; or
- (ii) a claim for such costs as are expressly excepted therefrom.

(2) A provision in such an agreement that the advocate shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as an advocate, shall be void.

(3) No action shall be brought upon any such agreement, but the High Court, after hearing the Remuneration Committee if it wishes to be heard, may, on the application of any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be, liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect thereof.

(4) On any such application, the High Court—

- (a) if it is of opinion that the agreement is in all respects fair and reasonable, may enforce it;
- (b) if it is of opinion that the agreement is in any respects unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered thereby to be taxed as if the agreement had never been made;
- (c) in any case, may make such orders as to the costs of the application as it thinks fit.

Certain
circumstances
taxing
officer may
reduce amount
payable under
agreement

56.-(1) If the business covered by any agreement made pursuant to section 54 is business done, or to be done, in any action, the amount payable under the agreement shall not be received by the advocate until the agreement has been examined and allowed by a taxing officer of the High Court, and if the taxing officer is of the opinion that the agreement is unfair or unreasonable, he may require the opinion of the Remuneration Committee to be taken thereon and may on receipt of such opinion reduce the amount payable thereunder, or order the agreement to be cancelled and the

costs recovered thereby to be taxed as if the agreement had not been made.

(2) When the amount agreed upon under any such agreement has been paid by or on behalf of the client or by any person entitled so to do, the person making the payment may at any time within twelve months after payment apply to the High Court and the High Court, if it appears to it that the special circumstances of the case require the agreement to be re-opened, may, on such terms as may be just, re-open the agreement and may order the costs covered thereby to be taxed and the whole or any part of the amount received by the advocate to be repaid by him.

(3) Where any such agreement is made by the client as the guardian or committee of, or as a trustee under a deed or will for, any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the taxing officer of the High Court and that officer shall examine the agreement and may disallow any part of it or may require the opinion of the High Court to be taken thereon.

(4) Any such client as is mentioned in subsection (3) who pays the whole or any part of the amount payable under the agreement without the agreement having been allowed by the taxing officer or by the High Court, shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the advocate who accepts the payment may be ordered by the High Court to refund the amount received by him.

Death or
incapacity of
advocate

57.-(1) If, after some business has been done under an agreement made pursuant to section 54 but before the advocate has wholly performed it, the advocate dies or becomes incapable of acting, then any party to, or the representative of any party to, the agreement, may apply to the High Court and the High Court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the advocate had not died or become incapable of acting:

Provided that, the High Court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done thereunder to be ascertained by taxation, and in that case-

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
- (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.

(2) The provisions of subsection (1) shall apply in the event of the client changing his advocate before the conclusion of the business to which the agreement relates in the same manner as they apply when the advocate dies or is incapacitated:

Provided that, if an order is made for the taxation of the amount due to the advocate in respect of the business done under the agreement, the High Court shall direct the taxing officer to have regard to the circumstances under which the change of advocate has taken place, and the taxing officer, unless he is of opinion that there has been no default, negligence, improper delay or other conduct on the part of the advocate affording to the client reasonable ground for changing his advocate, shall not allow to the advocate the full amount of the remuneration agreed to be paid to him.

Agreement
excludes
taxation

58. Save as provided in the foregoing provisions, the costs of an advocate in any case where an agreement has been made shall not be subject to taxation or to the subsequent provisions of this Part of this Act with respect to the signing and delivery of an advocate's bill.

Miscellaneous
provisions as to
remuneration
for contentious
business

59. Nothing in section 57, 58, 59, 60 or 61 shall give validity to-

- (a) any purchase by an advocate of the interest or any part of the interest, of his client in any action, suit or other contentious proceeding;

- (b) any agreement by which an advocate retained or employed to prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success of that action, suit or proceeding; or
- (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or composition.

Power of High Court to order advocate to deliver his bill and to deliver up deeds

60.-(1) The jurisdiction of the High Court to make orders for the delivery by an advocate of a bill of costs and for the delivery up of, or otherwise in relation to, any deeds, documents or papers in his possession, custody or power, is hereby declared to extend to cases in which no business has been done by him in the High Court.

(2) In this section and in sections 61, 62 and 63, the expression “advocate” includes the executors, administrators, and assignees of the advocate in question.

Action to recover advocates' costs

61.-(1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to an advocate until one month after a bill thereof has been delivered in accordance with the requirements of this section:

Provided that, if there is probable cause for believing that the party chargeable with the costs is about to depart from Tanzania, or to become a bankrupt, or to compound with his creditors, or to do any other act which would tend to prevent or delay the advocate obtaining payment, the High Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence an action to recover his costs and may order those costs to be taxed.

(2) The following are the requirements referred to in subsection (1)-

- (a) the bill must be signed by the advocate or, if the costs are due to a firm, one partner of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and

- (b) the bill must be delivered to the party to be charged therewith, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling house, or last known place of abode, and where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill, which shall be presumed until the contrary is shown, to be a bill bona fide complying with this Act.

Taxation of bills on application of party chargeable or advocate

62.-(1) On the application, made within one month of the delivery of an advocate's bill, of the party chargeable therewith, the High Court shall, without requiring any sum to be paid into Court, order that the bill shall be taxed and that no action shall be commenced thereon until the taxation is completed.

(2) If no such application is made within the period mentioned in subsection (1), then, on the application either of the advocate, or the party chargeable with the bill, the High Court may, upon such terms, if any, as it thinks fit (not being terms as to the costs of the taxation), order—

- (a) that the bill shall be taxed;
- (b) that, until the taxation is completed, no action shall be commenced on the bill, and any action already commenced be stayed:

Provided that-

- (i) if twelve months have expired from the delivery of the bill, or if the bill has been paid, or if a decree, judgment or order has been obtained in a suit for the recovery of the costs covered thereby, no order shall be made on the application of the party chargeable with the bill except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the taxation as the High Court may think fit;

(ii) in no event shall any such order be made after the expiration of twelve months from the payment of the bill.

(3) Every order for the taxation of a bill shall require the taxing officer to tax not only the bill but also the costs of the taxation and to certify what is due to or from the advocate in respect of the bill and in respect of the costs of the taxation.

(4) If after due notice of any taxation, either party thereto fails to attend, the taxing officer may proceed with the taxation *ex parte*.

(5) Unless-

(a) the order for taxation was made on the application of the advocate and the party chargeable does not attend the taxation; or

(b) the order for taxation otherwise provides, the costs of the taxation shall be paid according to the event of the taxation, that is to say, if one-sixth of the amount of the bill is taxed off, the advocate shall pay the costs, but otherwise the party chargeable shall pay the costs:

Provided that, the taxing officer may certify any special circumstances relating to the bill or the taxation thereof to the High Court, and the High Court may make thereon any such order as it thinks fit respecting the payment of the costs of the taxation.

Taxation on application of third parties and beneficiaries under trust, etc.

63.-(1) Where a person other than the person who is the party chargeable with the bill for the purposes of section 62, has paid, or is, or was, liable to pay, the bill either to the advocate or to the party chargeable with the bill, that person or his administrators, executors or assignees may apply to the High Court for an order for the taxation of the bill as if he were the party chargeable therewith, and the High Court may make thereon the same order, if any, as it might have made if the application had been made by that party:

Provided that, in cases where the High Court has no power to make an order except in special circumstances the High Court may, in considering whether there are special

circumstances sufficient to justify it in making an order, take into account circumstances affecting the applicant, but which do not affect the party chargeable with the bill.

(2) If a trustee, executor or administrator has become liable to pay the bill of an advocate, the High Court may, upon the application of any person interested in the property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill, and upon such terms, if any, as it thinks fit, order the bill to be taxed, and may order such payments, in respect of the amount found due to or from the advocate, or to the executor, administrator or trustee, as it thinks fit:

Provided that, in considering any such application, the High Court shall have regard to-

- (a) the provisions of section 62 as to applications by the party chargeable with the taxation of an advocate's bill so far as they are capable of being applied to an application made under this subsection;
- (b) the extent and nature of the interest of the applicant.

(3) If an applicant under subsection (2) pays any money to the advocate, he shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the advocate had.

(4) The following provisions shall apply to applications made under this section-

- (a) except in special circumstances no order shall be made for the taxation of a bill which has already been taxed;
- (b) the High Court may, if it orders taxation of a bill, order the advocate to deliver to the applicant a copy of the bill upon payment of the costs of that copy.

General provisions as to taxation

64.-(1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the High Court, be final as to the amount of the costs covered thereby, and the High Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

Charging orders

65. Any court in which an advocate has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the advocate entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the said costs and for raising money to pay or for paying the said costs out of the said property as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a *bona fide* purchaser for value without notice, be void as against the advocate:

Provided that, no order shall be made if the right to recover the costs is barred by limitation.

**PART IX
MISCELLANEOUS PROVISIONS**

Advocates to be officers of High Court

66. Any person duly admitted as an advocate shall be an officer of the High Court and shall be subject to the jurisdiction thereof.

Payment of expenses of Committee

67.-(1) Any expenses certified to have been incurred by the Committee in carrying out any of the provisions of this Act or in supporting any report before the High Court shall, subject to the provisions of subsection (2), be paid out of the general revenue of the United Republic.

(2) The High Court may, on the application of the Committee, order that any such expenses shall be paid to the Permanent Secretary to the Treasury by the advocate concerned or by any party on whose application such expenses had been incurred.

(3) Where any such expenses have been paid in accordance with an order made under subsection (1), they shall form part of the general revenue of the United Republic.

Authentication of regulations and other documents

68. All regulations, orders, certificates, notices and other documents made or issued by the Committee or the Remuneration Committee for any purpose whatsoever may be signed on behalf of the Committee concerned by the chairman or such member or other person as the Committee may for that purpose appoint.

Fees for admission and practising certificates to be paid to Law Society
Ord. No. 36 of 1961
s. 2

68A.-(1) The Registrar shall retain in a separate account all fees paid under the provisions of subsection (2) of section 8, subsection (1) of section 35 and subsection (2) of section 39, and shall pay the balance standing to the credit of that account on the first day of January, the first day of April, the first day of July and the first day of October in each year to the Law Society, and the Law Society may apply the same for any of the purposes for which the funds of the Society may be applied.

(2) The receipt of the Secretary of the Law Society, or of any other officer of the Law Society authorised by the Council thereof in that behalf, shall be a sufficient discharge to the Registrar for any payment made by him under this section.

Regulations

69. The Committee, with the approval of the Chief Justice, may make regulations for the better carrying out of the provisions and purposes of this Act and, in particular but without prejudice to the generality of the foregoing, may make regulations with respect to the following matters—

- (a) the keeping of accounts by advocates;
- (b) the acts or omissions which shall constitute misconduct on the part of an advocate;
- (c) practice and etiquette of advocates;
- (d) prescribing anything which under this Act is to be prescribed.

Saving of other laws

- 70.** Nothing in this Act shall prejudice or affect—
- (a) the provisions of any other law empowering any person, not being an advocate to conduct, defend or otherwise act in relation to any proceedings;
 - (b) the provisions of any other law prohibiting any person or class of persons from conducting, defending or otherwise acting in relation to any proceedings; or
 - (c) any existing rules touching the remuneration of advocates, except only so far as they conflict or are inconsistent with any of the provisions of this Act or orders made hereunder, and such existing rules shall, except only as aforesaid, be deemed to be an order made pursuant to the provisions of section 49 until amended, revoked or repealed by orders made under the said section.

Omitted

71. [Transitional provisions.]

Repeal

72. [Repeals F.R.L. Cap. 10 and F.R.L. Cap. 11.]

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 423

THE ANTI-MONEY LAUNDERING ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Anti-Money Laundering Act, Chapter 423, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

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6 of 2008 s.41	“bank” has the meaning ascribed to it under the Banking and Financial Institutions Act;
1 of 2012 s.3	“Bank” has the meaning ascribed to it under the Bank of Tanzania Act;
1 of 2013 s.4	“cash dealer” means-
14 of 2015 s.57	(a) a person who carries on a business of an insurer, an intermediary insurance broker, a securities dealer or broker;
Cap. 4 s.8	(b) a person who carries on a business of dealing in gold bullion, or issuing, selling or redeeming traveler’s cheques, money orders or similar instruments, of collecting, holding and delivering or transmitting money;
Cap. 197	(c) an operator of a gaming activity;
	(d) a trustee or a manager of a Collective Investment Scheme; and
	(e) an operator of a bureau de change;
	“Chairman” means the Chairman of the National Committee appointed under section 8;
	“Commissioner” means the Commissioner of the FIU appointed under section;
	“comparable body” means an overseas Government agency with functions similar to those of the FIU;
Cap. 342	“financial institution” has the meaning ascribed to it under the Banking and Financial Institutions Act;
Cap. 256	“forfeiture” has the meaning ascribed to it under the Proceeds of Crime Act;
	“Government” means the Government of the United Republic and where appropriate includes the Revolutionary Government of Zanzibar;
	“law enforcement agency” means the Police Force, Prevention and Combating of Corruption Bureau, Immigration Services, Tanzania Revenue Authority and any other investigative agency dealing with anti-money laundering and combating the financing of terrorism;

- “Minister” means the Minister for the time being responsible for monetary affairs;
- “money laundering” means engagement of a person or persons, direct or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and in which such engagement intends to avoid the legal consequence of such action and includes offences referred in section 12;
- “National Committee” means the National Multi-disciplinary Committee on Anti-Money Laundering Committee established by section 8;
- “politically exposed person” means a foreign individual entrusted with prominent public functions including heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations or agencies;
- “predicate offence” means-
- (a) any dealing which amounts to illicit drug trafficking under the law for the time being relating to narcotic drugs and psychotropic substances;
 - (b) terrorism, including terrorist financing;
 - (c) illicit arms trafficking;
 - (d) participating in an organized criminal group and racketeering;
 - (e) trafficking in persons and smuggling immigrants;
 - (f) sexual exploitation, including sexual exploitation of children;
 - (g) illicit trafficking in stolen or other goods;
 - (h) all corruption and related offences stipulated under the Prevention and Combating of Corruption Act;
 - (i) counterfeiting of currency or goods;
 - (j) armed robbery;
 - (k) theft;
 - (l) kidnapping, illegal restraint and hostage taking;

- Cap.443
- (m) smuggling;
 - (n) extortion;
 - (o) forgery;
 - (p) piracy;
 - (q) hijacking;
 - (r) offences under the Cyber Crimes Act;
 - (s) insider dealing and market manipulation;
 - (t) illicit trafficking or dealing in human organs and tissues;
 - (u) poaching;
 - (v) tax evasion;
 - (w) illegal fishing;
 - (x) illegal mining;
 - (y) fraud and other related offences;
 - (z) murder;
 - (aa) grievous bodily harm;
 - (bb) pyramid and other similar schemes;
 - (cc) piracy of goods;
 - (dd) environmental crimes; or
 - (ee) any other offences as the Minister may, by notice published in the *Gazette*, declare, whether committed within or outside the boundaries of the United Republic;
- Cap. 256
- “property” has the meaning ascribed to it under the Proceeds of Crime Act;
- “regulator” includes, the:
- (a) Bank of Tanzania;
 - (b) Capital Markets and Securities Authority;
 - (c) Tanzania Insurance Regulatory Authority;
 - (d) Gaming Board of Tanzania;
 - (e) Social Security Regulatory Authority;
 - (f) Registrar of Cooperatives;
 - (g) Registrar of Titles;
 - (h) Registrar of Non- Governmental Organisations;
 - (i) Registrar of Political Parties;
 - (j) Energy and Water utilities Regulatory Authority;
 - (k) Tanzania Communication Regulatory Authority;
 - (l) Business Registration and Licensing Agency;
 - (m) Tanzania Investment Centre;

- (n) Registration, Insolvency and Trusteeship Agency;
and
- (o) any other regulatory authorities or agencies which the Minister may, by order published in the *Gazette*, specify;

“reporting person” means-

- (a) banks and financial institutions;
- (b) cash dealer;
- (c) an accountant, real estate agent, dealer in precious stones work of arts or metals;
- (d) a regulator;
- (e) customs officer;
- (f) attorneys, notaries and other independent legal professionals when:
 - (i) assisting clients in preparing or executing transactions involving:
 - (aa) the purchase or sale of real property or commercial enterprises;
 - (bb) management of funds, securities or other assets which belong to a client;
 - (cc) the opening or management of bank accounts, saving accounts or portfolios
 - (dd) the organisation of contributions required to create, manage or direct corporations or legal entities;
 - (ee) the creation, management or direction of corporations or legal entities; and
 - (ff) the buying or selling of business entities;
 - (ii) acting on behalf of a client in any financial or real estate transaction;
- (g) pension funds managers, securities market intermediaries, financial leasing entities, micro financing institutions and companies and

- financing housing companies;
- (h) auctioneers; and
- (i) any other person who the Minister may, by notice published in the *Gazette*, specify;

“terrorist financing” means-

- (a) the provision of, or making available such financial or other related services to a terrorist, group or entity which is concerned with terrorist act;
- (b) entering into or facilitating directly or indirectly any financial transaction directed to a dealing in property owned or controlled by or on behalf of any terrorist or any entity owned or controlled by a terrorist; or
- (c) knowingly solicits support for, or rendering financial support to a terrorist, group or entity which is associated with terrorist acts.

PART II THE FINANCIAL INTELLIGENCE UNIT AND THE NATIONAL COMMITTEE

Establishment
of Financial
Intelligence
Unit
Act No.
1 of 2012
s. 4

4.-(1) There shall be established under the Ministry of Finance an Extra Ministerial Department to be known as a Financial Intelligence Unit also known by an acronym FIU.

(2) The FIU shall be responsible for receiving, analyzing and disseminating suspicious transaction reports, currency transaction reports, cross border currency reports, electronic funds transfer reports and other information regarding potential money laundering or terrorist financing received from the reporting persons and other sources from within and outside the United Republic.

(3) The FIU shall have operational and budgetary independence as may be necessary for effective discharge of its functions.

Appointment
of
Commissioner
Act No.
1 of 2012
s. 5

5.-(1) The President shall appoint a person who has adequate knowledge and experience either in economics, monetary affairs, finance, law, financial crimes or any other field that is beneficial to the execution of this Act, to be the Commissioner of FIU.

(2) The Commissioner shall be responsible for the general administration of the FIU.

(3) The Commissioner shall be the Chief Executive Officer as well as the accounting officer of the FIU and shall perform the functions and exercise powers conferred upon him by this Act.

(4) The Commissioner shall hold office for a term of five years and may be re-appointed for another one term of five years subject to satisfactory performance.

(5) The President may remove the Commissioner from office on the grounds of misconduct, incompetency or for a ground of mental or physical incapacity.

(6) Where the removal of the Commissioner is in question, the President shall form a Committee to inquire into and make recommendation to the President on the matter.

(7) Where the Committee recommends that the removal of the Commissioner should not be made, the President shall not remove the Commissioner.

(8) The Committee shall consist of-

- (a) a judge of the High Court;
- (b) a senior police officer;
- (c) a senior officer from the Bank of Tanzania; and
- (d) two other prominent persons who have knowledge and experience on the matter which is the subject of inquiry.

(9) Where the inquiry is commended in terms of subsection (6), the Commissioner shall be temporarily relieved from duty pending completion of inquiry and measures taken by the President.

(10) The Committee shall make its own procedure for the conduct of investigation.

Powers and
duties of FIU
Act No.
1 of 2012
s. 6

6.-(1) For the purposes of section 4, the Financial Intelligence Unit shall-

- (a) receive and analyze reports of suspicious transactions submitted by the reporting persons pursuant to section 17;
- (b) disseminate any such reports to the appropriate

- law enforcement agencies if, after having considered the report, FIU has reasonable grounds to suspect that, the transaction involves money laundering or any other predicate offence;
- (c) disseminate to the appropriate law enforcement agencies any information derived from an inspection carried out pursuant to paragraph (d), if it gives the FIU reasonable grounds to suspect that, a transaction involves the proceeds of crime or financing of terrorism;
 - (d) instruct any reporting person to take such steps as may be appropriate to facilitate any inspection anticipated by the FIU;
 - (e) compile statistics and records, disseminate information within the United Republic or elsewhere, make recommendations arising out of any information received and advise the National Committee as appropriate;
 - (f) in consultation with the regulatory authorities of the relevant reporting persons, issue guidelines to banks, financial institutions and other reporting persons in respect of suspicious transactions, record-keeping and reporting obligations provided for in sections 16, 17, 18 and 19;
 - (g) create training requirements and provide such training for reporting persons, judicial officers and law enforcement officers;
 - (h) consult with any relevant person, institution or organization for the purpose of discharging its duties under this section;
 - (i) request for or have access to information from any reporting person, regulator or law enforcement agency in the manner provided for in the regulations made under this Act;
 - (j) require any reporting person to report to FIU any suspicious transaction or activity where that reporting person suspects that the transaction or activities involves funds that may have been derived from money laundering or terrorism

financing activities;

- (k) in collaboration with the regulator or on its own, conduct inspection on the reporting person for the purpose of detection of any money laundering or combating financing of terrorism activities in the manner provided for in the regulations made under this Act;
- (l) prepare and submit periodic quarterly reports on money laundering typologies and trends in the manner provided for in the regulations made under this Act;
- (m) exchange information with overseas financial intelligence units and comparable bodies; and
- (n) liaise with the relevant investment and business registration and licensing authorities in assessing genuine investors.

(2) The Commissioner may, where he has received information from the reporting person pursuant to section 17 and upon reasonable grounds, suspend a suspicious transaction or activity for a period not exceeding five working days to allow time for investigation on the matter.

(3) The suspension under subsection (2) shall lapse after five days.

Employees of
FIU
Act No.
1 of 2012
s. 7

7.-(1) There shall be appointed such number and categories of employees of the Government or other public institutions of such qualifications as may be considered necessary to assist the Commissioner in the performance of FIU.

(2) In appointing such employees, the appointing authority shall in particular have regard to persons with experience in law, finance, customs and law enforcement.

(3) The employees referred to under subsection (1), shall hold office for a term of five years and shall be eligible for re-appointment.

(4) The employees of the FIU shall be subject to initial and periodical disclosure of financial position in the manner as may be prescribed under the regulations.

(5) Every employee of the FIU shall be under the

general obligation to keep all information that comes to his knowledge as confidential during his employment and after termination of employment.

(6) A person who contravenes the provisions of subsection (5) commits an offence and shall be liable-

- (a) in the case of an employee, to administrative actions or any other sanctions which may be imposed under section 28B; and
- (b) in the case of former employee, a fine of five million shillings or imprisonment for a term of three years or to both.

Establishment
and
composition
of National
Committee
Act No.
1 of 2012
s. 8

8.-(1) There is established for the purposes of this Act, a National Multi-Disciplinary Committee on Anti-Money Laundering.

(2) The National Committee shall be composed of-

- (a) one representative of the Bank of Tanzania, who shall be the Chairman;
- (b) one representative of the Ministry of Finance;
- (c) one representative of the Ministry of Finance of the Revolutionary Government of Zanzibar;
- (d) one representative of the Attorney-General's Chambers;
- (e) one representative of the Attorney-General's Chambers of the Revolutionary Government of Zanzibar;
- (f) two representatives of the Directorate of Criminal Investigation, one of whom shall come from its office in Tanzania Zanzibar;
- (g) one representative of the Ministry responsible for foreign affairs;
- (h) the Commissioner of the FIU;
- (i) one representative of the Capital Markets and Securities Authority;
- (j) one representative of the Tanzania Intelligence and Security Service; and
- (k) One representative from the Prevention

and Combating of Corruption Bureau.

(3) The National Committee may co-opt any person who appears to it to have special knowledge or experience in investigation of matters relating to anti-money laundering.

(4) Members of the National Committee established under subsection (1) shall be appointed by the Minister.

(5) The Minister shall appoint any employee from the public service to be the Secretary of the National Committee.

(6) The tenure of office for members of the Committee shall be three years but shall be eligible for re-appointment for another term.

Functions of National Committee Act No. 1 of 2012 s. 9

9. The functions of the National Committee shall be to-

- (a) formulate, assess and improve the effectiveness of the policies and measures to combat money laundering and financing of terrorism;
- (b) advise the Government on legislative, regulatory and policy reforms in respect of anti-money laundering and combating predicate offences;
- (c) generally, advise the Government in relation to such other matters relating to anti-money laundering and predicate offences.

Meetings of National Committee

10.-(1) The Members of the National Committee shall elect one from their number to be the Vice-Chairman.

(2) The Chairman shall preside at every meeting of the National Committee and in his absence the Vice-Chairman shall preside at the same.

(3) In the absence of both, the Chairman and Vice-Chairman, the members present shall elect one of their number to preside at that meeting.

(4) A majority of the members of the National Committee shall constitute a quorum at any meeting.

(5) The National Committee may regulate its own procedure for the conduct of its meetings.

Allowances
and
remunerations

11. There shall be paid to the members of the National Committee such allowances or remunerations and other payments as shall be determined by the Minister.

**PART III
PROHIBITION OF MONEY LAUNDERING**

Offence of
money
laundering

- 12.** A person who-
- (a) engages, directly or indirectly, in a transaction that involves property that is proceeds of a predicate offence while he knows or ought to know or ought to have known that the property is the proceeds of a predicate offence;
 - (b) converts, transfers, transports or transmits property while he knows or ought to know or ought to have known that such property is the proceeds of a predicate offence, for the purposes of concealing, disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offence to evade the legal consequences of his actions;
 - (c) conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, while he knows or ought to know or ought to have known that such property is the proceeds of a predicate offence;
 - (d) acquires, possesses, uses or administers property, while he knows or ought to know or ought to have known at the time of receipt that such property is the proceeds of a predicate offence; or
 - (e) participates in, associates with, conspires to commit, attempts to commit, aids and abets or facilitates and counsels the commission of any of the acts described in paragraphs (a) to (d) of this section, commits offence of money laundering.

Penalties for

13.-(1) Any person who contravenes the provisions

acts of money
laundering
Acts Nos.
1 of 2012
s. 10
4 of 2016
s. 4

of section 12 shall, on conviction-

- (a) if the person is an individual, be sentenced to a fine not exceeding five hundred million shillings and not less than one hundred million shillings or an amount equivalent to three times the market value of the property, whichever is greater or to a term of imprisonment not exceeding ten years and not less than five years; or
- (b) if the person is a body corporate, be liable to a fine not exceeding one billion shillings and not less than five hundred million shillings or be ordered to pay the amount equivalent to three times the market value of the property, whichever amount is greater.

(2) Notwithstanding the provisions of subsection (1), the Financial Intelligence Unit or regulator may apply to the court for an order against a body corporate that has been convicted of an offence under this section, namely-

- (a) barring that body corporate from carrying on business directly or indirectly for a period not exceeding three years;
- (b) placing that body corporate under supervision of the regulator; or
- (c) permanently barring that body corporate from carrying on business in respect of which an offence was committed directly or indirectly.

Offences by
corporate
bodies

14.-(1) Where an offence under the provisions of section 12 is committed by a body corporate or an association of persons, every person who, at the time of the commission of the offence, was-

- (a) a director, manager, controller or partner; or
- (b) concerned in the management of its affairs,

may be convicted of that offence and shall be liable to a penalty specified in section 13 unless that person proves that, the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity

and to the circumstances pertaining to commission of the offence.

(2) The director, manager, controller, partner or a person concerned in the management of affairs of a body corporate or an association may be convicted for an offence under subsection (1) notwithstanding that, such body corporate or association of persons has not been convicted of the offence.

(3) Any person who would have committed an offence if any act had been done or omitted to be done by him personally, commits that offence and shall on conviction be liable to the same penalty as if such act had been done or omitted to be done by his agent or officer in the course of that agent's business or in the course of that officer's employment, as the case may be, unless he proves that the offence was committed without his knowledge or consent and he took all reasonable precautions to prevent the doing of, or omission to do, such an act.

**PART IV
ANTI-MONEY LAUNDERING SUPERVISION**

Reporting persons to verify customer's identity

15.-(1) A reporting person shall-

- (a) take reasonable measures to satisfy himself as to the true identity of any applicant seeking to enter into a business relationship with him or to carry out a transaction or series of transactions with him, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant;
- (b) in relation to politically exposed persons, in addition to performing normal due diligence measures-
 - (i) have appropriate risk management systems to determine whether the customer is a politically exposed person;
 - (ii) obtain senior management approval for establishing business relationship with such customer;

- (iii) take reasonable measures to establish the source of wealth and source of funds; and
- (iv) conduct enhanced on-going monitoring of the business relationship.

(2) The official record referred to under subsection (1) shall include-

- (a) a birth certificate or an affidavit to that effect;
- (b) a passport or other official means of identification;
- (c) in the case, of a body corporate, a copy of the organisations Memorandum and Articles of Association and a certificate of incorporation together with latest annual reports certified by the Chief Executive Officer of the Business Registration and Licensing Authority; and
- (d) any other documents as may be prescribed by the Minister in the regulations.

(3) Where an applicant requests a bank, financial institution or any other reporting person to enter into-

- (a) a continuing business relationship;
- (b) in the absence of such a relationship, any transaction,

the bank, financial institution or any other reporting person shall take reasonable measures to establish whether the person is acting on behalf of another person.

(4) Where it appears to a reporting person that, an applicant requesting him to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the reporting person shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(5) In determining what constitutes reasonable measures for the purposes of subsection (1), (2) or (4), regard shall be had to all the circumstances of the case, and in particular-

- (a) to whether the applicant is a person based or incorporated in a country in which there are in

force provisions applicable to it to prevent the use of the financial system for the purpose of money-laundering or terrorist financing; and

(b) to custom and practice as may from time to time be current in the relevant field of business.

(6) Nothing in this section shall require the production of any evidence of identity where-

(a) the applicant himself is a reporting person to which this Act applies; or

(b) there is a transaction or series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

Reporting persons to establish and maintain customer records
Act No. 1 of 2012
s.11

16.-(1) Every reporting person shall establish and maintain-

(a) records of all transactions, accounts, files and business correspondence carried out by that person;

(b) where evidence of a person’s identity is obtained in accordance with subsection (1) of section 15, a record that indicates the nature of the evidence obtained, and which comprises of either a copy of the evidence or such information as would enable a copy of it to be obtained.

(2)Records required under paragraph (a) of subsection (1) shall contain particulars sufficient to identify-

(a) the name, address and occupation or where appropriate business or principal activity, of each person:

(i) conducting the transaction;

(ii) if known, on whose behalf the transaction is being conducted, as well as the method used by the reporting person to verify the identity of each such person;

(b) the nature and date of the transaction;

(c) the type and amount of currency involved;

(d) the type and identifying number of any account

with the reporting person involved in the transaction;

- (e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument, the number, if any, of the instrument and details of any endorsements appearing on the instrument; and
- (f) the name and address of the reporting person, and of the officer, employee or agent of the reporting person who prepared the record.

(3) Records maintained pursuant to this section shall be made available on timely basis to FIU upon request.

(4) Where a reporting person is required by any provision of law to release any document referred to in section 18 he shall retain a copy of the document and shall maintain a register of released documents with such particulars as may be prescribed in the regulations to be made.

(5) Any reporting person who contravenes the provisions of his section commits an offence and shall, on conviction, be liable to-

- (a) administrative actions as prescribed in the regulations made under section 19A; or
- (b) criminal sanctions as provided for under this Act.

Reporting
persons to
report
suspicious
transactions
Act No.
1 of 2012
s. 12

17.-(1) Where a reporting person suspects or has grounds to suspect that, funds or property are proceeds of crime, or are related or linked to or are to be used for commission or continuation of a predicate offence or has knowledge of a fact or an activity that may be an indication of money laundering or predicate offence, he shall within twenty four hours after forming that suspicion and, wherever possible, before any transaction is carried out-

- (a) take reasonable measures to ascertain the purpose of the transaction or proposed transaction, the origin and ultimate destination of the funds or

property involved, and the identity and address of any ultimate beneficiary; and

- (b) prepare a report of the transaction or proposed transaction in accordance with subsection (2), and communicate the information to the FIU by any secure means as may be specified by FIU.

(2) A report required under subsection (1) shall contain such particulars as may be specified in the regulations to be made.

(3) A reporting person who has reported a suspicious transaction or proposed suspicious transaction in accordance with this Part shall, if requested to do so by the FIU or a law enforcement agency investigating the suspicious transaction, give such further information in relation to such transaction.

(4) Any person who contravenes the provisions of subsection (1) commits an offence and shall, on conviction-

- (a) if the person is an individual, be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years;
- (b) if the person is a body corporate, be liable to a fine of not exceeding ten million or three times the market value of the property, whichever is greater.

(5) Notwithstanding subsection (3), the records of other transactions shall be kept in the manner as prescribed in the regulations.

Reporting persons to establish and maintain internal reporting procedures

18. A reporting person shall establish and maintain internal reporting procedures-

- (a) by designating a person to whom its employees are to report any suspicious transaction which comes to the employee’s attention in the course of employment that another person is engaged in money-laundering or an act constituting a predicate offence;

- (b) for enabling designated person to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 17(1); and
- (c) requiring the designated person to report the matter pursuant to section 17, in the event that he determines that sufficient reasons exist.

Additional preventive measures by reporting persons

19.-(1) A reporting person shall, in addition to requirements provided for under section 18-

- (a) take appropriate measures for the purpose of making employees aware of domestic laws relating to money laundering and terrorist financing, and the procedures and related policies established and maintained by it pursuant to this Act; and
- (b) provide its employees with appropriate training in the recognition and handling of transactions relating to money laundering or financing of terrorism.

(2) No person shall open or operate an account with a bank, financial institution or any other reporting person in a false, disguised or anonymous name.

(3) A bank, financial institution or any other reporting person who commits an offence under this Part, for which no penalty is specified, shall on conviction-

- (a) if the person is an individual, be liable to a fine not exceeding five million shillings or to imprisonment for a period of twelve months; and
- (b) if the person is a body corporate, be liable to a fine not exceeding ten million shillings.

(4) In determining whether a person has complied with any requirement of subsection (1), the court shall have regard to all the circumstances of the case, including such custom and practice as may from time to time be current in the relevant trade, business, profession or employment, and may take account of any relevant guidance adopted or approved by a public authority or other body that supervises,

regulates or is representative of the trade, business, profession or employment carried on by that person.

Administrative sanctions
Act No. 1 of 2012
s. 13

19A. Where any reporting person fails to comply with the provision of section 15, 16, 17 or 18 of this Act, the FIU or regulator shall impose administrative actions against that person as prescribed in the regulations made under this Act.

Tipping off
Act No. 1 of 2012
s. 14

20.-(1) No person shall disclose or warn any person involved in the transaction or to an unauthorised third party, during the establishment or course of customer relationship or when conducting occasional transactions-

(a) that, a suspicious transaction report under section 17 may be prepared, or is being prepared or has been sent to the FIU; or

(b) any other information or matter, except so far as is required by this Act.

(2) Any person who contravenes the provisions of subsection (1), commits an offence and shall, on conviction-

Cap. 4
S.8

(a) if the person is an individual, be liable to a fine not exceeding five hundred million shillings and not less than one hundred million shillings or to imprisonment for a term not exceeding ten years and not less than five years;

(b) if the person is a body corporate, be liable to a fine not exceeding one billion shillings and not less than five hundred million shillings or three times the market value of the property, whichever amount is greater.

Secrecy obligation overridden
Act No. 1 of 2012
s. 15

21.-(1) The provisions of this Part shall have effect notwithstanding any obligation as to secrecy or other restrictions, upon the disclosure of information imposed by any law or otherwise.

(2) For the purpose of subsection (1), a bank or financial institution may, on matters related to money laundering or financing of terrorism, share any information relating to its customers.

Protection of reporting persons, witnesses and informers
Act No. 1 of 2012
s. 16

22.-(1) Notwithstanding any other written law, no criminal, civil or administrative proceedings for breach of banking or professional secrecy or contract shall be instituted against a bank or a financial institution, cash dealer, designated non-financial businesses or professions or their respective staff or partners who, in good faith, submitted a report or supplied information in compliance with this Act.

(2) In any criminal proceedings brought under this Act, the court may, upon an application by the Attorney-General, order-

- (a) witness testimony to be given through the use of communication technology such as video conferencing;
- (b) non-disclosure or limitations as to the identity and whereabouts of a witness taking into account the security of the informer or witness; or
- (c) any other protection as the court may, upon application by the Attorney-General, order.

(3) The provisions of subsection (1) of this section shall apply equally victims in so far as are witnesses.

Obligation to report physical cross border transportation of cash or bearer negotiable instruments
Act No. 1 of 2012
s. 17

23.-(1) Any person, who enters or leaves the territory of the United Republic of Tanzania while transporting or is about to transport or has transported cash or a bearer negotiable instrument in any amount equal or above the amount prescribed by the Minister in regulations, shall declare to customs authority such amount of money or a bearer negotiable instrument and the customs authority shall transmit that information to the FIU.

(2) The customs authority shall have power to seize the whole amount of the unreported cash or bearer negotiable instruments.

(3) The FIU shall open a special account into which all the seized cash or bearer negotiable instruments shall be kept.

(4) Where any person fails to comply with the reporting obligation provided for under subsection (1), the

law enforcement agency may impose any administrative sanction against such person.

(5) Any person who contravenes the provisions of subsection (1) or otherwise, commits an offence and shall be liable to a penalty provided for in section 28B.

(6) Any person who, knowingly, makes false or wrong reporting of cash or a bearer negotiable instruments, commits an offence and shall be liable to a penalty provided for under section 28B, and in addition, the court may order confiscation of cash or a bearer negotiable instrument in respect of which an offence was committed.

Regulator's
obligation
Act No.
1 of 2012
s. 17

23A.-(1) The regulator shall-

- (a) enforce compliance by their regulated entities in accordance with the requirements of this Act;
- (b) conduct onsite and offsite examinations for the purpose of monitoring and ensuring compliance by regulated entities; and
- (c) impose administrative sanctions for non-compliance.

(2) For the purpose of this section, "regulated entities" means all reporting persons, save for regulators.

PART V FINANCIAL PROVISIONS

Sources of fund

24. The funds of the FIU shall consist of-

- (a) such sums as may be appropriated by the Parliament; and
- (b) grants and donations lawfully received by the FIU.

Financial year

25. The Financial year of the FIU shall be the period of twelve calendar months beginning on the first day of July of every year.

Accounts and
audit
Act No.
1 of 2012
s. 18

26.-(1) The FIU shall keep accounts and records of its transactions and affairs and shall ensure that all moneys received are properly brought to account and all payments out of its moneys are correctly made and properly authorised and adequate control is maintained over its property.

(2) The Commissioner shall, as soon as practicable but not later than ninety days after the thirtieth day of June in each year, cause to be submitted to the Controller and Auditor General, accounts and financial records of the FIU, who shall audit them and prepare a report on the accounts and submit the report to the Minister, who shall lay it before the National Assembly.

**PART VI
MISCELLANEOUS PROVISIONS**

Immunity

27. No action shall be taken against the FIU, the Commissioner, members of the National Committee and employees of FIU in respect of any act done or omission made by the FIU, Commissioner, members of the Committee or any employee of the FIU in good faith, in the exercise of the functions conferred on the FIU under this Act and the Criminal Procedure Act.

Cap. 20

Application of
proceeds of
crime

28. The procedure in relation to arrest, information gathering powers, trial, determination, confiscation, forfeiture, pecuniary penalty and restraining orders and control of property liable to confiscation, shall be in accordance with the provisions of the Proceeds of Crime Act and the Criminal Procedure Act.

Caps. 256
and 20

Disclosure of
information
Act No.
1 of 2012
s.19

28A. Any person who is or was engaged in the administration of this Act and discloses any information acquired by that person by virtue of his position to unauthorised person, commits an offence.

General penalty
Act No.
1 of 2012
s. 19

28B.-(1) Where a person contravenes any provision of this Act or regulations made under this Act and no specific penalty is stipulated for that offence, that person shall, on conviction-

- (a) in case of an individual person, be liable to a fine not exceeding five hundred million shillings and not less than one hundred million shillings or be ordered to pay the amount equivalent to the total amount of money involved or market value of the property, which ever amount is greater or imprisonment for a term not exceeding three years;
- (b) in case of a body corporate, be liable to a fine of not less than five hundred million shillings or be ordered to pay the amount equivalent to the total amount of money involved or market value of the property, which ever amount is greater.

(2) For purpose of subsection (1), every director, manager, controller or principal officer of the company, partner, or a principal officer of the partnership shall be deemed have committed the offence.

Court
jurisdiction over
foreigner
Act No.
1 of 2012
s. 19

28C.-(1) The High court shall have jurisdiction to try a person from a foreign state for an offence committed outside the United Republic which would constitute an offence under this Act.

(2) A person from a foreign state shall not be prosecuted except with the consent of the Director of Public Prosecutions.

(3) For the purpose of subsection (1), prosecution against a person who commits an offence outside the United Republic shall only be conducted where that person cannot be extradited to a foreign state where the offence was committed.

Regulations
Act No.
1 of 2012
s. 20

29.-(1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing-

- (a) matters required or permitted by this Act to be prescribed;
 - (b) manner and procedure of carrying out customer due diligence; and
 - (c) matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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THE UNITED REPUBLIC OF TANZANIA



CHAPTER 141

THE APPELLATE JURISDICTION ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Appellate Jurisdiction Act, Chapter 141, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

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CHAPTER 141
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THE APPELLATE JURISDICTION ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

Section *Title*

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- 2. Application.
- 3. Interpretation.
- 3A. Overriding objective of Act.
- 3B. Duty to uphold objective.

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JURISDICTION OF THE COURT OF APPEAL**

- 4. Jurisdiction of the Court of Appeal.

**PART III
APPEALS TO THE COURT OF APPEAL**

- 5. Appeal in Civil cases.
- 6. Appeal in Criminal cases.

PART IV
APPEALS AND RESERVATIONS ON QUESTIONS
RELATING TO THE CONSTITUTION

7. Appeals to Court of Appeal for Constitutional interpretation.
8. Reservation of questions.

PART V
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9. Presence of appellant in criminal cases.
10. Power to admit to bail or postpone.
11. Extension of time by high court.
12. Chief Justice may make rules.
13. Omitted.
14. Application of this Act.
15. Repeal of R.L caps 451 and 507.

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CHAPTER 141
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THE APPELLATE JURISDICTION ACT

An Act to provide for appeals to the Court of Appeal of the United Republic of Tanzania.

[1st SEPTEMBER, 1979]

[G.N.No. 98 of 1979]

Acts Nos.
15 of 1979
17 of 1993
32 of 1994
10 of 1999
25 of 2002
3 of 2016
8 of 2018

**PART I
PRELIMINARY PROVISIONS**

Short title

1. This Act may be cited as the Appellate Jurisdiction Act.

Application
Act No.
16 of 1981

2. This Act shall apply throughout the United Republic.

Interpretation

3.-(1) In this Act, unless the context requires otherwise-

Cap.2

“Constitution” means the Constitution of the United Republic or the Constitution of Zanzibar, as the case may be;

“Court of Appeal” means the Court of Appeal of the United Republic of Tanzania established by Article 117 of the Constitution of the United Republic;

“High Court” means the High Court of Tanzania or the High Court of Zanzibar, as the case may be;

“judgment” includes a decree, an order, a sentence or decision, or the grounds for any of them.

(2) For the purposes of this Act, reference to any provision of any procedural or substantive enactment applicable to Mainland Tanzania shall be construed to include reference to a like or similar provision of a corresponding procedural or substantive enactment by the House of Representatives applicable to Zanzibar in relation to the matters to which the former enactment relates.

(3) For the purposes of this Act, reference to a court subordinate to the High Court shall be construed to include a court subordinate to the High Court of Zanzibar corresponding to the court referred to in this Act.

(4) For the purposes of this Act, reference to the Director of Public Prosecutions or to any other public officer on whom any power or function is conferred or imposed under this Act in relation to Mainland Tanzania shall, subject to subsection (5), be construed as including reference to a public officer holding office under the Revolutionary Government of Zanzibar and exercising or discharging powers or functions in relation to Zanzibar corresponding to those exercisable or discharged by the Director of Public Prosecutions or other public officer referred to in this Act.

(5) The provisions of subsection (4) shall not apply to the interpretation of the designation “Chief Justice”.

Overriding
objective of
Act
Act No.

3A.-(1) The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of all matters governed by this Act.

8 of 2018
s.4

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

Duty to uphold
objective
Act No.
8 of 2018
s.4

3B.-(1) For the purpose of furthering the overriding objective specified in section 3A, the Court shall handle all matters presented before it with a view to attaining the following-

- (a) Just determination of the proceedings;
- (b) efficient use of the available judicial and administrative resources including the use of suitable technology; and
- (c) timely disposal of the proceedings in the Court at a cost affordable by the respective parties.

(2) A party to proceedings before the court or an advocate for such a party shall have the duty to assist the Court to further the overriding objective and to that effect, participate in the processes of the Court and comply with directions and orders of the Court.

(3) The Chief Justice may make rules for better carrying out the provisions of sections 3A and 3B.”

PART II
JURISDICTION OF THE COURT OF APPEAL

Jurisdiction of
Court of
Appeal
Acts Nos.
17 of 1993
s.2
32 of 1994
sch.
3 of 2016
s.4

4.-(1) The Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court and from subordinate courts with extended jurisdiction.

(2) For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by this Act, the Court of Appeal shall, in addition to any other power, authority and jurisdiction conferred by this Act, have the power of revision and the power, authority and jurisdiction vested in

the court from which the appeal is brought.

(3) Without prejudice to subsection (2), the Court of Appeal shall have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court.

(4) The Court of Appeal shall have the power to review its own decisions.

(5) The Court of Appeal may in accordance with this Act, the Tanzania Court of Appeal Rules or any other law for the time being in force providing for appeals to the Court summarily reject any appeal.

(6) The power conferred upon the court by subsection (2) and (4) and the power to examine the records of any proceedings pursuant to subsection (3), shall not be exercised by a single judge of the court.

PART III APPEALS TO THE COURT OF APPEAL

Appeals in civil
cases
Acts Nos.
10 of 1999
sch.
25 of 2002
sch.
3 of 2016
s.4A

5.-(1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-

- (a) against every decree, including an ex parte or preliminary decree made by the High Court in a suit under the Civil Procedure Code, in the exercise of its original jurisdiction;
- (b) against the following orders of the High Court made under its original jurisdiction, that is to say—
 - (i) an order superseding an arbitration where the award has not been completed within the period allowed

- by the High Court;
- (ii) an order on an award stated in the form of a special case;
- (iii) an order modifying or correcting an award;
- (iv) in order filing or refusing to file an agreement to refer to arbitration;
- (v) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
- (vi) an order filing or refusing to file an award in an arbitration without the intervention of the High Court;
- Cap.33 (vii) an order under section 95 of the Civil Procedure Code, which relates to the award of compensation where an arrest or a temporary injunction is granted;
- (viii) an order under any of the provisions of the Civil procedure Code, imposing a fine or directing the arrest or detention, in civil prison, of any person, except where the arrest or detention is in execution of a decree;
- (ix) any order specified in rule 1 of Order XLIII in the Civil Procedure Code or in any rule of the High Court amending, or in substitution for, the rule;
- Cap.11 (c) with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court.
- (2) Notwithstanding the provisions of subsection (1)-
 - (a) except with the leave of the High Court, no appeal shall lie against-
 - (i) any decree or order made by the

- consent of the parties; or
 - (ii) any decree or order as to costs only where the costs are in the discretion of the High Court;
 - (b) except with the leave of the Court of Appeal, a party who does not appeal against a preliminary decree shall not dispute its correctness in an appeal against the final decree;
 - (c) no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order;
 - (d) no appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the suit.
- Cap.11

Appeals in criminal cases

6.-(1) Any person convicted on a trial held by the High Court or by a subordinate court exercising extended powers may appeal to the Court of Appeal-

- (a) where he has been sentenced to death, against conviction on any ground of appeal; and
- (b) in any other case-
 - (i) against his conviction on any ground of appeal; and
 - (ii) against the sentence passed on conviction unless the sentence is one fixed by law.

(2) Where the Director of Public Prosecutions is dissatisfied with any acquittal, sentence or order made or passed by the High Court or by a subordinate court exercising extended powers he may appeal to the Court of Appeal against the acquittal, sentence or order, as the case may be, on any ground of appeal.

Cap.16

(3) Where, in proceedings under the proviso to subsection (1) of section 26 of the Penal Code relating to the

conviction of a woman who is pregnant, the High Court or a subordinate court exercising extended powers has found that the woman in question is not pregnant, the woman may appeal to the Court of Appeal against the finding.

Cap.20

(4) An appeal shall lie to the Court of Appeal against any directions of the High Court or of a subordinate court exercising extended powers for the release of a person detained in proceedings for those directions in the nature of habeas corpus under section 390 of the Criminal Procedure Act against a refusal to give those directions.

(5) An appeal shall lie to the Court of Appeal from any order of the High Court awarding costs under section 350 of the Criminal Procedure Act and the Court of Appeal shall have power to award the costs of the appeal as it shall deem reasonable.

(6) Any person sentenced by the High Court in pursuance of the provisions of section 171 of the Criminal Procedure Act may appeal to the Court of Appeal against the sentence, unless it is one fixed by law; but if the High Court imposes a sentence which the court which committed the offender had power to impose no appeal shall lie against such sentence.

Cap.20

(7) Either party-

(a) to proceedings under Part X of the Criminal Procedure Act may appeal to the Court of Appeal on a matter of law (not including severity of sentence) but not on a matter of fact;

Cap.11

(b) to proceedings of a criminal nature under Head (c) of Part III of the Magistrates' Courts Act, may, if the High Court certifies that a point of law is involved, appeal to the Court of Appeal,

but where the order appealed against is a declaratory order, the determination of the Court of Appeal on its shall also have effect only as a declaratory order.

**PART IV
APPEALS AND RESERVATIONS ON QUESTIONS
RELATING TO THE CONSTITUTION**

Appeals to
Court of
Appeal for
constitutional
interpretation

7. An appeal shall lie to the Court of Appeal on any question relating to the interpretation of the Constitution.

Reservation of
questions

8. Where, in the course of any proceedings in a subordinate court (other than a subordinate court with extended powers), it appears to the magistrate that the determination of any issue or other matter in the proceedings involves a substantial question as to the interpretation of the Constitution, he may, at any time before judgment is pronounced, reserve that question for determination by the High Court; and where a magistrate so reserves that question, he may continue the hearing of the proceedings in respect of all or any other issues or matters in the proceedings or he may adjourn the hearing pending the determination of the question by the High Court.

**PART V
MISCELLAENOUS PROVISIONS AND REPEALS**

Presence of
appellant in
criminal cases

9.-(1) An appellant in any criminal cause or matter shall have no right to be present-

- (a) at the hearing or determination of an application for leave to appeal out of time or as a pauper or for a certificate that the case is a fit case for appeal, except where the rules of the High Court provide that he shall have the right to be present or where the High Court or the subordinate court concerned gives him leave to be present;
- (b) at the hearing or determination of an appeal by the Court of Appeal except in so far as the rules of the Court of Appeal provide that he shall have

the right to be present or where the Court of Appeal gives him leave to be present.

(2) An appellant who has no right to be present and is not given leave to be present at the hearing of his application for leave to appeal or for a certificate that the case is a fit case for appeal or at the hearing of his appeal, may present his case and argument in writing.

Power to admit to bail or postpone

10. The High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may, if it thinks fit, pending the determination of an appeal from the High Court or the subordinate court concerned to the Court of Appeal-

Cap.20

- (a) admit the appellant to bail in the same circumstances in which the court would have given bail under section 368 of the Criminal Procedure Act;
- (b) postpone the payment of a fine.

Extension of time by High Court

11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.

(2) In criminal cases, in the case of a sentence of death, no extension of time shall be granted after the issue of the warrant for the execution of that sentence.

Chief Justice may make rules Act No. 16 of 1984

12. The Chief Justice may, either on his own motion or upon the advice of, and after consultation with, the Chief Justice of Zanzibar, make rules of court regulating appeals to the Court of Appeal and other matters incidental to the making, hearing or determination of those appeals.

Omitted

13. [Transitional provisions.]

Application of
this Act

14. [Application of this Act notwithstanding Article 80 of the Treaty for East African Co-operation, etc.]

Repeal of R.L.
Caps. 451 and
507

15. [Repeals the Appellate Jurisdiction Ordinance and the Appellate Jurisdiction Act.]

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 95

THE DRUG CONTROL AND ENFORCEMENT ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Drug Control and Enforcement Act, Chapter 95, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

CHAPTER 95

THE DRUGS CONTROL AND ENFORCEMENT ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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- 15A. Prohibition on trafficking of narcotic drug or psychotropic substances or illegal dealing or diversion of precursor chemicals of less amount.
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GENERAL PROVISIONS

- 60. Submission of drug situation report.
- 61. Protection of action taken in good faith.
- 62. Authority to have regard to international conventions while making rules.
- 63. Power of Government to establish treatment centres of addicts and for supply of narcotic drugs.
- 64. Bar of jurisdiction.
- 65. Power of Authority to give directions.
- 66. Power to delegate.
- 67. Power of Minister to make regulations.
- 68. Application of Customs (Management and Tariff) Act.
- 69. Repeal and savings.

SCHEDULES

An Act to make robust legislative rules for efficient and effective control of narcotic drugs and psychotropic substances; to provide for the establishment of the Drug Control and Enforcement Authority for the prevention and control of drug trafficking; to repeal the Drugs and Prevention of Illicit Traffic in Drugs Act and to provide for other related matters.

[15th September, 2015]
[GN. No. 407 of 2015]

Acts Nos.
5 of 2015
15 of 2017
G.N. No.
137 of 2018

**PART I
PRELIMINARY PROVISIONS**

Short title and
application
Act No.
15 of 2017
s.2

1.-(1) This Act may be cited as the Drug Control and Enforcement Act.

(2) This Act shall apply to Mainland Tanzania.

(3) In respect of Part III and IV, it shall also apply to conduct-

(a) inside or outside Mainland Tanzania on-board a Tanzania ship or any other conveyance;

(b) outside Mainland Tanzania, to-

(i) a citizen or a person who ordinarily resides in the United Republic;

(ii) a body corporate incorporated in or carrying on business in Mainland Tanzania;

(iii) any other person, in relation to the supply or possible supply by that person of any narcotic drug or psychotropic substance to a person in Mainland Tanzania;

(iv) a conveyance registered in or having a nationality of a Convention State other than Tanzania;

- (v) a conveyance not registered in any state; or
- (vi) on a ship assimilated under the international law of the sea, a ship of no nationality.

Interpretation
Act No.
15 of 2017
s.3

2. In this Act, unless the context requires otherwise-
- “addict” means a person with a condition such that-
 - (a) administration of a drug results in the person demonstrating impaired control in relation to use of that drug, or drug-seeking behavior suggesting such impaired control; and
 - (b) cessation of the administration of the drug is likely to result in the person experiencing symptoms of mental or physical distress or disorder;
 - “Authority” means the Drug Control and Enforcement Authority established under section 3;
 - “authorised officer” means any person authorized to perform duties and functions conferred to him under this Act;
 - “cannabis” means any part of the plant of the genus cannabis, excluding the seeds, the mature stock, or fibre produce from the cannabis plant or cannabis resin;
 - “cannabis plant” means a plant of the genus cannabis by whatever name called and includes any part of that plant containing tetrahydro-cannabinol;
 - “cannabis resin” means the separated resin where the crude or purified is obtained from the cannabis plant;
 - “coca leaf” means-
 - (a) the leaf of the coca plant except a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed;
 - (b) any mixture with or without any neutral material, which does not include any preparation containing no more than 0.1 percent of cocaine;
 - “coca plant” means the plant of any species of the genus erythroxyton;

“Council” means the National Drug Control Council established under section 5;

“conveyance” means a conveyance of any description whatsoever and includes an aircraft, vehicle or vessel;

“Convention State” means any state which is a signatory to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, or any other related international conventions or protocol or other instrument amending it;

“court” means-

(a) in respect of an offence for contravention of section 7, 11, 15A, 17, 18, 19, 20, 21, 22, 25, 34, 39, 42, 47, 51A, 54 or 65 means subordinate court;

(b) in respect of an offence for contravention of section 15, 16 or 23, means the High Court;

“cultivate” includes planting, sowing, scattering the seed, graving, mortaring, lending or harvesting;

“dentist” means a person registered or licenced under the Medical Practitioners and Dentists Act;

“drug” means a narcotic drug or psychotropic substance set out in the First Schedule to this Act;

“export from the United Republic” with its grammatical variations and cognate expressions, means taking out of the United Republic to a place outside United Republic;

“import into Mainland Tanzania” with its grammatical variations and cognate expressions, means to bring into the Mainland Tanzania from a place outside Mainland Tanzania and it includes an act to bring into any port or airport or other place in Mainland Tanzania a narcotic drug or psychotropic substance with intention of taking such narcotic drug or psychotropic substance outside Mainland Tanzania without being removed from the vessel, aircraft, vehicle or any other conveyance in which it is

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carried;

“International Convention” means-

- (a) a Single Convention on Narcotic Drugs, 1961, adopted by the United Nations Conference at New York in March, 1961;
- (b) a Protocol amending the Convention mentioned in subclause (a), adopted by the United Nations Conference at Geneva in March, 1972;
- (c) a Convention on Psychotropic Substances, 1971, adopted by the United Nations Conference at Vienna in February 1971;
- (d) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted at Vienna on 19th December, 1988; and
- (e) any other international Convention or protocol or other instrument amending an international Convention, relating to narcotic drugs or psychotropic substances, which may be ratified or acceded to by the United Republic after the commencement of this Act;

“khat” means leaves and young shoots of a plant *cathaedulisforsk*, a species belonging to a plant family *celastraceae*;

“khat plant” means a flowering green leaf plant of the family *celastraceae* which contains the alkaloid chemical compounds named cathinone and cathine;

“manufacture” in relation to narcotic drugs or psychotropic substances, includes-

- (a) all processes other than production by which such drugs or substances may be obtained;
- (b) refining of such drugs or substances;
- (c) transformation of such drugs or substances; and
- (d) making of preparation otherwise than in a pharmaceutical industry or pharmacy on prescription with or containing such drugs or substances;

“manufactured drug” means-

- (a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;
- (b) any other narcotic substance or preparation which the Authority may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notice in the *Gazette*, declared to be a manufactured drug, but shall not include any narcotic substance or preparation which the Authority may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notice in the *Gazette*, declare not to be a manufactured drug;

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“medical practitioner” means a person registered or licensed under the Medical Practitioners and Dentists Act;

“medicinal cannabis” means any extract or tincture of cannabis;

“Minister” means the Minister responsible for drug control;

“narcotic drug” means any substance specified in the First Schedule or anything that contains any substance specified in that First Schedule to this Act;

“officer” means a person appointed or employed in accordance with section 8(1) or any other law enforcement officer under other laws of Tanzania enforcing or performing powers and duties under this Act;

“opium” means-

- (a) the coagulated juice of the opium poppy; and
- (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy which does not include preparation containing no more than 0.2 percent of morphine;

“opium derivative” means-

- (a) medicinal opium, that is, opium which has

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undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Tanzania Food, Drugs and Cosmetics Act , or any other pharmaceutical notified in this behalf by the Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

- (b) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the other residue remaining after opium is smoked;
- (c) phenantrene alkaloids, namely, morphine, codeine, the baine and their salts;
- (d) iacetylmorphine, that is, the alkaloid also known as diamorphine or heroin and its salt; and
- (e) all preparations containing more than two percent of morphine or containing any diacetylmorphine;

“opium poppy” means-

- (a) a plant of the species *papaver somniferum* L; and
- (b) a plant of any other species of *papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Authority may, by notice in the *Gazette*, declare to be opium poppy for the purposes of this Act;

“place” includes vacant land, premises, vehicle, vessel or aircraft;

“poppy straw” means all parts except seeds of the opium poppy after harvesting, whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

“preparation” in relation to a narcotic drug or psychotropic substance, means any one or more of such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more of such drugs or substances;

“precursor chemicals” means a chemical used in the process

of manufacturing of narcotic drugs or psychotropic substance as defined in Article 12 of the United Nations Convention Against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances, 1988 mentioned in Table I and Table II as set out in the Second Schedule to this Act;

“production” means the separation of opium, poppy straw, coca leaves, cannabis or khat from the plants from which they are obtained;

“prohibited plant” means cannabis plant, khat plant, coca plant, papaver somniferum or opium poppy and papaver setigerum;

“psychotropic substance” means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in a list of psychotropic substances specified in the First Schedule to this Act;

“sell” includes offer or expose for sale;

“supply” includes consignment, dispatch, transport, delivery, distribution as well as offer to supply;

“transport” means taking from one place to another within the United Republic;

“trafficking” means the importation, exportation, buying, sale, giving, supplying, storing, possession, production, manufacturing, conveyance, delivery or distribution, by any person of narcotic drug or psychotropic substance any substance represented or held out by that person to be a narcotic drug or psychotropic substance or making of any offer but shall not include-

(a) importation or exportation of any narcotic drugs or psychotropic substance or the making of any offer by or on behalf of any person who holds a licence under this Act in accordance with the licence;

(b) manufacturing, buying, selling, giving, supplying, administering, conveying, delivery or distribution of any narcotic drug or

psychotropic substance or the making of any offer by or on behalf of any person who has a licence under this Act;

- (c) selling or supplying or administering for medical purposes, and in accordance with the provisions of this Act, or the making of any offer by a medical practitioner or veterinary surgeon or dentist or by any other person qualified to do so on the instructions of the medical practitioner, veterinary surgeon or dentist;
- (d) selling or supplying in accordance with the provisions of this Act of a narcotic drugs or psychotropic substance by a registered pharmacist;
- (e) when used in relation to narcotic drugs and psychotropic substances, means any substance specified in the First Schedule to this Act or anything which contains any substance specified in the First Schedule to this Act;

“user” means a person who smokes, inhales, ingests, injects or otherwise consumes any narcotic drug or psychotropic substance for other than medical or scientific purposes.

PART II
ESTABLISHMENT OF AN AUTHORITY FOR CONTROL
AND COMBATING DRUGS

Establishment
of Authority

3. There shall be a Drug Control and Enforcement Authority.

Functions of
Authority

4.-(1) The functions of the Authority shall be to define, promote, coordinate and implement all measures geared towards control of drugs, drug abuse and trafficking in drugs.

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15 of 2017
s.4

(2) In performing its functions, the Drug Control and Enforcement Authority shall-

- (a) implement the provisions of international

-
- conventions, bilateral and multilateral agreements on control of narcotic drugs and psychotropic substances;
- (b) develop and implement a national plan of action for drug control;
 - (c) develop guidelines for addressing drug problem and its consequences to the general public;
 - (d) update and adapt drug control laws and regulations;
 - (e) promote the prevention of drug abuse and trafficking including education, dissemination of information to the general public and other drug initiatives;
 - (f) take measures to combat drug trafficking including arrest, search, seize and investigate drug offences and other related offences;
 - (g) prevent, detect, and investigate the diversion of controlled pharmaceuticals and listed chemicals from legitimate sources while ensuring an adequate and uninterrupted supply for legitimate medical, commercial and scientific needs;
 - (h) establish a viable data collection and analysis system at the national level on drug abuse and drug trafficking;
 - (i) promote and ensuring international cooperation in drug control measures;
 - (j) undertake, support and coordinate research on drug related issues;
 - (k) coordinate and support stakeholders on control of drug abuse and trafficking;
 - (l) sensitize and mobilize the community to participate in the fight against drug abuse and trafficking; and
 - (m) train personnel dealing with control of drug abuse, trafficking, money laundering and chemical precursors;
 - (n) conduct forensic investigation.
- (3) The Authority shall, in performing its functions

and, where circumstances require, collaborate with other relevant authority of national or international bodies established or formed for purposes of carrying out functions or activities relating to preventing, combating or controlling drugs in Mainland Tanzania.

(4) The Authority shall ensure that the requirements of the International Conventions are effectively fulfilled by the Government both at the national level and its relations with other states and international bodies in charge of drug control, as well as the implementation, at the national and international level of the drug control machinery are strengthened.

(5) For purposes of controlling drug, drug abuse and trafficking in drugs, diversion of precursor chemicals and controlled pharmaceuticals, any other authority vested with powers to issue permit or licence to deal or engage in drug, chemicals, precursor chemicals or substances with drug related effects, shall consult the Authority before issuing import or export permit, licence or certificate.

(6) The Authority may, by notice published in the *Gazette*, make rules prescribing procedures for implementation of subsection (5).

National Drug
Control Council

5.-(1) There shall be a National Drug Control Council.

(2) The Council shall consist of eleven members namely-

- (a) the Prime Minister who shall be a Chairman;
- (b) other Members shall be-
 - (i) the Minister responsible for legal affairs;
 - (ii) the Minister responsible for home affairs;
 - (iii) the Minister responsible for health;
 - (iv) the Minister responsible for community development;
 - (v) the Minister responsible for foreign affairs;

- (vi) the Minister responsible for finance;
- (vii) the Minister responsible youth development;
- (viii) the Minister responsible for education;
- (ix) the Minister responsible for agriculture; and
- (x) the Minister responsible for transport.

(3) Other Ministers may be called upon to serve to the Council in accordance with the agenda discussed and the Council may invite any other person to attend, if it is deemed necessary to do so.

(4) The principal function of the Council shall be to oversee the implementation of the National Drug Control Policy.

(5) The Council shall meet at least twice a year in regular session and whenever necessary in special session.

(6) Where the Prime Minister is unable to discharge his functions under this section for any other reason, the Council shall be chaired by the Minister responsible for legal affairs and in his absence the Minister responsible for home affairs and, in the absence of the latter the Minister responsible for health.

Appointment of
Commissioner
General

6.-(1) There shall be a Commissioner General of the Authority who shall be appointed by the President from amongst qualified public servants.

(2) The Commissioner General shall be the chief executive officer and accounting officer of the Authority and shall be responsible to the Council in the discharge of functions of the Authority.

(3) The Commissioner General shall be the Secretary to the Council and be responsible for implementation of decisions of the Council.

Functions and powers of Commissioner General

Act No. 15 of 2017 s.5

7.-(1) The Commissioner General shall perform the following functions-

- (a) represent the Authority within the international authorities competent in the matters related to drug control;
- (b) encourage and coordinate drug control action implemented by relevant stakeholders;
- (c) liaise with relevant international organisations on matters relating to drug control; and
- (d) ensure or facilitate the transmission of information and data to the competent international bodies as required by the treaties.

(2) The powers conferred on the Commissioner General shall include powers to order information from and to summon attendance of any person for the purpose of answering any question relating to drug abuse and trafficking.

(3) The Commissioner General may, in the course of performing duties under this Act and in accordance with other relevant laws, demand, access and obtain any information from public institutions including information collected or maintained by or on behalf of other public institutions and such institution shall be obliged to provide information as may be required.

(4) Any institution which fails to comply with the requirements of this section commits an offence under this Act.

(5) Subject to subsection (4), where an offence is committed under this Act by an institution, every person who, at the time the offence was committed, was in charge of, and was responsible to the institution for the conduct of the business of the institution, shall be deemed to have committed an offence and be liable to be proceeded against and punished accordingly.

(6) Nothing in subsection (5) shall render a person liable for punishment, if the person proves that the offence was committed without his knowledge or has exercised all

due diligence to prevent the commission of the offence.

Staff of
Authority

8.-(1) The Commissioner General may, with the approval of the Council, appoint or employ such number of officers and other employees of the Authority as may be necessary for the proper and efficient discharge of the functions under this Act.

(2) The terms and conditions of service, remunerations and allowances of officers and other employees of the Authority shall, after recommendation of the Council, be submitted to the President for approval.

Advisory
Committee
Act No.
15 of 2017
s.6

9.-(1) There is established a committee, which shall be known as the Advisory Committee.

(2) The Committee shall have a duty of advising the Commissioner General on matters relating to drug control.

(3) The Committee shall consist of not more than nine members drawn from Ministries, Government Departments, law enforcement agencies, Non-Governmental Organisations and other stakeholders.

(4) The Minister shall appoint the chairman and such other persons with experience and knowledge on matters relating to drug abuse or persons whose contributions may be of significant value to the formulation and execution of national policy on illicit drugs to be members of the Advisory Committee.

(5) The Chairman may co-opt any person to attend any of its meetings for purposes of assisting the Committee on the deliberation of its business, but that person shall have no right to vote.

(6) The Advisory Committee shall meet at least twice a year in regular sessions and whenever necessary, in special sessions.

(7) A representative from the Authority shall be the Secretary to the Committee.

(8) Tenure of office for each member of the Committee shall be three years and may be eligible for another term.

Obligation to take measures for preventing drug abuse

10.-(1) The Government shall endeavour to take such measures as necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs, psychotropic substances and the illicit traffic.

(2) Measures which the Government may take pursuant to subsection (1) shall include-

- (a) co-ordination of activities done by various officers and authorities under this Act or under any other written law for the time being in force in connection with the enforcement of the provisions of this Act and obligations under International Conventions;
- (b) render assistance to authorities in foreign countries and international organisations with a view to facilitate co-ordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances;
- (c) identification, treatment, education, after care, rehabilitation and social integration of drug addicts; and
- (d) such other matters as the Government deems necessary or expedient for effective preventing and combating the abuse of narcotic drugs, psychotropic substances and illicit trafficking of drugs.

PART III
PROHIBITION OF POSSESSION AND TRAFFICKING OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

Prohibition of cultivation of certain plants and substances

11.- (1) Any person who-

- (a) cultivates any prohibited plant;
- (b) possesses or supplies seeds in production of drugs;

- (c) being the owner, occupier or concerned in the management of any land or piece of land, permits the land to be used for purpose of cultivation of any prohibited plant;
- (d) produces, possesses, sells, purchases, transports, imports into Mainland Tanzania, exports, use or does any act or omits to do anything in respect of prohibited plants which act or omission amounting to contravention of the provisions of this Act,

commits an offence and upon conviction shall be liable to imprisonment for a term of not less than thirty years.

(2) For purposes of this section, the word “cultivation” includes gathering.

Power of Authority to permit, control and regulate cultivation, production or sale of opium or coca leaves

12.-(1) The Authority may, by regulations-

- (a) permit and regulate-
 - (i) cultivation or gathering of any portion of coca plant, cannabis plant, khat plant, production, possession, sale, purchase, transport, import into the Mainland Tanzania, use or consumption of cocaleaves only on the account of government;
 - (ii) cultivation of opium poppy only on account of the Government;
 - (iii) production and manufacture of opium and production of poppy straw;
 - (iv) sale of opium and opium derivatives from Government factories for export from the Mainland Tanzania or to manufacturing chemists;
 - (v) manufacture of drugs other than prepared opium but not including manufacture of medicinal opium or any preparation containing any manufactured drugs from materials which the maker is lawfully entitled to possess;

- (vi) manufacture, possession, transport, sale, purchase, consumption or use of psychotropic substances; or
 - (vii) importation in the Mainland Tanzania and transshipment of narcotic drugs and psychotropic substances;
- (b) prescribe any other matter requisite to render effective the control by the Government over any of the matters specified in paragraph (a).
- (2) Regulations made by the Authority may provide for regulating licensing, permits or otherwise the production, manufacture, possession, transport, import into and export from the Mainland Tanzania, sale, purchase, consumption, use, storage, distribution, disposal or acquisition of any narcotic drug or psychotropic substance.

Narcotic drugs and psychotropic substances not to be subject to distress or attachment

13. Notwithstanding anything to the contrary contained in any written law or contract, no narcotic drug, psychotropic substance or prohibited plant, shall be liable for detention or attachment by any person for the recovery of money under any order of a court or authority otherwise.

List of prohibited narcotic drugs, psychotropic substances or precursor chemicals
Act No. 15 of 2017
s.17

14.-(1) The list of prohibited narcotic drugs, psychotropic substances or precursor chemicals shall be as set out in the First and Second Schedules to this Act.

(2) Subject to subsection (1), the Minister may, by notice published in the *Gazette*, amend the list set out in the First and Second Schedules.

Prohibition of possession, trafficking, purchasing or manufacturing of narcotic drugs or psychotropic substance and

15.-(1) Any person who-

- (a) trafficks in narcotic drug or psychotropic substance, commits an offence and upon conviction shall be liable to life imprisonment;
- (b) traffics, diverts or illegally deals in any way with precursor chemicals, substances with drug related effects and substances used in the process

precursor
chemicals
Act No.
15 of 2017
s.8

of manufacturing of drugs; and

(c) directly or indirectly facilitates or causes any other person to be used as bondage for the purposes of drug trafficking, commits an offence and upon conviction shall be sentenced to life imprisonment.

(2) Any person who produces, possesses, transports, exports, imports into the United Republic, sales, purchases or does any act or omits anything in respect of drugs or substances not specified in the Schedule to this Act but have proved to have drug related effects, or substances used in the process of manufacturing of drugs commits an offence, and upon conviction shall be sentenced to life imprisonment.

(3) For purposes of this section, a person commits an offence under subsection (1) if such person traffics-

- (i) narcotic drugs, psychotropic substances weighing more than two hundred grams;
- (ii) precursor chemicals or substance with drug related effect weighing more than 100 litres in liquid form or 100 kilogram in solid form, or
- (iii) cannabis and or khat weighing more than fifty kilogram.

Prohibition on
trafficking of
narcotic drug or
psychotropic
substances or
illegal dealing
or diversion of
precursor
chemicals of
less amount
Act No.
15 of 2017
s.9

15A.-(1) Any person who traffics in narcotic drugs, psychotropic substances or illegally deals or diverts precursor chemicals or substances with drug related effects or substances used in the process of manufacturing drugs of the quantity specified under this section, commits an offence and upon conviction shall be liable to imprisonment for a term of thirty years.

(2) For purposes of this section, a person commits an offence under subsection (1) if such person traffics in-

- (a) narcotic drugs, psychotropic substances weighing two hundred grams or below;
- (b) precursor chemicals or substance with drug

related effect weighing 100 litres or below in liquid form, or 100 kilogram or below in solid form;

- (c) cannabis or khat weighing not more than fifty kilogram.

Possession of machines, equipment and laboratory for narcotic drugs and psychotropic substances

16. Any person who is found in possession of a machine, equipment, laboratory or any other utensil intended for preparation, production or manufacturing of narcotic drugs or psychotropic substances, commits an offence, and upon conviction, shall be sentenced to life imprisonment in addition to a fine of not less than two hundred million shillings.

Prohibition in respect of possession, use of small quantity of narcotic drugs or psychotropic substances

17.-(1) Any person who in contravention of any provisions of this Act or permit issued under this Act, possesses in a small quantity any narcotic drug or psychotropic substance which is proved to have been intended for personal consumption or consumes any narcotic drug or psychotropic substance shall on conviction, notwithstanding anything contained in this Part, be liable, if-

- (a) the narcotic drug or psychotropic substance in question is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance specified by the Minister by notice in the *Gazette* to a fine of not less than one million shillings, or to imprisonment for a term of five years or to both;
- (b) the narcotic drug or psychotropic substance in question is other than those specified under paragraph (a), to a fine of not less than five hundred thousand shillings or to imprisonment for a term of three years or to both.

(2) Where a person possesses a small quantity of narcotic drug or psychotropic substance, the burden of proving that it was intended for the personal consumption and not for sale or distribution shall lie to that person.

(3) A term “small quantity” as used in this section means a quantity prescribed by the Minister in the regulations.

Prohibition in respect of smoking, inhaling, sniffing or otherwise using narcotic drugs or psychotropic substance

18. A person who-

- (a) smokes, inhales, sniffs, injects or otherwise uses any narcotic drug or psychotropic substance;
- (b) without lawful and reasonable excuse, is found in any house, room or place illegally used for smoking, injecting inhaling, sniffing any narcotic drug or psychotropic substance; or
- (c) without lawful and reasonable excuse, is found in possession of any pipe or other utensil for use in connection with smoking, inhaling, sniffing or otherwise using narcotic drugs or psychotropic substance,

commits an offence, and upon conviction shall be sentenced to a fine of not less than one million shillings or to imprisonment for a term of three years or to both.

Prohibition in respect of owner or occupier of premises

19.-(1) A person who being the owner, occupier or person concerned with the management of any premises, enclosure or conveyance shall not permit such a premises, enclosure or conveyance to be used for the purpose of preparation of narcotic drug or psychotropic substance or for smoking, selling, injecting, inhaling, sniffing, or otherwise use such drug, unless such person has a permit from a relevant authority.

(2) Any person who contravenes subsection (1), commits an offence and upon conviction shall be liable to a fine of not less than five million shillings or imprisonment for a term of not less than three years, or to both.

Prohibition of
administering
narcotic drug or
psychotropic
substance
Act No.
15 of 2017
s.10
Cap. 4
s.8

20.-(1) Any person who-

- (a) administers a narcotic drug or psychotropic substance or causes or permits it to be administered except where an authorised person or a medical practitioner or dentist acting in his professional capacity and in accordance with the prevailing norms and standards or professional practice, authorised;
- (b) adds a narcotic drug or psychotropic substance to a food or drink or uses any other method to administer such drugs without the knowledge of the consumer; or
- (c) sells, supplies or acquires a narcotic drug or psychotropic substance on presentation of prescription knowing or having reasons to believe that the prescription is forged, unlawfully obtained or acquired or was issued more than six months before presentation,

commits an offence and upon conviction shall be sentenced to a fine of not less than fifty million shillings or to imprisonment for a term of not less than thirty years or to both.

(2) Where an offence under subsection (1) is committed-

- (a) in school or other education institutions, social service facilities or in their vicinities; or
- (b) the victims are persons under the age of eighteen years,

the person upon conviction shall be sentenced to imprisonment for a term of not less than thirty years.

Embezzlement
by authorized
cultivators

21. Any person licensed to cultivate opium poppy by the Government and illegally disposes of opium produced or any part of it commits an offence and upon conviction shall be liable to a fine of fifteen million shillings or to imprisonment for a term of not less than thirty years or both, and the court may, for reasons to be recorded in the judgment, impose a fine of not less than thirty million

shillings if the offender repeats the offence.

Breach of terms, licence or permit

22. Where a holder of a licence, permit or other kind of authorisation granted in accordance with the provisions of this Act-

- (a) omits, without any reasonable cause, to maintain accounts or to submit returns in accordance with this Act;
- (b) fails to produce, maintain or to submit without any reasonable cause, accounts returns in accordance with this Act;
- (c) keeps any accounts or makes any statement which is false or which he knows or has reason to believe to be incorrect; or
- (d) wilfully does any act in breach of any of the conditions of the licence, permit or authorization for which a penalty is provided in this Act,

commits an offence and upon conviction shall be liable to a fine of not less than twenty five million shillings or to imprisonment for a term of not less than thirty years or to both, and in addition, his licence or permit shall be revoked.

Finance of illegal activities

23. Any person who knowingly directly or indirectly finances activities specified in section 15 or harbours any person engaged in such activities, commits an offence and upon conviction shall be liable to a fine of not less than one billion shillings in addition to life imprisonment.

Prohibition in respect of aiding to commit offences under this Act

24. Notwithstanding anything contained in any other written laws, any person who-

- (a) conspires with another person to commit;
- (b) solicits, incites, aids, conceals or attempts to solicit, incite, aid, abet or conceal any other

person to commit;

(c) causes, procures or attempts to cause or procure the commission of an offence under this Act;

(d) is otherwise directly or indirectly concerned in the commission of an offence under this Act,

may be charged with in all respects as if he were the principal offender.

Preparation or attempt to commit offence

25. Where a person attempts to do or omits to do anything which constitutes an offence under this Part and from the circumstances of the case it may be reasonably inferred that he intended to carry out the intention to commit an offence but was prevented by circumstances independent of his will, that person shall be liable to imprisonment for a term of not less than the half of the maximum term of imprisonment with which he would have been punishable in the event of his having committed such offence, with fine of not less than half of the maximum amount of fine which that person would have been punished, had that person committed the offence.

Subsequent offence

26.-(1) Any person who is convicted of an offence under this Act, upon conviction shall be sentenced for the second and every subsequent offence to fine of ten million shillings or to imprisonment for life.

(2) Where a person is convicted for offence under sections 19, 20 and 25 by the competent court outside the United Republic under any law corresponding to the provisions of our law that person in respect of the conviction, shall be dealt with for the purpose of subsection (1), as if he was convicted by a court in the United Republic.

Penalty for offences for which no penalty is provided Act No. 15 of 2017

27. Any person who contravenes any provision of this Act or any condition of a licence, permit or authorisation issued under this Act, for which no punishment is specifically provided in this Part shall, upon conviction, be sentenced to a fine of not less than five

s.11 million shillings but not exceeding fifty million shillings or to imprisonment for a term of not less than five years and not exceeding thirty years or to both.

Burden of proof
Act No.
15 of 2017
s.12

28.-(1) In prosecution for an offence of possessing, dealing in, trafficking, selling, cultivating, purchasing, using or financing of any narcotic or psychotropic substance, the burden of proof that the narcotic or psychotropic substance, was possessed, dealt in, trafficked, sold, cultivated, purchased, used or financed pursuant to the terms of a licence, permit or authority granted under this Act or any other written law shall lie on the person charged.

(2) Notwithstanding the provisions of subsection (1), it shall be a defence for a person charged for an offence involving possession of narcotic or psychotropic substance to prove to the satisfaction of the court that the possession of such narcotic or psychotropic substance was, considering all circumstances of the case, not conscionable.

Unbailable
offences
Act No.
15 of 2017
s.13
Cap.4
s.8

29.-(1) A police officer in charge of a police station or an officer of the Authority or a court before which an accused is brought or appear shall not admit the accused person to bail if-

- (a) that accused is charged of an offence involving trafficking of Amphetamine Type Stimulant (ATS), heroin, cocaine, mandrax, morphine, ecstasy, cannabis resin, prepared opium and any other manufactured drug weighing twenty grammes or more;
- (b) that accused is charged of an offence involving trafficking of cannabis, khat and any other prohibited plant weighing twenty kilogram or more;
- (c) that accused person is charged of an offence relating to precursor chemical, other substances proved to have drug related effect or substances used in the process of manufacturing drugs,

thirty litres in liquid form and thirty kilograms in solid form or more; and

(d) a person is charged under the provision of sections 16, 20 or 23.

(2) Where there is any inconsistency in matters relating to weight, type of chemical concerned or any other matter of similar nature provided in this section, the weight, type of chemical or that other matter determined by the Government Analyst shall prevail.

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(3) The conditions on granting bail specified in section 148 of the Criminal Procedure Act, shall *mutatis mutandis* apply to all bailable offences under this Act.

Offences by companies

30.-(1) Where an offence is committed under this Act by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to have committed an offence and shall be liable to be proceeded against and punished accordingly.

(2) Nothing in subsection (1) shall render a person liable for punishment, if the person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(3) Notwithstanding subsection (2), where any offence under this Part is committed by a company and it is proved that the offence was committed with consent or connivance of, or is attributed to any negligence on part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall be proceeded against and punished and the company be de-registered or confiscated.

Release to
certain addicts
Act No.
15 of 2017

31.-(1) Where a person is convicted of an offence under section 18 and the court is satisfied that-

(a) the person is a drug addict;

s.14
Cap.4
s.8

- (b) the addiction resulted or caused or motivated him to commit the offence he is charged with;
- (c) the addiction can be medically treated within a reasonable time; and
- (d) it is in the interest of justice notwithstanding anything contained in this Act or any other written law,

the court may record the finding, and instead of sentencing that person immediately to imprisonment, or such other sentence as it could otherwise pass, upon his consent, direct that he be released for detoxification or deaddiction to the hospital or an institution maintained or recognized by the Government.

(2) The court shall not make any findings under subsection (1) without receiving a written report from a medical expert providing relevant information to the court which shall include-

- (a) examination of the convicted person;
- (b) medical assessment regarding the presence and level of any addiction;
- (c) the nature and availability of any treatment;
- (d) the likelihood of successful treatment and time scales; and
- (e) any other information that the medical expert or the court considers relevant.

(3) In making a determination under subsection (1), it shall not be in the interests of justice to provide for medical treatment any convicted person in which any of the following aggravating features are present-

- (a) violence was used or threats;
- (b) weapon was used;
- (c) part of a gang or otherwise organized crime;
- (d) volume of drugs was more than consistent with personal use for an addict;
- (e) the convicted person had a role in the planning, controlling or facilitating others to commit offences; and
- (f) any other condition which the court deems fit to

consider.

(4) The court shall give satisfactory reasons of the basis upon which the findings have been made under subsection (1).

(5) When a court makes determination under subsection (1), the court shall postpone the sentence of that person who shall enter into a bond in the form prescribed by the Authority, with or without sureties, for him to undertake the recommended medical treatment.

(6) In determining the length of time under subsection (5), the court shall award time not exceeding twelve months for completion of the treatment during which period of sentence shall be postponed and the bond extended.

(7) The court may, as it deems fit, order a medical progress report to be provided in a period not exceeding three month intervals, and such report shall contain assessment of the health condition of the convicted person, levels of cooperation and likely outcome.

(8) Before the expiry of twelve months, the convicted person shall appear before the court for consideration of whether or not to be released without further sanction or if the convicted person has failed to cooperate or otherwise has shown bad faith that calls for imposition of sentence for the original offence.

**PART IV
ARREST PROCEDURE**

Application of
Criminal
Procedure Act
with necessary
modification

Act No.
15 of 2017
s.15

32.-(1) The officers of the Authority shall have powers of arrest, search, seizure and investigation in relation to offences under this Act and other related offences.

(2) The officers of the Authority shall, in exercising the powers under subsection (1) and where circumstances require, consult and cooperate with other relevant authorities.

(3) The provision of any law in force in the United

Republic in relation to the general powers and duties of investigation, arrest, search and seizure by officers of the police, customs officer or any other person having powers of arrest, shall apply to this Act.

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Cap.403

(4) The officer of the Authority shall have powers to arrest, search, seize, investigate and record statements in relation to any matter under this Act as if he is a police officer discharging duties and exercising powers under the Criminal Procedure Act or customs officer under the Customs (Management and Tariff) Act or any other law conferring powers of arrest and seizure.

(5) The provisions of any law in force in the United Republic in relation to the general powers and duties of the investigation, arrest, search, seizure and record statements by the police officer, customs officers or any other person having powers of the arrest, shall apply to officer under this Act.

(6) Anything seized or recorded by the officer shall be admissible in court as evidence.

(7) Any such officer referred to under subsection (1), may at any time-

- (a) enter into and search any buildings, conveyance, or place;
- (b) in case of resistance, break, open any door or remove any obstacle to such entry;
- (c) seize-
 - (i) anything with respect to which any offence has been or is suspected to have been committed;
 - (ii) anything with respect to which there are reasonable grounds to suspect that it will afford evidence as to the commission of any offence; or
 - (iii) anything in respect of which there are reasonable grounds to suspect that it is intended to be used for the purpose of committing any offence.

(8) Where an officer takes down any information or

records grounds for arrest he shall immediately thereafter submit a copy of the information or record to his immediate superior.

Procedure of seizure where confiscation is not possible

33. Where it is not possible to seize any goods including standing crops which are liable for confiscation, any officer authorised under section 32 may serve on the owner or person in possession of the goods, and order that he shall not remove, part with or otherwise deal with goods except with the prior permission of such officer.

Land owners duty to give information of crops illegally cultivated
Act No. 15 of 2017
s.16

34. Every owner, occupier or a person concerned in the management of any land, premises or place, shall give immediate information to any officer of police or any officer of the departments mentioned in section 32 of all drug crops, any narcotic drug or psychotropic substance which may be illegally cultivated, produced or manufactured within his land, premises or place and every such holder who knowingly neglects to give such information, commits an offence, and upon conviction shall be sentenced to a fine of not less than five million shillings but not exceeding fifty million shillings or imprisonment for a term of not less than five years but not exceeding thirty years or to both.

Powers of attachment of crops illegally cultivated

35. Any officer empowered under this Act, may order attachment of any opium poppy, cannabis plant, khat, coca plant or any other drug crop which he has reason to believe to have been illegally cultivated and may pass such order, including an order to destroy the crop, as he thinks fit.

Authority to direct certain substance to be disposed of
Act No. 15 of 2017
s.17

36.-(1) The Authority may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances or precursor chemicals or substances used in the process of manufacturing of drugs or other substances proved to have drug related effects, vulnerability to theft, substitution, constraint of proper storage, space or other

consideration, dispose of such drugs or substances in accordance with procedures specified under subsections (2) and (3).

(2) Where any narcotic drug or psychotropic substance has been seized the officer seizing such drug or psychotropic substances or precursor chemicals or substances used in the process of manufacturing of drugs or other substances proved to have drug related effects shall prepare an inventory of such narcotic drug or psychotropic substance containing such details relating to-

- (a) their description, quantity, mode of packing, marks, numbers;
- (b) such other identifying particulars of the narcotic drugs or psychotropic substances or precursor chemicals or substances used in the process of manufacturing of drugs or other substances proved to have drug related effects;
- (c) packing in which they are packed;
- (d) country of origin; and
- (e) other particulars as such officer may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act

(3) An officer seizing such narcotic drug, psychotropic substance, precursor chemicals or other substances proved to have drug related effects shall make an application to any magistrate having jurisdiction under this Act, for the purpose of-

- (a) certifying the correctness of the inventory so prepared;
- (b) taking, in the presence of such magistrate, photographs of such drugs or substances and certifying such photographs as true; or
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of sample so drawn,

Provided that, where it is not practicable to secure

the presence of the magistrate, the requirement of subsection (3)(b) and (c) shall be dispensed with.

(4) Where an application is made under subsection (3), the Magistrate shall as soon as practicable allow the application.

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Cap.20

(5) Notwithstanding anything contained in the Evidence Act, or the Criminal Procedure Act, every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under subsection (3) and certified by a magistrate court as primary evidence in respect of such offence.

Relevancy of statements under certain circumstances

37.-(1) A statement made and signed by a person before an officer empowered under section 51 to investigate of offences, during and in the course of an inquiry or proceedings by such officer, shall be relevant for the purpose of proving in any prosecution for an offence under this Act, the truth of the facts which it contains-

- (a) where a person who made a statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without any amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) where a person who made the statement is examined as a witness in the case before a court, and the court is of the opinion that, having regard to the circumstances of the case, the statement shall be admitted in evidence in the interest of justice.

Cap.6

(2) Where there is a conflict between the provisions of this section and those of the Evidence Act, the provisions of this section shall prevail.

Presumption of

38. In trials under this Act, it may be presumed,

possession of
illicit articles
Act No.
15 of 2017
s.18

unless the contrary is proven that the accused has committed an offence under Part III in respect of-

- (a) a narcotic drug or psychotropic substance;
- (b) an opium poppy, cannabis plant, khat or coca plant growing on any land which he has cultivated;
- (c) machine, equipment, clandestine laboratory, apparatus or any other utensils specially adopted for production or manufacturing of any narcotic drug or psychotropic substance; or
- (d) materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance, or any residue of the materials from which a narcotic drug or psychotropic substance has been manufactured for possession of which he fails to satisfactorily account for.

Authorized
officers to take
charge of
articles seized

39.-(1) An officer authorized under section 45 shall take charge of articles and keep in safe custody, pending orders of a magistrate and shall allow a seizing officer who may be deputed for purpose, to affix seal to such articles or take samples from them and samples so taken shall be sealed with the seal of the office of such officer.

(2) An officer who fails to comply with conditions relating to safe custody of seized articles or causes disappearance of such articles, commits an offence and upon conviction is liable to a fine of fifteen million shillings or to imprisonment for a term of five years or to both.

Obligation of
various of
officers to
render
assistance

40. All officers specified under this Act to whom specific or general functions or powers have been conferred under this Act shall, upon a notice or a request made, be legally bound to assist each other in carrying out the provisions of this Act.

Right to possess
and use

40A.-(1) For the purposes of carrying out their functions and duties, the officers of the Authority shall,

firearms and
ammunition
Act No.
15 of 2017
s.19
Cap.223

subject to provisions of Arms and Ammunition Act, or any other written law have the right to possess and use suitable and appropriate firearms and ammunition for the purpose of this Act.

(2) Every officer of the Authority shall have powers and privileges as conferred upon other forces by the provisions of their respective laws relating to the use of firearms and ammunition.

(3) Any officer charged with any duty under this Act may, subject to subsections (4) and (5), use a firearm issued to him against-

- (a) any person suspected to commit any offence ordered to surrender or is in lawful custody, charged with or convicted of an offence under this Act when such person is escaping or attempting to escape or doing any act posing danger to the officer or property where such officer has reasonable ground to believe that he cannot otherwise prevent the escape and has given a warning to such person that he is about to use such arm against him and such warning is unheeded;
- (b) any person who by force rescues or attempts to rescue any other person from lawful custody;
- (c) any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person where such officer has reasonable ground to believe that he or any other person is in danger of grievous bodily harm and that he cannot otherwise effect such arrest or prevent such rescue;
- (d) any property placed under custody of the officer or any other person is in danger of being destroyed or used as otherwise unlawfully;

Provided that, the officer shall not use a firearm unless the use of the firearm and the degree to which it is used is reasonable in the circumstances.

(4) The officer under this Act shall not, in the

presence of his superior officer, use a firearm against any person except under the orders of that superior officer.

(5) The use of a firearm under this section shall, as far as possible, be to disable the suspect, accused or the convicted person, as the case may be.

(6) The powers conferred on the officer by this section shall be in addition to and not in derogation of any other powers conferred on such officer by any other written laws.

Arrests and seizures to be reported within forty- eight hours
Cap.4
s.8

41. A person who makes any arrest or seizure under this Act, shall, within forty-eight hours after arrest or seizure make full report of particulars of such arrest or seizure to his immediate superior.

Vexatious or malicious entry, seizure, or arrest

42.-(1) An officer who in exercise of powers conferred under this Act, and who-

- (a) without reasonable grounds of suspicion, enters or searches or causes to be entered or searched any building, conveyance or place;
- (b) unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance or other article liable to be confiscated under this Act, or of seizing any document or article liable to be seized under this Act; or
- (c) unreasonably detains, searches or arrests any person,

commits an offence and upon conviction shall be liable to a fine of not less than two million shillings or to imprisonment for a term of not less than one year or to both.

(2) A person who willfully or maliciously gives false information thereby causing arrest or search being made under this Act, commits an offence and upon conviction shall be sentenced to a fine of not exceeding one million shillings or to imprisonment for a term of six months or to both.

Officers refusing to perform their duties or aiding offenders

43.-(1) An officer charged with any duty by or under this Act-

- (a) refuses to perform the duties of his office, unless he has lawful excuse for doing so;
- (b) has been given the custody of any addict or any other person who has been charged with an offence under this Act releases him or cause him to escape;
- (c) willfully aids or connives for the contravention of any provision of this Act,

commits an offence and upon conviction shall be liable to a fine of not less than five million shillings or to imprisonment for a term of not more than two years or to both.

(2) The expression "officer" in this section includes a person employed in a hospital or institution maintained or recognised by the Government for providing de-addiction or detoxification treatment.

(3) A court shall not take cognizance of an offence under subsection (1) except on a complaint in writing made upon sanction of the Authority.

Powers to confiscate articles or things in connection with offence

44.-(1) Where an offence under Part III has been committed, the narcotic drug, psychotropic substance, the opium poppy, coca plant, khat, cannabis plant, material, apparatus and utensils in respect of which such offence is committed shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance lawfully produced, imported into or exported from the Mainland Tanzania, transported, manufactured, possessed, used, purchased or sold along with, or in addition to any narcotic drug or psychotropic substance which is liable for confiscation under subsection (1) and the receptacles, packages, coverings in which any narcotic drug or psychotropic substance, materials, apparatus or utensils liable to confiscation is found and the other contents of such receptacles or packages shall likewise be liable to

confiscation.

(3) Any good used for concealing narcotic drug or psychotropic substance which is liable to confiscation under this Act shall also be confiscated.

(4) Where a narcotic drug or psychotropic substance is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, proceeds of sale shall be confiscated.

Repealed

45. [Repealed by Act No.15 of 2017 s.20.]

Documents in certain cases

46. Where a document-

- (a) is produced or furnished by any person or seized from the custody or control of any person under this Act, or under any other written law; or
- (b) is received from any place outside the United Republic, and is duly authenticated by such authority or person and in such manner as may be prescribe by the Authority, in the course of investigation of an offence under this Act, if such document is tendered in prosecution under this Act, in evidence against him or against any other person who is tried jointly with him, the court shall-
 - (i) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence; and
 - (ii) in a case falling under paragraph (a) also presume, unless the contrary is proved, the truth of the contents of such document.

Powers of authorised officer to call for information Act No.

47.-(1) An officer who is authorised under this Act may, during the course of any inquiry in connection with the contravention of any provision of this Act-

- (a) call for information from any person for the

15 of 2017
s.21

purpose of satisfying himself whether there has been any contravention of the provisions of this Act; and

- (b) require any person to produce or deliver any document or thing useful or relevant to the inquiry.

(2) An officer acting in exercise of powers vested in him under any provision of this Act, shall not be compelled to say where he got piece of information as to the commission of an offence.

(3) A person who fails to supply information or comply with the requirement of this section commits an offence under this Act.

Arrest
procedures
Act No.
15 of 2017
s.22

48.-(1) Subject to the provisions of this Act, the procedures and powers conferred to the officers of the Authority under this Part shall be followed, unless in all circumstances it is unreasonable or impracticable to do so.

(2) For purposes of subsection (1), an officer of the Authority and other enforcement organs who-

- (a) arrests a suspect shall-
 - (i) actually touch or confine the body of the person arrested unless he submits himself;
 - (ii) inform the person arrested grounds or reasons for arrest and substance of the offence he is suspected to have committed;
 - (iii) caution in writing and in a language which he understands, and, or inform that person of a right to or not to answer anything save for questions seeking particulars of his name and address, a right to call lawyer, relative or friend during interrogation;
 - (iv) interrogate a person arrested about how he came about narcotic drug or psychotropic substance or precursor chemicals, or any other substances proved containing drug related effects;

- (v) cause or require a person arrested to admit or deny the offence in writing within twenty four hours or such other reasonable time and as it may be extended, and where necessary procure a statement before a justice of peace;
- (vi) where the time for recording a statement is extended, the officer to inform in writing, the arrested person, such extension and the reason for extension;
- (vii) record the dates and time when the interrogation was commenced, interrupted, continued and completed;
- (viii) allow or permit the arrested person to correct, alter or add to the record, or make any corrections, alterations or additions to the record;
- (ix) if a person arrested makes a statement admitting or confessing to the commission of offence or not and the statement is recorded, the recording officer shall read or cause it to be read to the arrested person and sign immediately below the last line of recorded statement and allow other person in attendance, if any to sign as a witness to a signature of a person arrested;
- (x) the recording officer to write or cause to be written at the end of the statement a certificate certifying correctness of the statement in accordance with a form set out in the Third Schedule to this Act;
- (xi) if an officer has audio, video, digital or other media equipment upon which an accurate recording of any interrogation can be made, such officer may use such equipment to make a recording of the interrogation of any offence committed under this Act;

- (xii) the Authority may make rules prescribing process to be followed by an officer conducting interviews under subparagraph (xi);
 - (xiii) the recording of an interrogation in accordance with the provision of subparagraph (xi) shall be either in addition to or as an alternative to a written caution statement record by the arrested person in accordance with the procedure stated in subparagraphs (v) to (x);
 - (xiv) the recording of an interrogation taken in accordance with the provision of subparagraph (xi) shall be admissible as an alternative to a written caution statement;
 - (xv) the record in subparagraph (xi) shall be exhibited in a statement by an officer present in the interrogation and such exhibit shall be an admissible evidence of the record of the interrogation;
 - (xvi) a written transcript of all or part of recording in subparagraph (xi) may be made and exhibited by an officer who listened to the recording shall be construed to be true and accurate of the recording;
- (b) investigates an offence shall-
- (i) personally go to the scene of crime to investigate and take stock of every article suspected to be used for commission of offence;
 - (ii) take every measure necessary for discovery and impound every article which may potentially be used as evidence;
 - (iii) examine orally every person acquainted with the facts and circumstances of the crime committed;
 - (iv) avoid to subject the arrested person to cruelty, inhuman or degrading treatment;

- (v) if the circumstance calls for, or at the request of the arrested person, allow him access to medical treatment, give advice or render assistance in case of an illness or an injury;
 - (vi) if the arrested person is a child, cause a parent or guardian of the child to be informed that he is under restraint and the offence for which he is under restraint;
 - (vii) without unnecessary delay and subject to the provisions relating to bail, take or send the arrested person before a subordinate court in the area where he has been arrested;
- (c) searches for an article used or suspected to have been used in commission of an offence shall-
- (i) stop, search and detain any conveyance, suspected to have carried any drug, substances with drug related effects or precursor chemicals or substances used in the process of manufacturing of drug;
 - (ii) stop, search and detain any person who is reasonably suspected of carrying, conveying, storing, transporting, cultivating, importing, exporting, possessing any narcotic drug, substance with drug related effects or precursor chemicals or substances used in the process of manufacturing of drug;
 - (iii) not to detain a person, any vessel, boat aircrafts, vehicle, building for a period more than forty eight hours, unless further extension of time is made in writing by the officer in a form set out in the Third Schedule to this Act for the purpose of facilitation of further investigation;
 - (iv) if it is necessary, to cause a woman to be searched, the search shall be made by a

- woman;
- (v) take or seize from the arrested person or any other person anything in connection with the offence for which he is arrested, or connected to any narcotic drug, substance with drug related effects or precursor chemicals or substances used in the process of manufacturing of drug;
- (vi) report the result or search to an immediate senior officer of the authority as soon as practicable;
- (vii) record and issue a receipts or fill in the observation form an article or thing seized in a form set out in the Third Schedule to this Act;
- (d) seizes an article used or suspected to have been used in commission of an offence shall-
 - (i) procure presence of and take statements of persons who will testify on an article seized;
 - (ii) record a statement of the arrested person relating to his relationship with article seized;
 - (iii) evaluate and determine size, volume, quantity, quality and value or estimated value of article seized;
 - (iv) keep safe custody of article seized from possible act of loss, theft, shrinkage, depreciation of quality or value.

(3) An officer of the Authority who abdicates duty to do or omits to do an act and as a result of such omission, a person suspected or accused of commission of an offence relating to narcotic drug or psychotropic substances is not arrested or an offence for which he is charged of is improperly investigated shall be liable to disciplinary proceedings in addition to any criminal liability that may arise out of such abdication or omission.

Cap.20

(4) Where any objection is taken to the admission of evidence on the ground that the evidence was obtained in contravention with the provisions of this Act or any other written law including the Criminal Procedure Act, the court shall admit the evidence unless having regard to all circumstances including the circumstances in which the evidence was obtained, if it is satisfied that the admission of the evidence would have such and overwhelming adverse effect on the fairness of the proceedings that the court should not admit it.

(5) For purposes of carrying out the provision of this section and any other provisions of this Act, all forms set out in the Third Schedule to this Act shall apply.

Cap.20

(6) Where there is a conflict between the provisions of this section and those of the Criminal Procedure Act on matters provided for, the provisions of this Act shall prevail.

Reports of
Government
Analysts
Act No.
15 of 2017
s.23

48A.-(1) The Government Analyst to whom a sample of any narcotic drugs, psychotropic substance, precursor chemicals, controlled or any other substances suspected to have drug related effect has been submitted for test and analysis shall deliver to the person submitting it, a signed report in quadruplicate in the prescribed form and forward one copy thereof to such authority as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, any document purporting to be a report signed by a Government Analyst shall be admissible as evidence of the facts stated therein without formal proof and such evidence shall, unless rebutted, be conclusive.

Act No.
15 of 2017
s.24

PART V
FORFEITURE OF PROPERTY DERIVED FROM OR
USED IN COMMISSION OF AN OFFENCE UNDER

PART III

Forfeiture of
property

Cap. 256
Act No.
15 of 2017
s.25

49.-(1) Where any person is convicted of an offence under Part III, the property owned by him or his associate on the date of charging or acquired by him after that date shall be forfeited to the Government in accordance with the provisions of the Proceeds of Crime Act.

(2) The provisions of subsection (1), shall apply to-

- (a) a person who is convicted of an offence under this Act;
- (b) a person who is convicted of a similar offence by a competent court of criminal jurisdiction outside the United Republic; and
- (c) an associate of a person referred in paragraphs (a) and (b).

(3) For the purpose of this Part, unless the context requires otherwise, "associate" means-

- (a) any individual who is holding property on behalf or managing the affairs of the business of the person convicted;
- (b) the trustee of any trust, where-
 - (i) the trust is created by such person; or
 - (ii) the value of the assets contributed by such person including the value of the assets, if any, contributed by him earlier to the trust amounts to not less than twenty percent of the value of the assets of the trust.

(4) A property shall not be forfeited under this Part if such property was acquired by a person to whom this Act applies before a period of ten years from the date on which he was charged with an offence under Part III.

Confiscation of
property
Act No.
15 of 2017
s.26

49A.-(1) Where the accused is convicted, acquitted or discharged of offences under Part III, the court shall order confiscation of any article seized or property used for purposes of committing or facilitating the commission of the offence or otherwise involved in the commission of the offence.

(2) Where the accused is not the owner of the article or property that is liable for confiscation and owner's whereabouts is not known or cannot be found the confiscation order shall not be issued unless the conditions in subsection (3) are satisfied.

(3) An order for confiscation of an article or property shall not be made until-

- (a) a thirty days notice of intention to confiscate the property has been issued; and
- (b) the notice has expired without the owner entering appearance.

(4) Where the article or property is susceptible to decay, or it appears the sale of such article or property would be necessary for its proper management the court may order the sale of that article or property.

(5) A person who claims right to property which has been confiscated under this Act may make application to the trial court to challenge the confiscation order.

Prohibition of holding tainted property
Act No. 15 of 2017
s.27
Cap. 256

50.-(1) A person shall not hold a property which is tainted either by himself or through any other person on his behalf.

(2) Where a person holds a tainted property in contravention of subsection (1), such property shall be forfeited in accordance with the Proceeds of Crime Act.

Authority to authorize investigation or survey
Act No. 15 of 2017
s.28

51.-(1) The Authority may authorise any officer to inquire, investigate or conduct surveillance on any person or group of persons as it may consider necessary.

(2) An officer authorized by the Authority may, on receipt of information that any person to whom this Part applies holds properties whether in the United Republic or outside, proceed to take all steps necessary for tracing and identifying any property illegally acquired.

(3) Where an officer in the cause of conducting an inquiry, investigation or surveillance under subsection (1), has reason to believe that any property in relation to which

such inquiry, investigation or surveillance is being conducted is an illegally acquired and such property is likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to forfeiture of such property under this Part, he may make an order for seizing such property.

(4) Where it is not practicable to make order for seizure under subsection (3), the officer may make an order that such property shall not be transferred or otherwise dealt with, subject to the prior permission of the Commissioner General.

(5) Where any property referred to in subsections (3) and (4) is transferred by any mode, such transfer shall be void.

(6) An officer making an inquiry, investigation or surveillance may in writing call upon the person concerned within a period of thirty days to indicate the sources of his income, earnings or assets out of which or by means of which acquired such property and to show cause why all or any of such properties should not be declared illegally acquired and forfeited to the Government.

(7) Where the person affected does not appear or appears and admits that the property he holds was acquired illegally, the authorised officer may record his findings on the basis of the evidence available before him and submit a report to the Commissioner General.

(8) Where a person referred to under subsection (6) appears before the authorised officer and shows cause why all or any of such properties should not be declared illegally acquired, the legality of that property shall be determined in accordance with the provisions of the Proceeds of Crime Act.

Cap.256

Power of
Commissioner
General to
freeze account

51A.-(1) Where a person is under investigation or charged with offences under this Act, the Commissioner General may where reasonably suspect that any evidence in connection with the offence or property is found in a bank

account, freeze that bank account for fourteen days during which leave of the court for continued freezing shall be obtained.

(2) Upon application, the court may extend time for freezing an account where there are reasonable grounds to suspect that the money held in the account is related to the commission of drug offences and other related offences.

(3) Where a court extends an account freezing order under subsection (2) it may, at any later time, vary or set aside that order where the continued freezing is no longer required or upon production of additional evidence, the court is satisfied that money held into the account is not related to the commission of drug offences and other related offences.

(4) A person who violates or fails to comply with the freezing order commits an offence under this Act.

Repealed

52. [Repealed by Act No. 15 of 2017 s.30]

Declaration of
forfeiture of
property by
Commissioner
General
Act No.
15 of 2017
s.31

53.-(1) Subject to subsection (4), where the Commissioner General receives a report pursuant to section 51 (7) and he is satisfied that there is reasonable ground to believe that the property has been abandoned or illegally acquired he may declare the property to be forfeited to the Government.

(2) Where the Commissioner General declares that only a part of a property is subject to forfeiture, he may make an order giving an option to the person affected to pay a sum of money equal to the market value of that part of the property.

(3) Where the Commissioner General declares the property to be liable for forfeiture under subsection (1), he shall in writing notify the person affected by that declaration within thirty days.

(4) A property shall not be forfeited under this section if the property was acquired by a person to whom section 51 applies before a period of ten years prior to the date of commencement of the investigation under section

51.

(5) A person aggrieved by the declaration of the Commissioner General may, within thirty days from the date of notification, seek review to the High Court.

Power to take possession
Act No.
15 of 2017
s.32

54.-(1) Where any property is declared forfeited to the Government or the person affected fails to pay the amount of money in lieu of any part of the property declared to be forfeited, the Commissioner General may order the person affected or any other person who may be in possession of that property to surrender or deliver possession of the property.

(2) Any person who refuses or fails to comply with an order made under subsection (1), commits an offence and the Authority may take possession of the property and may for that purpose use such force as may be necessary.

Arrangement regarding tracing, realization of property
Act No.
15 of 2017
s.33

55.-(1) The Government of the United Republic may enter into an arrangement-

- (a) with the government of a foreign country-
 - (i) for the recovery and handing over possession to the Government of the United Republic, of any property in that country in respect of which forfeiture has been made;
 - (ii) for tracing and preserving any property in that country owned by or under the control of any person who has been convicted of or is suspected to have committed an offence under this Act; or
- (b) on a reciprocal basis with the government of any other country-
 - (i) in respect of the recovery and handing over of possession to the Government of that country of any property in the United Republic which is confiscated by or forfeited to the Government or authority

of that country in consequence of the commission by any person or his associate of an offence against a corresponding law of that country; or

- (ii) for preserving any property in the United Republic owned by or under the control of any person who has been convicted of, or is suspected to have committed an offence against such corresponding law.

(2) Nothing in subsection (1) shall be construed as preventing the provision or obtaining assistance in criminal matters otherwise than as provided in the Mutual Assistance in Criminal Matters Act.

Cap.254

PART VI THE FUND FOR DRUG CONTROL

Establishment
of Fund

56. The Authority shall, by notice published in the *Gazette*, constitute a Fund to be known as the Drugs Control Fund.

Sources of
funds

57.-(1) The source of funds for the Fund shall include-

- (a) a sum of money allocated by Parliament to the Fund;
- (b) the sale proceeds of any property forfeited under this Act;
- (c) any grants, gifts and donations that may be made by any person or institution;
- (d) any other money borrowed, received by or made available for the purposes of its functions.

(2) The Fund shall be used to meet the expenditure incurred in connection with the measures taken for combating illicit traffic or controlling abuse of narcotic drugs and psychotropic substances.

(3) The Commissioner-General shall be the authorisation officer of the Fund.

Budget of Authority

58. The Authority shall have its own budget for the administrative support of control of drug and for the support of specific activities, special events or initiatives, undertaken by administrative public offices and institutions, as well as organisations, and associations participating in the drug control activities.

Books of accounts, records and annual reports

59.-(1) The Authority shall keep books of accounts and maintain proper records of operations of the Fund in accordance with the acceptable accounting standards.

(2) The Authority shall, at the end of each financial year, have the accounts of the Fund audited by the Controller and Auditor-General.

(3) The Authority shall, submit to the Minister audited report and annual report containing detailed information regarding activities of the Fund during the previous year ending on the 30th June.

(4) Minister shall cause to be tabled to the National Assembly statement of audited accounts.

**PART VII
GENERAL PROVISIONS**

Submission of drug situation report

60. The Authority shall publish annual reports describing the National drug situation and its development as regards to the supply and demand of drugs, and formulating any proposal likely to promote drug control activities and such report shall be laid before the Parliament.

Protection of action taken in good faith

61. No suit, prosecution or other legal proceeding shall lie against the Authority or any officer of the Government or any other person exercising any powers or discharging any functions or performing any duties under this Act, for anything done in good faith or intended to be done under this Act or any regulations or order made thereunder.

Authority to have regard to international conventions while making rules

62. Where under this Act the Authority has been empowered to make regulations, it may, while making the rules have regard to the provisions of Single Convention on Narcotic Drugs, 1961, Protocol of 1972 amending the said Convention and the Convention on Psychotropic Substances, 1971, United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on 19th December 1988, and to the provisions of any other international convention relating to narcotic drugs or psychotropic substances to which the United Republic becomes a party.

Power of Government to establish treatment centres of addicts and for supply of narcotic drugs

63.-(1) The Government may, establish as many centres as it thinks fit for identification, treatment, education, after-care, rehabilitation, social reintegration of addicts and for supply, subject to such conditions and in such manner as may be prescribed, by the Authority of any narcotic drugs and psychotropic substances to the addicts registered with the Government and to others where such supply is a medical necessity.

(2) The Authority may, in consultation with the Minister responsible for health, make regulations for establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from the centre referred to in subsection (1) and for the appointment, training, powers, duties and persons employed in such centre.

Bar of jurisdiction

64. A civil court shall not entertain any suit or proceeding against any decision made or order passed by any officer or Authority under this Act on any of the following matters-

- (a) withholding, refusal or cancellation of any licence for the cultivation of the opium poppy;
- (b) weighing, examination and classification according to the quality and consistence of opium and any deductions from, or addition to, the standard price made in accordance with such

- examination; and
- (c) confiscation of opium found to be adulterated with any foreign substance.

Power of Authority to give directions
Act No. 15 of 2017
s.34

65.-(1) The Commissioner General may give directives as it may deem necessary to any department of the Government regarding the carrying into execution of the provisions of this Act, and that department shall comply with such directions.

(2) A person who fails to comply with the requirement of this section commits an offence under this Act.

Power to delegate

66. The Authority may, by notice published in the *Gazette*, delegate, subject to such conditions and limitations as may be specified in the notice, such of its powers and functions under this Act except the power to make regulations as it may deem necessary or expedient, to any other authority or the Commissioner-General.

Power of Minister to make regulations

67.-(1) Subject to the other provisions of this Act, the Minister may, by notice published in the *Gazette*, make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the provisions of subsection(1), the regulations may provide for the following matters-

- (a) the method by which percentages in the case of liquid preparations shall be calculated;
- (b) the form of bond to be executed for release of an adult convict for medical treatment under section 31 (1) and the bond to be executed by such convict before his release after the due admonition under section 31(2);
- (c) the Authority or the person by whom and the manner in which a document received from any place outside the United Republic shall be authenticated;
- (d) the manner in which and the conditions subject

- to which properties confiscated or forfeited shall be managed;
- (e) the disposal of all articles or things confiscated under this Act;
- (f) the drawing of samples and testing and analysis of such samples;
- (g) the rewards to be paid to the officers, informers and other persons;
- (h) the conditions and the manner in which narcotic drugs and psychotropic substances may be supplied for medical necessity to the addicts registered with the Government and to others subject to the provisions of this Act;
- (i) any other matter as the Minister may prescribe.

Application of
Customs
(Management
and Tariff)Act,
Cap.403

68.-(1) All prohibitions and restrictions imposed by or under this Act on the import into the United Republic, the export from the United Republic and transshipment of narcotic drugs and psychotropic substances shall be deemed to be prohibitions and restrictions imposed by or under the Customs (Management and Tariff) Act, and the provisions of that Act shall apply accordingly.

Cap.403

(2) Where the doing of anything is an offence punishable under the Customs (Management and Tariff) Act, and under this Act, nothing in that Act shall prevent the offender from being punished under this Act.

Repeal and
savings
Act No.
9 of 1995

69.-(1) [Repeals the Drugs and Prevention of Illicit Traffic in Drugs Act.]

(2) Notwithstanding the repeal, anything done or any action taken or purported to have been done or taken under any of the enactments repealed by subsection (1) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) Nothing in this Act or regulations made hereunder shall affect the validity of any Act for the time being in force, or of any rule made thereunder which

imposes any restriction or provides for punishment which is not imposed by this Act or imposes restriction on a punishment which is greater in degree a corresponding restriction imposed by or a corresponding provision under this Act for the cultivation of cannabis plant, consumption or trafficking in narcotic drug or psychotropic substance.

SCHEDULES

Act
No.15
of 2017
So34

FIRST SCHEDULE

(Made under section 14(1))

**Schedules of the Single Convention on
Narcotic Drugs of 1961 as amended by the
1972 Protocol, as at 18 May 2016**

List of drugs included in Schedule I

Acetorphine	3- <i>O</i> -Acetyltetrahydro-7 α -(1-hydroxy-1-methylbutyl)-6,14- <i>endo</i> -ethenooripavine
Acetyl- <i>alpha</i> -methylfentanyl	<i>N</i> -[1-(α -Methylphenethyl)-4-piperidyl]acetanilide
Acetylfentanyl	<i>N</i> -phenyl- <i>N</i> -[1-(2-phenylethyl)-4-piperidinyl]acetamide
Acetylmethadol	3-Acetoxy-6-dimethylamino-4,4-diphenylheptane
AH-7921	3,4-dichloro- <i>N</i> -{[1-(dimethylamino)cyclohexyl]methyl}benzamide
Alfentanil	<i>N</i> -[1-[2-(4-Ethyl-4,5-dihydro-5-oxo-1 <i>H</i> -tetrazol-1-yl)ethyl]-4-(methoxymethyl)-4-piperidinyl]- <i>N</i> -phenylpropanamide
Allylprodine	3-Allyl-1-methyl-4-phenyl-4-propionoxypiperidine
Alphacetylmethadol	α -3-Acetoxy-6-dimethylamino-4,4-diphenylheptane
Alphameprodine	α -3-Ethyl-1-methyl-4-phenyl-4-propionoxypiperidine
Alphamethadol	α -6-Dimethylamino-4,4-diphenyl-3-heptanol
<i>alpha</i> -methylfentanyl	<i>N</i> -[1-(α -Methylphenethyl)-4-piperidyl]propionanilide
<i>alpha</i> -methylthiofentanyl	<i>N</i> -[1-[1-Methyl-2-(2-thienyl)ethyl]-4-piperidyl]propionanilide
Alphaprodine	α -1,3-Dimethyl-4-phenyl-4-propionoxypiperidine
Anileridine	1- <i>p</i> -Aminophenethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester
Benzethidine	1-(2-Benzoyloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
Benzylmorphine	3-Benzylmorphine
Betacetylmethadol	β -3-Acetoxy-6-dimethylamino-4,4-diphenylheptane
<i>beta</i> -Hydroxyfentanyl	<i>N</i> -[1-(β -Hydroxyphenethyl)-4-piperidyl]propionanilide
<i>beta</i> -Hydroxy-3-methylfentanyl	<i>N</i> -[1-(β -Hydroxyphenethyl)-3-methyl-4-piperidyl]propionanilide

Betameprodine	β -3-Ethyl-1-methyl-4-phenyl-4-propionoxypiperidine
Betamethadol	β -6-Dimethylamino-4,4-diphenyl-3-heptanol
Betaprodine	β -1,3-Dimethyl-4-phenyl-4-propionoxypiperidine
Bezitramide	1-(3-Cyano-3,3-diphenylpropyl)-4-(2-oxo-3-propionyl-1-benzimidazoliny)l)piperidine
Cannabis and cannabis resin and extracts and tinctures of cannabis	
Clonitazene	2-(<i>p</i> -Chlorbenzyl)-1-diethylaminoethyl-5- nitrobenzimidazole
Coca leaf	
Cocaine	Methyl ester of benzoylecgonine
Codoxime	Dihydrocodeinone-6-carboxymethyloxime
Concentrate of poppy straw (the material arising when poppy straw has entered into a process for the concentration of its alkaloids when such material is made available in trade) ("Poppy straw" means all parts (except the seeds) of the opium poppy after mowing)	
Desomorphine	Dihydrodesoxymorphine
Dextromoramide	(+)-4-[2-Methyl-4-oxo-3,3-diphenyl-4- (1-pyrrolidinyl)butyl]morpholine
	Diampromide <i>N</i> -[2-(Methylphenethylamino)-propyl]propionanilide
	Diethylthiambutene 3-Diethylamino-1,1-di-(2'-thienyl)-1-butene
Difenoxin Dihydroetorphine	1-(3-Cyano-3,3-diphenylpropyl)-4-phenylisonipecotic acid 7,8-Dihydro-7 α -[1-(<i>R</i>)-hydroxy-1-methylbutyl]-6, 14- <i>endo</i> -ethanotetrahydrooripavine Dihydromorphine
Dimenoxadol	2-Dimethylaminoethyl-1-ethoxy-1,1-diphenylacetate
Dimepheptanol	6-Dimethylamino-4,4-diphenyl-3-heptanol Dimethylthiambutene 3-Dimethylamino-1,1-di-(2'-thienyl)-1-butene
Dioxaphetyl butyrate	Ethyl-4-morpholino-2,2-diphenylbutyrate
Diphenoxylate	1-(3-Cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
Dipipanone	4,4-Diphenyl-6-piperidine-3-heptanone
Drotebanol	3,4-Dimethoxy-17-methylmorphinan-6 β ,14-diol
Ecgonine, its esters and derivatives which are convertible to ecgonine and cocaine	
Ethylmethylthiambutene	3-Ethylmethylamino-1,1-di-(2'-thienyl)-1-butene
Etonitazene	1-Diethylaminoethyl-2- <i>p</i> -ethoxybenzyl-5-nitrobenzimidazole
Etorphine	Tetrahydro-7 α -(1-hydroxy-1-methylbutyl)-6,14-

	<i>endo</i> -ethenoripavine
Etoxidine	1-[2-(2-Hydroxyethoxy)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester
Fentanyl	1-Phenethyl-4- <i>N</i> -propionylanilinopiperidine
Furethidine	1-(2-Tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
Heroin	Diacetylmorphine
Hydrocodone	Dihydrocodeinone Hydromorphanol
14-Hydroxydihydromorphine	Hydromorphone
Dihydromorphinone	
Hydroxypethidine	4- <i>m</i> -Hydroxyphenyl-1-methylpiperidine-4-carboxylic acid ethyl ester
Isomethadone	6-(Dimethylamino)-5-methyl-4,4-diphenyl-3-hexanone
Ketobemidone	4- <i>m</i> -Hydroxyphenyl-1-methyl-4-propionylpiperidine
Levomethorphan ^a	(-)-3-Methoxy- <i>N</i> -methylmorphinan
Levomoramide	(-)-4-[2-Methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl)butyl]morpholine
Levophenacymorphan	(-)-3-Hydroxy- <i>N</i> -phenacymorphinan
Levorphanol ^a	(-)-3-Hydroxy- <i>N</i> -methylmorphinan
Metazocine	2'-Hydroxy-2,5,9-trimethyl-6,7-benzomorphan
Methadone	6-(Dimethylamino)-4,4-diphenyl-3-heptanone
Methadone intermediate	4-Cyano-2-dimethylamino-4,4-diphenylbutane
Methyldesorphine	6-Methyl- Δ^6 -deoxymorphine Methyldihydromorphine
6-Methyldihydromorphine	
3-Methylfentanyl	<i>N</i> -(3-Methyl-1-phenethyl-4-piperidyl)propionanilide
3-Methylthiofentanyl	<i>N</i> -[3-Methyl-1-[2-(2-thienyl)ethyl]-4-piperidyl]propionanilide
Metopon	5-Methyldihydromorphinone
Moramide intermediate	2-Methyl-3-morpholino-1,1-diphenylpropane carboxylic acid
Morpheridine	1-(2-Morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
Morphine	
Morphine methobromide and other pentavalent nitrogen morphine derivatives	
Morphine- <i>N</i> -oxide	

MPPP 1-Methyl-4-phenyl-4-piperidinol propionate (ester)

MT-45 1-Cyclohexyl-4-(1,2-diphenylethyl)piperazine

Myrophine Myristylbenzylmorphine

Nicomorphine 3,6-Dinicotinylmorphine

^a Dextromethorphan ((+)-3-methoxy-*N*-methylmorphinan) and dextrorphan ((+)-3-hydroxy-*N*-methylmorphinan) are specifically excluded from this Schedule.

Noracymethadol	(±)- <i>α</i> -3-Acetoxy-6-methylamino-4,4-diphenylheptane
Norlevorphanol	(-)-3-Hydroxymorphinan
Normethadone	6-(Dimethylamino)-4,4-diphenyl-3-hexanone
Normorphine	Demethylmorphine
Norpipanone	4,4-Diphenyl-6-piperidino-3-hexanone
Opium	
Oripavine	3- <i>O</i> -Demethylthebaine or 6,7,8,14-tetrahydro-4,5- <i>α</i> -epoxy-6-methoxy-17-methylmorphinan-3-ol
Oxycodone	14-Hydroxydihydrocodeinone
Oxymorphone	14-Hydroxydihydromorphinone
<i>para</i> -Fluorofentanyl	4'-Fluoro- <i>N</i> -(1-phenethyl-4-piperidyl)propionanilide
PEPAP	1-Phenethyl-4-phenyl-4-piperidinol acetate (ester) Pethidine 1-Methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester
Pethidine intermediate A	4-Cyano-1-methyl-4-phenylpiperidine
Pethidine intermediate B	4-Phenylpiperidine-4-carboxylic acid ethyl ester Pethidine
intermediate C	1-Methyl-4-phenylpiperidine-4-carboxylic acid Phenadoxone
6-Morpholino-4,4-diphenyl-3-heptanone	
Phenampramide	<i>N</i> -(1-Methyl-2-piperidinoethyl)propionanilide
Phenazocine	2'-Hydroxy-5,9-dimethyl-2-phenethyl-6,7- benzomorphan
Phenomorphin	3-Hydroxy- <i>N</i> -phenethylmorphinan
Phenoperidine	1-(3-Hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
Piminodine	4-Phenyl-1-(3-phenylaminopropyl)-piperidine-4- carboxylic acid ethyl ester
Piritramide	1-(3-Cyano-3,3-diphenylpropyl)-4-(1-piperidino) piperidine-4-carboxylic acid amide
Proheptazine	1,3-Dimethyl-4-phenyl-4-propionoxyazacycloheptane
Properidine	1-Methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester

Racemethorphan	(±)-3-Methoxy- <i>N</i> -methylmorphinan
Racemoramide	(±)-4-[2-Methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl)butyl]morpholine
Racemorphan	(±)-3-Hydroxy- <i>N</i> -methylmorphinan
Remifentanil	1-(2-Methoxycarbonylethyl)-4-(phenylpropionylamino)-piperidine-4-carboxylic acid methyl ester
Sufentanil	<i>N</i> -[4-(Methoxymethyl)-1-[2-(2-thienyl)-ethyl]-4-piperidyl]propionanilide
Thebacon	Acetyldihydrocodeinone
Thebaine	
Thiofentanyl	<i>N</i> -[1-[2-(2-Thienyl)ethyl]-4-piperidyl]propionanilide
Tilidine	(±)-Ethyl- <i>trans</i> -2-(dimethylamino)-1-phenyl-3-cyclohexene-1-carboxylate
Trimeperidine	1,2,5-Trimethyl-4-phenyl-4-propionoxypiperidine

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

The esters and ethers, unless appearing in another Schedule, of the drugs in this Schedule whenever the existence of such esters or ethers is possible.

The salts of the drugs listed in this Schedule, including the salts of esters, ethers and isomers as provided above whenever the existence of such salts is possible.

List of drugs included in Schedule II

Acetyldihydrocodeine	
Codeine	3-Methylmorphine
Dextropropoxyphene	α -(+)-4-Dimethylamino-1,2-diphenyl-3-methyl-2-butanol propionate
Dihydrocodeine	
Ethylmorphine	3-Ethylmorphine
Nicocodine	6-Nicotinylcodeine
Nicodicodine	6-Nicotinyldihydrocodeine
Norcodeine	<i>N</i> -Demethylcodeine

Pholcodine

Morpholinylethylmorphine

Propiram

N-(1-Methyl-2-piperidinoethyl)-*N*-2-pyridylpropionamide

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

The salts of the drugs listed in this Schedule, including the salts of the isomers as provided above whenever the existence of such salts is possible.

List of preparations included in Schedule III

1. Preparations of:

Acetyldihydrocodeine

Codeine Dihydrocodeine

Ethylmorphine

Nicocodine

Nicodicodine

Norcodeine Pholcodine

when compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.

2. Preparations of propiram containing not more than 100 milligrams of propiram per dosage unit and compounded with at least the same amount of methylcellulose.

3. Preparations of dextropropoxyphene for oral use containing not more than 135 milligrams of dextropropoxyphene base per dosage unit or with a concentration of not more than 2.5 per cent in undivided preparations, provided that such preparations do not contain any substance controlled under the 1971 Convention on Psychotropic Substances.

4. Preparations of cocaine containing not more than 0.1 per cent of cocaine calculated as cocaine base and preparations of opium or morphine containing not more than 0.2 per cent of morphine calculated as anhydrous morphine base and compounded with one or more other ingredients and in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health.

5. Preparations of difenoxin containing, per dosage unit, not more than 0.5 milligram of difenoxin and a quantity of atropine sulfate equivalent to at least 5 per cent of the dose of difenoxin.

6. Preparations of diphenoxylate containing, per dosage unit, not more than 2.5 milligrams of diphenoxylate calculated as base and a quantity of atropine sulfate equivalent to at least 1 per cent of the dose of diphenoxylate.

7 *Pulvis ipecacuanhae et opii compositus*

10 per cent opium in powder

10 per cent ipecacuanha root, in powder

well mixed with

80 per cent of any other powdered ingredient containing no drug.

8. Preparations conforming to any of the formulas listed in this Schedule and mixtures of such preparations with any material which contains no drug.

List of drugs included in Schedule IV

Acetorphine	3- <i>O</i> -Acetyltetrahydro-7 α -(1-hydroxy-1-methylbutyl)-6,14- <i>endo</i> -ethenooripavine
Acetyl- <i>alpha</i> -methylfentanyl	<i>N</i> -[1-(α -Methylphenethyl)-4-piperidyl]acetanilide
Acetylfentanyl	<i>N</i> -phenyl- <i>N</i> -[1-(2-phenylethyl)-4-piperidinyl]acetamide
<i>alpha</i> -Methylfentanyl	<i>N</i> -[1-(α -Methylphenethyl)-4-piperidyl]propionanilide
<i>alpha</i> -Methylthiofentanyl	<i>N</i> -[1-[1-Methyl-2-(2-thienyl)ethyl]-4-piperidyl]propionanilide
<i>beta</i> -Hydroxy-3-methylfentanyl	<i>N</i> -[1-(β -Hydroxyphenethyl)-3-methyl-4-piperidyl]propionanilide
<i>beta</i> -Hydroxyfentanyl	<i>N</i> -[1-(β -Hydroxyphenethyl)-4-piperidyl]propionanilide
Cannabis and cannabis resin	
Desomorphine	Dihydrodesoxymorphine
Etorphine	Tetrahydro-7 α -(1-hydroxy-1-methylbutyl)-6,14- <i>endo</i> -ethenooripavine
Heroin	Diacetylmorphine
Ketobemidone	4- <i>m</i> -Hydroxyphenyl-1-methyl-4-propionylpiperidine
3-Methylfentanyl	<i>N</i> -(3-Methyl-1-phenethyl-4-piperidyl)propionanilide
3-Methylthiofentanyl	<i>N</i> -[3-Methyl-1-[2-(2-thienyl)ethyl]-4-piperidyl]propionanilide
MPPP	1-Methyl-4-phenyl-4-piperidinol propionate (ester)
<i>para</i> -Fluorofentanyl	4'-Fluoro- <i>N</i> -(1-phenethyl-4-piperidyl)propionanilide PEPAP
1-Phenethyl-4-phenyl-4-piperidinol acetate (ester)	Thiofentanyl
Thienyl)ethyl]-4-piperidyl]propionanilide	<i>N</i> -[1-[2-(2-

The salts of the drugs listed in this Schedule whenever the formation of such salts is possible.

**Schedules on Psychotropic Substances of 1971, as at 13
November 2016 of the Convention**

List of substances in Schedule I

<i>International non-proprietary name (INN)</i>	<i>Other non-proprietary or trivial names</i>	<i>Chemical name</i>
	25B-NBOMe, 2C-B-NBOMe	2-(4-bromo-2,5-dimethoxyphenyl)- <i>N</i> -[(2-methoxyphenyl)methyl]ethanamine
	25C-NBOMe, 2C-C-NBOMe	2-(4-chloro-2,5-dimethoxyphenyl)- <i>N</i> -[(2-methoxyphenyl)methyl]ethanamine
	25I-NBOMe, 2C-I-NBOMe	2-(4-iodo-2,5-dimethoxyphenyl)- <i>N</i> -[(2-methoxyphenyl)methyl]ethanamine
Brolamfetamine	DOB	(±)-4-Bromo-2,5-dimethoxy- α -methylphenethylamine
Cathinone		(-)-(<i>S</i>)-2-Aminopropiophenone
	DET	3-[2-(Diethylamino)ethyl]indole
	DMA	(±)-2,5-Dimethoxy- α -methylphenethylamine
	DMHP	3-(1,2-Dimethylheptyl)-7,8,9,10-tetrahydro-6,6,9-trimethyl-6 <i>H</i> -dibenzo[<i>b,d</i>]pyran-1-ol
	DMT	3-[2-(Dimethylamino)ethyl]indole
	DOET	(±)-4-Ethyl-2,5-dimethoxy- α -methylphenethylamine
Eticyclidine	PCE	<i>N</i> -Ethyl-1-phenylcyclohexylamine
Etryptamine		3-(2-Aminobutyl)indole
	<i>N</i> -Hydroxy MDA	(±)- <i>N</i> -[α -Methyl-3,4-(methylenedioxy)phenethyl]hydroxylamine
(+)-Lysergide	LSD, LSD-25	9,10-Didehydro- <i>N,N</i> -diethyl-6-methylergoline-8 β -carboxamide
	MDE, <i>N</i> -Ethyl MDA	(±)- <i>N</i> -Ethyl- α -methyl-3,4-(methylenedioxy)phenethylamine
	MDMA	(±)- <i>N</i> , α -Dimethyl-3,4-(methylenedioxy)phenethylamine
	Mescaline	3,4,5-Trimethoxyphenethylamine
	Methcathinone	2-(Methylamino)-1-phenylpropan-1-one
	4-Methylaminorex	(±)- <i>cis</i> -2-Amino-4-methyl-5-phenyl-2-oxazoline
	MMDA	5-Methoxy- α -methyl-3,4-(methylenedioxy)phenylethylamine

name (INN) 52

*International
non-proprietary*

<i>Other non-proprietary or trivial names Chemical name</i>		3-Hexyl-7,8,9,10-tetrahydro-6,6,9- trimethyl-6 <i>H</i> -dibenzo[<i>b,d</i>]pyran-1-ol
	PMA	<i>p</i> -Methoxy- α -methylphenylethylamine
4-MTA α -Methyl-4- methylthiophenet hylamine Parahexyl		
	<i>para</i> - Methoxymethylamphetamine, PMMA	1-(4-methoxyphenyl)- <i>N</i> -methylpropan-2- amine

	Psilocine, psilocin	3-[2-(Dimethylamino)ethyl]indol-4-ol
Psilocybine		3-[2-(Dimethylamino)ethyl]indol-4-yl hydrogen phosphate
Rolicyclidine	PHP, PCPY STP, DOM	1-(1-Phenylcyclohexyl)pyrrolidine 2,5-Dimethoxy- α ,4- dimethylphenethylamine
Tenamfetamine	MDA	α -Methyl-3,4-(methylenedioxy) phenethylamine
Tenocyclidine	TCP	1-[1-(2-Thienyl)cyclohexyl]piperidine
	Tetrahydrocannabinol, the following isomers and their stereochemical variants:	
		7,8,9,10-Tetrahydro-6,6,9-trimethyl-3- pentyl-6 <i>H</i> -dibenzo[<i>b,d</i>]pyran-1-ol
		8,9,10,10 <i>a</i> -tetrahydro-6,6,9-trimethyl- 3-pentyl-6 <i>H</i> -dibenzo[<i>b,d</i>]pyran-1-ol
		6 <i>a</i> ,9,10,10 <i>a</i> -Tetrahydro-6,6,9-trimethyl- 3-pentyl-6 <i>H</i> -dibenzo[<i>b,d</i>]pyran-1-ol
		6 <i>a</i> ,7,10,10 <i>a</i> -Tetrahydro-6,6,9-trimethyl- 3-pentyl-6 <i>H</i> -dibenzo[<i>b,d</i>]pyran-1-ol
		6 <i>a</i> ,7,8,9-Tetrahydro-6,6,9-trimethyl-3- pentyl-6 <i>H</i> -dibenzo[<i>b,d</i>]pyran-1-ol
		6 <i>a</i> ,7,8,9,10,10 <i>a</i> -Hexahydro-6,6- dimethyl-9-methylene-3-pentyl-6 <i>H</i> - dibenzo[<i>b,d</i>]pyran-1-ol
	TMA	(\pm)-3,4,5-Trimethoxy- α - methylphenethylamine

The salts of the substances listed in this Schedule whenever the existence of such salts is possible. The stereoisomers, unless specifically excepted, of substances in this Schedule, whenever the existence of such stereoisomers is possible within the specific chemical designation.

List of substances in Schedule II

<i>International non-proprietary name (INN)</i>	<i>Other non-proprietary or trivial names</i>	<i>Chemical name</i>
	α -Pyrrolidinovalero phenone, α -PVP	1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one
Amfetamine	Amphetamine	(\pm)- α -Methylphenethylamine
Amineptine		7-[(10,11-Dihydro-5 <i>H</i> -dibenzo[<i>a,d</i>]cyclohepten-5-yl)amino]heptanoic acid

	N-benzylpiperazine, BZP	1-Benzylpiperazine
	2C-B	4-Bromo-2,5-dimethoxyphenethylamine
Dexamfetamine	Dexamphetamine	(+)- α -Methylphenethylamine
Dronabinol*	<i>delta</i> -9-Tetrahydrocannabinol and its stereochemical variants	(6 <i>aR</i> ,10 <i>aR</i>)-6 <i>a</i> ,7,8,10 <i>a</i> -Tetrahydro-6,6,9-trimethyl-3-pentyl-6 <i>H</i> -dibenzo[<i>b,d</i>]pyran-1-ol
Fenetylline		7-[2-[(α -Methylphenethyl)amino]ethyl]theophylline
	GHB	γ -Hydroxybutyric acid
Levamphetamine	Levamphetamine	(-)-(<i>R</i>)- α -Methylphenethylamine
	Levomethamphetamine	(-)- <i>N</i> , α -Dimethylphenethylamine
Mecloqualone		3-(<i>o</i> -Chlorophenyl)-2-methyl-4(3 <i>H</i>)Quinazolinone
	Mephedrone,4-methylmethcathinone	(<i>RS</i>)-2-(methylamino)-1-(4-methylphenyl)propan-1-one
Metamfetamine	Methamphetamine	(+)-(<i>S</i>)- <i>N</i> , α -Dimethylphenethylamine
Metafetamine racemate	Methamphetamine racemate	(\pm)- <i>N</i> , α -Dimethylphenethylamine
Methaqualone		2-Methyl-3- <i>o</i> -tolyl-4(3 <i>H</i>)quinazolinone
	Methoxetamine, MXE	2-(ethylamino)-2-(3-methoxyphenyl)cyclohexanone
	3,4-Methylenedioxypropio- <i>valerone</i> , MDPV	(<i>RS</i>)-1-(benzo[<i>d</i>][1,3]dioxol-5-yl)-2-(pyrrolidin-1-yl)pentan-1-one
	Methylone, <i>beta</i> -keto- MDMA	(<i>RS</i>)-2-methylamino-1-(3,4-methylenedioxyphenyl)propan-1-one

*International
non-*

proprietary
name
(INN)

Other non-
proprietary or
trivial names Chemical name

Methylphenidate

Methyl α -phenyl-2-piperidine acetate
JWH-018 Naphthalen-1-yl(1-pentyl-1*H*-indol-3-yl)
methanone
AM-2201 1-(5-fluoropentyl)-1*H*-indol-3-yl]-
(naphthalen-1-yl)methanone
para-Methyl-4- methylaminorex,
4,4'-DMAR
4-methyl-5- (4-methylphenyl)-4,5-dihydro- 1,3-oxazol-2-
amine

Secobarbital 5-Allyl-5-(1-methylbutyl)barbituric acid
XLR-11 [1-(5-fluoropentyl)-1*H*-indol-3-yl](2,2,3,3-
tetramethylcyclopropyl) methanone
Zipeprol α -(α -Methoxybenzyl)-4-(β - methoxyphenethyl)-1-
piperazineethanol

The salts of the substances listed in this Schedule whenever the existence of such salts is possible.

* This INN refers to only one of the stereochemical variants of delta-9-tetrahydrocannabinol, namely (-)-*trans*-delta-9-tetrahydrocannabinol.

List of substances in Schedule III
Schedules of the Convention on Psychotropic Substances
of 1971, as at 13 November 2016

<i>International non-proprietary name (INN)</i>	<i>or trivial names</i>	<i>Other non-proprietary chemical name</i>
Amobarbital		5-Ethyl-5-isopentylbarbituric acid
Buprenorphine		21-Cyclopropyl-7 α -[(S)-1-hydroxy-1,2,2-trimethylpropyl]-6,14-endo-ethano-6,7,8,14-tetrahydrooripavine
Butalbital		5-Allyl-5-isobutylbarbituric acid
Cathine	(+)-Norpseudo-ephedrine	(+)-(S)- α -[(S)-1-Aminoethyl]benzyl alcohol
Cyclobarbital		5-(1-Cyclohexen-1-yl)-5-ethylbarbituric acid
Flunitrazepam		5-(<i>o</i> -Fluorophenyl)-1,3-dihydro-1-methyl-7-nitro-2 <i>H</i> -1,4-benzodiazepin-2-one
Glutethimide		2-Ethyl-2-phenylglutarimide
Pentazocine		(2 <i>R</i> *,6 <i>R</i> *,11 <i>R</i> *)-1,2,3,4,5,6-Hexahydro-6,11-dimethyl-3-(3-methyl-2-butenyl)-2,6-methano-3-benzazocin-8-ol
Pentobarbital		5-Ethyl-5-(1-methylbutyl)barbituric acid

The salts of the substances listed in this Schedule whenever the existence of such salts is possible.

List of substances in Schedule IV

<i>International non-proprietary name (INN)</i>	<i>Other non-proprietary or trivial names</i>	<i>Chemical name</i>
Allobarbital		5,5-Diallylbarbituric acid
Alprazolam		8-Chloro-1-methyl-6-phenyl-4 <i>H</i> - <i>s</i> -triazolo[4,3- <i>a</i>][1,4]benzodiazepine
Amfepramone	Diethylpropion	2(Diethylamino)propiophenone
Aminorex		2-Amino-5-phenyl-2-oxazoline
Barbital		5,5-Diethylbarbituric acid
Benzfetamine	Benzphetamine	<i>N</i> -Benzyl- <i>N</i> - α -dimethylphenethylamine
Bromazepam		7-Bromo-1,3-dihydro-5-(2-pyridyl)-2 <i>H</i> -1,4-benzodiazepin-2-one
Brotizolam		2-Bromo-4-(<i>o</i> -chlorophenyl)-9-methyl-6 <i>H</i> -thieno[3,2- <i>f</i>]- <i>s</i> -triazolo[4,3- <i>a</i>][1,4]diazepine
	Butobarbital	5-Butyl-5-ethylbarbituric acid
Camazepam		7-Chloro-1,3-dihydro-3-hydroxy-1-methyl-5-phenyl-2 <i>H</i> -1,4-benzodiazepin-2-one dimethylcarbamate (ester)
Chlordiazepoxide		7-Chloro-2-methylamino-5-phenyl-3 <i>H</i> -1,4-benzodiazepine-4-oxide
Clobazam		7-Chloro-1-methyl-5-phenyl-1 <i>H</i> -1,5-benzodiazepine-2,4(3 <i>H</i> ,5 <i>H</i>)-dione
Clonazepam		5-(<i>o</i> -Chlorophenyl)-1,3-dihydro-7-nitro-2 <i>H</i> -1,4-benzodiazepin-2-one
Clorazepate		7-Chloro-2,3-dihydro-2-oxo-5-phenyl-1 <i>H</i> -1,4-benzodiazepine-3-carboxylic acid
Clotiazepam		5-(<i>o</i> -Chlorophenyl)-7-ethyl-1,3-dihydro-1-methyl-2 <i>H</i> -thieno[2,3- <i>e</i>]-1,4-diazepin-2-one
Cloxazolam		10-Chloro-11 <i>b</i> -(<i>o</i> -chlorophenyl)-2,3,7,11 <i>b</i> -tetrahydrooxazolo-[3,2- <i>d</i>][1,4]benzodiazepin-6(5 <i>H</i>)-one
Delorazepam		7-Chloro-5-(<i>o</i> -chlorophenyl)-1,3-dihydro-
<i>International non-proprietary name (INN)</i>		<i>proprietary name (INN)</i>

<i>Other non-proprietary</i>	<i>or trivial names</i>	<i>Chemical name</i>
2 <i>H</i> -1,4-benzodiazepin-2-one Diazepam		7-Chloro-1,3-dihydro-1-methyl-5-phenyl-2 <i>H</i> -1,4-benzodiazepin-2-one
Estazolam		8-Chloro-6-phenyl-4 <i>H</i> -s-triazolo[4,3- <i>a</i>][1,4]benzodiazepine
Ethchlorvynol		1-Chloro-3-ethyl-1-penten-4-yn-3-ol
Ethinamate		1-Ethynylcyclohexanolcarbamate
Ethyl loflazepate		Ethyl 7-chloro-5-(<i>o</i> -fluorophenyl)-2,3-dihydro-2-oxo-1 <i>H</i> -1,4-benzodiazepine-3-carboxylate
Etilamfetamine	<i>N</i> -Ethylamphetamine	<i>N</i> -Ethyl- α -methylphenethylamine
Fencamfamin		<i>N</i> -Ethyl-3-phenyl-2-norbornanamine
Fenproporex		(\pm)-3-[(α -Methylphenethyl)amino]propionitrile
Fludiazepam		7-Chloro-5-(<i>o</i> -fluorophenyl)-1,3-dihydro-1-methyl-2 <i>H</i> -1,4-benzodiazepin-2-one
Flurazepam		7-Chloro-1-[2-(diethylamino)ethyl]-5-(<i>o</i> -fluorophenyl)-1,3-dihydro-2 <i>H</i> -1,4-benzodiazepin-2-one
Halazepam		7-Chloro-1,3-dihydro-5-phenyl-1-(2,2,2-trifluoroethyl)-2 <i>H</i> -1,4-benzodiazepin-2-one
Haloxazolam		10-Bromo-11 <i>b</i> -(<i>o</i> -fluorophenyl)-2,3,7,11 <i>b</i> -tetrahydrooxazolo[3,2- <i>d</i>][1,4]benzodiazepin-6(5 <i>H</i>)-one
Ketazolam		11-Chloro-8,12 <i>b</i> -dihydro-2,8-dimethyl-12 <i>b</i> -phenyl-4 <i>H</i> -[1,3]oxazino[3,2- <i>d</i>][1,4]benzodiazepine-4,7(6 <i>H</i>)-dione
Lefetamine	SPA	
diphenylethylamine		(-)- <i>N,N</i> -Dimethyl-1,2-
Loprazolam		6-(<i>o</i> -Chlorophenyl)-2,4-dihydro-2-[(4-methyl-1-piperazinyl)methylene]-8-nitro-1 <i>H</i> -imidazo[1,2- <i>a</i>][1,4]benzodiazepin-1-one
Lorazepam		7-Chloro-5-(<i>o</i> -chlorophenyl)-1,3-dihydro-3-hydroxy-2 <i>H</i> -1,4-benzodiazepin-2-one
Lormetazepam		7-Chloro-5-(<i>o</i> -chlorophenyl)-1,3-dihydro-3-hydroxy-1-methyl-2 <i>H</i> -

	1,4-benzodiazepin-2-one
Mazindol	5-(<i>p</i> -Chlorophenyl)-2,5-dihydro-3 <i>H</i> -imidazo[2,1- <i>a</i>]isoindol-5-ol
Medazepam	7-Chloro-2,3-dihydro-1-methyl-5-phenyl-1 <i>H</i> -1,4-benzodiazepine
Mefenorex	<i>N</i> -(3-Chloropropyl)- α -methylphenethylamine
Meprobamate	2-Methyl-2-propyl-1,3-propanediol dicarbamate
Mesocarb	3-(α -Methylphenethyl)- <i>N</i> -(phenylcarbamoyl)sydnone imine
Methylphenobarbital acid	5-Ethyl-1-methyl-5-phenylbarbituric acid
Methylprylon	3,3-Diethyl-5-methyl-2,4-piperidinedione
Midazolam	8-Chloro-6-(<i>o</i> -fluorophenyl)-1-methyl-4 <i>H</i> -imidazo[1,5- <i>a</i>][1,4]benzodiazepine
Nimetazepam	1,3-Dihydro-1-methyl-7-nitro-5-phenyl-2 <i>H</i> -1,4-benzodiazepin-2-one
Nitrazepam	1,3-Dihydro-7-nitro-5-phenyl-2 <i>H</i> -1,4-benzodiazepin-2-one
Nordazepam	7-Chloro-1,3-dihydro-5-phenyl-2 <i>H</i> -1,4-benzodiazepin-2-one
Oxazepam	7-Chloro-1,3-dihydro-3-hydroxy-5-phenyl-2 <i>H</i> -1,4-benzodiazepin-2-one
Oxazolam	10-Chloro-2,3,7,11 <i>b</i> -tetrahydro-2-methyl-11 <i>b</i> -phenyloxazolo[3,2- <i>d</i>][1,4]benzodiazepin-6(5 <i>H</i>)-one
Pemoline	2-Amino-5-phenyl-2-oxazolin-4-one
Phendimetrazine	(+)-(2 <i>S</i> ,3 <i>S</i>)-3,4-Dimethyl-2-phenylmorpholine
Phenobarbital	5-Ethyl-5-phenylbarbituric acid
Phenazepam	7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2 <i>H</i> -1,4-benzodiazepin-2-one
Phermentamine	α,α -Dimethylphenethylamine
Pinazepam	7-Chloro-1,3-dihydro-5-phenyl-1-(2-propynyl)-2 <i>H</i> -1,4-benzodiazepin-2-one

Pipradrol	1,1-Diphenyl-1-(2-piperidyl)methanol
Prazepam	7-Chloro-1-(cyclopropylmethyl)-1,3-dihydro-5-phenyl-2 <i>H</i> -1,4-benzodiazepin-2-one
Pyrovalerone	4'-Methyl-2-(1-pyrrolidinyl) valerophenone
Secbutabarbital	5- <i>sec</i> -Butyl-5-ethylbarbituric acid
Temazepam	7-Chloro-1,3-dihydro-3-hydroxy-1-methyl-5-phenyl-2 <i>H</i> -1,4-benzodiazepin-2-one
Tetrazepam	7-Chloro-5-(1-cyclohexen-1-yl)- 1,3- dihydro-1-methyl-2 <i>H</i> -1,4- benzodiazepin-2-one
Triazolam	8-Chloro-6-(<i>o</i> -chlorophenyl)-1-methyl-4 <i>H</i> - <i>s</i> -triazolo[4,3- <i>a</i>][1,4] benzodiazepine
Vinylbital	5-(1-Methylbutyl)-5-vinylbarbituric acid
Zolpidem	<i>N,N</i> ,6-Trimethyl-2- <i>p</i> -tolylimidazo [1,2- <i>a</i>] pyridine-3-acetamide

The salts of the substances listed in this Schedule whenever the existence of such salts is possible.

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SECOND SCHEDULE
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(Made under section 14(1))

Table I	Table II
Acetic anhydride	Acetone
N-acetylanthranilic acid	Anthranilic acid
Ephedrine	Ethyl ether
Ergometrine	Hydrochloric acid
Ergotamine	Methyl ethyl ketone
Isosafrole	Piperidine
Lysergic acid	Sulphuric acid
3,4-methylenedioxyphenyl-2-propanon	Toluene
Norephedrine	
1-phenyl-2-propanone	
Alpha-phenylacetoacetonitrile (APAAN)	
Phenylacetic acid	
Piperonal	
Potassium permanganate	
Pseudoephedrine	
Safrole	
The salts of the substances listed in this Table whenever the existence of such salts is possible	The salts of the substances listed in this Table whenever the existence of such salts is possible (the salts of hydrochloric acid and sulphuric acid are specifically excluded)

G.N.No.
137 of
2018

THIRD SCHEDULE

(Made under section 48(2))

FORMS

THE UNITED REPUBLIC OF TANZANIA

THE DRUG CONTROL AND ENFORCEMENT AUTHORITY



Form No. DCEA 001

FORENSIC LABORATORY SUBMISSION FORM

**For submission of biological samples/ substances suspected to be drug
or precursor chemicals / substances with drug related effects**

New Submission Resubmission Additional Submission

Contact Person Information

Submitting Agency:
Submitting Officer: Full Name:Title.....
Physical Address:
RegionDistrictWorking Station.....
Office Telephone No.:Mobile Telephone No:.....
Fax:E-mail:

Case Information

Case No.:
Offence:
Date of Seizure:
Area of Seizure: RegionDistrict Ward.....
Village/Street:.....

Suspect Information

S/n	Suspect Name (First, Middle, Last)	Sex (F/M)	Date of Birth	Nationality	ID No./ Passport No.

Description of Exhibit Submitted

S/No.	No of Items and its Description	Suspected Drug, chemical or item

Request

Requested analysis of:

- (1) Sample identity
- (2) Drug type
- (3) Weight of drug
- (4) Effects of the identified drug to human being

Submitted By

Full Name of Submitting Officer: Title.....

Signature:Date: Time:.....

Received by

Full Name of Receiving Officer: Title:

Signature:Date: Time:.....

FOMU

JAMHURI YA MUUNGANO WA TANZANIA

MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA KULEVYA

FOMU Na. DCEA 001



FOMU YA UWASILISHAJI SAMPULI MAABARA

“Kwa ajili ya uwasilishwaji wa Sampuli za kibaiolojia/vitu vinavyodhaniwa kuwa dawa za kulevya/vitu vyenye madhara yahusianayo na dawa za kulevya

sampuli mpya sampuli ya marudio sampuli ya nyongeza

Maelezo ya Mwasilishaji

Taasisi inayowasilisha Sampuli:

.....

Majina ya Afisa Mwasilishaji:

.....Wadhifa.....

Anwani:

.....

Mkoa Wilaya.....Kituo cha kazi

.....

Simu ya Ofisi:Simu ya

mkononi:.....

NukushiBarua pepe:

.....

Taarifa za kesi

Namba za Kesi:.....

Kosa:

Tarehe ya ukamataji

Eneo la ukamataji: Mkoa

Wilaya.....

Kijiji/mtaa :.....

Taarifa za Mtuhumiwa

S/N	Jina la Mtuhumiwa, (Jina la kwanza, la pili	Jinsia (ME/KE)	Tarehe ya kuzaliwa	Uraia	Namba ya kitambulisho/pasi ya kusafiria Na. ...
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	la tatu)				

Maelezo ya kielelezo kinachowasilishwa

S/N	Idadi ya sampuli/vielelezo na maelezo yanayohusiana nayo/navyo	Aina ya kielelezo/sampuli inayodhaniwa kuwa dawa za kulevya, kemikali n.k

Maombi

Maombi ya Uchunguzi:

- 1) Utambulisho wa Kielelezo/sampuli
- 2) Aina ya Dawa
- 3) Uzito wa dawa
- 4) Madhara kwa binadamu

Imewasilishwa na:

Jina la Afisa anayewasilisha sampuli:

Cheo.....

Sahihi:Tarehe: muda:.....

Imepokelewa na

Jina la Afisa Mpokeaji: Cheo:

SahihiTarehe: muda:.....

THE UNITED REPUBLIC OF TANZANIA

DRUG CONTROL AND ENFORCEMENT AUTHORITY

FORM NO. DCEA 002



CERTIFICATE OF PHOTOGRAPH/MOVING PICTURE

I,
District/Resident
Magistrate, do hereby certify that still
pictures/moving pictures stored in
..... (form of storage) have been
taken/recorded in my presence by
(recording officer) before the disposal of the exhibit namely
.....this day of
..... 20.....

NAME OF THE OFFICER:
SIGNATURE OF THE OFFICER:

BEFORE ME:

NAME:.....
QUALIFICATION:
ADDRESS:.....
SIGNATURE:
DATE:

JAMHURI YA MUUNGANO WA TANZANIA

MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA KULEVYA

FOMU NA. DCEA002



HATI YA PICHA ZA MNATO/VIDEO

Mimi,Hakimu Mkazi/wa Wilaya
Nathibitisha kwamba picha za mnato/video
zilizotunzwa kwenye (taja namna ya utunzaji)
zimepigwa/zimechukuliwa mbele yangu na (Afisa anayepiga
picha/video/kabla ya kuteketeza vielelezo/vielelezo (taja) Leo tarehe
mwezi wa mwaka 20.....

JINA LA AFISA:
SAHIHI YA AFISA:

MBELE YANGU:

JINA:.....
SIFA:
ANUANI:.....
SAHIHI:
TAREHE:

THE UNITED REPUBLIC OF TANZANIA

DRUG CONTROL AND ENFORCEMENT AUTHORITY

FORM NO. DCEA 003



CERTIFICATE OF SEIZURE

(Made under section 48(2)(c) of DCEA, 2015)

I(name)(title)

DO HEREBY certify to have conducted a search on

..... (date) at

(place) and the under mentioned things/properties were seized:-

- 1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

in the presence of:

- 1. Name of witness: of

Signature:

- 2. Name of Witness:

Signature:

- 3. Name(s) of person(s) searched and signature

(a) Name:

Signature:

(b) Name:

Signature:

(c) Name:

Signature:

(d) Name:

Signature:

(e) Name:

Signature:

(f) Name:

- Signature:
4. Name of Executing officer:
Signature:
Date:
 5. Name of interpreter (if any)
Signature:
Date:

JAMHURI YA MUUNGANO WA TANZANIA

FOMU NA. DCEA 003



MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA KULEVYA
HATI YA UKAMATAJI MALI

(Chini ya Kifungu cha 48(2)(c) cha DCEA, 2015)

Mimi..... (jina)
(cheo), nathibitisha kuwa nimefanya upekuzi tarehe..... eneo la
..... (mahali) ambapo vitu vifuatavyo vimekamatwa:

- 1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

Mbele ya:

- 1. Jina la Shahidi:.....
Saini:.....
2. Jina la Shahidi:.....
Saini:.....

*** (MASHAHIDI WATAJAZWA KULINGANA NA MAZINGIRA)

Jina/majina na saini za watu waliofanyiwa upekuzi

- (a) Jina:.....
Saini:.....
(b) Jina:.....
Saini:.....
(c) Jina:.....
Saini:.....
(d) Jina:.....
Saini:.....
(e) Jina:.....
Saini:.....
(f) Jina:.....

Saini:.....
Jina la Afisa Mtekelezaji:.....
Saini:.....
Tarehe.....
Jina la Mkalimani (kama yupo):.....
Sahihi:.....
Tarehe:.....

THE UNITED REPUBLIC OF TANZANIA

FORM NO. DCEA 004



DRUG CONTROL AND ENFORCEMENT AUTHORITY

OBSERVATION FORM

(Made under section 48(2)(c) of DCEA, 2015)

NAME OF ACCUSED:
UNDER OBSERVATION:

AGE: TRIBE/NATIONALITY

RESIDENCE: PHONE NUMBER:

DATE/TIME OF ARREST:

FLIGHT/VESSEL/M/VEHICLE NO:

DURING THE OBSERVATION THE ACCUSED EMITTED SOME PELLETS/
SUBSTANCES SUSPECTED TO CONTAIN NARCOTIC DRUGS/SUBSTANCES
AS FOLLOWS:

Table with 6 columns: DATE, TIME, PELLETS/SUBSTANCE EMITTED, NAME AND SIGNATURE OF SUSPECT/ACCUSED, NAME AND SIGNATURE OF INDEPENDENT WITNESS, NAME AND SIGNATURE OF OFFICER

Finishing Time:

Declaration of suspects/accused:

Ido hereby declare that the entries made herein
above in respect of the substances emitted are correct according to my knowledge:

Dated at this day of 20.....

NAME AND SIGNATURE OF SUSPECT/ACCUSED

NAME AND SIGNATURE OF OFFICER

OFFICER'S OPINION (if any).....

Name of Officer:

Signature:

Name of witness

Signature of witness

Name of Interpreter (if any):

Signature:

JAMHURI YA MUUNGANO WA TANZANIA

FOMU NA. DCEA 004



MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA KULEVYA

FOMU YA UANGALIZI

(Chini ya Kifungu cha 48(2)(c) cha DCEA, 2015)

Jina la mtuhumiwa/mshtakiwa aliye chini ya uangalizi:.....
 Jinsi:Umri: Kabila/Uraia:.....
 Makazi:.....Simu:.....
 Kazi.....
 Tarehe na muda wa ukamataji:.....
 Namba ya Ndege/Meli/Gari/Chombo cha Usafiri:.....
 Wakati wa uangalizi mtuhumiwa/mshtakiwa ametoa pipi zinazodhaniwa kuwa na dawa za kulevya kama ifuatavyo:

Tarehe	Muda	Idadi ya Pipi zilizotolewa	Jina na Saini ya Mtuhumiwa	Jina na Saini ya Shahidi Huru	Jina na Saini ya Afisa

Muda aliomaliza kutoa pipi:.....

Tamko la Mtuhumiwa/Mshtakiwa aliye Chini ya Uangalizi

Mimi..... nathibitisha kuwa taarifa iliyoingizwa kwenye jedwali hapo juu kuhusu dawa nilizotoa ni sahihi kwa kadiri ya ufahamu wangu.

Imetiwa saini terehe:.....

Jina la Mtuhumiwa/Mshtakiwa:.....

Saini ya Mtuhumiwa/Mshtakiwa:.....

Jina la Afisa:.....

Saini ya Afisa:.....

Maoni ya Afisa (kama yapo).....

Jina :.....
Saini :.....Tarehe.....
Jina la Mkalimani (kama yupo):
Saini:

THE UNITED REPUBLIC OF TANZANIA

DRUG CONTROL AND ENFORCEMENT AUTHORITY

FORM NO. DCEA 005



CAUTIONED STATEMENT

(Made under Section 48(2) (ix) pf DCEA, 2015)

WRITE IN CAPITAL LETTERS

NAME OF SUSPECT:.....
NATIONALITY/TRIBE:.....
AGE:
RELIGION:.....
OCCUPATION:.....
PHYSICAL ADDRESS:..... STREET/VILLAGE:.....
WARD:.....
DIVISION:..... DISTRICT:.....
REGION:.....
MOBILE /TEL. NO.....
E-MAIL:.....
NAME OF TEN CELL LEADER/WARD SECRETARY.....
DATE:..... PLACE:.....
STARTING TIME:.....

CAUTIONED STATEMENT ACCORDING TO SECTION 48 OF THE DRUG CONTROL AND ENFORCEMENT ACT (DCEA), No.5 OF 2015

CAUTION: -

I (Name and Title/Position), warn you..... that you are accused of an offence of c/s
You are not obliged to say anything regarding this offence unless you wish to do so. But whatever you say will be recorded and may be used in evidence against you before the court of law once needed. Also you have right to make your statement in presence of a lawyer, relative or friend of your choice to witness it.
Recording Officer's Signature Signature of Suspect

Name of interpreter (if any)..... Signature..... Date

RESPONSE:-

I.....have been warned by
that I am charged with the offence of.....c/s
..... I am not obliged to say anything regarding
this offence unless I wish to do so. But whatever I say will be taken down in writing and
may be used in evidence against me before the court of law once needed. Also I have
been given the right to make my statement in presence of a lawyer, relative or friend of
my choice to witness it.

Signature of Suspect.....Signature of Recording Officer.....

QUESTION:- Are you ready to give out your statement?

RESPONSE:- Yes, I am ready/No, I am not ready : (Give reasons):

Signature of SuspectSignature of Recording Officer

QUESTION: Who would you like to witness your statement?

RESPONSE:

.....
Signature of Suspect.....Signature of Recording Officer

Name of interpreter (if any)..... Signature Date

In the presence of relative/friend/Advocate Signature
Date.....

STATEMENT:.....

.....
.....
.....
.....

CERTIFICATION OF THE SUSPECT under Section 48 (2) (ix) : I
.....certify that my statement has been correctly
recorded without adding or leaving any word. I have read the statement/ The statement
was read to me and satisfy myself that it is correct. (To be filled by a suspect. If illiterate,
thumb print be used instead)

Signature of Suspect:

CERTIFICATION OF THE RECORDING OFFICER under Section 48 (2) (a) (x): I
..... hereby declare that I have faithfully and accurately recorded the
statement of the above named suspect

Signature of Recording Officer.....

FINISHING TIME

JAMHURI YA MUUNGANO WA TANZANIA

MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA KULEVYA

FOMU NA.DCEA 005



KARATASI YA MAELEZO YA ONYO

(Chini ya kifungu cha 48(2)(ix))

JALADA LA KESI NA:
JINA LA MTUHUMIWA:
KABILA/UTAIFA:
UMRI:
DINI:
MAKAZI:
ANWANI: MTA/KIJI
KATA.....
TARAF: SIMU YA MKONONI
SIMU YA OFISINI: BARUA PEPE:
M/KITI WA SERIKALI YA
MTAA/KIJI.....
TAREHE MAHALI MUDA WA
KUENZA.....
MAELEZO YA ONYO CHINI YA KIFUNGU CHA 48 CHA SHERIA.

ONYO: Mimi (Jina na Wadhifa) nakuonya wewe
.....
Kwamba unatuhumiwa kwa kosa la chini ya
Kifungu cha sheria hivyo basi
hulazimishwi kusema neno lolote kuhusiana na tuhuma hizi isipokuwa kwa hiari yako
mwenyewe, lolote utakalolisema litaandikwa hapa chini na maelezo yako yanaweza
kutumika kama ushahidi mahakamani pia unayo haki ya kisheria kuwa na wakili wako,
jamaa yako, ndugu yako au rafiki yako ili aweze kushuhudia wakati ukitoa maelezo yako.
.....
Saini ya Afisa Mwandishi Saini ya Mtuhumiwa
Jina la Mkalimani (kama yupo) sahihi tarehe ...

JIBU LA ONYO Mimi Nimeonywa kwamba
natuhumiwa kwa kosa la chini ya Kifungu
..... cha Sheria na kwamba silazimishwi kusema neno
lolote kuhusiana na tuhuma hizi isipokuwa kwa hiari yangu mwenyewe na kwamba lolote

nitakalolisema litaandikwa hapa chini na maelezo yangu yanaweza kutumika kama ushahidi mahakamani na kwamba pia ninayo haki ya kisheria kuwa na wakili wangu, jamaa yangu, ndugu au rafiki yangu ili aweze kushuhudia wakati natoa maelezo yangu.

.....
Saini ya Afisa Mwandishi Saini ya mtuhumiwa tarehe
SWALI: Je uko tayari kwa sasa kutoa maelezo yako?
JIBU:

Saini ya Afisa Mwandishi Saini ya mtuhumiwa
SWALI: Ugependa nani awepo kushuhudia ukitoa maelezo yako?
JIBU:

.....
Saini ya Afisa Mwandishi Saini ya mtuhumiwa tarehe
Jina la Mkalimani (kama yupo)..... Sahihi tarehe ...
Mbele ya ndugu/Wakili/Rafiki (kama yupo)
Jina sahihi tarehe

MAELEZO:
.....
.....
.....

UTHIBITISHO: Chini ya kifungu cha 48(2)(a)(x) cha sheria Mimi.
..... nathibitisha kuwa maelezo yangu yameandikwa kwa usahihi bila kuongeza au kupunguza neno. Nimeyasoma na ni sahihi (Aandike mtuhumiwa mwenyewe, kama hajui kusoma na kuandika na aweke dole gumba).
Jina la mtuhumiwa Sahihi

UTHIBITISHO: Chini ya kifungu cha 48(2)(a)(x) cha sheria Mimi
..... (jina na wadhifa) nathibitisha kuandika maelezo ya mtuhumiwa kwa uaminifu na kama alivyoeleza.
Jina la Afisa Mwandishi:
Sahihi:
Muda wa kumaliza maelezo:

**THE UNITED REPUBLIC OF TANZANIA
DRUG CONTROL AND ENFORCEMENT AUTHORITY**

FORM NO. DCEA 006



INVENTORY OF SEIZED EXHIBIT FOR DISPOSAL
(Made under Section 36 (2))

INVESTIGATION REGISTER NO.	DATE	NAME OF DRUG/PRECURSOR CHEMICAL (Example: Cannabis, Heroin, Khat, cocaine, etc.)	DESCRIPTION OF ARTICLE (Example: mark, form: powder, solid, liquid, crystal, etc.; colour: white, brown, etc.)	ESTIMATED WEIGHT/VOLUME (Example: Kilograms grams, Litres, etc)	QUANTITY (Example: 10 pellets, 20 parcels)	MODE OF PACKING (Example: wrappers, container, bag, box, etc.)	REMARKS (Other relevant information)

NAME OF A SUSPECT:.....

SIGNATURE OF A SUSPECT:.....

(If more than one suspect, add another sheet)

NAME OF AN

OFFICER:.....

SIGNATURE OF AN

OFFICER:.....

JUDGE/ MAGISTRATE

REMARKS/ORDER:.....

NAME:.....

QUALIFICATION:.....

ADDRESS:.....

SIGNATURE:.....

DATE:.....

SEAL OF THE OFFICE:.....

JAMHURI YA MUUNGANO WA TANZANIA
MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA KULEVYA

FORM NO. DCEA 006



ORODHA YA VIELELEZO KWA AJILI YA UTEKETEZWAJI
(Chini ya kifungu cha 36 (2))

NAMBA ZA USAJILI WA JALADA LA UCHU NGUZI	TAREHE	JINA LA DAWA/KEMIKALI BASHIRIFU (Mfano: Bangi, Heroin, Cocaine, Mirungi)	MAELEZO YA KIELELEZO (Mfano: Alama, umbile, unga, yabisi, kimiminika, chenga chenga n.k. rangi: nyeupe, kahawia n.k)	MAKADIRIO YA UZITO/UJAZO (Mfano: kilo, gramu, lita n.k.)	IDADI (Mfano: pili 10, vifurushi 20, gunia 5, debe 10 n.k.)	AINA YA UFUNGAJI (Mfano : Aina ya kifunga shio, debe, pipa, sanduku, boksi n.k.)	MAELEZO OMAONI MENGINE (maelezo mengine muhimu)

JINA LA MTUHUMIWA.....
 SAINI YA MTUHUMIWA:.....
 (Kama ni zaidi ya mmoja ongeza karatasi nyingine)
 JINA LA AFISA :.....
 MAONI/AMRI YA JAJI/HAKIMU:.....
 JINA LA JAJI/HAKIMU:.....
 SIFA:.....
 ANWANI:.....
 SAHIHI:.....
 TAREHE:.....
 MUHURI/LAKIRI YA OFISI:.....

THE UNITED REPUBLIC OF TANZANIA
 DRUG CONTROL AND ENFORCEMENT AUTHORITY



FORM NO. DCEA 007

WITNESS STATEMENT

WRITE IN CAPITAL LETTERS

PARTICULARS OF WITNESS

NAME OF WITNESS:.....
 GENDER:.....
 NATIONALITY/TRIBE:.....
 AGE:.....
 RELIGION:.....
 OCCUPATION:.....
 PHYSICAL ADDRESS:..... STREET/VILLAGE.....
 WARD.....DIVISION.....DISTRICT.....
 REGION.....
 MOBILE /TEL. NO.....
 E-MAIL:.....
 NAME OF TEN CELL LEADER/WARD SECRETARY.....
 DATE:..... PLACE :.....
 STARTING TIME:.....

DECLARATION UNDER SECTION 34B (2)(c) OF EVIDENCE ACT, [CAP 16 RE 2002]

This statement (consisting of pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence. I shall be liable to prosecution for perjury if I have willfully stated in it anything, which I know to be false or do not believe to be true.

Made at (Place).....on theday of
TimeSignature of Witness.....

STATEMENT

.....

 Signature of Witness.....

CERTIFICATION OF THE RECORDING OFFICER under Section 10 (3)
of THE CRIMINAL PROCEDURE ACT, CAP 20 [R.E. 2002]. I
.....hereby declare that I have faithfully and
accurately recorded the statement of the above named
witness.....
Signature of Recording Officer.....

FINISHING TIME

JAMHURI YA MUUNGANO WA TANZANIA

MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA KULEVYA

FOMU NA. DCEA 007



MAELEZO YA SHAHIDI

JAZA KWA HERUFI KUBWA

TAARIFA ZA SHAHIDI

JINA:.....

JINSI:.....

KABILA/URAIA:.....

UMRI:.....

DINI:.....

KAZI:

ANWANI YA MAKAZI:.....

MTAA/KIJIJI.....

KATA.....

TARAFU.....

WILAYA.....

MKOA.....

SIMU YA MKONONI/ YA MEZANI:.....

BARUA PEPE:

JINA LA BALOZI WA NYUMBA KUMI/ KATIBU

KATA.....

TAREHE:.....MAHALI :.....

MUDA WA KUANZA KUTOA MAELEZO:.....

TAMKO LA SHAHIDI CHINI YA KIFUNGU CHA 34B (2)(c) CHA SHERIA
YA USHAHIDI [SURA YA 6, RE 2002]

Maelezo haya (yenye kurasa.... zilizosainiwa na mimi) ni ya kweli kwa mujibu
wa imani na ufahamu wangu na nayatoa nikijua kuwa endapo yatatolewa
mahakamani nitawajibika nayo na naweza kushtakiwa kwa kutoa ushahidi wa
uongo endapo nitabainika kuwa maelezo hayo ni ya uongo au kinyume.

Maelezo haya yametolewa hapa (mahali).....leo tarehe

MweziMwaka.....

MudaSaini ya Shahidi.....

MAELEZO KAMILI.....

.....

.....

Saini ya Shahidi.....

UTHIBITISHO: Mimi..... (jina na wadhifa) nathibitisha kuwa nimeandika maelezo ya..... (jina la shahidi) kwa uaminifu na usahihi kama alivyoeleza kwa mujibu wa Kifungu cha 10 (3) cha Sheria ya Mwenendo wa Makosa ya Jinai [Sura 20, R.E., 2002].
Saini ya Afisa anayerekodi/anayeandika maelezo:.....

Muda wa Kumaliza:

THE UNITED REPUBLIC OF TANZANIA

DRUG CONTROL AND ENFORCEMENT AUTHORITY

FORM NO. DCEA 008



EXTENSION OF TIME TO DETAIN A PERSON(S) OR PROPERTY (IES)
(Under Section 48(2)(c)(iii) of DCEA, 2015)

I..... (Name and title) on thisday of20....
DO HEREBY extend time for a period ofhours/days to allow further
investigation to the under mentioned suspect(s) arrested and/or properties seized.

Suspect(s)

- 1.
2.
3.
4.
5.

(If more than above suspects, add another sheet)

Properties (e.g. motor vehicle, vessel, aircraft, building, etc.):

- 1.
2.
3.
4.
5.

(If more than above properties, add another sheet)

The suspect (s) has/have been informed accordingly of such extension as
witnessed here under.

1. Name(s) of suspect(s):

- (a) Name:
Signature:
(b) Name:
Signature:
(c) Name:
Signature:
(d) Name:
Signature:

(e) Name:
Signature:

2. Officer extending time

Name:
Signature:
Qualification/Title:
.....
Date:

3. Interpreter (if any needed)

Name:
Signature:
Date:

JAMHURI YA MUUNGANO WA TANZANIA
MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA KULEVYA

FOMU NA. DCEA 008



FOMU YA KUONGEZA MUDA WA KUMWEKA MTUHUMIWA
CHINI YA ULINZI
AU KUSHIKILIA MALI

(Chini ya Kifungu cha 48 (2)(c)(iii) DCEA, 2015)

Mimi..... (Jina na Cheo) leo hii tarehe Mwezi20.... ninaongeza muda kwa kipindi cha saa/siku kuruhusu upelelezi zaidi wa mtuhumiwa/watuhumiwa na,au mali zilizoshikiliwa walioorodheshwa/ zilizoorodheshwa hapa chini:

Watuhumiwa

- 1.
- 2.
- 3.
- 4.
- 5.

(Iwapo kuna watuhumuwa zaidi ya idadi tajwa hapo juu, ongeza karatasi nyingine)

Mali (mfano: gari, meli, ndege, jengo, n.k.):

- 1.
- 2.
- 3.
- 4.
- 5.

(Iwapo kuna mali zaidi ya idadi tajwa hapo juu, ongeza karatasi nyingine)

Mtuhumiwa/watuhumiwa ame/wamejulishwa kuhusu kuongeza muda wa kuwekwa kizuizini na, au kushikiliwa mali kama inavyoshuhudiwa hapa chini: -

1. Jina la mtuhumiwa:

- 6. Jina:
- (a) Saini:
- (b) Jina:

Saini:

(c) Jina:

Saini:

(d) Jina:

Saini:

(e) Jina:

Saini:

2. Ofisa aliyetoa nyongeza ya muda

Jina:

Saini:

Cheo:

Tarehe:

3. Mkalimani (kama anahitajika)

Jina:

Saini:

Tarehe:

THE UNITED REPUBLIC OF TANZANIA
DRUG CONTROL AND ENFORCEMENT AUTHORITY



FORM NO. DCEA 009

THE GOVERNMENT LABORATORY ANALYST REPORT

(Under Section 48A(1) of DCEA, 2015)

I..... (Name of Chemist) of the
.....(institution), being an officer dully authorised to
examine and analyse samples/exhibits, hereby certify as follows:

1) On the day of 20..... At (place)
I received

(quantity) sealed packets/boxes/sacks/containers (whichever applicable)
number (any marked number) purporting to be sent by
..... (institution) suspected to have contained
..... (type of exhibit) in the form No. purported
to be signed by (officer of the institution sending the sample(s))
which were handled to me by (officer(s)
of the institution) and was given Laboratory No.....,

2) I have examined and analysed the said samples/exhibits the results of
which are stated hereunder:

Exhibit "A"(Description of Exhibit)

- (a) Has been found/not found to have contained drug/substance or substance used in preparation of drug
- (b) Type of drug/substance or substance used in preparation of drug (if any found)
- (c) Its weight/volume in kilograms/grams or litres/millilitres
- (d) Its effect to human health if consumed/applied or used anyhow

Exhibit "B"(Description of Exhibit)

- (a) Has been found/not found to have contained drug/substance or substance used in preparation of drug
- (b) Type of drug/substance or substance used in preparation of drug (if any found)
- (c) Its weight/volume in kilograms/grams or litres/millilitres
- (d) Its effect to human health if consumed/applied or used anyhow

Other remarks (if any)

3) The (quantity) sealed packets/boxes/sacks/containers
(whichever applicable) each signed by me, has/have been handled back
after examination to (officer) who brought the sample)

Dated at this day of 20.....

Examining officer

Name:.....

Signature:.....

Title/Qualification:.....

Certifying officer:

Name:.....

Signature:.....

Title/Qualification:.....

Date:.....

JAMHURI YA MUUNGANO WA TANZANIA
MAMLAKA YA KUDHIBITI NA KUPAMBANA NA DAWA ZA
KULEVYA



FOMU NA. DCEA 009

TAARIFA YA UCHUNGUZI WA MAABARA YA SERIKALI
(Chini ya kifungu 48A(1))

Mimi.....(Jina la mkemia) wa maabara ya Serikali.....(Jina la Taasisi), ambaye ni afisa niliyeidhinishwa kufanya uchunguzi wa vielelezo, nathibitisha kuwa,

- (1) Tarehe/...../20..... eneo la (mahali), nilipokea pakiti/sanduku/magunia/kilo (kiasi chochote kinachohusika) yenye namba (alama yeyote inayoonekana) kilichowasilishwa kwangu toka (taasisi iliyowasilisha kielelezo) kwa kutumia fomu na. inayosadikika kusainiwa na (afisa mwenye dhamana toka taasisi inayowasilisha kielelezo)
- (2) Nimefanya uchunguzi wa sampuli/kielelezo/vielelezo na kupata matokeo yafuatayo:

Kielelezo "A"

- (a) Kimegundulika/hakijagundulika kuwa na dawa ya kulevya au kemikali inayoweza kutumika kutengeneza dawa za kulevya
- (b) Aina ya dawa au kemikali iliyogundulika/zilizogundulika kuwemo
- (c) Uzito wa dawa/kemikali hizo katika ujazo wa kilogramu/gramu/lita au mililita
- (d) Athari za dawa/kemikali hiyo endapo itatumiwa na binadamu au kutengeneza dawa za kulevya

Kielelezo "B"

- (a) Kimegundulika/hakijagundulika kuwa na dawa ya kulevya au kemikali inayoweza kutumika kutengeneza dawa za kulevya
- (b) Aina ya dawa au kemikali iliyogundulika/zilizogundulika kuwemo
- (c) Uzito wa dawa/kemikali hizo katika ujazo wa kilogramu/gramu/lita au mililita
- (d) Athari za dawa/kemikali hiyo endapo itatumiwa na binadamu au kutengeneza dawa za kulevya

Maoni mengine (kama yapo)

3. Kiasi cha pakiti/sanduku/magunia/kilo/lita (kiasi) zikiwa/yakiwa zimefungwa kwa lakiri kila moja ikiwa na saini yangu, zimerudishwa baada ya uchunguzi kwa

..... (afisa aliyechukua vielelezo) leo tarehe
...../...../20.....

Aliyefanya uchunguzi:

Jina:.....

Saini:.....

Cheo:.....

Afisa anayethibitisha

Jina:.....

Saini:.....

Cheo:.....

Tarehe:.....

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 200

THE ECONOMIC AND ORGANISED CRIME CONTROL ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

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Dodoma,
30th October, 2018

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CHAPTER 200

THE ECONOMIC AND ORGANISED CRIME CONTROL ACT

[PRINCIPAL LEGISLATION]

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SCHEDULES

- Cap. 80 “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;
- “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;
- Cap. 329 “corruption offence” means an offence under the Prevention and Combating of Corruption Act specified in the First Schedule;
- “Court” means the Corruption and Economic Crimes Division of the High Court established under 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;

Cap. 6

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

“document” has the meaning ascribed to it under the Evidence Act;

“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 converted 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;

“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;

“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 CORRUPTION AND ECONOMIC CRIMES DIVISION OF
THE HIGH COURT

Establishment and composition of the Court

Establishment,
composition
and
jurisdiction of
Court
Act No.
3 of 2016
s.8

3.-(1) There is established the Corruption and Economic Crimes Division of the High Court with the Registry and sub-registries as may be determined by the Chief Justice, in which proceedings concerning corruption and economic cases under this Act may be instituted.

(2) The Corruption and Economic Crimes Division of the High Court shall consist of a Judge or such number of Judges of the High Court as may be determined by the Chief Justice.

(3) The Court shall have jurisdiction to hear and determine cases involving-

- (a) corruption and economic offences specified in paragraphs 3 to 21 and paragraphs 27, 29 and 38 of the First Schedule whose value is not less than one billion shillings, save for paragraph 14;
- (b) economic offences specified under paragraphs 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33,34, 35, 36, 37 and 39 of the Schedule regardless of their value; and
- (c) such other offences as may be referred to, or instituted in the Court in terms of the provisions of this Act.

Repealed

4. [Repealed by Act No. 3 of 2016 s.8A].

Repealed

5. [Repealed by Act No. 3 of 2016 s.8A].

Repealed

6. [Repealed by Act No. 3 of 2016 s.8A].

Repealed

7. [Repealed by Act No. 3 of 2016 s.8A].

Remuneration
and expenses

8.-(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, 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.

Seals of Court

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

Administration of Court

10.-(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

Powers and duties of Court Act No. 12 of 1987 s.5

11.-(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;

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(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.

Power to refer matters to other Courts
Act No. 12 of 1987
s.6

12.-(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)]

Place of sittings

13. 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.

Disclosure of interest of member

14.-(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.

Privilege of proceedings

15.-(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.

Repealed

16. [Repealed by Act No. 3 of 2016 s.8B].

Reports from
Court
Act No.
3 of 2016
s.8C

17.-(1) The Registrar and each Deputy 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; and
- (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.

Contempt of
Court
Act No.
12 of 1987
s.8

- 18.**-(1) Any person who-
- (a) willfully 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 anything 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) willfully 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.

Power of Court in relation to contempt

19.-(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

Investigation Process

Application of Criminal Procedure Act
Cap.20

20.-(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

Cap.20 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.

Personnel for investigation

21.-(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.

Search for and seizure of property Act No. 12 of 1987 s.9

22.-(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-

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

(b) 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.

Disposal and
forfeiture of
property
Acts Nos.
12 of 1987
s.10
6 of 2012
s.27

23.-(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;
- (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 purpose of this section:

“owner” includes a person who has interest in that property and includes a third party;

“property” includes the property originally in the possession or under the control of the accused person or any property into or for which that original property is converted or exchanged, or anything acquired by such conversion or exchange, whether before or after the accused was apprehended.

Disappearance
of suspect
Act No.
12 of 1987
s.11

24.-(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 of goods forfeited or disposed of by an order of the

Court in pursuance of the provisions of this section.

The Decision to Prosecute

DPP to be informed of occurrences and to give directions

25.-(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.

Consent of DPP for prosecutions

26.-(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.

Cap. 20 (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.

Repealed 27. [Repealed by Act No. 1 of 2008 s. 37.]

**PART IV
PROCEDURE PRIOR TO AND DURING TRIAL BEFORE THE
COURT**

Preliminary Procedure

Application of Criminal Procedure Act Cap.20 28. 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.

Procedure on arrest Acts Nos. 12 of 1987 s.12 3 of 2011 s.30 3 of 2016 s.9 Cap.4 s.8 29.-(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 and the Resident Magistrate 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 or Resident magistrate 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 Corruption and Economic Crimes Division of the High 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 and the Resident Magistrate 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) Where 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) Where 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 Court.

(8) After an information is filed in the 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.

Committal for
trial by Court

30.-(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.

Information
Act No.
4 of 1991
Sch.

31.-(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.

Address of
accused to be
recorded

32. 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]

Admission by
accused

33.-(1) Where 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]

Denial by
accused

34. Where the accused person does not admit the truth of the information or of any economic offence in it, 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]

Preliminary
hearing

35.-(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 his 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]

Bail
Acts Nos.
12 of 1987
s.13
10 of 1989
Sch.
27 of 1991
Sch.
17 of 1996
Sch.
3 of 2016
s.10

36.-(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 Drugs Control and Enforcement Act.

Cap.95

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

- (a) where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond;

Provided that, where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail;

- (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]

Change of
circumstances
after grant of
bail
Act No.
12 of 1987

37. 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

s.14

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]

Arrest of
persons
contravening
bail provisions
Act No.
12 of 1987
s.15

38.-(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

Expedition of actions

39.-(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]

Dismissal of charge

40. 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]

Procedure on close of case for prosecution

41.-(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]

Procedure on
defence of
alibi

42.-(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]

Judgment and
sentence
Act No.
3 of 2016
s.10A

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

(2) Every judgment shall contain the point or points for determination, the decision on the point or points and the reasons for the decision, and shall be dated and signed by the trial judge or the majority judges as the case may be.

(3) Where on a question to be decided by a majority of the judges of the Court, any judge holds the view which is different from that of the majority, a minority opinion of a judge shall be signed and dated and the Court shall inform the parties of the situation and be pronounced in open court.

(4) Where 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.

Alternative
verdicts

44.-(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]

Orders in
respect of
property

45.-(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

Application of
Evidence Act
Act No.
3 of 2016
s.10B
Cap.6

46. Except as is expressly provided otherwise in this Act, the rules of procedure for the production, 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]

Manner of
obtaining and
sources of
evidence

47.-(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

Cap.6

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]

Evidence on oath or affirmation

48.-(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.

Cap.16

[s. 47]

Evidence in presence of accused and examination
Act No. 3 of 2016
s.10C

49.-(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 or Judges shall affix their signature at the foot of the evidence.

[s. 48]

Evidence in
absence of
accused

50.-(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;

(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]

Interpretation
of evidence
Act No.
12 of 1987
s.17

51.-(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]

Refractory
witnesses

52.-(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]

Protection of
witnesses
Act No.
3 of 2016
s.11

53.-(1) 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.

Cap.446

(2) Subject to subsection (1), the provisions of the Whistleblower and Witness Protection Act, and any other relevant law shall apply in matters relating to witness protection under this Act.

[s. 52]

Immunity of
witnesses

54.-(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]

Depositions to
preserve
testimony
Act No.
12 of 1987
s.18

55.-(1) Where upon application by any party to any proceedings under or arising under this Act, it appears to the Court 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;
- (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;
- (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]

Litigation concerning sources of evidence

56.-(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

Offences under this Act

57.-(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]

Application of
Penal Code

58.-(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.

Cap.16

(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.

Cap.16

[s. 57]

Prohibition of
transfer of
advantage or
property
involved in
economic
offence

59.-(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;
- (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.

[s. 58]

Prohibition of
insolvency
Act No.
3 of 2016
s.12

59A.-(1) Notwithstanding the provision of any other law, the provisions governing bankruptcy or filing of any insolvency proceedings shall not apply to property which is subject of investigation or trial under this Act.

(2) Winding up of the company and the functions of the liquidator shall not be performed in relation to property which is subject of investigation or trial under this Act.

Punishment
for proved
crimes
Act No.
3 of 2016
s.12
Cap.4
s.8

60.-(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) Notwithstanding provision of a different penalty under any other law and subject to subsection (7), a person convicted of corruption or economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years, or to both such imprisonment and any other penal measure provided for under this Act;

Provided that, where the law imposes penal measures greater than those provided by this Act, the Court shall impose such sentence.

(3) In addition to the penalty imposed under subsection (2), the court shall order the confiscation and forfeiture to the Government of all instrumentalities and proceeds derived from the offence committed under this Act.

(4) All awards for compensation shall be taken from the personal properties or joint owned properties or such interest to the joint owned property attributed to the offender, where such properties are insufficient to cover the award, such balance shall be a civil debt due to the Government recoverable by civil process.

(5) Where the proceeds and instrumentalities in respect of which the offence was committed are destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly of the offender, or have been been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds or instrumentalities of the offence.

(6) A person who knowingly aids or abets the offender in destroying, diminishing in value or otherwise rendering the proceeds or instrumentalities of the offence worthless by any act or omission, directly or indirectly under this Act, commits an offence and shall upon conviction, be liable to imprisonment for a term not exceeding five years.

(7) 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

Cap.13

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) a child shall be sentenced in accordance with the provisions of the Law of the Child Act.

[ss. (3)]

(8) 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.

[ss. (5)]

(9) Where 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.

[ss. (6)]

(10) 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.

[ss. (7)]

(11) 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.

[ss. (8)]

[s. 59]

Orders for
compensation,
restitution etc.

61.-(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;
- (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.

Cap.33

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(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.

[s. 60]

Right of
appeal
Act No.
12 of 1987
s.19

62.-(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**

- Regulations **63.** 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]
- Power to make Rules
Act No.
3 of 2016
s.14 **63A.**-(1) The Chief Justice may, by Order published in the *Gazette*, make rules for the better performance of the duties of the Court.
(2) Without prejudice to the generality of subsection (1), the rules may prescribe-
(a) the contents and manner in which various court reports shall be prepared and submitted;
(b) contents of records of committal proceedings;
(c) procedures governing preliminary hearing;
(d) procedure for summoning of witnesses and for hearing of cases under this Act;
(e) procedure and conduct of the Registrar in the performance of functions under this Act;
(f) protection of witnesses under this Act; and
(g) anything which needs to be prescribed by rules under this Act.
- Omitted **64.** [Amends certain written laws.] [s. 63]
- Repeal **65.** [Repeals by Acts Nos.9 and 10 of 1983.] [s. 64]
- Savings
Act No.
3 of 2016
s.15 **66.**-(1) Notwithstanding the establishment of the Corruption and Economic Crimes Division of the High Court, where the Economic Crimes Court had-
(a) commenced the hearing of any case relating to economic offences, it shall continue with the

12 of 1987
s.20

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.

Leading
organized
crime
Act No.
12 of 1987
s.20
Cap.4
s.8

4.-(1) A person commits the offence of leading organised crime who-

- (a) intentionally or willfully 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.

Deleted

5. [Deleted by Act No. 2 of 2007 s.31.]

Fraudulent
schemes,
games and
artifices, theft
of public
property etc.
Cap.4
s.8

6. 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, commits an offence under this paragraph.

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

- 7.-(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

	<p>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;</p> <p>(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.</p>
Cap.20	
Omitted	<p>8. [Omitted under Fair Competition Act].</p>
Authorization of unlawful supply of designated authority goods	<p>9.(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.</p> <p>(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.</p> <p>(3) An amount or quantity of designated goods shall be deemed to be inordinate if-</p> <p>(a) where the supply is done once, the amount of 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</p> <p>(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</p>

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.

Occasioning
loss to at
specified
authority
Act No.
12 of 1987
s.20
Cap.4
s.8

10.-(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, notwithstanding any written law to the contrary, commits 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.

Offences relating to prohibited, restricted and uncustomed goods
Act No. 12 of 1987 s.20
13 of 1988 Sch.
Cap.47
Cap.4
s.8

11. A person commits 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.

Interfering with a necessary service
Cap.47

12. A person commits 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.

Using firearms etc.

13. 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 commits an offence under this paragraph.

Offences related to Wildlife
Caps. 283 or 282
Act No. 3 of 2016 s.16

14. A person commits an offence under this paragraph who commits an offence under section 17, 19, 24, 26, 28, 47, 53, 103, 105, Part X or Part XI of the Wildlife Conservation Act or section 16 of the National Parks Act.

Unlawful prospecting etc.
Cap.123

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

Offences in relation to gemstones	16. [Omitted.]
Offences in relation to diamonds Act No. 12 of 1987 Sch.	17. [Omitted.]
Theft of mail matter	18. -(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, commits 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 <i>mutatis mutandis</i> to the order compensation under this paragraph.
Deleted	19. [Deleted by Act No 2 of 2010, s11].
Hoarding of money Act No. 10 of 1989 Sch. GN. No. 658 of 1998 Cap.4 s.8	20. -(1) A person commits 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.

Offences under the Prevention and Combating of Corruption Act
Cap.329

21. A person commits an offence under this paragraph who commits any offence under the Prevention and Combating of Corruption Act other than an offence under section 15 of that Act.

Offences related to anti-money laundering
Cap.423

22. A person commits an offence under this paragraph who commits an offence under section 12, 17 or 20 of the Anti- Money Laundering Act.

Offences related to drugs control
Cap.95

23. A person commits an offence under this paragraph who commits an offence under section 15, 16 or 23 of the Drugs Control and Enforcement Act.

Offences related to terrorism

24. A person commits an offence under this paragraph who commits any offence under the Prevention of Terrorism Act.

Offences related to territorial sea and exclusive economic zone

25. A person commits an offence under this paragraph who commits any offence under the Territorial Sea and Exclusive Economic Zone Act.

Offences
related to
deep sea
fishing
Cap.388

26. A person commits an offence under this paragraph who commits an offence under section 18 of the Deep Sea Fishing Authority Act.

Offences
related to
mining
Cap.123

27. A person commits an offence under this paragraph who commits an offence under section 18 of the Mining Act.

Offences
related to
atomic energy
Cap.188

28. A person commits an offence under this paragraph who commits an offence under section 11, 13, 14 or 72 of the Atomic Energy Act.

Offences
related to
food and
drugs
Cap.219

29. A person commits an offence under this paragraph who commits an offence under section 32, 18 or 114 of the Tanzania Food and Drugs Control Act.

Offences
related to
extractive
industries
Cap.447

30. A person commits an offence under this paragraph who commits an offence under section 23 or 24 of the Tanzania Extractive Industries (Transparency and Accountability) Act.

Offences
related to fire
arms and
ammunition
Cap.223

31. A person commits an offence under this paragraph who commits an offence under section 20, 21 or 45 of the Fire Arms and Ammunition Control Act.

Offences
related to
armaments
Cap.246

32. A person commits an offence under this paragraph who commits any offence under the Armaments Control Act.

Offences
related to
forestry
Cap.323

33. A person commits an offence under this paragraph who commits an offence under section 86 or 89 of the Forest Act.

Offences
related to
petroleum
Cap.392

34. A person commits an offence under this paragraph who commits an offence under section 239 or 240 of the Petroleum Act.

Offences

35. A person commits an offence under this

related to oil and gas revenues Cap.328	paragraph who commits an offence under section 21 of the Oil and Gas Revenues Management Act.
Offences related to cyber Cap.443	36. A person commits an offence under this paragraph who commits an offence under section 6, 7, 8, 9, 10, 11, 12 or 19 of the Cyber Crimes Act.
Offences related to electronic and postal communications Cap.306	37. A person commits an offence under this paragraph who commits an offence under section 120, 122, 123 or 124 of the Electronic and Postal Communications Act.
Offences under the Penal Code Cap.16	38. A person commits an offence under this paragraph who commits an offence under section 66,96, 194A, 284A, or 318A of the Penal Code.
Offences related to whistleblower and witness protection Cap.446	39. A person commits an offence under this paragraph who commits offence under section 16 of the Whistleblower and Witness Protection Act.

SECOND SCHEDULE

OATHS OR AFFIRMATION OF WITNESSES

(Sections 48(2))

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."

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 366

THE EMPLOYMENT AND LABOUR RELATIONS ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Employment and Labour Relations Act, Chapter 366, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

CHAPTER 366

THE EMPLOYMENT AND LABOUR RELATIONS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

Section

Title

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CHAPTER 366

THE EMPLOYMENT AND LABOUR RELATIONS ACT

An Act to make provisions for core labour rights, to establish basic employment standards, to provide a framework for collective bargaining, to provide for the prevention and settlement of disputes, and to provide for related matters.

[20th DECEMBER, 2006]
[G.N.No.1 of 2007]

Acts Nos.
6 of 2004
8 of 2006
21 of 2009
2 of 2010
17 of 2010
24 of 2015
4 of 2016

**PART
PRELIMINARY PROVISIONS**

Short title **1.**This Act may be cited as the Employment and Labour Relations Act.

Application **2.**-(1) This Act shall apply to all employees including those in the public service of the Government of Tanzania in Mainland Tanzania but shall not apply to members, whether temporary or permanent, in the service of:

- (i) the Tanzania Peoples Defence Forces;
- (ii) the Police Force;
- (iii) the Prisons Service; or
- (iv) the national Service.

(2) The Minister may, after consultation with the Council and the relevant Minister responsible for the

service or services excluded under subsection (1) of this section, by notice published in the *Gazette*, determine the categories of employees employed in the said services who may be excluded services to whom this Act may apply.

(3) The provisions of sections 5, 6 and 7 shall apply to members of the forces and services referred to in subsection (1).

Objects

- 3.** The principal objects of this Act shall be -
- (a) to promote economic development through economic efficiency, productivity and social justice;
 - (b) to provide the legal framework for effective and fair employment relations and minimum standards regarding conditions of work;
 - (c) to provide a framework for voluntary collective bargaining;
 - (d) to regulate the resort to industrial action as a means to resolve disputes;
 - (e) to provide a framework for the resolution of disputes by mediation, arbitration and adjudication;
 - (f) to give effect to the provisions of the Constitution of the United Republic of Tanzania, 1977, in so far as they apply to employment and labour relations and conditions of work; and
 - (g) generally to give effect to the core Conventions of the International Labour Organisation as well as other ratified conventions.

Interpretation
Cap.300
Act No.
24 of 2015
s.4

4. In this Act, unless the context requires otherwise—

“arbitrator” means an arbitrator appointed under section 19 of the Labour Institutions Act;

“basic wage” means that part of an employee’s remuneration paid in respect of work done during the hours ordinarily worked but does not include -

- (a) allowances, whether or not based on the employee's basic wage;
- (b) pay for overtime worked in terms of section 19(5);
- (c) additional pay for work on a Sunday or a public holiday; or
- (d) additional pay for night work, as required under section 20(4);

“child” means a person under the age of 14 years; provided that for the employment in hazardous sectors, child means a person under the age of 18 years;

“collective agreement” means a written agreement concluded by a registered trade union and an employer or registered employers' association on any labour matter;

Cap.300 “Commission” means the Commission for Mediation and Arbitration established under section 12 of the Labour Institutions Act;

“complaint” means any dispute arising from the application, interpretation or implementation of -

- (a) an agreement or contract with an employee;
- (b) a collective agreement;
- (c) this Act or any other written law administered by the Minister;
- (d) Part VII of the Merchant Shipping Act;

Cap.72

Cap.300 “Council” means the Labour, Economic and Social Council established under section 3 of the Labour Institutions Act;

“dispute”-

- (a) means any dispute concerning a labour matter between any employer or registered employers' association on the one hand, and any employee or registered trade union on the other hand; and
- (b) includes an alleged dispute;

“dispute of interest” means any dispute except a complaint;

“employee” means an individual who—

- (a) has entered into a contract of employment; or
- (b) has entered into any other contract under which—
 - (i) the individual undertakes to work personally for the other party to the contract; and
 - (ii) the other party is not a client or customer of any profession, business, or undertaking carried on by the individual; or
- (c) is deemed to be an employee by the Minister under section 98(3);

“employer” means any person, including the Government and an executive agency, who employs an employee;

“employers’ association” means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and their employees or the trade unions representing those employees;

“employment” means the performance of a contract of employment by parties to the contract, under employer-employee relationship;

Cap. 300

"Essential Services Committee" means the Essential Services Committee established under section 29 of the Labour Institutions Act;

“federation” means either an association of trade unions or an association of employers’ associations;

Cap.300

“Labour Commissioner” means the Labour Commissioner appointed under section 43(1) of the Labour Institutions Act;

“Labour Court” means the Labour Division of the High Court established under section 50 of the Labour Institutions Act;

- “Labour matter” means any matter relating to employment or labour relations;
- “lockout” means a total or partial refusal by one or more employers to allow their employees to work, if that refusal is to compel them to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;
- Cap.300 “mediator” means a mediator appointed under section 19 of the Labour Institutions Act;
- “Minister” means the Minister for the time being responsible for labour;
- “operational requirements” means requirements based on the economic, technological, structural or similar needs of the employer;
- “organisation” means a trade union or an employers’ association;
- “protest action” means a total or partial stoppage of work by employees for the purpose of promoting or defending the socio-economic interests of workers but not for a purpose-
- (a) referred to in the definition of strike; or
 - (b) a dispute in respect of which there is a legal remedy;
- “registered organisation” means a registered trade union or registered employers’ association;
- Cap. 300 “Registrar” means the Registrar appointed under section 43(2) of the Labour Institutions Act;
- “reinstatement” means that the contract of employment has revived with all its incidents and that the employee is entitled to all his rights during the period of absence from actual service;
- “remuneration” means the total value of all payments, in money or in kind, made or owing to an employee arising from the employment of that employee;
- "strike" means a total or partial stoppage of work by employees if the stoppage is to compel their employer, any other employer, or an employers'

association to which the employer belongs, to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;

“specific task” means a task which is occasional or seasonal and is non-continuous in nature;

“trade union” means any number of employees associated together for the purpose, whether by itself or with other purposes, of regulating relations between employees and their employers or the employers’ associations to which the employers belong.

**PART II
FUNDAMENTAL RIGHTS AND PROTECTIONS**

Sub-Part A – Child Labour

Prohibition of
child labour
Act No.
21 of 2009
s.172

5.-(1) No person shall employ a child under the age of fourteen years.

(2) A child of fourteen years of age may only be employed to do light work, which is not likely to be harmful to the child’s health and development; and does not prejudice the child’s attendance at school, participation in vocational orientation or training programmes approved by the competent authority or the child’s capacity to benefit from the instruction received.

(3) A child under eighteen years of age shall not be employed in a mine, factory or as crew on a ship or in any other worksite including non-formal settings and agriculture, where work conditions may be considered hazardous by the Minister.

Cap 4
s. 8

(3A) For the purpose of subsection (3), “ship” includes a vessel of any description used for navigation.

(4) No person shall employ a child in employment-

- (a) that is inappropriate for a person of that age;
- (b) that places at risk the child’s well-being, education, physical or mental health, or spiritual, moral or social development.

(5) Notwithstanding the provisions of subsection (3), any written law regulating the provisions of training may permit a child under the age of eighteen to work-

- (a) on board a training ship as part of the child's training;
- (b) in a factory or a mine if that work is part of the child's training;
- (c) in any other worksites on condition that the health, safety and morals of the child are fully protected and that the child has received or is receiving adequate specific instruction or vocational training in the relevant work or activity.

(6) The Minister shall make regulations-

- (a) to prohibit, or place conditions on the employment and training of children under eighteen years of age;
- (b) to determine the forms of work referred to in sub-section (4) of this Act and to make provision for the regular revision and updating of the list of hazardous forms of work.

(7) It is an offence for any person-

- (a) to employ a child in contravention of this section;
- (b) to procure a child for employment in contravention of this section.

(8) In any proceedings under this section, if the age of the child is in issue, the burden of proving that it was reasonable to believe, after investigation, that the child was not underage for the purposes of this section shall lie on the person employing or procuring the child for employment.

(9) Without prejudice to the provisions of this section, every employer shall ensure that every child lawfully employed under this Act is protected against discrimination or acts which may have negative effect

on the child taking into consideration age and evolving capacities.

Sub-Part B: Forced Labour

Prohibition of forced labour

6.-(1) Any person who procures, demands or imposes forced labour, commits an offence.

(2) For the purposes of this section, forced labour includes bonded labour or any work exacted from a person under the threat of a penalty and to which that person has not consented but does not include-

Cap. 192

- (a) any work exacted under the National Defence Act, for work of a purely military character;
- (b) any work that forms part of the normal civic obligations of a citizen of the United Republic of Tanzania;
- (c) any work exacted from any person as a consequence of a conviction in a court of law, provided that the work is carried out under the supervision and control of a public authority and that the person is not hired to, or placed at, the disposal of private persons;
- (d) any work exacted in cases of an emergency or a circumstance that would endanger the existence or the well-being of the whole or part of the population;
- (e) minor communal services performed by the members of a community in the direct interest of that community after consultation with them or their direct representatives on the need for the services.

Sub-Part C: Discrimination

Prohibition of discrimination in work-place

7.-(1) Every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice.

(2) An employer shall register, with the Labour Commissioner, a plan to promote equal opportunity and to eliminate discrimination in the work place.

(3) The Labour Commissioner may require an employer –

- (a) to develop a plan prescribed in subsection (2); and
- (b) to register the plan with the Commissioner.

(4) No employer shall discriminate, directly or indirectly, against an employee, in any employment policy or practice, on any of the following grounds:

- (a) colour;
- (b) nationality;
- (c) tribe or place of origin;
- (d) race;
- (e) national extraction;
- (f) social origin;
- (g) political opinion or religion;
- (h) sex;
- (i) gender;
- (j) pregnancy;
- (k) marital status or family responsibility;
- (l) disability;
- (m) HIV/Aids;
- (n) age; or
- (o) station of life.

(5) Harassment of an employee shall be a form of discrimination and shall be prohibited on any one, or combination, of the grounds prescribed in subsection (4).

(6) it is not discrimination -

- (a) to take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace;
- (b) to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job; or

Cap.243

- (c) to employ citizens in accordance with the National Employment Promotion Services Act.
- (7) Any person who contravenes the provisions of subsections (4) and (5), commits an offence.
- (8) In any proceedings -
 - (a) where the employee makes out a *prima facie* case of discrimination by the employer on any of the grounds prescribed in subsection (4), it shall be the duty of the employer to prove-
 - (i) that the discrimination did not take place as alleged; or
 - (ii) that the discriminatory act or omission is not based on any of those grounds;
 - (b) employer shall prove a defence in terms of subsection (6) if the discrimination did take place on a ground stipulated in subsection (5); or
 - (c) the Labour Court or arbitrator, as the case may be, shall take into account any plan registered with the Labour Commissioner under this section.
- (9) For the purposes of this section -
 - (a) “employer” includes an employment agency;
 - (b) “employee” includes an applicant for employment;
 - (c) an “employment policy or practice” includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance

evaluation systems, promotion transfer, demotion, termination of employment and disciplinary measures.

(10) For the avoidance of doubt every employer shall take positive steps to guarantee equal remuneration for men and women for work of equal value.

Prohibition of discrimination in trade unions and employer associations

8.-(1) No trade union or employers' association shall discriminate, directly or indirectly, against any of the grounds prescribed in subsection (4) of section 7-

- (a) in its admission, representation or termination of membership;
- (b) in any employment policy or practice prescribed in sub-section (9) of section 7; or
- (c)) in any collective agreement.

(2) Any person who contravenes the provisions of subsection (1), commits an offence.

Sub-Part D – Freedom of Association

Employee's right to freedom of association

9.-(1) Every employee shall have the right –

- (a) to form and join a trade union; or
- (b) to participate in the lawful activities of the trade union.

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

- (a) a magistrate may only form or join a trade union that restricts its membership to judicial officers;
- (b) a prosecutor may only form or join a trade union that restricts its membership to prosecutors or other court officials;
- (c)) a senior management employee may not belong to a trade union that represents the non-senior management employees of the employer.

(3) No person shall discriminate against an employee on the grounds that the employee—

- (a) exercises or has exercised any right under this Act or any other written law administered by the Minister;
- (b) belongs to or has belonged to a trade union; or
- (c) participates or has participated in the lawful activities of a trade union.

(4) No person shall discriminate against an official of an office bearer of a trade union or federation for representing it or participating in its lawful activities.

(5) Any person who contravenes the provisions of subsections (3) and (4), commits an offence.

(6) For the purposes of this section -

- (a) “employee” includes an applicant for employment;
- (b) “senior management employee” means an employee who, by virtue of that employee’s position-
 - (i) makes policy on behalf of the employer; and
 - (ii) is authorized to conclude collective agreements on behalf of the employer.

Employer’s right to freedom of association

10.-(1) Every employer shall have the right –

- (a) to form and join an employer’s association; or
- (b) to participate in the lawful activities of an employer’s association.

(2) No person shall discriminate against an employer on the grounds that the employer –

- (a) exercises or has exercised a right under the Act;
- (b) belongs or has belonged to an employees association; or

(c) participates or has participated in the lawful activities of an employer's association.

(3) No person shall discriminate against an official or office bearer of an employer's association or federation for representing it or participating in its lawful activities.

(4) Any person who contravenes the provisions of subsections (2) and (3), commits an offence.

Rights of trade unions and employers' associations

11. Every organisation has the right to-

- (a) determine its own constitution;
- (b) plan and organise its administration and lawful activities;
- (c) join and form a federation;
- (d) participate in the lawful activities of a federation;
- (e) affiliate with, and participate in the affairs of any international workers' organisation or international employers' organisation or the International Labour Organisation, and to contribute to, or receive financial assistance from those organisations.

**PART III
EMPLOYMENT STANDARDS**

Sub-Part A - Preliminary

Application of this Part

Cap.72

12.-(1) Subject to the provisions of subsection (2), the provisions of Sub-Parts A to D and F shall not apply to seafarers whose terms and conditions of employment are regulated under the Merchant Shipping Act.

(2) Notwithstanding the provisions of subsection (1), the provisions of this Part apply to seafarers who work on fishing vessels and shall be to the extent that in the event there is any conflict between the provisions of this Act and the Merchant

Shipping Act and its regulations, the provisions of this Act shall prevail.

Cap.72

(3) Where the provisions of any written law relating to vocational training regulates an employment standard stipulated in section 13(1), the provisions of that other law shall apply.

Employment standards

13.-(1) Provisions of this Act on wage determination that stipulate a minimum term and condition of employment shall be an employment standard.

(2) An employment standard constitutes a term of a contract with an employee unless-

- (a) a term of the contract contains a term that is more favourable to the employee;
- (b) a provision of an agreement alters the employment standard to the extent permitted by the provisions of this Part;
- (c) a provision of any collective agreement, a written law regulating employment, wage determination or exemption granted under section 100 alters the employment standard.

Contracts with employees
Act No.
24 of 2015
s.5

14.-(1) A contract with an employee shall be of the following types-

- (a) a contract for an unspecified period of time;
- (b) a contract for a specified period of time for professionals and managerial cadre;
- (c) a contract for a specific task.

(2) A contract with an employee shall be in writing if the contract provides that the employee is to work within or outside the United Republic of Tanzania.

Written statement of particulars

15.-(1) Subject to the provisions of subsection (2) of section 19, an employer shall supply an employee, when the employee commences

employment, with the following particulars in writing, namely-

- (a) name, age, permanent address and sex of the employee;
- (b) place of recruitment;
- (c) job description;
- (d) date of commencement;
- (e) form and duration of the contract;
- (f) place of work;
- (g) hours of work;
- (h) remuneration, the method of its calculation, and details of any benefits or payments in kind; and
- (i) any other prescribed matter.

(2) If all the particulars referred to in subsection (1) are stated in a written contract and the employer has supplied the employee with that contract, then the employer may not furnish the written statement referred to in section 14.

(3) If an employee does not understand the written particulars, the employer shall ensure that they are explained to the employee in a manner that the employee understands.

(4) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the written particulars to reflect the change and notify the employee of the change in writing.

(5) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.

(6) If in any legal proceedings, an employer fails to produce a written contract or the written particulars prescribed in subsection (1), the burden of proving or disproving an alleged term of employment stipulated in subsection (1) shall be on the employer.

(7) The provisions of this section shall not apply to an employee who works less than 6 days in a month for an employer.

Informing employees of their rights

16. Every employer shall display a statement in the prescribed form of the employee’s rights under this Act in a conspicuous place.

Sub-Part B – Hours of work

Application of this Sub-Part

17.-(1) The provisions of this Sub-Part shall not apply to employees who manage other employees on behalf of the employer and who report directly to a senior management employee specified in section 9(6)(b).

(2) The provisions of sections 19(1), 19(3) and 23(1), 24(1) and 25(1) shall not apply to work in an emergency which cannot be performed by employees during their ordinary hours of work.

Interpretation

18. For the purposes of this Sub-Part-

- (a) “day” means a period of 24 hours measured from the time when the employee normally starts work, and “daily” has a corresponding meaning;
- (b) overtime” means work over and above ordinary hours of work;
- (c) “week” means a period of seven days measured from the day the employee normally starts the working week and “weekly” has a corresponding meaning.

Hours of work

19.-(1) Subject to the provisions of this Sub-Part, an employer shall not require or permit an employee to work more than 12 hours in any day.

(2) Subject to this Sub-Part, the maximum number of ordinary days or hours that an employee may be permitted or required to work are-

- (a) six days in any week;
- (b) 45 hours in any week; and
- (c) nine hours in any day.

(3) Subject to this Sub-Part, an employer shall not require or permit an employee to work overtime-

- (a) except in accordance with an agreement; and
 - (b) more than 50 overtime hours in any four week cycle.
- (4) An agreement under subsection (3) may not require an employee to work more than the 12-hour limit contained in subsection (1).
- (5) An employer shall pay an employee not less than one and one-half times the employee's basic wage for any overtime worked.

Night work

20.-(1) In this section, "night" means the hours after twenty hours and before six hours.

(2) It is prohibited for an employer to require or permit—

- (a) pregnant employees to work at night—
 - (i) two months before the expected date of confinement; or
 - (ii) before that date if the employee produces a medical certificate that she is no longer fit to perform night work;
- (b) mothers to work at night—
 - (i) for a period of 2 months after the date of birth;
 - (ii) before that date if the mother requests to work and produces a medical certificate that her and the baby's health shall not be endangered;
 - (iii) after that date if the mother produces a medical certificate that she is not yet fit to perform night work or that the baby's health does not permit the employee to work night shift;
- (c) children under 18 years of age;
- (d) an employee who is medically certified as unfit to do night work.

(3) An employer shall transfer any employee working night shift who becomes certified as unfit to do night work unless it is impracticable.

(4) An employer shall pay an employee at least 5% of that employee's basic wage for each hour worked at night and if the hours worked are overtime hours, the 5% shall be calculated on the employee's overtime rate.

(5) For the purposes of this section, a medical certificate means a certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

Compressed
working week

21.-(1) A written agreement shall require or permit an employee to work up to twelve hours in a day, inclusive of any meal interval, without receiving overtime pay.

(2) An agreement under subsection (1) shall not require or permit an employee to work-

- (a) more than 5 days in a week;
- (b) more than 45 hours in a week;
- (c) more than 10 hours overtime in a week.

Averaging hours
of work

22.-(1) Notwithstanding the provisions of section 19 or 24, a collective agreement shall provide for the averaging of the ordinary and overtime hours of work over an agreed period.

(2) A collective agreement in subsection (1) shall not require or permit an employee to work more than an average of—

- (a) 40 ordinary hours of work per week calculated over the agreed period;
- (b) ten hours overtime per week calculated over the agreed period.

(3) A collective agreement prescribed in subsection (1) shall not permit averaging for a period longer than a year.

Break in working day

23.-(1) Subject to this Part, an employer shall give an employee who work continuously for more than five hours a break of at least 60 minutes.

(2) An employer may require an employee to work during a break only if the work cannot be left unattended or cannot be performed by another employee.

(3) An employer shall not be obliged to pay an employee for the period of a break unless the employee is required to work, or to be available for work, during the break.

Daily and weekly rest periods

24.-(1) An employer shall allow an employee—

(a) a daily rest period of at least 12 consecutive hours between ending and recommencing work;

(b) a weekly rest period of at least 24 hours between the last ordinary working day in the week and the first ordinary working day of the next week.

(2) A daily rest period may be reduced to 8 hours if—

(a) there is a written agreement to that effect; and

(b) the ordinary working hours are interrupted by an interval of at least three hours; or

(c) the employee lives on the premises of the workplace.

(3) A weekly rest period may, by written agreement, provide for-

(a) a rest period of at least 60 consecutive hours every two weeks; or

(b) a reduced weekly rest period by 8 hours if the rest period in the following week is extended equivalently.

(4) An employee may only work during the weekly rest period referred to in subsection (1) if the employee has agreed to do so and provided that the

employer shall pay the employee double the employee's hourly basic wage for each hour worked during the period.

Public holidays
Cap.93

25. If an employee works on a public holiday specified in the Public Holidays Act, the employer shall pay the employee double the employee's basic wage for each hour worked on that day.

Sub-Part C - Remuneration

Calculation of
wage rates

26.-(1) The provisions of this section apply, when, for any purpose of this Act, it is necessary to determine the applicable hourly, daily, weekly or monthly rate of pay.

(2) The hourly, daily, weekly or monthly wage rates shall be determined in accordance with the Table provided for in the First Schedule.

(3) Where an employee is employed on a basis other than time worked, that employee shall be considered, for the purposes of this section, to be paid on a weekly basis and that employee's basic weekly wage shall be calculated on the amount earned—

- (a) over the immediately preceding 13 weeks; or
- (b) if the employee has been in employment for less than 13 weeks, that period.

Payment of
remuneration

27.-(1) An employer shall pay to an employee any monetary remuneration to which the employee is entitled—

- (a) during working hours at the place of work on the agreed pay day;
- (b) in cash, unless the employee agrees otherwise, in which case the payment shall be made either by—
 - (i) cheque payable to the employee;
 - or

(ii) direct deposit into an account designated by the employee in writing; and

(c) in a sealed envelope, if the payment is made in cash or by cheque.

(2) Each payment prescribed in subsection (1) shall be supported by a written statement of particulars in the prescribed form from which—

(a) shall accompany the payment if the payment is in cash or by cheque; or

(b) shall be given to the employee in a sealed envelope if the payment is by direct deposit.

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s.8

(3) Remuneration shall be due and payable at the end of contract period provided the employer may pay an advance before the due day on a mutually agreed day and, if such day is not agreed, at least once on completion of half the contract period; such advance shall not be considered a loan and shall not attract interest.

(4) Notwithstanding the provisions of subsection (1), the Minister may by regulations, provide for the partial payment of remuneration in the form of allowance in kind, but in no case alcoholic beverages or noxious drugs, in industries or occupations in which payment in the form of such allowance is customary or desirable, and any such allowance in kind shall be for the personal use of the employee and his or her family, and the value attributed to such allowance shall be fair and reasonable.

(5) Any employer who contravenes the provisions of this section, commits an offence.

Deductions and other acts concerning remuneration

28.-(1) An employer shall not make any deduction from an employee's remuneration unless—

(a) the deduction is required or permitted under a written law, collective agreement, wage determination, court order or arbitration award; or

(b) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt.

(2) A deduction under subsection (1)(b) may be made to reimburse an employer for loss or damage only if—

- (a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
- (b) the employer has submitted to the employee, in writing, the cause, the amount and calculation of the debt;
- (c) the employer has given the employee a reasonable opportunity to challenge the cause, amount or calculation;
- (d) the total amount of the debt does not exceed the actual amount of the loss or damage;
- (e) the total deductions from the employee's remuneration under this subsection do not exceed one quarter of the employee's remuneration in money.

(3) An agreement to make a deduction under subsection (1)(b) in respect of goods or services purchased by the employee shall specify the cause, amount and calculation of the debt.

(4) An employer who deducts an amount from an employee's remuneration under subsection (1) for payment to another person shall pay the amount to the person in accordance with any requirements specified in the agreement, law, determination, court order or arbitration award.

(5) An employer shall not require or permit an employee to—

- (a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or

(b) acknowledge receipt of an amount greater than the remuneration actually received.

(6) Notwithstanding the provisions of any other law on bankruptcy or winding up of an employer's business, the claim of an employee or those claiming on behalf of the employee of any remuneration to which the employee is entitled under this Act, shall be the claim that which have accrued in respect of the twenty six weeks immediately preceding the date on which the declaration of bankruptcy or winding-up is made.

(7) Any person who contravenes the provisions of this section, commits an offence.

Sub-Part D - Leave

Application of this Sub-Part

29.-(1) Subject to the provisions of subsection (2), an employee with less than six months service shall not be entitled to paid leave under the provisions of this Part.

(2) Notwithstanding the provisions of subsection (1)—

- (a) an employee employed on a seasonal basis is entitled to paid leave under the provisions of this Part;
- (b) an employee, with less than six months service and who has worked more than once in a year for the same employer, shall be entitled to paid leave under the provisions of this Part if the total period worked for that employer exceeds six months in that year.

Interpretation in this Sub-Part

30.-(1) For the purpose of this Sub-Part-

- (a) "day" includes any rest period prescribed in section 24;
- (b) "leave cycle" means—

- (i) in respect of annual leave, a period of 12 months consecutive employment with an employer following-
 - (aa) subject to subsection (2), an employee's commencement of employment; or
 - (bb) the completion of the last 12 months leave cycle.;
- (ii) in respect of all other forms of leave conferred under this Sub-Part, a period of 36 months' consecutive employment with an employer following-
 - (aa) subject to subsection (2), an employee's commencement of employment; or
 - (bb) the completion of the last 36 months leave cycle;
- (c) "paid leave" means any leave paid under this Part and calculated on an employee's basic wage.

(2) Notwithstanding the provisions of subsection (1)(b)(i)(aa) and (ii)(aa), an employer and employee may agree to a standard leave cycle provided that an employee's entitlement to paid leave under this Sub-Part is not prejudiced.

Annual leave
Act No.
24 of 2015
s.6

31.-(1) An employer shall grant an employee at least 28 consecutive days' leave in respect of each leave cycle, and such leave shall be inclusive of any public holiday that may fall within the period of leave.

(2) The number of days referred to in subsection (1) may be reduced by the number of days during the leave cycle which, at the request of the employee, the employer granted that employee paid occasional leave.

(3) An employer may determine when the annual leave is to be taken provided that it is taken no later than—

- (a) six months after the end of the leave cycle; or
- (b) twelve months after the end of the leave cycle if—
 - (i) the employee has consented; and
 - (ii) the extension is justified by the operational requirements of the employer.

(4) An employer shall pay an employee the remuneration the employee would have been paid had the employee worked during the period of leave before the commencement of the leave.

(5) An employer shall not require or permit an employee to take annual leave in place of any leave to which the employee is entitled under this Part.

(6) With the consent of an employee, the employer may require or permit such employee to work for the employer during a period of annual leave on condition that such employee shall not work for a continuous period of two years.

(7) Subject to subsections (6) and (8) an employer shall pay the employee one month salary *in lieu* of annual leave to which that employee is entitled or was called upon to work.

(8) An employer shall pay an employee a *pro rata* amount for annual leave accrued-

- (a) subject to the provisions of subsection (9), at the termination of employment; or
- (b) at the expiry of each season in respect of an employee employed on a seasonal basis.

(9) An employee is not entitled to be paid any *pro rata* amount for accrued annual leave if the employee has not taken the leave within the periods and circumstances prescribed in subsection (3).

(10) The *pro rata* amount of annual leave referred to in subsection (8) shall be calculated at the rate of one day's basic wage for every 13 days the employee worked or was entitled to work.

Sick leave

32.-(1) An employee shall be entitled to sick leave for at least 126 days in any leave cycle.

(2) The sick leave referred to in subsection (1) shall be calculated as follows-

- (a) the first 63 days shall be paid full wages;
- (b) the second 63 days shall be paid half wages.

(3) Notwithstanding the provisions of subsection (2), an employer shall not be required to pay an employee for sick leave if—

- (a) the employee fails to produce a medical certificate; or
- (b) the employee is entitled to paid sick leave under any law, fund or collective agreement.

(4) For the purposes of this section, “medical certificate “means a certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

Maternity leave

33.-(1) An employee shall give notice to the employer of her intention to take maternity leave at least 3 months before the expected date of birth and such notice shall be supported by a medical certificate.

(2) An employee may commence maternity leave—

- (a) at any time from four weeks before the expected date of confinement;
- (b) on an earlier date if a medical practitioner certifies that it is necessary for the employee's health or that of her unborn child.

(3) No employee shall work within six weeks of the birth of her child unless a medical practitioner certifies that she is fit to do so.

(4) Subject to the provisions of subsections (2) and (3), the employee may resume employment on the same terms and conditions of employment at the end of her maternity leave.

(5) No employer shall require or permit a pregnant employee or an employee who is nursing a child to perform work that is hazardous to her health or the health of her child.

(6) Subject to the provisions of subsections (7) and (8), an employee shall be entitled, within any leave cycle, to at least—

- (a) 84 days paid maternity leave; or
- (b) 100 days' paid maternity leave if the employee gives birth to more than one child at the same time.

(7) Notwithstanding the provisions subsection (6)(a), an employee is entitled to an additional 84 days paid maternity leave within the leave cycle if the child dies within a year of birth.

(8) An employer is only obliged to grant paid leave for 4 terms of maternity leave to an employee in terms of this section.

(9) Where an employee performs work that is hazardous to her health or that of her child, her employer shall offer her suitable alternative employment, if practicable, on terms and conditions that are no less favourable than her terms and conditions.

(10) Where an employee is breast-feeding a child, the employer shall allow the employee to feed the child during working hours up to a maximum of two hours per day.

(11) For the purposes of this section, “medical certificate” means a certificate issued by a registered medical practitioner, including a midwife, or any other

medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

Paternity and other forms of leave

34.-(1) During any leave cycle, an employee shall be entitled to-

- (a) at least 3 days paid paternity leave if—
 - (i) the leave is taken within 7 days of the birth of a child; and
 - (ii) the employee is the father of the child;
- (b) at least 4 days paid leave for any of the following reasons -
 - (i) the sickness or death of the employee's child;
 - (ii) the death of the employee's spouse, parent, grandparent, grandchild or sibling

(2) Before paying an employee for leave under this section, an employer may require reasonable proof of the event prescribed in subsection (1).

(3) For the purpose of clarity-

- (a) the 3 days referred to in subsection (1)(a) are the total number of days to which the employee is entitled irrespective of how many of the employee's children are born within the leave cycle;
- (b) the 4 days referred to in subsection (1)(b) are the total number of days to which the employee is entitled irrespective of how many of the events prescribed in that paragraph occur within the leave cycle, but the employee may take more days as may be authorised by the employer for the event and other subsequent events within the same leave cycle provided that such extra days will be without pay.

- (b) that the reason is a fair reason-
 - (i) related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer, and
- (c) that the employment was terminated in accordance with a fair procedure.

(3) It shall not be a fair reason to terminate the employment of an employee -

Cap. 4
s.8

- (a) for the reason that the employee -
 - (i) discloses information that the employee is entitled or required to disclose to another person under this Act or any other law;
 - (ii) fails or refuses to do anything that an employer may not lawfully permit or require the employee to do;
 - (iii) exercises any right conferred by agreement, this Act or any other law;
 - (iv) belongs, or belonged, to any trade union; or
 - (v) participates in the lawful activities of a trade union, including a lawful strike;
- (b) for reasons -
 - (i) related to pregnancy;
 - (ii) related to disability; and
 - (iii) that constitute discrimination under this Act.

(4) In deciding whether a termination by an employer is fair, an employer, arbitrator or Labour Court shall take into account any Code of Good Practice published under section 99.

(5) No disciplinary action in form of penalty, termination or dismissal shall lie upon an employee

who has been charged with a criminal offence which is substantially the same until final determination by the Court and any appeal thereto.

Termination based
on operational
requirements
Acts Nos.
17 of 2010
s.8
24 of 2015
s.7

38.-(1) In any termination for operational requirements (retrenchment), the employer shall comply with the following principles, that is to say, he shall-

- (a) give notice of any intention to retrench as soon as it is contemplated;
- (b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation;
- (c) consult prior to retrenchment or redundancy on –
 - (i) the reasons for the intended retrenchment;
 - (ii) any measures to avoid or minimize the intended retrenchment;
 - (iii) the method of selection of the employees to be retrenched;
 - (iv) the timing of the retrenchments; and
 - (v) severance pay in respect of the retrenchments,
- (d) give the notice, make the disclosure and consult, in terms of this subsection, with-
 - (i) any trade union recognized in terms of section 67;
 - (ii) any registered trade union which members in the workplace not represented by a recognised trade union;
 - (iii) any employees not represented by a recognized or registered trade union.

(2) Where in the consultations held in terms of sub-section (1) no agreement is reached between the

parties, the matter shall be referred to mediation under Part VIII of this Act..

(3) Where the mediation has failed, the dispute shall be referred for arbitration which shall be concluded within thirty days during which period no retrenchment shall take effect and, where the employees are dissatisfied with the award and are desirous to proceed with revision to the Labour Court under section 91(2), the employer may proceed with their retrenchment.

Proof in unfair termination proceedings

39. In any proceedings concerning unfair termination of an employee by an employer, the employer shall prove that the termination is fair.

Remedies for unfair termination

40.-(1) If an arbitrator or Labour Court finds a termination is unfair, the arbitrator or Court may order the employer –

- (a) to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination; or
- (b) to re-engage the employee on any terms that the arbitrator or Court may decide; or
- (c) to pay compensation to the employee of not less than twelve months remuneration.

(2) An order for compensation made under this section shall be in addition to, and not a substitute for, any other amount to which the employee may be entitled in terms of any law or agreement.

(3) Where an order of reinstatement or re-engagement is made by an arbitrator or Court and the employer decides not to reinstate or re-engage the employee, the employer shall pay compensation of twelve months wages in addition to wages due and other benefits from the date of unfair termination to the date of final payment.

Sub-Part F– Other incidents of Termination

Notice of
termination

41.-(1) If a contract of employment can be terminated on notice, the period of notice shall not be less than-

- (a) seven days, if notice is given in the first month of employment; and
- (b) after that -
 - (i) 4 days, if the employee is employed on a daily or weekly basis; or
 - (ii) 28 days, if the employee is employed on a monthly basis.

(2) An agreement may provide for a notice period that is longer than that required in subsection (1) provided that, the agreed notice period is of equal duration for both the employer and the employee.

(3) Notice of termination shall be in writing, stating –

- (i) the reasons for termination; and
- (ii) the date on which the notice is given.

(4) Notice of termination shall not be given -

- (a) during any period of leave taken under this Act;’ or
- (b) to run, concurrently with any such period of leave.

(5) Instead of giving an employee notice of termination, an employer may pay the employee the remuneration that the employee would have received if the employee had worked during the notice period.

(6) Where an employee refuses to work during the notice period, an employer may deduct, from any money due to that employee on termination, the amount that would have been due to the employee if that employee had worked during the notice period.

(7) Nothing in this section shall affect the right of -

- (a) an employee to dispute the lawfulness or fairness of a termination of employment under this Act or any other law;
- (b) an employer or an employee to terminate employment without notice for any cause recognised by law.

Severance pay
Act No.
2 of 2010
s.13

42.-(1) For the purposes of this section, “severance pay” means an amount at least equal to 7 days’ basic wage for each completed year of continuous service with that employer up to a maximum of ten years.

(2) An employer shall pay severance pay on termination of employment if –

- (a) the employee has completed 12 months continuous service with an employer; and
 - (b) subject to the provisions of subsection (3), the employer terminates the employment.
- (3) The provisions of subsection (2) shall not apply -

- (a) to a fair termination on grounds of misconduct;
- (b) to an employee who is terminated on grounds of capacity compatibility or operational requirements of the employer but who unreasonably refuses to accept alternative employment with that employer or any other employer; or
- (c) to an employee who attains the age of retirement or an employee whose contract of service has expired or ended by reason of time.

(4) The payment of severance pay under this section shall not affect an employee's right to any other amount payable under this or any other written law.

Transport to place
of recruitment

43.-(1) Where an employee’s contract of employment is terminated at a place other than where the employee was recruited, the employer shall either-

- (a) transport the employee and his personal effects to the place of recruitment;
- (b) pay for the transportation of the employee to the place of recruitment; or
- (c) pay the employee an allowance for transportation to the place of recruitment in accordance with subsection (2) and daily subsistence expenses during the period, if any, between the date of termination of the contract and the date of transporting the employee and his family to the place of recruitment.

(2) An allowance prescribed under subsection (1)(c) shall be equal to at least a bus fare to the bus station nearest to the place of recruitment.

(3) For the purposes of this section, “recruit” means the solicitation of any employee for employment by the employer or the employer’s agent.

Payment of termination and certificates of employment

44.-(1) On termination of employment, an employer shall pay an employee -

- (a) any remuneration for work done before the termination;
- (b) any annual leave pay due to an employee under section 31 for leave that the employee has not taken;
- (c) any annual leave pay accrued during any incomplete leave cycle determined in accordance with section 31(1);
- (d) any notice pay due under section 41(5); and
- (e) any severance pay due under section 42;
- (f) any transport allowance that may be due under section 43.

(2) On termination, the employer shall issue to an employee a prescribed certificate of service.

**PART IV
TRADE UNIONS, EMPLOYERS ASSOCIATIONS AND
FEDERATIONS**

Obligation to register

45.-(1) A trade union or employers' association shall register itself under this Part within 6 months of its establishment.

(2) A federation may register if it meets the requirements for registration of a federation in terms of section 46(3).

(3) It is an offence for a trade union or employer's association to operate as a union or association-

- (a) after 6 months have expired of its establishment if it has not applied for registration under this Part; or
- (b) unless it is registered under this Part.

Requirements for registration

46.-(1) The requirements for registration as a trade union are:

- (a) it is a *bonafide* trade union;
- (b) it is an association not for gain;
- (c) it is independent of any employer or employer's association;
- (d) it has been established at a meeting of at least 20 employees;
- (e) it has adopted a constitution and rules that comply with provisions of section 47;
- (f) it has adopted a name that does not resemble the name of another union so as to mislead or create confusion; and
- (g) it has an address in the United Republic of Tanzania.

(2) The requirements for registration as an employers' association are:

- (a) it is a *bona fide* employees association;
- (b) it is an association not for gain;
- (c) it has been established at a meeting of at least four employers;

- (d) it has adopted a constitution and rules that comply with provisions of section 47;
 - (e) it has adopted a name that does not resemble the name of another employer association so as to mislead or create confusion; and
 - (f) it has an address in the United Republic of Tanzania.
- (3) The requirements for registration as a federation are:
- (a) it is a bona fide employees association;
 - (b) it is a federation not for gain;
 - (c) it has been established at a meeting of at least five registered organizations of the same kind;
 - (d) it has adopted a constitution and rules that comply with section 47;
 - (e) it has adopted a name that does not resemble the name of another organization or federation so as to mislead or create confusion;
 - (f) it comprises registered organizations only; and
 - (g) it has an address in the United Republic of Tanzania.

Constitutional requirements

47.-(1) The constitution and rules of a trade union, employers' association or federation shall –

- (a) state that it is an organization not for gain;
- (b) prescribe the qualifications for membership and the grounds and procedure for termination of membership;
- (c) prescribe the membership fee or any method of determining the fee;
- (d) prescribe rules for the convening and conduct of meetings, including the quorum required, and the minutes to be kept of, those meetings;

- (e) establish the manner in which decisions are made;
- (f) establish the office of secretary and define its functions;
- (g) provide for office bearers, officials and define their respective functions;
- (h) prescribe a procedure for the nomination and election of office bearers;
- (i) prescribe a procedure for the appointment or nomination or election of officials;
- (j) establish the circumstances and manner in which office bearers, officials and trade union representatives may be removed from office;
- (k) establish the circumstances and manner in which a ballot shall be conducted;
- (l) provide for the conduct of a ballot of the members in respect of whom-
 - (i) in the case of a trade union, the union may call upon to strike;
 - (ii) in the case of an employers' association, the association may call upon to lock out;
 - (iii) in the case of a federation of trade unions, the federation may call upon to engage in protest action;
- (m) provide for banking and investing of money;
- (n) establish the purposes for which its money may be used;
- (o) provide for acquiring and controlling of property;
- (p) prescribe a procedure for the amendment of the constitution and rules;
- (q) prescribe a procedure for affiliation, or amalgamation—
 - (i) in the case of trade unions, with other registered unions;

- (ii) in the case of employer associations, with other registered associations;
- (iii) in the case of federations, with other federations;
- (r) prescribe a procedure for affiliation to an international workers' association or an international employers' association;
- (s) prescribe a procedure to dissolve the organisation or federation;
- (t) any other prescribed matter.
- (2) A constitution or rules of a registered organisation shall not -
 - (a) conflict with -
 - (i) the basic rights and duties set out in Part III of the Constitution of the United Republic of Tanzania, 1977;
 - (ii) the provisions of this law or any other written law; or
 - (b) evade any obligation imposed by any law.

Process of registration

- 48.**-(1) Any organisation or federation may apply for registration, by submitting to the Registrar-
- (a) a prescribed form that has been properly completed and signed by the secretary of the organisation or federation;
 - (b) a certified copy of the attendance register and minutes of its establishment meeting prescribed in section 46(1)(d), (2)(c) or (3)(c); and
 - (c) a certified copy of its constitution and rules.
- (2) Notwithstanding the provisions of subsection (1), the Registrar may require further information in support of the application.
- (3) Where the Registrar is satisfied that the organisation or federation has complied with the

requirements of sections 46 and 47, he shall register the organisation or federation.

(4) Where the Registrar is not satisfied that the organisation or federation complies with the requirements of sections 46 and 47, he—

- (a) may give the applicant an opportunity to rectify its application within a stipulated period;
- (b) may refuse the application and send the applicant a written notice of the decision and the reasons

(5) After registering an organisation or federation, the Registrar shall-

- (a) enter the name of the organisation or federation in the appropriate register;
- (b) issue a certificate of registration to the organisation or federation.

Effect of registration

49.(1) On registration, an organization or federation shall be a body corporate -

- (a) with perpetual succession and a common seal;
- (b) with the capacity, in its own name, to -
 - (i) sue and be sued;
 - (ii) contract; and
 - (iii) hold, purchase or otherwise acquire and dispose of movable or immovable property.

(2) A registered organisation or federation shall not be an association in restraint of trade.

(3) The fact that a person is a member of a registered organisation or federation shall not make that person liable for any of the obligations or liabilities of the union or organisation.

(4) A member; office bearer, official of a registered organisation or federation shall not be personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith

while performing their functions for or on behalf of the organisation or federation.

(5) A duly issued certificate of registration is sufficient proof that a registered organisation or federation is a body corporate.

(6) For the purposes of this section, “office bearer” in relation to a trade union includes a trade union representative prescribed in section 62.

Change of name or constitution

50.-(1) Any change of name or change to the constitution and rules of a registered organisation or federation shall have effect only when the Registrar approves the change under this section.

(2) A registered organisation or federation may apply for the approval of a change of name or to its constitution and rules by submitting to the Registrar-

- (a) the prescribed form duly completed and signed by the secretary;
- (b) a copy of the resolution containing the wording of the change; and
- (c) a certificate signed by the secretary stating that the resolution was passed in accordance with the constitution rules.

(3) Notwithstanding the provisions of subsection (2), the Registrar may require further information in support of the application.

(4) The Registrar shall -

- (a) consider the application and any further information supplied by the applicant; and
- (b) if satisfied that the change to the constitution and rules complies with the requirements prescribed in sections 46 and 47, approve the change by issuing the prescribed certificate approving the change;
- (c) if satisfied that the change of name does not resemble the name of another union so as to mislead or create confusion, approve the change by issuing a new

certificate of registration reflecting the new name.

(5) Where the Registrar refuses to approve a change, he shall give written notice of that decision and the reasons for the refusal.

Accounts and audits

51.-(1) Every registered organisation and federation shall, to the standards of generally accepted accounting practice, principles and procedures-

- (a) keep books and records of its income, expenditure, assets and liabilities;
- (b) for each financial year ending on 31 December, prepare financial statements in the prescribed form;
- (c) arrange an annual audit of its books and records of accounts and its financial statements by a registered auditor;
- (d) by 31 March of the following year, submit the financial statements and auditor's report to-
 - (i) a meeting of members or their representatives as provided for in the constitution of the organisation or federation; and
 - (ii) the Registrar.

(2) Every registered organisation and federation shall make its financial statements and auditor's report available to members for inspection at its offices.

Duties of registered organizations and federations

52.-(1) In addition to the records required by section 51, every registered organisation or federation shall keep for five years-

- (a) a list of its members in the prescribed form;
- (b) the minutes of its meetings;
- (c) the ballot papers.

(2) Every registered organisation or federation shall provide to the Registrar-

- (a) by 31 March of the following year, an annual statement certified by the secretary showing the total number of members as of 31 December of the previous year;
- (b) within 30 days of a request from the Registrar, a written explanation of anything relating to the statement of membership, the auditor's report or the financial statements:

Provided that, the Registrar shall not inquire into the financial affairs of any organisation unless there are serious grounds for believing that the organisation has infringed the law or that the funds of the organization have been embezzled or otherwise misused;

- (c) within 30 days of any appointment or election of its national office bearers, the names and work addresses of those office bearers;
- (d) 30 days before a new address for service of documents will take effect, notice of that change of address.

Non-compliance
with constitution

53.-(1) Where a federation or registered organisation fails to comply with its constitution, the Registrar or member of the federation or registered organisation may apply to the Labour Court for any appropriate order including-

- (a) setting aside any decision, agreement or election;
- (b) requiring the organisation or federation or any official thereof to-
 - (i) comply with the constitution;
 - (ii) take steps to rectify the failure to comply;
- (c) restraining any person from any action not in compliance with the constitution.

(2) Before the Labour Court hears an application prescribed in subsection (1), it shall satisfy itself that-

- (a) the organisation's or federation's internal procedures have been exhausted; or
- (b) it is in the best interests of the organisation or federation that the application be heard notwithstanding that any internal procedures have not been exhausted.

Amalgamation of registered organizations and federations

54.-(1) Any registered –

- (a) trade union may resolve to amalgamate with one or more registered trade unions; and
- (b) employer's association may resolve to amalgamate with one or more registered employer's associations;
- (c) federation may resolve to amalgamate with one or more federations to form a confederation.

(2) The amalgamating organisations or federations may apply to the Registrar for registration of the amalgamated organisation or federation and the provisions of section 48, relating to registration process shall *mutatis mutandis* apply in relation to the application.

(3) After the Registrar has registered the amalgamated organization or federation, he shall cancel the registration of each of the amalgamating organisations or federations by removing their names from the appropriate register.

(4) The registration of an amalgamated organisation or federation shall become effective from the date the Registrar enters its name in the appropriate register.

(5) Where the Registrar has registered an amalgamated organization or federation-

- (a) all the assets, rights, obligations and liabilities of the amalgamating organisations or federations shall devolve upon and vest in the amalgamated organisation or federation; and
- (b) the amalgamated organisation or federation shall succeed the amalgamating organisations or federations in respect of—
 - (i) any right that the amalgamating organisations or federations enjoyed;
 - (ii) any fund established under this Act or any other law;
 - (iii) any collective agreement or other agreement; and
 - (iv) any written authorisation by a member for the periodic deduction of levies or subscriptions due to the amalgamating organisations.

Cancellation of registration

55.-(1) The Registrar may apply to the Labour Court for an order to cancel the registration of a registered organisation or federation if that organisation or federation fails to comply with—

- (a) the requirements for registration; or
- (b) the provisions of this Part.

(2) Where the Labour Court may make any appropriate order including-

- (a) cancelling the registration of an organisation or federation;
- (b) giving the organisation or federation an opportunity to remedy any failure to comply.

(3) Where the registration of an organisation or federation is cancelled-

- (a) all the rights enjoyed by it under this Act shall cease; and

- (b) the organization or federation shall be dissolved in accordance with the provisions of section 56.

Dissolution of trade union or employers association

56.-(1) The Registrar may apply to the Labour Court for the dissolution of any organisation that contravenes the provisions of section 45.

(2) An organisation or federation may apply to the Labour Court for its dissolution.

(3) Where the Labour Court makes an order for cancelling the registration of an organisation or federation under section 55(2), it may in addition make an order dissolving the organisation or federation.

(4) In accordance with the laws relating to bankruptcy, any interested person may apply to the Labour Court for dissolution of a registered organisation or federation on any ground of bankruptcy.

(5) The laws of bankruptcy, shall apply to an application prescribed in subsection (3) and any reference to a court in those laws shall be interpreted as referring to the Labour Court.

(6) In granting an order of dissolution under this section, the Labour Court may-

- (a) appoint any suitable person as a liquidator on any appropriate conditions;
- (b) decide where any residue of assets shall vest if the constitution and rules fail to do so.

Appeals from decisions of Registrar

57. Any person aggrieved by a decision of the Registrar made under this Part may appeal to the Labour Court against that decision.

Publication in Gazette

58.-(1) The Registrar shall publish a notice in the *Gazette* stating the following facts, that-

- (a) an organisation or federation has been registered;

- (b) the registration of any organisation or federation has been cancelled;
 - (c) a change of a name or amalgamation affecting any registered organisation or federation has been registered;
 - (d) a registered organisation or federation has been dissolved.
- (2) Where the notice referred to in subsection (1) deals with registration of an organisation or federation, it shall contain a statement to the effect that, any person may view the constitution of that organisation or federation at the Registrar's office.

**PART V
ORGANISATIONAL RIGHTS**

Interpretation

- 59.** For the purposes of this Part -
- “authorised representative” means an office bearer or official of a trade union or any other person authorized to represent the trade union;
 - “employer’s premises” includes any premises under the control of the employer where work is done or the employees are accommodated;
 - “labour laws” includes this Act and any other law relating to labour matters;
 - “registered trade union” includes two or more trade unions acting jointly;
 - “representative trade union” means a registered trade union that is the most representative trade union.

Access to employer's premises

- 60.**(1) Any authorised representative of a registered trade union shall be entitled to enter the employer's premises in order to—
- (a) recruit members;
 - (b) communicate with members;
 - (c) meet members in dealings with the employer;
 - (d) hold meetings of employees on the premises;

(e) vote in any ballot under the union constitution.

(2) A registered trade union may establish a field branch at any workplace where ten or more of its members are employed.

(3) The employer shall provide a union recognised in terms of section 67 reasonable and necessary facilities to conduct its activities at the workplace.

(4) The rights under this section shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent undue disruption of work.

Deduction of trade union dues

61.-(1) An employer shall deduct dues of a registered trade union from an employee's wages if that employee has authorised the employer to do so in the prescribed form.

(2) The employer shall remit the deductions to the trade union within seven days after the end of the month in which the deductions are made.

(3) Where the employer fails to remit the union dues within the time specified in subsection (2), without reasonable grounds, the employer shall be liable to pay the union the equivalent of five percent of the total amount due for each day the dues remain unremitted.

(4) An employee may revoke an authorisation by giving one month's written notice to the employer and the trade union.

(5) Where an employee revokes any authorization under subsection (3), the employer shall cease to make any deductions after the expiry of the notice.

(6) With each monthly remittance, the employer shall give a registered trade union -

(a) a list in the prescribed form of the names of the members in respect of whom deductions are required to be made;

- (b) a copy of any notice of revocation under subsection (3).

Trade union
representation

62-(1) A registered trade union shall be entitled to—

- (a) one trade union representative for one to nine members;
- (b) three representatives for ten to twenty members;
- (c) ten representatives for twenty one to one hundred members;
- (d) fifteen representatives for work places with more than one hundred members.

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s.8

(2) In workplace with more than one hundred members, at least five of the trade union representatives shall represent women employees, if any, who are employed and belong to the union.

(3) The constitution of a registered trade union shall govern the election, terms of office and removal from office of a trade union representative.

(4) Trade union representatives shall perform the following functions-

- (a) to represent members in grievance and disciplinary hearings;
- (b) to make representations on behalf of members in respect of rules;
- (c) to consult on productivity in the workplace;
- (d) to represent the trade union in enquiries and investigations conducted by inspectors in terms of any labour laws;
- (e) to monitor employer compliance with labour laws;
- (f) to perform trade union functions under the union's constitution;
- (g) to further good relations;
- (h) to perform any function or role agreed to by the employer.

(5) Trade union representatives shall be entitled to reasonable paid time off to perform any of the functions referred to in subsection (4).

(6) The employer shall disclose to the trade union representatives any information relevant to the performance of their functions.

(7) The provisions of section 70 relating to disclosure of relevant information shall *mutatis mutandis* apply to any disclosure prescribed in subsection (6).

(8) The rights under this section are subject to any reasonable conditions to ensure the orderly exercise of the rights and that work is not unduly interrupted.

Leave for trade union activities

63. The employer shall grant reasonable paid leave to -

- (a) trade union representatives referred to in section 62 to attend training courses relevant to their functions;
- (b) office bearers of -
 - (i) a registered trade union, to perform the functions of their officer;
 - (ii) a registered federation, to which the representative union belongs, to perform the functions of their office.

Procedure for exercising organizational right

64.-(1) Any registered trade union may notify an employer in the prescribed form that it seeks to exercise a right conferred under this Part.

(2) Within 30 days of the receipt of a notice under subsection (1), the employer shall meet with the trade union to conclude a collective agreement granting the right and regulating the manner in which the right is to be exercised.

(3) Where there is no agreement or the employer fails to meet with the trade union within 30 days, the union may refer the dispute to the Commission for mediation.

(4) Where the mediation fails to resolve the dispute, the trade union may refer the dispute to the Labour Court which shall make appropriate orders.

(5) Any dispute over the interpretation or application of an order made under this section shall be referred to the Labour Court for decision.

Termination of organizational rights

65.-(1) Where a trade union materially breaches the terms and conditions for the exercise of organisational rights, the employer—

- (a) may refer the issue to the Commission for mediation;
- (b) if the mediation fails to resolve the issue, may apply to the Labour Court to-
 - (i) terminate any of the organisational rights granted to the trade union under a collective agreement; or
 - (ii) withdraw an order made under section 64.

(2) A Labour Court making a decision under this section may make any appropriate order including—

- (a) requiring the union to take measures to ensure compliance with the conditions for the exercise of a right;
- (b) suspending the exercise of a right for a period of time;
- (c) terminating the organisational rights contained in a collective agreement or order made under section 64.

PART VI COLLECTIVE BARGAINING

Interpretation

66. For the purposes of this Part -

- (a) a “bargaining unit”-
 - (i) means any unit of employees in

respect of which a registered trade union is recognised, or is entitled to be recognised, as the exclusive bargaining agent in terms of this Part;

- (ii) includes a unit of employees employed by more than one employer;
- (b) a “recognised trade union” means a trade union recognised by a collective agreement or in respect of an order made by the Labour Court under the provisions of section 67;
- (c) a “registered trade union” includes two or more registered trade unions acting jointly.

Recognition as
exclusive
bargaining agent of
employees
Act No.
17 of 2010
s.9

67.-(1) A registered trade union that represents the majority of the employees in an appropriate bargaining unit shall be entitled to be recognised as the exclusive bargaining agent of the employees in that unit.

(2) An employer or employers’ association may not recognise a trade union as an exclusive bargaining agent unless the trade union is registered and represents the majority of the employees in the bargaining unit.

(3) A registered trade union may notify the employer or employers’ association in the prescribed form that it shall seek recognition as the exclusive bargaining agent within an appropriate bargaining unit.

(4) Within thirty days of the notice prescribed in subsection (3), an employer shall meet to conclude a collective agreement recognising the trade union.

(5) Where there is no agreement or the employer fails to meet with the trade union within the thirty days, the union may refer the dispute to the Commission for mediation, and the period of thirty days may be extended by agreement.

(6) If the mediation fails to resolve the dispute, the trade union or the employer may refer the dispute to the Labour Court for decision.

(7) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(8) In determining the appropriateness of a bargaining unit, the Labour Court shall-

(a) consider the following:

- (i) the wishes of the parties;
- (ii) the bargaining history of the parties;
- (iii) the extent of union organisation among the employees of the employer or employers;
- (iv) the employee similarity of interest;
- (v) the organisational structure of the employer or employers;
- (vi) the different functions and processes of the employer or employers and the degree of integration;
- (vii) the geographic location of the employer or the employers;

(b) promote orderly and effective collective bargaining with a minimum of fragmentation of an employer's organisational structure.

(9) Any dispute over the interpretation or application of an order made under this section shall be referred to the authority or the court which made the order for interpretation and other necessary orders.

(10) Any order made pursuant to this section shall be enforced like any other order issued by the Labour Court.

(11) Nothing in this section precludes registered trade unions, employers and registered employers' associations from establishing their own collective bargaining arrangements by collective agreement.

Duty to bargain in good faith

68.-(1) An employer or employers' association shall bargain in good faith with a recognised trade union.

(2) A recognised trade union shall bargain in good faith with the employer or employers' association that has recognised it or is required to recognize it under the provisions of section 67.

Withdrawal of recognition Act No. 17 of 2010 s.10

69.Where a recognised trade union ceases to represent the majority of the employees in the bargaining unit, the employer shall-

- (a) give the trade union notice to acquire a majority within three months;
- (b) withdraw exclusive recognition, if it fails to acquire that majority at the expiry of the three months.

(2) Where a recognised trade union has ceased to represent the majority in the bargaining unit, any other trade union may fill the prescribed forms for purpose of being recognized as an exclusive bargaining unit.

(3) If a party to a collective agreement prescribed in section 67(10), or a party subject to a recognition order, materially breaches the agreement or order, the other party may apply to Labour Court to have recognition withdrawn by—

- (a) terminating the recognition agreement;
- (b) rescinding the recognition order.

(4) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(5) The Labour Court may make any appropriate order including-

- (a) giving the trade union an opportunity to become representative;
- (b) altering the bargaining unit;
- (c) suspending recognition for a period of time;

- (d) withdrawing recognition.

Obligation to disclose relevant information

70.-(1) An employer that has recognised a trade union under this Part shall allow the union to engage effectively in collective bargaining.

(2) An employer shall not be obliged to disclose information that-

- (a) is legally privileged;
- (b) the employer cannot disclose without contravening a law or an order of court;
- (c) is confidential and, if disclosed, may cause substantial harm to an employee or the employer;
- (d) is private personal information relating to an employee without that employee's consent.

(3) A trade union that receives confidential or private personal information under this section-

- (a) shall not disclose the information to any person other than its members and advisors;
- (b) shall take reasonable measures to ensure that the information disclosed is kept confidential.

(4) If there is a dispute over disclosure of information, any party to the dispute may refer the dispute to the Commission for mediation.

(5) If the mediation fails, any party may refer the dispute to the Labour Court for decision.

(6) In making any decision, the Labour Court may—

- (a) hold the proceedings in camera;
- (b) take into account any previous breaches of confidentiality by the trade union or its members;
- (c) order an employer to disclose any confidential information if, on balance, the effect of the non-disclosure may seriously impede the union's ability-

- (i) to bargain effectively;
- (ii) to represent employees effectively;
- (d) order the disclosure of information on terms designed to limit any harm that may be caused by disclosure;
- (e) order the trade union to pay damages for any breach of confidentiality;
- (f) suspend or withdraw the right to disclosure.

Binding nature of
collective
agreements
Acts Nos.
8 of 2006
Sch.
17 of 2010
s.11

71.-(1) Collective agreements shall be in writing and signed by the parties.

(2) A collective agreement shall be binding on the last signature unless the agreement states otherwise.

(3) A collective agreement shall be binding on

- (a) the parties to the agreement;
- (b) any members of the parties to the agreement;
- (c) any employees who are not members of a trade union party to the agreement if the trade union is recognised as the exclusive bargaining agent of those employees under section 67.

(4) A collective agreement shall continue to be binding on employers or employees who were party to the agreement at the time of its commencement and includes resigned members from that trade union or employer association.

(5) A collective agreement becomes binding on employers and employees who become members of the parties to the agreement after its commencement.

(6) Unless a collective agreement provides otherwise, any party to an agreement may terminate the agreement on reasonable notice and shall give reasons for the termination.

(7) The parties to a collective agreement shall be required to lodge a copy of the agreement with the Labour Commissioner and shall be a rebuttable presumption that the copy so registered is authentic and may be executed as a decree of the Court.

Agency Shop
agreements
Act No
24 of 2015
s.8

72.-(1)An agreement that compels an employee to become a member of a trade union is not enforceable.

(2) A recognised trade union and employer may conclude a collective agreement providing for an agency shop.

(3) The requirements for a binding agency shop agreement are:

- (a) the agreement applies to employees in the bargaining unit only;
- (b) employees who are not members of the trade union are not compelled to become members;
- (c) any agency fee deducted from the remuneration of an employee, who is not a member, is equivalent to, or less than, the union dues deducted by the employer from the remuneration of a member;
- (d) the amount deducted from both members and non-members shall be paid into a separate account administered by the trade union;
- (e) the monies in that account may only be used to advance or defend the socio-economic interests of the employees in that workplace and shall not be used to pay-
 - (i) an affiliation fee to a political party;
or
 - (ii) any contributions to a political party of person standing for political office.

(4) Notwithstanding the provisions of any law or contract, an employer may deduct an agency fee under an agency shop agreement that complies with the provisions of this section from an employee's wages without the consent of that employee:

Provided that, such deduction complies with the terms and conditions prescribed in the regulations.

(5) A trade union party to an agency shop agreement shall-

- (a) appoint a registered auditor to audit the account prescribed in subsection (3) (d) annually;
- (b) submit the auditor's report to the Labour Commissioner and to the Registrar within thirty days of the date of the report; and
- (c) permit any interested person to inspect the report at the union's offices during office hours.

(6) A report by an auditor appointed by a trade union under this section shall include an opinion on whether the provisions of this section have been complied with.

(7) An agency shop agreement shall be-

- (a) suspended for so long as the trade union is not representative;
- (b) terminated once recognition is withdrawn under section 69.

(8) If an agency shop agreement is suspended or terminated, the provisions of this section shall continue to apply in respect of any money remaining in the account prescribed in subsection (3)(d).

(9) For the purposes of this section, "agency shop" means a union security arrangement in terms of which employees in a bargaining unit, who are not members of the recognised trade union, are required to pay an agency fee to the trade union.

Workers participation agreement Act No. 24 of 2015 S.9

73.-(1) A recognised trade union and an employer or an employers' association may conclude a collective agreement establishing a forum for workers participation in a workplace.

(2) If a registered trade union, employer or employers' association wishes to establish a forum for workers' participation in any workplace, the union, employer or association may request the assistance of the Labour Commissioner to facilitate discussions between the union, employer or association.

(3) The Labour Commissioner shall facilitate any discussion concerning the establishment of a forum for workers participation in any workplace taking into account any code of good practice published by the Council on workers participation.

Disputes concerning collective agreements

74. Unless the parties to a collective agreement agree otherwise -

- (a) a dispute concerning the application, interpretation or implementation of a collective agreement shall be referred to the Commission for mediation; and
- (b) if the mediation fails, any party may refer the dispute to the Labour Court for a decision.

**PART VII
STRIKES AND LOCKOUTS**

Right to strike and to lockout

75.-(1) Subject to the provisions contained in this Part -

- (a) every employee has the right to strike in respect of a dispute of interest; and
- (b) every employer has the right to lockout in respect of a dispute of interest.

Restrictions on right to strike or lockout

76.-(1) No person shall take part in a strike or a lock out or in any way conduct himself in a manner contemplating or in furtherance of a strike or lockout if-

- (a) subject to the provisions of subsection (2), that person is engaged in an essential service referred to in section 77;
 - (b) that person is engaged in a minimum service prescribed in section 79;
 - (c) that person is bound by an agreement that requires the issue in dispute to be referred to arbitration;
 - (d) that person is bound by a collective agreement or arbitration award that regulates the issue in dispute;
 - (e) that person is bound by a wage determination that regulates the issue in dispute during the first year of that determination;
 - (f) that person is a magistrate, a prosecutor or other court personnel;
 - (g) the issue in dispute is a complaint;
 - (h) the procedures prescribed in sections 80, 81 and 82 have not been followed.
- (2) Notwithstanding the provisions of subsection (1) (a), a person engaged in an essential service may strike or lockout if-
- (a) there is a collective agreement providing for minimum services during a strike or lockout; and
 - (b) that agreement has been approved under section 77 by the Essential Services Committee.
- (3) The following conduct associated with strikes and lockouts is prohibited:
- (a) picketing -
 - (i) in support of a strike; or
 - (ii) in opposition to a lawful lockout;
 - (b) use of replacement labour in a lockout or a lawful strike
 - (c) locking employers in the premises;
 - (d) preventing employers from entering the premises.

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s.8

(4) For the purposes of this section, “replacement labour” means taking into employment any person to continue or maintain production during a strike or a lockout, but It does not include the deployment of an employee to do the work of an employee on strike or subject to a lockout provided that the deployment is with the consent of that employee.

Essential services

77.-(1) For the purposes of this section, “service” includes any part of service.

(2) The following services are essential services:

- (a) water and sanitation;
- (b) electricity;
- (c) health services and associated laboratory services;
- (d) fire-fighting services
- (e) air traffic control and civil aviation telecommunications;
- (f) any transport services required for the provision of these services.

(3) In addition to the services designated in subsection (2), the Essential Services Committee may designate a service as essential if the interruption of that service endangers the personal safety or health of the population or any part of it.

(4) Before the Essential Services Committee designates an essential service under subsection (3), it shall—

- (a) give notice in the prescribed manner of the investigation inviting interested parties to make representations;
- (b) conduct an investigation in the prescribed manner;
- (c) make any written representations available for inspection;
- (d) hold a public hearing at which the interested parties may make oral representations; and

(e) consider those representations.

(5) If the Essential Services Committee designates a service as an essential service, it shall publish a notice to that effect in the *Gazette*.

(6) The Essential Services Committee may vary or cancel a designation made under this section in accordance with the procedure set out in subsections (4) and (5) *mutatis mutandis*.

(7) Any party to a dispute as to whether or not a service is an essential service or an employer or an employee is engaged in an essential service shall refer the dispute to the Essential Services Committee for determination.

(8) The party who refers the dispute to the Essential Services Committee shall satisfy the Committee that a copy of the dispute has been served on all the other parties to the dispute.

(9) The Essential Services Committee shall determine the dispute as soon as possible.

Disputes of interest
in essential
services

78.-(1) Unless a collective agreement provides otherwise –

- (a) any party to a dispute of interest in an essential service may refer the dispute to the Commission for mediation.
- (b) if the mediation fails, any party to the dispute may refer the dispute to arbitration by the Commission.

(2) The provisions of subsection (1) shall apply if -

- (a) the parties are bound by a collective agreement providing for minimum services during a strike or lockout; and
- (b) the Essential Services Committee has approved that agreement in terms of section 70(2).

Minimum services during strike or lockout

79.-(1) The parties to a collective agreement may agree to the provision of minimum services during a strike or a lockout.

(2) Any party to a collective agreement that provides for minimum services during a strike or lockout in an essential service may apply in the prescribed manner to the Essential Services Committee for approval of that agreement.

(3) An employer may apply in the prescribed manner to the Essential Services Committee for the designation of a minimum service if-

- (a) a minimum service is necessary to prevent damage to property, machinery or plant during a strike or lawful lockout; and
- (b) there is no collective agreement providing for minimum services during a strike or lockout.

Procedure for engaging in lawful strike

80.-(1) Subject to the provisions of this section, employees may engage in a lawful strike if-

- (a) the dispute is a dispute of interest;
- (b) the dispute has been referred in the prescribed form to the Commission for mediation;
- (c) the dispute remains unresolved at the end of period of mediation provided under section 86(4) read with subsections (1) and (2) of section 87;
- (d) the strike is called by a trade union, a ballot has been conducted under the union's constitution and a majority of those who voted were in favour of the strike; and
- (e) after the applicable period referred to in paragraph (c), they or their trade union have given forty eight hours notice to their employer of their intention to strike.

(2) If the dispute relates to the unilateral alteration of terms and conditions of employment, the

employees and the trade union, may require the employer in the referral of the dispute under subsection (1)—

- (a) not to implement any proposed change to terms and conditions; or
- (b) if the employer has implemented the change, to restore the terms and conditions of employment that applied before the change.

(3) If the employer does not comply with the requirement referred to in subsection (2) within forty eight hours of service of the referral on the employer, the employees and trade union may strike without complying with paragraphs (c) to (e) of subsection (1).

(4) Nothing in this section prevents a trade union and an employer or employers' association from agreeing to their own strike procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsections (1) to (3) shall not apply.

Procedure for engaging in secondary strike

81.(1) “secondary strike” means a strike that is-

- (a) in support of a lawful strike (the “primary strike”) by other employees against their employer (the “primary employer”); or
- (b) in opposition to a lockout (the “primary lockout”) imposed by another employer (the “primary employer”) against its employees.

(2) A trade union may only call a secondary strike if –

- (a) fourteen days notice of the commencement of the secondary strike has been given to the secondary employer;
- (b) there is a relationship between the secondary and primary employer that may permit the exercise of pressure;

- (c) the secondary strike is proportional taking into account –
 - (i) the effect of the strike on the secondary employer;
 - (ii) the possible effect that the strike may have on resolving the dispute giving rise to the primary strike or primary lockout.
- (3) Employees engaged in the following services are prohibited from engaging in a secondary strike:
 - (a) the essential services referred to in section 77 in respect of which there is no approved collective agreement as prescribed in section 79(2); or
 - (b) agreed or determined minimum services as prescribed in section 79.
- (4) Nothing in this section shall prevent a trade union and an employer or an employers' association from agreeing to their own requirements and procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsections (1) and (2) shall not apply.

Procedure for engaging in lawful lockout

- 82.**-(1) Subject to the provisions of subsection (2), an employer may engage in a lawful lockout if-
- (a) the dispute is a dispute of interest;
 - (b) the dispute has been referred in the prescribed form to the Commission for mediation;
 - (c) the dispute remains unresolved at the end of the period of medication prescribed in sections 86 and 87;
 - (d) after the applicable period referred to in paragraph (c) the employer or employers' association has given forty eight hours notice to the employees or their trade union of the intention to lockout.

(2) Nothing in this section shall prevent a trade union and an employer or an employers' association from agreeing to their own procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsection (1) shall not apply.

Nature of protection of lawful strike or lockout

83.-(1) Notwithstanding the provisions of any law, including the common law, a lawful strike or lawful lockout shall not be -

- (a) a breach of contract;
- (b) a tort;
- (c) a criminal offence.

(2) An employer shall not terminate the employment of an employee for -

- (a) participating in a lawful strike; or
- (b) not acceding to an employer's demand in a lockout.

(3) No civil or criminal proceedings shall be instituted against any person for participating in a lawful strike or lawful lockout.

(4) Notwithstanding the provisions of subsection (1), an employer shall not be obliged to remunerate an employee for services that the employee does not render during a lawful strike or lawful lockout, however-

- (a) the employer shall continue to make its contribution and the employee's contributions to any funds that the employee is required to belong to by law or under the contract of employment during the strike or lockout;
- (b) if the employer provides accommodation, the provision of food or other basic amenities of life, the employer shall continue to provide that accommodation, food or amenities during the strike or lockout;

- (c) after the end of the strike or lockout, the employer may-
 - (i) deduct any of the employee's contributions referred to in paragraph (a) from the employee's remuneration;
 - (ii) deduct the agreed monetary value of the accommodation, food or amenities from the employee's remuneration with the consent of the employee.

(5) Where an employee does not consent to the deduction prescribed in subsection (4)(c)(ii), the employer may refer the dispute to mediation.

(6) Where the dispute referred to in subsection (5) is not resolved, the employer may refer it to the Labour Court for a decision.

(7) Nothing in subsection (4) shall prevent a trade union or employer or employers' association from concluding a collective agreement that regulates the matters dealt with in that subsection differently.

Strikes and lockouts not in compliance with this Part

84.-(1) Where a strike or lockout is not in compliance with this Act, or a trade union or employer or employers' association engages in prohibited conduct, the Labour Court shall have exclusive jurisdiction-

- (a) to issue an injunction to restrain any person from-
 - (i) participating in an unlawful strike or lockout;
 - (ii) engaging in any prohibited conduct;
- (b) to order the payment of just and equitable compensation for any loss attributable to the strike, lockout or conduct, having regard to-
 - (i) the degree of fault;

- (ii) the cause of the strike, lockout or conduct;
- (iii) any prior history of non-compliance;
- (iv) the ability to pay;
- (v) the extent of the harm;
- (vi) the interests of collective bargaining;
- (vii) the duration of the strike, lockout or conduct.

(2) The Labour Court may not issue an injunction unless forty eight hours notice of the application has been given to the respondent.

(3) Notwithstanding the provisions of subsection (2), the Court may grant a shorter period on good cause and only if the respondent is given a reasonable opportunity to be heard.

(4) Other than in exceptional circumstances, the Labour Court may not make an order of compensation that may cause a trade union, employer or employer's association to become bankrupt.

Protest action

85.-(1) Subject to the provisions of subsection (2), an employee may take part in protest action if-

- (a) the protest action has been called by a registered trade union or registered federation of trade unions;
- (b) the union or federation has served a notice on the Council stating-
 - (i) the reasons for the protest action; and
 - (ii) the duration and form of the protest action;
- (c) thirty days have elapsed from the date the notice was served; and
- (d) the union or federation has given at least fourteen days notice of the commencement of the protest action.

- (2) Employees engaged in the following services are prohibited from engaging in protest action:
- (a) the essential services referred to in section 77 in respect of which there is no approved collective agreement as prescribed in section 79(2); or
 - (b) agreed or determined minimum services as prescribed in section 79.
- (3) The Council shall convene a meeting within thirty days of the notice to –
- (a) resolve the matter giving rise to the protest action; and
 - (b) if unable to resolve the matter, secure an agreement with the trade unions or federation of trade unions calling for the protest action on the duration and form of the protest action in order to minimise the harm that may be caused by the protest action.
- (4) In order to achieve the objects prescribed in subsection (3), the Council may-
- (a) establish a tripartite committee to perform its functions under subsection (3);
 - (b) appoint a mediator after consultation with the Commission to mediate;
 - (c) apply to the Labour Court for a declaratory order prescribed in subsection (5).
- (5) Any person who is likely to be, or has been, affected by the protest action may apply to the Labour Court for—
- (a) an order restraining any person from taking part in protest action or in any conduct in contemplation or furtherance of an action that does not comply with the provisions of subsections (1) and (2);
 - (b) a declaratory order on the proportionality of any proposed action taking into account-

- (i) the nature and the duration of the protest action;
- (ii) the importance of the reasons for the protest action; and
- (iii) the steps taken by the union or the federation to minimise the harm caused by the protest action.

(6) Subject to the provisions of subsection (7), any person who takes part in protest action that complies with this section enjoys the protections conferred on lawful strikes in terms of section 83.

(7) The protections conferred by subsection (6) on persons engaged in lawful protest action shall not apply to persons who do not comply with any declaratory order issued under paragraph (b) of subsection (5).

PART VIII DISPUTE RESOLUTION

Sub-Part A - Mediation

Referral of
disputes for
mediation under
this Act
Act No.
8 of 2006
Sch.

86.-(1) Disputes referred to the Commission shall be in the prescribed form.

(2) The party who refers the dispute under subsection (1), shall satisfy the Commission that a copy of the referral has been served on the other parties to the dispute.

(3) On receipt of the referral made under subsection (1) the Commission shall -

- (a) appoint a mediator to mediate the dispute;
- (b) decide the time, date and place of the mediation hearing;
- (c) advise the parties to the dispute of the details stipulated in paragraphs (a) and (b).

(4) Subject to the provisions of section 87, the mediator shall resolve the dispute within thirty days of the referral or any longer period to which the parties agree in writing.

(5) The mediator shall decide the manner in which the mediation shall be conducted and if necessary may require further meetings within the period referred to in subsection (4).

(6) In any mediation, a party to a dispute may be represented by-

- (a) a member or an official of that party's trade union or employers' association;
- (b) an advocate; or
- (c) a personal representative of the party's own choice.

(7) Where the mediator fails to resolve a dispute within the period prescribed in subsection (4), a party to the dispute may—

- (a) if the dispute is a dispute of interest, give notice of its intention to commence a strike or a lockout in accordance with sections 80 or 82;
- (b) if the dispute is a complaint-
 - (i) refer the complaint to arbitration; or
 - (ii) refer the complaint to the Labour Court.

(8) Notwithstanding the failure to resolve a dispute within the period stipulated in subsection (4), the mediator shall remain seized with the dispute until the dispute is settled and may convene meetings between the parties to the dispute in order to settle the dispute at any time before or during any strike, lockout, arbitration or adjudication.

Consequences of
not attending
mediation hearing

87.-(1) Where the employees or a trade union refer a dispute of interest to the Commission under section 86, the mediator may-

- (a) extend the period stipulated under section 86(4) by a further thirty days if the

- employees or union fail to attend the hearing arranged by the Commission;
 - (b) shorten the period stipulated in section 86(4) if the employer or employers' association party to the dispute fail to attend the hearing.
- (2) Where an employer or an employers' association refers a dispute of interest to the Commission under section 86, the mediator may-
- (a) extend the period stipulated under section 86(4) by a further thirty days if the employer or employer's association fails to attend the hearing arranged by the Commission;
 - (b) shorten the period stipulated in section 86(4) if the employees or trade union party to the dispute fail to attend the hearing.
- (3) In respect of a complaint referred under this Act, the mediator may-
- (a) dismiss the complaint if the party who referred the complaint fails to attend a mediation hearing;
 - (b) decide the complaint if the other party to the complaint fails to attend a mediation hearing.
- (4) The decision made under this section may be enforced in the Labour Court as a decree of a court of competent jurisdiction.
- (5) The Commission may reverse a decision made under this section
- (a) application is made in the prescribed manner; and
 - (b) the Commission is satisfied that there are good grounds for failing to attend the hearing.

Sub-Part B: Arbitration

Resolving disputes
by compulsory
arbitration
Acts Nos.
8 of 2006
Sch
17 of 2010
s.12

88.-(1) For the purposes of this section, a dispute means—

- (a) a dispute of interest if the parties to the dispute are engaged in an essential service;
- (b) a complaint over-
 - (i) the fairness or lawfulness of an employee’s termination of employment;
 - (ii) any other contravention of this Act or any other labour law or breach of contract or any employment or labour matter falling under common law, tortious liability and vicarious liability;
 - (iii) any dispute referred to arbitration by the Labour Court under section 94(3)(a)(ii).

(2) If the parties fail to resolve a dispute referred to mediation under section 86, the Commission shall—

- (a) appoint an arbitrator to decide the dispute;
- (b) determine the time, date and place of the arbitration hearing; and
- (c) advise the parties to the dispute of the details stipulated in paragraph(a) or (b).

(3) Nothing in subsection (2) shall prevent the Commission from-

- (a) appointing an arbitrator before the dispute has been mediated;
- (b) determining the time, date and place of the arbitration hearing, which date may coincide with the date of the mediation hearing;
- (c) advising the parties to the dispute of the details stipulated in paragraphs(a) and (b).

(4) The arbitrator-

- (a) may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly;
- (b) shall deal with the substantial merits of the dispute with the minimum of legal formalities.

(5) Subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question witnesses, and present arguments.

(6) If the parties to the dispute consent, the arbitrator may suspend proceedings and resolve the dispute through mediation.

(7) A mediator may, by an agreement between the parties or on application by the parties, draw a settlement agreement in respect of any dispute pending before him, which shall be signed by the parties and the mediator, and such agreement shall be deemed to be a decree of the Court.

(8) Where a party fails to -

- (a) attend any arbitration proceedings convened by arbitrator, the matter may be heard ex-parte as provided for under rule 28 of the Labour Institutions (Mediation and Arbitration Guidelines) Rules; or
- (b) comply with any direction made by the arbitrator, the arbitrator shall proceed to make the award.

(9) In any arbitration hearing, a party to a dispute may be represented by-

- (a) member or official of that party's trade union or employers' association;
- (b) an advocate; or
- (c) a personal representative of the party's own choice.

G.N. No.
67 of 2007

(10) An arbitrator may make any appropriate award but may not make an order for costs unless a party or a person representing a party acted in a frivolous or vexatious manner.

(11) Within thirty days of the conclusion of the arbitration proceedings, the arbitrator shall issue an award with reasons signed by the arbitrator.

Effect of
arbitration award

89.-(1) An arbitration award made under this Act shall be binding on the parties to the dispute.

(2) An arbitration award made under this Act may be served and executed in the Labour Court as if it were a decree of a court of law.

Correction of
arbitration award
Act No.17
of 2010
s.13

90. An arbitrator who has made an award under section 88(10) may, on application or on his own motion, correct in the award any clerical mistake or error arising from any accidental slip or omission.

Revision of
arbitration award
Act No.
17 of 2010
s.14

91.-(1) Any party to an arbitration award made under section 88(10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-

(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;

(b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact.

(2) The Labour Court may set aside an arbitration award made under this Act on grounds that-

(a) there was a misconduct on the part of the arbitrator;

(b) the award was improperly procured;

(c) the award is unlawful, illogical or irrational.

(3) The Labour Court may stay the enforcement of the award pending its decision.

(4) Where the award is set aside, the Labour Court may-

- (a) determine the dispute in the manner it considers appropriate;
- (b) make any order it considers appropriate about the procedures to be followed to determine the dispute.

Application of
Arbitration
Act
Cap.15

92. The Arbitration Act, does not apply to an arbitration conducted by the Commission.

Voluntary
arbitration
Act No.
17 of 2010
s.15
Cap.15

93.-(1) Nothing in this Act prevents agreement to submit a dispute to arbitration.

(2) The provisions of the Arbitration Act, shall apply to any agreed submission of a dispute to arbitration provided that-

Cap. 4
s.8

- (a) notwithstanding the provisions of section 3 of the Arbitration Act, any dispute may be submitted to arbitration;
- (b) any reference to the High Court in the Arbitration Act shall be interpreted as referring to the Labour Court.

Cap.300

(3) A voluntary arbitration preferred under section 14(1)(b)(ii) of the Labour Institutions Act shall be dealt with by the Commission as if it were a compulsory arbitration referred to under subsections (2) to (9) of section 88.

Sub-Part C: Adjudication

Jurisdiction of
Labour Court
Acts Nos.
8 of 2006
sch.
17 of 2010
s.16

94.-(1) Subject to the Constitution of the United Republic of Tanzania,1977, the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act and over any employment or labour matter

falling under common law, tortious liability, vicarious liability or breach of contract and to decide-

- (a) appeals from the decisions of the Registrar made under Part IV;
 - (b) reviews and revisions of -
 - (i) arbitrator's awards made under this Part;
 - (ii) decisions of the Essential Services Committee made under Part VII;
 - (c) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act;
 - (d) complaints, other than those that are to be decided by arbitration under the provisions of this Act;
 - (e) any dispute reserved for decision by the Labour Court under this Act; and
 - (f) applications including-
 - (i) a declaratory order in respect of any provision of this Act; or
 - (ii) an injunction.
- (2) The Labour Court may refuse to hear a complaint if -
- (a) the complaint has not been referred to mediation by the Commission under section 86; or
 - (b) the provisions of that section have not been complied with; and
 - (c) the application is not urgent.
- (3) Where a party refers a dispute to the Labour Court, the Court may -
- (a) if it is a dispute that is required to be referred to the Labour Court in terms of this Act-
 - (i) decide the dispute; or
 - (ii) refer the dispute to the Commission to be decided by arbitration;

- (b) if it is a complaint that is required to be referred to arbitration-
 - (i) refer the complaint to the Commission for it to be dealt with under section 88;
 - (ii) decide the complaint provided that it may make an appropriate order as to costs.

Sub-Part D – Dispute Procedure in Collective Agreements

Dispute resolution
procedures in
collective
agreements
Act No.
8 of 2006
sch.

95.-(1) Nothing in this Part shall prevent a trade union on the one hand and an employer or employers' association on the other hand from concluding a collective agreement providing for the resolution of disputes not within the provisions of this Part.

(2) A collective agreement may depart from the provisions of this Part provided that the disputes are mediated or arbitrated in an independent, neutral, expedited and professional manner.

(3) A person bound by a collective agreement prescribed in this section may not refer a dispute to the Commission for Mediation and Arbitration under the provision of this Part:

Provided that, any dispute which is not resolved shall be referred by any party to the dispute or the mediator or arbitrator to the Labour Court for adjudication, decision and execution.

(4) Subject to the Provisions of subsection (3), any resolution made or award passed by the mediator or arbitrator respectively, shall be binding on the parties and shall be executed as a decree of the Labour Court.

(5) On application, the Labour Court, may set aside a provision of a collective agreement that does not comply with subsection (2).

**PART IX
GENERAL PROVISIONS**

Records to be kept
by employers and
employees

96.-(1) Every employer and employee shall keep a record of the following information-

- (a) the written particulars prescribed in section 15 and any changes to those particulars;
- (b) any remuneration paid to the employee.

(2) Every employer shall retain the record of an employee prescribed in subsection (1) for a period of five years after the termination of that employee.

(3) An employer shall keep a record of the prescribed details of any strike, lockout or protest action involving its employees.

(4) The Labour Commissioner, in the prescribed manner, may require information based on the records referred to in this section from an employer.

(5) An employer shall submit to the Labour Commissioner any information required in terms of subsection (4).

(6) Subject to the provisions of section 101, the Labour Commissioner may-

- (a) compile, analyse and tabulate statistics collected from the information submitted under this section; and
- (b) upon the Minister's direction publish those statistics.

Service of
documents

97.-(1) A document required to be served on a registered organization or federation in any civil or criminal proceedings shall be deemed to be duly served if it is-

- (a) delivered to the registered office of the organisation or federation;
- (b) delivered by registered post to its postal address; or

(c) served personally on an officer of the organisation or federation.

(2) For the purposes of this section, a “document” includes any notice, referral, submission, application or other document required to be served under this Act.

Regulations

98.-(1) The Minister may, in consultation with the Council, make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all or any of the following matters:

- (a) all matters stated or required in this Act to be prescribed;
- (b) the prohibition or regulation of employment of children under the age of eighteen years;
- (c) the registration of plans for eliminating discrimination in the workplace;
- (d) the form and manner in which written particulars of employment are to be given to an employee;
- (e) regulating the payment of wages including payment of any money due to a deceased employee to the heirs or estate of that employee;
- (f) the form and content of information and documentation to be supplied by the employer to its employees;
- (g) regulating the procedure of registration of organisations and federations, the registers to be kept and the certificate of registration;
- (h) the authorisation of access by trade union officials to employer premises for the purpose of recruiting, meeting and

representing members;

- (i) the deduction of trade union dues including authorisation and remittance of money to the registered trade union;
- (j) the procedure for the recognition of registered trade unions;
- (k) the lodgement of collective agreements with the Labour Commissioner;
- (l) the procedure for investigations by the Essential Services Committee into essential services and minimum services;
- (m) the books, records, accounts and other documents to be kept under this Act;
- (n) the information to be furnished by an employer to the Labour Commissioner;
- (o) the returns to be rendered by the employer to the Labour Commissioner;
- (p) the fees to be charged for registration or any other service or matter prescribed or permitted by this Act; and
- (q) occupational safety and health standards and the working environment secured by an appropriate system of inspection
- (r) generally for all matters incidental to or connected with the matters or subjects specifically mentioned in this Act.

(3) The Minister, after consultation with the Council, may, by notice in the *Gazette*, deem any category of persons to be employees for the purposes of this section, any provisions of this Act or any other written law in respect of which the Minister is responsible.

Guidelines and codes of good practice

99.-(1) The Minister, after consulting the Council, may-

- (a) issue codes of good practice;
- (b) issue guidelines for the proper administration of this Act;
- (c) change or replace any code or guideline.

(2) Any code of good practice or guideline or any change to, or replacement of, a code or guideline shall be published in the *Gazette*.

(3) Any person interpreting or applying this Act shall take into account any code of good practice or guideline published under this section, and where that person departs from the code or guideline, he shall justify the grounds for departure.

Exemptions

100.-(1) The Minister may exempt any employer or class of employers from any employment standard contained in sections 19, 20, 23 to 25, 27,31 to 34, 41, 42 and 43.

(2) Before the Minister grants an exemption under this section—

- (a) the employer or employers' organisation shall satisfy the Minister that they have consulted with the employees affected by the exemption or their registered trade union;
- (b) he shall notify the affected employers and employees or the reregistered organisations of any proposed exemption and request representations to be submitted within a reasonable period;
- (c) he shall take into account any representations made by the employees or their registered trade union;
- (d) he shall strike a fair balance between the interests of the employers and their employees, taking into account any applicable International Labour Organisation Convention or recommendation.

(3) An exemption granted under subsection (1) shall—

- (a) be in the prescribed form signed by the Minister, and the form shall include a statement of the employers, or category of

- employers affected by the exemption;
 - (b) include any conditions under which the exemption is granted;
 - (c) state the period of the exemption, which may be made retrospective to a date not earlier than the date of the application for exemption; and
 - (d) if the exemption is granted to a class of employers, be published in the *Gazette*.
- (4) An exemption granted under this section may be amended or withdrawn by the Minister.
- (5) If the exemption is published in the *Gazette* under subsection (3)(d), the Minister may amend or withdraw the exemption only by notice in the *Gazette* from a date stated in that notice.
- (6) Any person who is aggrieved by the grant, amendment or withdrawal of an exemption or its terms or period, may apply for the review of the decision in the Labour Court.

Confidentiality

101.-(1) Subject to the provisions of subsection (2), it is an offence for any person to disclose any information relating to the financial or business affairs of another person if that information was acquired in the performance of any function or the exercise of any power under this Act.

(2) Subsection (1) does not apply if the information is disclosed in compliance with this Act-

- (a) to enable a person to perform a function or exercise a power under this Act;
- (b) in accordance with any written law;
- (c) for the purpose of the proper administration of this Act;
- (d) for the purposes of the administration of justice.

Penalties

102.-(1) A District Court and a Resident Magistrate's Court have jurisdiction to impose a penalty for an offence under this Act.

(2) Any person convicted of any of the offences referred to in sections 5 and 6, may be sentenced to-

- (a) a fine not exceeding five million shillings;
- (b) imprisonment for a term of one year; or
- (c) both such fine and imprisonment.

(3) Any person convicted of any of the offences referred to in sections 7, 8 and 9 may be sentenced to a fine not exceeding five million shillings.

(4) Any person convicted of any of the offences referred to in sections 27, 28, 45(3) and 101 shall be sentenced to a fine not exceeding one million shillings.

(5) Any person aggrieved by the decision of a court under this section may appeal to the High Court.

Inconsistency with
written laws
Act No.
24 of 2015
s.10

102A. In case of conflict between this Act and any other written law relating to employment standards, the standards stipulated under this Act shall prevail.

Repeal and
amendment of
laws and savings
provisions

103.-(1) The laws specified in the Second Schedule are repealed subject to the savings and transitional provisions set out in the Third Schedule.

(2) Each of the laws specified in the Second Schedule are amended to the extent specified in that Schedule.

(3) The Third Schedule governs the transition from the administration of the laws repealed under paragraph (1) to the administration of the matters in this Act.

FIRST SCHEDULE

(Made under section 26(1))

Table for calculation of comparable wage rates

For the purpose of this Table -
 “ordinary hours” do not include overtime hours;
 “ordinary days” mean the days the employee ordinarily works in a week excluding any day falling within the weekly rest period stipulated in section 24;
 “rate” is based on the employee’s basic wage.

Table - Calculation of comparable wage rates

Basis of payment	To calculate hourly rates	To calculate daily rates	To calculate weekly rates	To calculate monthly rates
Employees whose basic wage is set by the hour		Multiply the hourly rate by the number of ordinary hours of work each day	Multiply the hourly rate by the number of ordinary hours of work each week	Calculate the weekly rate, then Multiply the calculated weekly rate by 4,333
Employees whose basic wage is set by the day	Divide the daily rate by the number of ordinary hours of work each day		Multiply the daily rate by the number of ordinary days of work each week.	Calculate the weekly rate, then Multiply the calculated weekly rate by 4,333
Employees whose basic wage is set by the week	Divide the weekly rate (or calculated weekly rate) by the number of ordinary hours of work each	Divide the weekly rate (or calculated weekly rate) by the number of ordinary days of work each week		Multiply the weekly rate (or calculated weekly rate) by 4,333

	week.			
Employees whose basic wage is set by the month	Divide the monthly rate by (4,333 times the number of hours ordinarily worked each week).	Divide the monthly rate by 4,333 times the number or days ordinarily worked each week	Divide the monthly rate by 4,333	

—————
SECOND SCHEDULE
—————

(Made under section 103(1))

<i>Citation of law</i>	<i>Extent of repeal</i>
Employment Ordinance (Cap.366)	The whole
Regulation of Wages and Terms of Employment Ordinance (Cap.300)	The whole
Wages and Salaries (General Revision) Act, 1974 (Act No.22 of 1974)	The whole
Trade Union Act, 1998 (Act No.10 of 1998)	The whole
Security of Employment Act (Cap.574)	The whole
Severance Allowances Act (Cap.487)	The whole
Industrial Court of Tanzania Act, 1967 (Act No.41 of 1967)	The whole

—————
THIRD SCHEDULE
—————

(Made under section (103)(2),(3))

Savings and Transitional provisions

- Interpretation **1.** In this Schedule, unless the context requires otherwise—
- Act No. “employers organisation” means an employer’s organisation
10 of 1998 registered under the Trade Unions Act;
 “federation” means a federation registered under the Trade Unions Act;

Cap 4. “repealed laws” means the laws repealed under section 103(1)
 s.8 and listed in the Second Schedule;
 “trade union” means a trade union registered under the Trade
 Unions Act;
 Act No. “Trade Unions Act” means the Trade Unions Act, 1998.
 10 of 1998

Existing trade unions employer’s organization and federations

2.-(1) A trade union, employer’s organisation or federation registered under the repealed laws immediately before the commencement of this Act, shall be deemed to be registered under this Act.
 (2) As soon as practicable after the commencement of this Act, the Registrar shall-
 (a) enter the names and details of the trade unions, employers’ organisations and federations into the appropriate registers prescribed under section 48(5)(a) of this Act;
 (b) issue a certificate in terms of section 48(5)(b) of this Act to the trade unions, employers’ organisations and federations referred to in paragraph (a).
 (3) If any provision of the constitution of a trade union, employers’ organisation or federation does not comply with the requirements of sections 46 and 47 of this Act, the trade union, employers organisation or federation shall rectify its constitution and submit the rectifications to the Registrar within 6 months of the commencement of this Act.
 (4) The provisions of section 50, shall apply *mutatis mutandis* in respect of arectification under subparagraph (3).
 (5) If a trade union, employers’ organisation or federation fails to comply with sub-paragraph (3) or fails to make the requisite changes, the Registrar shall apply to the Labour Court to cancel the registration of the trade union, employers’ organisation or federation because of its failure to comply with the provisions of this paragraph read together with sections 46 and 47 of this Act.
 (6) Section 55, shall apply *mutatis mutandis* in respect of an application brought under sub-paragraph (5).

Pending applications for registration

3.-(1) Any pending application for registration, alteration of name or constitution in terms of the repealed laws shall be dealt with as if the application had been made under this Act.
 (2) When dealing with an application referred to in subparagraph (1), the Registrar may-
 (a) condone any technical non-compliance with this Act;

Organizational
rights and
recognition

(b) require the applicant to amend its application in order to comply with this Act.

4.-(1) For the purposes of this paragraph—

(a) organisational rights' means any of the following rights:

(i) the right to trade union representation in the workplace including the right to a committee or a field branch;

(ii) the right to facilities for trade union representatives in the workplace;

(iii) the right to disclosure of information;

(iv) the right to deduction of trade union dues and levies;

(v) the right of access to the employer premises for the purposes of recruitment of members, meeting with members and representing members;

(b) "recognition" means any agreement or practice in terms of which a trade union is recognised under the repealed laws for the purposes of negotiating terms and conditions of employment.

(2) A trade union shall retain any organisational rights conferred by—

(a) any of the repealed laws for a period of three years;

(b) any collective agreement in force at the commencement of this Act until the agreement's expiry, except that, if the agreement expires within two years of the commencement of this Act, the agreement shall be extended for a further year as if the repealed laws had not been repealed.

(3) Any dispute referred to a labour officer under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(4) Where a trade union is recognised at the commencement of this Act, the employer shall continue to recognise the trade union for a period of three years unless another trade union is recognised as the exclusive bargaining agent under section 67.

(5) Any dispute over any organisational rights or recognition conferred under there pealed laws shall be decided by the Labour Court as if the repealed laws had not been repealed.

Negotiated or voluntary agreements

5.-(1) Any negotiated or voluntary agreement concluded before the commencement of this Act, whether or not the agreement has been registered by the Industrial Court under the repealed laws, shall be binding until its expiry provided that—

- (a) if the agreement is due to expire after a year from the commencement of this Act, the agreement expires at the end of the year.
- (b) subject to paragraph 4(2)(b), any renewal of any such agreement shall be done in terms of this Act.

(2) Any dispute arising from the application, interpretation or implementation of an agreement stipulated in sub-paragraph (1) shall be decided by the Labour Court as if there repealed laws had not been repealed.

The Employment Ordinance

6.Notwithstanding the repeal of the Employment Ordinance, the provisions of sections 100 and 102 relating to "provision of medicine and medical treatment" and "burial of deceased employees and dependants" shall continue to apply until they are repealed by another law.

Industrial Court awards

7.-(1) Subject to sub-paragraph (3), any trade dispute stipulated in the repealed laws that arose before the commencement of this Act shall be dealt with as if those laws had not been repealed.

(2) Subject to sub-paragraph (3), any trade dispute referred to the Industrial Court under section 4 of the Industrial Court of Tanzania Act or referred to the Court as a trade enquiry under section 8 of that Act before the commencement of this Act shall be dealt with as if those laws had not been repealed.

(3) Notwithstanding sub-paragraphs (1) and (2), a strike or a lockout that commences after the commencement of this Act shall be dealt with in terms of this Act.

(4) Any revision or interpretation of an award made by the Industrial Court shall be done as if the repealed laws had not been repealed.

(5) Any award made by the Industrial Court under the repealed laws shall remain in force until the expiry of the award.

References to conciliation boards

8.-(1) Any reference concerning a summary dismissal or disciplinary penalty that takes place before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(2) Any reference concerning a summary dismissal or disciplinary penalty that takes place before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

Disputes referred to labour officers

9. Any dispute contemplated in the repealed laws arising before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

References to Minister

10. Any reference to the Minister stipulated under the repealed laws shall be dealt with as if the repealed laws had not been repealed.

Matters before ordinary courts

11.-(1) Any offence committed under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(2) Any claim arising under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(3) Any suit or other civil proceedings commenced before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

Minister may authorize Commission to perform functions of conciliation board and Industrial Court

12.-(1) The Minister may, after consultation with the Commission, authorize the Commission by notice in the *Gazette* to perform the functions of conciliation boards or the industrial court in terms of paragraph 7 or 8—

(a) in respect of the whole or any specified part of Mainland Tanzania;

(b) with effect from a date specified in the *Gazette*.

(2) The authorisation of the Commission under subparagraph (1) shall not affect the competence of a conciliation board or the industrial court in terms of paragraph 7 or 8 to decide or finalise any matter that is partly heard at the date specified in the *Gazette*.

Disputes originating from repealed laws
Acts Nos. 11 of 2010 s.42
4 of 2016 s.24

13.-(1) All disputes originating from the repealed laws shall be determined by the substantive laws applicable immediately before the commencement of this Act.

(2) All disputes pending and all applications for executions filed arising from the decision of the Minister in the subordinate courts prior to the commencement of this Act shall proceed to be determined by such courts.

(3) All disputes pending -

(a) revision of the defunct Industrial Court of Tanzania shall be determined by a panel of three Judges of the Labour Court; and

(b) hearing before the Industrial Court of Tanzania shall be determined by the Labour Court.

(4) All appeals and applications for judicial review originating from the industrial Court of Tanzania pending in the High Court shall be determined by the High Court.

(5) The Commission shall have powers to mediate and arbitrate all disputes originating from the repealed laws brought before the Commission and all such disputes shall be deemed to have been duly instituted under section 86 of the Act.

(6) All references pending decision of the Minister shall -

(a) in the case of references which were returned by the High Court to the Minister for retrial, be determined and finalized by the Minister; and

(b) in the case of references pending the decision of the Minister be forwarded together with their respective complete records to the Labour Court for determination.

(7) The date of the decision of the Minister shall be the date indicated in the prescribed form.

(8) Notwithstanding the provisions of any other written laws, for the purposes of computation of limitation of time, the period between the date of decision and the date of receipt of the decision shall be excluded.

Minimum wages Ord No. 15 of 1951

14.-(1) Notwithstanding the repeal of the Regulation of Wages and Terms of Employment Ordinance-

(a) the Minister may, within 3 years of the commencement of this Act—

(i) establish a minimum wage board under section 4 of the Ordinance; and

(ii) make, with the approval of the President, a wages regulation order under section 10 fixing a basic minimum wage;

(b) the relevant provisions of the Ordinance shall apply to a board established and an order made in terms of paragraph (a).

(2) Subject to subsection (3), a Wages Regulation Order published under the Regulation of Wages and Terms of Employment Ordinance, shall remain in force after the commencement of this Act.

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(3) If a wage determination is published under the Labour Institutions Act, any applicable wages regulations order stipulated in sub-paragraph (1) shall cease to apply to the employers and employees subject to the determination.

- Subsidiary legislation **15.** Any subsidiary legislation made under the repealed laws shall remain in force until they are -
- (a) repealed by the Minister; or
 - (b) replaced by subsidiary legislation made under this Act.
- Hours of work domestic and security workers **16.** Notwithstanding the provisions of section 19, the hours of work of domestic workers and security workers shall be a maximum of—
- (a) 54 ordinary hours for the first year after the commencement of this Act;
 - (b) 51 ordinary hours for the second year after the commencement of this Act;
 - (c) 48 ordinary hours for the third year after the commencement of this Act; and
 - (d) 45 hours thereafter.
- Written particulars **17.** Each employer shall submit the written particulars contemplated in section 15 of this Act and applicable to an employee in employment at the commencement of this Act within a year of the commencement of this Act.
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THE UNITED REPUBLIC OF TANZANIA



CHAPTER 300

THE LABOUR INSTITUTIONS ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Labour Institutions Act, Chapter 300, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

CHAPTER 300

THE LABOUR INSTITUTIONS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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2. Interpretation.

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SCHEDULE

CHAPTER 300

THE LABOUR INSTITUTIONS ACT

An Act to provide for the establishment of Labour Institutions, to provide for their functions, powers and duties, and to provide for other matters related to them.

[1st FEBRUARY, 2005]

[GN No. 8 of 2006]

Acts Nos.
7 of 2004
8 of 2006
17 of 2010
24 of 2015
4 of 2016

**PART I
PRELIMINARY PROVISIONS**

Short title	1. This Act may be cited as the Labour Institutions Act.
Interpretation	2. In this Act, unless the context otherwise requires—
Act No. 17 of 2010 s.18	“Commission” means the Commission for Mediation and Arbitration established under section 12;
	“Council” means the Labour, Economic and Social Council established under section 3;
	“Court” means the Labour Court;
Cap. 366	“ELRA” means the Employment and Labour Relations Act;
	“Labour Commissioner” means the Labour Commissioner appointed in terms of section 43(1) and in the absence of the Labour Commissioner, the Deputy Labour Commissioner;

- “Labour Court” means the Labour Division of the High Court established in accordance with the provisions of section 50
- “labour laws” includes this Act and any other written law in respect of which the Minister is responsible;
- “labour officer” means a labour officer stipulated in section 43(3) and include the Labour Commissioner or the Deputy Labour Commissioner;
- “Minister” means subject to section 34(a), the Minister for the time being responsible for labour matters;
- “Permanent Secretary” means unless otherwise expressed in this Act, the Permanent Secretary of the Ministry responsible for labour matters;
- “Registrar of the Labour Court” means the Registrar appointed in terms of section 54;
- “Registrar of Organisations” means the Registrar appointed in terms of section 43(2) and in the absence of the Registrar, the Deputy Registrar appointed in terms of subsection (2);
- “sector” means an industry or a service or part of an industry or a service.

PART II
LABOUR, ECONOMIC AND SOCIAL COUNCIL

Establishment of Council **3.** There is hereby established a Council for Labour, Economic and Social matters.

Composition of Council **4.-(1)** The Council shall consist of the following members to be appointed by the Minister in accordance with this section-

- (a) Chairperson who shall not be
 - (i) a member, official or office bearer of a trade union, employers association or federation; or
 - (ii) an employee in the public service of the Government of the United Republic;
- (b) sixteen other members, comprising—

- (i) the Permanent Secretary and three other members to represent the interests of the Government;
- (ii) four members to represent the interests of employers;
- (iii) four members to represent the interests of employees; and
- (iv) four members appointed because of their expertise in labour, economic, and social policy formulation.

(2) Prior to appointing a member of the Council, the Minister shall by notice in writing, invite nominations from-

- (a) registered trade unions and federations of trade unions, if the member is to represent employees; or
- (b) registered employers' associations and federations of employers' associations, if the member is to represent employers;
- (c) those members of the Council representing the interests of employers and employees in respect of the members contemplated in subsection (1)(b)(iv).

(3) With the approval of the Minister, the Council may co-opt other members to assist it in the performance of its functions, and such members shall not vote at meetings of the Council.

Function and powers of Council

5.-(1) The function of the Council shall be-

- (a) to advise the Government through the Ministry on any of the following-
 - (i) measures to promote economic growth and social equity;
 - (ii) economic and social policy;
 - (iii) any significant changes to social and economic policy before it is submitted to cabinet;
 - (iv) the promotion of a co-ordinated policy on labour, economic and social matters;

- (b) to advise the Minister on—
 - (i) national labour market policy;
 - (ii) any proposed labour law before it is submitted to cabinet;
 - (iii) the prevention and reduction of unemployment;
 - (iv) any issue arising from the International Labour Organisation;
 - (v) any issue raised by any international or regional association of states of which the United Republic of Tanzania is a member;
 - (vi) codes of good practice;
 - (vii) collection and compilation of information and statistics relating to the administration of the labour laws;
 - (viii) any other labour matter referred to the Council by the Minister or the Council considers useful to achieve the objects of the labour laws;
- (c) to ensure that employers and employees each nominate-
 - (i) assessors for appointment of the panels of assessors referred to in section 53;
 - (ii) individuals for appointment as members of the governing body of the Commission in terms of section 16;
 - (iii) individuals for appointment as members of the Essential Services Committee in terms of section 29;
- (d) to survey and analyse social and economic affairs;
- (e) to keep abreast of international developments in social and economic policy;
- (f) to evaluate the effectiveness of legislation and policy affecting social and economic policy;
- (g) to work in close cooperation with different ministries, statutory bodies, programmes and

other forums or non-governmental agencies engaged in the formulation and the implementation of labour, economic, and social policy;

(2) In the performance of its functions, the Council may conduct-

- (a) an investigation as it may consider necessary; or
- (b) research into labour, economic, and social policy.

(3) The Council may determine its own rules for the performance of its functions.

Tenure of office and terms and conditions of membership

6.-(1) A member of the Council-

- (a) shall be appointed for three years; and
- (b) may be re-appointed at the end of the term of office.

(2) A member of the Council shall be paid allowances for attending meetings, travel and subsistence at a rate to be determined by the Minister on the recommendations of the Permanent Secretary after consultation with the Permanent Secretary of the Office of Public Service Management.

Removal of members and filling of vacancies

7.-(1) The Minister shall remove a member from office if the member-

- (a) has resigned in writing and delivered the resignation to the Permanent Secretary;
- (b) no longer represents the interest in respect of which the member was appointed in terms of section 5 (1)(b)(i), (ii) or (iii):

Provided that, removal of a member on this ground shall be done only if requested by the constituency whose interests that member represents;

- (c) is guilty of serious misconduct relating to the performance of the member's functions;
- (d) is not able to perform the functions of a member (due to illness or any other reason);

- (e) is absent from three meetings of the Council without permission or good cause;
- (f) is declared bankrupt; or
- (g) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(2) Whenever a vacancy occurs on the Council, the Minister shall appoint a member to fill that vacancy for the unexpired term of office, and while making such an appointment shall comply with the provisions of section 4.

Committee of Council

8.-(1) The Council may, for the purpose of performing its functions-

- (a) establish committees to perform specific functions of the Council; and
- (b) subject to the approval of the Minister, assign any of its functions to a committee on conditions it may deem necessary to impose.

(2) A committee appointed by the Council-

- (a) shall be tripartite;
- (b) comprise at least three of its own members; and
- (c) may include any number of other committee members, but such members shall not vote in meetings of the committee if that committee has been assigned functions in terms of subsection (1)(b).

(3) Any function performed by a committee in terms of this section shall be deemed to be performed by the Council.

Meeting of Council

9.-(1) The Chairperson shall call-

- (a) at least three meetings of the Council in a calendar year;
- (b) meetings of the Council in accordance with its rules;
- (c) a special meeting of the Council-
 - (i) at the written and motivated request of four members; or
 - (ii) at the request of the Minister.

(2) The Chairperson shall preside over all meetings of the Council at which the chairperson is present.

(3) If the Chairperson is not present, the members may elect a chairperson from among their number to chair the meeting.

(4) The majority of the members of the Council constitute a quorum provided that there is at least one member representing each of the following interests-

- (a) the government;
- (b) employers; and
- (c) employees.

(5) A decision of the majority of the members of the Council present at the meeting shall be the decision of the Council.

(6) In the case of a tied vote, the member presiding at the meeting shall have a casting vote in addition to that member's deliberative vote.

(7) The Council shall keep a written record of its meetings.

Administration
of Council

10.-(1) The Permanent Secretary-

- (a) shall provide members of staff in the Ministry available to be a Secretariat of the Council in the performance of its functions; and
- (b) may designate an officer in the Ministry to serve as a Secretary to the Council.

(2) The Council may contract with persons to assist it in the performance of its functions-

- (a) after consultation with the Permanent Secretary; and
- (b) with the approval of the Permanent Secretary as to the conditions of the contract.

Annual report
of Council

11. The Council shall submit an annual report of its activities in each calendar year to the Minister before 30 June of the next year.

**PART III
COMMISSION FOR MEDIATION AND ARBITRATION**

Establishment
of
Commission
Cap 4
s.8

12. There is hereby established a Commission for Mediation and Arbitration.

Independence
and
status of
Commission

13.-(1) The Commission –

Cap 4
s.8

- (a) shall be an independent department of Government;
- (b) shall not, in the performance of its functions, be subjected to the direction or control of any person or authority; and
- (c) shall be independent of any political party, trade union, employers’ association, federation of trade unions or employers’ associations.

(2) The Government, public authorities and other registered organisations and federations shall provide such assistance and cooperation as may be required to ensure the effectiveness of the provisions of subsection(1).

(3) Subject to the provisions of this Act, the provisions of any written law relating to public departments shall apply to the Commission and the office of the Commission, and any office established under the Commission shall be a public office.

Functions of
Commission

14.-(1) The functions of the Commission shall be to-

Act No.
24 of 2015
s. 12

- (a) mediate any dispute referred to it in terms of any labour law;
- (b) determine any dispute referred to it by arbitration if-
 - (i) a labour law requires the dispute to be determined by arbitration;
 - (ii) the parties to the dispute agree to it being determined by arbitration;

Cap. 366 (iii) the Labour Court refers the dispute to the Commission to be determined by arbitration in terms of section 94(3)(a)(ii) of the Employment and Labour Relations Act.

(2) The Commission may offer to mediate a dispute that has not been referred to it.

Powers of Commission

15.-(1) In the performance of its functions, the Commission may-

- (a) appoint a director, mediators and arbitrators;
- (b) assign mediators and arbitrators to mediate and arbitrate disputes in accordance with the provisions of any labour law;
- (c) establish offices in areas and at administrative levels as it may determine;
- (d) establish divisions of the Commission and assign particular responsibilities to them;
- (e) make rules to regulate-
 - (i) its internal administration;
 - (ii) the practice and procedure for mediating disputes;
 - (iii) the practice and procedure for arbitrating disputes;
 - (iv) the practice and procedure of the essential services committee;
- (f) publish guidelines; or
- (g) publish a code of ethics for mediators and arbitrators.

(2) The Commission shall, by notice in the *Gazette*, publish any rules or guidelines prescribed in subsection (1)(e) and (f).

Composition of Commission

16.-(1) The Commission shall consist of-

- (a) a chairperson, who shall not be-
 - (i) a member, official or office bearer of a trade union, employers association or federation; or

- (ii) an employee in the public service;
- (b) six other Commissioners.
- (2) The Chairperson shall be appointed from among persons who have knowledge, experience and a considerable degree of involvement in labour matters.
- (3) The President shall appoint-
 - (a) the Chairperson, from a list of three persons recommended by the Council;
 - (b) two Commissioners proposed by members of the Council representing the interests of employees;
 - (c) two Commissioners proposed by members of the Council representing the interests of employers;
 - (d) two Commissioners to represent the Government.
- (4) The appointment referred to in subsection (3) shall be made on the recommendation of the Minister after the Minister has consulted with the Council.

Tenure and conditions of service of Commissioners

- 17.**-(1) A Commissioner shall hold office for a period of three years and shall be eligible for re-appointment at the end of the term of office.
- (2) The office of Commissioner shall not be a full time office and a Commissioner shall not be paid a salary but shall be paid allowances for attending meetings, travel and subsistence at a rate determined by the Minister on the recommendation of the Permanent Secretary after consultation with the Permanent Secretary of the Office of Public Service Management.
 - (3) The office of a Commissioner shall become vacant if the Commissioner-
 - (a) resigns;
 - (b) is removed from office in terms of subsection (4).
 - (4) The President, on the recommendations of the Minister, shall remove a Commissioner from office if the Commissioner-

- (a) no longer represents the interest in respect of which the member was appointed in terms of section 16(3):

Provided that, removal of a Commissioner on this ground shall be done only if requested by the constituency whose interests that Commissioner represents;

- (b) is guilty of serious misconduct relating to the performance of the Commissioner's functions;
- (c) is not able to perform the functions of a Commissioner (due to illness or any other reason);
- (d) is absent from three consecutive meetings of the Commission without permission or good cause;
- (e) is declared bankrupt; or
- (f) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(5) The Minister shall consult with the Council before making a recommendation to the President to remove a Commissioner from office.

(6) Whenever an office of a Commissioner becomes vacant, the President shall appoint a Commissioner to fill that vacancy for the unexpired term of office and while making such an appointment, he shall comply with the provisions of section 16(3).

Director of
Commission

18.-(1) There shall be appointed a Director and a Deputy Director of the Commission-

(2) The Commission, after consultation with the Minister, shall appoint a Director and a Deputy Director from among persons who are knowledgeable, skilled and experienced in labour relations and dispute prevention and resolution.

(3) The Director shall be the chief executive of the Commission and subject to the general directions and control of the Commission-

- (a) be responsible for carrying out the policy decisions of the Commission and the day to day administration and management of the affairs of the Commission;

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- (b) perform the functions that are conferred on the Director by any labour law or delegated to the Director by the Commission;
- (c) may mediate and arbitrate disputes referred to the Commission under the Employment and Labour Relations Act.

(4) The Director shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote.

(5) The Director, in consultation with the Commission, may delegate any of his functions or the function of the Commission to any mediator, arbitrator or member of staff.

(6) Notwithstanding any provisions in this Act, the Director may refer any dispute referred to the Commission to the Labour Court for its decision if it is in the public interest to do so.

Mediators and arbitrators

19.-(1) The Commission shall appoint as many mediators and arbitrators as it considers necessary to perform the functions of the Commission.

(2) The Commission may appoint mediators and arbitrators on either a full-time or part-time basis and on terms and conditions determined by it, in consultation with the Office of the Public Service Management.

(3) When appointing a mediator or arbitrator, the Commission shall have due regard to the need to constitute an independent and professional Commission.

(4) The Commission shall prepare a code of conduct for mediators and arbitrators and ensure that they comply with the code of conduct in performing their functions.

(5) The Commission shall be responsible for the control and discipline of mediators and arbitrators provided that the control or discipline does not amount to interference with the independence of the mediator or arbitrator in any dispute.

(6) The Commission may remove a mediator or arbitrator from office only for-

- (a) serious misconduct relating to the functions of a mediator or arbitrator;

- (b) incapacity relating to the functions of a mediator or arbitrator; or
- (c) a material violation of the code of conduct referred to in subsection (4).

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(7) Nothing in this Act or the Employment Labour Relations Act precludes-

- (a) a person being appointed as both a mediator and an arbitrator under this section;
- (b) such a person from being assigned to perform both capacities in respect of a dispute.

(8) An assignment of a person in terms of subsection (7)(b) shall only take place where there are published rules and guidelines regulating the performance of such persons.

Powers of mediators and arbitrators
Act No. 8 of 2006
Sch.

20.-(1) Mediators and arbitrators appointed in terms of this Act may-

- (a) summon any person for questioning or to attend a mediation or arbitration hearing if the mediator or arbitrator considers that, that person's attendance shall assist in the resolution of the dispute;
- (b) summon any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the mediator or arbitrator to be questioned and to produce the book, document or object;
- (c) administer an oath or accept an affirmation from any person called to give evidence; and
- (d) question any person about any matter relevant to the dispute.

(2) Witness fees to a person who appears before a mediator or arbitrator in response to a summons issued in terms of this section shall be borne out by a party who calls that witness.

(3) Where a witness is summoned by the Commission on its own motion, the cost for that witness shall be borne out by the Director of the Commission.

(4) Notwithstanding the provisions of subsection (2), in a fitting case, the Commission may order the cost for the witness to be paid by the Director of the Commission.

(5) Any person, who does or omits to do any of the acts provided for in paragraphs (a) to (i) of this subsection, commits contempt of the Commission-

- (a) if, after having been summoned to appear before a mediator or arbitrator, the person, without good cause, fails to appear at the place, date and time stated in the summons;
- (b) if, after having appeared in response to a summons, the person fails to remain in attendance until excused by the mediator or arbitrator;
- (c) by refusing to take the oath or to make an affirmation as a witness when a mediator or arbitrator so requires;
- (d) by refusing to answer any question fully or to the best of that person's knowledge and belief subject to any law entitling that person to refuse to do so;
- (e) if the person, without good cause, fails to produce any book, document or object specified in the summons;
- (f) if the person wilfully hinders a mediator or arbitrator in performing any function conferred by or in terms of any labour law;
- (g) if the person insults, disparages or belittles a mediator or arbitrator, or prejudices or improperly influences proceedings or improperly anticipates a mediator's or arbitrator's decision;
- (h) by wilfully interrupting the mediation or arbitration proceedings or misbehaving in any other manner during those proceedings;
- (i) by doing anything else in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.

Oaths

21. A Commissioner, the Director, mediator and arbitrator shall, before entering upon the duties of office, take and subscribe to an oath for the due performance of the functions of office as set out in the Schedule to this Act.

Staff of
Commission

22.-(1) The Director may appoint staff after consulting the Commission.

(2) The Commission, in consultation with the Office of the Public Service Management, shall determine the remuneration of staff members.

(3) The Director shall be responsible for the control and discipline of the staff.

Finances of
Commission

23.-(1) The funds and resources of the Commission shall consist of-

- (a) moneys appropriated by Parliament;
- (b) donations, grants or bequests as the Commission may from time to time receive without compromising the independence of the Commission;
- (c) such other moneys or property accruing to the Commission-
 - (i) under any written law; or
 - (ii) in any other manner in the performance of its functions.

(2) The Commission shall be responsible to the National Assembly in accounting for its revenue and expenditure.

(3) The financial year of the Commission begins on first July in each year and ends on thirtieth June of the next year.

(4) In each financial year, at a time determined by the Minister, the Commission shall submit to the Minister a detailed annual budget for the next financial year including the Commission's estimated income and expenditure and the requested appropriation from Parliament.

(5) In preparing its estimates under subsection (4), the Commission shall have regard to the advice of the Minister and the Minister responsible for finance.

(6) The Minister shall, upon receipt of an annual budget, table the budget before the National Assembly.

Accounts and audits

24.-(1) The Commission shall-

- (a) keep proper books of accounts and records of its income, expenditure, assets and liabilities;
- (b) take all reasonable measures to ensure that the resources of the Commission are safeguarded and utilized in the most economic, efficient and effective manner;
- (c) prepare appropriation accounts in accordance with the Public Finance Act;
- (d) prepare annual accounts in accordance with generally accepted accounting practice in respect of all its transactions.

Cap. 348

(2) The accounts of the Commission shall be audited by the Controller and Auditor General in respect of each financial year.

(3) After the audit, the Controller and the Auditor General shall certify the accounts of the Commission and submit the report to the Commission.

Power to contract

25.-(1) The Commission may contract with any person to-

- (a) do work for the Commission;
- (b) perform any function on behalf of the Commission.

(2) Any person with whom the Commission contracts shall be bound by the requirements of independence that binds the Commission under section 13.

Delegation of Commission's powers

26.-(1) The Commission may delegate in writing any of its functions, other than the functions prescribed below, to any member of the Commission, the Director, a committee of the Commission, and a mediator or arbitrator appointed in terms of section 19, and the functions that the Commission shall not delegate are-

- (a) appointing the Director;

- (b) appointing mediators and arbitrators under section 19;
- (c) approving the annual or supplementary budget for submission to the Minister in terms of section 23.

(2) The Commission may attach conditions to a delegation and may amend or revoke a delegation at any time.

(3) The Commission may vary or set aside any decision made by a person acting in terms of a delegation made in terms of subsection (1).

Limitation of liability and limitation of disclosure

27.-(1) The Commission shall be liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising the functions of the Commission.

(2) The Commission may not disclose to any person, or in any court, any information or document acquired on a confidential basis or without prejudice in the course of mediation.

(3) In this section, “Commission” includes the Commission, a Commissioner and any person employed, appointed or contracted by the Commission.

Annual report of Commission

28.-(1) Within six months after the end of the financial year, the Commission shall prepare and submit to the National Assembly, through the Minister, an annual report in respect of that year containing-

- (a) a copy of the audited accounts of the Commission;
- (b) the auditor’s report on those accounts;
- (c) a report on the operations of the Commission; and
- (d) any other information that the Minister may require.

(2) The Minister shall table the report with the National Assembly as soon as reasonably practicable.

**PART IV
ESSENTIAL SERVICES COMMITTEE**

Establishment
of Essential
Services
Committee

29. There is hereby established an Essential Services Committee within the Commission.

Functions of
Essential
Service
Committee
Cap. 366

30. The functions of the Essential Services Committee shall be-

- (a) to designate essential services in terms of section 76(3) of the Employment and Labour Relations Act; and
- (b) to determine disputes about whether or not an employee or employer is engaged in a designated essential service.

Appointment
of Essential
Service
Committee
Act No.
24 of 2015
s.13
Cap.4
s.8

31.-(1) The Minister shall, in consultation with the Council-

- (a) appoint five members with knowledge and experience of labour law and labour relations as members of the Essential Services Committee; and
- (b) appoint one of such members to be a Chairperson of the Committee.

(2) The Chairperson and members of the Essential Services Committee-

- (a) shall be appointed for three years;
- (b) may be re-appointed at the end of the term of office; and
- (c) before assuming duties of office, shall take and subscribe to an oath or affirmation.

(3) The Minister, on the recommendations of the Permanent Secretary, may determine the allowances to be paid to members of the Essential Services Committee for attending meetings, travel and subsistence.

(4) The Permanent Secretary shall consult with the Permanent Secretary of the Office for Public Service Management prior to the making of a recommendation stipulated in sub-section (3).

(5) The Minister shall remove a member from office if the member-

- (a) has resigned in writing and delivered the resignation to the Permanent Secretary;
- (b) is guilty of serious misconduct relating to the performance of the member's functions;
- (c) is not able to perform the functions of a member (due to illness or any other reason);
- (d) is absent from three consecutive meetings of the Essential Services Committee without permission or good cause;
- (e) is declared bankrupt; or
- (f) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(6) Whenever a vacancy occurs on the Essential Services Committee, the Minister shall appoint a member to fill that vacancy for the unexpired term of office and while making such an appointment he shall comply with the provisions of subsection (1).

Powers of
Essential
Services
Committee

32.-(1) The Essential Services Committee may-

- (a) summon for questioning any person to attend a hearing if the Committee considers that, that person's attendance will assist in the performance of its functions;
- (b) summon any person, who is believed to have possession or control of any book, document or object relevant to the performance of its functions, to appear before the Committee to be questioned and to produce the book, document or object;
- (c) administer an oath or accept an affirmation from any person called to give evidence; and
- (d) question any person about any matter relevant to the performance of its functions.

(2) Nothing in subsection (1) shall require any person to answer any question or furnish any information, book, document or object if there is a lawful ground for not doing so.

(3) The Commission shall pay the prescribed witness fee to each person who appears before a mediator or arbitrator in response to a subpoena issued in terms of this section.

Administrati
on of
Essential
Services
Committee

33.-(1) The Essential Services Committee may make rules for the conduct of its meetings.

(2) The Commission shall provide staff available to be a Secretariat of the Essential Services Committee to assist it in the performance of its function.

PART V WAGE BOARDS

Interpretation

34. For the purpose of this Part, ‘Minister’ means-

- (a) the Minister for the time being responsible for the public service if the sector in respect of which the provisions of this Part are to apply is the whole or part of the public service; or
- (b) the Minister for the time being responsible for labour matters in respect of any other sector.

Appointment
of wage
boards
Acts Nos.
8 of 2006
Sch.
24 of 2015
s.14

35.-(1) The Minister may appoint a wage board in respect of a sector and area to investigate remuneration and terms and conditions of employment in any sector and area and shall report to the Minister on its findings and recommendations.

(2) The Minister shall publish a notice in the *Gazette* prescribing-

- (a) the names of the individuals appointed as members of the wage board;
- (b) the terms of reference of the investigation including-
 - (i) the sector and area to be investigated;
 - (ii) the categories and classes of employees to be included in the investigation;
 - (iii) the matters to be investigated; and

(c) an invitation to members of the public to make written representations within a period prescribed in the notice.

(3) The wage board shall consist of the following members-

(a) in case of the private sector-

- (i) the Chairman;
- (ii) the Secretary;
- (iii) four members recommended by the Council to represent interests of employees;
- (iv) four members recommended by the Council to represent interests of the employer;
- (v) four members recommended by the Council to represent interests of the Government; and
- (vi) three members nominated by virtue of their professions,

appointed by the Minister responsible for labour;

(b) in case of public sector-

- (i) the Chairman;
- (ii) the Secretary;
- (iii) four members recommended by the Council to represent interests of employees;
- (iv) four members recommended by the Council to represent interests of the Government;
- (v) two members nominated by virtue of their professions,

appointed by the Minister responsible for public service.

(4) A member appointed under subsection (3) shall not be a member of the Council.

(5) The appointment of a member under this section shall consider the terms and conditions as may be prescribed in the regulations.

(6) A member of a wage board shall hold office until-

- (a) the Minister discharges the wage board;

- (b) the Minister has removed the member in terms of subsection (7).

(7) The Minister-

- (a) may remove a member from office at any time;
- (b) shall remove a member from office if the member-
 - (i) has resigned in writing and delivered the resignation to the Permanent Secretary;
 - (ii) is guilty of serious misconduct relating to the performance of a member's functions;
 - (iii) is not able to perform the functions of a member (due to illness or any other reason);
 - (iv) is absent from three consecutive meetings of the wage board without permission or good cause;
 - (v) is declared bankrupt;
 - (vi) is convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

(8) Whenever a vacancy occurs on a wage board, the Minister shall appoint a member to fill that vacancy in accordance with subsections (2) and (3).

(9) The Minister, upon the recommendation of the Permanent Secretary, may determine the allowances to be paid to a member of a wage board for attending meetings, travel and subsistence.

(10) The Permanent Secretary shall consult with the Permanent Secretary of the Office for Public Service Management prior to making a recommendation stipulated in subsection (9).

Functions and powers of wage boards

36.-(1) The functions of a wage board shall be within its terms of reference that is-

- (a) to conduct an investigation on a minimum remuneration and other conditions of employment;

- (b) to promote collective bargaining between registered trade unions, employers and registered employers' associations;
 - (c) to make recommendations to the Minister on a minimum wage and conditions of employment.
- (2) In the performance of its functions within its terms of reference, a wage board may-
- (a) question any person who may be able to provide information relevant to any investigation;
 - (b) require, in writing, any person to furnish any information, book, document or object that is material to the investigation;
 - (c) conduct public hearings;
 - (d) facilitate negotiations on a minimum remuneration and conditions of employment between registered trade unions, employers and registered employers' associations in the sector.
- (3) It shall be an offence to refuse to answer any question or furnish any information, book, document or object without a lawful ground for that refusal.
- (4) At the request of a wage board, the Commission shall provide a mediator to facilitate the negotiations stipulated in subsection (2)(d).

Investigations

- 37.** In any investigation, a wage board shall take into account-
- (a) Articles 22 and 23 of the Constitution of the United Republic of Tanzania;
 - (b) any applicable Convention or recommendation of the International Labour Organisation, whether or not the United Republic of Tanzania is a signatory to the Convention;
 - (c) all representations and other information submitted to it;
 - (d) all relevant factors including-
 - (i) the ability of employers to carry on their businesses successfully;
 - (ii) the operation of small, medium and micro-enterprises;

- (iii) the operation of new enterprises;
- (iv) the cost of living;
- (v) the alleviation of poverty;
- (vi) the minimum subsistence level;
- (vii) the remuneration and terms and conditions of employment of employees employed in the East African Community in the sector;
- (viii) any collective agreements providing for remuneration and terms and conditions of employment in the sector;
- (ix) the likely impact of any proposed condition of employment on current employment or the creation of employment;
- (x) any other relevant matter.

Report of
wage board

38.-(1) On completion of an investigation and after considering all representations made to it, a wage board shall prepare and submit a report to the Minister, which shall consist of-

- (a) the board's findings;
- (b) its recommendations on-
 - (i) minimum wage for the sector and area;
 - (ii) any term and condition of employment particular to the sector or area, including any variation of a basic employment condition referred to in section 9 of the Employment and Labour Relations Act.

Cap. 366

(2) If as a result of any facilitation on the part of a wage board, the registered trade unions, employer organizations and employers in the sector conclude a collective agreement on the matters referred to in subsection (1)(b), the Board-

- (a) shall recommend the extension of that agreement to all employers and employees in the sector and area if the parties to the agreement are sufficiently representative of employers and employees in the sector and area;
- or

- (b) may recommend the extension of the agreement or provisions of the agreement to all employers and employees in the sector and area if the parties to the agreement are not sufficiently representative of employers and employees in the sector and area.

(3) If a member of a wage board does not agree with a board's report or any part thereof, he shall submit a minority report which shall be accompanied with the board's report.

Making of
wage order
Act No.
24 of 2015
s. 15

39.-(1) After considering the report and recommendations of the wage board and the Council, the Minister shall make a wage order determining the minimum wage and other conditions of employment for employees in any sector and area of economy.

Cap. 105

(2) For the purpose of this section, "Council" includes Public Service Joint Staff Council established under the Public Service (Negotiating Machinery) Act.

Cap. 366

- (3) A wage order may, in respect of a sector and area-
 - (a) set minimum rates of remuneration;
 - (b) provide for the adjustment of minimum rates of remuneration;
 - (c) set minimum terms and conditions of employment including any variation of basic conditions of employment referred to in section 13 of the Employment and Labour Relations Act;
 - (d) regulate task based work, piece work, home work and contract work;
 - (e) set minimum standards for housing and sanitation for employees who reside on the premises of the employer;
 - (f) specify minimum conditions for trainees;
 - (g) regulate workplace training and education; or
 - (h) regulate any other matter concerning remuneration or other terms and conditions of employment.

(4) Any provision of a wage order may apply to all or some of the employers and employees in the sector and area concerned.

(5) If the Minister does not accept a recommendation of a wage board, the Minister may refer the recommendations back to the board for its reconsideration indicating the matters on which the Minister disagrees with the board.

(6) Where the Minister fails to make a wage order within thirty days after receipt of the wages board and council's report, the aggrieved party may, within thirty days, file an application before the Labour Court which shall compel the Minister to make the order within sixty days from the date of filing the application.

(7) Every employer shall keep workers informed of the minimum wage rates in force by posting notices at the workplace or by any other more effective means.

Period of operation of wage order

40.-(1) The provisions of a wage order shall remain binding until they are-

- (a) suspended or cancelled by the Minister in accordance with subsection (2);
- (b) amended or superseded by a new wage order; or
- (c) superseded by a collective agreement.

(2) The Minister, after consulting the wage board and the parties to a wage order, may suspend or cancel all or part of the order by publishing a notice in the *Gazette*.

Legal effect of wage order

41.-(1) A wage order shall be binding on all employers and employees described in the notice.

Cap. 366

(2) If a matter regulated in Part III of the Employment and Labour Relations Act is also regulated by a wage order, the provisions in the order shall prevail.

(3) Any worker who has been paid wages below the prescribed minimum wage may apply to the District Court or Resident Magistrates' Court for the recovery of the amount by which the worker was underpaid.

Administration
of wage board
Act No.
24 of 2015
s. 16

42.-(1) The Labour Commissioner shall provide staff members of the Ministry available to assist wage board in the performance of its functions.

(2) The wage board may form sub-committees to assist in the performance of its functions.

(3) A wage board may contract persons to assist it in the performance of its functions-

- (a) after consultation with the Labour Commissioner; and
- (b) with the approval of the Permanent Secretary as to the contractual conditions of employment.

PART VI
LABOUR ADMINISTRATION AND INSPECTION

Appointment
of Labour
Commissioner
and other
officers
Act No.
24 of 2015
s. 17
Cap. 366

43.-(1) The President, shall appoint a Labour Commissioner and a Deputy Labour Commissioner, who shall be responsible for the administration of the labour laws.

(2) The Minister shall appoint a Registrar of Organisations and a Deputy Registrar who shall be responsible for the regulation of trade unions, employer organisations and federations under Part IV of the Employment and Labour Relations Act.

(3) The Minister shall, subject to organization structure approved by relevant authorities, appoint Assistant Labour Commissioners to assist Labour Commissioners in the performance of his functions.

(4) There shall be as many labour officers as are necessary to administer and enforce the labour laws.

Delegation
Cap.4
s.8

44.-(1) The Labour Commissioner may, in writing, delegate to the Deputy Labour Commissioner, Assistant Labour Commissioners or any labour officer, any of the Commissioner's powers, functions and duties.

(2) The Registrar of Organisations may, in writing, delegate to the Deputy Registrar any of the Registrar's powers, functions or duties.

(3) The Labour Commissioner or Registrar of Organisations, as the case may be, may-

- (a) attach conditions to a delegation and may amend or revoke a delegation at any time;
- (b) vary or set aside any decision made by a person acting in terms of a delegation made in terms of subsection (1) or (2).

Powers of
labour officers

45.-(1) For the purposes of the administration of labour laws, a labour officer may-

Act No.
24 of 2015
s. 18

- (a) at any reasonable time, enter any premises with a prescribed certificate of authorisation and-
 - (i) require that the premises or any part of it shall not be disturbed during an inspection as long as it is reasonably necessary to search the premises;
 - (ii) search for and examine any information book, document or object;
 - (iii) seize or make a copy of any information, book, document or object;
 - (iv) take a sample of any object found;
 - (v) take measurements, readings, recordings or photographs; and
 - (vi) question any person on the premises;
- (b) order, in the prescribed form, any person to appear before him at a specified date, time and place and to question that person;
- (c) require any person who has control over any information, book, document or object to furnish it and explain any entry in the information, book or document or on the object;
- (d) examine, make a copy or seize any book, document or object produced in terms of paragraph (c);
- (e) take a sample of any object produced in terms of paragraph (c);
- (f) give directions on where notices required in terms of this Act are to be posted;

- (g) request a member of the Police Force to assist in the exercise of the powers referred to in this subsection;
- (h) request any person to assist as an interpreter or otherwise in the exercise of the powers referred to in this subsection;
- (i) institute proceedings in the Resident Magistrate's Court or District Court in respect of any contravention of any labour law and may appear and prosecute in the name of the Labour Commissioner;
- (j) educate, advise and oversee the implementation of labour laws;
- (k) conduct and scrutinize any election or ballot of registered trade union or employer's association if required to do so by the Labour Court or at the request of the union or association concerned; and
- (l) upon request, provide employees, employers, registered trade organizations and federations advice and training in skills for avoidance prevention and settlement of disputes.

(2) Any information, book, document, sample or object referred to in this section shall be relevant to the enforcement and administration of the labour laws.

(3) A labour officer shall issue a receipt for any book, document or object seized in terms of this section.

(4) If asked, a labour officer shall produce the certificate referred to in subsection (1)(a).

(5) Any police officer requested to assist in terms of subsection (1), or any person requested to assist in terms of subsection (1), may accompany the labour officer as if that member or person were a labour officer.

(6) Any individual in charge of any premises on which individuals are employed shall provide facilities as may be reasonably required in order for a labour officer to exercise the powers referred to in subsection (1).

Power to
compound
offences
Act No.
4 of 2016
s.33

45A.-(1) The labour officer may, if satisfied that any person has not complied with any provision of the labour laws or regulations made under this Act, by order, compound such offences by requiring such person to make payment of a sum of money except that-

- (a) such sum of money shall not be less than one hundred thousand shillings; and
- (b) the labour officer shall give a receipt to the person from whom he or she receives such sum of money.

(2) Where an offence in compounded in accordance with the provisions of subsection(1) and proceedings are brought against the offender for the same offence, it shall be a good defence for the offender to prove to the satisfaction of the court that the offence with which the offender is charged has been compounded under subsection (1).

(3) Any person who is aggrieved by any order made under subsection (1) may, within thirty days from the date of that order, appeal to the Labour Commissioner.

(4) Where the employer fails to comply with the order given under this section within the prescribed time, the labour officer shall, in addition to the sum of money ordered, require the employer to pay an interest at the rate prescribed in the regulations.

(5) Subject to the provisions of this section, the labour officer may seek for an execution order against the employer who fails to comply with the order issued under this section.

(6) Notwithstanding the provisions of this section, where the labour officer during inspection finds that the employer has defaulted to remit contributions or has under-declared contributions to any social security fund, the labour officer shall immediately report such matter to the relevant social security fund.

Compliance
order

46.-(1) A labour officer who has reasonable grounds to believe that an employer has not complied with a provision of the labour laws may issue a compliance order in the prescribed form.

(2) The labour officer shall serve the compliance order on-

- (a) the employer;
- (b) any registered trade union with members among the employees affected by the order;
- (c) each employee affected by it.

(3) The failure to serve the stipulated order on the persons stipulated in subsection (2)(b) shall not invalidate the order.

(4) The employer shall display a copy of the order prominently at a place accessible to the affected employees at each workplace named in the order.

(5) An employer shall comply with a compliance order issued in terms of subsection (1) within the period stated in the order.

(6) The Labour Commissioner may apply to the Labour Court to enforce the compliance order if the employer has not complied with the order and has not objected to the order in terms of section 47(1).

Objections to
compliance
order
Cap.4
s.8

47.-(1) An employer may object in writing to a compliance order issued in terms of section 46 within 30 days of receipt of that order.

(2) The employer shall-

- (a) serve the objection on the Labour Commissioner;
- (b) serve a copy of the objection on any registered trade union with members among the employees; and
- (c) display a copy of the objection in a prominent place accessible to the employees affected by the order.

(3) The Labour Commissioner, on good cause, may condone a late objection made in terms of subsection (1).

(4) After considering any representations by the employer, the employees or a registered trade union, the Labour Commissioner-

- (a) may confirm, modify or cancel an order;

(b) shall specify the period within which the employer shall comply with any confirmed or modified order.

(5) The Labour Commissioner shall serve a copy of the order made under subsection (4) on-

- (a) the employer;
- (b) any registered trade union with members among the employees affected by the order; and
- (c) the employees affected by the order.

(6) The failure to serve a copy of the order on the persons stipulated in subsection (5)(b) and (c) shall not invalidate the order.

(7) Where the Labour Commissioner confirms or modifies an order made under subsection (4), the employer shall comply with that order within the period specified in that order.

(8) The Labour Commissioner may apply to the Labour Court to enforce the compliance order if the employer has not complied with the order and has not lodged an appeal in terms of section 48.

Appeals from
order of
Labour
Commissioner

48.-(1) An employer may appeal to the Labour Court against an order of the Labour Commissioner within 30 days of receipt of the order.

(2) Upon an application by the employer, the Labour Court may, on such terms and conditions as it may impose, suspend the order of the Labour Commissioner pending the final order of the Labour Court or any other appeal against the decision of the Labour Court.

(3) The Labour Court, on good cause, may condone any appeal made after the 30 days have expired.

(4) The Labour Court may confirm, modify or cancel an order, and the order in respect of which is confirmed, modified or cancelled shall specify the period within which the employer shall comply with the confirmed or modified order.

Offences in
relation to
labour officers

49.-(1) Subject to subsection (2), any person who commits any of the following acts shall be guilty of an offence-

- (a) hindering or obstructing a labour officer in the performance of the officer's functions or the exercise of the officer's powers;
- (b) refusing or failing to answer, without good reason, any question put by a labour officer in terms of section 45 (1)(a)(vi) or (1)(c);
- (c) refusing or failing to appear in terms of section 45 (1)(b);
- (d) refusing or failing to furnish any information, book, document or object after being required to do so in terms of section 45 (1)(c);
- (e) wilfully furnishing false and misleading information to a labour officer;
- (f) refusing or failing to comply with any lawful request of, or lawful order by, a labour officer or any other person performing a function in terms of this Act or any other labour law;
- (g) falsely claiming to be a labour officer.

(2) It shall not be an offence to refuse to answer a question or produce any information, book, document or object if there is a lawful ground for the refusal.

PART VII LABOUR COURT

Establishment
and
constitution of
Labour Court
Acts Nos.
8 of 2006
Sch.
17 of 2010
s.19

50.-(1) There shall be established a Labour Division of the High Court.

(2) The Labour Division of the High Court shall consist of-

- (a) such number of Judges as the Chief Justice may consider necessary, one of whom shall be designated by Chief Justice as Judge In-Charge who shall head the Labour Court and shall designate any Judge to be in charge of any court zonal centre;
- (b) two panels of assessors appointed in terms of section 53.

(3) The Labour Division of the High Court shall be constituted by a Judge sitting with at least two assessors nominated by the presiding Judge from each of the panels appointed in terms of subsection (2) (b) of this section, provided that, it shall not be necessary for the Judge to sit with assessors-

- (a) in application proceedings;
- (b) if the parties to the dispute agree; or
- (c) if it is necessary for the expeditious determination of proceedings.

(4) The decision of the Labour Court shall be made by the Judge after taking into account the opinions of the assessors, if any, and if the Judge does not agree with such opinions, the Judge shall give reasons.

(5) No proceedings of the Labour Division of the High Court shall be invalid for the reasons only that-

- (a) the appointment of an assessor was defective;
- (b) after the commencement of the proceedings, the Court proceeds without an assessor because-
 - (i) an assessor is unable to sit; or
 - (ii) the Judge of the Labour Court removes the assessor from the proceedings in the interest of the administration of justice.

(6) No fees, cost or interest shall be payable in respect of any proceedings before the Court under the provisions of this Act.

(7) Notwithstanding subsection (6)-

- (a) where any proceedings appear to the Court to be frivolous or vexatious, the Court may, in its discretion, order the party initiating such proceedings to defray the general costs and interest and, in default of payment, the said party shall be liable to imprisonment for such a period not exceeding one month as may be ordered by the court; and
- (b) the general cost or interest may be imposed upon the occasion of the trial and without any action or proceeding for the recovery.

Jurisdiction of
Labour Court
Act No.
8 of 2006
Sch.

51. Subject to the Constitution and the labour laws and over employment matter falling under common law, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court, the Labour Court has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws.

Powers of
Labour Court
Act No.
8 of 2006
Sch.

52.-(1) In the performance of its functions, the Labour Court shall have all the powers of the High Court, save that in making a judgment, ruling, decision, order or decree in so far as it is relevant, the Court may take into account or consider the need-

- (a) to maintain a high level of domestic capital accumulation with a view to increasing the rate of economic growth and to provide greater employment opportunities;
- (b) to maintain and expand the level of employment;
- (c) to develop payment-by-result schemes, or other wage incentive structures, which will induce an employee to make greater effort and relate increases in labour productivity;
- (d) to prevent gains in the wages of the employees from being affected adversely by unnecessary and unjustified price increases;
- (e) to preserve and promote the competitive position of local products in the domestic market as well as in the global market;
- (f) to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility;
- (g) for the United Republic, to maintain a favourable balance of trade and balance of payment;
- (h) to ensure the continued ability of Government to finance development programs and recurrent expenditure in the public sector;
- (i) to maintain a fair relation between the incomes of different sectors of the community; or

(j) for any scientific or social matter of great importance which the court may deem necessary and just to take into account or consider.

(2) Subject to the provisions of subsection (1), on application of any of the parties and after hearing such parties as desired to be heard or on its own motion without such notice, the Labour Court may at any stage transfer any matter submitted and pending before it for trial or disposal:

Provided that, the matter is not resolved for the exclusive jurisdiction of the Labour Court by labour laws to another Court of competent jurisdiction

(3) Where any matter has been transferred under subsection (2), the competent Court shall proceed to retry it or proceed from the state at which it was transferred.

Assessors
Acts Nos.
8 of 2006
Sch.
17 of 2010
s.20

53.-(1) The panels of assessors referred to in section 50(2)(b) shall be constituted as follows-

- (a) an employer panel drawn from a list of names nominated by the members of the Council representing the interests of employers; and
- (b) an employee panel drawn from a list of names nominated by the members of the Council representing the interests of employees.

(2) The Judge Chairman may suspend a person from a panel referred to in subsection (1)-

- (a) if that person has resigned in writing and delivered the resignation to the Registrar of the Labour Court;
- (b) for misconduct inconsistent with the ethics of an assessor;
- (c) for inability to perform the functions of an assessor due to illness or any other reason;
- (d) if that person fails to attend a hearing without permission of the Judge;
- (e) if that person is declared bankrupt; or
- (f) if that person is convicted of a criminal offence and sentenced to imprisonment.

(3) Where the Judge Chairman or presiding Judge suspends any assessor or person from a panel of assessors

constituting the Court, the Judge Chairman shall recommend to the appointing authority for his removal from the roll of assessors.

Registrar of
Labour Court
Act No.
8 of 2006
Sch.

54.-(1) There shall be a Registrar of the Labour Court appointed by the Chief Justice who shall be the Chief Executive Officer of the Labour Court and who shall, subject to this Act, be answerable to the Judge In-Charge.

(2) There shall be Deputy Registrars of such number as shall be determined and appointed by the Chief Justice.

Rules of
Labour Court

55.-(1) The Chief Justice, after consultation with the Minister, shall make rules to govern the practice and procedure of the Labour Court.

(2) The rules shall, by notice, be published in the *Gazette*.

Representation
in Labour
Court

56. In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented by-

- (a) an official of a registered trade union or employers' organisation;
- (b) a personal representative of the party's own choice; or
- (c) an advocate.

Appeals from
decisions of
Labour Court

57. Any party to the proceedings in the Labour Court may appeal against the decision of that Court to the Court of Appeal of Tanzania on a point of law only.

References by
Labour
Commissioner
to Labour
Court and
Court of
Appeal of
Tanzania

58.-(1) The Labour Commissioner may-

- (a) refer any point of law, other than the point of law referred to in paragraph (b), to the Labour Court-
- (b) refer a point of law to the Court of Appeal if-
 - (i) there are conflicting decisions of the Labour Court in respect of the same point of law; and
 - (ii) the parties to the proceedings in those decisions have not appealed.

(2) The Labour Commissioner shall serve any reference under subsection (1) on the Council.

(3) Any registered organisation or registered federation with an interest in the subject matter of any reference under paragraph (a) or paragraph (b) may apply to the Court to which the reference is made to be joined as parties to the proceedings.

**PART VIII
GENERAL**

Confidentiality

59.-(1) Subject to provisions of subsection (2), it shall be an offence for any person to disclose any information relating to the financial or business affairs of another person if that information was acquired in the performance of any function or the exercise of any power under this Act.

(2) Subsection (1) shall not apply if the information is disclosed in compliance with this Act-

- (a) to enable a person to perform a function or exercise a power under this Act;
- (b) in accordance with any written law;
- (c) for the purpose of the proper administration of this Act;
- (d) for the purposes of the administration of justice;

Burden of proof

60.-(1) In any proceedings concerning a contravention of any labour law, it shall be for the employer-

- (a) to prove that a record maintained by or for that employer is valid and accurate;
- (b) who has failed to keep a record required by any labour law, to prove compliance with any provision of those laws.

(2) In any civil proceedings concerning a contravention of a labour law-

- (a) the person who alleges that a right or protection conferred by any labour law has been contravened shall prove the facts of the conduct

said to constitute the contravention unless the provisions of subsection (1)(b) apply; and

- (b) the party who is alleged to have engaged in the conduct in question shall then prove that the conduct does not constitute a contravention.

Presumption
as to who is
employee

61. For the purposes of a labour law, a person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors is present-

- (a) the manner in which the person works is subject to the control or direction of another person;
- (b) the person's hours of work are subject to the control or direction of another person;
- (c) in the case of a person who works for an organisation, the person is a part of that organization;
- (d) the person has worked for that other person for an average of at least forty five hours per month over the last three months;
- (e) the person is economically dependent on the other person for whom that person works or renders services;
- (f) the person is provided with tools of trade or work equipment by the other person; or
- (g) the person only works for or renders services to one person.

Guidelines

62.-(1) The Minister, after consultation with the Council, may-

- (a) issue guidelines for the proper administration of this Act;
 - (b) change or replace a guideline.
- (2) Any guideline or any change to, or replacement of, a code or guideline shall be published in the *Gazette*.
- (3) Any person interpreting or applying this Act shall take into account any guideline published under this section.
- (4) If a person departs from the guideline, that person shall justify the departure.

Offences
Acts Nos.
8 of 2006
Sch.
17 of 2010
s.20

63.-(1) It shall be an offence to contravene sections 36, 49, 59 or any other section of or rules made under this Act.

- (2) It is an offence to-
- (a) attempt to influence improperly a person who is performing a function in terms of this law or any other labour law;
 - (b) obtain or attempt to obtain any document by means of fraud, false pretences, or by presenting or submitting a false or forged document;
 - (c) pretend to be any person appointed in terms of this Act or any other labour law;
 - (d) furnish false information knowing that the information is false; or
 - (e) hinder, obstruct or disobey any lawful order issued by a person performing a function in terms of this Act or any other labour law.

Penalties

64.- (1) A District Court which includes a Resident Magistrate's Court shall have jurisdiction to impose a penalty for an offence under this Act.

(2) Any person convicted of any of the offences referred to in section 63 (1) shall be liable to-

- (a) a fine not exceeding five million shillings;
- (b) imprisonment for a period of 3 months; or
- (c) both a fine and imprisonment.

(3) Any person convicted of any of the offences referred to in subsection (2) of section 63 shall be liable to-

- (a) a fine not exceeding ten million shillings;
- (b) imprisonment for a period of 6 months; or
- (c) both a fine and imprisonment.

Regulations

65.-(1) The Minister, after consultation with the Council, may make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1) of this

section, the Minister may make regulations for or in respect of all or any of the following matters-

- (a) all matters stated or required in this Act to be prescribed;
- (b) conduct of investigations by the Council;
- (c) procedure for appointing members of the Council to represent the interests of employers and employees;
- (d) regulating the establishment and conduct of committees of the Council
- (e) appointment and discharge of wage boards;
- (f) regulating investigations, public hearings and facilitation of negotiations by wage boards;
- (g) procedure for the suspension, cancellation, amendment or suspension of a wage order;
- (h) regulating the exercise of labour officers' powers of investigation and prosecution;
- (i) regulating the issuing of compliance orders and objections to those orders;
- (j) regulating the removal of members, Commissioners, mediators and arbitrators from office; or
- (k) regulating annual reports of the Council and the Commission.

Savings and transitional provisions
Cap. 366

66.-(1) For the purpose of this section, “repealed laws” means the laws repealed under section 103 of the Employment and Labour Relations Act.

(2) The Labour Commissioner, Registrar of Trade Union, Deputy Registrar of a Trade Union and labour officers appointed under the repealed laws are deemed to be appointed under this Act as the Labour Registrar of Organizations, Deputy Registrar of Organisations and labour officers respectively.

—————
SCHEDULE
—————

OATHS OF OFFICE

(Made under section 21)

OATH FOR COMMISSIONERS

I,, having been appointed a Commissioner of the Commission for Mediation and Arbitration, do swear/affirm that I will discharge my functions without bias and will not directly or indirectly reveal any information that comes into my possession without the authorisation of the Commission or the Labour Court.

SO HELP ME GOD

Sworn/Affirmed before me on thisday of20.....

.....
President

OATH FOR DIRECTOR, MEDIATOR OR ARBITRATOR

I,....., having been appointed a Director /Mediator / Arbitrator of the Commission for Mediation and Arbitration, do swear/affirm that I will discharge my functions without bias and will not directly or indirectly reveal any information that comes into my possession without the authorisation of the Commission or the Labour Court.

SO HELP ME GOD

Sworn/Affirmed before me on thisday of 20.....

.....
Judge of the High Court

—————

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 113

THE LAND ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Land Act, Chapter 113, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

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CHAPTER 113
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THE LAND ACT
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[PRINCIPAL LEGISLATION]

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SCHEDULE

CHAPTER 113

THE LAND ACT

An Act to provide for the basic law in relation to land other than the village land, the management of land, settlement of disputes and related matters.

[1st MAY, 2001]
[GN. No. 484 of 2001]

- Acts Nos.
- 4 of 1999
- 2 of 2002
- 2 of 2004
- 12 of 2004
- 11 of 2005
- 12 of 2008
- 17 of 2008
- 3 of 2009
- 2 of 2010
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- 4 of 2018
- 7 of 2018

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Land Act.

Interpretation

Act No

7 of 2016

2nd Sch. Para 2

2. In this Act, unless the context required otherwise-

“access order” means an order made under section 148;

“ actual notice” means the notice which a person has personally of a matter or action or document or the rights and interests of another person;

- " Allocations Committee" means the Land Allocations Committee established by section 12;
- " appointing authority" means the person or organization having the authority under any law to appoint persons to the public service;
- "assignee" means a person to whom an assignment is made;
- "Assistant Commissioner" means an Assistant Commissioner appointed under section 11;
- "authorised officer" means an officer authorised by the Commissioner or the Registrar to perform any functions of the Commissioner or, as the case may be, the Registrar which may be specified in the document of authorisation delivered to that officer;
- "borrower" means a person who obtains an advance of money or money's worth or agrees to the fulfillment of a condition on the security of a mortgage of his right of occupancy or lease;
- "building" means any building or other structure made or assembled on, in or under any land and includes the land on, in or under which the building or structure is situate;
- "caveat" means a notice in the form of an entry on a register that no action of a specified nature in relation to the right of occupancy in respect of which the notice has been entered may be taken without first informing the person who gave the notice;
- "certificate of approval" means the certificate granted under section 41;
- "certificate of occupancy" means a certificate issued under section 29;
- "certificate of validation" means a certificate issued under section 53;
- " Commissioner" means the Commissioner for Lands appointed under section 9;
- "communal right of way" has the meaning ascribed to it by section 153;
- "co-occupancy" has the meaning ascribed to it by section 159;

- Cap. 1
- "Council" means the National Land Advisory Council established by section 17;
- "Court" means anybody established by or under any written law which is referred to in section 167 as having jurisdiction to determine land disputes;
- "customary law" has the meaning ascribed to it by the Interpretation of Laws Act;
- "customary right of occupancy" includes deemed right of occupancy;
- "dealing" includes disposition and transmission;
- "deemed right of occupancy" means a right to title of a Tanzania citizen of African descent or a community of Tanzania citizens of African descent using or occupying land under and in accordance with customary law;
- "deliver" includes to transmit by post or by hand;
- "derivative right" means a right to occupy and use land created out of a right of occupancy and includes a lease, a sub-lease, a licence, a usufructuary right and any interest analogous to those interests;
- "Deputy Commissioner" means a Deputy Commissioner appointed under section 11;
- "development" means the carrying out of any building operation, engineering operation or mining operation in, on, under or over land or the making of any change of a substantial nature in the use of land;
- "disposition" means any sale, exchange, transfer, grant, partition, exchange lease, assignment, surrender, or disclaimer and included the creation of an easement, a usufructuary right or other servitude or any other interest in a right of occupancy or a lease and any other act by an occupier of a right of occupancy over that right of right of occupancy or under a lease whereby his rights over that right of occupancy or lease are affected and an agreement to undertake any of the dispositions so defined;
- "district authority" means a district council, a township authority or a village council;

Cap. 38

"District Land and Housing Tribunal" means a Court referred to in section 167;

"dwelling house" means any house or part of a house or room used as a separate dwelling in any building and included any garden or other premises within the cartilage of a used as a part of the dwelling house as so defined;

"easement" has the meaning ascribed to it by section 143;

"entry order" means an order made under section 155;

"foreign company" means a company classified as a foreign national by the Tanzania Investment Act;

"Fund" means the Land Compensation Fund established by section 173;

"general land" means all public land which is not reserved land or village land includes un occupied or unused village land;

"granted right of occupancy" means a right of occupancy granted under and in accordance with Part VI;

"hazardous land" means land declared to be hazardous land under section 7;

"head lease" means a lease in respect of which a sublease is entered into;

"High Court" means the High Court of Tanzania established under Article 108 of the Constitution of the United Republic;

"instrument" means a writing including an enactment which creates or affects legal or equitable rights and liabilities and includes any covenant or condition expressed in an instrument or implied in an instrument under this or any other enactment relating to land and, except where otherwise provided, any variation of an instrument;

"interest" means a right in or over a right of occupancy;

"land" includes the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other

structures permanently affixed to or under land and land covered by water;

"lease" means a lease or sublease, whether registered or unregistered of a right of occupancy and includes a short-term lease and agreement to lease;

"lender" means a person to whom a mortgage has been given as security for the repayment of an advance of money or money's worth or to secure a condition;

"lessee" means a person to whom a lease is granted and includes a person who has accepted a transfer or assignment of a lease;

"lessor" means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

"letter of offer" means a letter of offer issued under section 27;

"licence" means a permission given by the Government or an occupier of land under a right of occupancy or a lessee which allows the person to whom the licence is given to occupy or use or do some act in relation to the land comprised in the right of occupancy or the lease which would otherwise be a trespass but does not include an easement;

"licensee" means the person granting or giving the licence;

"lien" means the holding by a lender of any document of title relating to a right of occupancy or a lease as security for an advance of money or money's worth or the fulfillment of a condition;

"local government authority" means a district authority or an urban authority;

"Minister" means the Minister responsible for land;

"mortgage" means an interest in a right of occupancy or a lease securing the payment of money or money's worth or the fulfillment of a condition and includes a sub-mortgage and the instrument creating a mortgage;

"occupier in common" has the meaning ascribed to it by section 159;

"partition" means the separation by formal legal instrument of the shares in a right of occupancy or a lease held by occupiers in common so that each such occupier takes his shares free of the rights of the others and includes partition carried out in accordance with section 149;

"periodic lease" means a lease from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;

"peri-urban area" means an area which is within a radius of ten kilometers out-side the boundaries of an urban or semi built up area or within any large radius which may be prescribed in respect of any particular urban area by the Minister"

"Permanent Secretary" means the Permanent Secretary in the Ministry responsible for land;

"Primary land Court" means a Court established by section 167;

"public land" means all the land of Tanzania;

"public right of way" has the meaning ascribed to it by section 151;

"register" means a register prescribed under this Act for the recording of rights and interests in and dispositions, of land in connection with right of occupancy and includes the and register established under the Land Registration Act, and the registry of documents established under the Registration of Documents Act;

Cap 334
Cap 117

"registered valuer" means a valuer with a professional or academic qualification in land valuation or with a professional or academic qualification in a subject that includes land valuation;

Cap 334

"Registrar" has the meaning ascribed to it by the Land Registration Act, and includes the registrar of documents as appointed and defined in the Registration of Documents Act;

Cap 117

"regularisation area" means an area in respect of which a scheme of regularisation has been declared;

"reserved land" means land referred to by section 6;

Act No.
2 of 2002

"residential licence" has the meaning ascribed to it by section 23;

"restrictive agreement" means an agreement by one occupier of land under a right of occupancy restricting the building on or the use or other enjoyment of his land for the benefit of the occupier under a right of occupancy or neighbouring land and includes a restrictive covenant;

"right of occupancy" means a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law;

"Rules Committee" means the Land Court Rules Committee established by section 167;

"sale" as used in relation to a right of occupancy, means transfer of an interest in or over land on conditions attached to a granted right of occupancy;

"scheme of regularisation" means a scheme declared by the Minister under section 59;

"short term lease" has the meaning ascribed to it by section 80;

"small mortgage" has the meaning ascribed to it by section 114;

"transfer" means the passing of a right of occupancy, a lease or a mortgage the parties and not by operation of the law and includes the instrument by which such passing is effected;

"transferee" means a person who receives the right of occupancy, lease or mortgage passed by an act of transfer;

"transfer land" means general or reserved land which is to be transferred from one category of land;

"transferor" means the person who passes the right of occupancy, lease or mortgage by an act of transfer;

- "transmission" means the passing of a right of occupancy, a lease or a mortgage from one person to another by operation of law on death or insolvency or otherwise;
- Cap 318 "trustee" means a person having a nominal title to the ownership of land or other property which he is under a legal duty to hold for the benefit of some other person or persons and includes a trustee appointed under the Trustees (Incorporation) Act;
- "Trustees" means the Trustees of the Land Compensation Fund established by section 173;
- "unexhausted improvement" means anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature;
- Cap. 288 "urban area" means an area within the jurisdiction of an authority established or deemed to have been established under and governed by the Local Government (Urban Authorities) Act and the Local Government (District Authorities) Act;
- Cap. 287 "village council" has the meaning ascribed to it by the Local Government (District Authorities) Act;
- "village land" means the land declared to be village land under and in accordance with section 4 and includes any transfer land transferred to a village;
- Cap. 114 "Village Land Council" has the meaning ascribed to it by section 60 of the Village Land Act;
- "village transfer land" means village land which is to be transferred to become part of general or reserved land;
- "way leave" has the meaning ascribed to it by section 151.

PART II
FUNDAMENTAL PRINCIPLES OF
NATIONAL LAND POLICY

Fundamental principles of National Land Policy

3.-(1) The fundamental principles of the National Land Policy which is the objective of this Act to promote and to which all persons exercising powers under, applying or interpreting this Act are to have regard to, are-

- (a) to recognise that all land in Tanzania is public and vested in the President, as trustee on behalf of all citizens;
- (b) to ensure that existing rights in and recognised long-standing occupation or use of land are clarified and secured by the law;
- (c) to facilitate an equitable distribution of and access to land by all citizens;
- (d) to regulate the amount of land that any one person or corporate body may occupy or use;
- (e) to ensure that land is used productively and that any such use complies with the principles of sustainable development;
- (f) to take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest;
- (g) to pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act:

Cap.118

Provided that, in assessing compensation of land acquired in the manner provided for in this Act, the concept of opportunity shall be based on the following-

- (i) market value of the real property;
- (ii) disturbance allowance;
- (iii) transport allowance;
- (iv) loss of profits or accommodation;
- (v) cost of acquiring or getting the subject land;

- (vi) any other cost loss or capital expenditure incurred to the development of the subject land; and
 - (vii) interest at market rate will be charged;
 - (h) to provide for an efficient, effective, economical and transparent system of land administration;
 - (i) to enable all citizens to participate in decision making on matters connected with their occupation or use of land;
 - (j) to facilitate the operation of a market in land;
 - (k) regulate the operation of a market in land so as to ensure that rural and urban small-holders and pastoralists are not disadvantaged;
 - (l) to set out rules of land law accessibly and in a manner which can be readily understood by all citizens;
 - (m) to establish an independent, expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay;
 - (n) to encourage the dissemination of information about land administration and land law as provided for by this Act through programmes of public awareness, using all forms of media.
- (2) The right of every adult woman to acquire, hold, use, and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man.

PART III CLASSIFICATION AND TENURE OF LAND

All land vested in President as trustee

4.-(1) All land in Tanzania shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania.

(2) The President and every person to whom the President may delegate any of his functions under this Act, and any person exercising powers under this Act, shall at all times exercise those functions powers and discharge duties as a trustee of all the land in Tanzania so as to advance the economic and social welfare of the citizens.

(3) Every person lawfully occupying land, whether under a right of occupancy wherever that right of occupancy was granted or deemed to have been granted, or under customary tenure, occupies and has always occupied that land, the occupation of such land shall be deemed to be property and include the use of land from time to time for depasturing stock under customary tenure.

(4) For the purposes of the management of land under this Act and all other laws applicable to land, public land shall be in the following categories-

- (a) general land;
- (b) village land;
- (c) reserved land.

(5) A grant of a right of occupancy shall be made in the name of the President and shall be sealed with a seal of a nature and pattern which the President may, by order, published in the *Gazette* approve.

(6) Nothing in this section shall be construed to affect the validity of any right of occupancy lawfully granted or deemed to have been granted or consented to, under the provisions of any law in force in Tanzania before the commencement of this Act.

(7) The President may, subject to the provision of this part, by order published in the *Gazette*, transfer or exchange land from one category of land described in subsection (4) to another category of land so described.

Transfer of
general or
reserved land
to village land

5.-(1) Where the President is minded to transfer any area of general or reserved land to village land he may direct the Minister to proceed in accordance with the provisions of this section.

(2) The Minister shall cause to be published in the *Gazette* and sent to the Village Council of the village to which general or reserved land may be transferred, hereinafter referred to as (transferred land) a notice specifying-

- (a) the location of the transferred land;
- (b) the boundaries and extent of the transferred land;

(c) a brief statement of the reasons for the proposed transfer;

(d) the date, being not less than sixty days from the date of the publication of the notice, on which the President may exercise his powers to transfer the transferred land or part of it.

(3) Where the transferred land is-

(a) reserved land, a copy of the notice shall be sent to-

(i) the Minister responsible for that reserved land; or

(ii) where a local authority is responsible for that land, to that local authority; and

(iii) where there are any persons occupying and using that land, to those persons in a manner and form that will enable them to understand the information contained in the notice;

(b) general land, a copy of the notice shall be served on-

(i) the local authority in whose area the land is situate;

(ii) the holder of any right of occupancy in that land;

(iii) the holder of any derivative right in that land;

(iv) any person occupying or using that land under customary law,

and in the case of the persons referred to in subparagraphs (ii), (iii) and (iv) the notice shall be in a manner and form that will enable those persons to understand the information contained in the notice.

(4) Any person who has received a notice under subsection (3) may, within not less than twenty nor more than forty days from the date of the receipt of the notice, make representations to the Commissioner or an authorized

officer who shall be under a duty to hear and record the representations and take them into account in any report prepared for the President on the proposed transfer.

(5) The Commissioner shall, after taking account of any representations received under subsection (4), prepare a report for the Minister to submit to the President on the proposed transfer.

(6) Where the subject of a report referred to in subsection (5) is reserved land, a copy of the report shall be conveyed to the Minister responsible for that reserved land.

(7) Where a granted right of occupancy exists in any transferred land or a part thereof, a transferred land shall, unless the instrument of transfer provides otherwise, operate as a compulsory acquisition of that right of occupancy and compensation on it shall be payable.

(8) Where persons are occupying and using the general transferred land a part of it under a customary right of occupancy, the transfer of that land to village land shall not, of itself, operate to determine or affect the rights of such persons to continue to occupy and use that land under that customary right of occupancy but that land shall, after the transfer, be under the jurisdiction of the Village Council of the village to which the land has been transferred.

(9) After receiving the report of Commissioner prepared under subsection (5) and any representations made by the Minister in any case to which subsection (6) applies, the President may exercise his power to transfer the transferred land or a part of it, and allocate that land to a village named in the document of transfer.

(10) The President may direct the Minister to appoint an inquiry under section 18 into a proposed transfer under this section and where such an inquiry has been appointed, no further action shall be taken on the proposed transfer until the inquiry has reported.

(11) A transfer of general or reserved land to village land shall be notified in the *Gazette* and shall come into effect thirty days after the date of the publication of the notice.

Cap. 114 (12) Village land may be transferred to general land in accordance with the provisions of the Village Land Act.

Categories of reserved land

6.-(1) Reserved land is-

Cap. 323
Cap. 282
Cap. 284
Cap. 283
Cap. 146
Cap. 355
Cap. 167
Cap. 320
Cap. 118

- (a) land reserved, designated or set aside under the provisions of the-
 - (i) Forests Act;
 - (ii) National Parks Act;
 - (iii) Ngorongoro Conservation Area Act;
 - (iv) Wildlife Conservation Act;
 - (v) Marine Parks and Reserves Act;
 - (vi) Urban Planning Act;
 - (vii) Roads Act;
 - (viii) Public Recreation Grounds Act;
 - (ix) Land Acquisition Act;
- (b) land parcel within a natural drainage system from which the water resource the concerned drainage basin originates;
- (c) land reserved for public utilities;
- (d) land declared by order of the Minister in accordance with the provisions of this Act to be hazardous land.

(2) Where a right of occupancy has been acquired, revoked or surrendered in general land which is within or contiguous to an area of reserved land, the President may declare that general land to be reserved land of the same nature and subject to the same law as the reserved land of which it has, by that declaration, become a part.

Declaration of hazardous land
Cap.4
S.8

7.-(1) For the purposes of this Act, hazardous land is land the development of which is likely to pose a danger to life or to lead to the degradation of or environmental destruction on that or contiguous land and includes but is not limited to-

- (a) mangrove swamps and coral reefs;
- (b) wetlands and off-shore islands;

- (c) land designated or used for the dumping of hazardous waste;
- (d) land within sixty metres of a river bank or the shoreline of an inland lake, beach or coast;
- (e) land on slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice, specify;
- (f) land specified by the appropriate authority as land which should not be developed on account of its fragile nature or of its environmental significance.

(2) The declaration of any land to be hazardous land shall be in accordance with the provisions of this section.

(3) Where the Minister considers that an area of land should be declared to be hazardous land, in this section referred to as “proposed hazardous land” he shall publish a notice in the *Gazette* specifying-

- (a) the location of the proposed hazardous land;
- (b) the boundaries and extent of the proposed hazardous land;
- (c) a brief statement of the reasons for the proposed declaration;
- (d) the date, being, not less than sixty days from the date of the publication of the notice, when declaration may be made.

(3A)¹ For the purpose of subsection (3) “*Gazette*” includes official *Gazette* or local newspapers.

(4) A copy of the notice referred to in subsection (3) shall be-

- (a) saved on all persons occupying and using the proposed hazardous land in a manner and form as will be understandable to those persons;
- (b) saved on all local authorities having jurisdiction in the area of the proposed hazardous land;

¹ Note: The contents of subsection (3A) have been designated as such after rearrangement

(c) put up in conspicuous places within the area of the proposed hazardous land.

(5) All persons and authorities on whom a notice has been served and all persons and organisations on whom a notice should have been served but was not and any other person or organisation with an interest in land may, within not less than thirty days after the date of the service of the notice, make representations to the Commissioner on the proposed declaration and the Commissioner shall be under a duty to hear and record the representations and take them into account in determining whether to recommend to the Minister that the land or any part of it be declared to be hazardous land.

(6) Where the Minister, after considering a report prepared by the Commissioner under subsection (5), determines that the proposed hazardous land or a part of it shall be declared to be hazardous land, he may, subject to subsection (7), make a declaration accordingly.

(7) Where the proposed hazardous land or a part of it is occupied and used by any person under a granted or customary right of occupancy, the Minister shall, if he considers that that land or a part of it should be declared to be hazardous land, report the matter to the President.

(8) The President may, after considering the report of the Minister, declare any land to which subsection (7) applies to be hazardous land and any such declaration shall operate to compulsorily acquire, subject to compensation, any right of occupancy in that land.

(9) A notice of a declaration of hazardous land shall be published in the *Gazette* in the manner provided for under sections 169 and 170 of this Act and shall come into force thirty days after the date of the publication of the notice.

**PART IV
ADMINISTRATION**

Minister's
responsibilities

8. The Minister shall be responsible for policy formulation and for ensuring the execution by officials in the Ministry of the functions connected with the implementation of the National Land Policy and of this Act which are allocated or delegated to him by the President and in pursuance of this responsibility, the Minister may-

- (a) give any advice, guidance and directives to the officials in the ministry which will in his opinion be conducive to the efficient effective, economical, impartial and transparent administration of land under this Act;
- (b) seek advice from any official in the Ministry concerning implementation of the National Land Policy and of the administration of land under this Act;
- (c) seek advice from other knowledgeable persons concerning the administration of land and the implementation of this Act;
- (d) take all other necessary actions decisions which will enable him to discharge all the functions which are allocated or delegated to him by the President in connection with the implementation of National Land Policy and of the administration of land under this Act.

Appointment
of
Commissioner
for Lands

9.-(1) There shall be a Commissioner for Lands who shall be appointed by the President.

(2) In appointing the Commissioner, regard shall be had to the need to appoint a person of proven probity with qualifications skill and practical experience in land management or law in the public or private sector.

Functions of
Commissioner

10.-(1) The Commissioner shall be the principal administrative and professional officer of, and adviser to, the Government on all matters connected with the administration of land and shall be responsible to the Minister for the administration of this Act and the matters contained in it.

(2) The President may, by notification in the *Gazette*, delegate any of the specific functions under this Act which are vested in him, in accordance with any terms and conditions which he sees fit, to the Commissioner.

(3) The President may, through the Minister, give directives in writing to the Commissioner concerning the proper discharge by the Commissioner of the functions conferred by this Act on the President which the President has, under subsection (2), delegated to the Commissioner and the Commissioner shall comply with those directives.

(4) The Commissioner may from time to time, as he sees fit, issue and publish circulars and directives on the administration of this Act but no such circulars or directives shall purport to alter, amend or depart from the provisions of this Act or any regulations made under this Act or contradict any advice, guidance or directives issued by the Minister under section 9.

(5) Where the Commissioner is required or empowered by this Act to make a determination affecting or likely to affect the rights of any person or the opportunity for any person to exercise any powers conferred on that person by this Act the Commissioner shall, where he makes a determination which is adverse to that person give that person reasons for that determination.

(6) The Commissioner shall prepare and publish an annual report on the management of land for which he is responsible and each report shall include all directives given to the Commissioner under subsection (3) together with a brief statement of the action taken to comply with any of those directives.

Appointment
of officers

11. There shall be appointed a Deputy Commissioner of Lands and one or more Assistant Commissioners and, after obtaining the advice of the Commissioner, any other officers whom the appointing authority shall consider necessary.

(2) In appointing officers under subsection (1) of this section, regard shall be had to the need to appoint a person of proven probity with qualifications, skill and practical experience in land management or law in the public or private sector.

(3) Officers appointed under this section shall be allocated any functions and shall be located in any offices in any areas as the Commissioner considers will contribute to the proper management of land.

(4) Officers appointed under this section shall be subject to the directions of and answerable to the Commissioner.

(5) Functions vested in the Commissioner by this or any other legislation may be exercised by any officers whom the Commissioner shall, on any terms as he may specify in writing, authorise to do so and those officers shall be referred to as “authorized officers”.

(6) Where the Commissioner delegates any of his functions connected with the signing and execution of rights of occupancy, that delegation shall-

- (a) be to a named officer;
- (b) be published in the *Gazette*;
- (c) not take effect until publication in the *Gazette*.

(7) Any local authority officer or officer appointed to and working in any other public organisation allocated any functions relating to land arising out of or under or in connection with this Act by that local authority or other public organisation shall comply with any directives of the Commissioner issued to him specifically or generally, and shall have regard to any circulars issued by the Commissioner.

(8) All Courts, judges and persons acting judicially shall take judicial notice of the Commissioner and any person to whom he has delegated his functions under subsection (6).

Land
Allocations
Committees

12.-(1) The Minister shall establish committees at appropriate levels of Government to be called the Land Allocations Committees to advise the Commissioner on the exercise of his power to determine applications for rights of occupancy.

(2) The land Allocations Committee shall be composed of any persons with any tenure of office which the Minister shall by regulations made under section 179 of this Act prescribe and may, subject to the approval of the Minister concerned, include officials from any other Ministry.

(3) Land Allocations Committees shall be established at Central, Urban and District Authorities.

(4) The names of the members of the Land Allocations Committees shall be published in the *Gazette* and posted up in the Ministry's headquarters and district offices.

Information
from
Commissioner
to members of
public

13.-(1) The Commissioner and all officers appointed under this Act shall, where it is practical to do so, provide information and guidance of a general character either orally or in writing, to members of the public in connection with land matters and the implementation of this Act.

(2) Where the information required, to be provided under subsection (1) is of confidential character, regard shall be given to the provisions of the National Security Act.

Cap. 47

(3) Subject the provisions of section 15, unless otherwise specifically stated in writing and signed by the Commissioner or an authorized officer information, guidance, advice and assistance provided under this section shall not create any legal liability in the Government, the Commissioner or the officer giving the advice and assistance.

Functions and
roles of local
government
authorities
under this Act

14.-(1) A local government authority, shall not, unless specifically authorised by this Act or any regulation made under the Authority of this Act, make an offer of or grant any right of occupancy to any person or organisation and any such purported offer or grant shall be void.

(2) No officer of a local government authority, other than an officer authorized by this Act or in writing by the Commissioner shall make or sign an offer of a right of occupancy and any such purported offer shall be void.

(3) A local government authority, acting through a duly constituted committee or through duly appointed offices may make representations in writing or orally to the Commissioner on any matter connected with the administration of land under this Act situate within their area of jurisdiction and the Commissioner shall have regard to that representation.

(4) A District Council may provide advice and guidance to any Village Council situate within its area of jurisdiction concerning the administration by the that Village Council of village land, either in response to a request for such advice and guidance from a Village Council or of its own motion and any Village Council to which such advice and guidance is given, shall have regard to such advice and guidance.

(5) No advice and guidance given by a Village Council under subsection (4) shall contradict or conflict with any directive or circular issued by the Commissioner under subsection (4) of section 10.

(6) Where a local government authority receives an application for a granted right of occupancy, it shall forward that application to the Commissioner and may include comments and recommendations about that application which it considers appropriate and the Commissioner shall have regard to the comments and recommendations received.

(7) The Commissioner shall use his best endeavours to ensure that all local government authorities and

associations of local authorities are consulted and kept informed about the administration of land under this Act and all other laws connected with the administration of land.

Conflict of interests

15.-(I) Where any matter concerning land in which any officer exercising functions under this Act or any member of his immediate family has an interest is allocated to, referred to or otherwise comes to that officer for his advice, assistance or decision, that officer shall not exercise any functions under this Act in respect of that land.

(2) Where the officer referred to in subsection (1) is the Commissioner, he shall declare his interest to the Permanent Secretary, and where the officer referred to in subsection (1) is an officer appointed under section 11, shall declare his interest to the Commissioner and the Permanent Secretary or the Commissioner, as the case may be, shall appoint some other officer to exercise functions under the Act in respect of that land.

(3) Where any land is advertised or offered for a right of occupancy in pursuance of any provision of this Act, any officer exercising functions under this Act who wishes to apply for or bid for that right of occupancy or who has knowledge that any member of his immediate family wishes to apply for or bid for that right of occupancy shall forthwith inform the Commissioner or if he is the Commissioner, inform the Permanent Secretary and such officer or the Commissioner, as the case may be, shall not exercise any functions in respect of that land.

(4) A person to whom subsection (1), (2) or (3) applies shall not influence or seek or attempt to influence any officer exercising functions under this Act or any other legislation to show any undue favour or preference to him or any member of his immediate family in respect of the land the subject of the declaration of interest under subsection (1) or advertised or offered for a right of occupancy under subsection (3).

Cap 4
S.8

GN. No 168 of
2002

(5) Any person exercising functions under this Act to whom this section applies who contravenes any of the provisions of this section shall render himself liable to disciplinary proceedings in accordance with the Public Service Regulations,2002 and including dismissal from the public service with reduction or loss of pension entitlements.

(6) Where a conflict of interest as described in subsection (1) or subsection (3) arises in respect of the administration of village land, any member of a Village Council or a committee of the council dealing with land who is covered by any such description shall declare his conflict of interest and shall take no further part in nor attend any meeting of the Village Council or its committee where the land of which the subject of the conflict of interest is on the agenda, and the person who fails to declare his conflict of interest or who contravenes the provisions of subsection (4) shall render himself liable to-

- (a) criminal proceedings;
- (b) forfeiture of any benefits which he or any member of his immediate family have or may have obtained as a result of any contravention of this section.

(7) In this section “immediate family” means, any other person related to that person as a father or mother, son or daughter, wife or husband, and brother or sister whether born in or out of wedlock, whether born in or outside Tanzania, and where any person referred to above has had more than one spouse, shall include all those spouses.

Protection of
officers

16. No officer appointed under this Act shall be personally liable for any act or matter done or ordered to be done or omitted to be done by him in good faith and without negligence and in the intended or purported exercise of any power, or the performance of any duty, conferred or imposed on or allocated or delegated to him by or under this Act.

National Land
Advisory
Council

17.-(1) There is hereby established a National Land Advisory Council which shall have not less than seven members and not more than eleven members appointed by the Minister and the Chairman of the Council shall be appointed by the President.

(2) In appointing members to the Council, the minister shall have regard to the importance of ensuring a fair balance of men and women in the Council.

(3) The composition and procedures of the Council shall be as provided for in the regulations made under this Act.

(4) The functions of the Council shall be-

- (a) to review and advise the Minister on the National Land Policy and recommend changes where necessary; and
- (b) to review institutional framework and advise the Minister on jurisdiction and organisational structures of the institutions involved in land matters.

Inquiries

18.-(1) The Minister may, for any purpose for which he thinks fit, appoint one or more persons to hold an inquiry into any matter concerning land or arising out of the operation of this Act.

(2) Where the Minister considers that the matters to be inquired into are so serious that it would be desirable that a judge of the High Court hold the inquiry, he shall seek and act on the advice of the Chief Justice as to the judge who shall hold the inquiry.

(3) Every inquiry shall be held at any time, being not less than one month from the date of the notification of the holding of an inquiry, and place which the Minister shall direct.

(4) Every inquiry shall be open to the public provided that the person holding or chairing the inquiry may for good cause certify in writing that any particular evidence which the inquiry wishes to hear shall be taken in private.

(5) Every person whose conduct is or may be called into question at an inquiry shall be entitled to be represented at and heard by the inquiry.

(6) An inquiry shall be conducted in accordance with the principles of natural justice, but subject to that, the person holding or chairing the inquiry shall exercise his own discretion in determining the procedures of the inquiry.

(7) The person holding or chairing the inquiry shall have all the powers of a judge of the High Court to summon witnesses, call for the production of books, plans and documents and to examine witnesses and parties on oath.

Cap. 16

(8) The inquiry shall be deemed to be a judicial proceeding for purposes of sections 102 to 110, 114 and 114A of the Penal Code.

(9) The person or persons holding the inquiry shall, as soon as may be after the conclusion of the hearing, prepare and submit to the Minister a report of the inquiry which shall include any advice and recommendations to the Minister which the terms of reference for the inquiry require or which the person or persons aforesaid think necessary to make.

(10) The report of the inquiry shall be published and the defence of qualified privilege shall attach to that report.

**PART V
RIGHTS AND INCIDENTS OF LAND OCCUPATION**

Rights to
occupy land
Acts Nos.
2 of 2004
s.3
12 of 2004
Sch

19.-(1) The rights to occupy land which a citizen, a group of two or more citizens whether formed together in an association under this Act or any other law or not, a partnership or a corporate body, in this Act called "right holders" may enjoy under this Act are hereby declared to be

- (a) granted right of occupancy;
- (b) a right derivative of a granted right of occupancy, in this Act called a derivative right;

Cap.212

(2) A person or a group of persons, whether formed into a corporate body under the Companies Act or otherwise who is or are non-citizens, including a corporate body the

majority of whose shareholders or owners are non-citizens, may only obtain -

- Cap.38 (a) a right of occupancy for purposes of investment approved under the Tanzania Investment Act;
- Cap.373 (b) a derivative right for purposes of investment approved under the Tanzania Investment Act or issued under the Export processing Zones Act; or
- (c) an interest in land under a partial transfer of interest by a citizen for purposes of investment approved under the Tanzania Investment Act or issued under the Export processing Zones Act in a joint venture to facilitate compliance with development conditions.

(3) The provisions of subsection (2) shall not apply to -

- (a) a not-for-profit foreign or local corporation or organization of the relief of poverty or distress of public or provision of health or other social services for the advancement of religion or education under an agreement to which the Government of United Republic is a party, and where no such agreement exists, the Minister is satisfied that such corporation or organization is established solely for the purpose of the relief of poverty or distress for the public, or for provision of health or other social services or for the advancement of religion or educations;
- (b) a foreign Government, an institution wholly owned by a foreign Government, an International Institution or organization.

(4) Subject to the provisions of subsection (3), the provisions of sections 47, 48 and 49 shall apply *mutatis mutandis* where there is a breach of agreement.

Occupation of land by non-citizen restricted
Cap. 38
Act No.2 of 2004
s.4

20.-(1) For avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act.

(2) Land to be designated for investment purposes under subsection (1), shall be identified, gazetted and allocated to the Tanzania Investment Centre which shall create derivative rights to investors.

(3) For the purposes of compensation made pursuant to this Act or any other written law, all lands acquired by non-citizens prior to the enactment of this Act, shall be deemed to have no value, except for unexhausted improvements for which compensation may be paid under this Act or any other law.

(4) For the purposes of this Act, any body corporate of whose majority shareholders or owners are non-citizens shall be deemed to be non citizens or foreign companies.

(5) At the expiry, termination or extinction of the occupancy or derivative right granted to a non-citizen or a foreign company, reversion of interests or rights in and over the land shall vest in the Tanzania Investment Centre or any other authority as the Minister may describe in the *Gazette*.

Ceiling on land occupancy

21.-(1) The Minister shall make regulations prescribed under section 179 of this Act providing for an area of land that a person can hold under single right of occupancy or derivative right or in any way otherwise disposed of to any person or body corporate.

(2) The regulations made under the provisions of section 179 and subsection (1) of this section shall provide for consultation in determining land ceilings under this section.

Incidents of granted right of occupancy

Cap. 334

22.-(1) A granted right of occupancy shall be-

- (a) granted by the President;
- (b) in general or reserved land;
- (c) of land which has been surveyed;
- (d) required to be registered under the Land

- Registration Act, to be valid and, subject to the provisions of that law and this Act, indefeasible;
- (e) for a period up to but not exceeding 99 years;
 - (f) at a premium;
 - (g) for an annual rent which may be revised from time to time;
 - (h) subject to any prescribed conditions;
 - (i) capable of being the subject to the subject of dispositions;
 - (j) liable, subject to the provisions this Act, to revocation;
 - (k) liable, subject to the prompt payment of full compensation, to compulsory acquisition by the state for public purposes.

(2) A granted right of occupancy shall not confer on the holder any water rights or rights over the foreshore unless those rights are expressly mentioned nor shall it confer on the holder or any person acting under the authority of the holder any rights to mines, minerals, or gas or the right to appropriate and remove from the country for gain or for purposes of research of any kind any flora or fauna naturally occurring or present on the land or any palaeontological or archaeological remains found on the land.

Residential
licence and its
incidents
Act No.
3 of 2009
s.44

23.-(1) A derivative right, in this Act referred to as a residential licence, confers upon the licensee the right to occupy land in non-hazardous land, land reserved for public utilities and surveyed land, urban or peri-urban area for the period of time for which the residential licence has been granted.

(2) Any person who at the commencement of this Act, has, without any official title, acquired and occupied as his home for not less than three years, land in an urban or peri-urban area other than land held for a granted or customary right of occupancy or as a tenant of a person so holding land or land to which subsection (2) of section 51 applies, shall by virtue of this Act be deemed to occupy that land as a residential licensee under a licence granted from year to year to that person by the local authority having

jurisdiction in the area where that land is situate.

(3) Subject to the provisions of this Act a residential licence may be granted by a local authority-

- (a) to any person occupying land without official title or right within the area of jurisdiction of that local authority as his home;
- (b) for a term which shall be not less than six months but not more than five years which may be renewed for a similar term;
- (c) subject to any conditions, including conditions as to the payment of any fees or charges which may be specified in the licence or which may be prescribed.

(4) A residential licence shall not be assignable by the licensee.

(5) A residential licence shall bind the successor in title to the licensor who obtains the land with actual or constructive notice of the licence.

(6) Where a person or family has occupied land in the same location under a residential licence for not less than three years, he or they shall be entitled to compensation under the Land Acquisition Act, where that land is to be acquired for a public purpose or where that person or family is to be removed from the land as if that person or family had a right of occupancy in the land and section 12 and Part III of that Act did not apply to that land.

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**PART VI
GRANTED RIGHTS OF OCCUPANCY**

**SUB-PART I
GRANT OF RIGHT OF OCCUPANCY**

Application of this Part

24. This Part applies to granted rights of occupancy hereafter referred to as “rights of occupancy”.

Procedure for application for right of occupancy

25.-(1) An application for a right of occupancy shall-
(a) be submitted on a prescribed form and accompanied by a photograph;

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s.8

- (b) be accompanied by the prescribed fee;
- (c) be signed by the applicant or a duly authorised representative or agent of the applicant;
- (d) be sent or delivered to the Commissioner or an authorised officer;
- (e) contain or be accompanied by any information which may be prescribed or which the Commissioner may in writing require the applicant to supply;
- (f) be accompanied by a declaration in the prescribed form of all rights and interests in land in Tanzania which the applicant has at the time of the application;
- (g) where any law requires the consent of any local authority or other body before an application for a right of occupancy may be submitted to the Commissioner, be accompanied by a document of consent, signed by the duly authorised officer of that local authority or other body; and
- (h) if made by a non-citizen or foreign company, be accompanied by a Certificate of Approval granted by the Tanzania Investment Centre under the Tanzania Investment Act, and any other documentation which may be prescribed by that Act or any other law.

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(1A) ²if an application for a right of occupancy or a derivative right, which is made by a non-citizen or a foreign company, is for residential purposes, the use of such land shall be secondary or ancillary to the investment approved under the Tanzania Investment Act.

(2) The Commissioner may require an applicant to submit information relevant to that application, additional to that already submitted with the application, and shall not be obliged to determine the application until that additional

² Note: Section 25(1) is rectified to make proper grammatical flow of the subsection and the paragraphs under it. The contents of paragraph (i), which appeared to be an independent provision, have been redesignated as subsection (1A)

information has been submitted or a satisfactory explanation provided as to why it is not practical or possible to submit that additional information.

(3) Where an application is for a right of occupancy in reserved land, the Commissioner shall refer that application to the official or the public body having jurisdiction over that reserved land and shall take account of any representations that such official or such public body shall make on that application.

(4) Where an application is for a right of occupancy the development of which in accordance with the application will have, in the opinion of the Commissioner, a substantial effect on the activities and services provided by the local authority in the area where the land the subject of the right of occupancy is situate, the Commissioner shall refer that application to that, local authority and shall take account of any presentations made by that local authority on that application.

(5) Any official to whom or public body or local authority to which an application is referred under subsection (3) or (4) may make any such representations on that application within twenty days of the receipt of that application.

(6) The Commissioner shall maintain a register of applications in the prescribed form which shall be available to inspection by the members of the public at reasonable times during office hours.

Determination
of application
by
Commissioner
Act No.
17 of 2008
s.4

26.-(1) The Commissioner shall be responsible for determining any application for a right of occupancy under the provisions of section 29.

(2) Where the power to recommend whether a right of occupancy be granted has been allocated or delegated to a local authority or other body by or under this Act or any other law, the Commissioner shall, in any case-

- (a) if he approves the recommendation, act on it;
- (b) if he is disposed to reject the recommendation, return it to the local authority or other body which made the recommendation with a statement of

Grant of right of occupancy Act No. 17 of 2008 s.6

29.-(1) Where the Commissioner determines to grant a right of occupancy to a person who -
(a) has applied for grant of a right of occupancy;
(b) is in occupation of land under a right of occupancy or under an acceptance of an offer of a right of occupancy; or
(c) is otherwise entitled to a right of occupancy,
he shall issue a certificate referred to as a “certificate of occupancy” to that person.

(2) A certificate of occupancy shall be issued in the name of the President and shall be in a prescribed form.

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(3) A certificate of occupancy shall be deemed to be duly and validly executed if it is signed by the Commissioner and sealed with his official seal and purports to be signed and sealed by the President and further proof of such execution shall not be required for the purpose of registration under the Land Registration Act.

(4) The occupier to whom a certificate of occupancy is issued shall sign at the bottom of the certificate as acceptance of the terms and conditions of that certificate and no certificate of occupancy shall be valid or give rise to any liabilities on the part of the state or any rights on the part of the occupier to whom the certificate has been issued until it is so signed.

Repealed

30. [Repealed by Act No. 17 of 2008, S.7].

Saving provisions Act No. 3 of 2009 S.45 Cap 4 S.8

30A. Notwithstanding the amendment and repeal of sections 26, 27, and 28 an offer of a right of occupancy issued before the 1st December, 2008 shall continue to be valid for all purposes and shall have the force of law applicable to it as if sections 26, 27 and 28 had not been amended or repealed as the case may be.

**SUB-PART 2
CONDITIONS ON RIGHT OF OCCUPANCY**

Payment of
premium on
grant of right
of occupancy
Act No. 7 of
2016
2nd Sch. Para 2

31.-(I) The Minister may require the payment of a premium on the grant of a right of occupancy.

(2) A premium shall be paid in one or more installments as may be determined by the Minister.

(3) In determining the amount of a premium, the Minister shall have regard to-

(a) the use of the land permitted by the right of occupancy which has been granted;

(b) the value of the land as evidenced by sales, leases, and other dispositions of land in the market in the area where the right of occupancy has been granted, whether those sales, leases and other dispositions are in accordance with this Act or any law relating to land which this Act replaces;

(c) the value of land in the area as evidenced by the price paid for land at any auction conducted by or on behalf of the government;

(d) the value of land as evidenced by the highest offer made in response to a request made by or on behalf of the government, a local authority or parastatal for a tender for the development of land in the area;

(e) any unexhausted improvements on the land;

(f) an assessment by a registered valuer given in writing of the value of land in the open market.

(4) Where the payment of a premium is required, a demand for that payment shall be sent or delivered to the person to whom the certificate of occupancy is to be sent or delivered at the same time as or before the certificate of occupancy is sent or delivered to that person.

(5) Failure to pay a premium or any installment on the date at which the payment of that premium or installment falls due shall be deemed to be a breach of a condition of the

right of occupancy which shall give rise to revocation of a right of occupancy.

Length of term
of right of
occupancy

- 32** -(1) A right of occupancy may be granted-
- (a) for a term up to but not exceeding ninety nine years;
 - (b) for a term together with an option for a further term or terms which together with the original term may be up to but shall not exceed, ninety nine years;
 - (c) from year to year or for periods of less than a year determinable by the Commissioner by one year's notice or less, whether or not the grant includes an initial fixed term, so long as that initial fixed term does not exceed four years.

(2) Where a right of occupancy has been granted for a term certain, with or without an option for a further term or terms certain, no reduction in the length of that term certain or the term or terms certain contained in the option or options shall be made to or introduced into that right of occupancy by the Commissioner without the agreement of the occupier.

(3) Where a right of occupancy comes to an end through affliction of time, the person or organisation occupying the land under that right of occupancy shall, if he has complied with the terms and conditions of that right of occupancy in a satisfactory manner and it is practical so to do, be offered a renewal of that right of occupancy on any terms and conditions which the Commissioner may determine before that right of occupancy is offered to any other person or organisation.

(4) The provisions of subsection (3) shall not operate to preclude the Government or a local authority or other public body from causing the land occupied under the right of occupancy to which subsection (3) refers to be developed or redeveloped in such a way that it is impractical to grant a right of occupancy of that land to the former holder of that right of occupancy and where such development or redevelopment takes place, the former holder of the right of

occupancy shall not be entitled to any compensation for the loss of any expectation created by the provisions of subsection (3).

Rent
Act No. 7 of
2016
2nd Sch. Para 2
Cap. 348

33.-(1) The holder of a right of occupancy shall, subject to the provisions of this section pay an annual rent for that right of occupancy in the manner provided for under the provisions of the Public Finance Act.

(2) Rent shall be paid in any installments and at any intervals of time during the year as the Commissioner shall determine or which is provided in the certificate of occupancy.

(3) Rent shall be paid to the Commissioner or an authorized officer at the office of the Commissioner or any other place which the Commissioner determines or which may be prescribed.

(4) In determining the amount of any rent, the Commissioner shall have regard to-

- (a) the area of the land which is the subject of the right of occupancy;
- (b) the use of land permitted by the right of occupancy which has been granted;
- (c) the value of land as evidenced by sales, leases and other dispositions of land in the market in the area where the right of occupancy has been granted, whether those sales, leases and other dispositions are in accordance with this Act or any law relating to land which this Act replaces;
- (d) where the right of occupancy has been granted for any commercial or residential development in any urban or peri-urban area and there has been no such development in that area or no or insufficient sales, leases or other dispositions of land or no, or insufficient evidence of the same in that area from which an assessment of the value of land may be arrived at, an assessment by a registered valuer of the value of land in the open market in that area which may be developed for

the purpose for which the right of occupancy has been granted;

(e) the amount of any premium required to be paid on the grant of a right of occupancy.

(5) For the purpose of computing the rent payable in respect of any land in connection with any sub-divisions, partition, amalgamation or any other transaction which reduces the area of the land after the determination of the rent for that land, the Commissioner shall, where two or more plots of land are created out of the land for which the rent was determined, apportion the rent payable between the two or more plots of land in the same proportion as the two or more plots of land bear to the whole of the land for which the rent was originally determined.

(6) Notwithstanding anything to the contrary contained in any certificate of occupancy or in any of the provisions of any conditions of a right of occupancy, in every case in which the Commissioner requires the payment of a rent, the Commissioner shall have the power to revise that rent at intervals of not less than three years and in any exercise of that power, the determination of any revised rent shall be in accordance with subsection (2).

(7) The Commissioner may grant a right of occupancy free of rent to any person or organisation if the land is to be used exclusively for religious worship or for burial or exclusively both for religious worship and for burial.

(8) The Commissioner may grant a right of occupancy at a nominal rent if the land is to be used exclusively for a charitable purpose.

(9) In any case referred to in subsections (7) and (8), where the land ceases to be used exclusively for the purposes specified in those subsections, the Commissioner shall charge any rent or make any adjustment to the rent which appears to him to be necessary and desirable in all the circumstances.

(10) The Minister may direct the Commissioner to establish arrangements to review, and if the case is made out to remit in whole or in part the rent of any person who

claims that by reason of poverty, infirmity, the effects of a natural or other disaster or other similar cause, he cannot pay the rent required to be paid under the right of occupancy and thereafter to keep such case under continuous review and, where necessary, make further adjustments, either to increase or reduce the rent which is to be paid.

(11) Where any rent or installment of rent payable in respect of a right of occupancy, or any part of such rent or installment, remains unpaid for a period of six months after the date on which the same is required to be paid, interest at the rate of one per centum per month shall be payable on the unpaid amount until payment of the amount is made, and such interest shall be collected and recoverable in the same manner as rent.

(12) The acceptance by or on behalf of the Commissioner of any rent shall not be held to operate as a waiver by the Government of any right to revoke the right of occupancy accruing by reason of the breach of any covenant or condition, express or implied in any contract for a right of occupancy or in any certificate of occupancy granted under this Act or under any law repealed and replaced by this Act.

Exemption
from land rent
on
Government
Act No.
4 of 2018
s.31

33A.-(1) Notwithstanding any provisions under this Act, the payment of rent for a right of occupancy shall not be paid exclusively for-

- (a) central or local government use;
- (b) government institution or organisation use;
- (c) non profit organizations including religious institutions which provide health, education or other social services which are not profit oriented.

(2) The Minister may, by regulations set criteria for determining activities which are exempted from the payment of rent for right of occupancy under subsection (1)(c).

(3) Where the Commissioner is satisfied that part of the land granted to Government, public institution or organisation is used for purposes other than those specified under subsection (1) that part shall be apportioned and subjected to rent.

(4) The Commissioner shall, where the land ceases to be used exclusively for the purposes specified under subsection (1), charge any rent or make any adjustment to the rent as may be appropriate.

Conditions

34.-(1) Every right of occupancy shall be granted subject to the provisions of this section and to any development or other conditions which may be prescribed, or which the Commissioner may impose and any of those conditions the Commissioner may impose may be in or addition to, subtraction from variation of the prescribed conditions.

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(2) It shall be a condition in every grant of a right of occupancy where the purpose for which the grant has been made is to construct buildings on the land that the grantee of such right shall, in any case where any consents and permissions are required, apply for planning consent under the Urban Planning Act, and apply for a building permit under the Township (Building) Rules within six months of the grant of the right of occupancy.

(3) Where a right of occupancy includes land which is occupied by persons under customary law, it shall be a condition of that right of occupancy that those customary rights shall be recognised and those persons so occupying the land shall be moved or relocated only-

- (a) so far as is necessary to enable the purpose for which the right of occupancy was granted to be carried out; and
- (b) in accordance with due process and principles of fair administration, being given-
 - (i) not less than one hundred and eighty days' notice of any requirement to move;
 - (ii) the opportunity to reap crops sown before any notice to move was to those persons;
 - (iii) the right to continue to use water which those persons had a right to use before being given notice to move; and
 - (iv) prompt payment of full compensation for loss of any interests in land and any other

losses that are incurred due to any move or any other interference with their occupation or use of land.

(4) Until the time conditions are prescribed by regulations made under this Act, all those conditions which immediately before the enactment of this Act had been acted or prescribed as conditions to be imposed on the grant of a right of occupancy, other than any conditions which expressly or impliedly require any approval for a change of use or disposition of a right of occupancy, shall be deemed to be conditions prescribed under this Act and shall, unless they conflict with any provisions of this Act or it is otherwise specifically provided for in the letter of offer or the certificate of title be implied in every such grant of a right of occupancy and shall be binding on the grantee of that right of occupancy and his successors in title.

(5) Before imposing, amending or adding to any conditions in respect of a right of occupancy granted in reserved land, the Commissioner shall consult with the official or organisation having jurisdiction over that reserved land and shall have regard to any representations and recommendations that such official or such organisation may make in respect of the proposals of the Commissioner.

(6) Before imposing, amending or adding to any conditions in respect, of a right of occupancy which would be likely to have a significant effect on the activities and services provided by the local authority having jurisdiction in the area where the land, the subject of the right of occupancy is situate, the Commissioner shall consult with that local authority and shall have regard to any representations and recommendations that such local authority may make in respect of the proposals of the Commissioner.

(7) A person who signs a certificate of occupancy in accordance with the provisions of section 29 shall, where he signs on his own behalf be deemed to have bound himself and, where he signs as the authorized representative of a local authority, corporate body or other organisation, be deemed to have bound that local authority, corporate body or

other organisation to the President to observe and comply strictly with each and every condition contained in that certificate of occupancy or subject to which that right of occupancy was granted.

(8)The commissioner and any authorized officer may, subject to section 170, enter on land the subject of a right of occupancy to inspect that land and to investigate that the conditions subject to which the right of occupancy has been granted have been complied with.

Change of use

35.-(1) An occupier of land under a right of occupancy may apply to the Commissioner for a change or variation to the conditions of that right of occupancy so as to enable him to undertake a development on or a use of that land or a disposal of the whole or a part of that land in connection with a development on or a use of that land which is not permitted by the conditions subject to which the right of occupancy was granted.

(2) An application under this section shall be-

- (a) submitted on a prescribed form and accompanied by a photograph;
- (b) accompanied by the prescribed fee;
- (c) signed by the applicant or his duly authorised representative or agent;
- (d) sent or delivered to the Commissioner or an authorized officer; and
- (e) accompanied by any other information which may be prescribed or which the Commissioner may, in writing, require.

(3) The Commissioner shall consult with and take account of the views of-

- (a) the authority having responsibility for town and country planning in the area where the land is situate;
- (b) the local authority having jurisdiction in the area where the land is situate;
- (c) any other authority whose consent to that change of use is necessary.

(4) Where the Commissioner determines to approve a proposed change of use, he shall, in writing using the prescribed form-

- (a) inform the occupier of that fact;
- (b) request the occupier to bring or send the certificate of occupancy to the Commissioner endorsement on it of the change of use; and
- (c) inform the occupier of any premium or additional rent that is payable as consequence of the change of use.

(5) No approved change of use shall take effect and no action may be taken by an occupier in pursuance of a proposed or approved change of use until-

- (a) that change of use is endorsed on the certificate of occupancy;
- (b) the endorsement is signed by the Commissioner with his official seal and by the occupier;
- (c) all premia and additional rent have been paid by the occupier in accordance with the terms and conditions subject to which the change of use is granted.

(6) The provisions of sections 30 and 32 apply to the payment of any premium and any rent under this section as they apply to the payment of premia and rent under those sections.

(7) The grant by the Commissioner of a consent to a change of use shall not-

- (a) absolve the occupier from any obligation to obtain the consent of any other authority to that change of use;
- (b) require any other authority whose consent to that change of use is necessary to grant that consent.

**SUB-PART 3
DISPOSITIONS OF RIGHT OF OCCUPANCY**

General provisions as to dispositions

36.-(1) A disposition of a right of occupancy shall-
(a) comply with the provisions of this section and sections 37, 38, 39 and 40;
(b) be void if the provisions of this section and sections 37, 38, 39 and 40 are not complied with.

(2) Unless otherwise provided for by this Act or regulations made under this Act, a disposition of a right of occupancy shall not require the consent of the Commissioner or an authorized officer.

(3) Any person proposing to carry out a disposition, other than a disposition to which section 38 applies, shall send or deliver a notification in the prescribed form to the Commissioner or an authorized officer before or at the time the disposition is carried out together with the payment of all premia, taxes and dues prescribed in connection with that disposition.

(4) The Commissioner shall, subject to the provisions of section 37, on receipt of a notification under subsection (3) and the payment of all premia, taxes and dues which may be prescribed, with all due dispatch, endorse that notification with his signature and official seal and send or deliver a copy to the Registrar.

(5) The Registrar shall not make any entry on the register in respect of any disposition or any right of occupancy transferred as a result of a disposition to which subsection (3) applies unless and until he is in receipt of a copy of a notification endorsed in accordance with subsection (4).

Approval for dispositions Act No. 2 of 2004 s.5

37.-(1) The Commissioner shall have power to consider and approve categories of dispositions of land under this Act.

(2) Any assignment of a right of occupancy which

was granted to the assignor less than three years before the proposed assignment is to take effect shall require the approval of the Commissioner, which approval shall not be unreasonably withheld.

(3) A loan granted on the security of a mortgage by a prescribed lender or a disposition of a right of occupancy or a lease made by a prescribed lender of monies on the security of a mortgage of land in the exercise of the power of leasing under section 115 or the power of sale under section 118, shall not require any approval under this section whatever the value of the mortgage or disposition, at the time the disposition is made, but that disposition shall come within the provisions of section 38.

(4) Where the Commissioner has reasonable cause to believe that a disposition has taken place or is about to take place which in order to avoid the requirement to obtain approval under this section has been agreed between the parties to be for a value less than the market value of the interest in land which is the subject of the disposition, he may take any such action in relation to dispositions to which that section applies.

(5) A disposition which has been carried out without first obtaining the approval of the Commissioner shall be inoperative.

(6) The requirement to obtain approval to a disposition under this section shall not absolve an applicant for that approval from any other requirement to obtain any other consent approval, permit, licence or other authorization in respect of that disposition or for the use and development of the land to be acquired through that disposition under any other law.

(7) The Minister may, after seeking and taking into account the views of the Commissioner by regulations under this section-

- (a) provide for dispositions or classes of dispositions which do not require approval under this section to require approval from the Commissioner;
- (b) provide for dispositions or classes of dispositions which require approval under this section-

- (i) not to require approval at all;
- (ii) to require approval from the Commissioner.

(8) Subject to subsection (9), the Commissioner shall approve sale of a right of occupancy without unexhausted improvement if such sale complies with the provisions of subsection (9).

(9) The sale of a right of occupancy without unexhausted improvement may be made to a citizen of Tanzania and shall be lawful if that land is sold in the following circumstances, that is to say,-

- (a) it is sold to a purchaser who agrees to comply with development conditions; or
- (b) it is a partial transfer of interest in land for a joint venture to facilitate compliance with development conditions.

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s.8

Supervisory
powers over
dispositions

38. (1) The Commissioner may on receipt of a notification of a disposition under subsection (3) of section 36 issue a notice in the prescribed form to the parties requiring them not to proceed with the disposition until-

- (a) they have sent or delivered to him any additional information and documentation about the disposition which is specified in the notice;
- (b) they have applied for and received approval for that disposition.

(2) Where the Commissioner has reasonable cause to believe that a disposition is about to take place or has taken place of which he has not received notification under subsection (3) of section 36 of the parties to the transaction of which he has knowledge requiring them-

- (a) to comply with section 36;
- (b) not to proceed with disposition until-
 - (i) they have sent or delivered to him any additional information and documentation about the disposition which is specified in the notice; or
 - (ii) they have applied for and received approval to the disposition.

(3) Where the Commissioner has reasonable cause to believe, either of his own motion or as a result of representations made to him by or on behalf of one of the parties to the disposition, that a disposition has been or is in the process of being or is likely to be affected by fraud, or undue influence, or lack of good faith, or the fact that one party appears to have taken unfair advantage over another party to the disposition or that the disposition, not being a gift, is not for value, he may-

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- (a) where the disposition has taken place and not more than two years have elapsed since the conclusion of the formalities necessary to complete the disposition, apply to the Registrar of Titles to enter injunction under section 79 of the Land Registration Act for rectification of the land register;
- (b) where the disposition has not yet taken place-
 - (i) apply to the Registrar to enter an injunction to prevent the disposition from taking place;
 - (ii) issue any notice that he can issue under subsection (2); or
 - (iii) issue a notice requiring the parties to the disposition to appear before him and give an explanation of the circumstances of the disposition.

(4) Where the Commissioner issues a notice under subparagraph (iii) or paragraph (b) of subsection (3), he may after hearing the parties to the disposition, issue a notice under subparagraph (i) or (ii) of paragraph (b) of subsection (3).

Application for grant of approval for disposition

39.-(1) An application for a grant of approval for a disposition shall be –

- (a) made on a prescribed form;
- (b) signed by all the applicants;
- (c) accompanied by any other information which are prescribed or which may be required by the Commissioner;

(d) accompanied by any fees which may be prescribed.

(2) One application may be made for a grant of approval for two or more dispositions and where that application is made, the provisions of this section shall apply to each disposition as if a separate application had been made in respect of an approval for each disposition.

(3) The Commissioner may require relevant information additional to that which is referred to in paragraph (c) of subsection (1) and shall not be under any obligation to determine an application in respect of which he has required additional information until that additional information has been submitted to him or a satisfactory explanation of why that additional information cannot be submitted to him has been submitted to him.

(4) The Commissioner may consult with any person or organisation on an application for a grant of approval for a disposition but shall not be obliged to accept any advice received as a result of that consultation, nor, where that advice has been requested within a certain time, shall the Commissioner be obliged to delay the determination on the application where that advice has not been submitted within that certain time.

(5) The Commissioner shall-

(a) grant approval, subject to any conditions which may be prescribed which apply to that disposition;

(b) grant approval, subject to the conditions referred to in paragraph (a) and any other conditions which he may determine to impose; or

(c) refuse to grant approval,

to the application.

(6) A consent under subsection (5), in this Act referred to as a "certificate approval" shall-

(a) be personal to the applicant;

(b) not be assignable;

(c) be valid for one year from the date on which it was given.

(7) A determination by the Commissioner under subsection (5) shall be-

- (a) in the prescribed form;
- (b) signed by the Commissioner;
- (c) where it is a certificate of approval, accompanied by a demand for any premium, taxes or dues which may be prescribed or which is determined by the Commissioner;
- (d) copied to the Registrar;
- (e) delivered or sent by registered letter to the applicant to his last known abode or his usual place of business.

(8) A person who has received a certificate of approval shall pay all premia, taxes and dues which are required to be paid in connection with the disposition to which the certificate of approval refers and no such disposition shall be valid or effective to transfer any interest in any land or give rise to any rights in the transferee unless and until all the premia, taxes and dues have been paid accordingly.

(9) The Commissioner, an authorized officer or any other officer to whom any premia, taxes or dues is or are required to be paid under this section shall endorse and sign a receipt for that premium, tax or due on the certificate of approval.

(10) The Registrar shall not make any entry on the register in respect of any disposition or any right of occupancy the subject of a disposition to which this section applies unless and until he is satisfied that all premia, taxes and dues in respect of that disposition have been paid and a receipt for the same has been validly endorsed on the certificate of approval.

Reconsideration
of application
for approval
for disposition

40.-(I) Where the Commissioner has refused an application for approval for a disposition or has granted it subject to conditions, the applicant may request the Commissioner to reconsider that application with a view to granting it, or granting it free of or with amended conditions.

(2) A request for a reconsideration of an application shall be-

- (a) made on a prescribed form signed by the applicant;
- (b) accompanied by any information which may be prescribed and which the Commissioner may require; and
- (c) accompanied by any fee which may be prescribed.

(3) In determining an application under this section, the Commissioner shall have all the powers and take account of all the criteria set out in this Sub-Part which apply to an application for a grant of approval for a disposition.

Criteria for determining application for grant of approval for disposition Act No. 7 of 2016 2nd Sch. Para 2

41.-(1) Subject to the provisions of this section, there shall be a presumption that an application for a grant of an approval for a disposition shall be granted.

(2) In determining whether to grant an approval for a disposition, the Commissioner shall, taking into account the presumption set out in subsection (1), have regard to-

- (a) whether the occupier of land which is the subject to the disposition proposed has complied with all the conditions in the right of occupancy subject to which he occupies that land;
- (b) where a right of occupancy is to be transferred or a lease is to be granted out of a right of occupancy, whether the price at which the transfer or grant is to be made is at a significant undervalue of the land;
- (c) where the applicant already occupies or has at some time in the past occupied land in Tanzania under a right of occupancy, the amount of land occupied and whether that land is being or was occupied and used in accordance with the conditions of the right of occupancy for which it is or was held;
- (d) whether the person or body to whom or which the land is to be disposed has any criminal convictions relating to dishonesty, fraud or

corruption;

(e) whether the disposition concerns the interest of risk groups such as displaced persons, children and any low income persons.

(3) Where the Commissioner is of the opinion that a right of occupancy in land is to be transferred at a significant under-valuation or a lease is to be granted at a premium or for a rent which is significantly below the value of that lease in the open market, the Commissioner may require the parties to the disposition to obtain, at the expense of the proposed transferee, a valuation of that land from a registered valuer which the Commissioner shall nominate, and consent shall not be granted to any disposition to which this subsection applies at a price which is less than the value put upon the land by the nominated valuer.

(4) An application of a grant of approval for a disposition shall be determined by the Commissioner within sixty days or any longer period which may be agreed upon between the Commissioner and the parties to the proposed disposition.

(5) Where a determination has not been made within the period specified in subsection (4) and no agreement has been reached between the parties to the disposition and the Commissioner to extend the specified period, the approval to the disposition shall be deemed to have been refused.

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(6) Nothing in this section shall be taken to dispense with the requirement to obtain permission to develop land under the Urban Planning Act, and any other laws relating to the erection of buildings on land.

(7) The Minister may, after consulting with the Minister for Agriculture, by regulations set out by reference to regions, districts or agro ecological zones the amounts of land necessary for a small holder to feed himself and his family and when such regulations have been made, the Commissioner shall comply with them when exercising his functions under paragraph (e) of subsection (2).

Power to
surrender right
of occupancy

42.-(1) An occupier of land under a right of occupancy may surrender the whole or a part of the land

comprised in that right of occupancy.

(2) The Commissioner shall not accept any surrender of the whole or a part of any occupied land unless the following circumstances apply-

- (a) all rent, taxes and dues owed to the Government in respect of that land are fully paid up;
- (b) the land will not create, cause or give rise to or a transfer of, any liability in contract, tort or otherwise to the Government;
- (c) the land is not subject to any subsisting mortgage, charge or encumbrance;
- (d) the land is not subject to any action in Court by a lender to possess and sell the land;
- (e) the land is not subject to any action by a trustee in bankruptcy on behalf of creditors or is not otherwise subject to an order of attachment by any Court;
- (f) the surrender is not designed to defeat the rights of a spouse to share in or obtain part of the land;
- (g) every co-occupier and person or body having any interest in that land has consented in writing to the surrender;
- (h) the land is surrendered in consideration of natural love and affection.

(3) Where the Commissioner is satisfied that an application for the surrender of the whole or a part of the land is due to hardship or poverty and by reason of that hardship or property, the applicant is not able to pay any rent, taxes and other dues which he owes to the Government, the Commissioner may remit the whole or a part of any monies which the applicant owes the Government.

Procedure for
surrender of
right of
occupancy

43.-(1) A deed of surrender of a right of occupancy shall be in writing using the prescribed form and signed by the person surrendering the right of occupancy and shall be accompanied by-

- (a) any fee which may be prescribed;
- (b) any written consents which are required under paragraph (g) of subsection (2) of section 42;

(c) the certificate of occupancy, or where the certificate occupancy is in the possession of a lender, charge or lien-holder, a written notice, signed by that lender, charge or lien-holder as evidence of that fact.

(2) On receipt of the deed of surrender and all accompanying documents, the Commissioner shall, if it appears to him that all the conditions specified in section 42 are satisfied and that the documents are all in order, accept the surrender by signing the deed of surrender.

(3) In any case where it appears to the Commissioner that one or more of the matters referred to in subsection (2) are not satisfied or in order, he shall refuse to accept the deed or surrender.

(4) Where the Commissioner has made a determination in terms of either subsection (2) or (3), he shall-

- (a) notify the occupier;
- (b) where the surrender is of a part of the land-
 - (i) notify the occupier of any revision to the rent for the remaining portion of the land;
 - (ii) cancel the existing certificate of occupancy;
 - (iii) issue a new certificate of occupancy to the occupier;
- (c) present any deed of surrender and certificate of occupancy to the Registrar.

(5) The Registrar shall take steps which are necessary to amend the register in the light of the information of which he is notified by the Commissioner.

**SUB- PART 4
BREACH OF CONDITIONS OF RIGHT OF OCCUPANCY**

When breach of condition of right of occupancy arises

44.-(1) A breach of a condition requiring continuous performance shall arise as soon and continue as long as the condition is not complied with.

(2) A breach of a condition subject to a fixed term shall arise-

- (a) in the case of a condition requiring the doing of any act within any time specified in the condition or where that time has been extended by the Commissioner, within that extended time, upon the expiry of that time without that act having been done;
- (b) in the case of a condition requiring any act to be refrained from until any time specified in the condition or where that time has been extended by the Commissioner, within that extended time, upon the doing of that act before that time.

(3) Where any condition consists of two or more separate obligations or liabilities, a failure to fulfil any of those obligations or liabilities shall constitute a breach of the condition.

Liability to revocation for breach of condition Act No. 1 of 2018 s.9

45.-(I) Upon any breach arising from any condition subject to which any right of occupancy has been granted, the right of occupancy shall become liable to be revoked by the President.

(2) The President shall not revoke a right of occupancy save for the good cause.

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(2A)³ In subsection (2) “good cause” shall include the following-

- (a) there has been an attempted disposition of a right of occupancy to a non-citizen contrary to this Act and any other law governing dispositions of a right of occupancy to a non-citizen;
- (b) the land the subject of the right of been abandon for not less than two years;
- (c) where the right of occupancy is of land of an area of not less than five hundred hectares, not less than eighty *per centum* of that area of land

³ Note: Subsection (2) has been split into subsections (2) and (2A) for proper arrangement of legislative sentence.

has been unused for the purpose for which the right of occupancy was granted for not less than five years;

- (d) there has been a disposition or an attempt at a disposition which does not comply with the provision of this Act;
- (e) there has been a breach of a condition contained or implied in a certificate of occupancy;
- (f) there has been a breach of any regulation made under this Act;
- (g) where there is contravention of section 120A or 120B.

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s.8

(3) Notwithstanding subsection (2), the President may revoke a right of occupancy if in his opinion it is in the public interest to do so.

(4) Before proceeding to take any action in respect of a breach of a condition of the right of occupancy, the Commissioner shall consider-

- (a) the nature and gravity of the breach and whether it could be waived;
- (b) the circumstances leading to the breach by the occupier;
- (c) whether the condition that has been breached could be amended so as to obviate the breach,

and shall in all cases where he is minded to proceed to take action on a breach, first issue a warning letter to the occupier advising him that he is in breach of the conditions of the right of occupancy.

(5) The Commissioner may, instead of proceeding to the enforcement of the revocation-

- (a) impose a fine on the occupier in accordance with section 46;
- (b) serve a notice on the occupier in accordance with section 47 requiring the breach to be remedied.

(6) The Commissioner may, at any time, withdraw from taking action under section 46 or withdraw a notice served under section 47 and proceed to the enforcement of

the revocation under section 49.

(7) A right of occupancy which has become liable to be revoked under this section shall cease to be so liable if the breach is subsequently remedied.

Fine for breach
of condition

46.-(1) Where any breach of a condition has arisen, the Commissioner may serve a notice in the prescribed form, on the occupier requiring him to show cause as to why a fine should not be imposed upon him in respect of such breach.

(2) The occupier shall, within the time specified in the notice, respond to the notice.

(3) Where the occupier has not responded to the notice or where he has failed to show cause as to why a fine should not be imposed to the satisfaction of the Commissioner, the Commissioner may serve a notice on the occupier in the prescribed form requiring him to pay a fine as prescribed by the Minister by regulations made under section 179 of this Act and in the case of a continuing breach, the occupier shall be liable to a further notice to pay a further fine for each day during which the breach continues.

(4) The Commissioner may, and shall where the occupier has not committed any other breach of a condition of the right of occupancy, suspend the payment of any fine for up to two years and if the occupier does not commit that breach again within the period during which the fine is suspended, the fine shall lapse and shall no longer be payable.

(5) Where the fine is paid in full and no notice has been served under section 48 in respect of the breach, no further action shall be taken by the Commissioner in respect of that breach.

(6) If the Commissioner is satisfied, after due inquiry, that the breach in respect of which a fine has been paid is continuing, or has recommenced, he may take action in respect of that continuing or recommenced breach under section 48 or 49.

Summary action
to remedy breach
of condition

47.-(1) Where any breach of a condition has arisen, and it appears to the Commissioner that the breach is capable of being remedied by the occupier within a reasonable time, he may serve a notice in the prescribe form on the occupier specifying the action required for remedying the breach and requiring the occupier to take any action within the time specified in the notice.

(2) The occupier on whom a notice under this section is served shall be responsible for the compliance with that notice.

(3) Where a notice served under this section is complied with, no further action shall be taken by the Commissioner in respect of that breach.

(4) Where it appears to the Commissioner that the notice has not been complied with or that the breach in respect of which the notice was served is continuing or has recommenced, he shall proceed with the enforcement of the revocation of the right of occupancy in accordance with section 49.

Action to enforce
revocation for
breach of
condition

48.-(1) Where the Commissioner is satisfied that-

- (a) a notice served under section 47 has not been complied with;
- (b) the breach of condition is so serious and of far-reaching consequences that-
 - (i) it would not be practicable for the occupier to remedy that breach within a reasonable time;
 - (ii) the occupier has demonstrated a clear unwillingness to comply with the conditions of the grant of the right of occupancy made to him;
- (c) there has been an attempted disposition of a right of occupancy to a non-citizen contrary to this Act and any other law governing the disposition of a right of occupancy to a non-citizen;

- (d) the land the subject of the right of occupancy has been abandoned for not less than two years;
- (e) where the right of occupancy is of land of an area of not less than five hundred hectares, not less than eighty *per centum* of that area of land has been unused for the purpose for which the right of occupancy was granted for not less than five years;
- (f) there has been a disposition or an attempt at a disposition which does not comply with the provisions of this Act;
- (g) any rent, taxes or other dues remain unpaid for six months after a written notice in the prescribed form was served on the occupier, and subsection (8) of section 33 does not apply to the occupier,

he shall-

- (i) serve a notice of revocation in the prescribe form on the occupier;
- (ii) cause a copy of that notice to be served on all persons having an interest in the land; and
- (iii) notify the Registrar of the services of the notice which shall be recorded in the Land Register.

(2) A notice of revocation shall, subject to the provisions of this section, take effect ninety days after it has been served on the occupier.

(3) As soon as a notice of revocation has come into effect, the Commissioner shall recommend to the President to revoke the right of occupancy.

Revocation and
its effects

49.-(1) As soon as the President approves a revocation under section 48(3) of this Act, the Commissioner shall cause it to be published in the *Gazette* and in one or more newspaper circulating in the area where the land subject of the revocation is situate a notification of that revocation.

(2) Upon the approval of the revocation by the President-

- (a) the right of occupancy to which it refers shall determine immediately and without further action;
- (b) all derivative rights, created out of the right of occupancy which has determined shall determine immediately and without further action;
- (c) all rights and interests in the land the subject of the right of occupancy shall revert to the President and the same shall be registered in the Land Register;
- (d) subject to subsection (3), all unexhausted improvements shall vest in the President without further action;
- (e) any rent, taxes or other dues owing to the Government arising out of or attributable to the grant of the right of occupancy shall be extinguished;
- (f) all proceedings relating to the right of occupancy or the land the subject of the right of occupancy which were or could have been commenced against the occupier and all proceedings which were or could have been commenced against any person, other than the Commissioner, by the occupier shall be taken over by the Government and thereafter shall be pursued against or by the Government as the case may be provided that, in any case in which the Government is a defendant, the Government may join the former occupier as a co-defendant and shall have a right to call upon or take any action which may be necessary to compel the former occupier to pay any damages or costs which may be awarded against the Government in such a case.

(3) There shall be payable to the former occupier whose right of occupancy has been revoked compensation which shall equal the value of unexhausted improvements

made in accordance with the terms and conditions of the right of occupancy on the land at the time of the revocation less-

- (a) the costs to the Government of any proceedings for or taken in connection with the revocation;
- (b) any rent, taxes and dues together with any interest on the rent, taxes and dues which were owned to the Government immediately before the revocation;
- (c) any sums owed by the former occupier, or by the Government as a consequence of the revocation, to any person claiming a derivative right to the land through the former occupier;
- (d) any monies which the Government is obliged to spend or which it is reasonably necessary for the Government to spend to repair any damage to the land or any building on the land or to any contiguous and or to any occupying and using the land or any contiguous land as a result of any act or omission to act by the former occupier during his occupation, whether that act or omission, to act was lawful or not;
- (e) any other expenses which the Government incurs or may reasonably anticipate incurring as a result of or on account of the revocation.

(4) Where, as a result of any calculation undertaken under subsection (3) the former occupier owes the Government any money, the Commissioner shall serve notice on that person demanding that money from that person within fourteen days of the service of the notice and if at the expiry of that period, that money has not been paid, an action may be commenced in the Court in accordance with this Act to recover that money as a civil debt owned to the Government.

(5) The Commissioner may grant any relief including the payment of any sums of money which appear to him to be fair and reasonable to any person claiming a derivative right under the right of occupancy which has been revoked but no relief or sum of money

shall be granted to any person who has contributed to or participated in or benefited from, directly or indirectly, any act or omission to act, the doing or not doing of which is the reason or one of the reasons for the revocation of the right of occupancy.

Summary
proceedings for
recovery of rent
Act No.
11 of 2005
s.13

50.-(1) Subject to the provisions of this section but without prejudice to any other remedy for the recovery of rent and interest payable under section 33, where any person who is liable for rent for a right of occupancy granted under this Act fails to pay such rent or any instalment thereof on the due date, an authorized officer may serve or cause to be served on such person, a written notice calling upon such person to pay such rent or instalment together with interest, if any, within fourteen days of the service of the notice and, if at the expiration of such period of fourteen days, the rent or instalment and interest, if any, has not been paid, the authorized officer may cause a copy of the notice to be filed in the District Land and Housing Tribunal or District Court within the area in which the land to which the right of occupancy relates is situate, and upon such copy being so filed, it shall be deemed to be a decree passed by such Court against the person to whom the notice is addressed for payment by him to the President of the amount specified in such notice as being due from him together with such interest thereon at the Court rate from the date on which such notice is so filed till payment and such decree may be executed by the Court on the application made *ex parte* by the authorized officer, either by the issue of a warrant or in any other manner in which a decree passed by such Court may be executed, and the Court shall have jurisdiction to execute such decree notwithstanding that the amount involved may exceed the pecuniary jurisdiction of the Court.

(2) An application under this section shall be accompanied by-

(a) a copy of the demand containing a certificate by the person, who served the same stating the

time and place of service and the person on whom it was served;

(b) a certificate by the authorized officer of the amount due and owing,

and upon production thereof the Court mentioned under subsection (1) shall have jurisdiction to grant such summary warrant, and be executed in all respects as though it were both a warrant of attachment and a warrant of sale issued out of the Court of such magistrate.

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(3) Subject to subsection (1) of section 22 of the Land Disputes Court Act, filing of a copy of notice in the District Court shall apply where the District Land and Housing Tribunal has not been established or is not operational at the district level.

(4) The notice required to be served under subsection (1) shall be served either by delivering a copy thereof to the person to whom it is addressed or by leaving a copy thereof at his usual place of residence or business or by publishing such notice in such newspaper or newspapers as the authorized officer may determine.

(5) In this section “authorized officer” means the Commissioner for Lands and such other person as he may appoint in writing in that behalf.

Abandonment of land held under a right of occupancy

51.-(1) Land held for a right of occupancy shall be taken to have been abandoned where one or more of the following factors are present:

(a) the occupier owes any rent, taxes or dues in respect of the land and has continued to owe such rent, taxes or dues or any portion of them for not less than five years from the date on which any rent, taxes or dues or any portion thereof first fell to be paid;

(b) the occupier has left the country without making any arrangement for any person to be responsible for the land and for ensuring that the conditions subject to which the right of occupancy was granted are complied with and that occupier has not given any appropriate

- notification to the Commissioner;
- (c) any building on the land has fallen into a state of such disrepair that it has become a danger to the health and safety of any person occupying that building for any lawful purpose or a neighbor to the occupier;
 - (d) persons with no apparent lawful title so to do are occupying or using the land or any buildings on the land and one or more of those persons or a person from a community which contains one or more such persons have so occupied or used the land or any building on the land for a period of not less than two years immediately preceding the date on which in accordance with this section, the Commissioner publishes a notice of abandonment in the *Gazette*;
 - (e) by reason of the neglect of the land, the land is-
 - (i) no longer capable, significant without expenditure and remedial work, of being used for productive purposes; or
 - (ii) suffering serious environmental damage.
- (2) Where it appears to the Commissioner that any land has been abandoned, he shall publish in the *Gazette* and in a newspaper circulating in the area where the land is situate a notice of abandonment which shall-
- (a) state the location of the land;
 - (b) state the boundaries of the land;
 - (c) set out briefly the grounds on which the Commissioner intends to rely in determining that the land has been abandoned;
 - (d) state the time, being not less than sixty days from the date of the publication of the notice, within which any person claiming to have an interest in the land may show cause why the land should not be declared to be abandoned.
- (3) Where the Commissioner after considering any representations received under paragraph (d) of subsection

(2) determines that the land has been abandoned, the Commissioner shall issue in the prescribed form, a declaration of abandonment and shall send a copy of that declaration to the occupier of the land at his last known place of abode or last known address.

(4) Proceedings to revoke a right of occupancy under section 49 in respect of land which has been declared abandoned under subsection (3) shall be commenced forthwith.

(5) Where any person claiming to have an interest in land shows cause that the land is not abandoned, the Commissioner if satisfied as such shall take no further action.

**SUB-PART 5
AUCTIONS OF RIGHT OF OCCUPANCY**

Auction of and tenders for rights of occupancy

52.-(1) The Minister may, after considering the advice of the Commissioner, direct that any portion of general land, be made available for development through a right of occupancy by means of-

- (a) an auction; or
- (b) a process of tendering for the land.

(2) The Minister shall make regulations governing the holding and conduct of an auction and the process of tendering for land.

**PART VII
CONVERSION OF INTERESTS IN LAND**

**SUB-PART 1
VALIDATION OF INTERESTS IN GENERAL LAND**

Validation of certain dispositions completed before coming into operation of this Act

53.-(1) This section applies to any disposition of a right of occupancy or of an interest in land held under customary tenure or any other form of informal tenure, wheresoever's the land in respect of which the disposition has taken place is located, where the parties to that disposition-

(a) should have but did not obtain a grant of approval from the Commissioner or other relevant authority;

(b) applied for a grant of approval but notwithstanding the refusal of approval, carried out that disposition, where the disposition has been completed before the coming into operation of this Act.

(2) A person who is occupying land which he has obtained under or as a consequence of a disposition to which subsection (1) applies, shall by virtue of this section be deemed to be in lawful occupation of that land for a period of six years from the date of commencement of this Act or any longer period which the Minister, after seeking and taking account of the advice of the Commissioner, shall by order published in the *Gazette* determine and may, within two years from the date of the commencement of this Act or any later date, being earlier than the period of six years or any longer period referred to in this subsection for which this occupation is lawful, as the Minister may, by order, prescribe, apply to the Commissioner for a certificate of validation of that occupation.

(3) An application for a certificate of validation shall be made-

- (a) on a prescribed form;
- (b) accompanied by the prescribed fee;
- (c) signed by the applicant or his duly appointed representative or agent;
- (d) accompanied by any other information which may be prescribed or which the Commissioner may require.

(4) The Commissioner shall, on being satisfied that-

- (a) the provisions of subsection (3) have been complied with; and
- (b) the provisions of paragraph (d) of subsection (2) of section 41 do not apply to the applicant,

issue a certificate of validation to the occupier in the prescribed form.

(5) Where the occupation which is validated by a certificate of validation is an occupation which was commenced after a disposition which purported to transfer a right of occupancy in the occupied land to the person who has obtained a certificate of validation or his predecessor in title, the receipt by the occupier of a certificate of validation shall entitle that person to apply for and obtain a right of occupancy for a period of not less than thirty three years.

(6) Where the occupation which is validated by a certificate of validation is an occupation which was commenced by a transaction which purported to be a lease or sub-lease of the occupied land to the person who has obtained a certificate of validation or his predecessor in title, the receipt by the occupier of a certificate of validation shall operate-

- (a) as a grant of consent for a lease or, as the case may be, a sub-lease for a term of the same length as the lease which is being validated, retrospective to the date when the lease or, as the case may be, sub- lease in fact commenced whether that lease or, as the case may be, sub-lease was in writing or not;
- (b) where the lease was granted out of an interest in land which is by this section validated as a right of occupancy for thirty three years, and was for a period longer than thirty-three years, the validation of that lease shall operate to reduce the term to thirty three years less ten days;
- (c) to bring the lease, other than a lease created out of customary tenure, within the provisions of the Registration of Documents Act, or where the land out of which the lease or sublease has been created is held for a right of occupancy registered under the Land Registration Act, under the provisions of that Act.

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(7) Where, the occupation which is validated by a certificate of validation is an occupation which was commenced as a result of a subdivision of land in favour of the person who has obtained a certificate of validation or his predecessor in title, the receipt by the occupier of a certificate of validation shall operate as a permission lawfully to occupy that sub-divided land with any development on it which has been constructed during the period of occupation which is validated without the requirement to obtain any other permissions or consents under any other law for that sub-division or development on it; except that, such permissions and consents shall be required for any sub-divisions or developments on the land which commence after the commencement of this Act.

(8) Where the disposition for which a certificate of validation is issued was a purported mortgage, charge or lien on the land, the issue of a certificate of validation to the lender, charge or holder of the lien shall operate-

- (a) as a grant of approval for the mortgage, charge or lien;
- (b) to bring that mortgage or charge, not being a customary mortgage or charge, within the provisions of the Registration of Documents Act, or where the mortgage was of an interest in land registered under the Land Registration Act, under the provisions of that Act.

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(9) Where the occupation or transaction which is to be validated by a certificate of validation is an occupation or transaction which cannot with any certainty be related to any of the legal transactions referred to in subsections (5) to (8) or which was commenced as a result of a transaction by customary law, the Commissioner shall, after an investigation of the incidents of the occupation and any transactions relating to them of the land and taking any advice on customary law which he considers necessary, classify that transaction into one of the categories referred to in subsections (5) to (8) and issue a certificate of

validation accordingly.

(10) Where a person has received a certificate of validation under subsections (5) to (9), he may pursue any action which may be required to obtain or register or otherwise perfect the interest in land referred to in those subsections and until he does so take any action referred to in this subsection, the interest in land which he has obtained through a certificate of validation shall not be capable of being the subject of any disposition.

Effect of non-application for certificate of validation

54.-(1) Where a person who occupies land under a disposition to which section 53 applies does not comply with that section immediately before the termination of the date referred to in that section or any later date which the Minister may prescribe, the interest by which the land was occupied by that person shall be deemed to be a licence, valid and irrevocable until the end of the period of six years referred to in section 53, without prejudice to any derivative rights which that person may have created during his occupation and which have been validated by a certificate of validation issued under section 53.

(2) At any time before the end of the period for which the licence referred to in subsection (1) is valid and irrevocable, the occupier under that licence may apply for a right of occupancy or as the case may be a lease and the provisions of sections 24 to 52 shall apply to that application as if it were an application for right of occupancy or as the case may be an application for the disposition of a lease under sections 24 to 52.

(3) Where an occupier to which this section applies is refused a right of occupancy or a lease, he shall be entitled to compensation for the value of the unexhausted improvements on the land.

Validated derivative rights where certificate of validation not applied for

55.-(1) Where a person who occupies land under an irrevocable licence created under the provisions of section 54 is granted a right of occupancy as a result of an application for a right of occupancy under subsection (2) of section 54, any derivative right in that land validated under

and in accordance with the provisions of sections 53 to 57 shall be held of that right of occupancy.

(2) Where a person who occupies land under an irrevocable licence created under the provisions of section 54 is refused a right of occupancy, a lease validated under and in accordance with the provisions of sections 53 to 57 held of the interest in land which was by section 54 converted into an irrevocable licence shall, at the expiry of the period of the irrevocable licence, be converted into a right of occupancy for the same term as the lease was granted for but if that term was more than thirty three years or the term was indeterminate or unclear, then the term of the right of occupancy shall be for thirty three years.

(3) A validated derivative right of occupation created out of an interest in land which was, until it was converted into an irrevocable licence by the provisions of section 54, a derivative right shall as from the date of the termination of the irrevocable licence, be held of the next superior holder of a validated derivative right of occupation or where there is no such person, or the holder of a validated right of occupancy, or as the case may be a right of occupancy granted under the provisions of section 53.

(4) The terms and conditions on which a validated derivative right of occupation shall be held under this section shall be as near as may be the same as it was held of the unauthorised disposition immediately before the provisions of section 53 were applied to that unauthorised disposition, except that any terms and conditions that conflict with or are inconsistent with any of the provisions contained in sections 61 to 166 of this Act shall not be valid.

(5) Where the terms and conditions on which a validated derivative right of occupation is to be held of a person under this section are not clear or the parties cannot agree on them, either party or both of them may-

- (a) refer the matter to a Court for its decision; or
- (b) request the Commissioner to assist the parties to reach an agreement on those terms and conditions.

(6) Where any land or interest in land to which this section applies has been made the subject of one or more mortgages during any time prior to the application of section 53 to the land or any interest in the land which has come into being through an unauthorized disposition, and those mortgages have been validated in accordance with section 53, the following rules shall apply to determine the priority of those mortgages-

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- (a) where the mortgages have been registered under the Registration of Documents Act, their priority shall rank in accordance with the date of their registration;
- (b) where two or more mortgages have been validated through the issuing of a certificate of validation, their priority between themselves shall rank in accordance with the date recorded on the certificate of validation of when those certificates were issued but after any mortgage referred to in paragraph (a);

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- (c) a mortgage registered under the Registration of Documents Act, shall rank before any validated derivative right of occupation irrespective of when those certificates were issued but after any mortgage referred to in paragraph (a);
- (d) a mortgage validated by the issuing of a certificate of validation which was created before a derivative right of occupation validated by the issuing of a certificate of validation shall rank before that derivative right of occupation validated by the issuing of a certificate of validation shall rank before that derivative right of occupation irrespective of the date when the two certificates were issued.

**SUB-PART 2
REGULARISATION OF INTERESTS IN LAND**

Application of sections 56 to 60

56. Sections 56 to 60 of this Act apply to land within the boundaries of any urban authority and to any land in a peri-urban area whether that land is within the boundaries of a village and is village land or not.

Purpose of and criteria for declaring scheme of regularisation

57.-(1) The purpose of a scheme of regularisation is to facilitate the recording, adjudication, classification and registration of the occupation and use of land by those persons living and working in an area declared by sections 56 to 60 of this Act to be subject to a scheme of regularisation.

(2) The criteria to be taken into account in determining whether to declare a scheme of regularisation in any area are:

- (a) whether the area is used substantially for habitation in dwellings of their own construction or dwelling places adapted from buildings abandoned by their former occupiers by persons holding at the will or sufferance of a person having title to the land or as trespassers;
- (b) whether a substantial number of persons living in the area appear to have no apparent lawful title to their use and occupation of land notwithstanding that they have paid for or are paying for the land they are occupying and manage the land in accordance with rules generally recognized within the area;
- (c) whether the land, although part of an urban local authority is occupied under customary land law, whether that customary land law is the law of one group of people living in the area;
- (d) whether the area is a substantially built-up area;
- (e) whether the area has been or is likely to be declared to be a Planning area under the Urban Planning Act;

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- (f) whether the area has a substantial number of persons who have lived there for a substantial period of time so that the area is a well established and settled area from a social point of view;
- (g) whether there is evidence that despite the lack of any security of tenure for the persons living in the area, a considerable number of such persons appear to be investing in their houses and businesses and attempting to improve the area through their own initiatives;
- (h) whether a substantial number of people and community-based organisations within the area indicate that they wish to participate in a scheme of regularisation;
- (i) such other criteria which may be prescribed or which the Minister considers relevant.

Determination of whether to declare scheme of regularisation

58.-(1) The Minister may, of his own motion or at the request of an urban authority or a village council within an urban or peri-urban area, either direct the Commissioner to consider, or appoint an inquiry under section 18 to consider the question of whether any area to which sections 60 to 64 apply be declared to be an area of regularisation, shall-

- (a) cause to be convened one or more meetings in the area to explain to the residents of the area the nature and purpose of, and procedures to be followed in the declaration and implementation of a scheme of regularisation and to listen and take account of the views of the residents on the matter;
- (b) cause to be prepared a report on the existing state of land tenure in the area and the nature and the basis of the tenure under which persons in the area occupy land in the area;
- (c) cause an estimate to be prepared to what will need to be undertaken, the time it will take and the costs to carry out a scheme of regularisation;

- (d) assemble any other information which the Commissioner considers necessary or which may be prescribed to enable a decision to be taken to proceed with a scheme of regularisation,

and submit to the Minister a report based on the matters referred to in paragraphs (a) to (d) on whether a scheme of regularisation should be declared.

(2) Where the Minister, after considering the report submitted to him under subsection (1), determines to proceed to declare a scheme of regularisation he shall direct the Commissioner to cause to be prepared a draft of a scheme of regularisation.

(3) Any preparation of a scheme of regularisation which is referred to in subsection (2) shall involve the urban authority within whose jurisdiction the proposed scheme area is or contiguous to whose area the peri-urban area is in which the proposed scheme area is and shall take account of any report prepared under this section.

Procedure for
declaration of
scheme of
regularisation

59.-(1) Where a draft scheme of regularisation has been prepared –

- (a) a summary of the draft scheme of regularisation shall be published in at least one Kiswahili language newspaper circulating in the proposed regularisation area;
- (b) the Commissioner shall give publicity to the substance of the draft scheme within the area of the draft scheme in a manner which is customary in that area of which is likely to bring that fact to the attention of people living in that area where the content of the draft scheme may be explained to those people and their views on the draft scheme may be obtained;
- (c) the local authority referred to in subsection (4) of section 59 shall consider the draft scheme and send its comments to the Commissioner.

(2) Where a draft scheme will or is likely to involve the movement or relocation of people from their homes or

places of work or the acquisition of land in the area or the redistribution of land or the readjustment of boundaries and areas of plots of land, the Commissioner shall serve a notice on every person occupying land affected or likely to be affected by any parts of that draft scheme and shall not reach any final conclusions on the draft scheme to which this subsection refers until all persons on whom a notice has been served who so desire it have had an opportunity of being heard on these proposals in the draft scheme.

(3) The Commissioner shall, after considering the views of people in the area, the urban authority for the area or contiguous to the peri-urban area and any other persons who have submitted comments on the draft plan and the views of people to whom subsection (4) applies, if he considers it necessary or desirable to do so, revise the draft scheme and submit the revised draft scheme to the Minister.

(4) The Commissioner shall give not less than fourteen days' notice of any public meeting at which any matter connected with a draft scheme is to be discussed and of the time by which any written or other submissions or representations may be made on the draft scheme.

(5) The Minister may, after considering the draft scheme submitted to him by the Commissioner-

- (a) approve the draft scheme and declare a scheme of regularisation by order published in the *Gazette* in terms of the draft scheme;
- (b) refer the draft scheme back to the Commissioner for further work in accordance with any directions which the Minister may give to the Commissioner; or
- (c) reject the draft scheme.

(6) A scheme of regularisation declared by the Minister under this Act shall be deemed to be a scheme under the Urban Planning Act.

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Content of
scheme of
regularization

60.-(1) A scheme of regularization may contain all or any of the following matters, that is to say-

- (a) arrangements for the survey, adjudication and

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recording of the interests in land claimed by those persons occupying land in the regularisation area, which arrangements shall be based, as far as is practicable, on the provisions of sections 48 to 58 of the Village Land Act, relating to adjudication of interests in land;

- (b) arrangements for the readjustment of the boundaries of plots of land;
- (c) arrangements, within the framework of the rights in land provided for under paragraphs (a) and (b), for the better planning and layout of the land, including the pooling, sharing and redistribution of rights in land;
- (d) arrangements for the involvement of the local authorities having jurisdiction in the regularisation area in the implementation of the scheme;
- (e) arrangements for the involvement of the people whose land is the subject of the scheme of regularization in the implementation of the scheme;
- (f) arrangement for the assessment and payment of any compensation that may be payable in connection with the implementation of the scheme;
- (g) a budget for the scheme;
- (h) any other matter which may be prescribed.

(2) The Commissioner shall be responsible for the implementation of a scheme of regularisation but he may, and if so directed by the Minister shall, delegate the whole or any part of the implementation of that scheme to the urban authority where the regularisation area is situate.

(3) For avoidance of doubt, no scheme of regularisation under this section shall be implemented until-

- (a) occupation and use of land by those persons living and working in the area declared by sections 56 to 60 have been recorded, adjudicated, classified and registered;

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- (b) the President has acquired existing right and interests in terms of section 45 of the Urban Planning Act; and
- (c) fair compensation is paid promptly for the rights and interests to be acquired by the President.

**PART VIII
DISPOSITION AFFECTING LAND**

**SUB- PART 1
GENERAL PROVISIONS**

Dispositions and dealings affecting land

61.-(1) No right of occupancy, lease or mortgage shall be capable of being disposed of or dealt with except in accordance with this Act, and any attempt to dispose of any right of occupancy, lease or mortgage otherwise than in accordance with this Act, shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in land, or in the right of occupancy, lease or mortgage.

(2) The provisions of sections 61 to 166 of this Act shall not, unless otherwise expressly declared to do so, apply to a disposition of or dealing with land carried out and executed in accordance with customary law.

(3) For avoidance of doubt, dispositions of customary rights of occupancy shall be governed by customary law.

Instruments of disposition

62.-(1) Every instrument effecting any disposition under this Act shall use any of the prescribed forms which are specified in relation to that disposition under this Act or any other law.

(2) No instrument effecting any disposition under this Act shall operate to sell or assign a right of occupancy or create, transfer or otherwise affect any right of occupancy, lease or mortgage until it has been registered in accordance with the laws relating to the registration of instruments affecting the land in respect of which the disposition has been made.

(3) The provisions of subsection (2) shall not apply to any dispositions exempt from registration.

(4) This section shall not apply to or affect the operation of any contract for a disposition under this Act.

Execution of instruments in writing
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63.-(I) Without prejudice to the provisions relating to attestations and execution under the Land Registration Act and Registration of Documents Act, every instrument effecting any disposition under this Act shall, subject to the provisions of this Act, be executed in accordance with the provisions of this section by each of the parties consenting to it.

(2) The execution of any instrument referred to in subsection (1) by a person shall consist of his signing it or affixing a thumbprint or other mark which shall evidence his personal acceptance of that instrument.

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(3) The execution of any instrument referred to in subsection (1) by a corporate body, an association, a co-operative society or any other like organisation shall be effected in any manner authorised by the constitution of those organisations or by any law for the time being in force.

Writing required for enforcement of contracts relating to land

64.-(I) A contract for the disposition of a right of occupancy or any derivative right in it or a mortgage is enforceable in a proceeding only if-

- (a) the contract is in writing or there is a written memorandum of its terms;
- (b) the contract or the written memorandum is signed by the party against whom the contract is ought to be enforced.

(2) A contract for a disposition referred to in subsection (1) may be made using a prescribed form.

(3) The Minister may, after seeking and taking into account the recommendations of the Commissioner and any other organizations having an interest in the operation of dispositions of land, prescribe terms and conditions which

shall, subject to any modification or limitation provided for in the contract, form a part of any contract for the disposition of a right of occupancy.

- (4) This section shall not apply to-
 - (a) a short term lease;
 - (b) a disposition by order of a Court;
 - (c) a disposition by operation of laws.
- (5) This section shall not affect-
 - (a) the creation or operation of a resulting, implied or constructive trust;
 - (b) the making or operation of a will;
 - (c) an arrangement, recognised by customary law, for the temporary disposition of a customary interest in land.

Person may make disposition to himself

65.-(1) For avoidance of doubt, it is hereby declared that any person may make a disposition to himself and any other person or together with any other person to himself alone.

(2) The sale, assignment or disposition referred to in subsection (1) is enforceable in the same manner as a sale, assignment or disposition to another person.

Covenants to be implied in certain instruments

66.-(1) This section applies to an instrument coming into operation on or after the date of the coming into effect of this Part of the Act which for valuable consideration-

- (a) transfers or sells a right of occupancy in land;
- (b) creates, transfers or assigns a lease.

(2) Every instrument to which this section applies contains the implied covenants set out in section 67 unless a contrary intention is expressed in the manner provided for in this section.

(3) A covenant implied in an instrument under this Act has the same force and effect and may be enforced in the same manner as if it has been expressed in that instrument, subject, however, to subsection (4).

(4) A covenant implied in an instrument under this Act may be negated, varied or extended-

- (a) by the express terms of the instrument;

- (b) by a written memorandum executed as the instrument was required to be executed, by the parties to the instrument; or
- (c) in the case of a short term lease that is not made in writing, by the express or implied agreement of the parties.

(5) The covenants implied in an instrument by the section relate only to the acts and omissions of—

- (a) the person who creates, transfers or assigns the right of occupancy, lease or mortgage;
- (b) all persons through whom that person derives title otherwise than by purchase for valuable consideration.

The implied covenants

67. The following are the covenants implied, subject to section 66, in every instrument to which section 66 refers—

- (a) a disposition of a right of occupancy or a lease is to be taken to include and to convey with the interest being conveyed all rights, easements, and appurtenances belonging to the land, or the interest being conveyed or usually held or enjoyed with the land or the interest being conveyed, but this covenant does not give a person a better title to any interest in land referred to in this covenant than the title which the disposition of which it is a part gives that person;
- (b) a person obtaining a right of occupancy or a lease by means of a disposition not prejudicially affected by notice of any instrument, fact or thing, unless—
 - (i) it is within that person's knowledge, or would have come to that person's knowledge if any inquiries and inspections had been made which ought reasonably to have been made by that person; or

- (ii) it has in the disposition as to which a question of notice arises, come to the knowledge of the person's advocate or agent as such if such inquiries had been made as ought reasonably to have been made by that advocate or agent as such, except that the covenant in this paragraph does not exempt the person referred to in this paragraph from any liability under or from any obligation to perform or observe any covenant, condition, provision or restriction contained in any instrument under which his title is derived, mediately or immediately, and that liability or obligation may be enforced in the same manner and to the same extent as if this covenant were not part of the disposition;
- (c) a person who by an instrument to which section 66 refers creates, transfers, or assigns an interest in land (which term shall be taken to include a sublease), covenants with the grantee, transferee, assignee or sublessee that-
 - (i) he has the right and the power to create, transfer or assign that interest free of all encumbrances except those to which the interest will remain subject as specified in the instrument or as is provided for by the law;
 - (ii) the person who becomes entitled to the interest and all persons claiming under that person will be able quietly to enjoy the interest without disturbance by the grantor, transferor, assignor or lessor or all persons through whom that person derives title;
 - (iii) he will, at the request and expense of the person who becomes entitled to the interest, do all acts and execute all

documents for the better assuring of the title to the interest as that person may reasonably require from time to time;

- (iv) all rent due under the right of occupancy or lease, including, where relevant, a superior lease, has been paid and all covenants and conditions contained in it have been performed and observed.

SUB-PART 2
DISPOSITIONS TO PREJUDICE CREDITORS

Purpose of this Sub-Part

68. The purpose of sections 68 to 76 is to enable a Court to order that any interest in land acquired or received under or through certain prejudicial dispositions of those interests in land made by a debtor or the value of those interests in land be restored for the benefit of unsecured creditors but no order referred to in this section has effect so as to increase or prejudice the value of any security held by a creditor over the interest in land of the debtor.

Prejudicial dispositions

69.-(1) A disposition under this Act shall be taken to prejudice a creditor if it hinders, delays or defeats or is intended to hinder, delay or defeat the exercise by a creditor of any right of recourse to land or any interest in land in respect of which that disposition has been made in order to satisfy in whole or in part any debt owed to the creditor by the person making the disposition and that person is unable to pay all his debts without recourse to that land or any interest in it.

(2) A disposition shall not be taken to prejudice a creditor if it is made with the intention only of preferring one creditor over another.

Dispositions to prejudice creditors may be set aside

70.-(1) A creditor, and any public officer, Government department or parastatal body charged with the responsibility for collection of money owing to the Government or any part of it by any person may apply to

the Court under this section for an order by the Court to set aside a prejudicial disposition.

(2) An application made under this section shall-

- (a) specify the land to which it relates;
- (b) specify the disposition alleged to be prejudicial;
- (c) be served on-
 - (i) the person who has made the disposition;
 - (ii) the person in whose favour the disposition has been made;
 - (iii) any other person involved in the disposition from whom compensation is sought.

(3) A Court may, subject to section 72, on being satisfied that an applicant has been prejudiced by a disposition to which this Sub-Part applies make an order-

- (a) directing any person who acquired or received land under that disposition or through a person who acquired or received land under such a disposition-
 - (i) to pay any amount of compensation within any time to the applicant which the Court shall specify;
 - (ii) to re-assign a right of occupancy or a derivative right to the person who has made the prejudicial disposition;
 - (iii) to take any other action which the Court may specify;
- (b) direct the debtor who made the prejudicial disposition-
 - (i) to hold the land restored to him through the re-assignment of a right of occupancy or derivative right under subparagraph (ii) of paragraph (a) of subsection (3) as a trustee for his creditors; and
 - (ii) to deal with the land so held only in accordance with any orders which the Court may make for the purpose of

enabling the creditors to be paid by the debtor.

Protection of persons receiving land under prejudicial disposition

71.-(1) Where a person acquires or receives land in respect of which a Court could make an order for a restoration or the payment of reasonable compensation under section 70, the Court shall not make that order against that person if that person proves that he-

- (a) acquired or received the land in good faith and without knowledge of the fact that it has been the subject of a disposition to which section 70 applies, or
- (b) acquired or received the land through a person who acquired or received it in the circumstances set out in paragraph (a).

(2) Reference to knowledge in this section shall be taken to include actual, constructive and imputed knowledge.

Application of this Sub-Part to customary dispositions

72. A creditor for whose protection of this Sub-Part of this Act applies who alleges and provides *prima facie* evidence that a disposition made under customary law has been made with the same purpose and effect as a prejudicial disposition to which this Sub-Part applies may apply to the Court under section 70 for that disposition to be set aside and the Court shall, on being satisfied that that customary disposition is a prejudicial disposition, apply the provisions of this Sub-Part to that prejudicial disposition.

**SUB-PART 3
SALE OF RIGHT OF OCCUPANCY**

Regaining possession of land after concluding contract for sale of right of occupancy

73.-(1) Where, under a contract for the sale of a right of occupancy, the purchaser has entered into possession of the land, the vendor may exercise any contractual right to rescind the contract by reason of a breach of the contract by the purchaser only by-

- (a) resuming possession of the land peaceably; or
- (b) obtaining an order for possession of the land from the Court in accordance with the provisions of section 74.

(2) This section does not prevent the vendor from claiming damages for the breach of a contract for a sale or for breach of any other duty to the vendor which the purchaser may be under independently of the contract or affect the amount of damages which the vendor may claim by way of damages.

(3) Any term express or implied in a contract or other instrument which conflicts with this section shall be inoperative.

Procedure for obtaining order for possession

74.-(I) Where the vendor proposes to seek to regain possession of land under section 73, he shall serve a notice on the purchaser which shall inform the purchaser-

- (a) of the nature and extent of the breach complained of by the vendor;
- (b) whether the vendor considers that the breach is capable of being remedied by the payment of a stated amount of money owing under the contract;
- (c) whether the vendor considers that the breach is capable of being remedied by the purchaser doing or desisting from doing anything or paying reasonable compensation or both, and of the thing that the purchaser must do or desist from doing or the amount of compensation that

must be paid or both to remedy the breach and the time, being not less than thirty days within which the actions referred to in this paragraph must be completed;

- (d) where the vendor considers that the breach is capable of being remedied, of the period within which the purchase must remedy the breach;
- (e) of the consequence that if the purchaser fails to remedy the breach or if the vendor does not consider that the breach can be remedied, the vendor may seek an order from the Court to possess the land and rescind the contract;
- (f) of the right of the purchaser, within not more than fifteen days, to-
 - (i) apply to Court for relief against the rescission of the contract;
 - (ii) tender an amount by way of compensation different to that proposed by the vendor in the notice;
 - (iii) propose an alternative remedies to those set out in the notice;
 - (iv) propose an alternative time for the completion of the actions referred to in paragraph (c).

(2) The fact that the notice served under subsection (1) does not comply in every particular with the provisions of subsection (1) shall not-

- (a) render it invalid so long as the purport of the notice is clear; or
- (b) absolve the purchaser from the consequences of not responding to the notice.

Relief against rescission of contract for sale of right of occupancy

75.-(1) Where the vendor, after serving on the purchaser a notice under section 74, applies to the Court for an order for possession of the land or where the vendor has peaceably entered on to the land in order to regain possession under section 73, the purchaser may apply to the Court for relief against the rescission of the contract either-

- (a) in the proceedings for an order for possession;

or

(b) in a proceeding brought by the purchaser.

(2) Where the vendor has peaceably entered on to the land the purchaser must apply for relief within ninety days of the entry on to the land.

(3) The Court may grant such relief on any terms which it thinks fit, including relief for breach of any term or condition of the contract that is not capable of being remedied.

(4) An application for relief under this section is not in itself to be taken as an admission by the purchaser that-

- (a) there has been a breach of the contract by the purchaser;
- (b) by reason of the breach, the vendor has the right to rescind the contract;
- (c) a notice has been duly and properly served on the purchaser;
- (d) the time for remedying a breach or for paying an amount by way of compensation has expired,

and the Court may grant relief without determining any of those matters.

(5) Any term, express or implied, in a contract or other instrument to which this section applies which conflicts with or purports to set aside or negates this section shall be inoperative.

Purchaser of right of occupancy may seek relief against performance of contract to assign

76.-(1) Where a Court will not or would not, in the exercise of its discretion, order the specific performance by a purchaser of a contract to sell a right of occupancy but the purchaser is not entitled to rescind or repudiate the contract, the purchaser may apply to the Court for relief under this section.

(2) On any application made under subsection (1) the Court may make an order-

- (a) rescinding the contract;
- (b) requiring the vendor to refund any deposit and other money paid to the vendor by purchaser;
- (c) declaring that the purchaser has a lien on the

land to which the contract relates to secure payment by the vendor of any amounts ordered to be refunded to the purchaser under paragraph (b).

(3) The grant of relief under this section does not deprive the vendor of any right to claim damages from the purchaser for failure to perform the contract and in awarding damages, the Court shall take account of any relief granted under this section.

(4) Any term, express or implied, in a contract or other instrument to which this section applies which conflicts with or purports to set aside or negates this section shall be inoperative.

**PART IX
LEASES**

**SUB-PART 1
GENERAL PROVISION**

Application of
this Part
Act No.
11 of 2005
S.14

77.-(1) Unless otherwise provided for, the provisions of sections 77 to 110 of this Part shall apply to all leases, other than leases governed by customary law, made or coming into effect after the coming into operation of this Part of this Act.

(2) The parties to a lease made or coming into effect before the enactment of this Act may agree in writing to adopt or incorporate any of the provisions of this Part into that lease and where that agreement is made, the provisions so adopted or incorporated shall, unless the agreement otherwise provides, as from the date of the agreement, become a part of the lease and enforceable in every respect as such.

(3) The Minister may, with the approval of the National Assembly signified by a resolution and by order published in the *Gazette*, exempt any leased land or class of leased land or building comprised in any lease from the application of any of the provisions of this Part.

(4) In this Part, unless the context expressly or by implication renders it unfeasible, references to a lease include a sub-lease.

Power to lease
right of
occupancy
Act No.
11 of 2005
S.15

78.-(1) Subject to the provisions of this Act, the holder of a granted right of occupancy may lease that right of occupancy or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee, and subject to any conditions which may be required by this Act or any other law applicable to leases or which he may think fit.

(2) Subject to the provisions of section 41(2), the maximum term for which any lease may be granted shall be ten days less than the period for which the right of occupancy has been granted for a definite period.

(3) In determining the amount of rent payable under a lease, regard shall be had to -

- (a) size of the land;
- (b) use of the land
- (c) value of the land as evidenced by leases in the market in the area where the land is located;
- (d) location of the land; and
- (e) condition of the land or building.

(4) For purposes of determining the amount of rent payable, it shall be taken into account that the lessor will pay-

- (a) the land rent under a granted right of occupancy;
- (b) the premium for insuring the land;
- (c) the property tax and other rates leviable upon the land under any law; and
- (d) any repairs for which the lesser is liable by agreement or customs or any law.

(5) Where part only of the land which is held of a right of occupancy is leased, the lease shall be accompanied by a plan or other description of the leased

part which is sufficient to enable the part to be accurately identified and, where so required, registered.

Periodic leases

79.-(1) Where in any lease-

- (a) the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to be a periodic lease;
- (b) the term is from week to week, month to month, year to year or any other periodic basis, it shall be treated as a term for a period equal to its minimum possible duration;
- (c) the lessee remains in possession of land with the consent of the lessor after the term of a lease has expired, then-
 - (i) unless the lessor and lessee have agreed, expressly or by implication, that the continuing possession shall be for some other period, the lease shall be deemed to be a periodic one; and
 - (ii) all the terms and conditions of the lease that are consistent with the provisions of sub-paragraph (i) continue in force until the lease is terminated in accordance with this section.

(2) Where the holder of a right of occupancy permits the exclusive occupation of the land or any part of it by any person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The periodic tenancy to which paragraph (a) of subsection (1) refers shall be the period by reference to which the rent is payable.

(4) A periodic tenancy may be terminated by either party giving to the other notice, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

Short term leases

80.-(1) A short term lease is a lease which is-
(a) made for a term of one year or less;
(b) a periodic tenancy for periods of one year or less;
(c) a lease to which subsection (2) of section 79 applies.

(2) A short term lease may be made orally or in writing.

(3) A short term lease is not a registrable interest in land but any lease of a short term lease may-

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(a) where the short term lease has been granted out of a right of occupancy registered under the Land Registration Act, enter a caveat under Part IX of that Act to protect that lease;

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(b) where the short term lease has been granted out of an interest in land registered of under the Registration Documents Act, enter a caveat under section 32 of that Act to protect that lease.

Lease terminating on occurrence of future event

81. A lease which comes into operation on or after the date on which this Part of this Act comes into operation which provides for its termination or permits notice of its termination to be given on the occurrence of a future event is not invalid by reason only of that fact if the event is sufficiently defined in the lease so as to be identified when it occurs.

Lessee remaining in possession after termination of lease without consent of lessor

82.-(1) Where a lessee remains in possession of land without the consent of the lessor after the lease has been terminated or the term of the lease has expired, all the obligations of the lessee under the lease continue in force until such time as the lessee ceases to be in possession of the land.

(2) A lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired is not, by reason only of that fact, to be taken as having given consent to the lessee remaining in possession of the land or as having given upon any of the

rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease but where the lessor continues for two months to accept rent from a tenant who remains in possession after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.

Future leases

83.-(1) For the avoidance of doubt, it is hereby provided that a lease of a right of occupancy may be made for a term to begin on a future date, not being later than twenty one years from the date on which the lease is executed.

(2) A feature lease which is expressed to be for a period of more than five years shall be of no effect unless and until it is registered under the law applicable to the registration of interests in the land out of which that future lease has been created.

Lessor's consent to dealing with leases

84. Where a lease contains a condition, express or implied, by the lessee that he will not transfer, sublet, mortgage or part with the possession of the land leased or any part of it without the written consent of the lessor, no dealing with the lease shall be registered until the consent of the lessor has been produced to, and authenticated to the satisfaction of the Registrar.

Notice by joint occupiers

85. If a lease is entered into by-

- (a) two or more lessors as co-occupiers; or
- (b) two or more lessees as co-occupiers,

and the lease is terminable by notice, the notice must be given by and to all the co-occupiers, unless all the parties to the lease have agreed otherwise, expressly or by implication.

Sublease for term same as or longer than term of head lease

86.-(1) This section applies to a sublease coming into operation after the date of commencement of this Act under which a lessee enters or purports to enter into a sublease for a term which will expire at the same time as or later than, the expiry of the term of the head lease.

(2) A sublease to which this section applies does not operate as an assignment of the head lease to the subleases, unless a contrary intention appears from the sublease or from the circumstances surrounding the granting of the sublease.

(3) If the term of the sublease to which this section applies will expire after the expiry of the term of the head lease, then-

- (a) the term of the sublease is reduced, so as to expire one day earlier than the term of the head lease, but without prejudice to any remedies which the subleases may have in respect of that reduction;
- (b) if the term of the head lease is extended or renewed beyond the term for which the sublease was created, the sublease shall expire at the end of that original term; or
- (c) if the term of the head lease is extended or the head lease is renewed, the term of the sublease is extended so as to expire-
 - (i) one day earlier than the extended term of the head lease or the term of the head lease as renewed; or
 - (ii) one day earlier than the time at which the head lease is expressed to expire, whichever time is the earlier.

(4) The parties to a lease and sublease to which this section refers may renegotiate any terms or conditions of the sublease but no renegotiated terms or conditions shall be more onerous to or impose more obligations on the subleases than the original terms and conditions.

Surrender to enable new head lease to be entered into not to affect sublease

87.-(1) The surrender of a lease for the purpose of enabling a new lease to the same lessee to be entered into does not require the surrender of any sublease in respect of the surrendered lease, if, on or before the date on which the term of the new head lease will expire-

- (a) the term of the sublease will expire; or

- (b) in the case of a sublease which is a periodic tenancy, the sublease may be terminated by the giving of the specified period of notice of termination and the expiry of that period.
- (2) A sublease preserved under subsection (1)-
 - (a) continues in force as though it had been entered into in respect of the new head lease; and
 - (b) all rights and obligations under the sublease, including those which relate to any period before the surrender of the head lease, continue to be enforceable, except to the extent that any such obligation is, by reason of the fact that a new head lease has been entered into, more onerous than it would have been had the original head lease not been surrendered.
- (3) A sublease entered into in respect of a surrendered lease includes for purposes of this section any sublease entered into by a person deriving title through the lessee under the surrendered lease.

SUB-PART 2
COVENANTS, CONDITIONS AND POWERS IMPLIED IN LEASES

Covenants implied in leases on part of lessor

- 88.**-(1) There shall be implied in every lease covenants by the lessor with the lessee binding the lessor-
- (a) that, so long as the lessee pays the rent and observes and performs the covenants and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall peaceably and quietly possess and enjoy the land leased during the term of the lease without any lawful interruption from or by the lessor or any person rightfully claiming through him;
 - (b) not to use or permit any adjoining or neighbouring land of which he is the occupier under a right of occupancy or a lessee in any way which would render the leased land or any buildings on the leased land unfit or materially

less fit for any purpose for which they were leased or may, consistent with the terms and conditions of the lease, be used;

- (c) where part only of a building is leased, to keep the roof, all external and main walls and main drains, and the common parts and common installations and facilities, including common passages and walkways in a proper state of repair;
- (d) where any dwelling house, flat, or room is leased, that house, flat or room is fit for human habitation at the commencement of the tenancy and will be kept fit for human habitation during the lease;
- (e) that if at any time the leased premises or any part of them are destroyed or damaged-
 - (i) by fire, flood or explosion accident not attributable to the negligence of the lessee, his invitees or employees;
 - (ii) by civil commotion;
 - (iii) by lightning, storm, earthquake, volcanic activity or other natural disaster,

so as to make the leased premises or any part of it wholly or partially unfit for occupation or use, the rent and any contribution payable by the lessee to the outgoings on the premises or its just proportion of that rent or contribution according to the nature and extent of the damage sustained shall be suspended and cease to be payable until the leased premises have been again rendered fit for occupation and use, but that if the leased premises have not been so rendered fit for occupation and use within six months of their destruction or damage as is referred to in this paragraph, the lessee may at his option and on giving one month's notice of his intention so to do,

terminate the lease;

- (f) if it is an express or implied term of the lease that the leased land or a building, on it may be used for any one or more specific purposes, the lessee may terminate the lease, on giving one month's notice to the lessor, if at any time during the currency of the lease, the land or building cannot be, or can no longer lawfully be used, for any one or more of those purposes;
- (g) unless otherwise specified in the lease, to pay all rates, taxes, dues and other outgoings which are payable in respect of the land leased during the continuance of the lease unless the same are or shall be payable exclusively by the lessor under any law.

(2) There shall be implied in every lease covenants by the lessor with the lessee empowering the lessor-

- (a) at all reasonable times, to enter, either personally or by agents, the leased land or buildings for the purpose of inspecting their condition and repair and for carrying out repairs and making good any defects which it is the lessor's obligation so to do but that in the exercise of that power, the lessor will not unreasonably interfere with the occupation and use of the land and buildings by the lessee;
- (b) to terminate the lease by serving a notice of intention to terminate the lease on the lessee where-
 - (i) any rent is unpaid for one month after the due date for payment whether or not a demand in writing for payment has been made by the lessor or an agent of the lessor;
 - (ii) the lessee has failed for a period of one month to observe or perform any condition, covenant or other term, the observation or performance of which has

been assumed by the lessee expressly or impliedly in the lease.

Convenants
implied in
leases on part of
lessee
Cap 4
s.8

89.-(1) There shall be implied in every lease, other than a short term lease, covenants by the lessee with the lessor binding the lessee-

- (a) to pay the rent reserved by the lease at the times and in the manner specified in the lease;
- (b) to use any land in a sustainable manner and in accordance with any conditions imposed on that use of that land by the lease, or with any written law or with any provisions in a grant of a right of occupancy of the land out of which that lease has been created and in particular, unless the purpose for which the land has been leased cannot be carried out without so doing, not to cut down, injure or destroy any living tree on the land;
- (c) to yield up the land and buildings in the same condition as they were when the term of the lease began, except that the lessee is not bound to repair damage or restore the land and buildings to the same conditions they were at the beginning of the lease where the damage or deterioration of the condition is caused by-
 - (i) reasonable wear and tear;
 - (ii) fire, flood or explosion or other accident not attributable to the negligence of the lessee, his invitees or employees;
 - (iii) civil commotion;
 - (iv) lightning, storm, earthquake, volcanic activity or other natural disaster;
- (d) to keep all boundary marks in repair;
- (e) subject to the lessor's obligations set out in paragraph (d) of subsection (1) of section 88 and except where part only of a building is leased, to keep all buildings comprised in the

lease in a reasonable state of repair, regard being had to the condition of the building and the materials of which it is composed at the beginning of the lease;

- (f) subject to the lessor's obligations set out in paragraphs (c) and (d) of subsection (1) of section 88, where part only of a buildings is leased, to keep the leased part of the building in a reasonable state of repair, regard being had to the condition of the building and the materials of which it is composed at the beginning of the lease;
- (g) to permit the lessor or his agent or employees at all convenient times and after reasonable notice, to enter on the leased land or buildings to examine their condition and to undertake any repairs and make good any defects for which the lessor is responsible;
- (h) to repair or make good any defect or breach of covenant for which the lessee is responsible and of which notice has been given by the lessor to the lessee within any period which may be specified in the notice;
- (i) not to transfer, mortgage, charge, sublease or otherwise part with the possession of the leased land or buildings or any part of it without the previous written consent of the lessor, that consent not to be unreasonably withheld;
- (j) where a termination order has been served and, if disputed, confirmed by a Court, to render up possession of the leased land and buildings peaceably and without further dispute.

(2) There shall be implied in a short term lease only the following covenants by the lessee with the lessor binding the lessee, that is to say, those covenants set out in paragraphs (a), (b), (c), (g), (i) and (j).

Application of covenants to customary leases

90.-(1) Subject to the provisions of section 21 of this Act, the parties to a customary lease may adopt and incorporate into such a lease any or all of the covenants set out in sections 88 and 89.

(2) The Minister may, after taking account of the advice of the Commissioner, prescribe that such of the covenants as are set out in sections 88 and 89 as he shall determine shall be implied in a customary lease in the same manner and to the same extent as they are implied in the leases and the parties shall adopt provisions of section 62 of this Act.

Meaning of reference to the “usual covenants”

91. In a lease coming into effect after the commencement of this Act, unless the context requires otherwise, a reference to “the usual covenants” is to be taken as a reference to the covenants implied in that lease by sections 88 and 89.

Meaning of “in a reasonable state of repair”

92. In a lease coming into effect after the commencement of this Act, a covenant to keep a building or part of it “in a reasonable state of repair” (or like expression) shall, in the absence of an express provision to the contrary, mean in such a state of repair as that which a prudent owner might reasonably be expected to keep his own building, due allowance being made for the age, character and locality of the building and the means of the person under the obligation to comply with such a covenant provided that, there shall not be read into any such covenant an undertaking by a lessee to put any building or part of it into a better condition than it was in at the commencement of the lease.

Consent by lessor to application by lessee under lease

93.-(1) On and after the enactment of this Act, a covenant by the lessee not to take an action without the consent of the lessor shall be construed as requiring the lessor not unreasonably to withhold consent to the taking of that action by lessee.

(2) Where an application is made by a lessee to a lessor for consent to take one or more of the following action, that is to say-

- (a) transfer or assign the lease;
- (b) enter into a sublease;
- (c) part with possession of the leased land or buildings;
- (d) change the use of the land or buildings from a use which is permitted under the lease;
- (e) extend, improve, add on to or in any other way develop any building beyond what is permitted in the lease;
- (f) create a mortgage over the lease;
- (g) take any of the actions referred to in subparagraph (a), (b), (c), (d), (e) or (f) in relation to any part of the leased land or buildings, or for any part of the term of the lease,

the lessor must, on receiving the application and within a reasonable time thereafter-

- (i) give that consent; or
- (ii) withhold that consent,

and in either case must inform the lessee in writing of his decision on the application.

(3) Without limiting the generality of the lessor's obligation under subsection (1), consent is unreasonably withheld if the lessor as a condition of or in relation to the giving of consent-

- (a) requires the lessee to pay any money by way of additional rent, or a premium or a fine or other consideration for the consent, other than the payment of the lessor's reasonable expenses incurred in connection with the giving of consent;
- (b) imposes on the lessee any unreasonable condition or per-condition;
- (c) where the lessee proposes to transfer or assign

the lease or enter into a sublease, objects to the gender or nationality or other personal characteristic of the transferee, assignee or subleases where the circumstances are such that a reasonable person would consider that those factors are irrelevant to the granting of such consent.

(4) A lessor who refuses consent or gives consent subject to a condition or pre-condition must, if the lessee so requests in writing, inform the lessee as soon as may be of the reasons for the refusal or, as the case maybe, for the imposition of the condition or pre-condition.

(5) The lessee or any person at the request of the lessee involved in a transaction to which this section applies, who has paid any money or suffered any loss in connection with subsection (3), may recover that money and seek damages for that loss from the lessor.

(6) This section does not prevent the inclusion in a lease of a covenant binding the lessee absolutely not to take any action of the kind referred to in subsection (2).

**SUB-PART 3
TRANSFERS, ASSIGNMENTS AND TRANSACTIONS**

Merger of lessor's interest not to affect remedies

94.-(1) Where a sublessor surrenders his head lease to or merges his head lease with the right of occupancy out of which it was created, the holder of the right of occupancy shall have all the same remedies against the subleases for non-performance or non-observation of the covenants and conditions expressed or implied in the sublease and all the same rights to give notice of the termination of the sublease to the subleasee as the sublessor had before he surrendered or merged his head lease.

Burden and benefit of covenants to run with reversion

95.-(1) Where the interest held by the lessor under a lease (the reversion) ceases to be so held by the lessor (whether by transfer, assignment, grant, operation of law or otherwise), then, unless a contrary intention appears from the lease, expressly or impliedly, or from some other circumstance-

- (a) the obligations imposed by every covenant of the lease on the lessor run with the reversion and may be enforced by the person who is from time to time entitled to the lease against the person who is from time to time entitled to the reversion;
- (b) the rights to the benefits of every covenant of the lease which has reference to the subject matter of the lease imposed on the lessee may be exercised and enforced by the person who is from time to time entitled to the reversion against the person who is from time to time entitled to the lease.

(2) A person who becomes entitled to exercise a right to which paragraph (b) of subsection (1) refers may exercise that right even if it first became exercisable or accrued before the time at which that person became so entitled, unless before that time, the right was waived or the lessee was released from the obligation to which the right relates.

- (3) If, in respect of a lease-
 - (a) there has been a division of the reversion into different parts so that different persons are lessors of the different parts; or
 - (b) the lease terminated as to part only of the land comprised in the lease,

the obligations referred to in paragraph (a) and the rights and remedies referred to in paragraph (b) of subsection (1) shall be apportioned, and to the extent required by that apportioned, remain attached to each part of that reversion or to that part of the land in respect of which the lease has not been terminated as the case may require and may be enforced by the person entitled to enforce those obligations under paragraph (a) and exercised by the person entitled to exercise those rights and remedies under paragraph (b) of subsection (1).

Effect of payment by lessee to assignor of reversion

96-(1) If a lessor has transferred or assigned the reversion, payment of all or part of the rent or other money due under the lease to the transferor or assignor by the lessee who does not have actual notice of the transfer or assignment discharges the lessee to the extent of that payment.

(2) For purposes of subsection (1), registration of a transfer of the reversion is not, in itself, actual notice to the lessee of the transfer, notwithstanding any other provision to the contrary in any other written law.

Transferor or assignor of lease released from liability to pay rent and observe covenants thereafter

97-(1) In respect of any lease or any transfer or assignment of a lease or part of it made or coming into effect on or after the date of the commencement of this Act, the rule of common law that a transferor or assignor of a lease remains liable on the personal covenant to the lessor for payment of rent and for all breaches of covenants, notwithstanding that the transferor or assignor is no longer in possession or occupation of the leased land is abolished and the effect of a transfer or assignment of a lease is, as from that date, to discharge absolutely and without more the transferor or assignor from any obligation to pay rent or to observe any covenants in respect of the land as from the date of the transfer or assignment, whether the person to whom the lease has been transferred or assigned is in or goes immediately into occupation or possession of the land so transferred or assigned.

(2) Where the transferor or assignor remains in occupation of the leased land notwithstanding transfer or assignment, he shall remain liable to pay rent and comply with all the covenants as if he were still the lessee for as long as he shall remain in occupation.

(3) Subsection (1) shall not apply to absolve a transferor or assignor of a lease from any obligation to pay rent or remedy and breach of a covenant which accrued or arose during the term of the lease when that transferor or assignor was bound by all the covenants in that lease and

the lessor may enforce all such obligations of that lease which have so accrued or arisen against that transferor or assignor notwithstanding that the lease has been transferred or assigned.

(4) As from the date of the commencement of this Act, the rule of common law that a lessee remains liable to pay rent and comply with all the covenants notwithstanding that he has, with the agreement of the lessor, vacated the leased land before the date for the termination of the lease is abolished and the provision set out in subsection (5) shall forthwith apply.

(5) A lessee who, with the agreement of the lessor, vacates land before the termination of a lease shall, unless the lease provides expressly for a shorter period, remain liable to pay rent and observe all the covenants in the lease for one year from the date on which he vacates the land or buildings except that where the lessor leases that land or any buildings to another person before the end of the period of one year, the provisions of subsection (1) shall apply from the date of the execution of that lease.

(6) The provisions of subsection (3) shall apply to a lessee referred to in subsection (5) as if the words “transferor or assignor” wherever they appear, they are substituted the words “lessee to whom subsection (5) applies” and at the end of the subsection, for the words “the lease has been transferred or assigned” there are substituted the words “he has vacated the land”.

(7) The provisions of subsections (1) and (5) apply in like manner to the transfer, or assignment of a lease of a part of the leased land and to the vacating of a part of the leased land as they apply to the transfer or assignment of the lease of all the land and the vacating of all the land comprised in the lease.

(8) Any term expressed or implied in a lease or in a condition or covenant in a lease conflicting with this section is of no effect.

Transferee or
assignee as
lessee

98.-(1) A person who accepts a transfer or assignment of a lease becomes the lessee without any need

for that person to-

- (a) acknowledge the lessor as such;
- (b) take possession of the land or buildings complied in the lease.

(2) If there is a covenant in the lease that the lessee will not, or will not without the consent of the lessor, transfer or assign the lease, a transfer or assignment has effect whether or not the lessor has consented to that transfer or assignment and whether or not that transfer or assignment is in breach of the covenant but this subsection does not prevent the lessor from seeking and remedy for and such breach.

(3) A person to whom this section applies who became a lessee-

- (a) is bound to pay to the lessor the rent payable under the lease;
- (b) is bound to observe and perform all the covenants on the part of the lessee expressed or implied in the lease;
- (c) may enforce all covenants made by and binding on the lesser expressed or implied in the lease.

Cap.334

(4) Section 95 of the Land Registration Act applies to any lease created or coming into effect under this Part.

**SUB-PART 4
REMEDIES AND RELIEF**

Application of this Sub-Part to customary leases

99. This Sub-Part shall apply to all leases and licences.

Application of this Sub-Part to customary leases

100-(1) Subject to the provisions of this section, the provisions of this Sub-Part shall not apply to customary leases.

(2) The provisions of this Sub-Part shall apply to the lease of a dwelling-house expressed to be leased by a customary leases where there is no rule of customary law applicable.

(3) Where any land or buildings have been leased by a customary lease which the parties to that lease have agreed shall be governed by any of the provisions or part of this Part, then the provisions of this Sub-Part shall apply to that customary lease.

(4) Where, in any customary lease other than a customary lease to which subsections (2) and (3) apply, a lessor seeks to take possession of the leased land or buildings on the grounds that a lessee has not complied with the terms and conditions of that customary lease, then-

(a) the lessor must act and act only in strict accordance with the customary law applying to the leases;

(b) the lessee who is alleged not to have complied with the terms and conditions of the customary lease may refer the matter to the Village Land Council and the Village Land Council shall in considering the matter-

(i) have regard to the extent to which the customary law applicable to the lease provides for a fair balance of rights and duties between the lessor and the lessee and in particular whether the lessee has been given notice that he is not complying with the terms and conditions of the lease and an opportunity to rectify the matter;

(ii) where it considers that the lessee ought to be granted relief against the lessor's demand for possession of the leased land or buildings, be guided by the provisions of sections 96 and 97 and in particular whether the lessor has conducted himself in relation to the lessee as respect the lease as a reasonable lessor should so conduct himself.

(5) In having regard to whether a lessor under a customary lease has conducted himself as a reasonable lessor should, the Village Land Council shall, while having regard to the customary law applicable to the lease, be guided by the provisions of this Part specifically applicable to lessors.

(6) A lessor or lessee who is dissatisfied with a determination by a Village Land Council may appeal to the district Court which shall apply to that appeal, as far as the circumstances shall permit, the provisions of section 97.

Determination of lease
Act No. 11 of 2005
s.16

101.-(1) On and after the commencement of this Act, a lessor may terminate a lease for non-payment of rent or for breach of any covenant in accordance and only in accordance with the provisions of this Sub-Part, notwithstanding any provision in any lease to the contrary.

(2) Any term expressed or implied in a lease or in any condition or covenant in a lease which purports to avoid or has the purpose or effect of avoiding the need to comply with all or any sections in this Sub- Part is of no effect.

Distress for rent
Act No. 11 of 2005
s.17
Cap.4
s.8

102.-(1) Subject to the provision of subsection (3), a lessor may only exercise his right to levy distress for rent after service of a notice in accordance with the provision of section 104.

(2) Where it is not possible to peacefully exercise a right to levy distress, the lessor shall only do so under the order of the Court.

(3) The exercise of the right to levy distress shall only be exercised using a Court broker or a broker of a tribunal.

Termination of lease for non-payment of rent or breach of covenant
Act No. 11 of 2005
s.18

103.-(1) Subject to the notice served under section 104 or 205 of this Act, a lessor may exercise any right to terminate a lease for failure to pay rent due under the lease or for a breach of any covenant or condition in the lease.

(2) The Minister may make rules of the Court providing for the procedures to be followed in applying for and the granting of an order for possession and such rules may provide for the granting of a summary order of possession in circumstances where the Court is satisfied that the lessee has no reasonable defence or excuse for the non-observance of any covenant or condition in the lease or for not complying with any notice from the lessor requiring the breach to be remedied.

Notice of intention to terminate a lease for breach of covenant
Act No. 11 of 2005
s.19

104.-(I) Where a lessee is in arrears with the rent and has been in arrears for not less than thirty days, the lessor may serve on that lessee a notice of intention to terminate the lease.

(2) A notice served on a lessee under this section shall adequately inform the recipient of all of the following matters:

- (a) the nature and extent of the breach complained of;
- (b) the amount which must be paid to remedy the breach;
- (c) the period, being not less than thirty days from the date of the service of the notice, within which the breach must be remedied;
- (d) in the event that the breach is not remedied the lease shall terminate at the expiry of thirty days from the date of service of notice.

Notice of intention to terminate lease for breach of covenant other than to pay rent
Act No. 11 of 2005 s.20

105.-(I) Where a lessee is in breach of a covenant or condition in the lease, the lessor may serve notice of intention to terminate the lease on that lessee.

(2) A notice served on a lessee under this section shall adequately inform the recipient of the following matters:

- (a) the nature and extent of the breach;
- (b) where the lessor considers that the breach is capable of being remedied-
 - (i) the action which the lessor must take or desist from taking to remedy the breach;
 - (ii) the amount (if any) of compensation which the lessee must pay to remedy the breach and to reimburse the lessor's reasonable expenses incurred in connection with the breach;
 - (iii) the reasonable time, being, not less than thirty days, within which the lessor must take or desist from taking the action specified in subparagraph (i);
- (c) in the event that the breach is not remedied the lease shall terminate on expiry of thirty days from the date of the service of notice.

Consequential provisions relating to notices under sections 104 and 105
Act No. 11 of 2005 s.21

106.-(I) Where the lessor has served a notice on a lessee under section 104 and 105, he shall at the same time or as soon as practicable serve a copy of that notice on-

- (a) subleases-
- (b) spouse of the lessee;
- (c) mortgagee of the lessee or of subleases;
- (d) where the lessee is bankrupt, the trustee in bankruptcy of the lessee.

(2) The obligation of the lessor under subsection (1) only applies to those persons mentioned in that subsection of whose names and addresses the lessor has actual notice.

(4) The Minister may, by regulations, prescribe the form of the notice to be served under part.

(5) Service of notice under the provisions of this Part shall be effected in person or by registered post and where the person to whom service is to be made is evading service or by some other reason, service cannot be made to that person physically, service may be effected by affixing the copy of the notice in a conspicuous place-

- (a) on or as near as may be to the land where possible;
- (b) where the land is village land, at the offices of the village council or other public place within the village;
- (c) where the land is general land at the offices of the local authority having jurisdiction in the area where the land is located or on other public place in the area where that land is located; and
- (d) publishing a copy in one or more newspapers circulating in Tanzania.

(6) The notice displayed or published pursuant to the provisions of this Part may be in English or Kiswahili or both languages.

Application
for relief

107.-(1) An application for relief may be made to a district Court-

- (a) in a proceeding brought by the lessor for an order of termination of the lease;
- (b) in a proceeding brought for the purpose by any of the persons referred to in subsection (2) before the lessor commences a proceeding mentioned in paragraph (a).

(2) An application of relief against an order of termination of a lease may be made by-

- (a) the lessee;
- (b) if two or more persons are entitled to the lease as co-occupiers, by one or more of them on their own behalf-
- (c) a sublessee;
- (d) a mortgagee for the lessee or a sublessee;

(e) the trustee in bankruptcy of the lessee.

(3) If an application made in accordance with paragraph (b) of subsection (1) is not made by all the co-occupiers, then, unless the Court orders otherwise, it must be served on all the co-occupiers.

(4) Any person, with an interest in the leased land or buildings the subject of an application by the lessor for an order of termination who on reasonable grounds claims that he has been prejudiced by not being served with a notice to which section 104 and 105 applies may apply to the Court for an extension of time within which to make an application for relief and the Court may grant that person an extension of the time on any conditions which it thinks fit.

(5) An application for relief is not to be taken as an admission by the lessee or any other person applying for relief that-

- (a) there has been a breach of a covenant or condition of the lease by the lessee;
- (b) by reason of such a breach, the lessor has the right to terminate the lease;
- (c) all notices which were required to be served by the lessor were properly served;
- (d) the period for remedying the breach specified in the notice served under section 104 was reasonable or had expired, and the Court may grant relief without determining all or any of those matters.

Power of
Court with
respect to
order
of termination
and relief
Act No.
11 of 2005
s.22

108.-(1) In considering whether to grant an order of termination or to grant relief against an order of termination, the Court shall have regard to the following matters:

- (a) the gravity of the breach and in particular whether any written law has not, as a result of the breach, been complied with;
- (b) the reasonableness of the action required to be taken or desisted from by the lessee to remedy the breach and the time within which it has to be taken or desisted from as specified in the notice served by the lessor under section 105, and in

particular with respect to the lease of any building the age, condition and location of building;

- (c) the reasonableness of the amount of compensation required to be paid and the manner of its payment by the lessee as specified in the notice served by the lessor under section 105;
- (d) whether the lessor has committed any breaches of covenants or conditions which he is under an obligation by the lease to comply with and the extent to which those breaches have contributed to any breaches by the lessee;
- (e) the degree of forbearance shown by the lessor in respect of other breaches of covenants conditions by the lessee;
- (f) the age, means and circumstances of the lessor;
- (g) the age, means and circumstances including the health and number of dependants of the lessee, and in particular whether-
 - (i) the lessee will be rendered landless or homeless by the grant of an order;
 - (ii) the lessee will have any alternative means of providing of himself and his dependants;
 - (iii) a spouse of the lessee will or is likely to suffer undue hardship if an order were made;
- (h) whether there is any alternative remedy which can be applied in the circumstances;
- (i) the interests of all parties other than the lessee and his dependants who are participating in the application for relief;
- (j) any other matter which the Court considers appropriate and reasonable in all circumstances.

(2) A Court may grant any relief against the operation of an order which the circumstances of the case require and without limiting the generality of that power, may-

- (a) cancel, vary or postpone the order;

- (b) extend the period of time for compliance by the lessee with a notice served under section 104;
- (c) alter the amount of compensation required to be paid by the lessee by a notice served under section 104;
- (d) substitute a different remedy for the one specified by the lessor or a different time for taking or desisting from taking an action specified by the lessor in a notice served under section 105;
- (e) provide that any arrears of rent or other payments due under the lease be paid in such instalments and at such times as the Court shall determine;
- (f) require the lessor or the lessee to remedy any breaches of any covenants and conditions which either or both of them are under an obligation to comply with;
- (g) order the lessor to enter into a lease with-
 - (i) a mortgagee of the lessee; or
 - (ii) a sublessee;for a period, not being longer than the period of the lease which is to be terminated, and on any terms and conditions which the Court thinks fit;
- (h) confirm the notice notwithstanding that some procedural errors took place during the making of that notice if the Court is satisfied that-
 - (i) the lessee or other person applying for relief was made fully aware of the substance of the notice; and
 - (ii) no substantial injustice will be done by confirming that notice,

and may grant that relief of any conditions as to expenses, damages, compensation or any other relevant matter which the Court thinks fit.

(3) A Court may grant relief against an order for termination notwithstanding that the lessee has breached an essential term of the lease and the breach is not capable of being remedied.

Remedies of

109.-(1) Where a lessee is in breach of covenant or

lessor and
lessee
for breach of
covenant

condition of a lease, which he is under an obligation to observe and comply with, the lessor may, instead of serving a notice of intention to terminate, commence an action against the lessee-

- (a) for damages;
- (b) for a decree of specific performance;
- (c) for an injunction; or
- (d) to recover as a debt any areas of rent,

but no action commenced before the service of a notice of intention to terminate shall not be proceeded with or judgement given in respect of it until after the conclusion of any proceedings commenced in connection with an order of termination arising from the same breaches, including any appeal against any decision given in connection with that order of termination.

Cap 4
s.8

(2) Where a lessor is in breach of a covenant or condition in a lease which he is under an obligation to observe and comply with, the lessee may-

- (a) commence an action against the lessor-
 - (i) for damages;
 - (ii) for a decree of specific performance; or
 - (iii) for an injunction;
- (b) in any case where the lessor has failed to comply with covenants contained in paragraphs (c) or (d) of subsection (1) of section 88 -

- (i) serve a notice on the lessor that unless he undertakes the repairs and maintenance he is obliged to undertake within thirty days, the lessee will undertake the repairs and maintenance which under those paragraphs, it is the lessor's obligation to undertake;
- (ii) if the lessor does not commence the repairs and maintenance as specified in the notice and does not seek an extension of time within which to undertake the repairs and maintenance specified in the notice referred to in

subparagraph (i) in as economical and efficient a way as possible; and

- (iii) set off the cost of that work against the rent due under the lease; or
- (c) deduct from any rent due under the lease any sums which the lessor has, contrary to the covenants and conditions in the lease or contrary to any written law, required the lessee to pay as a condition either of obtaining the lease or of continuing as the lessee; or
- (d) repudiate the lease and cease to pay any rent under it on the grounds that the lessor's conduct shows that he does not intend to comply with the lease,

and may pursue any two or more of these actions together as the case may require.

(3) Where the lessee commences an action for damages, the Court may award damages for the inconvenience suffered by the lessee and those dependants living with him for the lessor's failure to comply the covenants and conditions under the lease and in addition may award an element of damages to the lessee by way of a penalty on the lessor.

Unlawful
eviction

110.-(1) A lessee who, contrary to the express or implied terms and conditions of a lease is evicted from the whole or a part of the leased land or buildings, is not as from the time of the eviction, under any obligation to pay any rent or other monies due under the lease or perform any of the covenants and conditions on the part of the lessee expressed or implied in the lease in respect of the land or buildings or part thereof from which he has been so evicted.

(2) A lessee who, contrary to the express or implied terms of the lease is, on the commencement of the lease, unable through the actions or non-actions of the lessor or any of his agents or employees, to obtain possession of the leased land or buildings or part thereof is for purposes of this section to be taken as having been evicted from the whole or, as the case may be, a part of that land or those buildings.

**PART X
MORTGAGES**

**SUB-PART 1
GENERAL PROVISIONS**

Application of
this Part
to mortgages

111.-(1) This Part applies to all mortgages of land or interests in land, made or coming into effect on and after the coming into operation of this Act and any other mortgages of land which are specifically referred to in any section in this Part and references to mortgages in this Part shall apply and apply only to mortgages of land and interests in land.

(2) The repeal and substitution of Part X shall not apply in the case of mortgages created on or before the time when Part X as substituted came into operation.

(3) References in this Part to "the mortgaged land" shall be taken to mean and include a mortgaged right of occupancy, a mortgaged lease and sublease and a second or subsequent mortgage.

Interpretation
of expressions
used in
this Part

112.-(1) Where the expressions "borrower" or "lender" are used in this Part, their respective definitions in section 2 shall not apply, and they shall be respectively construed as "a person who borrows" and "a person who lends".

(2) In this Part, unless the context otherwise requires-

"matrimonial home" means the building or part of a building in which the husband and wife ordinarily reside together and includes-

- (a) where a building and its cartilage are occupied for residential purposes only, that cartilage and any outbuildings thereon; and
- (b) where a building is on or occupied in conjunction with agricultural land or pastoral land, any land allocated by the husband or the wife, as the case may be, to his or her spouse for her or his exclusive use;

"mortgagee" means a person in whose favour a mortgage is

created or subsists;

"mortgagor" means a person who has mortgaged a right of occupancy or a lease and includes a transferee of a right of occupancy or lease subject to a mortgage and a person to whom such right of occupancy or lease so subject has passed by transmission; and

"third-party mortgage" means a mortgage which is created or subsists to secure the payment of an existing or future or a contingent debt or other money or money's worth or the fulfillment of a condition by a person who is not the mortgagor, whether or not in common with the mortgagor.

(3) References in this Act to "mortgage" shall be taken to include a third-party mortgage, or, as the context requires, the creation of a third-party mortgage.

Power to create mortgage

113.-(1) An occupier of land under a right of occupancy and a lessee may, by an instrument in the prescribed form, with such variations and additions, if any, as the circumstances may require, mortgage his interest in the land or a part thereof to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfillment of a condition.

(2) The power conferred by subsection (1) shall include the power to create third-party mortgages and second and subsequent mortgages.

(3) The power conferred by this section shall be exercisable subject to-

- (a) any prohibition or limitation imposed by this Act or any written law; or
- (b) any restriction contained in an instrument creating or affecting the interest in land which is to be the subject of a mortgage.

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(4) In respect of a mortgage other than a mortgage of land registered under the Land Registration Act, it shall take effect only when it is registered in a prescribed register and a mortgagee shall not be entitled to exercise any of his remedies under that mortgage if it is not so registered.

(5) Nothing in this section shall operate to prevent a

borrower from offering and a lender from accepting -

- (a) a written and witnessed undertaking, the clear intention of which is to charge the borrower's land with the repayment of money or money's worth obtained from the lender; or
- (b) a deposit of any of the following -
 - (i) a certificate of a granted right of occupancy;
 - (ii) a certificate of a customary right of occupancy;
 - (iii) a document of a lease;
 - (iv) any other document which may be agreed upon evidencing a right to an interest in land; or
 - (v) any other documents which may be agreed upon, to secure any payments which are referred to in subsection (1).

(6) The arrangement specified in paragraph (a) of subsection (5) may be referred to as an "informal mortgage" and a deposit of documents specified in paragraph (b) of subsection (5) shall be known and referred to as a "lien by deposit of documents".

Mortgage of
Matrimonial
home
Act No
17 of 2008
S.8

114.-(1) A mortgage of a matrimonial home including a customary mortgage of a matrimonial home shall be valid only if-

- (a) any document or form used in applying for such a mortgage is signed by, or there is evidence from the document that it has been assented to by the mortgagor and the spouses or spouses of the mortgagor living in that matrimonial home; or
- (b) any document or form used to grant the mortgage is signed by or there is evidence that it has been assented to by the mortgagor and the spouse or spouses living in that matrimonial home.

(2) For the purpose of subsection (1), it shall be the responsibility of a mortgagor to disclose that he has a spouse or not and upon such disclosure the mortgagee shall be under the responsibility to take reasonable steps to verify

whether the applicant for a mortgage has or does not have a spouse.

(3) A mortgagee shall be deemed to have discharged the responsibility for ascertaining the marital status of the applicant and any spouse identified by the applicant if, by an affidavit or written and witnessed document, the applicant declares that there were spouse or any other third party holding interest in the mortgaged land.

(4) An applicant commits an offence who, by an affidavit or a written and witnessed document, knowingly gives false information to the mortgagee in relation to existence of a spouse or any other third party and, upon conviction shall be liable to a fine of not less than one half of the value of the loan money or to imprisonment for a term of not less than twelve months.

Application
of
this Part
to customary
mortgages

115.-(1) The creation and operation of customary mortgages of land shall, subject to the provisions of this section, continue to be in accordance with the customary law applicable to the land in respect of which the customary mortgage is created.

(2) Where the mortgagee under a customary mortgage seeks to exercise any customary remedy which involves or may involve the mortgagor being disposed or permanently deprived of the occupation of the mortgaged land, the mortgagee shall, after using the services of the Village Land Council, try and mediate on the application of the proposed or any other remedy, make an application to the Village Land Council for an order authorizing the exercise of that remedy.

(3) The mortgagor under a customary mortgage may, after making use of the services of the Village Land Council to try and mediate on the matter with the mortgagee, apply to a Village Land Council for the mortgage to be re-opened on the ground that the terms of the mortgage are -

- (a) unfair;
- (b) an unreasonable departure from the normal terms of a customary mortgage applicable in the area where the land is located; or

(c) disadvantageous to the interests of the dependents of the mortgagor, and the Village Land Council shall, in considering and determining that application, be guided by the provisions of sections 141 and 142.

(4) In any case concerning a customary mortgage, the Village Land Council determining the case shall, where it appears to the Village Land Council that -

- (a) there is a lacuna in the customary law applying to that mortgage; and
 - (b) no other system of customary law makes adequate or any provision for the matter in respect of which there is a lacuna,
- be guided by the relevant provisions of this Part of this Act.

Mortgage of land to take effect as security only

116.-(1) On and after the date of the commencement of this Act, a mortgage shall have effect as a security only and shall not operate as a transfer of any interests or rights in the land from the mortgagor to the mortgagee but the mortgagee shall have, subject to the provisions of this Part, all the powers and remedies in case of default by the mortgagor and be subject to all the obligations that would be conferred or implied in a transfer of an interest in land subject to redemption.

(2) In the case of the mortgage of a lease, the mortgagee shall not be liable to the lessor for rent or in respect of the covenants and conditions contained or implied in the lease to any greater extent than he would have been if the mortgage had been by way of a sublease.

Priority

117.-(1) Mortgages shall rank according to the order in which they are registered-

Cap. 334

- (a) in respect of mortgages of land registered under the Land Registration Act, in accordance with section 60(l) of that Act;
- (b) in respect of all other mortgages, in accordance with the appropriate register.

Cap. 117 (2) Informal mortgages shall rank according to the order in which they are made provided that, where an informal mortgage is registered under section 11 of the Registration of Documents Act, it shall take priority over any unregistered informal mortgage.

Cap. 117 (3) For purposes only of determining the priority of mortgages, a customary mortgage shall be deemed to be an informal mortgage, and registration of a customary mortgage in a register of village land shall have the same effect as regards the priority of such a mortgage as if it were registered under section 11 of the Registration of Documents Act.

(4) Where two informal mortgages are made on the same day or are registered on the same day, the mortgage which was first in time to be made or registered shall have priority.

(5) Where, a subsequent mortgagee has entered into the transaction secured by his mortgage as a consequence of or through the fraud, dishonesty or misrepresentation of a prior mortgagee, either in conjunction with or separately from the fraud, dishonesty or misrepresentation of the mortgagor, the subsequent mortgage shall have priority to the mortgage of that prior mortgagee as between them, but not so as to affect the priority of any other mortgage having priority to the subsequent mortgage.

(6) The rules of priority for informal mortgages shall apply as far as the circumstances shall permit to liens by deposit of documents.

Tacking
Act No.
17 of 2008
s.9

118.-(1) A mortgagee may, subject to the provisions of this section, make provision in the mortgage instrument to give further advances or to give credit to the borrower on a current or continuing account.

(2) A mortgage instrument intended to permit further advances shall include a maximum aggregate amount which may be advanced and outstanding at any point in time.

(3) A further advance referred to in subsection (1)

shall not rank in priority to any subsequent mortgage unless-

- (a) the provision for further advances is noted in the register in which the mortgage is registered; or
- (b) the subsequent mortgagor has consented in writing to the priority of the further advance.

(4) Except as provided for in this section, there is no right to tack.

(5) Where a mortgage provides for the disbursement of a specified principal sum by the mortgagee by way of installments, whether such disbursements are conditional or unconditional obligations of the mortgagee, the payment of those installments shall not be taken to be a further advance and such disbursements shall rank in priority to all subsequent mortgages upon to the amount stated in the mortgage.

Consolidation

119.-(1) Unless there is an express provision to the contrary clearly set out in the mortgage instrument, where a mortgagee has more than one mortgage from a single mortgagor, the mortgagor may discharge any or some of the mortgages without having to redeem all mortgages.

(2) A mortgagee who has made provision in accordance with subsection (1) for the consolidation of his mortgage shall record that right in the register or registers against all the mortgages so consolidated which are registered.

(3) Notwithstanding subsection (1), no right to consolidate shall be exercisable to the prejudice of any person acquiring any right of occupancy or lease or other interest in land entitling that person to the occupation and use of that land prior to the recording of that right to consolidate in the prescribed register.

(4) The rules of equity applicable to consolidation shall not apply as from the date of the commencement of this Act.

Variation of mortgage Act No. 17 of 2008 s.10

120.-(1) A mortgagee shall not vary the rate of interest payable under a mortgage without giving notice of such variation to the mortgagor.

(2) A mortgage may be varied by a memorandum which:

- (a) complies with subsection (4); and
- (b) is signed by the mortgagor and the mortgagee.

(3) The covenants, conditions and powers expressed or implied in a mortgage shall take effect as regards the mortgage as so varied from the time of the variation.

(4) A memorandum for the purposes of subsection (2):

- (a) must be endorsed or annexed to the mortgage instrument; and
- (b) when so endorsed or annexed to the mortgage instrument, shall operate to vary the mortgage in accordance with the terms of the memorandum.

(5) Notwithstanding the preceding provisions of this section, an interest rate which by the terms of the mortgage agreement may be varied periodically in accordance with a formula set out therein, may be changed by a written notice from the lender to be borrower setting forth clearly and in a manner likely to be understood by the mortgagor-

- (a) the new interest rate;
- (b) the date on;
- (c) any change to the amount of the payment due under the secured debt, and the first date on which the new payment is due; and
- (d) the alternative, if provided in the mortgage agreement, to paying an increased interest rate, if that is the case.

Mortgage of land Act No. 1 of 2018 s.10

120A.-(1) Subject to the provisions of this Act, a person may mortgage any land for the purpose of obtaining money from the local or foreign bank, or local or foreign financial institution for developing his land or for any other investment.

(2) The money obtained from the local or foreign bank, or local or foreign financial institution shall,-

(a) where the mortgaged land is developed, be utilized for further development of the land, for investments or for other purposes; and

(b) where the mortgaged land is undeveloped or underdeveloped, be utilized to develop part or whole of such mortgaged land.

(3) A Mortgagor shall within six months submit to the Commissioner information as to the manner in which the money obtained from the mortgage is invested to develop the mortgaged land.

Money to be invested in Tanzania Act No. 1 of 2018 s.10

120B.-(1) Money obtained from a mortgage from a local or foreign bank, or local or foreign financial institution referred to under section 120A shall be invested in Tanzania.

(2) Where the mortgagee is a local or foreign bank, or local or foreign financial institution, the mortgagee shall submit to the Commissioner a declaration that the money obtained from the mortgage is invested in Tanzania.

(3) For purposes of this section-

“local bank” means any bank licensed by the Bank of Tanzania to undertake the banking business in Tanzania;

“local financial institution” means any entity licensed in Tanzania to engage in the banking business, but limited as to size, locations served, or permitted activities as prescribed by the Bank of Tanzania or required by the terms and conditions of its licence;

“underdeveloped” in respect of land, means a land which is not developed in accordance with the conditions of relevant rights of occupancy;

“undeveloped” in respect of land, means a land without improvement in, on, under or over such land or without any change of substantial nature in the use of such land.

Scope of application Act No. 1 of 2018

120C. The provisions of sections 120A(2),(3) and 120B(1) shall not apply to land held under the Certificate of Customary Right of Occupancy.

s.10

Non compliance under mortgage of land Act No. 1 of 2018 s.10

120D. Failure to comply with the requirements under sections 120A and 120B shall constitute a breach of conditions of right of occupancy provided for under section 45(2).

Procedure relating to mortgage of land Act No. 1 of 2018 s.10

120E. The procedure for administration and enforcement of section 120A and 120B shall be prescribed in the Regulations.

**SUB-PART 2
DISCHARGE OF MORTGAGES**

Contents of notice Acts Nos. 17 of 2008 s.11 1 of 2018 s.11

120F.-(1) At least five days prior to making a mortgage loan to a borrower for purposes of acquiring, improving or constructing a residential property, a creditor shall provide the consumer in writing and in plain language the following information-

- (a) identification and address of the creditor and any intermediary action for the creditor;
- (b) the purposes for which the loan may be used;
- (c) a description of the payment terms of the loan, including the amount and frequency of payments, the allocation of payments to principal and interest of the loan, respectively, the place and method of payment;
- (d) with respect to loans on which the interest rate may be changed from time to time in accordance with the terms of the mortgage, variable interest rate loans, a description of the formula by which the interest rate shall be varied and the frequency of variation;
- (e) a calculation of the entire cost of the loan to the consumer over the stated duration of the loan, assuming no prepayment, distinguishing between principal and interest and in the case of variable

interest rate loans, statements of the assumptions underlying the interest calculation and that actual interest paid could be more or less than disclosed;

- (f) a good faith estimate of other costs related to the loan to be paid by the consumer, including costs, insurance premiums, legal, notary and registration fees, as well as appraisal fees;
- (g) whether there is a possibility of early repayment (prepayment) of all or any portion of the loan, and if so, its conditions;
- (h) whether an appraisal of the property is necessary and, if so, by whom it will be carried out;
- (i) a summary of the main terms of the mortgage securing the loan, including any restrictions on use or disposition of the property and the obligations of the consumer for maintenance and insurance of the property; and
- (j) an unambiguous statement that failure to repay the loan may result in loss of the mortgage property and description of the steps that may be taken by the creditor to enforce the mortgage in the event of the consumer's failure to meet his obligation.

(2) The Minister may, by regulations, prescribe the form and content of the written notice to be provided to borrowers and, where so prescribed a notice made under this section shall be in that form and shall be considered void if not in that form, provide that no such notice shall be considered void on the grounds of technical defects alone in the absence of material harm to the recipient.

(3) A notice given under this section shall not be considered defective because of discrepancies between costs estimated diligently and in good faith in accordance with paragraph (f) of subsection (1) and costs actually incurred.

Right to
discharge

121.-(1) Subject to the provisions of this section and section 136, on payment of all moneys and the performance of all other conditions and obligations secured by the

mortgage, the mortgagee shall at the request and cost of the mortgagor discharge the mortgage at any time and any agreement or provision in the mortgage instrument or otherwise which –

- (a) purports to deprive the mortgagor of this right;
- (b) seeks to fetter the exercise of this right; or
- (c) stipulates for a collateral advantage which is unfair and unconscionable and inconsistent with the right to discharge,

shall be void.

(2) Any agreement or provision in the mortgage instrument or otherwise which requires that a mortgagor wishing to obtain a discharge of the mortgage under subsection (1) shall be required to pay to the mortgagee, as well as paying all other monies secured by the mortgage, additional amount in excess of one month's interest at the rate at which interest is payable on the principal sum secured by the mortgage shall be void.

(3) A discharge whether of the whole or a part of a mortgage shall be as prescribed under this Act or any other written law.

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(4) Section 63 of the Land Registration Act shall apply to any mortgage made under this Part.

Transfer of mortgage

122.-(1) The current mortgagor or any person mentioned in subsection (2) may at any time, other than a time when the mortgagee is in a possession of mortgaged land, in writing request the mortgagee to transfer the mortgage to a person named in the written request.

(2) Subject to the consent of the mortgagor, which consent shall not be unreasonably withheld, the persons who may make the written request under subsection (1) are –

- (a) any person who has an interest in the right of occupancy, lease or mortgage that has been mortgaged;
- (b) any surety for the payment of the amount secured by the mortgage; or
- (c) any creditor of the mortgagor who has obtained a decree for sale of the mortgaged right of

occupancy, lease or mortgage.

(3) The mortgagee on receiving a written request made under subsection (1), and on payment by the person or persons making the request of all monies which would have been payable if the discharge of the mortgage had been made under section 120 and the performance of all other obligations secured by the mortgage, shall transfer the mortgage to the person named in the written request.

Mortgagee's
consents of
transfer
Act No.
17 of 2008
s.12

123. Where a mortgage contains a condition, express or implied, by the mortgagor that the mortgagor will not without the consent of the mortgagee transfer or assign or lease the right of occupancy or in the case of a lease or sublease, then no transfer, assignment, lease or sublease shall be registered until the written consent for the mortgagee has been produced to the Registrar and any such transfer shall be null and void as a matter of law with respect to the interests of the mortgagee.

**SUB-PART 3
COVENANTS, CONDITIONS AND POWERS IMPLIED IN
MORTGAGES**

Implied
covenants
by mortgagor
Act No.
17 of 2008
s.13

124.-(1) There shall be implied in every mortgage covenants by the mortgagor with the mortgagee binding the mortgagor:

- (a) save in the case of a mortgagor under a third-party mortgage, to pay the principal money on the day appointed in the mortgage agreement, and, so long as the principal money or any part thereof remains unpaid, to pay interest on the money thereon or on so much of the money which for the time being remains unpaid at the rate and on the days and in the manner specified in mortgage agreement;
- (b) to pay all rates, charges, rent, taxes and other outgoings which are at all times payable in respect of the mortgaged land held for a right of

- occupancy;
- (c) to repair and keep in repair all buildings and other improvements upon the mortgaged land or to permit the mortgagee or his agent at all reasonable times until the mortgage is discharged and after reasonable notice to the mortgagee to enter the land and examine the state and condition of such buildings and improvements;
 - (d) to ensure by insurance or any other means which may be prescribed or which are appropriate, that resources will be available to make good any loss or damage caused by fire to all buildings on the land, and where insurance is taken out, it is done so in the joint names of the mortgagor and mortgagee with insurers approved by the mortgagee and to the full value of all the buildings;
 - (e) in the case of a mortgage of land used for agricultural purposes, to use the land in a sustainable manner and in accordance with the principles of good husbandry and any conditions subject to which the right of occupancy or lease under which the land is held and to comply with all written laws and lawful orders applicable to that use of the land;
 - (f) not to lease or sublease the mortgaged land or any part of it for any period longer than a year without the previous consent in writing of the mortgagee but that consent shall not be unreasonably withheld;
 - (g) not to transfer or assign the right of occupancy or lease or part of it without the previous consent in writing of the mortgagee but that consent shall not be unreasonably withheld;
 - (h) in the case of a mortgage of a lease, during the continuance of the mortgage, to pay, perform and observe the rent, covenants and conditions by and in the lease contained and implied and on the part of the lessee to be paid, performed and

observed and to keep the mortgagee indemnified against all proceedings, expenses and claims on account of non-payment of the rent or part of it or the breach of non-observance of the said covenants and conditions or any of them, and, if the lessee has an enforceable right to renew the lease, to renew it;

- (i) where the mortgage is a second or subsequent mortgage, that the mortgagor will pay the interest from time to time accruing on each prior mortgage (not being a third-party mortgage) when it becomes due and will at the proper time repay the principal money or part of it due on each prior charge;
- (j) where the mortgagor fails to comply with any of the covenants implied by paragraphs (b), (c), (d), (e) and (h) of this subsection, that the mortgagee may spend any money which is reasonably necessary to remedy the breach and may add the amount so spent to the principal money and that amount shall be deemed for all purposes to be a part of the principal money secured by the mortgage.

(2) Reference to the obligation of the mortgagor in paragraph (b) of subsection (1), to keep all buildings upon the mortgaged land in repair, shall be taken to be an obligation to keep such buildings in a reasonable state of repair as set out in section 92.

(3) The provisions of section 93 shall apply to an application by a mortgagor to a mortgagee for consent under paragraphs (f) and (g) of subsection (1).

(4) The mortgagee shall not spend any money pursuant to paragraph (j) of subsection (1) without giving notice to the mortgagor of intention to do so.

(5) Consent given pursuant to paragraph (f) of subsection (1) shall not be construed as subordination of the mortgage to any such lease or sublease in the absence of specific agreement of the mortgagee to such subordination which agreement may be granted or withheld by the

mortgagee in its sole discretion.

(6) It shall not be deemed unreasonable for a mortgagee to require, as a condition of granting consent pursuant to paragraph (g) of subsection (1) that the entire debt secured by the mortgage be repaid in full.

**SUB-PART 4
POWERS OF THE MORTGAGEE**

Foreclosure
abolished

125.-(1) Any rule of law, written or unwritten, entitling a mortgagee to foreclose the equity of redemption in mortgage land is abolished.

(2) It is hereby declared that, on and after the coming into operation of this Act, a mortgagee shall not be entitled to enter into possession of the mortgaged land held for a right of occupancy or a mortgaged lease or to receive the rents and profits of that land or lease by reason only that default has been made in the payment of the principal sum or of any interest or other periodic payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the mortgage, other than in accordance with the provisions of this Sub-Part.

Remedies of
mortgagee

126. Where the mortgagor is in default, the mortgagee may exercise any of the following remedies –

- (a) appoint a receiver of the income of the mortgaged land;
- (b) lease the mortgaged land or where the mortgaged land is of a lease, sub-lease the land;
- (c) enter into possession of the mortgaged land; and
- (d) sell the mortgaged land, but if such mortgaged land is held under customary right of occupancy, sale shall be made to any person or group of persons referred to in section 30 of the Village Land Act.

Cap. 114

Notice to
exercise
Remedies
Act No. 17 of

127.-(1) Where there is a default in the payment of any interest or any other payment or any part thereof or in the fulfillment of any condition secured by any mortgage or

2008
s.14

in the performance or observation of any covenant, express or implied, in any mortgage, the mortgagee shall serve on the mortgagor a notice in writing of such default.

(2) The notice required by subsection (1) shall adequately inform the recipient of the following matters:

- (a) the nature and extent of the default;
- (b) that the mortgagee may proceed to exercise his remedies against the mortgaged land; and
- (c) actions that must be taken by the debtor to cure the default; and
- (d) that, after the expiry of sixty days following receipt of the notice by the mortgagor, the entire amount of the claim will become due and payable and the mortgagee may exercise the right to sell the mortgaged land.

(3) The Minister may, by regulations prescribe the form and content of a notice to be served under this section and where the notice to be served under this section has been so prescribed, a notice served under subsection (1) shall be in that form and shall be void if it is not in that form.

Appointment,
powers,
remuneration
and duties of
receiver

128.-(1) It shall be an implied condition in every mortgage, that the mortgagee shall have the power to appoint a receiver of the income of the mortgaged land.

(2) Prior to the appointment of a receiver under this section, the mortgagee shall serve a notice as provided for under section 127 on the mortgagor.

(3) The appointment of a receiver shall be in writing signed by the mortgagee.

(4) A receiver may be removed at any time and a new receiver appointed by writing signed by the mortgagee.

(5) A receiver appointed under this section shall be deemed to be the agent of the mortgagor for the purposes for which he is appointed including power of sale of mortgaged land so that the mortgagor shall, unless the mortgage instrument provides otherwise, be solely responsible for the acts and defaults of the receiver.

(6) The receiver shall have the power to demand and recover all the income of which he is appointed a receiver, by action or otherwise, in the name of the mortgagor and to

give effectual receipts for the same.

(7) The receiver shall be entitled to retain out of any money received by him all costs, charges and expenses incurred by him as receiver and, for his remuneration, a commission at the rate not exceeding five *per centum* of the gross amount of all monies received as specified in the appointment, or if no rate is so specified, at the rate of five *per centum* or any other rate as the mortgagor and mortgagee may agree or where the appointment of a receiver comes before the Court, which the Court thinks fit.

(8) The receiver shall apply all moneys received by him in the following order of priority:

- (a) first, in the payment of all rents, rates, charges, taxes and other outgoings required to be paid in respect of the mortgaged property;
- (b) second, in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage of which he is the receiver;
- (c) third, in payment of his remuneration and expenses;
- (d) fourth, in payment of all reasonable expenses incurred in the doing of anything which a receiver is required or entitled to do in respect of the mortgaged land, including but not limited to -
 - (i) the payment of any premiums on any insurance policy properly payable under the mortgage instrument; and
 - (ii) the costs of undertaking necessary and proper repairs to any buildings comprised in the mortgaged land as directed in writing by the mortgagee;
- (e) fifth, in the repayment of any money paid or advanced by the mortgagee, to meet the reasonable expenses referred to in paragraphs (a), (b), (c), and (d) together with any interest on any amount so paid or advanced at the rate at which interest is payable on the principal sum secured by the mortgage;

- (f) sixth, in payment of the interest accruing due in respect of any principal sum secured by the mortgage;
 - (g) seventh, in and towards the discharge of the principal sum secured by the mortgage,
- and shall pay the residue, if any, to the mortgagor or other person entitled to the mortgaged land.

Mortgagee's power of leasing

129.- (1) A mortgagee shall, unless the mortgage instrument expressly provides to the contrary, have power, subject to the provisions of this Act and any other law applicable to the leases of land -

- (a) to grant leases in respect of the mortgaged land or any part thereof;
- (b) to accept a surrender of any lease so granted and of any lease affecting the mortgaged land, and may, for that purpose, execute, in place of the mortgagor, any instrument required to execute that lease or surrender.

(2) Prior to granting a lease under this section, a mortgagee shall serve a notice on the mortgagor as provided for under section 127(2).

- (3) Every lease granted by the mortgagee shall -
 - (a) be made to take effect in possession not later than six months after its date;
 - (b) reserve the best rent that can reasonably be obtained regard being had to the circumstances of the case;
 - (c) be for a term not exceeding fifteen years or the length of the term of the mortgage, whichever is the shorter; and
 - (d) contain any terms and conditions which are reasonable, having regard to the interests of the mortgagor and of any other persons having an interest in the mortgaged land.

(4) A lease created by a mortgagee under this section shall not be binding on any person holding, and shall not take priority over any mortgage which has priority to the mortgage of the mortgagee who has granted the lease, unless

such person has consented thereto.

(5) A mortgagee shall not exercise the powers under subsection (1) in relation to any such land as is referred to in paragraph (a), (b) or (c) of subsection (5) of section 130 without first having obtained an order for possession thereof from the Court or having taken possession in the manner prescribed in paragraph (b) of subsection (2) of section 130.

Power of mortgagee to take possession of mortgaged land

130.-(1) A mortgagee may, at any time after service of a notice under section 127, enter into possession of the whole or a part of the mortgaged land.

(2) A mortgagee may exercise the power of entering into possession of the mortgaged land -

- (a) by entering into and taking physical possession of the land or a part of it peaceably;
- (b) by asserting management or control over the land by serving a notice in the prescribed form requiring any lessee or the mortgagor or any other occupier of the land to pay to the mortgagee any rent or profits which would otherwise be payable to the mortgagor; or
- (c) pursuant to an order of the Court.

(3) The mortgagee shall be regarded as being in possession on the date -

- (a) on which he enters into possession in accordance with paragraph (a) or (c) of subsection (2); or
- (b) on which he first receives any rent or profit from the land.

(4) A mortgagee who has entered into possession may remain in possession, without prejudice to the right to withdraw from possession, so long as the mortgaged land continues to be subject to any liability under the mortgage.

(5) A mortgagee shall not otherwise than through the execution of an order of the Court enter into or seek to enter into possession by taking physical possession of -

- (a) a dwelling house in which any person is in residence;
- (b) any land in actual use for agricultural purposes;
- (c) any land in actual use for pastoral purposes; or

(d) any land where the taking of physical possession peaceably is not possible.

(6) A mortgagee in possession of any mortgaged land by occupation shall be entitled to manage the land and take all its profits, but shall be liable to the mortgagor for any act by which the value of the land, or any buildings on, or other permanent improvements to the land are impaired or the borrower otherwise suffers loss.

(7) A mortgagee in possession shall apply all the moneys received by him to the same payments and in the same order as would apply to a receiver and which are set out in subsection (8) of section 128, except that a mortgagee in possession shall not be entitled to receive any payments under paragraph (c) of that subsection.

(8) Any person on whom a notice under paragraph (b) of subsection (2) has been served shall forthwith comply and continue to comply with that notice until -

- (a) a notice of withdrawal in the prescribed form is served on that person by the mortgagee in possession;
- (b) the mortgagee in possession withdraws from that possession; or
- (c) a Court orders the mortgagee in possession to withdraw from possession.

Withdrawal
of mortgagee
from
possession

131.-(1) A mortgagee shall withdraw from possession of the mortgaged land –

- (a) where a Court makes an order directing the mortgagee to withdraw;
- (b) where the mortgagee appoints a receiver under section 128;
- (c) where the default which was the cause of the entry into possession has been rectified through the possession of the mortgagee;
- (d) where the mortgagee has exercised the power of sale under section 132; or
- (e) where the mortgagor has become entitled to a discharge of the mortgage under section 121.

(2) A mortgagee in possession shall be taken to have

withdrawn from possession of all or a part of the mortgaged land in any case provided for -

- (a) by paragraph (a) of subsection (1), when the order of the Court is made;
- (b) by paragraph (b) of subsection (1), when the receiver has been appointed in accordance with section 128;
- (c) by paragraph (c) of subsection (1), when the mortgagee has either -
 - (i) ceased to occupy the mortgaged land; or
 - (ii) where he is not in occupation, served a notice of withdrawal on all persons served with a notice under paragraph (b) of subsection (2) of section 131; or
- (d) by paragraph (d) of subsection (1), when the purchaser of the mortgaged land enters into occupation of that land; or
- (e) by paragraph (e) of subsection (1), when the mortgagor obtains the discharge of the mortgage.

(3) A mortgagee who has withdrawn from possession of mortgaged land may not again enter into possession of that land, otherwise than by complying again with the provisions of section 130.

Mortgagee's
power of sale
Act No.
17 of 2008
s.15

132.-(1) A mortgagee may, after the expiry of sixty days from the date of receipt of a notice under section 127, sell the mortgaged land.

(2) A mortgagee may exercise the power of sale in relation to any such land as referred to in paragraph (a) or (b) of subsection (5) of section 130.

(3) The exercise by a mortgagee of his power of sale shall not be a disposition which is subject to the provisions of section 38.

(4) Where a sale of mortgaged property shall be made by means other than public auction, a mortgagee shall be required to give notice of sale of not less than ten days to the mortgagor and to any third party holding a registered interest in the property.

Duty of mortgagee exercising power of sale

133.-(1) A mortgagee who exercises a power to sell the mortgaged land, including the exercise of the power to sell in pursuance of an order of a Court, owes a duty of care to the mortgagor, any guarantor of the whole or any part of the sums advanced to the mortgagor, any lender under a subsequent mortgage including a customary mortgage or under a lien to obtain the best price reasonably obtainable at the time of sale.

(2) Where the price at which the mortgaged land is sold is twenty-five per centum or more below the average price at which comparable interests in land of the same character and quality are being sold in the open market, there shall be a rebuttable presumption that the mortgagee is in breach of the duty imposed by subsection (1) and the mortgagor whose mortgaged land is being sold for that price may apply to a Court for an order that the sale be declared void, but the fact that a mortgaged land is sold by the mortgagee at an undervalue being less than twenty-five per centum below the market price shall not be taken to mean that the mortgagee has complied with the duty imposed by subsection (1).

(3) It shall not be a defence to a proceeding against a mortgagee for breach of the duty imposed by subsection (1) that the mortgagee was acting as agent of or under a power of attorney from the mortgagor or any former mortgagor.

(4) A mortgagee shall not be entitled to any compensation or indemnity from the mortgagor, any former mortgagor or any guarantor in respect of any liability arising from a breach of the duty imposed by subsection (1).

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(5) The sale by a mortgagee of any village land occupied by a villager shall conform to the provisions of sections 30 and 31 of the Village Land Act, save that such a sale shall not require any approval from a village council.

(6) Any attempt by a mortgagee to exclude all or any of the provisions of this section in any mortgage instrument or any agreement collateral to a mortgage or in any other way shall be void.

Powers
incidental to
power of sale

134.-(1) Where a mortgagee becomes entitled to exercise the power of sale, that sale may be -

- (a) of the whole or a part of the mortgaged land;
- (b) subject to or free of any mortgage or other encumbrance having priority to the mortgagee's mortgage;
- (c) by way of subdivision or otherwise;
- (d) by private contract or public auction;
- (e) with or without reserve;
- (f) for a purchase price payable in one sum or by instalments; or
- (g) subject to any other conditions which the mortgagee shall think fit, having due regard to the duty imposed by subsection (1) of section 133.

(2) Where a sale is to proceed by public auction, it shall be the duty of the mortgagee to ensure that, the sale is publicly advertised in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the mortgaged land and that the provisions of section 52 (relating to auctions and tenders for right of occupancy) are, as near as may be, followed in respect of that sale.

(3) A sale of the mortgaged land by a mortgagee in exercise of the power of sale shall be made in the prescribed form and the Registrar shall accept it as sufficient evidence that the power has been duly exercised.

(4) Upon registration of the right of occupancy or lease or other interest in land sold and transferred by the mortgagee, the interest of the mortgagor as described therein shall pass to and vest in the purchaser free of all liability on account of the mortgage, or on account of any other mortgage or encumbrance to which the mortgagee has priority, other than a lease or easement to which the mortgagee had consented in writing.

Protection of
purchaser
Act No.
17 of 2008

135.-(1) This section applies to-

- (a) a person who purchases mortgaged land from the mortgagee or receiver, excluding a case where

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the mortgagee is the purchaser;

(b) a person claiming the mortgaged land through the person who purchases mortgaged land from the mortgagee or receiver, including a person claiming through the mortgagee where the mortgagee is the purchaser where, in such a case, the person so claiming obtained the mortgaged land in good faith and for value.

(2) A person to whom this section applies -

(a) is not answerable for the loss, misapplication or non application of the purchase money paid for the mortgaged land;

(b) is not obliged to see to the application of the purchase price;

(c) is not obliged to inquire whether there has been a default by the mortgagor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

(3) A person to whom this section applies is protected even if at any time before the completion of the sale, he has actual notice that there has not been a default by the mortgagor, or that a notice has not been duly served or that the sale is in some way unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the mortgagee of which that person has actual or constructive notice.

(4) A person prejudiced by an unauthorized, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.

(5) A person referred to under subsection (1), whether acting for himself or by or through the mortgagee from whom that person obtained the mortgaged property, shall be entitled to possession of the mortgaged property immediately upon acceptance of a bid at a public auction or contract of sale of that mortgaged property.

Sale by mortgagee to himself

136.-(1) A mortgagee exercising the power of sale may sell to himself, other than in the circumstances provided for in subsection (3), only if a Court gives him leave to do so.

(2) A Court shall not grant leave unless the mortgagee satisfies such Court that a sale of the mortgaged land to himself is the most advantageous way of selling the land so as to comply with the duty imposed on the mortgagee by subsection (1) of section 133.

(3) Where the mortgaged land is to be sold by public auction, the mortgagee may bid for and purchase the mortgaged land at that public auction so long as the price bid for the mortgaged land by the mortgagee is -

- (a) the highest price bid for that land at the auction; or
- (b) equal to or higher than the reserve price, if any, put upon the land before the auction, whichever amount is the greater.

(4) Where a mortgagee who has sold mortgaged land to himself applies to the Registrar to be registered as the lawful occupier of land under a right of occupancy or lease, the Registrar may require that mortgagee to provide any evidence which the Registrar may specify that the provisions of this section have been complied with and the Registrar shall not be obliged to register any such right of occupancy or lease until the mortgagee has so satisfied the Registrar.

Application of proceeds of sale of mortgaged land

137. The purchase money received by a mortgagee who has exercised his power of sale shall be applied in the following order of priority –

- (a) first, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the mortgaged land;
- (b) second, in discharge of any prior mortgage or other encumbrance subject to which the sale was made;
- (c) third, in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale;

- (d) fourth, in discharge of the sum advanced under the mortgage or so much of it as remains outstanding, interest, costs and all other moneys due under the mortgage, including any moneys advanced to a receiver in respect of the mortgaged land under section 128;
- (e) fifth, in payment of any subsequent mortgages in order of their priority, and the residue, if any, of the money so received shall be paid to the person who, immediately before the sale, was entitled to discharge the mortgage.

Right of mortgagor to discharge mortgage on payment of sum due any time before sale

138.-(1) At any time before an agreement is reached between the mortgagee and any purchaser for the sale to that purchaser of mortgaged land (whether or not such sale has been completed), the mortgagor or any other person who is entitled to discharge the mortgage may discharge the mortgage in whole or in part by paying to the mortgagee all moneys secured by the mortgage at the time of discharge.

(2) Where payment is made under subsection (1), the mortgagee shall deliver to the mortgagor –

- (a) a discharge of the mortgage in the prescribed form over the whole or that part of the mortgaged land to which the payment relates; and
- (b) all instrument and documents of title held by the mortgagee in connection with the mortgaged land.

Action by mortgagee for possession of dwelling house or agricultural land
Act No. 17 of 2008
s.17

139.-(1) Where the mortgagee under a mortgage of land which consists of or includes a dwelling house, to which subsection (5) of section 130 applies brings an action in which he claims possession of the mortgaged land, or a mortgagor brings an action to suspend or stop a sale pursuant to section 132, the Court may exercise any of the powers conferred on it by section 140 if it appears to the Courts, with a high degree of certainty, that in the event of its exercising that power-

- (a) the mortgagor is likely to be able, within a reasonable period, to pay any sums due under the mortgage or to remedy a default consisting of a

breach of any other obligation arising under or by virtue of the mortgage; and

- (b) there is sufficient value in mortgaged property that despite the delay, in the event that the mortgagor fails to cure his default and pay the sums due, the mortgagee will be likely to recapture the amount of its entire claim from sale of the property.

(2) Where the mortgagor is a natural person (or, in the case of joint mortgagors, all are natural persons) and the mortgagee under a mortgage of land which consists of or includes agricultural or pastoral land to which subsection (5) of section 130 applies brings an action which he claims possession of the mortgaged land, the Court may exercise any of the powers conferred on it by section 140 if it appears to the Court that in the event of its exercising that power the mortgagor will by the working of the land for such period as the Court determines to be reasonable (taking account of the nature of the land and its use, crops, pasture or produce) or otherwise, be likely to pay any sums due under the mortgage or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage within a reasonable period.

(3) For the purposes of subsections (1) and (2), a Court may treat as due under the mortgage on account of the principal sum secured and of interest on it only such amounts as the mortgagor would have expected to be required to pay if there had been no such provision for earlier payment, where by the mortgage of the land or by any agreement between the mortgagee under such a mortgage and the mortgagor, the mortgagor is entitled or is to be permitted to pay the principal sum secured by instalments or otherwise to defer payment of it in whole or in part, but provision is also made for earlier payment in the event of any default by the mortgagor or of a demand by the mortgagee or otherwise.

(4) The Court's discretion under this section may be exercised on behalf of the same mortgagor with respect to the same debt for not more than once.

Power of Court
in relation to
possession of
mortgaged
land, and
application of
the Civil
Procedure
Act, Cap.33
Act No.
17 of 2008
s.18

140.-(1) All proceedings instituted in Court in relation to the exercise by the mortgagee of powers to sell or enter in possession of the mortgaged land shall be brought in accordance with the provisions of the Civil Procedure Act, and tried by way of summary proceedings.

(2) Notwithstanding any other provision of this Act an action for exercise of a power of sale or for possession of a mortgaged property may be brought in the High Court.

(3) Notwithstanding any other provision of law, and excepting any action on a customary mortgage under section 115, any action brought in a forum other than the High Court to contest, stay, suspend, terminate or seek relief from demand for payment of a debt secured by a mortgage of real property, or an action for possession of mortgaged property, or exercise of a power of sale under this Act shall be transferred to the High Court immediately upon commencement of an action in that forum on the same subject matter and consolidated with such action.

(4) Upon commencement in the High Court of an action for collection of a debt secured by a mortgage of real property, or for possession of mortgaged property or exercise of a power of sale under this Act, no action on the same subject matter shall be entertained in any other forum, but shall be referred to the High Court and consolidated with the action commenced therein.

(5) Without prejudice to subsection (1), the Court-

- (a) may adjourn the proceedings; or
- (b) on giving judgment, or making an order, for delivery of possession of the mortgaged land, or at any time before the execution of such judgment or order may -
 - (i) stay or suspend execution of the judgment; or
 - (ii) postpone the date for delivery of possession,

for such period or periods as the Court thinks reasonable for the payment of the sums due or for the remedying of the default;

Provided that, the period of suspension or postponement shall not exceed a period of six months from the date on which an order of the Courts is given:

(6) Any such adjournment, stay, suspension or postponement as is referred to in subsection (2) may be made subject to such conditions with regard to payment by the mortgagor of any sum secured by the mortgage or the remedying of any default as the Court thinks fit;

Provided that, modifications to the interest rate or the maturity of the secured debts shall not be permitted without the consent of the mortgagee.

(7) The Court may -

(a) at any time, upon motion of the mortgage, terminate any period of suspension or postponement under subsection (5) upon a showing of change of circumstances posing increased risk that the mortgage will not be repaid, including and without limitation to any failure by the mortgagor to meet the terms of the suspension or any waste or other deterioration to the value of the mortgaged property; and

(b) from time to time vary or revoke any condition imposed by virtue of subsection (6).

(8) A Court shall not exercise by virtue of subsection (3) of section 139 the powers conferred by this section unless it appears to the Court not only that the mortgagor is likely to be able within a reasonable period to pay any amount regarded, in accordance with subsection (3) of section 139 as being due on account of the principal sum secured, together with the interest on those amounts, but also that the mortgage is likely to pay-

(a) any further amounts that he would have expected to be required to pay on account of that sum and of interest on it if there had been no such provision as is referred to in subsection (3) of section 139 for earlier payment;

(b) any penalties and charges due under the mortgage agreement; and

(c) costs incurred by the mortgage on account of the

default, including Court cost and attorney’s fees.

(9) Where the mortgagee under a mortgage of land to which neither subsection (1) nor subsection (2) of section 139 applies brings an action in which he claims possession of the mortgaged land, the Court may exercise any of the powers conferred on it by subsection (7) of this section, if it appears to the Court that, in the event of its exercising the power, the mortgagor will be able within the period of the next succeeding thirty days, to pay any sums due under the mortgage or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage.

(10) The Court may on giving judgement, or making an order, for delivery of possession of the mortgaged land, or at any time before the execution of such judgement or order-

- (a) stay or suspend execution of the judgment; or
- (b) postpone the date for delivery of possession,

on condition that the mortgagor shall within the period of the next succeeding thirty days pay all sums due under the mortgage (including such as may further fall due within such period) or remedy the default on the grounds of which the mortgagee brought the action for possession of the mortgaged land.

(11) The provisions of this section shall apply to any action brought to suspend or stop sale of a mortgaged property by power of sale conferred under this Act.

Powers of Court to reopen certain mortgages and revise terms Act No. 17 of 2008 s.19

141.-(1) Where a mortgage has been obtained -

- (a) through fraud, deceit or misrepresentation by the mortgagee; or
- (b) in a manner or containing a provision which is unlawful (whether by virtue of this Act or otherwise) or;
- (c) as a result of the exercise upon the mortgagor of undue influence by a third party in circumstances where the mortgagee had notice thereof,

application may be made to the Court for the exercise of

the powers contained in section 142.

(2) Notwithstanding subsection (1), upon receipt from the mortgage applicant and any other third party having interest to the mortgage including any spouse identified by the mortgage applicant, of a signed and witnessed statement that they have understood and consented to the terms and conditions of the mortgage as their own free act and deed, a mortgagee shall have satisfied obligations under subsection (1) and no mortgagee shall be required to make further inquiry regarding such matters and no claim of undue influence shall be permitted as a defence against enforcement of a mortgage or exercise of a power of sale by or on behalf of any person signing the document.

(3) Notwithstanding subsection (1), upon compliance by the mortgagee with the requirements of subsection (1) of section 120 of this Act there shall arise a rebuttable legal presumption that the mortgagee has not engaged in fraud, deceit or misrepresentation with respect to the terms or conditions of the mortgage.

(4) An application under subsection (1) may be made -

- (a) by the mortgagor;
- (b) if two or more persons are joint mortgagors, by one or more of them on their own behalf (save that in the case of an application on the grounds set out in paragraph (c) of subsection (1), only the person alleging to have suffered from the undue influence may apply).

(5) An application under subsection (1) may be made -

- (a) at any time before the mortgagor shall have obtained a discharge of the mortgage; or
- (b) on an application by the mortgagee to the Court for an order for possession or the execution of such an order.

Exercise of powers to reopen certain mortgages

142.-(1) Upon application under section 141, the Court may -

- (a) declare the mortgage to be void;
- (b) direct that the mortgage shall take effect subject

to modifications which the Court shall order.

(2) The Court shall not declare a mortgage to be void unless it is satisfied that the circumstances justify it.

(3) Where application is made on the grounds that the mortgage contains a provision which is unlawful, the Court shall, to the greatest extent possible, uphold the mortgage with the omission of the unlawful provision.

(4) Where application is made on the grounds of the exercise of undue influence, and two or more persons are joint mortgagors, the Court shall uphold the mortgage to the extent of the interest of the joint mortgagors upon whom undue influence was not exercised.

**PART XI
EASEMENTS AND ANALOGOUS RIGHTS**

**SUBPART I
GENERAL PROVISIONS**

Application of
this Part

143.-(1) This Part shall apply to all easements made or coming into force on or after the commencement of this Act.

(2) Subsection (1) shall not, unless stated specifically otherwise, apply to easements, profits, restrictive agreements and all other like restrictions on the use of land having effect in customary law only.

(3) In this Part, reference to “analogous rights” means an entry order made under section 170 and an access order made under section 148.

Nature of
easement

144.-(1) Subject to the provisions of this Act or any other written law applicable to the use of land, the rights capable of being created by an easement are-

- (a) any right to do something, over, under or upon the servient land;
- (b) any right that something should not be so done;
- (c) any right to require the occupier of servient land to do something over under or upon that land; or
- (d) any right to graze stock on the servient land.

(2) The rights capable of being created by an easement do not include-

- (a) any right to take and carry away anything from the servient land;
- (b) any right to the exclusive possession of any land or any part of it.

(3) Except where an easement has been created for specific period of time which will terminate at a fixed date in the future or on the happening of a specific event in the future or on the death of the grantor, the grantee or some other person named in the grant, an easement burdens the servient land and runs with the land for the same period of time as the right of occupancy or lease held by the grantor who created that easement.

(4) Subject to the provisions of this Part an easement shall be capable of existing only during the subsistence of the right of occupancy or lease out of which it was created.

Terminology

145.-(1) The land for the benefit of which any easement is created is in this Act referred to as the “dominant land” and the land of the person by whom an easement is created referred to as “the servient land”.

(2) An easement is, in this Act, in relation to the dominant land referred to as “benefiting” that land and is, in relation to the servient land, referred to as “burdening that land”.

(3) Subject to the provisions of this Part, an easement shall be capable of existing only during the subsistence of the right of occupancy or lease out of which they were created.

SUB-PART 2
CREATION ETC., OF EASEMENTS AND ANALOGOUS RIGHTS

Creation of easement

146.-(1) An occupier of land easement under a right of occupancy or a lessor may, by an instrument in the prescribed form, grant an easement over the land comprised in the right of occupancy or lease or a part of any

that land to the occupier under a right of occupancy or a lessee of other land for the benefit of that other land.

(2) Any occupier referred to in subsection (1) or any lessor transferring assigning or leasing land or lease may in the transfer assignment or lease grant, an easement for the benefit of the land transferred, assigned or leased over land retained by him or reserve an easement for the benefit of land retained by him.

(3) An instrument creating an easement shall specify clearly-

- (a) the nature of the easement and any conditions limitations, and restrictions subject to which it is granted;
- (b) the period of time for which it is granted;
- (c) the land, or the particular part of it benefited by the easement;
- (d) the land benefited by the easement,

and shall, if so required by the Registrar, include a plan sufficient to define the easement.

(4) Where a co-occupier, by any disposition, severs any building or part of it or any land separated by a common dividing wall or other structure, then, whether that wall or other structure is a party wall or other structure, there shall be implied in the disposition cross-easements of support of the dividing wall or other structure in respect of the severed buildings or land and the occupiers of the severed buildings or land and their successors in title shall be entitled to the benefit and subject to the burdens of the cross-easements.

(5) There shall be implied in every grant of an easement the grant of all ancillary rights which may be reasonably necessary for the full and effective enjoyment of it.

(6) Any grant of an easement may contain an agreement between the occupiers of the dominant and servient lands binding either or both of them to pay for or contribute towards the cost of constructing, maintaining or repairing any way, wall, drain, or other installation or work forming the subject matter of the easement.

(7) No easement and no right in the nature of an

easement shall be capable of being acquired by any presumption of a grant from long and uninterrupted user.

(8) Nothing in this section shall be taken to prevent the lawful use of a right of way for persons and for stock acquired and that right of way shall be deemed to be property.

Entry on neighbouring land where easement refused

147.-(1) An occupier of any land (the dominant land) may apply to a Court of the prescribed form for an order, referred to as an “entry order” authorising entry on or over any neighbouring land (the servient land) for the purpose of erecting repairing, adding to, painting or demolishing the whole or any part of my structure on the dominant land or doing any other necessary or desirable thing on that land.

(2) The applicant shall give not less than fourteen days' notice in writing to-

- (a) the occupier of the servient land; and
- (b) the local authority having jurisdiction in the area where the dominant and servient land are located, of the intention to apply for an entry order under this section.

(3) On an application under subsection (1), the Court may, after hearing the applicant and the persons to whom notice was given under subsection (2), make an entry order authorising the applicant to do all or any of the following:

- (a) to enter on or over the servient land, either personally or through the applicant's employees, agents or contractors, for any purpose specified in the entry order;
- (b) to use for that purpose on or over the servient land, any vehicles and other means of transport and any plant, machinery, cranes or other equipment as are specified in the entry order;
- (c) to store on the servient land materials such required for the purposes of the work and in any quantities which are specified in the entry order.

(4) In determining whether to make an entry order under subsection (3), the Court shall have regard to-

- (a) the nature and conduct of the negotiations, if any, between the occupiers of the dominant and servient land with respect to any attempt by the occupier of the dominant land to obtain an easement for the which the entry order is applied for from the occupier of the servient land;
- (b) the urgency, importance and desirability of the work for which the entry order is being applied;
- (c) the scope of the work and the length of the time for which the entry order is being applied;
- (d) whether the applicant has applied for or obtained all permissions, licences and consents required from all relevant public authorities to execute the works;
- (e) any other matters which shall appear to the Court to be relevant.

(5) An order made under subsection (3) may be made on any conditions which the Court shall think fit and without prejudice to the generality of this provision, these conditions may include-

- (a) the period of time during which the entry on or over the servient land is authorised;
- (b) the hours of the day or night during which the work may be done;
- (c) the preservation of the safety of persons or property on the servient land;
- (d) the preservation, so far as is consistent with the work to be executed, of the natural features and condition of the servient land;
- (e) the restoration of the servient land to its former state at the conclusion of the work;
- (f) the maintenance of adequate access to the servient land;
- (g) the provision of security or indemnity to secure-
 - (i) the performance of any conditions of the

- entry order;
- (ii) the making good of any damage caused by entry on or over the servient land, or work on or over the land; or
- (iii) the reimbursement of the occupier of the servient land for any costs, expenses or loss arising from the entry;
- (h) any other relevant matter.

(6) Where, as a result of fire, civil commotion or natural disaster, a structure on the dominant land has become a threat to public safety or public health, so that there is an urgent need to effect repairs to or demolish that structure and such action may only be executed by entry on or over the servient land, the occupier of the dominant land may, on giving not less than twenty four hours' notice in writing to the occupier of the servient land, enter the servient land and effect the repairs or demolition but the entry and execution of works shall not prevent the occupier of the servient land from applying to Court for an order requiring the occupier of the dominant land to make good any damage caused by the entry and works and to reimburse the occupier of the servient land for any costs, expenses or less arising from the entry and works.

- (7) In this section-
- (a) an occupier of land shall be taken to include an occupier under a right of occupancy, a lessor and lessee; and
- (b) neighboring, land means any land in respect of which an order is sought under this section, whether or not it adjoins the land occupied by the applicant for an entry order.

Access to
landlocked
land

148.-(1) An occupier of landlocked land may apply in the prescribed form to a Court for an order, referred to as an "access order", granting reasonable access to that land.

- (2) A copy of the, application shall be served on:-
- (a) the occupiers of each piece of land adjoining the landlocked land;

- (b) any person claiming an interest in any such piece of land of whom the applicant has actual notice;
- (c) the local authority having jurisdiction in the area where the landlocked land is located;
- (d) such other persons occupying or having an interest in land which in the opinion of the Court may be affected by the granting of the application.

(3) The Court may, after hearing the applicant and any person served with an application under subsection (2), make an access order in respect of any other piece of land, the occupier of which was served with a copy of the application under subsection (2), for the benefit of the landlocked land.

(4) In considering whether to grant an access order, the Court shall have regard to-

- (a) the nature and quality of the access, if any, to the landlocked land when the applicant first occupied the land;
- (b) the circumstances in which the land became landlocked;
- (c) the nature and conduct of the negotiations, if any, between the occupiers of the landlocked land and any adjoining or other land with respect to any attempt by the occupier of the landlocked land to obtain an easement from one or more occupiers of the adjoining or other land;
- (d) the hardship that may be caused to the applicant by the refusal of the access order, in comparison to the hardship that may be caused to any other person by the making of the order,
- (e) the purposes for which access is or may be required;
- (f) any other matters which appear to the Court to be relevant.

(5) An access order may be made subject to any conditions which the Court may think fit and without prejudice to the generality of this provision, such conditions may include-

- (a) the period for which the access order is to be made;
- (b) the payment of reasonable compensation by the applicant to any other person;
- (c) the allocation of the costs of any work necessary to give effect to the order between the applicant and any other person;
- (d) the fencing of any land and upkeep and maintenance of any such fence;
- (e) the upkeep and maintenance of any land over which the access order has been granted;
- (f) the execution of any instrument or the completion of any prescribed form or the doing of any other thing necessary to give effect to the order;
- (g) any conditions set out in subsection (5) of section 147 which in the opinion of the Court are applicable to an access order-
- (h) any other relevant matter.

(6) An access order made under this section shall be deemed to have all the characteristics and incidents of an easement and the land over which it has been granted shall be deemed to be the servient land and landlocked land shall be deemed to be the dominant land in respect of that easement.

Enjoyment of easement and analogous rights

149.-(1) The benefit of an easement, and an analogous right granted under this Part shall, during the term of its existence, be enjoyed by the occupier of the dominant land and his successors in title and by-

- (a) any lessee of the dominant land, or so far as the nature of the easement or analogous right, permit any part of it; and
- (b) any lender on the security of a mortgage for the time being in possession of the dominant land, or so far as the nature of the easement or analogous right permit, any part of it.

(2) Any person referred to paragraphs (a) and (b) of subsection (1) who is by this section entitled to the benefit

of an easement or analogous right may take in his own name any proceedings necessary to enforce that easement or those analogous rights.

Cancellation and extinguishment of easements and analogous rights

150.-(1) Subject to subsection (3), any easement granted under this Part or any analogous right created under this Part may be cancelled by the person occupying the dominant land under a right of occupancy.

(2) Any cancellation referred to in subsection (1) shall be effected by the prescribed form and the easement or analogous right shall be extinguished on the date that form is recorded in the register.

(3) On the application of any person occupying servient land under a right of occupancy, the Registrar may cancel an easement or an analogous right where he is satisfied that-

- (a) the period of time for which the easement or analogous right was intended to subsist has expired; or
- (b) the event upon which the easement or analogous intended to terminate has occurred.

(4) The consent of any lessee or lender for the time being entitled to the benefit of any easement or analogous right shall be necessary for any cancellation of any such easements or rights and such consent shall be signified in the prescribed form.

**SUB-PART-3
PUBLIC RIGHTS OF WAY**

Power of Minister to create public rights of way

151.-(1) The Minister may, subject to and in accordance with sections 152 and 153 create rights of way which shall be known as public rights of way.

- (2) A public right of way may be-
 - (a) a right of way created for the benefit of the Government, a local authority, a public authority or any corporate body to enable all such organizations, authorities and bodies to carry out its functions, referred to in this Act as a way leave; or

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s.8

(b) a right of way created for the benefit of the public, referred to in this Act as a communal right of way.

(3) A public right of way shall attach to and run with the servient land in respect of which it has been created and shall be binding on all occupiers from time to time of the servient land, any manner they are occupying the land, whether under a right of occupancy or a derivative right thereof, or under customary law or as a successor in title to any such occupier or as a trespasser.

(4) A wayleave shall authorities persons in the employment of or who are acting as agents of or contractors for any of the organisations, authorities and bodies to enter on the servient land for the purpose of executing works, building and maintaining installations and structures and insetting all such works, installations and structures on the servient land and to pass and repass along that way leave in connection with purposes of those organisations, authorities or bodies.

(5) A communal right of way created for the benefit of the public shall entitle the public to pass and repass along that right of way and in areas designated for that purpose, to undertake recreational activities of the kind permitted in that designated area.

Application for wayleave

152.-(1) Except where the Commissioner is proposing of his own motion to create a wayleave, an application from any ministry or department of Government, or local authority or public authority or corporate body shall be made to the Commissioner.

(2) An application shall be made on the prescribed form and shall be accompanied by any information which may be prescribed or which the Commissioner may, in writing, require the applicant to supply and the Commissioner shall not begin the process of creating a wayleave until all information which is prescribed or required is submitted to him.

(3) In order to enable a proposed wayleave to be created by the Commissioner of his own motion to comply

with the provisions of this section, the Commissioner shall complete an application form as if he were applying to create a wayleave and reference to “the applicant” in this SubPart in relation to an application to create a wayleave shall be taken to apply to the Commissioner as well.

- (4) The applicant shall serve a notice on-
 - (a) all persons occupying land under a right of occupancy over which the proposed way leave is to be created including persons occupying land in accordance with customary pastoral rights;
 - (b) all local government authorities in whose area of jurisdiction land over which the proposed wayleave is to be created is located;
 - (c) all persons in actual occupation of land in an urban and peri- urban area over which the proposed wayleave is to be created;
 - (d) any other interested person.

(5) The Commissioner shall give publicity to the application along the route of the proposed wayleave calculated to bring the application clearly and in a comprehensible manner to the notice of all persons using land over which the proposed wayleave is likely to be created.

Application for communal right of way

153.-(1) A local government authority, an association, or any group of persons with an interest in the environment or land may apply to the Commissioner for the creation of a communal right of way.

(2) An application made under subsection (1) may include an application to recognize and convert a right of way under customary law to which subsection (7) of section 146 applies to a communal right of way created under this section.

(3)The provisions of subsections (2), (4) and (5) of section 152 shall apply to an application by a local government authority for the creation of a communal right of way as they apply to an application to create a wayleave under that section.

(4) The Commissioner may, of his own motion where he is of the opinion that it is expedient or desirable that a communal right of way be created, initiate the procedures referred to in subsection (2).

Determination on creation of public right of way

154.-(1) The Commissioner shall-

- (a) on receipt of all information prescribed or required under sections 152 and 153; and
- (b) after not less than six days from the date of the serving of notices under subsection (3) of section 152 or subsection (2) of section 153,

consider all the information so received and all representations and objections made by any person served with a notice under the aforesaid subsections and recommend to the Minister whether to-

- (i) appoint an inquiry under section 18 to give further consideration to the representations and objections;
- (ii) refer the application to the local authority for its opinion on whether to approve the application; or
- (iii) initiate and facilitate negotiations between those persons who have made representations on the application and the applicant with a view to reaching a consensus on the application.

(2) Where the Commissioner has of his own motion proposed the creation of a public right of way and representations have been made on that proposal which are concerned with the matters other than the compensation payable for the use of the land for that public right of way, the Commissioner shall recommend to the Minister only that the Minister exercise powers under subparagraphs (i) or (ii) of subsection (1).

(3) The Minister shall, after taking account, as the case may be, of-

- (a) the recommendations of the Commissioner;
- (b) the report of an inquiry appointed under section 18;

- (c) the advice of the local authority; or
- (d) the outcome of any negotiations initiated under subparagraph (iii) of subsection (1),

determine whether to create or refuse to create a public right of way.

(4) The Minister may, by order, create a public right of way under this section subject to any amendments, limitations and conditions, including conditions of costs of constructing and maintaining a public right of way of he shall think fit.

(5) Where an agreement has been reached between the parties to any negotiations initiated under subparagraph (iii) of subsection (1) the Minister shall, if he is minded to create a public right of way but not to accept any amendment limitation or condition of that agreement, refer the matter back to the parties for their reconsideration and take no decision on the creation of that right of way until not less than thirty days have elapsed from the date of the referral of the matter back to the parties or the parties have resubmitted their agreement, with or without amendments, to the Minister whichever is the shorter period.

(6) The order of the Minister to create a public right of way shall-

- (a) delineate the route of that public right of way;
- (b) be published in the *Gazette*;
- (c) be notified to all local government authorities having jurisdiction along the route of the public right of way;
- (d) be publicized in any manner which is calculated to bring it to the attention of people occupying and using land along the route of the public right of way;
- (e) come into force thirty days after it has been published in the *Gazette*.

(7) Any person who made any representations or objections to an application to create a public right of way, may, within six weeks of the order being made, appeal to the High Court on a point of law against an order made by the Minister under this section, but apart from such an

appeal, an order of the Minister shall not be questioned by way of judicial review or otherwise in any Court.

Powers of registrar with respect to public right of way

155.-(1) Where the Minister has made an order to create a public right of way, the Commissioner shall cause to be delivered to the Registrar all the necessary documents, plans, demarcations and surveys of the route of that public right of way to enable the registrar to exercise his powers under this section.

(2) On receipt of the information referred to in subsection (1), the Registrar shall, after the expiry of the time allowed in subsection (6) of section 144 to appeal against the order of the Minister, take any action which he may consider necessary and desirable or which may be prescribed-

- (a) to cause to be recorded, using such forms as may be prescribed, the route of the public right of way on any certificate of occupancy or other document of title held in any office of the land registry having reference to land over which the public right of way has been created; and
- (b) to cause to be delivered to him all certificates of occupancy having reference to land over which the public right of way has been created held by-
 - (i) persons occupying such land under such right of occupancy; or
 - (ii) any lender of money secured by a mortgage or lien who is holding that certificate of occupancy as part of the security for that loan,

so as to amend that certificate of occupancy by recording the route of the public right of way on that certificate of occupancy.

Compensation in respect of public right of way

156.-(1) Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which he is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the use of land for any

damage suffered in respect of trees, crops and buildings as a result of the creation of such wayleave.

(2) Reference to damage caused as a result of the creation of a wayleave shall include any damage caused as a result of any preliminary work undertaken in connection with surveying or determining the route of that wayleave, whether the trees, crops or buildings so damaged were included in the route of the wayleave as delineated in the order of the Minister.

(3) The duty to pay compensation payable under this section shall lie with the Government department or the Ministry, local or public authority or corporate body which applied for the public right of way and that duty shall be complied with promptly.

(4) Where the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or where the person entitled to compensation is dissatisfied with the time taken by the body under a duty to pay that compensation to make, negotiate or process an offer of compensation, that person may apply to the High Court to determine the amount and method of payment of compensation and the High Court may in making any award, make an award for any additional costs and inconvenience incurred by the person entitled to compensation through the dilatory or other unsatisfactory procedures of that public authority.

**SUBPART 4
POWERS OF COURT**

Power of Court
to enforce
easements and
analogous
rights

157. A Court may, in determining any question or dispute concerning the existence or effect of an easement or an analogous right or a public right of way, make an order on any conditions which it thinks fit on all or any of the following matters:

- (a) the existence of an easement or an analogous right or a public right of way;
- (b) the enforceability of an easement, whether the existence of easement is created under this Act or otherwise, or an analogous right or a public right of way by or against any person;
- (c) the extent of the use of the easement, analogous right or public right of way and whether that use exceeds what is reasonable or is permitted under the terms of the grant of the easement or the terms of the order creating, the analogous right or public right of way;
- (d) the question whether any work is required to be done under the terms of an easement, analogous right or public right of way; and, if so, the nature and extent of the work required to be undertaken;
- (e) the reasonable and proper cost of any such work as is required to be undertaken;
- (f) the person or persons by whom the costs of any such work is to be borne and if the cost is to be shared between two or more persons, the shares to be borne by each such person;
- (g) the date by which and the manner in which any such work is to be undertaken;
- (h) the entry on to any land, whether or not it is land over which an easement, analogous right or public right of way has been created, for the purpose of doing the work and the use over or on that land of any vehicles, plant, machinery and

installations for the purpose of carrying out that work;

- (i) any other matter arising in relation to question or dispute about an easement, analogous right or public right of way.

Power of Court to modify or extinguish easements and analogous rights

158.-(1) This section applies to every easement, analogous right, restrictive covenant or agreement whensoever and in any manner created including easements, profits, restrictive agreements and other similar rights created under customary law.

(2) The Court may, by order, on the application of-

- (a) the Commissioner; or
- (b) any person having an interest in land benefited or burdened by one or more of the rights or restrictions referred to in subsection (1),

make modifying or extinguishing in whole or in part the an order right or restriction in respect of which the application has been made on any of the grounds set out in subsection (3).

(3) The grounds on which the Court may make any order referred to in subsection (2) are that-

- (a) by reason of any change since the creation of the right or restriction referred to in subsection (1) in-
 - (i) the nature or the extent of the use being made of the benefited burdened land;
 - (ii) the character of the neighbourhood or of the benefited or burdened land; or
 - (iii) any other circumstance that the Court relevant,

the aforesaid right or restriction ought to be modified or wholly or partly extinguished;

- (b) the continuation of the right or restriction in its existing form impedes or would impede the reasonable user of the land for public or private purposes and does not secure to those persons entitled to the benefit of that right or restriction

and practical benefits of substantial value or advantage to them;

(c) the development and use of land in accordance with-

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(i) any development conditions contained in the certificate of occupancy;

(ii) any proposals for or restrictions development contained in general planning scheme, detailed scheme or general development order made or approved under and in accordance with the provisions of the Urban Planning Act or any development plan made and approved under any law replacing that written law; or

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(iii) any land use plan made by a village under section 8 of the Village Land Act;

(iv) the general pattern of the development and use of land in the area of the benefited and burdened land,

makes it necessary and desirable that the aforesaid right or modified restriction be or wholly or partly extinguished; or

(d) every person entitled to the benefit of the right or restriction-

(i) has agreed that the right or restriction should be modified or wholly or partly extinguished; or

(ii) may reasonably be considered by his acts or omissions to have abandoned or waived the right to the aforesaid right or restriction;

(e) the proposed modification or extinguishment in whole or in part will not substantially disadvantage any person entitled to the benefit of the right or restriction;

(f) insofar as any person is disadvantaged by a proposed modification or extinguishment in whole or in part, the payment of compensation

will be an adequate substitute for the modification or loss in whole or, in part of that right or restriction.

(4) An application under this section, shall be served on-

(a) the local authority government having jurisdiction in the area where the land the subject of the application is situate; and

(b) any other persons whom the Court may direct.

(5) The Court may award any compensation to any persons referred to in paragraph (f) of subsection (3) as it considers just and reasonable and that compensation shall be payable by the person applying to the Court for the modification or extinguishment in whole or in part of that right or restriction.

(6) The Court may exercise any of the powers conferred upon a Court by section 157 in order to arrive at a decision under and in accordance with this section.

(7) Where any proceedings are commenced in any Court under section 157 to enforce an easement or analogous right or public right of way, the party against whom the proceedings have been taken may in those proceedings apply to the Court for an order giving leave to apply to the Court under this section and staying those proceeding in the meantime, and the Court may grant that application.

(8) An order made under this section shall be binding on all persons entitled or thereafter becoming entitled to benefit from the right or restriction thereby modified or extinguished, in whole or in part, whether those persons were parties to the proceedings or not or were served with a notice of the proceedings or not.

(9) The Court shall cause to be delivered to the Registrar a copy of the order made under this section and the Registrar shall have in relation to that order all the powers that are conferred on him by subsection (2) of section 155 in relation to an order creating a public right of way, modified in any way which the Registrar shall consider necessary to enable him to record the modification or as the case may be

the extinguishment in whole or in part of any right or restriction recorded on the certificate of occupancy or other document of title held by the land registry or by any person holding the land the subject of the application under a right of occupancy.

PART XII CO-OCCUPANCY AND PARTITION

Meaning and incidents of co-occupancy

159.-(1) In this Act, co-occupancy means the occupation of land held for a occupancy right of occupancy or a lease by two or more undivided shares and may be either joint occupancy or occupancy in common.

(2) Where, subject to the provisions of this Act, two or more persons not forming an association of persons under this Act or any other law which specifies the nature and content of the rights of the persons forming that association occupy land together under a right specified by this section, they may be either joint occupiers or occupiers in common.

(3) An instrument made in favour of two or more persons and the registration giving effect to it shall show-

- (a) whether those persons are joint occupiers or occupiers in common; and
- (b) where they occupiers in common, the share of each occupier.

(4) Where the land is occupied jointly under a right of occupancy or lease, no occupier is entitled to any separate share in the land and, consequently-

- (a) dispositions may be made only by all the joint occupiers;
- (b) on the death of a joint occupier, his interest shall vest in the surviving occupier or occupiers jointly;
- (c) a joint occupier may transfer his interest *inter vivos* to all the other occupiers but to no other person, and any attempt to so transfer his interest to any other person shall be void.

(5) Where any land, lease or mortgage is occupied in common, each occupier shall be entitled to an undivided

share in the whole; and on the death of an occupier, his share shall be treated as part of his estate.

(6) No occupier in common shall deal with his undivided share in favour of any person other than another occupier in common, except with the consent in writing or in any other manner which signifies clearly that the consent is given freely and without undue pressure, of the remaining occupiers, but such consent shall not be unreasonably withheld.

(7) Joint occupiers, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joining occupancy and the severance shall be complete by registration in the prescribed register of the joint occupiers and occupiers common.

(8) On and after the commencement of this Act, and except with leave of a Court, the only joint occupancy that shall be capable of being created shall be between spouses, and any joint occupancy other than that between spouses which is purported to be created without the leave of a Court shall take effect as an occupancy in common.

Certificate of
occupancy of
co-occupiers

160.-(1) Each co-occupier of a right of occupancy shall be entitled to receive a copy of the certificate of title of that right of occupancy.

(2) The Registrar shall, on application by a co-occupier in the prescribed form, issue a copy of the certificate of occupancy to that co-occupier, with an endorsement signed by the Registrar that the copy has been issued to the co-occupier in the endorsement.

(3) The Registrar shall make a note in the register of the issue of the copy of the certificate of occupancy, showing the date of the issue of the copy and the co-occupier in whose name the copy has been issued.

(4) An occupier in common who has obtained a copy of the certificate of occupancy may, subject to the provisions of subsection (5) of section 159, use that copy only for the executing a transfer or creating a mortgage or a lien in respect of the undivided share of that occupier in common and that copy shall, for such purposes, be deemed to be a

certificate that of occupancy in respect of that undivided share.

(5) Where a copy of a certificate of occupancy is submitted to the Registrar in connection with any transfer of the undivided share in respect of which it has been issued, the Registrar shall retain that copy and after completion of the transfer of the undivided share, shall destroy that copy and not the fact of that destruction in the register.

Co-occupancy
and other
relationships
between

161.-(I) Where a spouse obtains land under a right of occupancy for the co-occupation and use of both spouses, or where there is more than one wife, all spouses, there shall be a presumption that, unless a provision in the certificate of occupancy or certificate of customary occupancy clearly states that one spouse is taking the right of occupancy in his or her name only or that the spouses are taking the land as occupiers in common, the spouses will hold the land as occupiers in common and, unless the presumption is rebutted in the manner stated in this subsection, the Registrar shall register the spouses as occupiers in common.

(2) Where land held for a right of occupancy is held in the name of one spouse only but the other spouse or spouses contribute by their labour to the productivity, upkeep and improvement of the land, that spouse or those spouses shall be deemed by virtue of that labour to have acquired an interest in that land in the nature of an occupancy in common of that land with the spouse in whose name the certificate of occupancy or customary certificate of occupancy has been registered.

(3) Where a spouse who holds land or a dwelling house for a right of occupancy in his or her name alone undertakes a disposition of that land or dwelling house, then-

(a) where that disposition is a mortgage, the lender shall be under a duty to make inquiries if the borrower has or, as the case may be, have consented to that mortgage accordance with the provisions of section 59 of the Law of Marriage Act;

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(b) where that disposition assignment or a transfer of land, the assignee or transferee shall be under a duty to make inquiries of the assignor or transferor as to whether the spouse or spouses have consented to that assignment or transfer in accordance with section 59 of the Law of Marriage Act,

and where the aforesaid spouse undertaking the disposition deliberately misleads the lender or, as the case may be, the assignee or transferee as to the answers to the inquiries made in accordance with paragraphs (a) and (b), the disposition shall be voidable at the option of the spouse or spouses who have not consented to the disposition.

Partition

162.-(1) An application in the prescribed form to the Registrar for the partition of land occupied in common may be made by any one or more of the occupiers in common with the consent of all the occupiers in common and subject to the provisions of this Act and of any other written law applying to or requiring consent to a subdivision of land and of any covenants or conditions in a certificate of a right of occupancy, the Registrar shall effect the partition of the land in accordance with the agreement of the occupiers in common.

(2) An application in the prescribed form to the Registrar for an order for a partition of land occupied in common may be made by-

- (a) any one or more of the occupiers in common without the consent of all the occupiers in common; or
- (b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree.

(3) The Registrar may, after hearing the applicant and any of the other occupiers in common who wish to appear and be heard, make an order for a partition of land having regard to-

- (a) whether the provisions of this Act, any other written law regulating the subdivision of land and any covenants and conditions in a right of occupancy have been or will be complied with if the partition is effected;
- (b)) the nature and location of the land;
- (c) the number of occupiers in common and the extent of their shares in particular, the extent of the share of any occupier in common by whom or on whose behalf the application has been made;
- (d) the value of any contribution made by any occupier in common to the cost of improvements to or the maintenance of the land or buildings occupied in common;
- (e) where the occupiers in common are spouses or those occupiers in common who do not agree to the partition are dependants of or related to those occupiers in common whether the interests of those occupiers in common who have not agreed to the partition will be or have been adequately provided for as a consequence of or after the partition is effected, and in particular, a spouse or dependents of the occupier in common applying for partition not be rendered homeless by such partition;
- (f) in respect of an application made by a person referred to in paragraph (b) of subsection (2), whether the interests of the spouse or any dependants of the occupier in common whose share is to be sold in execution of a judgement decree, will be adequately catered for and in particular, any spouse or dependants will not be rendered homeless by the sale;
- (g) where the occupiers in common are pastoralists, whether those occupiers in common who have not agreed to the partition will, after the partition, still retain grazing rights, including grazing rights created by an easement in the partitioned land, to

sufficient land of the quality and nature and in the location customarily used by those pastoralists;

- (h) the proper development and use of the land and whether it may be adversely affected by the partition applied for;
- (i) the hardship that would be caused to the applicant or applicants by a refusal of an order in comparison with hardship that would be caused to any other person by the making of the order;
- (j) any other matters that the Registrar considers relevant,

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and may make that order subject to such limitations and conditions, including conditions as to the payment of compensation to those occupiers in common who have not agreed to the partition by those occupiers in common who have applied for the partition and how the expenses and costs of the partition are to be borne, as the Registrar considers just and reasonable.

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(4) The provisions of section 102 of the Land Registration Act, shall apply to any decision given by the Registrar under this section.

Ancillary power of Registrar in connection with partition

163. -(1) Where the land sought to be partitioned is capable of partition generally, and the occupiers in common have reached an agreement on the partition, but the resultant share of any particular occupier would be less in area than the minimum prescribed by any law either generally or for the development or use of the land which particular proprietor intends to undertake on that land the occupiers in common shall endeavour to reach a compromise on the matter, with or without the aid of mediation, and any party dissatisfied with that compromise or otherwise may refer that partition to the Registrar who shall-

- (a) add that share to the share of any other occupier in common; or
- (b) distribute that share amongst two or more other occupiers in common in any proportion which, in default of agreement, he shall think just and reasonable,

and cause the value of the share added or distributed to be assessed and order that there be paid to the occupier in common of that share by each occupier in common who has received an addition to his share, the value of that addition.

(2) Where any sum is payable under the provisions of paragraph (c) of subsection (1), the Registrar may order that sum be secured by way of a mortgage on the share of the occupier or occupiers in common liable to pay that sum.

(3) For the avoidance of doubt, it is hereby provided that the provisions of sections 34 to 38 of this Act apply to any partition agreed to by all the occupiers in common.

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(4) The provisions of section 102 of the Land Registration Act apply to any decision given by the Registrar under this section.

Sale of co-occupied land

164.-(1) Where for any reason the land sought to be partitioned is incapable of partition, or the partition would adversely affect the proper use of the land, and the applicant for partition or one or more of the other occupiers in common require that the land be sold, then if the occupiers in common cannot agree on the terms and conditions of the sale or the application of the proceeds of the sale, an application may be made to the Court for an order for sale and the Court may-

- (a) cause a valuation of the land and of the shares of the occupiers in common to be made; and
- (b) order the sale of the land or the separation and sale of the shares of the occupiers in common by public auction or any other means which appears to the Court to be suitable; or
- (c) make any other order to dispose of the application which the Court considers fair and reasonable,

and in exercising its powers under paragraphs (b) and (c), the Court shall have regard to any of the matters set out in paragraphs (a) to (f) of subsection (3) of section 158 which seems to it to be relevant in the circumstances.

(2) An occupier in common shall be entitled to purchase the land or any share in it so offered for sale, either at an auction or at any time by private sale.

Partition
subject to
mortgage

165.-(1) Where any undivided share in land held for a right of occupancy or for a lease by occupiers in common is subject to a mortgage, no partition of that right of occupancy or lease shall be entertained by or accepted for registration by the Registrar unless the consent in writing of the lender is produced to the Registrar.

(2) Where a partition referred to in this section takes place with the consent of the lender, the land appropriated to the borrower shall be deemed to be subject to the mortgage for all purposes as if it had originally been comprised in it and the land appropriated to the other occupiers in common shall be released from the mortgage.

Reorganisation
or winding up
of land sharing
arrangement
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166.-(1) A group of persons occupying land under a scheme of co-occupancy under section 58 of the Village Land Act, may apply to the Court for that scheme to be reorganised or wound up.

- (2) An application for reorganization may include-
- (a) a partition of the shares of land occupied under scheme by groups of persons;
 - (b) a re-division of the areas of land occupied by each group of persons occupying land under a scheme;
 - (c) a modification or extension of any easement created as a part of a scheme;
 - (d) an alternation of the periods of time when any land to which the scheme applies may be occupied or used by any group of persons occupying land under a scheme, either exclusively or in common with any other group of persons so occupying that land;
 - (e) an alteration of the purposes for which any part of the land to which the scheme applies may be used either generally or at any particular period of time;
 - (f) a reconsideration of any agreement reached by the joint panel established by the scheme to resolve disputes over the operation of the

- scheme;
- (g) any other matter relating to the occupation and use of the land to which a scheme applies which in the opinion of the Court is relevant to the effective continuation of the scheme.
- (3) An application to wind up a scheme shall -
- (a) state the reasons for that application and why winding up that scheme is preferable to a reorganisation of that scheme ; and
 - (b) be deemed to include an application to reorganise that scheme.
- (4) An application under this section shall -
- (a) be made on the prescribed form;
 - (b) be served on or otherwise made known to the members of all other groups of persons with whom the application group is occupying land under a Land Sharing Arrangement or where those groups have formed into an association, to the trustees of that association;
 - (c) be served on-
 - (i) the village council or councils having jurisdiction over the land which is occupied under that Land Sharing Arrangement of co-occupancy;
 - (ii) the Commissioner;
 - (iii) any other person whom the Court may direct;
 - (d) specify the nature of the reorganisation that is being applied for.
- (5) A Court shall, in considering whether to make an order authorising a reorganisation or the winding up of a scheme-
- (a) have regard to all those matters and exercise all those powers contained in subsections (3) to (5) of section 158 as if for the expression “occupiers in common” in those sections there were substituted the expression "occupiers under a Land Sharing Arrangement” with any modifications and adjustments which the Court

- shall consider necessary to reach a just and reasonable decision;
- (b) in respect of an application which consists of or includes a matter referred to in paragraph (c) of subsection (2) of this section a Court may exercise the power conferred on the Court by section 158; and
 - (c) use its best endeavours to ensure that any determination under this section is understood and accepted by all the groups of persons occupying under a Land Sharing Arrangement the land the subject of the application.

**PART XIII
DISPUTE SETTLEMENT**

Courts
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167-(1) The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of this Part, to hear and determine all manner of disputes, actions and proceedings concerning land, that is to say-

- (a) the Court of Appeal;
- (b) the High Court;
- (c) The District Land and Housing Tribunal;
- (d) Ward Tribunals;
- (e) Village Land Council.

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(2) Notwithstanding subsection (1), Ward Tribunals established under the Ward Tribunal Act shall have jurisdiction in relation to the area of a district Council for the purposes of this Act and shall be competent courts as are or may be established by a written law for the time being relating to the establishment and powers of magistrates and other courts of mainland Tanzania.

(3) A person aggrieved by a decision of a Ward Tribunal may appeal to the court of law having jurisdiction in the area of the relevant district council.

**PART XIV
MISCELLANEOUS PROVISIONS**

Substituted
service

168.-(1) Where the Commissioner is satisfied that a notice to be effected cannot be served personally or by post, either because the person to be served is evading service or for some other reason, he may order service to be effected by-

- (a) affixing a copy of the notice in a conspicuous place-
 - (i) on or as near as may be to the land where possible; and
 - (ii) where the land is village land, at the offices of the village council or other public place within the village; or
 - (iii) where the land is general land, at the offices of the local authority having jurisdiction in the area where the land is located or other public place in the area where the land is located; and
- (b) publishing a copy in the *Gazette* and if he thinks fit, one or more newspapers circulating in Tanzania.

(2) A notice displayed or published under this section may be in English or Kiswahili or both.

Publication of
notices and
other
information

169.-(1) Where, by any provision of this Act, a notice or other information is to be published or given any publicity which will bring it to the attention of all persons likely to be affected by it, that duty shall be construed as requiring-

- (a) where the land is village land, a copy of the notice or other information to be-
 - (i) affixed in a conspicuous position on or as near as may be to the land to which it relates; and
 - (ii) affixed in a conspicuous position at

the offices of the village council and in any other public places in the village which village council shall direct; and

- (iii) summarised and communicated orally to the residents of the village at a meeting of the village assembly and at any other meetings which may be convened by the village council for that purpose;
- (b) where the land is general land, a copy of the notice or other information to be—
- (i) affixed in a conspicuous place on or as near as may be to the land to which it relates; and
 - (ii) affixed in a conspicuous place at the offices of the local authority having jurisdiction in the area where the land is located and at any other public places, including offices of the Government and offices of the local government authority situated within the area where the land is located;
- (c) where the land consists of or includes land or a dwelling house and the notice or other information affects or may affect the continued occupation of that land or dwelling house by any person, then, in addition to the actions which must be taken under paragraphs (a) and (b), the notice or other information shall be summarised and communicated—
- (i) to that person orally at a meeting called for that purpose in the area where the land or dwelling house is; and
 - (ii) to that person or a member of the household of that person living in that dwelling house personally.
- (2) Where the Commissioner considers it desirable, a notice or the information to which this section applies may

be published in one or more newspapers in English or Kiswahili or both circulating in the area where the land to which the notice or other information relates is located.

Rights of entry

170.-(1) Any person authorised in that behalf by the Commissioner shall have power, on the giving of not less than 48 hours notice, to enter and inspect at all reasonable times between the hours of 6.00 am and 6.00 p.m. any land, other than land occupied exclusively as a dwelling house, for any purpose connected with the implementation of this Act.

(2) The notice which is required by subsection (1) to be given prior to any entry on to land shall specify clearly the purpose for which and the time at which the authorised person will enter the land.

(3) Every person authorised to enter or inspect land under this section shall be furnished with a written authorization signed by the Commissioner and if so required by any person having an interest in or occupying the land which he enters and inspects, shall produce the same to that person.

(4) Where any person authorized under this section causes any damage to land or anything on the land during his entry and inspection, the Commissioner, shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or things on the land have been damaged.

Call for information

171.-(I) The Commissioner may, for any purpose connected with the implementation of this Act, by notice in writing sent or delivered by registered post, require the occupier of land under a right of occupancy or a lease to send or deliver to the Commissioner within three months of the date on which the notice was so sent or delivered any document and other information about the occupation and use of that land and the interests and rights which specified in the notice he and any other persons have in or over that land, so far as they are known to him.

(2) The notice sent by the Commissioner shall specify clearly and in a language calculated to be understood by the recipient of the notice the information that is required.

(3) Where the recipient of the notice is unclear as to the information which he is required to provide, he shall, as soon as may be, seek further clarification and elucidation from the Commissioner.

(4) It shall be a defence to any person charged with a failure to comply with the notice or with giving misleading information in his reply to the notice that he could reasonably have been expected to understand the notice or any further clarification and elucidation provided by the Commissioner in response to any communication sent or made to the Commissioner under subsection (3).

(5) Where the Commissioner requires information from a person whom it is reasonable to assume from his age, circumstances, education, and location will not be able to understand or reply in writing to the written notice, the Commissioner shall authorise an officer in writing to interview that person and obtain the required information by means of that interview.

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(6) An officer authorised to conduct an interview under subsection (5) shall give not less than seven days' notice of the time, being a reasonable time between the hours of 6.00 am and 6.00 p.m., at which he proposes to conduct the interview and that interview shall be conducted in a reasonable manner.

(7) The provisions of subsections (3) and (4) of section 178 shall apply to a person conducting an interview under this section.

Meaning of
"opportunity of
being heard"

172.-(1) Whereby this Act, a thing or action is to be or may be done after giving a person an opportunity of being heard, then whether that or a cognate expression or form of words is used, that person shall, be deemed to have been given such an opportunity if he has been served with a

notice in writing or in circumstances similar to those referred to in subsection (3) of section 178, informed orally and in a language calculated to be understood, of the nature of the thing or action to be done and appointing a time, being not less than fourteen days after the service of the notice or the oral communication, and a place at which, he will, if he attends, be heard and-

- (a) he attends before the relevant official or body personally or by advocate or other agent and is given such an opportunity in a fair and reasonable manner to put his case;
- (b) he informs the relevant official or body that he does not wish to be heard but that he will submit in writing a statement of his case or other matters that he wishes the official or body to take into account, any written statement to be submitted within fourteen days thereafter;
- (c) he informs the relevant official or body that he does not wish to be heard or to submit any written statement; or
- (d) he takes none of the actions specified in paragraph (a), (b) or (c) within one month of the service of the notice or the oral communication despite being sent or given a reminder.

(2) Where a person or an advocate or other agent on his behalf attends before the relevant official or body concerning a matter on which he is entitled to be heard or fail to attend pursuant to such a notice and has not acted under paragraphs (b) or (c) of subsection (1), the relevant official or body may, if it thinks fit, adjourn the hearing, from time to time and notwithstanding failure to attend, may hear that person at any time.

(3) Whereby this Act, all persons interested or affected are to be given an opportunity of being heard, those persons shall be deemed to include all persons occupying the land or with an interest in the land the subject of the hearing, whether they are occupying land under a right of occupancy or without any apparent lawful right or title.

Land
Compensation
Fund

173.-(1) There shall be established a Land Compensation Fund, to be known as the Fund.

(2) The Fund shall be managed by the Trustees whose composition shall be as is prescribed by regulations made under section 180 of this Act.

(3) The Trustees shall be a body corporate capable of suing and being sued, of making contracts and of acquiring, holding and disposing of property.

(4) The objects and purposes of the Fund are to provide compensation to any person who, as a result of the implementation of any of the provisions of this Act by the Government or any public or local authority, suffers any loss or deprivation or diminution of any rights or interests in land or any injurious affection in respect of any occupation of land.

(5) The Minister shall, by regulations made under section 179 of this Act, have regard to the exercise and functions of the Trust.

Fees

174.-(1) The Minister, after consultation with the Minister responsible for finance shall prescribe the rates of fees for all matters in respect of which, by this Act, prescribed fees are required to be paid by any person and shall keep such fees under continuous review.

(2) Fees prescribed under this section shall be at a rate *per centum* rate of the value of the land the subject of the application or other matter in respect of which fees are required to be paid.

(3) The Registrar shall refuse to make any entry on the register or register any document in respect of any grant of a right of occupancy or any disposition of or arising in connection with a right of occupancy in respect of which a fee has not been paid in whole or in part, unless he is satisfied on the basis of written evidence produced before him that fee has been waived in whole or in part or that it has been agreed between the payer and payee that fee may be paid in installments and there are no arrears in those installments.

(4) Unpaid fees or expenses incurred by the

Government in connection with any attempt to recover those unpaid fees shall constitute a civil debt recoverable summarily.

Unlawful
occupation of
land

175.-(1) Any person who, without lawful authority or without any right or licence, express or implied under customary or statutory land law so to do-

- (a) occupies or erects building on any land-
- (b) clears, digs, ploughs, cultivates, or grazes animals over any land or part of it;
- (c) cuts or removes any timber or other produce on or from any land or part of it,

shall be taken to be in unlawful occupation of that land.

(2) Where, with respect to general land or reserved land, the Commissioner, or with respect to village land, the village council having jurisdiction over that land is of the opinion that a person is in unlawful occupation of land, the Commissioner or, as the case may be, the village council may serve on that person a notice in the prescribed form or give to that person an oral communicate, in a language calculated to be understood by that person requiring that person to show cause as to why he should not be required to vacate that land within any time and subject to any terms and conditions as to be removal of buildings, the reaping of growing crops and any other matters which the justice of the case may require, which may be specified in the notice or oral communication.

(3) Any notice referred to in subsection (1) shall inform the person to whom it is addressed that if he so desires it, he shall be given an opportunity of being heard in connection with his showing cause as to why he should not vacate the land which the notice relates.

(4) In determining whether to serve a notice or oral communication and the period of time to be specified in the notice by the and of which the person is required to vacate the land, the Commissioner or as, the case may be, the village council shall take account of-

- (a) whether any belief any by the person that he is in lawful occupation of land is a reasonable belief;
 - (b) the use which the person is making of the land, including any crops being grown by that person and when they may reasonably be expected to be ready to be harvested;
 - (c) the length of time that person has been on that land and his age and general circumstances;
 - (d) whether that person has any dependants living with him;
 - (e) whether that person or any dependants of that person are in employment near to that land;
 - (f) whether the occupation of the land took place peaceably or by force and whether the occupation is, as a consequence, depriving any person of the lawful occupation and use of that land which that person could the take land up immediately was vacated;
 - (g) whether the occupation of the land is preventing or some necessary desirable development or public works;
 - (h) the nature and environment of the land and where the land is land reserved for the primary use of wildlife, whether the occupation of the land is hindering or preventing the use of the land by wildlife or is in practice in harmony with that use;
 - (i) whether in all the circumstances, it would be reasonable to pay any sum of money to the person on account of his being required to vacate the land;
 - (j) any other factors which seem relevant including any matters which the person occupying the land brings to the attention of the Commissioner, or, as the case may be, the village council.
- (5) A person served with a notice or oral communication under this section shall, within not more

than sixty days, show cause to the Commissioner or, as the case may be a village council, as to why he should not vacate the land to which the notice relates.

(6) Where a person does not within sixty days show cause as to why he should not vacate the land to which the notice relates and has no reasonable excuse for not so complying, he shall be deemed to have accepted the notice and shall be under a duty to comply with that notice.

(7) Where the Commissioner or, as the case may be, the village council after considering any representations made by the person attempting to show cause determines that he has failed to show cause as to why he should not be required to vacate the land to which the notice relates, the Commissioner or, as the case may be, the village council shall inform that person by notice or oral communication that he is required to vacate the land within the time specified in the notice served under subsection (1).

(8) A person who responded to the notice whom cause but shows but who failed so to do in terms of subsection (5) may apply to the court for relief against the operation of that notice or oral communication, within thirty days of being notified that he has failed to show cause.

(9) An application for relief is not to be taken as an admission by the person applying for relief that-

- (a) he is in unlawful occupation of the land;
- (b) by person of that unlawful occupation, the Commissioner or, as the case may be, the village council has the right to require him to vacate the land in respect of which the application for relief has been made;
- (c) all notices and oral communications which were required to be served by the Commissioner or, as the case may be, the village council were properly served;
- (d) the period by which the land must be vacated specified in the notice or oral communication was reasonable or had expired.

(10) The court may, taking into account all those matters set out in subsection (4), grant relief to the person

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applying for the same on any terms and conditions which appear to the court to be just and reasonable and, without prejudice to the generality of this provision, the court may-

- (a) cancel the notice or oral communication and declare that the person is entitled to remain on the land;
- (b) postpone the operation of the notice or oral communication and grant the person a licence to remain on the land until the notice or oral communication shall come into operation;
- (c) where the person is a pastoralist, vary the operation of the notice or oral communication by granting the person an easement of grazing of any terms and conditions which the court shall think fit;
- (d) vary, my of the terms of the notice or oral communication or the period within which the person is required to vacate the land;
- (e) vary the amount of any payment to be paid, or where no payment has been offered, order that payment as the court shall think just be made to the person on his vacating of the land.

(11) Where the court has confirmed, with or without any variations, alterations or additions in the exercise of its powers under subsection (6), the notice or oral communication, the person on whom the notice or oral communication has been served shall be under a duty to comply with that notice or oral communication as confirmed by the court.

Obstruction of public rights of way

176.-(I) Where the Commissioner is satisfied that there has been any wrongful obstruction of or encroachment on any public right of way, he may make an order requiring the person responsible for that obstruction or encroachment to remove that obstruction or encroachment within the time specified in the order, which shall be not less than fourteen days, and if that order is not complied with within the time specified, he may take any steps which may be necessary for the purpose.

(2) Any notice made by the Commissioner under subsection (1) shall be served on or otherwise communicated to the person alleged by the notice to be responsible for the obstruction or encroachment in such a manner as that person will understand that notice and what he is required to do under the notice.

(3) A person who does not take action under subsection (2) shall be taken to have accepted the notice and shall be under a duty to comply with it.

(4) Where the Commissioner has reconsidered the notice in response to a request made in accordance with subsection (4) so to do, and determines to confirm the notice, he shall inform the person who made the request for a reconsideration that he confirmed the notice.

(5) A person whose request for a reconsideration of the notice has resulted in the notice being reconfirmed may appeal to a court against that reconfirmed notice, but if he does not so appeal within the time specified in the notice for compliance with the notice, he shall be deemed to have accepted the notice and shall be under a duty to comply with it.

(6) A court hearing an appeal under this section may-

- (a) confirm the notice and order the person to desist from obstructing or encroaching on the public right of way; or
- (b) suspend the operation of the notice for any period which the court shall determine; or
- (c) quash the notice,

and may make any ancillary orders which the circumstances of the case may require.

Offences

177.-(I) Any person who-

- (a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act;
- (b) knowingly gives any false information or makes any false statement, either orally or in writing, in

connection with any call for information made under section 171 or in connection with any investigation into the commission of any offence under this Act;

- (c) knowingly gives any false evidence either orally or in writing at any inquiry held under section 18 or otherwise in connection with the implementation of this Act; or
- (d) fraudulently procures-
 - (i) the registration or issue of any certificate of occupancy, customary certificate of occupancy or any other document or instrument relating to the land; or
 - (ii) the making of any entry or the endorsement of any matter on any document or instrument referred to in subparagraph (i);
 - (iii) the cancellation or amendment of any of the documents, instruments, entries or endorsements referred to in this paragraph;
- (e) fraudulently alters, adds to erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument;
- (f) suppresses or conceals from the Commissioner, the Registrar, any authorized officer or any officer of a village council exercising powers under this Act or assists or joins in so doing, any material document, fact or matter,

commits an offence and on conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both the fine and imprisonment.

(2) Any person who without reasonable excuse, fails to produce any document as required by any notice served on him under section 171 or otherwise under this Act commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings or imprisonment for a

term not exceeding three months or to both the fine and imprisonment.

(3) Any person who unlawfully occupies land commits an offence and upon conviction is liable to a fine not exceeding ten thousand shillings, and in the case of a continuing offence to an additional fine not exceeding five hundred shillings for every day during which the offence shall have continued.

(4) Any person who wrongfully obstructs or encroaches on to a public right of way and who does not within the time specified in any notice served on him under section 176 or where he has appealed against the notice, within the time specified in the notice after the hearing of the appeal where the Court has rejected that appeal, remove that obstruction or cease that encroachment commits an offence and upon conviction is liable to a fine not exceeding ten thousand shillings and in the case of a continuing offence, to an additional fine not exceeding two thousand shillings for every day during which the offence continues.

(5) Any person who willfully-

- (a) delays;
- (b) obstructs,
- (c) hinders;
- (d) intimidates; or
- (e) assaults,

any person authorized under this Act and inspect any land in the lawful exercise of the power in that behalf commits an offence and upon conviction is liable to a fine not exceeding one hundred thousand shillings exceeding one year or to both the fine and imprisonment.

(6) Any person who, being an authorized officer under this Act, whether generally or for a specific function, in the course of any official function or otherwise, unlawfully or with force enters on the land of any person or while on land, willfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land or crops planted or buildings erected on the land commits an offence and upon conviction is liable to a fine not exceeding fifty thousand

shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.

(7) Where a court has convicted any person of an offence under this section and the commission of that offence enabled that person to obtain or retain or regain any interest in land which he would otherwise not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on such person, make any such order in relation to that interest in land so obtained, retained or regained by such person as appears to the court necessary to ensure that such person does not profit by the offence of which he has been convicted and without prejudice to the generality of this provision, any such order may-

- (a) direct the Commissioner to commence proceedings to-
 - (i) revoke a right of occupancy;
 - (ii) take action under subsection (3) of section 38;
 - (iii) terminate a lease;
- (b) direct the Registrar to cancel any entry in any register which has been obtained by virtue or on account of the offence;
- (c) require that person to restitution to any person who has suffered loss by virtue of or on account of offence, including taking all necessary action to transfer to any such person any interest in land obtained, retained or regained by such offence from that person,

and any such order may be made subject to any conditions which the Court shall consider just and reasonable.

Corrupt transactions

178.-(1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to any grant of a right of occupancy, or any issue of a certificate of occupancy or a customary certificate of occupancy, or any disposition, or any contract for any of the earlier mentioned transactions which was obtained or

induced by any corrupt action, on the part of any government or public or local government official whether that government or public or local government official was directly involved in that transaction or not, and, notwithstanding any rule of law in Tanzania to the contrary, such a transaction is hereby declared to be and to have been from its inception an illegal transaction, void and having no legal effect.

(2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption when either-

- (a) any party to or involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption and all final appeals arising from that conviction have been concluded;
- (b) any civil servant or other public official is interdicted, or is retired in the public interest, from his post on the grounds that he has been engaged in corrupt actions and that these actions involved that transaction; or
- (c) an investigator body reports that it is satisfied or that transaction was procured by corrupt practices.

(3) Any person occupying land which he obtained as a consequence of participating in any of the transactions covered by subsection (1) and (2) shall be liable to forfeit that land to the President without any entitlement to any compensation.

(4) Notwithstanding that a transaction covered by this section is void, a person occupying land as a consequence of that transaction shall be obliged to comply with all the terms and conditions of the transaction as if it had been a valid transaction and shall be liable to all the remedies which may be applied to a person who fails to comply with the terms and conditions of a valid transaction in addition to any penalties which may be applied under this section.

Regulations

179. The Minister may make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and removing any difficulties, occasioned by the coming into operation of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe-

- (a) the forms to be used connection with this Act;
- (b) the manner of the exercise of the functions of-
 - (i) the Council;
 - (ii) the Land Allocations Committee;
 - (iii) the Administrator;
 - (iv) the manner and form of the Fund;
- (c) the management of the Fund;
- (d) the manner and form of the registries of village land, the procedures to be followed by the registries and hours they are to be open for business;
- (e) the functions of the officers implementing this Act and the manner in which they are to be exercised;
- (f) the procedures to be followed by village adjudication committees, village adjudication advisers and other officers exercising powers under Sub-Part C of Part IV of the Village Land Act;
- (g) the procedures to be followed by trustees in the exercise of their powers under Sub-Part D of Part IV of the Village Land Act;
- (h) the conduct of auctions under section 52;
- (i) the conduct of tenders under section 52;
- (j) the use and management public rights of way created under section 154;
- (k) procedures to be followed with respect to the making of any claim for compensation and the payment of any compensation under this Act;

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- (l) the alteration from time to time of the amount which may be advanced by way of a small mortgage;
- (m) the form and scope of schemes of co-occupancy;
- (n) the form and scope of joint village land use agreements;
- (o) the form and scope of the schemes of regularization and the manner of their implementation;
- (p) the form and scope of schemes of regularization;
- (q) procedure for the transfer of land from one category to another;
- (r) procedure for the lenders of funds on the security of a mortgage, being organizations or corporate bodies which may be exempted from certain provisions of this Act relating to approvals for dispositions.

Law to be applied

180.-(1) Subject to the provisions of the Constitution and this Act, the law to be applied by the courts in implementing, interpreting and applying this Act and determining disputes about land arising under this Act or any other written law shall be-

- (a) the customary laws of Tanzania; and
- (b) the substance of the common law and the doctrines of equity as applied from time to time in any other countries of the Commonwealth which appear to the courts to be relevant to the circumstances of Tanzania.

(2) On and after the date of the coming into operation of this Act no statutes of general application in force in England on the twenty second day of July 1920 which have not, at the date of the coming into operation of this act, been declared by a court to be a part of the law of Tanzania shall apply in any way to any matter connected with land.

(3) On and after the commencement of this Act, it shall be the duty of all courts in interpreting and applying this act and all other laws relating to land in Tanzania to use their best endeavours to create a common law of Tanzania applicable in equal measure to all land and to this end the courts shall apply a purposive interpretation to this act and shall at all times be guided by the fundamental principles of land policy set out in section 3.

Application of this Act

181. On and after the commencement of this Act, notwithstanding any other written law to the contrary, this Act shall apply to all land in Mainland Tanzania and any provisions of any other written law applicable to land which conflict, or are inconsistent with any of the provisions of this Act shall to the extent of that conflict or that inconsistency cease to be applicable to land or any matter connected with land in Mainland Tanzania.

Repeals

182. The written laws set out in the Schedule herein are hereby repealed.

Savings and transitional provisions with respect to rights, actions, dispositions etc

183.-(1) Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

(2) Unless the specifically provided for in this Act or the circumstances are such that the contrary must be presumed to be the case, where any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to immediately prior to the commencement of this Act.

(3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and-

- (a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and
- (b) subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

(4) Where any step has been taken to forfeit a lease or to foreclose a mortgage before the enactment of this Act, a court may, if it considers it just and reasonable so to do, on and after the commencement of this Act, on the application of the lessee or, as the case may be, the borrower to issue an injunction to the lessor or, as the case may be, the lender to stop the continuation of any step and where a court has issued an injunction under this subsection, the lessor or lender to whom the injunction has been issued may commence any action under this act to terminate that lease or bring that mortgage to an end.

Savings and transitional provisions with respect to rules, orders, etc

184.-(1) Any rule, order, regulation, direction, notice, notification or other administrative act made, given, issued or undertaken before the commencement of this Act under any land law repealed or amended in a material particular by this Act shall, if it could have been made, given, issued or undertaken any corresponding provision of this Act, continue in force and have the like effect as if it had been so made, given issued or, as the case may be, undertaken.

(2) Subject to the provisions of this Act and until they are repealed or amended, the conditions contained in the Land Regulations, 1948 shall unless they are specifically excluded or applied only as amended in a specific particular to a specific granted right of occupancy, or are impliedly or expressly repealed or rendered of no effect by any of the provisions of this Act continue to apply to any granted right of occupancy issued under this Act.

Act to be translated into Kiswahili

185. The Minister shall, as soon as may be practicable after the enactment of this Act, cause this Act to be translated into Kiswahili and that translation shall be published in the *Gazette* and in any other manner and form as will enable the citizens of Tanzania to gain access to that translation.

Act to bind Government

186. This Act shall bind the Government.

SCHEDULE

[Omitted: Repeal of laws]

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 334

THE LAND REGISTRATION ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Prevention and Combating of Corruption Act, Chapter 329, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

CHAPTER 334

THE LAND REGISTRATION ACT

[PRINCIPAL LEGISLATION]

ARRANGE MENT OF SECTION

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CHAPTER 334

THE LAND REGISTRATION ACT

An Act to provide for title registration on land and for related matters.

[1st June, 1954]

Ords. Nos.

36 of 1953

2p of 1958

3 of 1959

13 of 1960

22 of 1960

35 of 1961

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4 of 1963

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64 of 1963

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31 of 1997

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322 of 1962

478 of 1962

17 of 2008

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Land Registration Act.

Interpretation
Ord. No.

2.-(1) In this Act, unless the context otherwise requires-

22 of 1960
s.6
G.N.No.
322 of 1962

“approved plan” means a plan approved for the purposes of this Act by the Commissioner for Surveys, of the Survey Division

“borrower” means the owner of an estate which is subject to mortgage;

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“certificate of occupancy” means a certificate of occupancy issued under the provisions of the Land Act;

“co-owner” means the owner of an undivided share in any estate;

“deed” means an instrument in writing whereby a disposition is or is intended to be effected;

“disposition” means any act performed *inter vivos* whereby the owner of a registered estate or interest transfers or mortgages that estate or interest or any part thereof or creates any lesser estate or interest thereout or whereby any such estate or interest is varied or extinguished, other than –

- (a) a lease expressed to be for a term of five years or less or any estate or interest derived from such a lease, unless such lease contains an option whereby the tenant can require the landlord to grant him a further term or terms which, together with the original term, exceed five years; or
- (b) a lease from year to year or for periods of less than a year, whether or not the lease includes an initial fixed term or any estate or interest derived from such lease, unless such initial fixed term exceeds four

- years;
- “enter” means to inscribe in the land register a memorial recording any notice, caveat, injunction or prohibitory order, and "entry" and "entered" shall be construed accordingly;
- “estate” means a freehold estate, a lease or any estate which under the provisions of this Act is deemed to be freehold or leasehold or a right of occupancy in respect of, which a certificate of occupancy has been issued, but does not include the title to any building, tree or other thing erected on or growing out of or affixed to land and owned separately from the land;
- “index map” means the land register to be maintained by the Registrar under the provisions of section 86;
- “land register” means the land register to be maintained by the Registrar under the provisions of subsection (2) of section 3;
- “lease” includes a sub-lease and a term created out of a right of occupancy in respect of which a certificate of occupancy has been issued, but does not include -
- (a) a right of occupancy whether a certificate of occupancy has been issued in respect thereof or not; or
 - (b) a lease of, or any rights in or over, mines, minerals or mineral oils and "leasehold" shall be construed accordingly;
- “legal personal representative” means the executor, original or by representation or administration for the time being of a deceased person;
- “lender” means the owner of a mortgage;
- “memorial” means any inscription in the land

register and without prejudice to the generality of the foregoing, includes the description of any registered land, the record of the ownership thereof and the record of any incumbrance affecting the same;

“Minister” means the Minister responsible for matters relating to land;

“mortgage” includes a sub-mortgage;

“mutation” means the combination of two or more parcels into one or the division of a parcel into two or more parcels or a reparation;

“office copy” means a copy of a proceeding filed in the proper office of a court and sealed with the seal of such office;

“owner” means, in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered;

“parcel” means an area of registered land separately shown on the index map;

“partition” means the division and appropriation among co-owners of any parcel or the appropriation among co-owners of two or more parcels;

“public land” means all land other than land -
(a) registrable under Part II;
(b) required to be registered under Part II;

“register” means to inscribe in the land register a memorial recording the title to any estate in land or any disposition or transmission of any registered estate or interest, and “registration” and “registered” shall be construed accordingly;

“registered land” means land in respect of which

Cap 4
s.8

an estate has been registered;

“registrar” means the Registrar of Titles appointed under the provisions of section 4 and includes a Deputy Registrar and an Assistant Registrar;

“re-parcelation” means the alteration of the boundaries of two or more contiguous parcels to form new parcels differing in area or layout; and

“unregistered land” means land other than registered land.

(2) In this Act and in every deed made under this Act, reference to a landlord, tenant, lender, borrower, transferor or transferee shall be deemed to include his legal personal representative and successors in title.

(3) Unless the context otherwise requires, nothing contained in this Act shall be construed as permitting any disposition, mutation or other act which is forbidden under the express provisions of any other law for the time being in force or as overriding any provision of any such law requiring the consent or approval of any person to any disposition, mutation or other act.

Maintenance of
land registry
G.N. No.
478 of 1962

3.-(1) There shall be maintained at Dar es Salaam or such other place as the Minister may, by order, declare a land registry.

(2) The Registrar shall maintain in the land registry a land register for the registration of the title to land in Tanzania and the recording of dispositions, transmissions and in cumbrance of and over registered land.

Administration
G.N. No.
478 of 1962

4. The Minister shall appoint a Registrar of Titles to perform the duties and exercise the powers imposed and conferred by this Act and may appoint a Deputy Registrar and any number of Assistant Registrars, who shall be subject to the directions of the Registrar of Titles.

Signature of

5. All courts, judges and persons acting judicially

Registrar to be judicially noticed shall take judicial notice of the signature of the Registrar.

Seal of office 6. There shall be a seal of the land registry and any document purporting to be sealed with that seal shall be admissible in evidence.

Indemnity of officers 7. The Registrar shall not, nor shall any person acting under the authority of the Registrar or under any rule made in pursuance of this Act, be personally liable for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers conferred by this Act or by any rule made in pursuance of this Act.

**PART II
FIRST REGISTRATION OF EXISTING TITLES**

Registrable estates Ord. No. 22 of 1960 S. 6 8.-(1) For the purposes of this Part, the expression- "registrable estate" means a freehold estate or a lease or any estate which is by the provisions of the Act deemed to be freehold or leasehold, but does not include-

- (a) a lease for an unexpired term of five years or less unless such lease contains an option whereby the tenant can require the landlord to grant him a further term or terms which, together with the original unexpired term, exceed five years;
 - (b) a lease from year to year or for periods of less than a year whether or not the lease includes an initial fixed term, unless such initial fixed term exceeds four years; or
 - (c) a right of occupancy whether a certificate of occupancy has been issued in respect thereof or not.
- (2) An estate of absolute ownership acquired

before the 26th day of January, 1923, shall be deemed to be a freehold estate.

(3) An *Erbbaurecht* or hereditary right of construction granted under German law during the period of German administration of Tanganyika shall be deemed to have created a lease of the land thereby affected.

(4) Any land previously held in absolute ownership which has been validly endowed or dedicated as *wakf* under Muslim law shall be deemed to be freehold, notwithstanding such endowment or dedication.

Power to make orders rendering registration compulsory in certain areas Act; No. 24 of 1963 4th Sch.

9.-(1) The Registrar may, by order published in the *Gazette*, require every person who claims to be entitled, whether beneficially or as a trustee, to a registrable estate in any unregistered land to apply for registration of his title to such estate within such period as shall be specified in such order-

(2) An order under this section may be made in respect of registrable estates within an area defined in the order or in respect of a particular registrable estate (in which case the order shall also be served on the person whom the Registrar believes to have the greatest estate therein and shall be affixed in a prominent place on the land).

Application for registration Ord. No. 26 of 1958 s 2; G.N.No. 478 of 1962 R.L. Cap. 116 Ord. No. 33 of 1947-1949

10.-(1) Any person who claims to be entitled to a registrable estate in any unregistered land, whether beneficially or as a trustee, may apply to the Registrar in the prescribed manner for registration (hereinafter referred to as “first registration”) of his estate:

Provided that, no person who has failed to comply with an order made under section 9 or an order made under section 5A of the Land Registry Ordinance, as contained in the Land Registry (Amendment) Act, 1947-1949, shall, without the leave of the Registrar be entitled to apply for first registration.

(2) Every application for first registration shall be accompanied by all documents of title to such land in the

possession or under the control of the applicant.

Applications
not to
abate

11. An application for first registration shall not abate by reason of the death, bankruptcy or disability of the applicant or of any disposition made by him, but may be adopted and continued by his legal personal representative, trustee, committee or successor in title, as the case may be, and any reference in this Act to an applicant shall include any such legal personal representative, trustee, committee or successor in title so adopting and continuing an application.

Advertisement

12.-(1) Every application for first registration shall be advertised by the Registrar at the expense of the applicant in the *Gazette* and in such one or more newspapers, if any, as the Registrar may decide.

(2) The Registrar may give notice of any application to such persons as he may think fit and shall, whenever practicable, give such notice to the reputed owners of all land adjoining that comprised in the application, except where such adjoining land is in an area defined in a notice made under section 9 or is already registered or where the reputed owner or such adjoining land acknowledges in writing that he has no objection to the application.

Objections

13. Any person who claims to have any estate or interest in the land comprised in an application for first registration may, at any time prior to the determination of the application by the Registrar, give the Registrar notice in writing objecting to the first registration of the land in the name of the applicant and setting out the grounds of his objection.

Investigation of
title

14.-(1) The Registrar shall investigate the title to the registrable estate claimed and in the course of his investigation he may, in his absolute discretion, admit evidence which would not be admissible in a court of law

and may use evidence adduced in any other application or contained in any official records and may call evidence of his own motion.

(2) The Registrar may make such registration on title as may seem to him proper and may withdraw any such requisitions where he is satisfied that they cannot be complied with or can only be complied with at undue expense or after undue delay.

(3) The Registrar may, at any time, and by notice in writing, require an applicant for first registration to comply with any requisition he may have made within such period as may be specified in the notice, not being less than one month and in default of compliance with such notice within that period, the Registrar may dismiss the application:

Provided that, the Registrar may in his absolute discretion from time to time extend the period mentioned in such notice either before or after the expiration of such period.

Certain roots or title acceptable

15.-(1) An entry made in any *Grundbueh*, *Land register*, *Katv.sterbuch* or in the *Grundstruecksbuch* for Tabora or a finding made by a Land Commission or a certificate of ownership issued by a public authority, during the period of German administration of Tanganyika, may be accepted by the Registrar as a good root of title.

(2) A grant by the *Landsfiskus*, the *Deutseh-Ostafrikanische Gesellschaft*; the *Ostafrikanische Etsebahn Gesellschaft*, the *Osta- frikanische Land gesellschaft*, or by any *Communalverband* or *Stadtgemeinde*, made during the period of German administration of Tanganyika, shall be deemed to be a grant made by the former German Government and to constitute a good root of title.

Proclamation No. 5 of 1917

(3) A conveyance or assignment made by the Custodian of Enemy Property appointed under the

provisions of the Enemy Property (Vesting) Proclamation, shall be deemed to constitute a good root of title:

Provided that, where the Custodian of Enemy Property purported to conveyance or assignment subject to conditions or restrictions imposed by the former German Government, the Registrar shall look behind such conveyance or assignment to discover the nature and extent of such conditions or restrictions.

(4) Where the Registrar is satisfied that an Administrative Officer or the Commissioner for Lands, after due investigation, has in any document issued before the third day of September, 1939, recognised the title of any applicant to any estate, the Registrar shall accept that document as a good root of title.

(5) The Registrar may, in his absolute discretion, assume the root of title shown in an application for first registration to be good in any case where he has received no notice of objection to the application denying the root of title.

Adverse possession

16. For the avoidance of doubt, it is hereby declared that an application for first registration may be made by a person claiming to have acquired a title to a registrable estate by adverse possession or by reason of any law of prescription.

Registrar's discretion to suspend compromise

17.-(1) The Registrar may, at any time prior to determining an application for the first registration of any registrable estate, in respect of which the Commissioner for Lands on behalf of the President has given notice of objection denying the root of title, suspend the proceedings for such period or periods as he may determine if it appears to him that the matter might be compromised by the withdrawal of the application and the grant of right of occupancy.

(2) Where the applicant and the Commissioner for Lands fail to reach Land agreement, the proceedings shall

be resumed and neither party shall be prejudiced by any offer or admission or statement made during the period of suspension.

(3) The provisions of subsection (1) shall be construed as in addition to and not in derogation of the discretion of the Registrar to adjourn proceedings.

Decision allowing application

18.-(1) Where the Registrar is satisfied that a good title has been shown, he shall allow the application:

Provided that, the Registrar shall not allow any application until after the expiration of two months from the date of publication of the advertisement in the *Gazette* relating thereto:

And provided, further that the Registrar shall not allow any application to which he has received a notice of objection without giving the objector an opportunity of being heard unless the notice of objection is first withdrawn or the application is amended to comply with the notice of objection.

(2) Where the Registrar is satisfied that the applicant has a registrable estate other than that claimed he may, with the consent of the applicant, allow the application for first registration in respect of such other estate.

(3) In any class of case which may be prescribed and subject to any rules made under this Act, the Registrar may allow an application notwithstanding any defect in the title deduced, not being a defect in the root of title, where it appears to him equitable or necessary in order to achieve substantial justice.

Dismissal of application

19. Where the Registrar is not satisfied that a good title has been shown, he shall dismiss the application.

Decision of

20. Subject to the provisions of section 102, the

Registrar to be evidence in other proceedings

decision of the Registrar allowing or dismissing any application shall, in any subsequent civil suit, cause or matter between the applicant and any person who gave notice of objection to the application, be conclusive evidence of the matters therein contained and shall, in any subsequent civil suit, cause or matter between the applicant and any person who did not give such notice of objection, be *prima facie* evidence of the matters therein contained.

Applications not to be repeated
Ord. No. 26 of 1958

21.-(1) Where an application for first registration of a registrable estate has been dismissed by the Registrar under this Act, no subsequent application shall be made by the same person or any person claiming through or under him for the same estate in the land therein comprised or any part thereof.

(2) Notwithstanding the provisions of subsection (1), the Registrar may in his absolute discretion allow any such subsequent application, subject to such conditions as he may think fit to impose-

- (a) where he is satisfied that further evidence can be adduced which was not available when the original application was determined; or
- (b) where the original application was made before the first day of June, 1954, and the title was deduced from a document which is *prima facie* acceptable as a good root of title under subsection (4) of section 15, and in making any such subsequent application, an applicant shall not be stopped on account of his having accepted a right of occupancy nor shall his claim be defeated by reason of his having yielded up possession of the land to the President on or after the dismissal of his application.

Registrar to record reasons for his decision

22. In every case where a notice of objection has been given under the provisions of section 13 and has not

been withdrawn and in every case where the Registrar dismisses an application, he shall, when allowing or dismissing the application, record his reasons therefor.

Registration to be deferred in certain cases

23. Where the Registrar allows an application he shall register the estate in the name of the applicant:

Provided that, where the application is one in respect of which a notice of objection has been given under the provisions of section 13, he shall defer first registration for the period of one month and within that period a notice of intention to appeal against his decision is delivered to him under the provisions of section 102, he shall defer registration until such appeal has been determined.

Conditions imposed by former German government to run with land

24. Any subsisting covenants or conditions contained in any grant of land made by German Government or imposed by that Government at the time of any disposition of land under any law formerly in force shall, on first registration, be recorded in the land register and when so recorded shall be deemed to run with the land so registered.

Incumbrances subsisting at first registration

25.-(1) Where any registrable estate comprised in an application for first registration is subject to any estate or interest which, had such registrable estate been registered, would have required or been capable of registration or entry, such estate or interest shall be registered or entered in the land register at the time of first registration.

(2) A legal mortgage made before first registration and registered under subsection (1) shall be deemed to be a mortgage within the meaning of section 57 notwithstanding that it may have been expressed to be a conveyance or assignment or sub-lease subject to redemption.

(3) Where documents of title have, prior to first registration, been deposited with any person with the

intention of creating an equitable mortgage and such equitable mortgage is subsisting at the time of first registration, the certificate of title issued shall be deemed to be deposited with that person under the provisions of section 64 at the time of issue, and notice under subsection (2) of that section shall be deemed to have been given by that person.

(4) Where on first registration the Registrar is satisfied that any building, tree or other thing erected on or growing out of or affixed to the registered land is owned by a person other than the applicant for first registration he may inscribe a memorial to that effect in the land register

Disposal documents of title

26. The Registrar shall retain all documents of title produced to him in support of any application for first registration:

Provided that, where any such documents relate also to unregistered land not comprised in the application, the Registrar shall endorse them with a note of the application and return them to the person who produced them.

**PART III
GRANTS OF PUBLIC LAND**

Grants of public land and certificates of occupancy to be registered

27. Every grant of public land for a Government lease and every certificate of occupancy made or issued after the coming into force of this Act shall be delivered to the Registrar who shall thereupon register the estate therein comprised in the name of the grantee or occupier:

Ord. No. 22 of 1960

Provided that, the Registrar shall not register a certificate of occupancy in respect of a right of

s. 6
Act No.
24 of 1963
4th Sch.

occupancy:

- (a) for a term of five years or less, unless such right of occupancy contains an option whereby the occupier may require the President to grant him a further term or terms which together with the original term exceed five years; or
- (b) from year to year or for periods of less than a year, whether or not such right of occupancy includes an initial fixed terms unless such initial fixed term exceeds four years.

Covenants and conditions in grants and certificates of occupancy

28. All covenants and conditions contained in any grant of public land or certificate of occupancy shall, on the registration of the grant or of the certificate of occupancy, be recorded in the land register in such manner as the Registrar may determine and when so recorded shall be deemed to run with the land.

Mortgages of agreements for rights of occupancy

29. Where any person to whom the President has agreed to grant a right of occupancy over any land has mortgaged or charged his interest under such agreement and such mortgage or charge is subsisting at the time when a certificate of occupancy relating to that land is delivered for registration, the Registrar shall register the mortgage or charge as an incumbrance against the title and when so registered it shall be deemed to be a mortgage within the meaning of section 57.

**PART IV
MANNER AND EFFECT OF REGISTRATION**

Form and contents of land register

30.-(1) The land register shall be comprised of folios for every estate in every parcel, every such folio being divided into three parts containing respectively a brief description of the land together with its appurtenances, particulars of in ownership and particulars of incumbrances.

(2) Public land when registered shall be registered in the name of the President under the description “His

Excellency the President”.

(3) The Registrar may, from time to time, prepare a new folio in substitution for any folio of the land register, showing all subsisting entries and omitting any matter which he consider obsolete.

Manner
registration

31.-(1) The first registration of any estate shall be effected by the preparation of a folio of the land register in accordance with section 30 and the signing or initialing by the Registrar of the particulars of ownership and the particulars of incumbrance, if any, appearing thereon.

(2) Every subsequent registration or entry shall be effected by the inscription in the land register of appropriate memorials which shall be in such form as the Registrar may determine and shall be signed or initialed by the Registrar.

Time of
registration

32.-(1) A document presented for registration or entry in the land register which satisfies the requirements of this Act and of any other relevant law shall be deemed to be registered or entered, as the case may be, at the moment when it is presented, notwithstanding that the actual inscription in the land register may be delayed.

(2) Documents sent by post or under cover and received during the hours of business shall be deemed to be received simultaneously immediately before the closing of the office for that day and those received between the time of closing and the next opening of the office for business shall be deemed to be received simultaneously immediately after such opening.

(3) Where two or more documents relating to the same estate or interest in any registered land are presented simultaneously for registration or entry in the land register and one of such documents is accompanied by the

certificate of title, that document shall be deemed to have been received immediately before the other or others.

Estate of registered owner paramount Ord. No. 3 of 1959 s. 40

33.-(1) The owner of any estate shall, except in case of fraud, hold the same free from all estates and interests whatsoever, other than-

- (a) any incumbrance registered or entered in the land register;
- (b) the interest of any person in possession of the land whose interest is not registrable under the provisions of this Act;
- (c) any rights subsisting under any adverse possession or by reason of any law of prescription;
- (d) any public rights of way;
- (e) any charge on or over land created by the express provisions of any other law, without reference to registration under this Act, to secure any unpaid rates or other moneys;
- (f) any rights conferred on any person under the provisions of the Mining Act, the Petroleum Act, the Forests Act or the Water Resource Management Act (other than easements created or saved under the provisions of the last mentioned Act); and
- (g) any security over crops registered under the provisions of the Chattels Transfer Act.

Cap. 123
Cap. 328
Cap. 323
Cap. 331

Cap. 210

R.L Cap.257
R.L Cap.410

(2) For the avoidance of doubt it is hereby declared that an owner of an estate shall not take the same free of any easement registered in the Water Grants Records maintained under the Water Ordinance between the first day of October, 1954, and the date upon which the Water Ordinance came into operation, by reason only that such easement was not registered in the land register.

Memorials to

34. Every person acquiring any estate or interest

give actual notice

in any registered land shall be deemed to have actual notice of every subsisting memorial relating to such land in the land register at the moment when he acquires such estate or interest and, in the case of subsisting memorials inscribed in those parts of the land register which contain the description of the land and the particulars of incumbrance, of any filed documents to which those memorials refer.

**PART V
CERTIFICATES OF TITLE**

Owner entitled to receive certificate

35. The owner of an estate in any parcel shall be entitled to receive a certificate of title under the seal of the certificate land registry in respect thereof, showing the subsisting memorials in the land register relating thereto and co-owners may, if they so desire, receive separate certificates of title in respect of their respective shares:

Provided that, it shall not be necessary to issue a certificate of title in respect of any public land registered in the name of the President.

Endorsement of certificates of title

36.-(1) No registration shall be effected, nor shall a notice of deposit under section 64 be entered, unless the certificate of title to the ...is produced and the Registrar, when effecting any such registration or entry shall either –

- (a) endorse on the certificate of title a memorial similar to that inscribed in the land register; or
- (b) cancel the certificate of title and issue a new certificate of title or new certificates of title in its place,

whichever may in the opinion of the Registrar be appropriate.

(2) As soon as practicable after the entry in the land register of any prohibitory order, injunction, caveat or notice (other than a notice of deposit), the Registrar shall endorse on the certificate of title a memorial similar to that inscribed in the land register.

Registrar may
requires
production of
certificates of
title

37.-(1) The Registrar may, at any time, give notice in writing to any person whom he believes to be in possession of a certificate of title requiring such person to produce the same for endorsement of or cancellation within the period named in such notice, not being less than fourteen days from the date thereof, and any such notice shall state the reason why the production of such certificate of title is required.

(2) Where any person refuses or neglects to comply with any such notice as aforesaid, the Registrar or any interested person may apply to the High Court, for an order summoning such person to show cause why the certificate of title should not be produced to the Registrar and upon the appearance before the High Court of any person so summoned, the High Court may make such order as it thinks fit.

(3) Where a summons has been issued under the provisions of subsection (2), the Registrar or other applicant shall not be required to prove that the certificate of title is in the possession of the person so summoned.

Lost certificates

38.-(1) Where it is proved to the satisfaction of the Registrar that a certificate of title has been lost or destroyed or that there is other sufficient cause therefor, he may, after taking such indemnities as he may consider necessary, and giving, at the expense of the applicant, such public notice in the *Gazette* and in such local or other newspapers and in such other manner as shall appear to him sufficient in each case, issue a new

certificate of title.

(2) A new certificate of title issued under the provisions of subsection (1) shall be deemed to replace for all purposes the certificate of title previously issued, and any person discovering the certificate previously issued shall surrender it to the Registrar for cancellation by him.

Mutilated certificates to be replaced

39. Where any certificate of title has been mutilated or is soiled or damaged or otherwise rendered illegible, the Registrar may in his absolute discretion and at the expense of the owner, issue a new certificate of title *in lieu* thereof and may destroy the certificate of title so replaced.

Certificate of title to be evidence

40. A certificate of title shall be admissible as evidence of the several matter therein contained.

**PART VI
DISPOSITIONS**

(a) General Provisions

Disposition of land
Act No
17 of 2008
s.21

41.-(1) The disposition of land shall be registered by the Registrar.

(2) An applicant for disposition of land shall submit to the Registrar all relevant documents accompanied by a prescribed fee.

(3) When so registered, a disposition shall be effectual to create, transfer, vary or extinguish any estate or interest in any registered land.

(4) Upon registration, the Registrar shall submit a notice accompanied by the relevant document to the Commissioner for Lands who shall enter in the register particulars relating to such change of ownership.

Power or Registrar to reject deeds

42. Where it appears to the Registrar that any deed presented for registration is improper in form or in

substance or is not clearly expressed, or does not indicate with sufficient precision the particular estate which it is intended to affect, or contains material provisions which are not the proper subject of registration under this Act or covenants or conditions which do not in law run with the land or are not capable of being annexed thereto, or is otherwise expressed in a manner inconsistent with the principles on which the land register is to be kept, he may refuse registration, either absolutely or subject only to such modifications therein as he shall approve.

Implied covenants may be varied

43. Every provision, covenant and power implied in any deed by virtue of this Act may be negatived or modified by express declaration in the deed or in any deed made supplemental thereto.

Covenants to be joint and several

44. Where in any deed a covenant is made or implied by or on the part of two or more persons, such covenant shall, unless the deed otherwise provides, be construed to bind such persons jointly and severally.

Joint tenancy and tenancy in common

45. No deed drawn in favour of two or more persons shall be registered unless it expresses whether such persons are joint tenants or tenants in common, and, in the case of a tenancy in common, the share of each co-owner.

Implied receipt

46. Where any deed is expressed to be made in consideration of a sum of money, there shall be implied in the deed a receipt for such sum.

Deeds not include unregistered land

47. A deed may relate to two or more parcels but no deed shall be registered which relates to unregistered as well as registered land.

Original deeds to be retained

48.-(1) The Registrar shall retain all deeds registered by him.

(2) Where a lease or mortgage submitted for registration in duplicate or triplicate is registered, the

Registrar shall endorse the duplicate and the triplicate, with particulars of the registration and return them to the person who submitted them.

(b) Special Provisions Relating to Transfers

Transfer of lease

49.-(1) In every transfer of a registered lease, there shall be implied a covenant by the transferee with the transferor to pay, perform and observe the rent, covenants and conditions by and in the lease reserved contained and implied and on the part of the tenant to be paid, performed and observed, and to keep the transferor indemnified against all suits, expenses and claims on account of the non-payment of the said rent or any part thereof, or the breach of the said covenants and conditions, or any of them.

(2) On a transfer of part of the land held under a registered lease, the covenant implied on the part of the transferee under subsection (1) shall be limited to the payment of the apportioned rent, if any, and the performance and observance of the covenants by the tenant and conditions in the registered lease so far only as they affect the part transferred.

Transfers subject to mortgages

50. In every transfer of a registered estate subject to mortgage, there shall be implied a covenant by the transferee with the transferor, to pay the interest secured by the mortgage at the rate and at the times and in the manner therein specified and to keep the transferor indemnified against the principal sum secured by the mortgage and from and against all liability in respect of any of the covenants therein contained or implied on the part of the transferor.

Transfers in exercise of power of sale

51.-(1) A *bona fide* purchaser for value of a registered estate from a lender selling in professed exercise of his power of sale shall not be bound, nor shall the Registrar when a transfer is presented for

registration be bound, to inquire whether default has occurred, or whether any notice has been duly served or otherwise into the propriety or regularity of any such sale, but the Registrar shall serve notice ‘of such transfer on the owner of the estate and shall suspend registration of such transfer for one month from the date of such notice, and at the expiration of such period the Registrar shall register the transfer as at the date of presentation, unless in the meanwhile the High Court shall otherwise order, and thereafter the transfer shall not be defeasible by reason that default had not occurred, or that any notice was not duly served or on account of any impropriety or irregularity in the sale.

(2) Every such transfer, when registered shall vest the mortgaged estate in the purchaser freed and discharged from all liability on account of such mortgage or of any other incumbrance registered or entered subsequent thereto, except a lease to which the lender has consented in writing, or to which the consent of the lender is not required.

Owner may transfer to himself

52. For the avoidance of doubt, it is hereby declared that any person may make a transfer to himself and another person or, together with any other person, to himself alone.

Division on transfers be vertical

53. No transfer of the freehold estate in, or of a right of occupancy in respect of which a certificate of occupancy has been issued over part of a parcel shall be registered unless the division thereof is made vertically.

(c) Special Provisions Relating to Leases

Certain leases not registrable

54.-(1) No lease shall be registered unless it is expressed to be for a term exceeding five years or contains an option whereby the tenant can require the landlord to grant him a further term or terms which, together with the original term, exceed five years.

(2) Where any registered estate is subject to a mortgage, no lease of the land by the owner of that estate shall be registered until the consent in writing of the lender is produced to the Registrar, unless the mortgage otherwise provides.

(3) No lease of land by a co-owner shall be registered unless the tenant is the owner of all the remaining shares in the estate.

Reversionary leases

55. A lease of registered land may be made for a term to begin on a future date, not being later than twenty one years from the date on which the lease is executed.

Implied covenants and powers

56.-(1) There shall be implied in every registered lease covenants by the tenant with the landlord, binding the tenant-

- (a) to pay the rent reserved by the lease at the times therein mentioned and all rates and taxes which may be payable in respect of the land leased during the continuance of the lease unless the same are or, shall be payable exclusively by the landlord under any law;
- (b) not to cut down, injure or destroy any living tree being upon the land leased and to keep and yield up the land leased, in the case of agricultural land, in good heart, and in the case of buildings, in good and substantial repair and condition; and
- (c) to permit the landlord or his agent at all convenient times and after reasonable notice to enter on the land leased and examine the state and condition thereof, and to repair or otherwise make good any defect or breach of covenant of which notice shall, if practicable, be given within three months after the giving of such notice.

(2) There shall be implied in every registered lease a covenant by the landlord with the tenant that the tenant, paying the rent reserved by the lease and observing and performing the covenants and conditions contained or implied in the lease and on the part of the tenant to be observed and performed, shall and may peaceably and quietly possess and enjoy the land leased during the term of the lease without any lawful interruption from or by the landlord or any person rightfully claiming from or under him.

(3) There shall be an implied provision in every registered lease that the landlord may re-enter upon and take possession of the land leased if, at any time, the rent or any part thereof is in arrear for one month, whether or not any legal or formal demand has been made for payment thereof, or in case of any breach or non observance of any of the covenants and conditions contained or implied in the lease and on the part of the tenant to be observed and performed, if such breach or non observance has continued for one month.

(d) Special Provisions Relating to Mortgages

Effect of
registered
mortgage
Act No.
24 of 1963
4th Sch.

57. A mortgage shall, when registered, have effect as a security and shall not operate as a transfer of the estate thereby mortgaged, but the lender shall have all the powers and remedies in case of default and be subject to all the obligations that would be conferred or implied in a transfer of the estate subject to redemption:

Provided that, in the case of a mortgage of a registered lease, the lender shall not be liable to the landlord for rent or in respect of the covenants and conditions contained or implied in the lease to any greater extent than he would have been had the mortgage been by way of sub-lease; and the court may grant the lender the like protection against the forfeiture of the

lease as it may grant to a sub-lessee.

Mortgages may
secure future
debts

58. For the avoidance of doubt, it is hereby declared that a mortgage of a registered estate may be made to secure the payment of an existing or a future or a contingent debt or obligation.

Mortgages by
companies and
cooperative
societies
Ord. No.
13 of 1960;
Acts Nos.
4 of 1963

59.-(1) Where a mortgage is created by a company registered in Tanzania or by a company incorporated outside Tanzania which has established a place of business within Tanzania, such mortgage shall not be registered under the provisions of this Act unless and until it is proved to the satisfaction of the Registrar that it has been registered in accordance with the provisions of the Companies Act.

s.9:
38 of 1964
s.46
Cap. 212
Cap. 211

(2) Where a mortgage is created by a co-operative society registered under the Co-operative Societies Act such mortgage shall not be registered under the provisions of this Act unless and until it is proved to the satisfaction of the Registrar that it has been registered in accordance with the provisions of the Co-operative Societies Act.

Priority

60.-(1) Two or more mortgages of the same estate shall rank according to the order in which they are registered and not according to the order in which they are created, save where the prior lender otherwise agrees in writing of where an obligation in a prior mortgage to make further advances creates a right to tack.

(2) The Registrar shall, on the application of a lender whose mortgage creates a right to tack further advances record such right in the land register, and no such right shall be exercisable to the prejudice of any subsequent lender whose mortgage was registered prior to the inscription of such right in the land register.

Consolidation

61. Where a lender has the right to consolidate

his mortgage with any other mortgage, the Registrar shall, on the application of the lender, record such right in the land register against such of the mortgages as are registered and no such right shall be exercisable to the prejudice of any person acquiring any estate or interest in registered land prior to the inscription of such right in the land register.

Implied covenants
by borrower

62. There shall be implied in every registered mortgage covenants by the borrower with the lender binding the borrower -

- (a) to pay the principal money therein mentioned on the day therein appointed and, so long as the principal money or any part thereof remains unpaid, to pay interest thereon or on so much thereof as for the time being remains unpaid at the rate and on the days and in manner therein specified;
- (b) to repair and keep in repair all buildings or other improvements upon the mortgaged land and to permit the lender or his agent, at all reasonable times until such mortgage is discharged and after reasonable notice to the borrower, to enter upon the mortgaged land and examine the state and condition of such buildings and improvements;
- (c) to insure and keep insured all buildings upon the mortgaged land against loss or damage by fire in the joint names of the borrower and the lender with insurers approved by the lender to the full value thereof;
- (d) not to lease the mortgaged land or any part thereof for any period longer than one year without the previous consent in writing of the lender; and
- (e) in the case of leasehold estate, to pay, perform and observe the rent, covenants and conditions by and in the registered lease reserved, contained and implied and on the

part of the tenant to be paid, performed and observed and to keep the lender indemnified against all proceedings, expenses and claims on account of the non-payment of the said rent or any part thereof or the breach or non-observance of the said covenants and conditions or any of them.

Deposit of mortgage money

63.-(1) Where a lender is under any disability or is absent from Tanzania or his whereabouts are unknown and there is no person authorised to discharge the mortgage at or after the date appointed for payment thereof, it shall be lawful for the Registrar to receive such mortgage money with all arrears of interest due thereon in trust for the lender or other person entitled thereto; and thereupon the interest upon such mortgage shall cease to run or accrue and the Registrar may cancel the memorial in the land register relating to the mortgage.

(2) The Registrar may, in his absolute discretion, invest any moneys paid to him under the provisions of subsection (1) in any trustee security and he shall account to the lender for any interest so earned.

(3) The Registrar may, in his absolute discretion, employ any broker or agent in connection with the investment of any funds under the provisions of this section and may pay fees or commission to such broker or agent and other expenses out of such funds or the income thereof.

Creation of liens by deposit Act No. 64 of 1963 s.2

64.-(1) Any person with whom a certificate of title has been deposited with the intention of creating a lien thereover may give to the Registrar notice in the prescribed form of such deposit and thereupon the Registrar shall enter the same in the land register as an incumbrance.

(2) Any person who has given notice of deposit under subsection (1) may, at any time, withdraw the

same by a notice in the prescribed form executed and attested in the manner required for deeds by sections 92 and 93.

(3) Where a memorial of a notice of deposit has been entered under subsection(1)-

(a) no transfer of the estate to which the certificate of title relates shall be registered until such notice has been withdrawn; and

(b) subject to the provisions of section 103, no other disposition of that estate shall be registered unless the consent in writing of the person who gave the notice is produced to the Registrar:

Provided that, a transfer of part of the land therein comprised free from such lien may be registered with the consent in writing of the person who gave the notice.

(e) Special Provisions Relating to Partitions

Partition subject to mortgage

65.-(1) Where any undivided share in a registered estate is subject to a mortgage, no partition of that estate shall be registered unless the consent in writing of the lender is produced to the Registrar.

(2) Upon the registration of a partition with the consent of a lender, the land appropriated to the borrower shall be deemed to be subject to the mortgage for all purposes as if it had originally been comprised therein and the land appropriated to his co-owners shall be released therefrom.

Parcels to be divided vertically

66. No partition shall be registered which entails the division of a parcel, unless such division is made vertically.

**PARTVII
TRANSMISSIONS**

(a) Transmissions on Death

Registration of
legal personal
representatives
Ord. No.
35 of 1961
s. 140
Cap. 352
Cap. 11

67. On the death of the owner of any estate or interest, his legal personal representative, on application to the Registrar in the prescribed form and on delivering to him an office copy of the probate of the will or letters of administration to the estate of the owner, or of his appointment under Part VIII of the Probate and Administration of Estates Act or the Fourth Schedule to the Magistrates' Courts Act shall be entitled to be registered as owner in the place of the deceased.

Dispositions
and assents by
legal personal
representative

68.-(1) No assent to the vesting of any devise of bequest of any registered estate or interest, or disposition by a legal personal representative, shall be registered unless such estate or interest is registered in the name of such legal personal representative.

(2) Every assent to the vesting of any devise or bequest of any registered estate or interest shall be in the prescribed form.

Registration of
survivor of
joint owners

69.-(1) Where one or two or more joint owners of an estate or interest dies, his name shall be deleted from the land register on the application of any interested person, accompanied by proof of death.

Cap. 108

(2) For the purpose of this section and section 70, the death of a person shall be proved by the production of a certified copy of the relevant entry in a register of deaths, issued under the provisions of the Births and Deaths Registration Act or, in the case of a person the registration of whose death was not compulsory under that Act, or of a person dying outside Tanzania, by such evidence as the Registrar may accept as sufficient.

Cancellation of
lease

70. Where any registered lease is expressed to be

determinable on death determinable on the death of the tenant, the memorial in the land register relating to such lease shall be cancelled on the application of any interested person accompanied by proof of the death of the tenant.

(b) Other Transmissions

Registrar to record changes by operation of law
Cap. 89 **71.** Subject to the provisions the Law of Limitation Act, where the Registrar is satisfied that any person has become entitled to any estate or interest in any registered land by the express provision of any written law, or by any order, declaration or certificate made, granted or issued under the provisions of any written law or by operation of law not herein otherwise provided for, he may, on the application of any interested person, supported by such evidence as he may require, record the same by registration or entry.

Titles acquired by adverse possession **72.-(1)** Any person who claims that he has acquired any estate in any registered land by adverse possession or by reason of any law of prescription may apply to the Registrar in the prescribed manner for registration of his estate or interest.

(2) Any such application shall be advertised by the Registrar at the expense of the applicant in the *Gazette* and in such one or more newspapers, if any, as the Registrar may decide.

(3) The Registrar shall give notice of the application to the owner of the estate thereby affected and may give notice to any other persons who may, in his opinion, be affected thereby.

(4) The Registrar shall not allow any application under the provisions of this section until after the expiration of six months from the date of publication of the advertisement in the *Gazette* relating thereto.

(5) The Registrar may, on being satisfied as to the title of the applicant, allow the application and register his

estate, but such estate shall be subject to any estate or interests which have not been extinguished by such adverse possession.

**PART VIII
ORDERS OF COURT**

Entry of
prohibitory
orders and
injunctions

73. The Registrar shall enter in the land register as an incumbrance any order or injunction issued by a court restraining any disposition or staying any registration, where an office copy of such order or injunction is served upon him by or on behalf of any interested person, and any memorial so entered shall, while subsisting, operate to prevent the registration of any disposition incompatible with such order or injunction, and any such memorial shall be cancelled by the Registrar if an office copy of an order annulling or rescinding such order or injunction is served upon him by or on behalf of any interested person.

Authorities and
direction

74. An order of a court authorising or directing any person to execute any deed or make any application or do any other thing under this Act shall not require registration or entry, but an office copy of the order shall be annexed to the deed, application or other document before the same is presented for registration or entry.

Bankruptcy

75.-(1) When a receiving order is made against the owner of any estate or interest, the official receiver or any interested person may serve on the Registrar an office copy of such order, and thereupon the Registrar shall enter the same in the land register as an incumbrance against the estate or interest of the debtor; and any memorial so entered shall, while subsisting, operate to prevent the registration of any disposition or transmission of that estate or interest other than the registration as owner of the estate or interest of the official receiver or any trustee appointed in the bankruptcy; and any such memorial may be cancelled by the Registrar on proof to

his satisfaction that the receiving order has been annulled or on the registration of the official receiver or any trustee appointed in the bankruptcy as owner of that estate or interest.

(2) When the owner of any estate or interest is adjudged bankrupt, the official receiver may, serve on the Registrar an office copy of the adjudication order and shall thereupon be entitled to be registered as owner of that estate or interest.

(3) On the appointment of a trustee (other than the official receiver) in the bankruptcy of the owner of any estate or interest, such trustee may serve on the Registrar an office copy of the certificate of his appointment and shall thereupon be entitled to be registered as owner of that estate or interest.

Winding up
Cap. 212

76. Where a company within the meaning of the Companies Act is being wound up by the High Court and the High Court makes an order vesting any registered estate or interest in the liquidator, the liquidator may serve on the Registrar an office copy of such order and shall thereupon be entitled to be registered by his official name as owner of that estate or interest.

Appointment of
receivers and
managers
generally

77. An order of a court appointing any person as a receiver or manager of the property of any owner which does not operate to vest the property of such owner shall not be registered or entered, but any such receiver or manager may lodge a caveat under the provisions of section 78.

**PART IX
CAVEATS AND INJUNCTIONS**

Caveats

78.-(1) Any person who claims an interest in any registered land, or any person who has presented a bankruptcy petition against the owner of any estate or interest, may present a caveat in the prescribed form.

(2) Every such caveat shall be supported by a statutory declaration stating the facts upon which the claim is based.

(3) Upon receipt of any such caveat, the Registrar shall enter the same in the land register as an incumbrance and shall notify the same to the owner of the estate or interest thereby affected.

(4) The High Court, on the application of the owner of the estate or interest affected, may summon the caveator to attend and show cause why such caveat should not be removed and thereupon the High Court may make such order, either *ex parte* or otherwise as it thinks fit.

(5) Any person who has presented a caveat may at any time withdraw the same by a notice in the prescribed form executed and attested in the manner required for deeds by sections 92 and 93.

(6) Where a deed is presented for registration which purports or appears to affect any registered estate or interest in respect of which a caveat is entered, the Registrar shall give notice thereof to the caveator and shall suspend registration of such deed for one month from the date of such notice, and at the expiration of such period the caveat shall lapse and the deed shall be registered as at the date of presentation unless in the meanwhile the application for registration has been withdrawn or the High Court otherwise directs.

(7) The interest protected by a caveat may not be made the subject of a second caveat so as to defeat the

provisions of subsection (6).

Power of Registrar to enter injunctions

79.-(1) It shall be lawful for the Registrar, for the prevention of any fraud or improper dealing or for any other sufficient cause, at any time, to enter an injunction in the land register as an incumbrance and any such injunction shall operate to prevent any disposition of the estate or interest thereby affected until such conditions as may be specified therein have been satisfied or the injunction has been withdrawn by the Registrar or the High Court otherwise directs.

(2) Notice of any such injunction shall be given to the owner of the estate or interest

(3) The High Court may, on the application of the owner of the estate or interest affected by such injunction or of any other interested person, summon the Registrar to attend and show cause why the injunction should not be removed and thereupon the High Court may make such order, either *ex parte* or otherwise, as it thinks fit.

**PART X
TRUSTS**

Trusts Ord. No. 2(1) Of 1958 s.4

80.-(1) A legal personal representative may be registered as the owner of an estate or interest with the addition after his name of the words "as executor of the will of..... deceased " or" as administrator of the will of..... deceased" as the case may be, and in any such case a *bona fide* purchaser for value from such legal personal representative shall not be required, nor shall the Registrar be required, to enquire into any provisions of the will if any, of the deceased or enquire whether the consent of court, if necessary, has been obtained, or otherwise into the propriety or regularity of such disposition and no such disposition shall be defeasible by reason of the fact that such disposition amounted to a

breach of trust.

(2) A trustee in bankruptcy may be registered as the owner of an estate or interest with the addition after his name of the words "as trustee of the property of..... bankrupt".

(3) Trustees for sale or the trustees of any settled land may be registered as the owners of an estate or interest with the addition after their names of the words "as trustees" and in any such case a *bona fide* purchaser for value from such trustees, not being fewer than two, shall not be required, nor shall the Registrar be required, to enquire into the terms of the trust or the appointment of the trustees or the right of the trustees to sell or as to the disposal of the proceeds of sale and no such disposition shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

(3A) Trustees of charities may be registered as the owners of any estate or interest with the addition after their names of the words "as trustees upon charitable trust" and in any such case the Registrar shall not register any disposition of such estate or interest, other than a transfer consequent upon an appointment of new trustees, unless there is produced to him an office copy of an order of the High Court authorising such disposition.

(4) An estate which has been validly dedicated or endowed as wakf, when registered, shall be registered in the name of the trustee or mutawalli, with the addition after his name of the words "as mutawalli" or in the name of the Wakf Commission, as the case may be.

Cap 4
s.8

(5) Save as provided for in subsections (1), (2), (3), (3A) and (4), no memorial shall be inscribed in the land register disclosing or giving notice of any trust, whether express, implied or constructive, except so far as any other law may otherwise expressly require.

(6) Nothing in subsection (1) or subsection (3) contained shall operate to relieve a legal personal representative or a trustee for sale or a trustee of settled land from any liability on account of any breach of trust.

Settled land

81.-(1) The tenant for life of settled land shall not be entitled to be registered as the owner of any estate.

(2) The trustees of a settlement which includes registered land shall, when so directed by the tenant for life, effect any disposition of such registered land which the tenant for life could lawfully have effected had such land not been registered.

**PART XI
MUTATIONS**

Combination of parcels
Act. No
24 of 1963
4th Sch.

82. The Registrar may, on the application in the prescribed form made with the consent of the Commissioner for Lands, of the owner of Government leases or of rights of occupancy over any contiguous parcels, combine such parcels by cancelling the folios of the land register relating thereto and preparing a new folio or new folios in respect of the parcel resulting from such combination:

Provided that, parcels may only be combined-

- (a) if each parcel is held for a Government lease or each is held on a right of occupancy;
- (b) if each parcel is subject in all respects to the same rights and obligations;
- (c) in the case of a tenancy in common, if each co-owner has the same share in each parcel; and
- (d) if, where each parcel, or the corresponding share in each parcel is subject to a mortgage, the consent in writing of the lender is produced to the Registrar.

Division of

83. The Registrar may, on the application in

parcels
Act. No
24 of 1963
4th Sch.

the prescribed form made with the consent of the Commissioner for Lands, of the owner of Government leases or of a right of occupancy over any parcel, divide such parcel into two or more parcels by cancelling the folio or folios of the land register relating thereto and preparing new folios in respect of the new parcels.

Provided that, where the Government lease or the right of occupancy, as the case may be, is subject to a mortgage the parcel shall not be divided unless the consent in writing of the lender is first produced to the Registrar:

And provided further that, no parcel shall be divided otherwise than vertically.

Combination or
division subject
lease

84. The Registrar may effect the combination of any parcels or the division of a parcel whether or not any such parcel is subject to a lease.

Reparcellations
Act No.
24 of 1964
4th Sch.

85.-(1) The Registrar may, on the, application in the prescribed form of the owners of the Government lease in, or rights of occupancy over, any contiguous parcels who are desirous of changing the layout of such parcels, and with the consent in writing of all other persons in whose names any estate or interest in such parcels is registered or entered and of any caveator and the Commissioner for Lands, cancel the folios of the land register relating to such parcels and prepare new folios in accordance with the revised layout:

Provided that, where in the opinion of the Registrar a proposed reparcellation involves substantial changes of ownership which should be effected by transfers without invoking the provisions of this section, he may, in his absolute discretion, refuse to effect such reparcellation or any part thereof.

(2) Upon any such reparcellation, the new parcels shall, notwithstanding the provisions of section 41, vest in

the persons in whose names they are registered, for the estates which those persons enjoyed in the corresponding former parcels, and with and subject to all rights and obligations which were subsisting in respect of the corresponding former parcels at the time of the reparation in all respects as though such rights and obligations had been created or had arisen over or for the benefit of such new parcels.

PART XII
MAPS, PLANS AND BOUNDARIES

Index map

86.-(1) The Registrar shall keep an index map showing the boundaries of all registered land and containing such other information as the Registrar shall determine.

(2) For the purposes of the index map, Tanzania shall be divided into areas to be known as “blocks” and every block shall be given a reference number; and the boundaries of blocks shall be determined by the Registrar, who shall have power from time to time to vary such boundaries or to combine or to divide blocks.

(3) The parcels in each block shall be numbered consecutively and for the purposes of this Act, the numbers of the block and the parcel shall together be a sufficient reference to any parcel.

Power of Registrar to rectify index map

87.-(1) The Registrar may, from time, to time, after giving an opportunity of being heard to all persons who may, in his opinion, be affected thereby, amend the index map upon such evidence as he may in his absolute discretion accept as sufficient.

(2) The Registrar may, from time to time, cause to be prepared a new edition of the index map or any part thereof and may omit there from any matter which he considers obsolete.

Plans to support applications, dispositions and mutations

88.-(1) No estate shall be registered under Part II or Part III of this Act and no parcel shall be divided on a disposition, transmission or mutation except in accordance with an approved plan:

Provided that, the Registrar may dispense temporarily with the production of an approved plan where he is satisfied that a plan which is not an approved plan or, in the case of a lease, the description in the deed, sufficiently identifies the land to enable it to be located by survey and that the production of an approved plan would entail unreasonable delay or expense.

(2) Where any estate is registered without the production of an approved plan, the Registrar shall, as soon as practicable, cause the land to be surveyed at the expense of the owner, unless it would be unreasonable so to do having regard to the nature and term of that estate, and the cost of any such survey shall be recorded in the land register and when so recorded shall, until paid, constitute a charge upon such estate.

Cap. 5

(3) Notwithstanding anything contained in the Government Proceedings Act, the cost of any such survey may be sued for and recovered by the Registrar.

Boundaries only general

89.-(1) Subject to the provisions of subsection (2), the description in the land register shall not, nor shall the index map or any plan filed in the land registry, be conclusive as to the boundaries or extent of any registered land but shall be deemed to indicate the general boundaries only.

(2) The Registrar may, at any time at the request of the owner of any estate and after giving all persons who may, in his opinion, be affected thereby an opportunity of being heard, accept an approved plan as defining the precise position of any boundary or part of a

boundary of the land therein comprised and thereupon that approved plan shall be deemed to define such boundary or part of a boundary accurately.

(3) Where the Registrar exercises the power conferred by subsection (2) he shall endorse on the index map a note to that effect any parcel.

Foreshore

90. No land below high water mark at ordinary spring tides of the sea or of a tidal river shall be deemed to be included in any parcel unless the contrary is expressly stated in the land register.

**PART XIII
EXECUTION OF DEEDS**

Execution by all parties required

91. No deed shall be registered unless executed by all persons who are parties thereto and attested in accordance with the provisions of this Act:

Provided that, a discharge of a mortgage shall not require execution by the borrower:

Provided further that, the Registrar may for good cause dispense with the signature of a transferee.

Manner of execution

92. A deed shall be deemed to have been executed -
(a) if signed and delivered by a natural person;
(b) if sealed with the common seal of a corporation and delivered;
(c) in the case of a corporation not required by law to have a common seal, if signed and delivered by such persons as may be authorised in that behalf by any law or by the statute of the corporation or, in the absence of any express provision, by two or more persons appointed for that purpose by the corporation in the general meeting.

Attestation

93.-(1) A deed shall be deemed to be attested if-

Ord. No.
26 of 1958
s. 5

- (a) when signed by a natural person either as a party thereto or on behalf of a corporation not having a common seal, it is attested by an authorised witness;
- (b) when sealed with the common seal of a corporation, it is attested by such persons as may be required by law or by the charter or articles of association of the corporation and also, where such seal is affixed outside Tanzania, by an authorised witness, and the person witnessing the signature of the deed or the affixing of the seal thereto signs an attestation clause in the prescribed form and adds his postal address and qualification to act as witness.

(2) In this section, the expression “authorised witness” means a person authorised in that behalf by rules made under this Act or expressly so authorised under the hand of the Minister.

Presumption of
due execution
under
corporation seal

94. Where a seal purporting to be the seal of a corporation has been affixed to a deed and attested by persons purporting to be those whose attestation is required by the provisions of section 93, the Registrar may accept the deed as duly executed and no disposition effected by such deed in favour of a *bona fide* purchaser for value shall be defeasible by reason of any irregularity in such sealing or attestation.

Employment of
agents

95. No application for first registration, a deed or withdrawal of any caveat, a notice of deposit, signed by any person as agent for any other person shall be accepted for registration or an entry unless the person signing the same was authorised in that behalf by a power of attorney executed and attested in the manner prescribed for deeds by sections 92 and 93.

Filing of power
of attorney

96.-(1) The Registrar shall, on the joint

application of the donor and the donee of a power of attorney which contains any power to make applications under this Act to effect dispositions of, or otherwise to act in relation to registered land, file such power of attorney, and every such application shall be in writing in the prescribed form and shall be executed and attested in the manner required for deeds by sections 92 and 93.

(2) The grantor of a power of attorney filed in accordance with the provisions of subsection (1) may, at any time, give the Registrar notice in the prescribed form that such power has been revoked, and thereupon the Registrar shall file such notice and endorse notice of such revocation upon the power.

(3) Any interested person may give the Registrar notice in writing that any power of attorney which has been filed under subsection (1) has been revoked by the death, bankruptcy or disability of the grantor or the death or disability of the grantee, accompanied by such evidence as the Registrar may require, and thereupon the Registrar shall file the same and endorse notice of such revocation upon the power.

(4) The provisions of subsections (2) and (3) shall not apply to a power expressed to be granted for value and expressed to be irrevocable.

(5) A power of attorney which has been filled under subsection (1) and of which no notice of revocation has been filed under subsection (2) or subsection (3) shall be deemed to be subsisting and no disposition effected in exercise of the powers therein contained shall be defeasible by reason that such power has been revoked unless the person for the time being claiming under such disposition or any person through whom he claims otherwise than as a purchaser for value had actual notice of such revocation:

Provided that, the Registrar may, in his absolute

discretion and notwithstanding the foregoing provisions, require evidence in any particular case that a power of attorney by virtue of which an application or disposition is expressed to be made or effected has not been revoked.

(6) The Registrar shall reject any document signed by an attorney purporting to act under a power of attorney of which notice of revocation has been filed under subsection (2) or subsection (3).

**PART XIV
SEARCHES AND COPIES**

Searches

97.-(1) Any person may inspect the land register, any filed documents, the index map or any plan filed in the land registry, during the hours of business.

(2) Any person may require an official search in respect of any parcel and shall be entitled to receive particulars of the subsisting memorials appearing in the land register relating thereto.

Copies

98.-(1) Any person shall, on application to the Registrar, be entitled to receive certified or uncertified copies of the memorials appearing in the land register in respect of any parcel, filed document, the index map or any plan filed in the land registry.

(2) Copies certified under the hand of the Registrar and bearing the seal of the land registry shall be admissible in evidence in all actions and matters, and between all persons and parties to the same extent as the originals would be admissible, and no advocate, trustee, legal personal representative or other person in a fiduciary position shall be answerable in respect of any loss occasioned by relying on any such certified copy.

(3) No process for compelling the production of

the land register, any filed document, the index map or any plan filed in the land registry shall issue from any court except with the leave of that court and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

**PART XV
RECTIFICATION OF THE LAND REGISTER AND
INDEMNITY**

Rectification or
land register

99.-(1) Subject to any express provisions of this Act, the land register may be rectified pursuant to an order of the High Court or by the Registrar subject to an appeal to the High Court, in any of the following cases-

- (a) where the High Court has decided that any person is entitled to any estate or interest in any registered land and as a consequence of such decision the High Court is of opinion that a rectification of the land register is required, and makes an order to that effect;
- (b) where the High Court, on the application of any person who is aggrieved by any memorial made in, or by the omission of any memorial from the land register, or by any default being made, or unnecessary delay taking place in the inscription of any memorial in the land register, makes an order for the rectification of the land register;
- (c) in any case and at any time with the consent of all persons interested;
- (d) where the High Court or the Registrar is satisfied that any memorial in the land register, has been obtained by fraud;
- (e) where any memorial has become wholly obsolete; and
- (f) in any other case, where by reason of any error or omission in the land register or by reason of any memorial made under a mistake, or for other sufficient cause it may be deemed just to

rectify the land register.

(2) The land register shall not be rectified so as to affect the title of an owner of an estate who is in possession –

- (a) unless such owner is a party or privy or has caused or substantially contributed to the fraud, mistake or omission in consequence of which such rectification is sought;
- (b) unless the immediate disposition to him was void, or the disposition to any person through whom he claims otherwise than for value was void; or
- (c) unless for any other reason, in any particular case, it is considered that it would be unjust not to rectify the register against him.

(3) Where the land register is rectified, the Registrar shall not erase or render illegible the original memorial and shall affix the date on which such rectification is made and initial the same.

Right to
indemnity in
certain cases
Act. No.
24 of 1963
4th Sch.

100.-(1) Any person suffering loss by reason of any rectification of the land register under this Act shall, subject to the provisions of this Act, be entitled to be indemnified by the Government.

(2) Where an error or omission has occurred in the land register but the land register is not rectified, any person suffering loss by reason of such error or omission shall, subject to the provisions of this Act, be entitled to be indemnified by the Government.

(3) Where any person suffers loss by reason of an error in a copy of, or extract from the land register or of or from a document or plan filed in the land registry, certified under the provisions of this Act, he shall be entitled to be indemnified by the Government.

(4) No indemnity shall be payable under this Act to any person who has himself caused or substantially contributed to the loss by his fraud or negligence, or

derives title (otherwise than under registered disposition for value) from a person who so caused or substantially contributed to the loss.

(5) Where an indemnity is paid in respect of the loss of an estate or interest in any registered land, the amount so paid shall not exceed-

- (a) where the land register is not rectified, the value of the estate or interest at the time when the error or omission which caused the loss was made; or
- (b) where the land register is rectified, the value of the estate or interest immediately before the time of rectification.

(6) The Registrar may, on the application of any interested party and subject to an appeal to the High Court, determine whether a right to indemnity has arisen under this section, and if so, award indemnity.

(7) In granting any indemnity, the Registrar may have regard to any costs and expenses properly incurred in relation to the matter, and may add the same to the amount of the indemnity which would otherwise be payable.

Cap.5

(8) Notwithstanding anything contained in the Government Proceedings Act, where indemnity is paid for a loss, the Registrar, on behalf of the Government, shall be entitled to recover by suit or otherwise amount so paid from any person who has caused or substantially contributed to the loss by his fraud or negligence, and enforce any express or implied covenant or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which indemnity has been paid.

(9) Notwithstanding the foregoing provisions of this section, no person shall be entitled to any indemnity from the Government for any loss occasioned by-

Cap.393

- (a) any alteration made in the land register in

accordance with the provisions of section 61 of the Freehold Titles (Conversion) and Government Leases Act.

- (b) the retention on the land register of a memorial relating to any estate or interest created before the commencement of that Act which is not amended to disclose the nature of any conversion or the extent of any diminution thereof in accordance with the provisions of that Act

PART XVI
APPEALS FROM DECISION OF THE REGISTRAR

Decisions to be
in writing

101. Where under this Act the Registrar makes any decision or order or does any act he shall, on the application of any person affected thereby, give that decision or order in writing and state his reasons therefor or, as the case may be, give his reasons in writing for that act.

Appeals to High
Court
Ord. No.
26 of 1958
s. 6

102.-(1) Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act:

Provided that-

- (a) no such appeal shall lie unless the appellant or his advocate shall, within one month from the date of such decision, order or act, have given to the Registrar and to the High Court notice of intention of appeals; and
- (b) in the case of a decision allowing or dismissing an application for first registration-

- (i) no such appeal shall lie except on a matter of law or on a matter of mixed law and fact; and

- (ii) no such appeal shall lie except

at the instance of the applicant or a person who has given notice of objection to such application under the provisions of section 13:

And provided further that, the High Court may, for good cause, admit an appeal notwithstanding that the periods of limitation prescribed in this subsection have elapsed.

(2) For the purposes of subparagraph (ii) of paragraph (b) of subsection (1), the Government shall be deemed to have given notice of objection under the provisions of section 13, whether or not any such objection was given by or on behalf of the Government.

(3) Every appeal shall be made in the form of a petition in writing presented to the High Court by the appellant or his advocate and every such petition shall be accompanied by a copy of the decision, order or act appealed against.

(4) A copy of every such petition shall be delivered to the Registrar of the proceedings before him, if any, and the names of any persons who ought, in his opinion, to be given an opportunity of being heard on the appeal.

(5) The High Court shall cause notice of the time and place at which such appeal will be heard to be given to the appellant or his advocate and to any other person who, in the opinion of the High Court, should be given an opportunity of being heard on the appeal.

(6) Any person who has been given notice in accordance with subsection (5) shall, on application to the High Court, be entitled to a copy of the decision, order or act appealed against, a copy of the record of proceedings, if any, and a copy of the petition.

(7) On the hearing of the appeal, the appellant and any person who has been given notice in accordance with subsection (5) may appear and be heard in person or by advocate.

(8) The provisions of the Civil Procedure Code

relating to the production of additional evidence on an appeal shall apply, *mutatis mutandis*, to an appeal from the Registrar to the High Court.

(9) The High Court may make such order on the appeal as the circumstances may require, including an order as to costs:

Provided that, the Registrar shall not be ordered to pay any costs unless, in the opinion of the High Court, the appeal was occasioned by his willful misconduct.

**PART XVII
MISCELLANEOUS PROVISIONS**

Power for Registrar to record acts in exercise of powers
Act No. 64 of 1965
s.3

103.-(1) Where the Registrar is satisfied that any estate or interest has been varied or determined by the lawful power or by effluxion of time, he may, on the application of any interested person, supported by such evidence as he may require, or of his own motion record the same by registration or entry.

(2) Notwithstanding the provisions of subsection (2) of section 41, for the purposes of this section, the lawful exercise of a power shall not be deemed ineffectual to vary or determine any estate or interest solely by reason of its not having been previously registered.

Power of Registrar to state case

104. Whenever any question arises with regard to the performance of any duty or the exercise of any of the functions by this Act conferred or imposed on him, the Registrar may state a case for the opinion of the High Court; and thereupon the High Court shall give its opinion thereon, which shall be binding upon the Registrar.

Power of Registrar to require attendance of witnesses

105. Where any question arises as to whether any registration or entry should or should not be made, or whether any memorial inscribed in the land register should or should not be corrected or cancelled or where by this Act or any rule made thereunder the Registrar is

expressly or impliedly authorised or required to inquire into, investigate, give any decision on or exercise any discretion as to any matter, he may order any person-

- (a) to attend before him at such time and place as he may appoint and be examined on oath, which he is hereby authorised to administer; and
- (b) to produce to and allow him to inspect and take copies of all material documents in the possession, power or control of such person.

Power of Registrar to take statutory declarations

106.-(1) The Registrar may take any statutory declaration for the purposes of this Act.

(2) Every statutory declaration made for the purposes of this Act shall be exempt from stamp duty.

Power of Registrar to make order as to costs

107. The Registrar shall have power to order that the costs, charges and expenses incurred by him or by any other person in connection with any investigation, hearing or inquiry held by him for the purposes of this Act shall be borne and paid by such person and in such proportions as he may think fit, and any such order shall be deemed to be a rule of court.

Power to register without prior payment of fees

108.-(1) The Registrar may, in his absolute discretion, register any under the provisions of Part II notwithstanding that the prescribed fee or any part thereof may not have been paid any such fee or the balance of any such fee, remaining unpaid, whether or not formally demanded, shall be recorded in the land register, and when so recorded shall, until paid, constitute a charge upon such estate.

(2) The Registrar may refuse to register a disposition of any estate which is subject to a charge for unpaid fees until such fees are paid.

(3) Notwithstanding anything contained in the

Cap. 5 Government Proceedings Act, any unpaid fees may be sued for and recovered by the Registrar.

Power to destroy obsolete documents **109.** The Registrar may destroy any documents or plans in his possession or custody where in his opinion they have become obsolete or have ceased to have any effect.

Service of notice **110.**-(1) A notice under this Act shall be deemed to have been served on or given to any person-
(a) if served on him personally;
(b) if left for him at his last known address; or
(c) if sent by registered post addressed to him at his last known address.
(2) No person shall be entitled as of right to any notice which the Registrar is required to give under the provisions of this Act unless he has furnished to the Registrar a postal address for service in Tanzania

Estate duty **111.**-(1) Where in any case the Registrar is of the opinion that any estate is or may be subject to a charge for estate duty under the provisions of the Probate and Administration of Estates Act, he may enter a memorial of the same as an incumbrance in the land register:

Cap. 352 Provided that, the Registrar shall not be required to satisfy himself as to the payment of estate duty in respect of any estate administered by the Administrator-General.

(2) The Registrar may cancel any such memorial on production of a certificate from the Estate Duty Commissioners that all duty charged on the estate has been paid or that no duty is payable.

(3) The entry of a memorial under subsection (1) shall not operate to prevent the registration of any disposition.

Provisions of Registration of **112.** The registration of a document under the

Documents Act
excluded
Cap. 117

provisions of the Registration of Documents Act shall not affect, with notice thereof, any person acquiring any estate or interest in any registered land.

Omitted

113. [Amendments incorporated in relevant Ordinances.]

Rules
G.N. No.
478 of 1962

114.-(1) The High Court may make rules of court for regulating proceedings before it and for applications and appeals thereto, under the provisions of this Act and for the fees to be paid in respect thereof.

(2) Subject to the provisions of subsection (1), the Minister may make rules prescribing anything which may be prescribed under this Act and for the better carrying into effect of the provisions of this Act and, without prejudice to the generality of the foregoing, such rules may provide in the land registry, the hours in which the land registry is to be open for business and the forms to be used and the fees to be paid in respect of any matter under this Act required, permitted or entitled to be done.

Repeal of laws
R.L.Cap. 116
Ord. No. 33
Of 1947-1949

115. [Repeals the Land Registry Ordinance and the Land Registry (Amendment) Ordinance, 1947-1949, with transitional and consequential provisions.]

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 310

**THE LAW REFORM (FATAL ACCIDENTS
AND MISCELLANEOUS PROVISIONS) ACT**

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Chapter 310, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

CHAPTER 310

**THE LAW REFORM (FATAL ACCIDENTS
AND MISCELLANEOUS PROVISIONS) ACT**

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 310

**THE LAW REFORM (FATAL ACCIDENTS AND
MISCELLANEOUS PROVISIONS) ACT**

**An Act to effect miscellaneous reforms in the law relating to civil actions
and for related matters.**

[13th May, 1955]

R.L.Cap.360
Ord. No.
6 of 1955
Acts Nos.
55 of 1968
5 of 1971
10 of 1971
27 of 1991

**PART I
PRELIMINARY PROVISIONS**

Short title and
application

1.-(1) This Act may be cited as the Law Reform
(Fatal Accidents and Miscellaneous Provisions) Act.

Cap.5

(2) This Act shall bind the Republic, but as regards
the Republic's liability in tort shall not bind the Republic
further than the Republic is made liable in tort by the
Government Proceedings Act.

Interpretation
Act No.
5 of 1971
Sch.

2. In this Act, unless the context otherwise requires-
“damage” includes loss of life or personal injury;
“dependant” means the wife or, where the marriage was a
polygamous marriage, each of the wives, husband,
father, mother, grandfather, grandmother, stepfather,
stepmother, son, daughter, grandson, granddaughter,
stepson, stepdaughter, brother, sister, half-brother,

half-sister, and includes an infant child whom the deceased had accepted as a member of his family and every other person who is, on the death of the deceased, entitled to succeed to his property (otherwise than under a will) in accordance with the law of succession applicable to the estate of the deceased; and a person shall be deemed to be the father or mother or son or daughter of the deceased notwithstanding that he or she was related to him illegitimately or in consequence of adoption according to law;

“personal injury” includes any disease and any impairment of a person’s physical or mental condition and the expression “injured” shall be construed accordingly;

“wrongful act” means any negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort.

**PART II
FATAL ACCIDENTS**

Action
maintainable
when death
caused by
wrongful act

3. If the death of any person is caused by the wrongful act of any person and the wrongful act is such as would, if death had not ensued, have entitled the person injured thereby to maintain an action recover damages in respect thereof the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as would amount in law to a criminal offence.

Action to be
for benefit of
dependants
Act No.
10 of 1971
2nd sch.

4.-(1) Every action brought under the provisions of this Part shall be for the benefit of the dependants of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the dependants (if more than one) of the person deceased.

(2) In every such action the court may give such damages as it may think proportionate to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the aforesaid parties in such shares as the court shall find and direct:

Provided that, not more than one action shall lie for and in respect of the same subject matter of complaint.

Payment into court

5. Notwithstanding the provisions of section 4, it shall be sufficient, when the defendant pays money into court, that he pays it as compensation in one sum to all persons entitled under section 4 to damages for his wrongful act, without specifying the shares into which it is to be divided by the court; and if the said sum is not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the court shall think the same sufficient, the defendant shall be entitled to judgment on that issue.

Plaintiff to deliver particulars

6. In every action brought under the provisions of this Part the plaintiff shall deliver to the defendant or his advocate, together with the plaint, full particulars of the person or persons for whom and on whose behalf such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

Exclusion of payment by insurers in assessment of damages

7. The court in assessing damages in any action brought under the provisions of this Part shall not take into account any sum paid or payable on the death of the deceased under any contract of insurance or assurance.

Damages may be awarded in respect of funeral expenses

8. Damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

PART III
SURVIVAL OF CAUSES OF ACTION

Effect of
death on
certain causes
of action

9.-(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate:

Provided that, this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person-

- (a) shall not include any exemplary damages;
- (b) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and
- (c) where the death of that person has been caused by the wrongful act which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless either-

- (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
- (b) proceedings are taken in respect thereof not later than six months after his executor or administrator took out representation.

(4) Where damage has been suffered by reason of any wrongful act in respect of which a cause of action would have subsisted against any person if that person had not died

before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that wrongful act as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Part for the benefit of the estate of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by Part II and so much of this Part as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under Part II as it applied in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in relation to which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

**PART IV
JOINT TORTFEASORS**

Proceedings
against, and
contribution
between, joint
and several
tortfeasors

10.-(1) Where damage is suffered by any person as a result of a tort (whether a crime or not)-

- (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;
- (b) if more than one action is brought in respect of that damage by and on behalf of the person by whom it was suffered, or for the benefit of the estate, or of a dependant of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) the sums recoverable under the judgment given in

those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;

(c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would, if sued, have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) The reference in this section to "the judgment first given" shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

**PART V
CONTRIBUTORY NEGLIGENCE**

Appointment
of liability in
case of
contributory
negligence

11.-(1) Where any person suffers damage as the result partly of his own wrongful act and partly of the wrongful act of any other person, a claim in respect of that damage shall not be defeated by reason of the wrongful act of the person suffering the damage, but the damages recoverable in respect

thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that –

- (a) this subsection shall not operate to defeat any defence arising under a contract;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of subsection (1) subject to such reduction as is therein mentioned, the court shall find out and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) The provisions of Part IV shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own wrongful act and partly of the wrongful act of any other person, and accordingly if an action were brought for the benefit of the estate under Part III the damages recoverable would be reduced under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under Part II shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person or his executor or administrator by reason of any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or executor or administrator by virtue of the said subsection.

(6) For the purposes of this section, “wrongful act” includes any act or omission which would, apart from this section, give rise to the defence of contributory negligence.

Provisions as
to workers
and
employers
Cap.263

12.-(1) Where, within the time limited for the taking of proceedings under the Workers' Compensation Act (hereinafter in this section referred to as the Act), an action is brought to recover damages independently of the Act in respect of an injury or disease giving rise to a claim for compensation under the Act, and it is determined in that action that-

(a) damages are recoverable independently of the Act subject to such reduction as is mentioned in subsection (1) of section 11 of this Act; and

(b) the employer would have been liable to pay compensation under the Act,

subsection (2) of section 25 of the Act (which enables the court, on the dismissal of an action to recover damages independently of the Act, to assess and award compensation under the Act) shall apply in all respects as if the action had been dismissed and, if the claimant chooses to have compensation assessed and awarded in accordance with the said subsection (2), no damages shall be recoverable in the said action.

(2) Where a worker or his executor or administrator or dependant has recovered compensation under the Act, in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 11 of this Act from some person other than the employer (hereinafter referred to as "the third party"), any right conferred by section 24 of the Act, on the person by whom the compensation was paid, or on any person called on to pay an indemnity under section 23 of the Act, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the worker had not been at fault.

(3) For the purposes of this section, "employer" and "worker" have the same meaning as in the Act.

PART VI
ABOLITION OF THE DOCTRINE OF COMMON EMPLOYMENT
AND MISCELLANEOUS PROVISIONS

Common
employment

13.-(1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the wrongful act of a person employed by him, that that person was, at the time the injuries were caused, in common employment with the person injured.

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act) shall be void insofar as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the wrongful act of persons in common employment with him.

Criminal
liability
unaffected

14. Nothing in this Act shall affect any criminal proceedings against any person in respect of any wrongful act.

Amendment

15. [Amends R. L. Cap.2.]

Disapplication
of United
Kingdom Act
and savings
27 and 28
Vict., c.958
Edw.7,c.7

16. For the avoidance of doubt it is hereby declared that the Fatal Accidents Acts, 1846 to 1908, of the United Kingdom, shall no longer apply to Tanzania:

Provided that, any right or liability accrued or incurred thereunder shall be deemed to have accrued or been incurred under Part II of this Act as if this Act had been in force on the date when such right or liability so accrued or was incurred and any remedy or legal process in respect thereof may be instituted, continued or enforced accordingly.

PART VII
MANDAMUS, PROHIBITION AND CERTIORARI

Orders of
mandamus,
prohibition
and *certiorari*
substituted for
writs
Act No.
55 of 1988

17.-(1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of *mandamus*, prohibition or *certiorari*.

(2) In any case where the High Court would but for subsection (1) have had jurisdiction to order the issue of a writ of *mandamus* requiring any act to be done or a writ of prohibition prohibiting any proceedings or matter, or a writ of *certiorari* removing any proceedings or matter into the High Court for any purpose, the Court may make an order requiring the act to be done or prohibiting or removing the proceedings or matter, as the case may be.

(3) No return shall be made to any such order and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (5).

(4) In any written law, references to any writ of *mandamus*, prohibition or *certiorari* shall be construed as references to the corresponding order and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

(5) Any person aggrieved by an order made under this section may appeal therefrom to the Court of Appeal.

Attorney-
General to be
summoned as
party
Act No.
27 of 1991
Sch.

18.-(1) Where leave for application for an order of *mandamus*, prohibition or *certiorari* is sought in any civil matter against the Government, the court shall order that the Attorney-General be summoned to appear as a party to those proceedings; save that if the Attorney-General does not appear before the court on the date specified in the summons, the court may direct that the application be heard *ex parte*.

(2) In any proceedings involving the interpretation of the Constitution with regard to the basic freedoms, rights and duties specified in Part III of Chapter I of the Constitution, no hearing shall be commenced or continued unless the Attorney-General or his representative designated by him for

Cap.2

that purpose is summoned to appear as a party to those proceedings; save that if the Attorney- General or his designated representative does not appear before the Court on the date specified in the summons, the court may direct that the hearing be commenced or continued, as the case may be, *ex parte*.

(3) For the purposes of this section, the term “Government” includes a public officer and any office in the service of the United Republic established by or under any written law.

[s.17A]

Rules of
Court

19.-(1) The Chief Justice may make rules of Court prescribing the procedure and the fees payable or documents to be filed or issued in cases where an order referred to in subsection (2) of section 17 is sought.

(2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe that applications for an order under section 17 shall, in specified proceedings, be made within six months or such shorter period as may be prescribed after the act or omission to which the application for leave relates.

(3) In the case of an application for an order to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed under any Act, and where the proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the Court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

[s. 18]

**PART VIII
APPLICATION OF ACT**

Omitted

20. [Reproduced as s.1(2).]

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 11

THE MAGISTRATES' COURTS ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Magistrates' Courts Act, Chapter 11, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

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CHAPTER 11
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THE MAGISTRATES' COURTS ACT
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[PRINCIPAL LEGISLATION]
ARRANGEMENT OF SECTIONS

Section

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—————
SCHEDULES
—————

An Act to provide for the jurisdiction, powers and functions of magistrates' courts and for other related matters.

[1st JULY, 1984]

[G.N. No.112 of 1984]

Acts Nos.
2 of 1984
13 of 1986
10 of 1989
4 of 1991
27 of 1991
3 of 1992
2 of 1996
13 of 1996
17 of 1996
2 of 2002
25 of 2002
4 of 2004
4 of 2005
1 of 2013
3 of 2016
8 of 2018

**PART I
PRELIMINARY PROVISIONS**

Short title

- 1.** This Act may be cited as the Magistrates' Courts Act.

Interpretation
Act. No.
4 of 2004
Sch.

2. In this Act, unless the context otherwise requires –

“appropriate judicial authority” means the Chief Justice and any person appointed by the Chief Justice under section 15 to be, or to perform the functions of, the appropriate judicial authority for the relevant purpose;

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

“commercial case” means a civil case involving a matter considered to be of commercial significance including but not limited to-

- (i) the formation of a business or commercial organizations;
- (ii) the governance of a business or commercial organization;
- (iii) the contractual relationship of business or commercial organization with other bodies or persons outside it;
- (iv) the liability of a commercial or business organization or its official arising out of its commercial or business activities;
- (v) the liabilities of a commercial or business person arising out of that person’s commercial or business activities;
- (vi) the restricting or payment of commercial debts by or to business or commercial organization or person;
- (vii) the winding up or bankruptcy of a commercial or business organization or person;
- (viii) the enforcement of commercial arbitration award;

(ix) the enforcement of awards of a regional court or tribunal of competent jurisdiction made in accordance with a Treaty or Mutual Assistance arrangement to which the United Republic is a signatory and which forms part of the law of the United Republic;

(x) admiralty proceedings; and

(xi) arbitration proceedings;

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

“district court” means a court established under section 4;

“district magistrate” includes a resident magistrate;

“honorary magistrate” means any person appointed under section 16 to be, or to perform the functions of, a magistrate;

“local government authority” means a city, municipal, town or district council;

“magistrate” means a primary court magistrate, a district magistrate or a resident magistrate and also includes a civil magistrate and an honorary magistrate;

“Minister” means the Minister for the time being responsible for legal affairs;

“order” includes a writ, warrant, summons or other process, and a decree revisional or confirmatory order and any other formal expression of the decision of a court;

“primary court” means a court established under section 3;

“Primary Courts Criminal Procedure Code” means the Code set out in the Third Schedule to this Act, as amended from time to time;

“proceeding” includes any application, reference, cause, matter, suit, trial, appeal or revision, whether or not between parties;

“registrar” means the Registrar of the Court of Appeal Primary or of the High Court and includes any deputy or district registrar;

“resident magistrate-in-charge” means any resident magistrate appointed by the Chief Justice for each region under section 15, to be, or to perform, supervisory, administrative and judicial functions of a resident magistrate-in-charge.

PART II
ESTABLISHMENT, CONSTITUTION AND SET UP OF
MAGISTRATES' COURTS

Primary courts

3.-(1) There are hereby established in every district primary courts which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the respective districts in which they are established.

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

District courts

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

(2) Subject to subsection (3), the designation of a district court shall be the district court of the district in which it is established.

(3) The Chief Justice may, by order published in the *Gazette*, vary the designation of any district court.

(4) The variation of the designation of a district court or of the area within which such court may exercise jurisdiction, shall not affect the jurisdiction of

such court to continue the hearing of, or to determine, any proceeding commenced before it prior to such variation.

(5) The Chief Justice may, if in his opinion it is in the public interest so to do, by published order in the *Gazette*, confer upon a district court established for any district, jurisdiction over any other contiguous district or districts and where such order is made, such district court shall have concurrent jurisdiction in relation to the district for which it is established and also in relation to such other district or districts as may be specified in the order.

Courts of resident
magistrate

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

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

(3) The Chief Justice may, by order published in the *Gazette*, vary the designation of a court of a resident magistrate or of the area within which that court may exercise jurisdiction.

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

Constitution of
magistrates' courts
Act No.
1 of 2013
s. 8

6.-(1) Subject to the provisions of section 7, a magistrates' court shall be duly constituted when held by a single magistrate being-

(a) in the case of a primary court, a primary court magistrate or a resident magistrate;

- (b) in the case of a district court, a district magistrate resident or a magistrate;
- (c) in the case of a court of a resident magistrate, a resident magistrate.

(2) Notwithstanding the provisions of subsection (1), where jurisdiction is conferred on a district court only when held by a magistrate of a particular description, such court shall not be duly constituted for the exercise of such jurisdiction unless held by a magistrate of that description.

(3) Where two or more magistrates of the same description are assigned to a particular magistrates' court each may hold sittings of the court concurrently with the other or others.

(4) Notwithstanding the foregoing provisions of this section, the Chief Justice may direct two or more magistrates of the same or other appropriate description to sit for the hearing and determination of any proceeding or any category thereof, and in any such case the court shall not be duly constituted for such proceeding nor any proceeding of such category, unless it is composed of the number and description of magistrates so directed.

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

Assessors

7.-(1) In every proceeding in the primary court, including a finding, the court shall sit with not less than two assessors.

(2) All matters in the primary court including a finding in any issue, the question of adjourning the hearing, an application for bail, a question of guilt or innocence of any accused person, the determination of

sentence, the assessment of any monetary award and all questions and issues whatsoever shall, in the event of difference between a magistrate and the assessors or any of them, be decided by the votes of the majority of the magistrates and assessors present and, in the event of an equality of votes the magistrate shall have the casting vote in addition to his deliberative vote.

(3) In any proceeding in any other magistrates' court in which any rule of customary or Islamic law is in issue or relevant the court may, and when directed by an appropriate judicial authority shall, sit with an assessor or assessors; and every such assessor shall be required, before judgment, to give his opinion as to all questions relating to customary or Islamic law in issue in, or relevant to, the proceeding; save that in determining the proceeding the court shall not be bound to conform with the opinion of the assessors.

Liability to serve as assessor in courts, exemptions, etc

8.-(1) Subject to subsection (2) all persons between the age of thirty and sixty years shall be liable to serve as assessors in courts.

(2) The following persons are hereby exempted from liability to serve as assessors, namely-

- (a) Ministers and members of the National Assembly;
- (b) magistrates and judges;
- (c) persons actively discharging the duties of priests or ministers of their respective religion;
- (d) physicians, surgeons, dentists and apothecaries in actual practice;
- (e) legal practitioners in actual practice;
- (f) officers and men in the Armed Forces of the United Republic on full pay;
- (g) persons disabled by mental infirmity;
- (h) officers of the Police and Prison Services;

and

- (i) such other officers of the Government and such other persons as may be exempted by the Chief Justice from liability to serve.

Regulations for purposes of assessors in courts

9. The Minister may make regulations for the better carrying out of the purposes of the provisions of section 7, prescribing-

- (a) the constitution and composition of panels of assessors;
- (b) forms for the purposes of summoning assessors
- (c) the procedure for the appointment of members of panels of assessors;
- (d) the remuneration of assessors;
- (e) conditions and other matters in respect of the service of assessors.

Places and times of sitting and distribution of business

10.-(1) A magistrates' court may be held at any place within its local limits of jurisdiction.

(2) Notwithstanding the provisions of subsection (1) a magistrates' court shall not be held at a place that is not regularly or customarily used for such a purpose unless public notice has previously been given of the intention to use the same for such a purpose, and the Chief Justice may, by order published in the *Gazette*, authorise a district court to sit outside the district for which it is established when exercising its appellate, confirmatory or revisional jurisdiction.

(3) Subject to the other provisions of this section, a magistrates' court shall sit at such times and places as may be necessary for the convenient and speedy dispatch of the business of the court and the distribution of business as between magistrates assigned to a court shall be arranged as may be convenient.

(4) The resident magistrate-in-charge or the appropriate judicial authority may give general or specific directions relating to any of the matters referred to in subsection (3).

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

Registers and returns

11.-(1) Subject to subsection (2) each magistrates' court shall keep such register or registers of all the proceedings entered, heard and determined in the court as may be prescribed.

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

(3) Each magistrates' court shall-

- (a) with respect to all civil proceedings, submit to the Registrar of the High Court annual returns of all proceedings; and
- (b) with respect to all criminal proceedings submit to the Registrar of the High Court annual returns of all proceedings specifying-
 - (i) the number of persons prosecuted for the year of returns;
 - (ii) the nature of the charges;
 - (iii) the results of the proceedings taken therein and any other particulars relating to the state of crime in the area or areas of jurisdiction of the court.

Seals and stamps

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

Language of courts

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

(2) The language of courts of a resident magistrate and of district courts shall be either English or Kiswahili or such other language as the magistrate holding such court may direct; save that in the exercise of appellate, revisional or confirmatory jurisdiction by a district court (in which case the record and judgment may be in English or Kiswahili), the record and judgment of the court shall be in English.

Magistrates to sit in open court

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

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

Appointment of resident magistrates-in-charge and appropriate judicial authorities

15.-(1) The Chief Justice shall appoint for each region a resident magistrate-in-charge to perform the supervisory, administrative and judicial functions of a resident magistrate-in-charge in the region.

(2) The Chief Justice may, generally or in respect of specified provisions, courts or areas only, appoint any judge, registrar or magistrate to be, or to perform the functions of an appropriate judicial authority.

Appointment of
honorary
magistrates
Act No.
13 of 1986
Sch.

16.-(1) Subject to subsection (2), the Minister may, if in his opinion it is in the public interest so to do, and after consultation with the Chief Justice, appoint any suitable person as honorary magistrate who may from time to time be called upon to try specific cases or perform any judicial function.

(2) Unless circumstances require otherwise, an honorary magistrate shall be appointed from amongst persons who have had experience of, and have shown capacity in, the practice of any branch of the legal profession.

(3) The Minister shall, by order published in the *Gazette*, confer upon such honorary magistrate the jurisdiction to enforce any law or perform any judicial function.

(4) A person exercising judicial functions by reason of his appointment as an honorary magistrate shall be paid such remuneration, allowances or other payments for expenses and subsistence as the Minister may, by notice published in the *Gazette* determine.

Establishment of
special traffic courts

17. The Minister may, if in his opinion it is in the public interest so to do, after consultation with the Chief Justice, establish a special traffic court in such places as he may deem necessary, for the hearing and determination of traffic cases.

PART III
JURISDICTION AND POWERS OF, AND APPEALS, ETC.,
FROM PRIMARY COURTS

(a) Jurisdiction and Powers

Jurisdiction of
primary courts Acts
Nos.
3 of 1992
2 of 2002

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

- (a) in all proceedings of a civil nature-
- (i) where the law applicable is

Sch. Para 7
4 of 2005
s.33
1 of 2013
s. 9
3 of 2016
s. 20

customary law or Islamic law:

Provided that no primary court shall have jurisdiction in any proceedings of a civil nature relating to land;

- (ii) for the recovery of civil debts, rent or interests due to the Republic, any district, city, municipal or town council or township authority under any judgment, written law (unless jurisdiction therein is expressly conferred on a court or courts other than a primary court), right of occupancy, lease, sublease or contract, if the value of the subject matter of the suit does not exceed fifty million shillings, and in any proceedings by way of counter-claim and set-off therein of the same nature and not exceeding such value;
 - (iii) for the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value; and
- (b) in all matrimonial proceedings in the manner prescribed under the Law of Marriage Act.
 - (c) in all proceedings in respect of which jurisdiction is conferred on a primary court by the First Schedule to this Act;
 - (d) in all proceedings in respect of which jurisdiction is conferred on a primary court by any other law; and
 - (e) in all proceedings in which the Attorney General's right of audience is excluded.

Cap. 29

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

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

Powers, practice
and procedure
Act No.
3 of 2016
s. 21

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

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

(2) The Chief Justice may upon consultation with the Minister, make regulations prescribing the rules of evidence applicable in primary courts and subject to any regulations, a primary court may accept such evidence as is pertinent and such proof as appears to be worthy of belief, according to the rule thereof and notwithstanding any other law relating to evidence or proof.

(3) In addition to any other powers and provisions in that behalf and subject to subsection (4), a primary court shall have power, subject to rules of court-

- (a) to issue a summons for the attendance of any party to any proceeding in the court;
- (b) to issue a summons to any person to attend before it for the purposes of giving evidence or of producing any documents or thing relevant to any proceeding in the court, to issue a warrant for the arrest of any such person and his production before the court, to issue a commission for the examination of witnesses and to take evidence on commission;
- (c) where it is of the opinion that the justice of any case so requires, to require any person present at the court whether a party or summoned as a witness or not, to give evidence; and
- (d) if it is shown to the satisfaction of the court that any property which is in dispute in any case is in danger of being destroyed, hidden, wasted, damaged, alienated or otherwise injuriously dealt with by any person, the court may, pending final determination of the case, issue an injunction to restrain any such person from destroying, hiding, wasting, damaging, alienating or otherwise

injuriously dealing with any such property, and may, if it deems fit, take the property into its own custody, and, if it is of a perishable character, sell or dispose of the same and retain the proceeds in the same manner as if they were the original property.

(4) Where, in any proceeding of a criminal nature, the exercise of any of the powers specified in subsection (3) is subject, in accordance with the Primary Courts Criminal Procedure Code, to any condition, that power may be exercised only subject to that condition being fulfilled; and nothing in paragraph (c) of that subsection shall be construed as empowering a primary court to require any person accused in any criminal proceedings to give evidence therein against his will.

Cap. 16

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

(6) The Minister may, after consultation with the Chief Justice, by order published in the *Gazette*, amend the provisions of the Third, Fourth and the Fifth Schedules to this Act.

(b) *Appellate and Revisional Jurisdiction of District Courts*

Appeals from
primary courts

20.-(1) Save as hereinafter provided-

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

district for which the primary court is established.

(2) No appeal shall be allowed-

- (a) in any case of an accused person convicted on his own plea of guilty, except against sentence or an order for the payment of compensation;
- (b) in any case in which a primary court has passed a sentence of a fine not exceeding one hundred shillings only or made an order for the payment of compensation not exceeding one hundred shillings only, save with the leave of the district court; or
- (c) in any case where a person is convicted of an offence set out in the Schedule to the Minimum Sentences Act (being an offence within the jurisdiction of primary courts), against any minimum sentence ascribed by section 4 of that Act, unless the accused is a first offender within the meaning prescribed to that expression in that Act and the value of the relevant property does not exceed one hundred shillings or unless such sentence includes an order for the imposition of corporal punishment and the appellant is a male under the age of sixteen years or over the age of forty five years or is a female.

Cap.90

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

(4) Notwithstanding the provisions of subsection (3)-

- (a) the district court may extend the time for filing an appeal either before or after such period has expired; and
- (b) if an application is made to the district court

within the said period of thirty days or any extension thereof granted by the district court, the district court may permit an appellant to state the grounds for his appeal orally and shall record them and hear the appeal accordingly.

(5) The Minister may make regulation prescribing the procedure for appeals from primary courts by a complainant other than the Director of Public Prosecutions.

Power of district courts

21.-(1) In the exercise of its appellate jurisdiction, a district court shall have power-

- (a) to direct the primary court to take additional evidence and to certify the same to the district court or, for reasons to be recorded in writing, to hear additional evidence itself;
- (b) whether or not additional evidence is heard or taken, to confirm reverse, amend or vary in any manner the decision or order appealed against (including power to substitute a conviction or a conviction and sentence for an acquittal), so however that the decision or order as altered shall not be in excess of the jurisdiction of the primary court and no conviction or conviction and sentence shall be substituted for an acquittal, and no sentence shall be enhanced, unless the accused or convicted person, as the case may be, has been given an opportunity of being heard;
- (c) to quash any proceeding (including proceedings which terminated in an acquittal) and, where it is considered desirable, to order the case to be heard de novo either before the court of first instance

or some other primary court, or any district court, having jurisdiction; and

- (d) the provisions of paragraph (d) of subsection (1), and subsection (2) of section 49 shall be applicable to such rehearing as if the case had been transferred.

(2) Where an order that any proceedings be quashed and the case be reheard is made as aforesaid, no plea of *res judicata* or *autrefois acquit* or of *autrefois convict* shall be entertained in respect of any order or decision in the proceedings so quashed.

(3) Nothing in this section shall be read as prohibiting any aggrieved complainant in a criminal proceeding to appeal against the decision of a primary court to the district court.

Revisional
jurisdiction

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

(2) In the exercise of its revisional jurisdiction, a district court shall have all the powers conferred upon a district court in the exercise of its appellate jurisdiction including the power to substitute a conviction, or a conviction and sentence, for an acquittal; and the provisions of paragraph (b) of subsection (1) of section 21 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of a district court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.

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

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

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

Jurisdiction over
offenders committed
for sentence by
primary courts

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

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

- (a) the provisions of the Primary Courts Criminal Procedure Code and of this Part

shall apply only with regard to an appeal against conviction as for any other case tried by a primary court; and

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

Cap. 20

(3) The district court may in its discretion postpone its inquiry under the provisions of subsection (1) of this section until the expiration of the time for filing an appeal against conviction and, if the appeal has been filed before the district court commences the inquiry, the district court may in its discretion postpone the inquiry until final determination of the appeal or for such lesser period as the court may deem fit.

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

24.-(1) Where an appeal has been filed by a person entitled to appeal to a district Court or a district court calls for the record of any proceedings under section 23, the district court or the primary court may, for reasons to be recorded in writing-

- (a) in the case of a person sentenced to imprisonment or committed in custody to the district court for sentence, order-
 - (i) that the person be released on bail with or without sureties pending the hearing of his appeal or the termination of the revisional proceedings; or
 - (ii) that the execution of the sentence be suspended pending the hearing of his appeal or the termination of the

revisional proceedings, in which case he shall be treated as a remand prisoner pending the hearing of his appeal; but if the appeal is ultimately dismissed or the original sentence (being a sentence of imprisonment) is confirmed, or some other sentence of imprisonment substituted therefor, the time during which the sentence has been suspended, shall be excluded in computing the term of imprisonment; and

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

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

(c) Appellate and Revisional Jurisdiction of the High Court in Relation to Matters Originating in Primary Courts

Appeals etc., from district courts in their appellate and revision jurisdiction

25.-(1) Save as hereinafter provided-

- (a) in proceedings of a criminal nature, any person convicted of an offence or, in any case where a district court confirms the acquittal of any person by a primary court or substitutes an acquittal for a conviction, the complainant or the Director of Public Prosecutions; or

(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.

(2) The Minister may make regulations prescribing the procedure for appeals from district courts by a complainant other than the Director of Public Prosecutions against the decision or order of a district court confirming the acquittal of any person by the primary court or where a district court substitutes an acquittal for a conviction.

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

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

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

Power of registrars

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

(a) give directions as to the time within which

any further step in the proceedings shall be taken by the appellant or any other party (and may extend any such period) and where the appellant fails to complete any such step within such time, may dismiss the appeal for want of prosecution; or

- (b) order fresh evidence to be recorded before the court of first instance or the district court, and to be certified to the High Court.

Composition of High Court on appeal

27.-(1) Appeals to the High Court under this Part shall be heard by one judge unless the Chief Justice directs that an appeal be heard by two or more judges.

(2) Any direction by the Chief Justice under subsection (1) may be given at any time before judgment.

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

(4) In any appeal to the High Court under this Part in which any rule of customary law is in issue or relevant, the High Court may refer any question of customary law to a panel of experts constituted in accordance with rules made under this Act, but the High Court shall not be bound to conform with the opinion of such experts in determining the appeal.

Power to reject appeals summarily

28.-(1) Subject to the provisions of subsection (2) of this Section, a judge of the High Court may, if satisfied that an appeal in any proceeding of a criminal nature has been lodged without sufficient ground of complaint, summarily reject the appeal.

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

- (a) if the appeal is against sentence and is brought on the grounds that the sentence is

excessive, it appears that there is no material evidence in the circumstances of the case which could lead the court to consider that the sentence ought to be reduced;

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

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

Power of High
Court on appeal

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

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

Provided that-

- (i) no conviction or conviction and sentence shall be substituted for an order of the district court substituting an acquittal for a conviction, and no sentence shall be enhanced, unless the accused or convicted person, as the case may be, has been given an opportunity of being heard; and
 - (ii) no declaratory order on an appeal by the Director of Public Prosecutions against a decision or order of a district court confirming the acquittal of a person in a primary court shall have effect as a conviction;
- (b) to quash any proceedings (including proceedings which terminated in a decision or order of a district court substituting an acquittal for a conviction, not being a decision or order confirming an acquittal by a primary court) and where it is considered desirable, order the case to be heard de novo either before the court of first instance or some other primary court or district court having jurisdiction:

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

- (i) the provisions of paragraph (b) of subsection (1), of section 49 and of subsection (2) of that section shall be applicable to such rehearing as if the case had been transferred; and
- (ii) no plea of *res judicata* or *autrefois acquit* or *autrefois convict* shall be entertained in respect of any decision or order in the proceedings so quashed;

- (c) to make any other decision or order which might have been made by the court of first instance.

Supervision

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

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

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

(2) A resident magistrate-in-charge may call for and inspect the record of any proceedings under this Part in a resident magistrates' court, a district court or a primary court and may examine the records or registers

thereof for the purpose of satisfying himself as to the correctness, legality or propriety of any decision or order and as to the regularity of any proceedings therein; and may, in any case in which he considers that any decision or order is illegal or improper or any proceedings are irregular-

- (a) in the case of a resident magistrates' court or district court, forward the record with a report to the High Court in order that it may consider whether or not to exercise its powers of revision; and
- (b) in the case of a primary court, consider the proceedings and if he considers it appropriate so to do, revise the same:

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

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

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

Revision

31.-(1) In the exercise of its revisional jurisdiction under this Part, the High Court shall have all the powers conferred upon it in the exercise of its appellate jurisdiction under this paragraph including the powers to substitute a conviction or a conviction and sentence for an acquittal or an acquittal for a conviction or to make a declaratory order; and the provisions of the primary court, proviso to paragraph (b) of section 29 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of the High Court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.

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

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

32.-(1) Where-

- (a) an appeal to the High Court on appeal to the High Court under this Part has been filed; or
- (b) the High Court calls for the recording of any proceedings or any record is forwarded to the High Court under section 30, the High Court, or the district court may, for reasons to be recorded in writing-
 - (i) in the case of a person sentenced to imprisonment, order-
 - (A) that the person be released on bail, with or without sureties

pending the hearing of the appeal or termination of the revisionary proceedings;

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

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

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

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

(d) *Miscellaneous*

Appearance on behalf of parties in primary courts

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

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

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

Presence of parties
at hearing of
appeals and
revisional
proceedings
Act No.
4 of 1991
Sch.

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

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

Provided that, no such notice need be given-

- (i) to an appellant in any proceedings of a criminal nature who is in custody, who does not state in the petition both that he wishes to be present and that he is in a position to pay the expenses of his transfer to the place of hearing;
- (ii) to any party who has served notice on the appellate court that he does not wish to be present;

- (iii) to any advocate unless the petition of appeal is signed by the advocate or the appellate court is otherwise informed that he is instructed to appear at the hearing; or
- (iv) to the Republic or to the Director of Public Prosecutions except in the circumstances specified in paragraph (b) of this subsection.

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

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

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

Provided that-

- (a) the court may, if it thinks fit, hear any party personally or by advocate; and
- (b) nothing in this subsection shall derogate from the provisions of paragraph (b) of section 21, subsection (3) of section 22, paragraph (i) of the proviso to paragraph (a) of section 29, or subsection (2) of section 31.

(4) Where notice of time, and place of the hearing cannot be served on a party who is a respondent by virtue of his having been previously acquitted and his

acquittal is being appealed against, if he cannot be found through the address obtained by the trial court from him, the court shall order that notice be brought to his attention through publication in a newspaper three times, and at the end of that service the court may proceed with the appeal in the absence of the respondent.

Presence of parties at hearing of civil appeals Cap. 33

35. Subject to any provision of the Civil Procedure Code, in all civil appeals to the High Court or the district court, as the case may be, the court shall have the power to determine the appeal notwithstanding that the appellant or the respondent or both of them have not been served with notice of hearing of the appeal if the court, upon grounds to be recorded in writing, is satisfied that the party concerned cannot be served without undue delay and unnecessary expenses or efforts have been made to effect service without success.

Abatement of appeals on death

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

Substantial justice to be done without undue regard to technicalities

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

(2) No decision or order of a primary court or a district court under this Part shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, or any process or charge, in the proceedings before or during the hearing, or in such decision or order or on account of the

improper admission or rejection of any evidence, unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.

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

- (a) shall not refuse to recognise any rule of customary law on the grounds that it has not been established by evidence, but may accept any statement thereof which appears to them to be worthy of belief which is contained in the record of the proceedings in or before any lower court which has exercised jurisdiction in the case, or from any other source which appears to be credible, or of which the court may take judicial notice;
- (b) subject to any regulations made under subsection (2) of section 19, may accept such evidence as is pertinent and such proof as appears to be worthy of belief, according to the value thereof and notwithstanding any other law relating to the adduction and reception of evidence;
- (c) shall not be required to comply or conform with the provisions of any rule of practice or procedure otherwise generally applicable in proceedings in the appellate or revisional court, but may apply any such rule where it considers that its application would be advantageous to the exercise of its jurisdiction;
- (d) where there is any dispute or uncertainty as to any customary law, whether by reason of anything contained in the record of the proceedings in or before any lower court

which has exercised jurisdiction in the case, the grounds of appeal, or otherwise, shall not be required to accept as conclusive or binding any evidence contained in the record but shall-

- (i) in any case of dispute, determine the customary law applicable, and give judgment thereon, in accordance with what it conceives to be the best and most credible opinion or statement which is consistent with the provisions of such customary law as are undisputed; and
- (ii) in any case of uncertainty, determine the appeal, and give judgment thereon, in such manner as accords as near as may be to the provisions of such customary law as are established and certain.

Service of process

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

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

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

Execution of orders and process of other courts

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

(2) Every district court shall-

- (a) when so requested by some other district court, execute any decision or order of such district court or of the primary court established for the district for which such other district court is established and shall cause to be executed the summonses, warrants or other process thereof; and
- (b) execute or cause to be executed any decision or order of the High Court in the exercise of its jurisdiction under this Part directed to it and execute and serve the summonses, warrants and other process of the High Court directed to it.

PART IV

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

(a) Original Jurisdiction and Powers

Original jurisdiction of district courts

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

Act Nos.
27 of 1991
Sch.
25 of 2002
Sch.
4 of 2004;
Sch.
3 of 2016
s. 22

- (a) in all proceedings of a criminal nature in respect of which jurisdiction conferred on a district court by any such law for the time being in force;
- (b) in all such other proceedings under any written law for the time being in force except as otherwise provided in subsection (2) of this section) in respect of which jurisdiction is conferred on a district court by any such law:

Provided that-

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

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

courts, but (subject to any express exception in any other law) such jurisdiction shall be limited-

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

(3) Notwithstanding subsection (2), the jurisdiction of the District Court shall, in relation to commercial cases, be limited-

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

Original jurisdiction
of courts of resident
magistrates

41.-(1) A court of a resident magistrate shall have and exercise jurisdiction in all proceedings in respect of which jurisdiction is conferred by the Second Schedule to this Act and any law for the time being in force on a court of a resident magistrate or on a district court presided over by a resident magistrate or a civil magistrate, in the exercise of its original jurisdiction.

(2) The Minister may, by order published in the *Gazette*, amend or replace the Second Schedule to this Act if any circumstances so require.

Powers, practice
and procedure in
original jurisdiction

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

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Cap. 20

(a) in the exercise of their original criminal jurisdiction, by the Penal Code and the Criminal Procedure Act;

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

(b) Appellate and Revisional Jurisdiction, etc., of the High Court in relation to Proceedings Originating in District Courts and Courts of Resident Magistrates

Appeals, revision
etc.
Cap. 20
Act No.
25 of 2002
Sch.

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

(2) Subject to the provisions of subsection (3), no appeals or application for revision shall lie against or be made in respect of any preliminary or interlocutory decisions or order of the district court or a court of a resident magistrate unless such decision or order has the effect of finally determining the criminal charge or the suit.

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

Additional powers
of supervision and
revision

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

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

Provided that, no decision nor order shall be made by the High Court in the exercise of the jurisdiction conferred by paragraph (b) of this subsection, increasing any sum awarded or altering the rights of any party to his detriment, unless the party adversely affected has been given an opportunity of being heard.

(2) A resident magistrate-in-charge may call for and inspect the record of any proceedings in a district court and may examine the records or registers thereof for the purpose of satisfying himself as to the correctness, legality or propriety of any decision or order and as to the regularity of the proceedings therein; and may, in any case in which he considers that any decision or order is illegal or improper or any proceedings are irregular, forward the record with a report to the High Court in order that it may consider

whether or not to exercise its powers of revision.

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

(4) Where any sentence of imprisonment dealt with under this section is confirmed by the High Court, or some other sentence of imprisonment substituted therefor the time during which the convicted person was released or the sentence was suspended and the convicted person treated as a remand prisoner, shall be excluded in computing the term for which he is sentenced.

Minister may confer extended appellate jurisdiction on resident magistrate Acts Nos. 2, 13 and 17 of 1996 Sch. 8 of 2018 s.11

45.-(1) The Minister may, after consultation with the Chief Justice and with the Attorney-General, by order published in the *Gazette*-

- (a) invest any resident magistrate, in relation to any category of cases specified in the order, with the appellate jurisdiction ordinarily exercisable by the High Court under this Part and subpart (c) of Part III to this Act; or
- (b) invest any resident magistrate, in relation to any particular case specified in the order, with the appellate jurisdiction ordinarily exercisable by the High Court under this Part and subpart (c) of Part III to this Act,

and such magistrate shall, by virtue of such order notwithstanding the provision of any written law to the contrary but subject to the limitations or restrictions, if any, specified in the order or any subsequent order, have power in relation to such category of cases so specified or, as the case may be, such case so specified,

to hear and determine appeals and exercise in his capacity as a court of appeal, to hear and determine appeals and exercise in its capacity as a court of appeal, in the same manner and to the same extent as the High Court, and in so far as it is necessary, expedient or desirable for the proper exercise of such jurisdiction, and for the purpose of any appeal from his decision in the exercise of such jurisdiction, such resident magistrate shall be deemed to be a judge of the High Court, and the court presided over by him while exercising such jurisdiction shall be deemed to be the High Court.

(2) The High Court may direct that an appeal instituted in the High Court be transferred to and be heard by a resident magistrate upon whom extended jurisdiction has been conferred by section 45(1).

(3) The provisions of this Act, the Criminal Procedure Act or the Civil Procedure Code which govern the exercise by the High Court of its appellate and revisional jurisdiction shall, *mutatis mutandis*, and to the extent that they are relevant, govern proceedings before a resident magistrate under this section in the same manner as they govern like proceedings before the High Court, and the provisions of those laws which relate to appeals to the High Court, the powers of the High Court on such appeals, the revisional jurisdiction of the High Court and other matters relating to appeals, revisions, inspection and supervision to or by the High Court, shall be construed, in relation to proceedings under this section, as if references to the High Court were references to such resident magistrate exercising extended jurisdiction conferred upon him under this section.

(4) For avoidance of doubt, any proceedings conducted by a resident magistrate with extended appellate jurisdiction, prior to the coming into effect of the provisions of this subsection, such proceedings shall

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be deemed to have been conducted under the provisions of subsection (2) of this section.

(c) *Miscellaneous*

Application

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

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(2) Nothing in section 43 or 44 shall apply to or in relation to appeals from, or the stating of cases by, a district court or court of a resident magistrate exercising extended powers conferred by order under section 173 of the Criminal Procedure Act or, save as provided in section 175 of that Act, authorise the High Court or any resident magistrate-in-charge to exercise any power of supervision or revision in relation to any court.

**PART V
TRANSFERS**

Transfer from
primary court

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

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

in any case where-

it appears that the circumstances or gravity of the proceeding make it desirable that the same should be transferred;

- (i) there is reasonable cause to believe that there would be a failure of justice were the proceeding to be heard in the primary court;
- (ii) the subject matter of the proceeding arose outside the local limits of the primary court's jurisdiction or is not within its jurisdiction, or in any case in which the law applicable is a customary law which is not a customary law prevailing within such first-mentioned primary court's local jurisdiction; or
- (iii) the proceeding seeks to establish or enforce a right or remedy under customary law or Islamic law, or is an application for the appointment of an administrator of the estate of a deceased person, and the court is satisfied that the law applicable is neither customary law nor Islamic law or that the question whether or not customary law or Islamic law is applicable cannot be determined without hearing or determining the proceedings,

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

Provided that, nothing in this subsection shall authorize-

- (a) the transfer by a magistrates' court of any proceeding which is required by law to be commenced in a primary

court except to another primary court; or

- (b) the transfer of any proceeding to a court which, however constituted, has no jurisdiction in respect of the subject matter thereof.

(2) A primary court-

- (a) shall transfer to the district court of the district for which it is established any proceedings of a criminal nature if the accused person appears to be of unsound mind;
- (b) if the accused person so elects, shall transfer to the district court of the district for which it is established any proceeding of a criminal nature in which the accused is charged with an offence punishable in the primary court by imprisonment for more than twelve months or, in the case of an adult, by corporal punishment; and election under this section shall be exercised before the accused pleads to the charge.

(3) Where any proceedings of a civil nature to in subparagraph (iii) of paragraph (c) of subsection (1) has been instituted in a primary court, the primary court shall, on the application of either party to such proceedings and on being satisfied that the proceedings involve a question of law at issue between the parties, transfer the proceedings to the district court of the district for which the primary court is established:

Provided that, no decision, judgment or order of the primary court in any proceedings of civil nature to which this subsection applies shall be reversed or altered on appeal or revision on the ground only of failure by such primary court to transfer the proceedings in accordance with the provisions of this subsection unless such failure has in fact occasioned a failure of justice.

(4) Where any proceedings have been instituted in a primary court established for any district, the primary court may, if it is satisfied that it is reasonable in the circumstances so to do, and shall, if directed by the district court of that district, transfer the proceedings to another primary court established for the same district.

(5) The provisions of subsection (4) shall be construed without prejudice to the provisions of subsection (1).

(6) Where any proceedings of a criminal nature have been instituted in a primary court, it shall be lawful at any time before the accused person gives evidence therein, for the Director of Public Prosecutions to order the primary court to transfer the proceeding to the district court of the district for which it is established.

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

Transfer to primary courts

48. Where any proceedings in respect of which a primary court has jurisdiction have been instituted in the district court, a court of a resident magistrate or the High Court, it shall be lawful, at any time before judgment, for such court to order the transfer of the same to the primary court having jurisdiction; save that before making any such order the district court, court of a resident magistrate or High Court, as the case may be, shall satisfy itself that the transfer of the proceedings will not be contrary to the interests of justice or cause undue inconvenience to the parties, and shall record its reasons for ordering such transfer.

Additional provision

49.-(1) Where any proceeding or matter is transferred from one court to another under the provisions of section 47 or 48-

(a) the court from which the same is transferred

may, subject, in the case of a magistrates' court, to any directions in that behalf given by the superior court ordering the transfer, make such order as to the costs of the proceedings to date as it shall think fit;

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

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

(3) No appeal shall lie against the making of, or any refusal to make, an order under the provisions of section 47 or 48.

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

Savings of transfer
under other laws

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

PART VI
JUSTICES OF THE PEACE, AND ADDITIONAL POWERS
OF A MAGISTRATE IN THE PRIMARY COURT

(a) Appointment and Powers of Justices of the Peace

Appointment

51.-(1) Every specified officer of a district, town, municipal or city council shall be a justice of the peace for the district in which such council has jurisdiction.

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

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

(4) In this section, "specified officer" means the Secretary to the district, town, municipal or city council and includes the Secretary to a divisional committee thereof.

Assignment of
justices to court
houses

52. The appropriate judicial authority shall assign every justice of the peace to a primary or district court house in the district for which he is appointed.

Arrest by or on
order of justice

53. A justice of the peace may arrest, or may order any person to arrest, any person who commits a cognizable offence in his presence.

Justices may compel appearance of persons accused

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

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

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

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

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

Persons arrested to be taken before court

55. Where any person is arrested by or on the orders of a justice of the peace under section 53 or any person otherwise arrested without warrant is brought before justice of the peace shall, without unnecessary

delay, either take him or cause him to be taken before a magistrate:

Provided that, where-

- (a) the justice of the peace is assigned to a court house in the vicinity and, for the time being, there is no magistrate in attendance thereat; and
- (b) in accordance with the arrangements made for the dispatch of judicial business in the district by the appropriate judicial authority, the proceedings will be further prosecuted at such court house, the justice of the peace may, instead, enter the matter in the registers of the court house and exercise the powers conferred by paragraph (a) or (b) of section 56.

Powers of justices assigned to court houses

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

- (a) to admit any person arrested, with or without warrant, for any offence, other than murder or treason, to bail either with or without surety or release him in his own bond, and to issue a warrant of arrest for any person in breach of a bond for his appearance; or
- (b) to remand in custody any person arrested, with or without warrant, for a reasonable time, not exceeding seven days at any one time, to some prison, lock-up or other place or security:

Provided that a justice shall not remand any person in custody-

- (i) unless a case file is, or has have been, opened for the matter and a

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

- (ii) for more than seven days at any time nor, save where normal means of access to the nearest magistrate are interrupted, for more than an aggregate of twenty-eight days, without taking him before a magistrate;
- (c) to cause any person brought before a primary court under arrest to be taken before the district court;
- (d) to issue a summons compelling any person to appear to give evidence or to produce anything in any proceedings to be heard in the courthouse or for the attendance of any party to such proceedings;
- (e) to endorse warrants of arrest and summons issued by courts outside the district in which has jurisdiction;
- (f) if it is shown to the satisfaction of the justice of the peace that any property which is in dispute in any case (whether of a civil or a criminal nature) is in danger of being destroyed, hidden, wasted, damaged, alienated, or otherwise injuriously dealt with, by any person and, pending final determination of the case, to issue an injunction to restrain person from destroying, hiding, wasting, damaging,

alienating or otherwise injuriously dealing with that property, and, if it is of a perishable character, to sell or dispose of the same and retain the proceeds in the same manner as if they were the original property, and may exercise any of the powers, functions and duties conferred by any other written law upon a justice of the peace other than such as are conferred on a justice assigned to a district court house.

Additional powers of Justices assigned to district courts houses

57. In addition to the powers conferred by this Act on a justice of the peace a justice of the peace assigned to a district court house-

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

(b) Additional Powers of a Magistrate in the Primary Court

Primary court magistrates as justices
Act No 1 of 2013
s. 11

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

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

(c) *Miscellaneous*

Confessions to justices

59. A confession made by a person in the custody of a police officer which is made in the immediate presence of a justice of the peace assigned to a district court house may be proved in evidence in the same manner and to the same extent as a confession in the like circumstances in the immediate presence of a magistrate may be proved.

Powers of persons arresting

60. Every justice of the peace exercising the power to arrest any person, and every person to whom any order or warrant to arrest any other person is given or directed, in accordance with the provisions of this Part, shall have and may exercise, in the exercise of such powers, all such powers and shall perform all such duties as are by law conferred or imposed upon a police officer.

Provisions relating to process

61. The provisions of paragraphs 10, 11 and 12 of the Primary Courts Criminal Procedure Code shall apply to any process issued under this Part by justices of the peace assigned to primary court houses.

Supervision of and instruction to justices

62.-(1) Justices of the peace shall be subject to the supervision of the magistrate exercising jurisdiction in the court houses to which they are assigned, and to the supervision of a resident magistrate-in-charge, and they shall be obedient to the magistrates to whose supervision they are subject.

(2) The appropriate judicial authority may, from time to time, issue instructions not inconsistent with any law for the time being in force for the guidance and control of justices of the peace in the exercise of their powers, functions and duties, and every justice of the peace shall comply with and obey such instructions.

**PART VII
MISCELLANEOUS PROVISIONS**

Concurrent
jurisdiction
Act No. 2 of 2002
Sch. Para. 7

63.-(1) Subject to the provisions of any law for the time being in force, where jurisdiction in respect of the same proceedings is conferred on different courts, each court shall have concurrent jurisdiction therein:

Provided that, no civil proceedings in respect of marriage, guardianship or inheritance under customary law, or the incidents thereof, unless the High Court gives leave for such proceedings to be commenced in some other court.

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(2) Nothing in section 15 of the Civil Procedure Code shall require any proceedings of a civil nature to be commenced in a primary court.

Certain issues not
justiciable in
primary courts

64. Where-

- (a) proceedings to establish or enforce any right or remedy under customary law are instituted in a primary court, or an application is made to a primary court on which jurisdiction in the administration of deceased estates has been conferred for the appointment of an administrator for the administration and distribution of the estate in accordance with customary law, and the proceedings are, or the application is, are not rejected by the court of its own motion; or
- (b) any proceedings have been transferred to a primary court and the reason or one of the reasons therefor is that the law applicable is customary law,

the issue whether or not customary law applies to any party, or person, relevant to the proceedings or application, or whether or not customary law is the law applicable, shall not be justiciable in such court, but the proceedings or application shall be heard and

determined and decisions and orders made therein in accordance with customary law and this Act, and the primary court shall have jurisdiction accordingly:

Provided that-

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

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Magistrates not to act if having interest

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

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

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

66.-(1) A magistrate holding a magistrates' court shall not be liable to be used in any court for any act done or ordered to be done by him in the exercise of his

judicial duty, nor shall a justice of the peace be liable to be sued in any court for any act done or ordered to be done by him in the exercise of his functions or duty as a justice, whether or not such act is within the limits of his or the court's jurisdiction, if at the time of doing such act or making such order he believed in good faith that he had jurisdiction to do the act or make the order.

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

Contempt

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

Appellants in prison or lock-up

68. Where any person who wishes to appeal under the provisions of this Act against any decision or order in proceedings of a criminal nature is in prison or a lock-up established under section 70 he may present his petition of appeal to the officer-in-charge of the prison or lock-up, who shall forward it to the court in which, but for the provisions of this section, the petition is required to be filed.

Local government authorities to prepare list of assessors

69. Every local authority shall, before the first day of March in each year, prepare and deliver to the district court a list of suitable persons ordinarily resident within the area of its jurisdiction, who shall be liable to serve as assessors when so required by a court:

Provided that-

- (a) any person exempted from liability to serve as an assessor by section 8 of this Act, shall

be exempted from liability to serve as an assessor under this section; and

- (b) no person shall be disqualified from service as an assessor by reason only that his name is not included in a list prepared under this section.

Lock-ups

70.-(1) The Minister for the time being responsible for Home Affairs (in this section referred to as “the Minister”) may establish lock-ups for the reception of persons taken or remanded in custody and for the safe keeping of persons sentenced to a term of imprisonment by a primary court pending their transfer to a prison.

(2) The Minister shall make arrangements for the administration and control of lock-ups and may authorise a local government authority and its servants to administer and control lock-ups in its area:

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

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

(4) The Minister may delegate his powers to establish lock-ups under this section to any Regional Commissioner or any local government authority.

Rules and direction

71.-(1) The Chief Justice may make rules of court and give directions not inconsistent therewith, regulating and prescribing the practice and procedure of

magistrates' courts, the execution of the decisions and orders thereof and the functions and duties of members and officers of such courts, and regulating and prescribing the practice and procedure in hearing and determining appeals including the power to strike out appeals in proceedings of a civil nature in the absence of the parties, the exercise of revisional jurisdiction and the manner of presenting appeals, and otherwise for the purposes of this Act and the administration of magistrates' courts.

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

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

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

PART VIII
REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Repeal of
R.L
Cap. 537

72-76. [Repeals the Magistrates' Courts Act with saving and transitional provisions].

Saving of appeal
laws and
prerogative
Cap. 141

77. Unless the context requires otherwise, nothing in this Act shall derogate from the provisions of the Appellate Jurisdiction Act, or from the power or jurisdiction of the High Court to issue any writ of *mandamus*, *certiorari* or prohibition to, or in respect of any magistrates' court.

FIRST SCHEDULE

JURISDICTION OF THE PRIMARY COURTS
(Made under section 18(1))
PART I
JURISDICTION UNDER THE PENAL CODE

Primary courts shall have jurisdiction to try any offence contrary to any of the following provisions of the Penal Code:-

<i>Section</i>	<i>Offences</i>
84	Going armed in public
85	Forcible entry
86	Forcible detainer
87	Affray
88	Challenging to fight a duel
89	Abusive language, brawling and threatening violence.
101	Threat of injury to persons employed in the public service.
109	Destroying evidence.
114 (1) other than paragraph (d) thereof	Contempt of court.
114A	Preventing or obstructing service or execution of process.

116	...	...	Escape from lawful custody
116A	...	...	Absence from extra-mural employment
117	...	...	Aiding prisoners to escape
118	...	...	Removal, etc., of property under lawful seizure
124	....	...	Disobedience of lawful orders
126	....	...	Disturbing religions assembly.
134	...	...	Abduction of girls under sixteen.
135 (3)	...	...	Insulting the modesty of a woman
166	...	....	Desertion of children.
167	...	....	Neglecting to provide food, etc. for children.
176 (b), (c) and (e)			Idle and disorderly person (certain offences only).
178 (1)...	...		Wearing uniform without authority.
178 (2)...	...		Bringing contempt on uniform.
180	...	...	Adulteration of food or drink intended for sale.
181	....	....	Sale of noxious food or drink.
184	...	....	Fouling water.
185	...	...	Fouling air
194 (a)	...		Holding of commodities.
217	....	....	Attempting suicide.
218	...	...	Concealing the birth of a child.

- 228 (a) Wounding.
- 233 (d) Omitting to take precautions against probable danger from animal.
- 234 Other negligent acts causing harm not specified in section 233.
- 240 Common assault.
- 241 Assaults causing actual bodily harm.
- 247 Kidnapping.
- 253 Wrongful confinement.
- 265 Theft.
- 266 Stealing cattle.
- 268 Stealing wills.
- 269 Stealing from the person.
- 270 Stealing by person in the public service.
- 271 Stealing by clerks and servants.
- 279 Killing animal with intent to steal.
- 280 Severing with intent to steal.
- 286 Robbery.
- 288 Assault with intent to steal.
- 292 Demanding property with menaces with intent to steal.

294	....	....	Housebreaking and burglary.
295	....	....	Entering dwelling house with intent to commit offence.
296	....	....	Breaking into building and committing offence.
297	...	....	Breaking into building with intent to committing offence.
299	....	....	Criminal trespass.
<i>Section</i>		<i>Offences</i>	
302	....	....	Obtaining goods by false pretences.
304	...	...	Cheating.
311	...	...	Receiving stolen property, etc.
319	...	...	Arson.
320	....	....	Attempt to commit arson.
321	....	...	Setting fire to crops and growing plants.
325	....	....	Injuring animals.
326(1)	...	....	Malicious injuries.
369	....	...	Personation.
381	....	...	Attempt to commit any of the offences orders which a primary court has jurisdiction to try.
390	...	...	Soliciting or inciting the commission of an offence which it has jurisdiction to try.

PART II
JURISDICTION UNDER OTHER LAWS

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

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

1	2	3	4
<i>Cap No.</i>	<i>Law</i>	<i>Section, rule, by law</i>	<i>Limitation</i>
Cap. 19	The Prevention of Gambling Act	Sections 3, 4 and 5	
Cap. 167	The Highways Act	Sections 37, 38, 39, 40, 41, 42, 43, 50 and 51	
Cap. 168	Road Traffic Act		(a) any offence under the Road Traffic Act or any subsidiary legislation made there under which is connected with the riding of a bicycle, the condition of a bicycle, the carrying of a passenger on a bicycle, or the contravention of any requirement in relation to a bicycle or its use;
Cap. 168			(b) Offences under rules 18, 32, 43 (i), 69 and

S.L.			70 of the Traffic Rules.
Cap. 223	The Arms and Ammunition	Sections 13 (1), 39(1) and (2), 22 and 32	Jurisdiction under section Act 39 (1) and (2), 22 only in so far as the 22 and 32 offence relates to the manufacture of smooth bore muzzle loading muskets and section 32 only in relation to offences set out in column 3
Cap. 265	The Stock Theft (Prevention) Act	sections 3, 4, 5,6 and 7	
Cap. 283	Wildlife Conservation Act	The whole Act	
Cap. 284	Ngorongoro Conservation Act	The whole Act	
Cap. 323	The Forests Act	sections 15(1), (2) and (4), 16 (1) and (2), 18, 22, 24, 25, 26(1), (2) and (3)	
	The Forests Act Rules	Rules 10(1), 11 (2), 14, 15(1) and 17	
Cap. 344	The Food (Control of Quality) Act	Parts IV, V and VI	
Cap. 385	The Public Order		

SECOND SCHEDULE

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

(Made under section 41)

<i>Cap. No</i>	<i>Law</i>	<i>Provision</i>
7	The Judgments Extension Act	The whole Act
25	The Bankruptcy Act	section 97
27	The Administrator-General (Powers and Functions) Act	section 2
113	The Land Act	sections 22 and 23
114	The Law of Real Property and Conveyancing Act	section 9
165	The Merchant Shipping Act	Section 93
212	The Companies Act	sections 164, 165 and 166.
263	The Workers' Compensation Act	section 3
336	Public Health (Sewerage and Drainage)	Section 21
399	The Mining (Mineral Oil) Act	Section 9
352	The Probate and Administration of Estates Act	The whole Act
33 9	The Rent Restriction Act	Section 2
77	The Intoxicating Liquors Act	Sections 13, 14, 66, 67, 68, 70, 72, 74, 78, 83, 19 and 92

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THIRD SCHEDULE
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THE PRIMARY COURTS CRIMINAL PROCEDURE CODE

(Made under section 2)

**PART I
PRELIMINARY PROVISIONS**

1. Title, interpretation and general.

**PART II
POWERS OF PRIMARY COURTS IN PROCEEDINGS OF A
CRIMINAL NATURE**

2. Court may impose imprisonment, fine or corporal punishment.
3. Primary court may commit to district court for Bail sentence.
4. Power to discharge absolutely or on conditions, and to promote reconciliation.
5. Additional powers.
6. Powers cumulative.
7. Confirmation of certain orders.

**PART III
WARRANTS AND SUMMONSES**

8. Complaints.
9. Additional powers to issue warrant.
10. Summons.
11. Warrants.
12. Service outside local jurisdiction.
13. Search warrants.

**PART IV
REMAND AND BAIL**

14. Power to grant bail or remand in custody.
15. Remands.
16. Bail.
17. Forfeiture.
18. Provisions relating to bail to apply to bail after conviction.

**PART V
COURTS WHICH MAY TRY OFFENCES**

19. Courts which may try offences.

**PART VI
TRIAL OF OFFENCES**

- 20. Limitation of time for trials in certain cases.
- 21. Charge to be drawn up.
- 22. Additions to or amendment of charges.
- 23. Withdrawal.
- 24. Adjournment.
- 25. Non-appearance of parties after adjournment.
- 26. Appearance.
- 27. Accused may be convicted and sentenced in absentia.
- 28. Evidence relative to proper sentence or order.
- 29. Presence of accused.
- 30. Interpretation of evidence.
- 31. Charge to be read.
- 32. Where accused admits offence.
- 33. Where accused denies offence.
- 34. Refractory witnesses.
- 35. Evidence and examination.
- 36. Dismissal of charge.
- 37. Judgment and verdict.
- 38. Alternative verdicts.
- 39. Sentence.
- 40. Warrant of committal.

**PART I
PRELIMINARY PROVISIONS**

Title,
interpretation
and general

1.-(1) This Code may be cited as the Primary Courts Criminal Procedure Code

(2) In this Code, unless the context requires otherwise-
“adult” means a person of the age of sixteen years or more;
“bail” includes a bond in a person’s own recognisance;
“complaint” includes information laid by a person in relation to, and accusing of, an offence a person arrested without a warrant, and
“complainant” includes a person who lays such information
“court” means the primary court having jurisdiction;

“the district court” means the district court to which an appeal lies from the primary court having jurisdiction;
 “magistrate” means a primary court magistrate.

**PART II
 POWER OF PRIMARY COURTS IN PROCEEDINGS OF A
 CRIMINAL NATURE**

Court may impose imprisonment, fine or corporal punishment
 Act No. 25 of 2002 Sch.

2.-(1) Subject to the provisions of any law for the time being in force, a court may, in the exercise of its criminal jurisdiction, in the cases in which such sentences are authorised by law, pass the following sentences-

- (a) imprisonment for a term not exceeding twelve months;
- (b) a fine not exceeding five hundred thousand shillings;
- (c) corporal punishment not exceeding twelve strokes:

Provided that where a court convicts a person of an offence specified in any of the Schedules to the Minimum Sentences Act which it has jurisdiction to hear, it shall have the jurisdiction to pass the minimum sentence of imprisonment

(2) A court may order that any fine which it imposes shall be paid at such time or times or by such instalments or in kind or otherwise as it shall think just, and in default of the payment of any fine or of any instalment of the same when due, the court may order that the amount of the fine or of the instalment, as the case may be, shall be levied by the sale of any movable property belonging to the offender.

(3) Subject to subsection (4), when a court makes an order for the payment of a fine, it shall have the power to direct by its sentence that in default of the payment of the fine the offender shall suffer such period of imprisonment as will satisfy the justice of the case.

(4) Except where it is expressly provided by any law for the time being in force, in no case shall imprisonment provided under subsection (3) exceed the maximum prescribed by the following scale:

(a) Amount	Maximum Period
Not exceeding Shs.5,000/=	14 days
Exceeding Shs.5, 000/= but not exceeding shs. 50,000/=	1 month

Exceeding shs. 50,000 /= but not exceeding 100,000/= 3 months

Exceeding shs. 100,000 /= but not exceeding 500,000 /= 4 months

Exceeding shs. 500,000/= 5 months

(b) Such imprisonment, either by itself or together with such substantive imprisonment (if any) as may be imposed, shall not in any event exceed the use of the substantive imprisonment prescribed for the offence.

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

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

Primary court may commit to district court for sentence

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

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

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

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

Additional
power

5.-(1) A court may, where the justice of the case so requires, and shall, in any case where any law for the time being in force so requires, make orders-

- (a) for the supervision of habitual offenders;
- (b) for the payment of compensation not exceeding one hundred thousand shillings or costs or for compensation of more than one hundred thousand shillings where it convicts a person of an offence specified in the Schedules to the Minimum Sentences Act which it has jurisdiction to hear;
- (c) for the forfeiture of any property in the case of unlawful possession or, where authorised by any other law for the time being in force, for the forfeiture of any property in the case of unlawful use or the forfeiture of any licence, permit or other authorisation;
- (d) when any person is convicted by it of having stolen or having dishonestly or wrongfully obtained any property, for the restoration of such property, to the person appearing to the court to be the owner or entitled to the possession thereof;
- (e) to any other effect, not hereinafter provided, prescribed by the law under which a person is convicted.

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

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

(3) Any compensation or costs awarded by a court under this section may be ordered to be paid at such time or times or in such instalments, as the case may be, and shall be levied by the sale of any property belonging to the person ordered to pay the compensation or costs.

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

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

(6) At the time of awarding any compensation in any subsequent civil proceedings relating to the same matter as the criminal

proceedings in which compensation was awarded, any court hearing the civil proceedings shall take into account any compensation paid or recovered under an order made under this section.

(7) Nothing in this Code shall be construed derogating from the provisions of the Probation of Offenders Act.

Power
cumulative

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

Cap. 90

Provided that, the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction (including where it convicts a person of offences specified in the Schedules to the Minimum Sentences Act, the amount of imprisonment authorised by the proviso to subsection (1) of section 2 of this Code), competent to impose.

Confirmation of
certain order

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

- (a) of imprisonment for a term exceeding six months;
 - (b) of corporal punishment on an adult;
 - (c) of supervision of a habitual offender; or
 - (d) of forfeiture in the exercise of its criminal jurisdiction,
- shall be carried into effect unless it has been confirmed by the district court:

Provided that, nothing in this subsection shall apply in any case where a person is convicted of an offence specified in any of the Schedules to the Minimum Sentences Act and sentenced to the minimum term of imprisonment provided for by that Act.

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

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

Provided that, where a court makes an order of corporal punishment on an adult, then whether or not it also makes an order for

imprisonment at the same trial, it shall not release the person to whom the order applies pending confirmation but shall, subject in the case of a person to whom the order of imprisonment applies to his right to make the election set out in subsection (4) of this section, remand him in custody.

(4) If an offender who has been sentenced to a term of imprisonment which requires confirmation is not released on bail, he may elect either-

- (a) to serve his sentence, pending confirmation or other order, from the date upon which he is sentenced by the court in which case the term of imprisonment shall run from such date; or
- (b) to postpone serving his sentence until the order is confirmed or other order is made by the district court, in which case the offender shall be remanded in custody pending the confirmation or other order and the term of his imprisonment shall run from the date he begins to serve his sentence.

**PART III
WARRANTS AND SUMMONSES**

Complaints

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

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

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

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

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

Additional powers to issue warrant	<p>9.Where-</p> <p>(a) a person has failed to appear in answer to a summons; or</p> <p>(b) a summons has been issued, but the court has reason to apprehend that the person to whom it has been issued will not appear in answer to the summons,</p> <p>a magistrate may issue a warrant of arrest and where a person commits an act of contempt in the face of the court, the court may either order his arrest forthwith or issue a warrant of arrest.</p>
Summons	<p>10.(1) Every summons shall be in the prescribed form and shall be issued in duplicate and one copy of the summons shall be signed, if so required by the person serving the same, by the person on whom it is served or with whom it is left, and returned to the court.</p> <p>(2) Wherever possible the summons shall be served on the person to be summoned personally but, where such person cannot be found, it may be served by leaving it with some adult member of his family, or with some adult servant residing with him, or with his employer and every such other person with whom a summons is left shall take such steps as may be reasonable and necessary to serve the person to be summoned.</p>
Warrants	<p>11.(1) Every warrant of arrest shall be in the prescribed form.</p> <p>(2) A warrant of arrest shall constitute authority to the person to whom it is directed, to all officers of the court to which the magistrate by whom it is issued is assigned and to all police officers, to take the person in respect of whom it is issued into custody and to produce him before the court and, subject to the provisions of this Code, every such person shall have and may exercise, in the execution thereof, all such powers and shall perform all such duties as are by law conferred or imposed upon police officers.</p> <p>(3) A person executing a warrant shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.</p> <p>(4) Every warrant of arrest shall remain in force until it is executed or until it is cancelled by the court to which the magistrate by whom it was issued is assigned.</p>
Service outside local jurisdiction	<p>12.(1) Process issued under the foregoing provisions of this Part may be served or executed at any place in the country but if it is to be served or executed outside the local limits of the jurisdiction of the court by which it is issued, it shall first be sent or taken to a magistrates' court within the local limits of the jurisdiction of which it is to be served or executed and there endorsed by a magistrate or a justice of the peace; and shall not be served or executed unless it is so endorsed.</p>

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

Search warrant

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

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

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

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

PART IV REMAND AND BAIL

Power to grant
bail or remand in
custody

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

Provided that where a person is brought before a court under

arrest and the court has no jurisdiction to try the offence for which such person is arrested, it shall cause him to be taken before the district court.

(2) Nothing in the proviso to subsection (1) shall preclude a primary court magistrate from exercising in relation to such person, at a district court house or elsewhere, any of the powers conferred upon a justice of the peace under Part VI of this Act.

Remands

15. No persons shall be remanded-

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

Bail

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

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

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

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

(4) In any case in which-

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

Forfeiture
Cap. 16

17.-(1) Whenever it is proved to the satisfaction of a court by which a recognisance under this Act or the Penal Code has been taken or when the recognisance has been taken by a police officer for

appearance before recognisance has been forfeited, the court shall record the grounds of such recognisance to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to that person on his estate if he is dead.

(3) The warrant may be executed within the local limits of the jurisdiction of the court which issued it and it shall authorise the attachment and the sale of the movable property belonging to that person without such limits when endorsed by any magistrate within the local limits of whose jurisdiction that property is found.

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

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

(6) Where a surety to a recognisance dies before the recognisance is forfeited his estate shall be discharged from all liability in respect of the recognisance.

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

Provisions relating to bail to apply to bail after conviction

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

**PART V
COURTS WHICH MAY TRY OFFENCES**

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

- (a) the offence was committed;
- (b) the accused was apprehended or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging him with the offence;
- (c) if the offence was committed on a journey, any part of the journey; or

- (d) if it is uncertain in which of several local areas in which the offence was committed, any ingredient of the offence occurred; or

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

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

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

Limitation of time for trials in certain cases

20. Except where a longer time allowed by law, no offence the maximum punishment for which does not exceed imprisonment for six months or a fine exceeding five thousand shillings or both, shall be triable by the court, unless the charge or complaint relating to it is laid within twelve months from the time when the matter of such charge or complaint arose.

**PART VI
TRIAL OF OFFENCE**

Charge to be drawn up

21-(1) Where -

- (a) a magistrate issues process under section 8; or
- (b) any person is brought before a court under arrest,

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

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

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

Addition to or amendment of charges

22. At any time before the accused person gives evidence at the trial, the court may amend a charge or add new offences to it, but where the court amends or adds to a charge, the accused person may

require any witness who has previously given evidence to be recalled and may put relevant questions to such witness.

Withdrawal

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

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

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

Adjournment

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

Non-appearance of parties after adjournment

25.-(1) If at any time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court, which made the order of adjournment, it shall be lawful for such court to proceed with the hearing or further hearing as if the accused were present, and if the complaint shall not appear, the court may dismiss the charge and acquit the accused with or without costs as the court shall think fit.

(2) If the court convicts the accused person in his absence, it may set aside such conviction upon being satisfied that his absence was from causes over which he had no control, and that he had a probable defence on the merits.

(3) Any sentence passed under subsection (1) shall be deemed to commence from the date of apprehension, and the magistrate shall endorse the date thereof on the back of the warrant of commitment.

(4) The court, in its discretion, may refrain from convicting the accused in his absence, and in every such case the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

Appearance

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

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

Accused may be convicted and sentenced *in absentia*

27.-(1) Where in any case to which paragraph 25 does not apply an accused fails to appear on the date fixed for the continuation of the hearing after the close of the prosecution case or on the date fixed for the passing of sentence, the court may, if it is satisfied that the accused's attendance cannot be secured without undue delay or expense, proceed to dispose of the case in accordance with the provision of subsection (2) as if the accused, being present had failed to make any statement or adduced any evidence in relation to any sentence which the court may pass; save that where the accused appear on any subsequent date to which the proceedings under this subsection or the proceedings under this section on the day or days on which the accused was absent shall not be invalid by reason only of his absence.

Evidence relative to proper sentence or order

28. The court may before passing sentence receive such evidence as it thinks fit, in order to inform itself as to the sentence to be passed.

Presence of accused

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

Interpretation of evidence

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

(2) Before entering upon the duties of his office, an interpreter shall take oath or be affirmed, as the case may be:

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

Charge to be read

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

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

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

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

(5) After the accused has pleaded to the charge read over to him in the court under this paragraph the court shall obtain from the accused his permanent address and shall record and keep that address as part of the record of the proceedings.

Where accused admits offence

32.-(1) Where the accused person admits the truth of the charge (or any of offence therein-

- (a) the magistrate shall cause a charge to be read and explained to him and where there are more counts than one, each shall be put separately;
- (b) the admission shall be recorded as nearly as possible in the accused own words and then read over to him and any amendments or corrections by the accused shall be recorded;
- (c) the prosecutor shall state alleged facts in sufficient details and bring essential constituents of the offence charged and the accused shall be asked, if he admits truth of the statements if he does not admit the magistrate shall the change plea and that event the prosecutor may amend the charge; and
- (d) if the plea is not (charged) the magistrate and, if an interpreter is employed and the interpreter, shall sign the admission of the accused person and the magistrate shall invite the accused person also to sign it.

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

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

Where accused denies witness

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

Refractory witness

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

- (a) refuses to be sworn or affirmed;
- (b) having been sworn or affirmed, refuses to answer any question put to him;
- (c) refuses or neglects to produce any document, or thing which he is required to produce; or
- (d) refuses to sign his depositions, without in any case offering any sufficient excuse for such refusal, or neglect, the court may adjourn the case or a period not exceeding eight days, and may, in the meantime, commit such person unless he sooner consents to do what is required of him.

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

Evidence and examination

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

Provided that-

- (a) without prejudice to the power of court to recall him, the complainant shall give evidence first;
- (b) subject to the provisions of item (c) of this proviso, if the accused person wishes to give evidence, he shall give such evidence before his witnesses; and
- (c) the accused person shall be afforded an opportunity of giving evidence in rebuttal of any evidence given after he himself has given evidence, by the complainant, the complainant's witnesses or witnesses called by the court.

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

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

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

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

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

Dismissal of charge
Act No. 4 of 1991 Sch.

36.-(1) 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.

Judgment and verdict

37.-(1) Subject to section 6 of this Code, 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 arrived at by the and assessors the, decision thereon and the reasons for such decision, and shall be dated and signed by the magistrate.

Alternative
verdicts

38.-(1) A person charged with an offence may be convicted of-

- (a) an attempt to commit such offence;
- (b) another offence if the first-mentioned offence consists of a number of particulars, a combination of some of which constitute the other offence, if the relevant matters are proved and such attempt or such other offence are within the courts jurisdiction.

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

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

(4) Where a person is charged with and offence under section 302 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 303 of the Penal Code, he may be convicted of that offence although he was not charged with it.

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

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

Sentence

39. After conviction the court shall consider the question of sentence and may hear such evidence, on oath or affirmation as it thinks necessary to assist it to determine the sentence to be passed.

Warrant of
committal
Cap. 90

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

THE FOURTH SCHEDULE

**PROVISIONS RELATING TO THE CIVIL JURISDICTION
OF PRIMARY COURTS**

(Made under section 19(1)(b))

1. Courts by which proceedings to be heard.
2. Customary law.
3. Powers.
4. Executing.

Courts by
which
proceedings to
be heard
Act. No. 7
of 2002

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

- (a) If they relate to immovable property, by a court within the local jurisdiction of which the property is situated;
- (b) in any other case, by a court within the local jurisdiction of which the cause of action arose or the defendant is ordinarily resident, or by a court to which proceedings have been transferred under, or by an order made under Part V of this Act:

Provided that, nothing in this paragraph shall be construed as conferring jurisdiction on primary courts to the exclusions of the court other category of magistrate's court or any tribunal established by law.

Customary law

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

subject to rules of court, apply the customary law prevailing within the area of its local jurisdiction in matter of practice and procedure to the exclusion of any other customary law.

Powers
Act No.
2 of 2002
Sch.

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

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

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

- (a) the necessary wearing apparel, cooking utensils, bed and bedding of the judgment debtor and of his wife and children;
- (b) the manual tools of artisans or of agriculturist;
- (c) the salary or wages of any person to the extent of-
 - (i) the whole of the salary of wages, where the salary or wage does not exceed eighty shillings monthly;

- (ii) eighty shillings where the salary or wage exceeds eighty shillings monthly but does not exceed one hundred and fifty shillings monthly;
- (iii) two-thirds of any salary or wage which exceeds one hundred and fifty shillings monthly;
- (d) any fund or allowance declared by law to be exempt from attachment or sale in execution of a decision or order;
- (e) any land used for agricultural Purpose by a village, an Ujamaa Village, a cooperative society or an individual whose livelihood is wholly dependent upon the use of such land; or
- (f) any residential house or building, or part of a house or building occupied by the judgment debtor, his wife and dependent children for residential purposes.

Execution

4. A primary court may, on the application of the party entitled to the benefit of such order in any civil proceedings, request a district court to take steps for the arrest and detention of any person who has failed to comply with an order for the payment of any amount, including compensation or costs, made by such primary court, and, upon receiving any such request, the district court shall have such jurisdiction and powers to order the arrest and detention of such order as if an application were made for the arrest and detention in the civil Prison of a judgment debtor in accordance with the provisions of the Civil Procedure Code.

THE FIFTH SCHEDULE

(Made under section 19(1) (c))

PART I
POWERS OF PRIMARY COURT IN ADMINISTRATION CASES

1. Jurisdiction.
2. Powers of courts.

3. Conflicts.
4. Consequences of revocation.

**PART II
POWERS AND DUTIES OF ADMINISTRATORS APPOINTED BY
PRIMARY COURTS**

5. General duties of administrator.
6. Proceedings.
7. Receipts.
8. Loss.
9. No obligation to advertise.
10. Distribution of assets.
11. Account.

**PART I
POWERS OF PRIMARY COURTS IN ADMINISTRATION CASES**

Jurisdiction

1.-(1) The jurisdiction of a primary court in the administration of deceased's estates, where the law applicable to the administration or distribution or the succession to, the estate is customary law or Islamic law, may be exercised in cases where the deceased at the time of his death, had a fixed place of abode within the local limits of the court's jurisdiction:

Provided that, nothing in this paragraph shall derogate from the jurisdiction of a primary court in any proceedings transferred to such court under Part V of this Act.

(2) A primary court shall not appoint an administrator of a deceased's estate-

Cap. 352

(a) in respect of an estate to which the provisions of the Probate and Administration of Estates Act are applicable or of which a grant of administration has been made under that Act, or of which the administration is undertaken by the Administrator-General under the Administrator-General (Powers and Functions) Act; or

Cap.27

(b) where the gross value of the estate does not exceed Shs.1,000/- unless the court is of the opinion that such an appointment is necessary to protect the creditors or beneficiaries.

Powers of courts

2. A primary court upon which jurisdiction in the administration of deceased's estates has been conferred may-

- (a) either of its own motion or an application by any person interested in the administration of the estate appoint one or more persons interested in the estate of the deceased to the administrator or administrators, thereof, and, in selecting any such administrator, shall, unless for any reason it considers in expedient so to do, have regard to any wishes which may have been expressed by the deceased;
- (b) either of its own motion or on application by any person interested in the administration of the estate, where it considers that it is desirable so to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under sub-paragraph (a);
- (c) revoke any appointment of an administrator for a good and sufficient cause and require the surrender of any document evidencing his appointment;
- (d) make orders as to the administration of the estate, and, in particular but without prejudice to the generality of the foregoing, as to the law to be applied in the distribution of the estate and as to advertising for creditors;
- (e) require an administrator to sign an undertaking to administer the estate faithfully;
- (f) require an administrator to give security for the due administration of the estate;
- (g) make orders as to the payment of the share in the estate of any minor or other person under a disability to a relative or other suitable person for the maintenance or otherwise for the use of such minor or person under a disability, or with the consent of the Public Trustee, to the Public Trustee; or
- (h) make any order which it has power to make under this Act in cases of a civil nature.

conflicts

3. Where the High Court has directed that the Probate and Administration Ordinance shall apply to an estate of which an

administrator has been appointed by a primary court, the primary court shall, upon receiving notice to that effect from the High Court revoke the appointment of such administrator and require the surrender of any document evidencing his appointment.

Consequences
of revocation

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

PART II
POWERS AND DUTIES OF ADMINISTRATORS APPOINTED BY
PRIMARY COURTS

General duties
of administrator

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

Proceedings

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

Receipts

7. A receipt issued by an administrator shall constitute a good discharge to any debtor paying his debtor and to any person delivering the property of the deceased to the administrator.

Loss

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

No obligation to
advertise

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

Distribution of
assets

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

Provided that, nothing in this paragraph shall prejudice the right of any creditor to assets at the time of such distribution.

Account

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

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 123

THE MINING ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Mining Act, Chapter 123, incorporates all amendments made up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUSL.KILANGI
Attorney General

THE MINING ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 123

THE MINING ACT

[1st NOVEMBER, 2010]
[G.N. No.396 of 2010]

Acts Nos.
14 of 2010
17 of 2010
23 of 2015
4 of 2017
7 of 2017
9 of 2017
4 of 2018

**PART I
PRELIMINARY PROVISIONS**

Short title

1. This Act be cited as the Mining Act.

Application

2. This Act shall apply to Tanzania Mainland.

Disapplication
to petroleum

3. This Act does not apply to exploration for or
production of petroleum.

Interpretation
Acts Nos.
23 of 2015
s.29
7 of 2-17
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Cap.4
s.8

4.-(1) In this Act, unless the context otherwise
requires-

"authorized officer" means the Commissioner, Chief
Inspector, Inspector, or a public officer appointed
under section 25 or a person designated as such by the
Commissioner under subsection (2) of section 25;

"building materials" includes all forms of rock, stones,
gravel, sand, clay, soils, volcanic ash or cinder, scoria,
pumice, or other minerals being used for the
construction of buildings, roads, dams, aerodromes, or

similar works but does not include gypsum, limestone being burned for the production of lime, or material used for the manufacture of cement;

“Chief Inspector” means the Chief Inspector of Mines appointed by the Minister under section 25;

“Commission” means the Mining Commission established under section 21;”

“Commissioner for Minerals” means the Commissioner for Minerals appointed under section 20;

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“company” means a company incorporated under the Companies Act;

“development agreement” means an agreement made between the Government and the holder of a mineral right with intention to conduct mining operations under a special mining licence;

“dispute” means all disputes as referred to under section 119;

“energy minerals” means a group of minerals comprising of coal, peat, uranium, thorium and other radioactive minerals;

“entitled applicant” means an applicant to whom subsection (1) of section 39 applies;

“Executive Secretary” means the Executive Secretary of the Commission appointed under section 24;

“free carried interest” means the interest derived from holding shares of which the holder enjoys all the rights of a shareholder but has no obligation to subscribe or contribute equity capital for the shares;

“gems” means cut and polished or engraved gemstone;

“gemstone” means-

- (a) diamonds, emerald and other gem varieties of beryl, opal, ruby, sapphire, turquoise, chrysoberyl, spinel, topaz, tourmaline, zircon, obsidian, peridot, moonstone, chrysophase, amethyst;

- (b) other gem varieties of quartz, garnet, zoisite, tanzanite, cordierite and scapolite in rough and uncut form;
- (c) any other rough and uncut stone which may be declared to be a gemstone by the Minister by notice in the *Gazette*:

Provided that, prospecting operations, the primary purpose of which is to search for diamonds located in a kimberlite pipe, shall not be treated as prospecting for gemstones for the purpose of Part IV and diamonds located in, and recovered from, a kimberlite pipe shall not for the purpose of section 7 or Part IV be treated as gemstones;

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s.8

“Geological Survey of Tanzania” means the Geological Survey of Tanzania as established under this Act;

“gold” means all gold other than refined gold and includes gold in the raw or natural state, gold in ore, gold at any stage of its extraction from its ores or other minerals including auriferous amalgam, gold slimes, pot scrapings and slags containing gold, gold-bearing concentrates and sweepings from gold reduction works;

“holder” means the person in whose name a Mineral Right is registered;

“in default” means in breach of the provisions of this Act or the regulations or any condition of a Mineral Right;

“industrial minerals” means a group of minerals comprising of phosphate, kaolin, lime, gypsum, dolomite, diatomite, bentonite, zeolite, trona, pozzollana, vermiculite, salt, beach sands and other minerals other than metallic minerals, normally used in industries;

“Inspector” means an Inspector of Mines appointed by the Minister under section 25;

“Integrity pledge” means a formal and concrete expression of commitment by mineral right holder to abide with ethical business practices and support a national campaign against corruption, prepared by the Commission;

“kimberlitic diamonds” means diamonds of gem or industrial quality formed and found in a primary rock intrusion or extrusion from the earth’s crust known as kimberlite pipe;

“land to which this Act applies” means-

- (a) land in Tanzania; (including land beneath the territorial sea and other territorial waters); and
- (b) the seabed and subsoil of the continental shelf;

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“lawful occupier” in relation to any land means the lawful occupier of land in accordance with the Land Act, and the Village Land Act;

“licensed broker” means a person holding a broker licence granted under section 81;

“licensed dealer” means a person holding a dealer licence granted under section 74;

“licensing activities” include receiving, processing and validating applications, and granting and issuing of mineral rights;

“licensing authority” means the Commission and includes any other person authorized by the Commission to perform licensing activities;

“licensing officer” includes a licensing authority or any other public officer authorized or appointed to perform licensing activities on behalf of the licensing authority;

“local content” means the quantum of composite value added to, or created in, the economy of Tanzania through deliberate utilization of Tanzanian human and material resources and services in the mining operations in order to stimulate the development of capabilities of indigenous of Tanzania and to encourage local investment and participation;

“metallic minerals” means a group of minerals comprising of gold, silver, copper, iron, nickel, cobalt, tin, tungsten, zinc, chromium, manganese, titanium, aluminium, platinum group of metals and other metallic minerals;

“mine” when used as a noun, means any place, excavation or working in or on which any operation connected with mining is carried on together with all buildings, premises, erections and appliances belonging or appertaining thereto, above or vertically below the ground within horizontal boundaries of the licence, the purpose of mining, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores but does not include a smelter or a refinery;

“mine” when used as a verb, means intentionally to mine minerals, and includes any operations directly or indirectly necessary therefore or incidental thereto, including such processing of minerals as may be required to produce a first saleable product, and “mining” shall be construed accordingly;

“mineral” means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, or in or under the seabed formed by or subject to a geological process, but does not include petroleum or surface water;

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7 of 2017

“Mineral Cadastral” means the Mineral Cadastre established pursuant to section 27G;

“Mineral Concentrate” means minerals or associated minerals won through the process of direct extraction of minerals from the ore which need further processes to extract metals and bi- product such as:

- (a) minerals in the category of precious and base metals-
 - (i) gold;
 - (ii) silver;
 - (iii)copper;
 - (iv)iron;
 - (v) nickel;
 - (vi)zinc and
 - (vii) lead;

- (b) minerals in the category of platinum group metals-
 - (i) platinum;
 - (ii) rhodium; and
 - (iii) iridium;
 - (c) minerals in the category rare earth elements, transition element which includes-
 - (i) ytterbium;
 - (ii) beryllium;
 - (iii) tantalum; and
 - (iv) lithium;
 - (d) minerals in the category of non-metallic minerals-
 - (i) graphite; and
 - (ii) sulphur and bi-product from smelting;
 - (e) minerals in the category of industrial and ceramic minerals –
 - (i) limestone, gypsum, clays and refractory minerals;
 - (ii) agro-minerals for fertilizers such as phosphate;
 - (iii) coal; and
 - (iv) soda ash;
 - (f) minerals in the category of alloy metals-
 - (i) manganese;
 - (ii) chromium;
 - (iii) cobalt;
 - (iv) molybdenum; and
 - (v) vanadium;
 - (g) minerals in the category of light metals-
 - (i) aluminium;
 - (ii) magnesium; and
 - (iii) titanium;
 - (h) minerals in the category of gemstones-
 - (i) diamond;
 - (ii) tanzanite;
 - (iii) and all other gemstones; and
 - (i) any other mineral found in the periodic table.
- “mineral processing” means the process of separating commercial value minerals from their ores;

“Mineral rights” means licences referred to in section 7;

“mining area” means an area of land subject to a special mining licence, a mining licence, or a primary mining licence;

“ Mining Cadastre” means the central online system for processing applications for mining rights and mineral processing licences established pursuant to section 27G;

“mining licence” means a mining licence for medium scale mining operation, whose capital investment is between US\$100,000 and US\$ 100,000,000 or its equivalent in Tanzanian shillings;

“mining operations” means operations carried out in the course of undertaking mining activities;

“Minister” means the Minister responsible for mining affairs;

“Online transactional mining flexicadastre portal” means a web based service to facilitate submission of mineral right applications, online payments, administration of mineral rights and exchange of mineral rights information including communication of decisions electronically;

“person” means a natural person or a body corporate or other juridical person;

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“petroleum” has the meaning ascribed to it in the Petroleum Act;

“prescribed form” means all forms applicable under this Act including an electronic forms available within the online transactional mining cadastre portal;

“Primary mining licence” means a licence for small scale mining characterized by minimal machinery or technology of an initial capital for investment which does not exceed US dollars 5 million or its equivalent in Tanzania Shilling;

“processing area” means an area whether within or outside the mining area used for the purpose of milling, beneficiating and dressing mineral ores, and including smelting and refining of minerals;

“prospect” means to search for any mineral by any means and to carry out any such works and remove such samples as may be necessary to test the mineral bearing qualities of land, and includes the conduct of reconnaissance operations;

“prospecting area” means an area of land subject to a prospecting licence;

“prospecting licence” means a prospecting licence granted under Division A of Part IV;

“prospecting operations” means operations carried out in the course of prospecting;

“regulations” means regulations made under this Act;

“reserved area” means-

- (a) an area reserved in accordance with section 15 for applications for mineral rights by tender; or
- (b) an area reserved in accordance with section 16 exclusively for the grant of primary licences to mine minerals under Division C of Part IV;

“resident mines officer” means an officer appointed as such under section 25

“special mining licence” means a licence for large scale mining operation, whose capital investment is not less than US\$100,000,000 or its equivalent in Tanzanian shillings;

“specified gemstone” means gemstone specified under section 17;

“Tax Authority” means the Tanzania Revenue Authority, established under the Tanzania Revenue Authority Act;

“tax expenditure” means the quantified value of tax incentives granted to a company by the Government.”

“vacant area” means an area of land which is not the subject of-

- (a) a mineral right, or an area subject to such a mineral right which the applicant has entered into an agreement to purchase, or in respect of which he has an enforceable option to purchase;
- (b) a processing area;
- (c) a pending application for a mineral right;

(2) A reference in this Act to “land subject to a mineral right” is a reference to an area of land in respect of which a mineral right and or a licence for a Processing Area has been granted and subsists.

PART II GENERAL PRINCIPLES

Ownership of minerals and Government lien
Act No. 7 of 2017
s. 5

5.-(1) The entire property in and control of all minerals in, and under or upon any land, rivers, streams, water courses throughout Tanzania, area covered by territorial sea, continental shelf or the exclusive economic zone is the property of the United Republic and shall be vested in the President in trust for the People of Tanzania.

(2) The Government shall have lien over any material, substance, product or associated products extracted from the mining operations or mineral processing.

Declaration of mining controlled areas
Act No. 7 of 2017
s. 6

5A.-(1) The President may, after consultation with the relevant local authorities through the Minister responsible for local government, and by Order in the *Gazette* declare any area of Tanzania which is subject to mining operations to be a controlled area.

(2) The Order made under this section shall prescribe conditions applicable to the controlled area, and upon such Order being made, the conditions specified in the order shall apply to the specified area and any contravention of such conditions shall be an offence.

(3) For the purpose of subsections (1) and (2), the Commission shall recommend to the Minister regulations applicable to mining operations and activities in the controlled areas.

Authority
required for
prospecting
or mining
Act. No.
23 of 2015
s. 30

6.-(1) No person shall, on or in any land to which this Act applies, prospect for minerals or carry on mining operations or processing operations except under the authority of a mineral right granted or deemed to have been granted, under this Act.

(2) The activities carried on by the Agency in the course of geological mapping shall not be treated for the purpose of subsection (1) as prospecting for minerals or mining operations.

(3) Any person who contravenes subsection (1), commits an offence and on conviction is liable-

- (a) in the case of an individual, to a fine of not exceeding ten million shillings but not less than five million shillings or to imprisonment for a term not exceeding three years or both;
- (b) in the case of a body corporate, to a fine of not less than fifty million shillings.

(4) Any minerals obtained in the course of unauthorized prospecting or mining or processing operations including equipment involved in such operations and any minerals possessed without a proper permit shall be forfeited to the Government by the Commission and auctioned through relevant Government Asset Auctioning Procedures.

Mineral
rights and
exclusivity
Act No.
23 of 2015
s. 31

7.-(1) The following mineral rights may be granted under this Act-

- (a) under Division A of Part IV-
 - (i) a prospecting licence;
 - (ii) a gemstone prospecting licence;
 - (iii) a retention licence;
- (b) under Division B of Part IV-
 - (i) a special mining licence;
 - (ii) a mining licence;

- (c) under Division C of Part IV-
primary mining licence;
- (d) under division D of Part IV-
 - (i) a processing licence;
 - (ii) a smelting licence;
 - (iii) a refining licence.

(2) The licensing authority may, upon consent of the mineral right holder, grant more than one mineral right over the same mining area as follows-

- (a) a mining licence or primary mining licence for building materials may be granted in an area subject to a mineral right for minerals other than building materials;
- (b) a primary mining licence for gemstones may be granted in an area subject to a prospecting licence for minerals other than gemstones;

(3) Notwithstanding the foregoing provision of this section, nothing in this Act shall prevent any person engaged in the construction of tunnels, road, dams, aerodromes and similar public works of an engineering nature from utilizing as building materials any minerals derived from a source approved by the Minister in writing.

(4) The Minister shall not, for the purposes of subsection (3), approve a source in a mining area.

(5) The Minister may, at any time withdraw the approval given under subsection (3).

Restriction on
grant of
mineral rights
Act No.
7 of 2017
s. 7

8.-(1) Mineral rights shall not be granted to-

- (a) an individual who-
 - (i) is under the age of eighteen years;
 - (ii) not being a citizen of the United Republic, has not been ordinarily resident in the United Republic for a period of four years or such other period as may be prescribed;
 - (iii) is an un-discharged bankrupt, having been adjudged or, otherwise declared bankrupt under any written law whether under the laws of the United Republic or

elsewhere, or enters into any agreement or scheme of composition with creditors, or takes advantage of any law for the benefit of debtors; or

(iv) has been convicted, within the previous ten years, of an offence of which dishonesty is an element, or of any offence under this Act, any related or similar Act, or any similar written law in force outside the United Republic and has been sentenced to imprisonment or to a fine exceeding twenty million shillings.

(b) a company-

(i) which has not established a physical and postal address in the United Republic for the purpose of serving legal notices and other correspondences;

(ii) unless, such company is incorporated under the Companies Act and intends to carry out the business of mining under a mining licence;

(iii) which is in liquidation other than a liquidation that forms part of a scheme for the reconstruction or amalgamation of the holder;

(iv) which has among its directors or shareholders any person who would be disqualified in terms of paragraph (a)(iii) and (iv).

(2) A Primary Mining Licence for any minerals shall not be granted to an individual, partnership or body corporate unless-

(a) in the case of an individual, the individual is a citizen of Tanzania;

(b) in the case of a partnership, it is composed exclusively of citizens of Tanzania;

(c) in the case of a body corporate, it is a company and-

- (i) its membership is composed exclusively of citizens of Tanzania;
- (ii) its directors are all citizens of Tanzania;
- (iii) control over the company, both direct and indirect, is exercised, from within Tanzania by persons all of whom are citizens of Tanzania.

(3) Notwithstanding subsection (2), the Commission may, on recommendation of the Resident Mines Officer and upon satisfying itself that a Primary Mining Licence holder needs a technical support which cannot be sourced within Tanzania, allow the Primary Mining licence holder to contract a foreigner for the technical support.

Cap.4
s.8

(4) The provisions of subsection (1)(a)(iii) and (iv) shall apply in relation to engagement of foreign technical support.

(5) A mining licence for mining gemstones shall only be granted to applicants who are Tanzanians.

(6) Notwithstanding subsection (5), where the Minister after consultation with the Commission determines that the development of gemstone resources in an area of land subject to a mineral right, is most likely to require specialized skills, technology or high level of investment, he may grant a mining licence for gemstones to the applicant, where he is satisfied that the licence will be held by that person together with a non-citizen whose undivided participating shares amount to not more than fifty percent either alone, in the case of one person or in the aggregate in the case of more than one person.

(7) A mineral rights shall not be granted to an individual who, or to any partnership or body corporate or to any one of the partners, shareholders or directors of the partnership or body corporate which is in default in another mineral rights or in an expired or cancelled mineral rights:

Provided that-

- (a) an individual who or partnership or body corporate which is in default; or

- (b) a partner, shareholder or director of a partnership or body corporate which is in default, may be granted a mineral right upon rectifying the default.

(8) A prospecting licence shall not be granted to an individual, partnership, body corporate, or any one of the partner, shareholders or directors of the partnership or body corporate who owns more than twenty other valid prospecting licences, unless the cumulative prospecting areas of such other prospecting licences do not exceed 2,000 square kilometres. .

Mineral
rights
transferable
Act No.
7 of 2017
s. 8

9.-(1) The holder of a mineral right, or where the holder is more than one person, every person who constitutes the holder of that mineral right, shall, subject to subsection (2), be entitled to assign the mineral right or, as the case may be, an undivided proportionate part thereof to another person.

(2) No Special Mining Licence, Mining Licence or any undivided proportionate part thereof shall be assigned to another person without a written consent of the licensing authority.

(3) Notwithstanding subsection (2), consent of the licensing authority shall not be required for an assignment to-

- (a) an affiliate, where the obligations of the affiliate are guaranteed by the assignor or by a parent company approved by the licensing authority; and, for the purposes of this paragraph, an affiliate means any company which directly or indirectly controls or is controlled by the applicant or which is controlled directly or indirectly by a company which directly or indirectly controls the applicant;
- (b) a bank or other financial institution by way of mortgage or charge given as security for any loan or guarantee in respect of mining operations;

- (c) another person who constitutes the holder of the special mining licence or, as the case may be, the mining licence.

(4) The consent of the licensing authority where it is required under subsection (2), shall not be given unless there is proof that substantial developments have been effected by the holder of a mineral right.

(5) Application for assignment or transfer of mineral rights shall be made in a prescribed form and accompanied by a prescribed fee.

State participation Act No. 7 of 2017 s. 9

10.-(1) In any mining operations under a mining licence or a special mining licence the Government shall have not less than sixteen percent non-dilutable free carried interest shares in the capital of a mining company depending on the type of minerals and the level of investment.

(2) In addition to the free carried interest shares, the Government shall be entitled to acquire, in total, up to fifty percent of the shares of the mining company commensurate with the total tax expenditures incurred by the Government in favour of the mining company.

(3) Acquisition by the Government of shares in the Company shall be determined by the total value of the tax expenditures enjoyed by the mining company.

Review and renegotiation of development agreements Acts Nos. 7 of 2017 s. 10 6 of 2017

11. Notwithstanding the provisions of this Act and any other written law, all development agreements concluded prior to the coming into force of this section shall, subject to the provisions of the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act, remain in force.

Repealed

12. [Repealed by Act No.7 of 2017.]

Joint and Several obligations

13. Where a mineral right is granted to, or held by, more than one person, any obligation under this Act, the Regulations or a relevant development agreement which is to be observed and performed by the holder shall be a joint

and several obligation of the persons who constitute the holder save where the terms and conditions of that mineral right or a relevant development agreement otherwise provide.

Priority
between
competing
applications

14.-(1) Where two or more persons, not acting together as partnership or joint venture, each make a specified application for the grant of a mineral right over the same area of land, or over areas of land, parts of which are the same area, the person whose application was first registered under this Act shall, if the circumstances in subsection (3) are satisfied, be granted the mineral right for which he has applied.

(2) Where two or more specified applications are received on the same day by an authorized officer or officers during the hours of business appointed by the Commission for the receipt of applications, those applications shall be deemed to have been received simultaneously and priority between them shall be determined by the licensing authority in such manner as may be prescribed in the regulations.

(3) The circumstances referred to in subsection (1) and (2) are that the applicant is –

Cap.4
s.8

- (a) not disqualified for a grant of the mineral right by section 8;
- (b) entitled, otherwise than as provided in this section, to a grant of the mineral right over the area of land for which application is made.

(4) For the purpose of this section, a specified application means an application for the grant of-

- (a) a prospecting licence;
- (b) a special mining licence or a mining licence by a person who is not an entitled applicant;
- (c) a primary mining licence.
- (d) a processing licence, smelting licence, or refining licence.

Applications
for Mineral
Rights by
tender
Cap.4
s.8

15.-(1) Where the Minister considers that it is in the public interest to do so he may, by notice in the *Gazette* or in a local newspaper, designate any vacant area other than an area already forming part of a reserved area as an area for which he invites applications by tender for-

- (a) a prospecting licence or licences;
- (b) a mining licence or licences; or
- (c) a special mining licence or licences.

(2) The area of a prospecting licence or part thereof which has been expired by the holder in accordance with section 32 shall, within a period of four months from the date of expiry, be deemed to have been designated under this section as an area for which the Minister may-

- (a) invite application by tender,
- (b) declare such an area to be exclusively reserved for allocation to small scale miners in accordance with the procedures stipulated under section 16,

or on the expiry of the four months period, the area or areas shall fall vacant.

Exclusive
areas for
primary
licenses

16. Where the Minister, after consultation with the Commission, determines that it would be in the interests of the orderly development of the mining industry in Tanzania, he may, by order published in the *Gazette*

- (a) designate any vacant area; or
- (b) declare any area deemed to have been designated under paragraph (b) of subsection (2) of section 15,

as an area exclusively reserved for prospecting and mining operations by persons holding primary mining licences issued under Division C of Part IV.

Specified
gemstone

17. Where the Minister after consultation with the Commission, determines that it would be in the interests of the development of the gemstone industry in Tanzania, he may by order published in the *Gazette*, designate any gemstone to be a specified gemstone for special conditions on mining trading and disposal.

Offences
relating to
unauthorized
trading of
minerals
Act No.
4 of 2017
s. 34

18.-(1) Subject to subsection (2), no person other than a mineral right holder, a licensed dealer, or licensed broker shall have in his possession, or dispose of, any mineral or minerals, unless as an employee, agent or contractor, he has acquired and holds the mineral or minerals for or on behalf of a mineral right holder, licensed dealer or a licensed broker.

(2) Subsection (1) shall not be construed to restrict any member of the public to have in his possession, or dispose of common salt and building materials which are commonly used for domestic purposes.

(3) No person shall export from Tanzania any mineral or minerals unless he is a mineral right holder, or a licensed dealer, and-

- (a) in the case of a mineral right holder, has paid the royalty or provisional royalty due on such mineral or minerals;
- (b) has paid the inspection fee due on such mineral or minerals;
- (c) in the case of a licensed dealer has made the payment or provisional payment in lieu of royalty due on the export of the mineral or minerals; or
- (d) in any case, has given security to the satisfaction of the Commission for the payment of any such amount.

(4) Any person who contravenes the provisions of subsections (1) and (3) commits an offence and on conviction is liable.

- (a) in the case of an individual, to a fine not exceeding ten million shillings or to imprisonment for a period not exceeding three years or to both;
- (b) in the case of a body corporate, to a fine not exceeding fifty million shillings.

Restriction on exportation or domestic use of minerals
Act No. 4 of 2017
s. 35

18A. Notwithstanding any provision of this Act, no person shall remove or cause to be removed mineral or minerals from a mine for the purpose of export or domestic use unless that person fulfills the conditions specified under section 90A.

**PART III
ADMINISTRATION**

Role of Minister
Act No. 7 of 2017
s. 11

- 19.** The Minister shall be responsible for:
- (a) preparing policies, strategies and legislative framework for exploration and exploitation of mineral resources with special reference to establishing national priorities having due regard to the national economy;
 - (b) monitoring the implementation of laid down government policies on minerals;
 - (c) monitoring the operations of all bodies or establishments with responsibility for minerals and report to the Cabinet;
 - (d) promoting mineral resources of Tanzania for research and exploitation;
 - (e) monitoring the issuance by the Commission of licenses for mining activities in Tanzania; and
 - (f) providing support for the creation of a favourable environment for private investment in the mining industry.

Commissioner for Minerals

20. There shall be appointed by the President a suitably qualified public officer to be a Commissioner for Minerals who shall be responsible for advising the Minister on all matters relating to the mining sector.

Establishment of Mining Commission

21.-(1) There is established a Commission to be known as the Mining Commission.

Act No. 9 of 2017
s.12

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

- (a) suing and being sued;
 - (b) purchasing or otherwise acquiring, holding, charging or disposing of its movable and immovable property;
 - (c) borrowing and lending;
 - (d) entering into contracts; and
 - (e) performing all such other things or acts for the proper execution of its functions which may lawfully be performed by a body corporate.
- (3) Notwithstanding preceding provisions of this section, the Attorney General shall have the right to intervene in any suit or matter instituted by or against the Commission.
- (4) Where the Attorney General intervenes in any matter pursuant to subsection (3), the provisions of the Government Proceedings Act, shall apply in relation to the proceedings of that suit or matter as if it has been instituted against the Government.
- (5) The Commission shall have the duty to notify the Attorney General of any impeding suit or intention to institute a suit or matter for or against the Commission.
- (6) The common seal of the Commission shall be kept in such custody as the Commission may direct and shall not be used except by the order of the Commission.
- (7) The Commission shall be composed of:
- (a) the Chairman;
 - (b) the Permanent Secretary Treasury;
 - (c) the Permanent Secretary from the Ministry responsible for Lands;
 - (d) the Permanent Secretary from the Ministry responsible for Defence;
 - (e) the Permanent Secretary from the Ministry responsible for Local Government;
 - (f) the Chief Executive Officer of the Federation of Miners Associations of Tanzania;
 - (g) Deputy Attorney General;
 - (h) two eminent persons who possess proven knowledge and experience in the mining sector one of whom shall be a woman.

(8) The Chairman and the Commissioners referred under paragraph (h) of subsection (7) shall be appointed by the President and shall serve on full time basis.

(9) Members referred to in paragraphs (b) (c), (d), (e), (f) and (g) shall discharge their responsibilities under this Act on part-time basis but they shall have equal rights with full-time members.

(10) The First Schedule shall have effect on the proceedings of the meeting of the Commission and other matters related to it.

Functions of
Commission

22. The functions of the Commission shall be to:

- (a) supervise and regulate the proper and effective carrying out of the provisions of this Act;
- (b) issue licences under this Act;
- (c) regulate and monitor the mining industry and mining operations in Tanzania;
- (d) ensure orderly exploration and exploitation of mineral resources in Tanzania and the optimal utilization of mineral resources at all mining operations in accordance with the mining policies and strategy;
- (e) resolve disputes arising out of mining operations or activities;
- (f) carry out inspections or investigations on health and safety issues related to mining operations or activities;
- (g) advise the Government on, and ensure compliance with all applicable laws and regulations related to the health and safety of persons involved in mining operations or activities;
- (h) monitor and audit environmental management, environmental budget and expenditure for progressive rehabilitation and mine closure;
- (i) counteract minerals smuggling and minerals royalty evasion in collaboration with relevant Government authorities;

- (j) advise the Government on all matters relating to the administration of the mineral sector with main focus on monitoring and auditing of mining operations to maximize Government revenue;
- (k) promote and conduct research and development in the mineral sector that will lead to increased Government revenue;
- (l) examine and monitor implementation of feasibility reports; mining programs and plans; annual mining performance reports; and environmental management plans and reports of mining companies;
- (m) secure a firm basis of comprehensive data collection on national mineral resources and technologies of exploration and exploitation for national decision making;
- (n) issue, suspend and revoke exploration and exploitation licences and permits;
- (o) ensure general compliance with the laid down standards in mining operations, laws and the terms and conditions of mineral rights;
- (p) monitor and audit quality and quantity of minerals produced and exported by large, medium and small scale miners; to determine revenue generated to facilitate collection of payable royalty;
- (q) audit capital investment and operating expenditure of the large and medium scale mines for the purpose of gathering taxable information and providing the same to the Tanzania Revenue Authority (TRA) and other relevant authorities;
- (r) sort and assess values of minerals produced by large, medium and small scale miners to facilitate collection of payable royalty;
- (s) produce indicative prices of minerals with reference to prevailing local and international markets for the purpose of assessment and valuation of minerals and assessment of royalty;
- (t) verify the forecasted capital investment specified

under section 41 for purposes of ascertaining mis-invoicing or any other form of malpractice in respect of mining licence and special mining licence holders and providing the same to the Tanzania Revenue Authority within twelve months after the issuance of such licences;

- (u) supervise and monitor the implementation of local content plan and corporate social responsibility by a mineral right holder; and
- (v) provide, upon request, information to a mineral right holder or any other person who is engaged in mining operations.

Committees of
Commission

23.-(1) For the purpose of facilitating performance of the functions of the Commission, it may form such number of committees to advise on matters relating to mining and minerals.

(2) The committees shall perform the functions assigned to it by the Commission upon such terms and restrictions as the Commission may determine.

(3) The provisions of the First Schedule shall apply with necessary modification to the proceedings of committees.

Executive
Secretary

24.-(1) There shall be the Executive Secretary of the Commission who shall be appointed by the President.

(2) The Executive Secretary shall-

- (a) exercise supervisory powers over the management of officers and staff of the Commission; and
- (b) be responsible for the day to day management of the affairs of the Commission and carrying out directives of the Commission.

(3) The Executive Secretary shall be the Chief Executive Officer of the Commission and shall hold office for a term of five years and shall be eligible for re-appointment.

Appointment of staff of Commission

25.-(1) The Commission may appoint such officers and staff for the proper discharge of the functions of the Commission under such terms and conditions of the public service as the Commission may determine.

(2) The Minister in consultation with the Commission may appoint a Chief Inspector of Mines, Resident Mines Officers, Mines Resident Officers, Inspectors of Mines and other public officers as may be required for the better performance of functions under this Act.

(3) Officers and staff shall, in the performance of their functions be responsible to the Commission.

Provisions relating to disclosure of information

26.-(1) No information furnished, or information in a report submitted, pursuant to section 100 by the holder of a mineral right shall, for so long as that mineral right or another mineral right granted to the holder has effect over the land to which the information relates be disclosed, except with the consent of the holder of the mineral right.

(2) Nothing in subsection (1) shall operate to prevent the disclosure of information where the disclosure is made-

- (a) for or in connection with the administration of this Act;
- (b) for the purpose of any legal proceedings;
- (c) for the purpose of any investigation or inquiry conducted under this Act;
- (d) to any person being a consultant to the Government or public officer who is authorized to receive such information;
- (e) for or in connection with, the preparation by or on behalf of the Government of statistics in respect of prospecting or mining; or
- (f) for purposes of measures taken in accordance with any written laws aimed at preventing or combating corruption, prevention of financing of terrorism or organized crimes.

- (3) Any person who contravenes subsection (1) commits an offence and is liable on conviction-
- (a) in the case of partnership or community group, to a fine not less than two hundred million shillings or to imprisonment for a period not exceeding twelve months, or to both; and
 - (b) in the case of a body corporate, to a fine not less than one billion shillings.

Mines Resident
Officer

27.-(1) The Commission shall station in every mining site where mining operations take place a Mines Resident Officer who shall be responsible for:

- (a) monitoring the day to day production process at the mining site;
- (b) verifying records, information and production reports kept by the holder of mineral right;
- (c) authorizing entry into the minerals storage facility at the mine of behalf of the Government; and
- (d) oversight over mineral removals and transportation to Government Minerals Warehouse.

(2) For the purpose of the discharge of functions under this Act the Mines Resident Officer shall have all the powers conferred to authorized officers under section 101.

Geological
Survey of
Tanzania
Act No.
7 of 2017
s.12

27A.-(1) There is established the Geological Survey of Tanzania.

(2) The Geological Survey of Tanzania shall be responsible for all matters related to geological activities other than prospecting, exploration and mining activities, and in particular shall-

- (a) advice the Minister on geological matters;
- (b) undertake the geological mapping of Tanzania, and may for that purpose, engage contractors;
- (c) provide data concerning the geology and mineral resources of Tanzania, and generally assist members of the public seeking information concerning geological matters;

- (d) maintain such laboratory, library and record facilities as may be necessary for the discharge of its functions;
- (e) provide geo-scientific advice, information and data to the Government;
- (f) acquire geo-scientific data and information;
- (g) maintain, process, archive and disseminate national geo-scientific data and information;
- (h) collect, arrange and maintain geo-scientific books, records, publications, rock or mineral or fossil or core samples for research, learning and future reference;
- (i) conduct geo-technical and geo-environmental studies;
- (j) monitoring and management of geo-hazard;
- (k) support large and small scale miners on geo-scientific services;
- (l) maintain laboratory, library and record facilities as may be necessary for the discharge of the functions;
- (m) provide geo-scientific laboratory services;
- (n) promote investment in mining industry through dissemination of geo-data, information and maps; and
- (o) perform any other function as may be assigned by the Government, this Act or any other written law.

(3) For an orderly discharge of duties and exercise of powers of the Geological Survey of Tanzania, there shall be the Chief Executive Officer who shall be appointed by the President.

(4) The Chief Executive Officer shall be responsible for the day to day discharge and exercise of powers of the Geological Survey of Tanzania.

Geological
survey,
mapping and
prospecting
Act No.
7 of 2017
s.12

27B. The Geological Survey of Tanzania shall, for the purpose of carrying out the geological mapping of Tanzania-

- (a) enter upon any land for the purpose of carrying out such mapping;
- (b) take soil samples or specimens of rocks, concentrate, tailings or minerals from any licence or permit for purpose of examination or assay;
- (c) break up the surface of the land for the purpose of ascertaining the rocks or mineral within or under it;
- (d) dig up any land or fix any post, stone, mark or object to be used on the surface of that land; and
- (e) carry out any operations which may be carried out in accordance with this Act.

Establishment
of Tanzania
Gem and
Minerals
Houses

27C.-(1) The Commission shall establish such number of the Tanzania Mineral and Gem Houses, which shall comprise of the Minerals Auction Centre, the Minerals Exchange, and the Minerals Clearing House.

Act No.
7 of 2017
s.12

(2) The Minister shall, in consultation with the Commission and Minister responsible for finance, make regulations for the operation and running of the Minerals Auction Centre, the Minerals Exchange, and the Minerals Clearing House.

Establishment
of National
Gold and
Gemstone
Reserve
Act No.
7 of 2017
s.12

27D.-(1) The Minister responsible for finance shall, after consultation with the Commission and the Governor of the Bank of Tanzania and by order published in the *Gazette*, establish the National Gold and Gemstone Reserve into which shall be deposited:

- (a) all royalties required to be paid in refined minerals;
- (b) all minerals impounded or otherwise confiscated in accordance with the law;
- (c) minerals purchased by the Government in accordance with the provisions of this Act;

- (d) dividend minerals paid under any arrangement or agreement; and
- (e) any minerals otherwise acquired by the Government.

(2) The National Gold and Gemstone Reserve established under this section shall be under the control of the Bank of Tanzania.

Establishment
of Government
Minerals
Warehouse
Act No.
7 of 2017
s.12

27E.-(1) The Minister responsible for finance shall after consultation with the Commission and the Governor of the Bank of Tanzania, establish the government Minerals Warehouse which shall be the central custodian of all the metallic minerals and gemstones won by mineral rights holders in Tanzania.

(2) The Minister responsible for finance in consultation with the Minister shall make regulations for the transfer and deposit of minerals by the mineral right holders in the Government Minerals Warehouse, and for the attendant procedures and fees.

Establishment
of National
Mineral
Resources Data
Bank
Act No.
7 of 2017
s.12

27F.-(1) The Geological Survey of Tanzania shall establish under it the National Mineral Resources Data Bank.

(2) All mineral data generated under this Act shall be owned by the Government.

(3) The mineral right holder shall submit to the Geological Survey of Tanzania the following accurate mineral data- .

- (a) geological maps and plans;
- (b) geophysical and geochemical raw data;
- (c) processed and interpreted data or maps;
- (d) technical reports;
- (e) core samples and its mineral exploration data base; and
- (f) any other information as may be required.

(4) The mineral right holder shall give copies of data generated under subsections (2) and (3) to the Geological Survey of Tanzania free of charge.

(5) The Geological Survey of Tanzania may permit the mineral right holder to market the right of use of data on terms to be agreed.

(6) The mineral right holder shall not export any core, cuttings, rock samples, soil, fluid samples or any other data collected without the written authorisation of the Geological Survey of Tanzania.

(7) The Geological Survey of Tanzania shall prescribe rules for the better compliance with the requirements under this section, including the keeping of records and submission of reports and returns.

Mining
Cadastre
Act No.
7 of 2017
s.12
Cap.4
s.8

27G.-(1) There shall be established a Mining Cadastre which shall-

- (a) receive and process applications for mineral rights and mineral processing licences;
- (b) administer mineral rights and mineral processing licences; and
- (c) maintain public cadastral maps and cadastre registers.

(2) The Commission may establish regional mining cadastre offices which shall receive applications for mineral rights and forward applications for processing by the Mining Cadastre.

(3) The Minister may after consultation with Minister responsible for lands, make regulations to prescribe the operationalization and management of the Mining Cadastre.

Indemnity
Act No.
7 of 2017
s.12
Cap.4
s.8

27H. An officer of the Commission or committee shall not be liable for anything done or omitted to be done in good faith in the performance or purported performance of any function vested in that officer by, or in accordance with an appointment made under this Act.

**PART IV
MINERAL RIGHTS**

**DIVISION A:
Prospecting Licence**

Application
for
prospecting
licence

Acts Nos.
23 of 2015
s.38
7 of 2017
s.13

28.-(1) An application may be made under this Division of this Part for a prospecting licence for minerals falling under any of the following groups:

- (a) metallic minerals;
- (b) energy minerals;
- (c) gemstone excluding kimberlitic diamond;
- (d) kimberlitic diamond;
- (e) industrial minerals; or
- (f) building materials.

(2) An application for a prospecting licence including an application in respect of land in an area reserved for applications by tender for prospecting licences shall be made to the Commission and shall be in the prescribed form and accompanied by the prescribed fee.

(3) An application for the grant of a prospecting licence-

(a) shall contain-

- (i) in the case of an individual, his full name and nationality, physical and postal addresses, and attach his recent passport size photograph and a copy of his national identity card, passport, driving licence or voters registration card"; or
- (ii) in the case of a body corporate, its corporate name, place of incorporation, names and nationality of directors including copies of their identity cards;
- (iii) in the case of more than one person, particulars referred in items (i) and (ii) of each of that person.

(b) shall state the type of minerals and its relevant group, as indicated in subsection (1);

- (c) shall state the size of the area of land over which it is sought, which shall not exceed the maximum area prescribed as provided under section 70, and be accompanied by a plan of the area;
- (d) shall contain a statement giving particulars of the financial and technical resources available to the applicant;
- (e) shall contain a statement on the procurement plan of goods and services available in the United Republic;
- (f) shall contain details of any Mineral Right previously granted to the applicant;
- (g) a statement of integrity pledge in a prescribed form; and
- (h) local content plan.

(4) Every application for a prospecting licence made in the prescribed form by an applicant who has tendered to the licensing authority the prescribed fee, shall be registered immediately in the register maintained for such applications under this Act.

(5) Each application registered under subsection (4) shall be assigned a number and the date on which it was received and shall be indicated on an official receipt handed to the applicant or his authorized agent or sent to the applicant by registered mail.

Prospecting
licence by
tender
Act No.
7 of 2017
s.14

29.-(1) An application for a prospecting licence in an area designated as an area for which applications for such a licence are invited by tender shall-

- (a) be in the prescribed tender form and accompanied by the prescribed tender fee; and
- (b) subject to the terms and conditions of the invitation to tender, include the matters required to be included in applications by section 28.

(2) Applications made under subsection (1) shall be submitted to the Commission.

(3) On receipt of a report from the Commission, the licensing authority shall consider the competing bids and shall select the bid which is most likely to promote the expeditious and beneficial development of the mineral resources of the area having regard to-

- (a) the programme of prospecting operations which the applicant proposes to carry out and the commitments as regards expenditure which the applicant is prepared to make;
- (b) the financial and technical resources of the applicant; and
- (c) the previous experience of the applicant in the conduct of prospecting and mining operations, and the successful application shall be treated as an application under section 14 which has priority over any other application and the applicant shall be notified accordingly.

Minimum expenditure

30.-(1) The amount per square kilometre which the holder of a prospecting licence shall expend annually on prospecting operations shall be prescribed and for that purpose the Regulations may prescribe different amounts in respect of prospecting licences for building materials and gemstones mineral groups from those for prospecting licences for metallic, energy, kimberlitic diamonds or industrial minerals group.

(2) The expenditure per square kilometre specified in subsection (1) shall be different amounts for the different periods specified under subsection (1) of section 32 including making provision for a lump sum payment.

Condition for grant of prospecting licence
Cap.4
s.8

31. An applicant for a prospecting licence whose application was properly made under section 28 and an applicant whose application has been declared to be a successful application under section 29 shall be entitled to the grant of a prospecting licence for which he has applied unless-

- (a) he is disqualified from holding a prospecting licence under section 8;

- (b) he is the holder of another mineral right and is, in respect of that other mineral right, in default;
- (c) the financial and technical resources available to the applicant are not adequate;
- (d) the area of land for which he has made application or part thereof is subject to another mineral right;
- (e) the area of land for which application has been made, or any part of it, covers or includes an area designated by the Minister under section 16 as an area reserved for prospecting and mining operations by persons holding primary mining licences;
- (f) the area of land for which application has been made covers or includes an area of land for which application has been made by another person who has priority over the applicant under section 14;
- (g) in a case to which section 29 applies, the area of land for which application has been made, or any part of it, covers or includes an area deemed to have been designated or designated by the Minister under section 15 as an area in respect of which applications for the grant of a mineral right shall be invited by tender.

Grant and
renewal
of prospecting
licence

Acts Nos
23 of 2015
s. 39
7 of 2017
s. 15

32.-(1) Where an applicant is entitled to the grant of a prospecting licence under section 31, the licensing authority shall issue to the applicant the prospecting licence as provided in that section and the licence so issued shall subsist for the following periods-

- (a) for the initial prospecting period for which the applicant has applied, a period not exceeding four years;
- (b) where application for renewal has been made by the holder in the prescribed form, for the first period of renewal for which the applicant has applied, a period not exceeding three years;
- (c) a prospecting licence shall not be renewable after the second period of renewal;

- (d) where a prospecting licence is no longer renewable the prospecting area shall revert to the Government and thereafter a prospecting licence in respect of the said prospecting area shall be issuable to a local mining company to be designated by the Minister upon approval by the Cabinet; and
- (e) any company desiring to carry out prospecting activities in respect of prospecting areas over which a prospecting licence has been issued to a local mining company, shall conclude an arrangement with the company after approval by the Cabinet.

(2) A holder of a licence who intends to renew the licence shall, within one month before the expiry date of the licence, submit an application for renewal of the prospecting licence.

Notification
of grants
Cap.4
s.8

33.-(1) The licensing authority shall, within four weeks from the date on which an application under section 28 for the grant of a prospecting licence was registered in consideration of the application, notify the applicant that the application has been granted or rejected:

Provided that where the application has been rejected under this section, the licensing authority shall, in notifying the applicant give reasons to that effect.

(2) The applicant shall, within four weeks of the date of notification under subsection (1) give notice to the licensing authority of his willingness to accept the proposed licence and pay the fees stipulated in the notification.

(3) Where, within the time specified under subsection (2) the applicant fails to inform the licensing authority of his acceptance of the proposed licence, the application shall be treated as having been withdrawn.

(4) The licensing authority shall, within four weeks from the notice given by the applicant, grant the application and cause the licence to be issued to the applicant.

(5) Not later than six weeks from the date on which application is made for the renewal of a prospecting licence, the licensing authority shall, in accordance with subsection (2) of section 32, grant the application or-

- (a) in a case of default, serve on the holder a notice of the kind referred to in paragraph (a) of subsection (3) of section 32; or
- (b) where the holder has failed to provide the licensing authority with a sufficient description of the areas he is relinquishing in order to satisfy the requirements of subparagraph (i), or (ii), of paragraph (b) of subsection (3) of section 32 serve a notice on the holder calling on him within a reasonable time to satisfy those requirements;
- (c) where the holder has not satisfied the licensing authority as required under paragraph (b), require the holder to provide further description of the area for relinquishment; or
- (d) in the case of an application under paragraph (d) of section 32, if the conditions for the grant of an extension in accordance with that provision have not been satisfied, serve a notice on the holder stating why.

Content of
prospecting
licence

34.-(1) A prospecting licence shall-

- (a) state the names, postal and physical address and status of the licensee;
- (b) state the date of the grant of the licence and the period for which it is granted;
- (c) state the commencement and expiry dates;
- (d) include a description and plan of the area of land over which it is granted;
- (e) append the prospecting programme and its financial expenditure estimate;
- (f) state in the procurement plan of goods and services available in the United Republic;
- (g) state whether the licence applies to:

- (i) metallic minerals group and the type of mineral;
- (ii) energy minerals group and the type of mineral;
- (iii) gemstone minerals group and the type of mineral;
- (iv) industrial minerals group and the type of mineral;
- (v) building materials group and the type of mineral;
- (vi) kimberlitic diamonds.

(2) In determining the date for the commencement of the period for which the licence is granted, the licensing authority may take account of any period not exceeding six months from the date of the grant which is required by the applicant to make any necessary preparations for prospecting operations.

Rights of
holder of
prospecting
licence

35.-(1) Subject to the provisions of this Act and the Regulations, a prospecting licence confers on the holder the exclusive right, to carry on prospecting operations in the prospecting area for minerals to which the licence applies.

(2) In the exercise of the rights conferred by this section, the holder may, subject to section 95, either himself or by his employees or agents, enter upon the prospecting area and erect camps and temporary buildings and may erect installations in any water forming part of the prospecting area.

(3) The holder of a prospecting licence for gemstones, who in the course of carrying out prospecting operations under the prospecting licence recovers gemstones, may dispose of the gemstones by sale to a licensed dealer and shall promptly following any such sale submit particulars thereof to the Commission, showing the name and business address of the dealer, a description of the stones, their weight and a copy of a receipt given by the purchaser for the price received.

(4) The holder of a prospecting licence for gemstones who recovers gemstones in the course of prospecting operations shall for the purpose of holding the gemstones and selling them pursuant to subsection (3) be deemed to be a mineral right holder.

Obligations
of holder of
prospecting
licence

36.- (1) The holder of a prospecting licence shall-

- (a) commence prospecting operations within a period of three months, or such further period as the licensing authority may allow, from the date of the grant of the licence or such other date as is stated in the licence on commencement period;
- (b) give notice to the licensing authority of the discovery of any mineral deposit of potential commercial value;
- (c) adhere to the prospecting programme appended to the prospecting licence; and
- (d) expend on prospecting operations not less than the amount prescribed.

(2) A person who-

- (a) contravenes any provision of subsection (1), shall be in default;
- (b) makes false statement or presentation to the licensing authority regarding the obligations of the licensee under subsection (1) commits an offence, and on conviction is liable to a fine of not less than twenty million shillings.

Repealed

37. [Repealed by Act No. 7 of 2017 s. 16.]

Repealed

38. [Repealed by Act No. 7 of 2017 s. 16.]

DIVISION B:

Special Mining Licence and Mining Licence

(i) Applications for Special Mining Licence and Mining Licence

Applicants
Act No.
23 of 2015
s. 40
Cap.4
s.8

39.-(1) Subject to section 42 or 50, as the case may be, the holder of a prospecting licence hereinafter in this Division of this Part referred to as an “entitled applicant” is entitled-

- (a) on application to the Commission, pursuant to section 41, to the grant of a special mining licence;
- (b) on application to the Commission pursuant to section 50 to the grant of a mining licence,
for the mining within the prospecting area of minerals to which the prospecting licence applies.

(2) Where a person who is not an entitled applicant has made an application to the licensing authority for a special mining licence or mining licence in the prescribed form and tendered the prescribed fee, the application shall be registered immediately in the register maintained for such applications in accordance with this Act.

(3) The application registered under subsection (2) shall be assigned a number, date and time at which it was received shall be indicated on an official receipt and handed to the applicant or his authorized agent or sent to the applicant by registered mail.

(4) Every applicant applying for a special mining licence or a mining licence under the provisions of this Act shall submit copies of his application to such persons as the Minister may prescribe in the Regulations.

Repealed

40. [Repealed Act No. 23 of 2015 s. 41.]

(ii) *Special Mining Licence*

Application
for special
Mining
Licence

41.-(1) An application for a special mining licence shall be in the prescribed form and shall be accompanied by the prescribed fee.

Acts Nos
23 of 2015
s. 42
7 of 2017
s.17
Cap.4
s.8

(2) In addition to the requirements in subsection (3), an application for a special mining licence shall identify the relevant prospecting licence and provide a full description of the land within the prospecting area for which the special mining licence is sought and a plan of the proposed mining area drawn in the manner and showing particulars as the Commission may reasonably require.

(3) Every application for a special mining licence shall include or be accompanied by:-

- (a) a statement of the period for which the licence is sought;
- (b) a comprehensive statement by the applicant, so far as he knows, of the mineral deposits in the proposed area, and details of all known minerals proved, estimated or inferred, ore reserves and mining conditions;
- (c) the proposed programme for mining operations, including a forecast of capital investment, the estimated recovery rate of ore and mineral products, and the proposed treatment and disposal of ore and minerals recovered;
- (d) proposed plan for relocation, resettlement and compensation of people within the mining areas in accordance with the Land Act;
- (e) the applicant's environmental certificate issued in terms of the Environment Management Act;
- (f) details of expected infrastructure requirements;
- (g) the procurement plan of goods and services available in the United Republic;

Cap.113

Cap.191

Cap. 366

- (h) proposed plan with respect to the employment and training of citizens of Tanzania and succession plan for expatriate employees, if any as may be required by the Employment and Labour Relations Act;
- (i) a statement of integrity pledge in a prescribed form;
- (j) local content plan; and
- (k) such other information as the Minister may reasonably require for the disposal of the application.

(4) An application under this section shall be submitted to the Commission.

Grant of
special
mining
licence
Act No.
7 of 2017
s.18

42.-(1) Where upon satisfying itself that the applicant for special mining licence complies with all requirements, the Commission shall submit the application with all relevant documents to the Minister for tabling to the Cabinet for approval.

(2) Upon approval by the Cabinet, the Commission shall grant a special mining licence to the applicant of the minerals licence in respect of the area of the land requested in application if –

- (a) it is established, or may be reasonably inferred, that there are sufficient deposits or reserves of minerals proposed to be mined to justify their commercial exploitation;
- (b) the area of land over which the licence is sought is not in excess of the area reasonably required to carry out the applicant's proposed programme for mining operations and shall cover only that area required for surface mining and treatment facilities, and proved, indicated and inferred reserves;

- (c) judged by international standards of good mining practice, the applicant's proposed programme for mining operations would ensure the efficient and beneficial use of the mineral resources of the area over which the licence is sought;
- (d) taking account of the size and nature of the proposed mining operations, the applicant's proposals for the employment and training of citizens of Tanzania and succession plan on expatriate employees and plan for procurement of goods and services available in the United Republic are adequate;
- (e) the applicant is not in default in respect of any of the obligations under his prospecting licence.

(3) Notwithstanding paragraph (e) of subsection (2) the Commission shall not reject an application for the grant of a special mining licence on the grounds that the applicant is in default without first serving on the applicant a notice giving particulars of the default and requiring the applicant within a reasonable time specified in the notice to remedy the default or, where a default is not capable of remedy, the applicant has not offered in respect thereof reasonable compensation.

(4) In the event that an application for a special mining licence made by an applicant is rejected by the Commission on the grounds that the application does not satisfy one or more of the requirements set forth in subsection (2), the Commission shall cause a notice to be served on the applicant giving full particulars of the respects in which the applicant fails to satisfy those requirements.

(5) The Commission shall give notice to an applicant to which subsection (2) refers of his decision on the application, and, if he intends to grant it, on the terms and conditions of the special mining licence.

(6) Where within sixty days of the service of such notice, the applicant fails to inform the Commission of his acceptance of the proposed special mining licence, his application shall be deemed to have lapsed.

Duration of special mining licence

43. A special mining licence granted to an entitled applicant shall be for the estimated life of the ore body indicated in the feasibility study report, or such period as the applicant may request whichever period is shorter.

Content of special mining licence

44. A special mining licence shall-

- (a) state names, physical and postal address, and status of the licence holder;
- (b) state the date of the grant of the licence and the period for which it is granted;
- (c) include a description and plan of the area of land over which it is granted;
- (d) state conditions on-
 - (i) the programme of mining operation;
 - (ii) the environmental management plan;
 - (iii) the employment and training of citizens of Tanzania and succession plan, as required by the Employment and Labour Relations Act;
 - (iv) other matters as may be required; and
 - (v) the procurement plan of goods and services available in the United Republic.

Cap. 366

Renewal of special mining licence
Act No. 7 of 2017
s.19

45.-(1) The holder of a special mining licence may, at any time not later than one year before the expiry of that licence, apply to the Commission for the renewal of his licence in respect of all or any part of the mining area.

(2) An application for renewal shall be in the prescribed form, and shall be accompanied by the prescribed fee and shall include-

- (a) a statement on the implementation of the conditions of licence;

- (b) a statement of the period not exceeding the estimated life of the ore body for which the renewal is sought;
- (c) details of-
 - (i) the latest proved, estimated and inferred ore reserves;
 - (ii) the capital investment to be made in, and production costs and revenue forecasts in respect of, the period of renewal;
 - (iii) any expected changes in methods of mining and treatment;
 - (iv) any expected increase or reduction in mining activities and the estimated life of the mine;
- (d) a proposed programme of mining operations for the period of renewal;
- (e) an environmental certificate, issued under the Environment Management Act; in respect of operations to be conducted during the renewal period;
- (f) if the renewal is sought in respect only of part of the mining area, a plan identifying that part.

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(3) An application for renewal shall be referred to the Commission.

(4) Save as provided in subsection (5), on an application duly made under this section, a special mining licence shall be renewed by the Commission for a period not exceeding the estimated life of the remaining ore body and the Commission may, subject to any relevant development agreement and after consultation with the applicant, renew the licence with variation of conditions of the licence.

(5) The Commission may reject an application for renewal after taking account of any relevant stipulation in a development agreement if-

- (a) the applicant is in default, provided that the Commission shall not reject an application on the grounds that the applicant is in default without first serving on the applicant a notice giving particulars of the default and requiring the applicant within a reasonable time specified in the notice to remedy the default or, where a default is not capable of remedy, requiring the applicant to offer in respect thereof reasonable compensation;
- (b) the development of the mining area has not proceeded with reasonable diligence;
- (c) minerals in workable quantities do not remain to be produced;
- (d) the programme of intended mining operations will not ensure the proper development of the mineral resources of the mining area and their recovery in accordance with good mining practice;
- (e) the applicant has not included in his application for renewal the relevant environmental certificate issued under the Environment Management Act in respect of operations to be conducted during the period of renewal.

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Rights of holder of special mining licence

46. A special mining licence confers on the holder the exclusive right, subject to this Act and the Regulations, to carry on mining operations in the mining area for minerals as specified in the licence, and for that purpose the holder, his servants and agents may, in particular-

- (a) enter on the mining area and take all reasonable measures on or under the surface for the purpose of facilitating and undertaking his mining operations;
- (b) erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing or treating the mineral

- recovered by him in the course of mining operations;
 - (c) subject to the payment of royalties in accordance with this Act and the Regulations, dispose of any mineral product recovered;
 - (d) stack or dump any mineral or waste products in a manner provided for in his environmental management plan and the regulations,
- and may prospect within the mining area for any mineral specified in the licence.

Obligations
of holder of
special mining
licence
Act No.
23 of 2015
s. 43

47. Subject to the provisions of this Act and the regulations, the holder of a special mining licence shall, as a condition of the licence-

- (a) commence mining activities within eighteen months or such other further period as the licensing authority may allow from the date of grant of a licence and carry on mining operations in substantial compliance with the programme of mining operations and an environmental management plan;
- (b) employ and train citizens of Tanzania and implement succession plan on expatriate employees in accordance with his proposals as appended to the special mining licence;
- (c) demarcate and keep demarcated in the prescribed manner the mining area;
- (d) prepare and update mine closure plans for making safe the mining area on termination of mining operations in a manner as prescribed in the relevant regulations;
- (e) implement proposed plan for relocation, settlement and payment of compensation to people within the mining area in accordance with the Land Act;

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- (f) the Minister shall, after consultation with the Commission, provide for the posting of a rehabilitation bond, as provided for in the regulations, to finance the costs of rehabilitating and making safe the mining area on termination of mining operations where the holder of the special mining licence has failed to meet his obligations under paragraph (d) relating to the mine closure plan or updated mine closure plan, as the case may be.

Amendment of
special mining
licence by holder

48.-(1) The holder of a special mining licence may make amendments to-

- (a) the programme of mining operations;
- (b) the programme for the employment or training of citizens of the United Republic of Tanzania.

(2) Particulars of the amendments, including, where appropriate, particulars of any significant impacts to the environment that any amendment could endanger, shall be served on the Minister and, subject to subsections (3) and (4), the amendment shall have effect when so served.

(3) An amendment which substantially alters any provision which forms part of the conditions of the licence, shall not take effect without the express approval of the Minister and where any such amendment appears to the Minister to make such a substantial alteration, he shall refer the amendment to the Commission for its advice.

(4) On receiving the advice of the Commission, the Minister shall within thirty days and, subject to any relevant development agreement, determine whether or not to approve the amendment and, if he decides to approve the amendment, the terms and conditions if any, on which such approval is granted, shall be complied with.

(iii) Mining Licence

Application
for mining
licence
Act No.
7 of 2017
s.20

49.-(1) An application for a mining licence for minerals shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed fee.

(2) Every application under this section shall-

- (a) identify the relevant prospecting licence;
- (b) describe the area, not exceeding the maximum area prescribed over which a mining licence is sought, and shall be accompanied by a sketch plan in sufficient detail to enable the Commission to identify the area;
- (c) describe the mineral deposits in the proposed area;
- (d) include a feasibility study which should set out-
 - (i) the proposed programme of mining operations including such measures as the applicant proposes to take in relation to any adverse impacts to the environment;
 - (ii) the estimated recovery rate of ore and the applicant's proposals for its treatment and disposal;
 - (iii) the applicant's estimate of the quantity of minerals to be produced for sale annually;
- (e) state the duration, not exceeding ten years, for which the mining licence is sought;
- (f) append a plan on employment and training of Tanzanians and succession plan on expatriate employees in accordance with the Employment and Labour Relations Act as appended to the special mining licence;

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- (g) include a statement giving particulars of financial and technical resources available to the applicant;
- (h) submit a procurement plan of goods and services available in the United Republic.
- (i) include a statement of integrity pledge in a prescribed form;
- (j) include a local content plan; and
- (k) include such further information as the Commission may require for disposing of the application.

Grant of
mining
licence
Cap. 4
s.8

50.-(1) The Commission shall grant an application for a mining licence for minerals which has been properly made under section 49 and a successful application for a mining licence made under section 71 unless-

- (a) the applicant is a person to whom section 8 applies;
- (b) the area in respect of which a mining licence is sought is in excess of the area required to mine the deposits identified by the applicant;
- (c) employment and training programme for citizens of Tanzania and succession plan on expatriate employees in accordance with his proposals is not satisfactory;
- (d) the applicant is or was in default in respect of any other mineral right and has failed to rectify such fault;
- (e) the applicant is not an entitled applicant and-
 - (i) the area of land for which the applicant has made application or part of it is subject to another mineral right, other than a prospecting licence for building materials or gemstones;
 - (ii) the area of land for which application has been made, or part of it, covers or includes an area designated by the Minister under section 16 as an area

reserved for prospecting and mining operations by persons holding primary licences to mine minerals;

- (iii) the area of land for which application has been made covers or includes an area of land for which application has been made by another person who has priority over the applicant under section 14;
- (iv) except in a case of an application made in accordance with section 71, the area of land for which application has been made, or part of it, covers or includes an area designated by the Minister under section 15 as an area in respect of which applications for the grant of a mineral right have been or will be invited by tender;
- (v) financial and technical resources available to the applicant are not adequate for the conduct of mining operations;
- (vi) the applicant has not included an application for mining licence the relevant environmental certificate issued under the Environment Management Act.

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(2) The maximum initial period for which a mining licence may be granted is ten years but the licence may be renewed as provided in section 53.

Rights
of holder of
mining
licences

51. A mining licence confers on the holder the exclusive right, subject to this Act and the Regulations, to carry on mining operations in the mining area for the stated minerals, and for that purpose the holder, his servants and agents may, in particular-

- (a) enter on the mining area and take all reasonable measures on or under the surface for the purpose of facilitating and under taking his mining operations;
- (b) erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing or treating the mineral recovered by him in the course of mining operations;
- (c) subject to payment of royalties in accordance with this Act and the Regulations, dispose of any mineral product recovered;
- (d) stack or dump any mineral or waste product in a manner provided for in the applicable Regulations; and
- (e) employ and train citizens of Tanzania and implement succession plan on expatriate employees in accordance with the Employment and Labour Relations Act,

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and may prospect within the mining area for any minerals other than gemstones.

Obligations
of holder of
mining
licences
Act No.
23 of 2015
s. 44

52. Subject to the provisions of this Act and the Regulations the holder of a mining licence shall-

- (a) commence mining operations within eighteen months and develop the mining area in substantial compliance with the programme of mining operations with due diligence;
- (b) demarcate and keep demarcated in the prescribed manner the mining area;
- (c) take all appropriate measures for the protection of the environment in accordance with the Environment Management Act;
- (d) implement the proposed plan for relocation, resettlement of, and payment of compensation to people within the mining areas in accordance with the Land Act;

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- (e) employ and train citizens of Tanzania and implement the succession plan on expatriate employees in accordance with the Employment and Labour Relations Act; and
- (f) implement plan for procurement of goods and services available in the United Republic.

Renewal of
mining
licence

53.-(1) The holder of a mining licence may, not later than six months prior to expiry date of the licence, apply to the Commission for a renewal of his licence; an application for renewal shall be in the prescribed form and shall be accompanied by the prescribed fee and tax clearance certificate issued by the Tax Authority in respect of operations to be conducted during the renewal period.

(2) On an application made under this section, the Commission shall renew the mining licence for the period for which application has been made, but not exceeding ten years, unless-

- (a) the applicant is in default;

Provided that, the licensing authority shall not reject an application to renew a mining licence on the grounds that the holder is in default, without first serving on the holder a notice specifying particulars of the default and requiring the holder to remedy the default time specified in the notice;

- (b) the development of the mining area has not proceeded with reasonable diligence;
- (c) minerals in workable quantities do not remain to be produced; or
- (d) the applicant has failed to conduct mining operations in the mining area in strict compliance with the applicable Regulations relating to safety and environmental management.

DIVISION C:
Primary Mining Licences

Application
for primary
mining
licence
Acts Nos
23 of 2015
s. 45
7 of 2017
s. 21

54. (1) Any person not disqualified under section 8, may apply to the Commission for the grant of a primary mining licence.

- (2) Every such application shall-
- (a) be in the prescribed form and accompanied by the prescribed fee;
 - (b) describe the area not exceeding the prescribed maximum area over which a primary mining licence is sought, and shall be accompanied by a sketch plan with sufficient details to enable the Commission to identify the area;
 - (c) include a statement of integrity pledge in a prescribed form; and
 - (d) include a local content plan.

(3) An application for a primary mining licence shall contain:

- (a) in the case of an individual, his full name and nationality, physical and postal addresses and attach an identification card such as his national identity card, passport, driving licence or voter's registration card;
- (b) in the case of a body corporate, its corporate name, place of incorporation, names and the nationality of its directors including copies of their identity cards;
- (c) in the case of more than one person, the particulars referred in paragraphs (a) and (b);
- (d) environmental investigations and social study and an environmental protection plan as described in the relevant regulations.

(4) A primary mining licence shall confer on the holder the right to prospect for and mine minerals as provided for in this Division of this Part.

Grant and
validity of
primary mining
licence
Acts Nos
23 of 2015
s.46
7 of 2017
s.4(f)

55.-(1) The Commission shall grant an application for a Primary Mining Licence which has been properly made under section 54 unless-

- (a) the applicant is or was in default in respect of any other mineral right and has failed to rectify such default;
- (b) the area for which application has been made or part of it covers or includes an area which is:
 - (i) subject to another mineral right or an area which subsection (3) of section 7 relates;
 - (ii) an area designated by the Minister under section 16 as an area reserved for prospecting and mining operations by persons holding primary mining licences;
 - (iii) an area designated by the Minister under section 15 (2) (a) as an area in respect of which applications for the grant of a mineral right have been, or will be, invited by tender.

(2) A primary mining licence granted under this section shall be valid for a period of seven years and may be renewed under section 56.

(3) A primary mining licence to mine minerals granted under this section shall confer on the holder the exclusive right, subject to this Act and the Regulations including the Regulations applicable to safety and the protection of the environment, to carry on prospecting and mining operations in the mining area, and for that purpose the holder, his servants and agents (being persons not disqualified under subsection (2) of section 8 from holding a primary mining licence) may, in particular-

- (a) enter on the mining area and take all reasonable measures on or under the surface for the purpose of mining operations;
- (b) erect the necessary equipment, plant and buildings for the purpose of mining, transporting, dressing or treating the minerals

recovered by him in the course of mining operations;

- (c) subject to payment of royalties in accordance with this Act and the regulations dispose of any mineral recovered;
- (d) stack or dump any mineral or waste product in compliance with the applicable regulations;
- (e) carry on prospecting operations in the mining area.

(4) Notwithstanding subsection (2), a primary mining licence issued for mining sand and other fast depleting building materials shall be valid for a period of one year and may be renewed in accordance with section 56.

Renewal of
primary
mining
licence

56.-(1) Not later than three months before the expiry date of primary mining licence, the holder may apply to the Commission for renewal of the licence.

(2) The Commission shall renew the licence on an application made under subsection (1) and accompanied by the prescribed fee.

(3) An application for renewal of the licence under this section may be refused if-

- (a) the applicant is in default;
- (b) the development of the mining area has not proceeded with due diligence;
- (c) minerals in workable quantities do not remain to be produced;
- (d) the applicant has failed to conduct mining operations in the mining area in strict compliance with the applicable Regulations relating to safety and environmental management;

Provided that, the licensing authority shall not reject an application to renew a primary mining licence on the grounds that the holder is in default, without first serving on the holder a notice specifying particulars of the default and requiring the holder to remedy the default time specified in the notice.

Allocation of primary mining licences to mine in exclusive primary area

57.-(1) primary mining licences in an area designated under section 16 shall be allocated in accordance with a scheme of allocation provided for by the regulations and no application for any such licence may be made under section 54.

(2) A scheme of allocation made under the regulations pursuant to this section, shall make provision for the renewal amalgamation and conversion of such primary mining licences in the designated area.

Conversion of primary mining licences to mining licences Act No. 23 of 2015 s. 47

58.-(1) The holder of one or more primary mining licences may-

- (a) at any time before the licences expire;
- (b) if the holder has tendered the prescribed fee, is not in default and has provided particulars which would be required in an application under sections 49 as the case may be,

apply to the Commission to convert the licence or licences to a mining licence.

(2) An application made in accordance with subsection (1) shall be processed by the Commission and the mining licence shall be granted by the Commission.

(3) When granting the licence under this section the remaining period of the former licences shall not be taken into account.

DIVISION D:

Mineral Processing, Smelting and Refining

Mineral right holder to set aside minerals for processing, smelting or refining

59. The mineral right holder shall be required to set aside certain amount of minerals at such percentage as the Minister may, after consultation with the mineral right holder and the Commission, determine for processing, smelting or refining within the United Republic.

Application and grant of licence for processing minerals

60.-(1) A person who is not entitled to process minerals in any area within or outside the area subject to a mineral right may apply to the Commission for a licence for processing minerals.

(2) An application under subsection (1) shall be made in the prescribed form and accompanied by-

- (a) prescribed fee;
- (b) environment management plan as described in relevant regulations;
- (c) process plant layout;
- (d) procurement, haulage and processing inputs plan;
- (e) compensation, relocation and resettlement plan, if required; and
- (f) such other documents and information as may be required by the licensing authority.

(3) The Commission shall, if satisfied with the content of the application under subsection (2), register the applicant and issue the licence upon such terms and conditions as may be prescribed in the licence.

(4) The Processing Licence issued under this section shall be valid for a period not exceeding ten years and shall be subjects to renewal.

(5) Procedures for application and granting of licence for processing minerals under this section shall be prescribed in the regulations.

Application and grant of licence for smelting or refining minerals

61.-(1) A person who wishes to smelt or refine minerals shall submit an application to that effect to the Commission for a smelting licence or as the case may be, a refining licence.

(2) The application under subsection (1) shall be made in the prescribed form and shall be accompanied by-

- (a) prescribed fee;
- (b) environment management plan as prescribed in relevant regulations;

- (c) smelter or refinery plant layout;
- (d) waste disposal management plan;
- (e) compensation relocation and resettlement plan;
and
- (f) such other documents or information as may be required by the licensing authority.

(3) The smelting licence or a refining licence issued under this section shall be valid for a period not exceeding twenty five years and shall be subject for renewal.

DIVISION E:

Supplementary Provisions Affecting Mineral Rights

Surrender of
land subject to
mineral right

62.-(1) The holder of a mineral right who wishes to surrender all or any part of the land subject to his licence, shall apply to the licensing authority not less than three months before the date on which he wishes the surrender to have effect, for a certificate of surrender, and, subject to subsection (3) and any relevant stipulation in a development agreement, the licensing authority shall issue to the applicant a certificate of surrender either unconditionally or subject to such conditions relating to the surrendered land as the licensing authority may determine.

(2) An application under this section-

- (a) shall identify the land to be surrendered and, if the application applies to only a part of the land subject to the licence, include a plan clearly identifying both the part to be surrendered and the part to be retained;
- (b) shall state the date on which the applicant wishes the surrender to take effect;
- (c) shall give particulars of the operations which have been carried on under the licence on the land to be surrendered;
- (d) shall be supported by such records and reports in relation to those operations as the licensing;
and

(e) authority may reasonably require.

(3) The licensing authority shall not issue a certificate of surrender-

- (a) to an applicant who is in default;
- (b) to an applicant who fails to comply with the reasonable requirements of the licensing authority under subsection (2);
- (c) if the licensing authority is not satisfied that the applicant will leave the land to be surrendered and on which prospecting or mining operations have been carried on in a condition which is safe, which accords with good mining practice, and, as applicable, conforms to the requirements of the environmental management plan or the applicable Regulations relating to safety and environmental management;
- (d) in respect of any part of the land subject to the licence if the licensing authority is not satisfied that the land which remains subject to the licence is capable of being efficiently used or developed according to the terms of the licence.

(4) A certificate of surrender shall take effect on the date on which it is issued to the applicant.

(5) Where the certificate relates to the whole of the land subject to the holder's licence, the licence shall be cancelled with effect from the same date; in any other case, the licence shall be amended to take account of the surrender.

(6) Notwithstanding the issue of a certificate of surrender, the surrender of any land shall not affect any liability incurred before the date on which the surrender had effect in respect of the land, and any legal proceedings that might have been commenced or continued in respect of any liability against the holder of the licence may be commenced or continued against the holder or, as the case may be, the former holder.

Suspension
and cancellation
of mineral
right
Act No.
7 of 2017
s. 22

63.-(1) Subject to this section where the holder of a mineral right-

- (a) fails in a material respect to comply with any requirement of this Act or the Regulations which are binding on him;
- (b) fails to comply with a condition of the licence (not being exempted under this Act or the Regulations from doing so);
- (c) fails to comply with a direction lawfully given under this Act or the Regulations or with a condition on which any certificate of surrender is issued or on which any exemption or consent is given under this Act or the Regulations;
- (d) fails to comply with the conditions relating to the exercise of his rights under his licence which are contained in a relevant development agreement,

the licensing authority may, on that ground but subject to subsection (2) and the provisions of any relevant development agreement, by notice in writing served on the holder of the licence, suspend or cancel the licence.

(2) The licensing authority shall not suspend or cancel a licence on a ground referred to in subsection (1) unless-

- (a) he has first served on the holder a default notice specifying the grounds on which, under subsection (1), the licence is liable to be suspended or cancelled;
- (b) the holder has failed within a period of thirty days from the date on which the default notice was served or such longer period as the licensing authority may allow to remedy the default specified or, where such default is not capable of being remedied, has failed to offer in respect thereof reasonable compensation;
- (c) for matters related to licences other than primary licences the matter has been referred to the Commission for advice.

(3) The Licensing Authority may, by notice in writing to the holder of a mineral right, cancel the relevant licence on the occurrence of an event which, as provided under subsection (1) of section 8, would render that person ineligible to be granted a mineral right.

(4) Where two or more persons constitute the licensee and-

- (a) an event occurs of a kind referred to in section 8 in respect of one or more but not all of those persons; or
- (b) one or more, but not all, of those persons fails to comply with an obligation which, under the terms and conditions of the licence or a relevant development agreement, is a several obligation, the Licensing Authority shall not suspend or cancel the licence, but may serve on any such person (in this section referred to as an “affected person”) a notice of compulsory assignment requiring the affected person unconditionally, without consideration and free from any encumbrance, to assign to the licence holders who are not affected persons (in this section referred to as “unaffected persons”) the entire interest in the licence held by the affected person.

(5) For the purposes of subsection (4), the affected person shall make such assignment to the unaffected persons in undivided shares in proportion to the undivided shares in which the unaffected persons hold the licence, and the unaffected persons shall be obliged to accept such assignment.

(6) The provisions of subsections (2) and (3) shall apply to a proposal to serve on an affected person a notice of compulsory assignment as they apply to a notice suspending or cancelling a licence.

(7) On the cancellation of a licence or a compulsory assignment under this section, the rights of the holder, or as the case may be the affected person, cease, but the cancellation or compulsory assignment does not affect any liability incurred before the cancellation or assignment and any legal proceedings that might have been commenced or continued against the former holder may be commenced or continued against him.

Abandonment
of land subject
to mineral
rights

Cap. 4
s.8

64.-(1) The holder of a mineral right who wishes to abandon all or any part of the land subject to licence shall apply to the Chief Inspector, not later than ninety days before the date on which he wishes the abandonment to have effect, for a certificate of abandonment.

(2) Subject to this section, the Chief Inspector shall issue to the applicant a certificate of abandonment either unconditionally or subject to such conditions relating to the abandoned land as the Chief Inspector may determine.

(3) An application under this section shall -

- (a) identify the land to be abandoned and, if the application applies to only a part of the land subject to the licence, shall include a plan clearly identifying both the part to be abandoned and the part to be retained;
- (b) state the date on which the applicant wishes the abandonment to take effect;
- (c) give particulars of the operations which have been carried on under the licence on the land to be abandoned; and
- (d) be supported by such record and reports in relation to those operations as the Chief Inspector may reasonably require.

(4) A certificate of abandonment shall take effect on the date on which it is granted to the applicant, and-

- (a) where the certificate relates to the whole of the land subject to the holder's licence, the licence shall be cancelled with effect from the same date; and

(b) in any other case, the licence shall be amended to take account of the abandonment.

(5) The abandonment of any land does not affect any liability incurred before the date on which the abandonment has effect in respect of the land, and any legal proceedings that might have been commenced or continued in respect of any liability against the applicant for the certificate may be commenced or continue against that applicant.

Appeals
Act No.
23 of 2015
s.48

65.-(1) A person who is aggrieved by a decision of the Commission for suspension or cancellation of mineral rights may, within sixty days from the date of the decision, file an application for judicial review to the High Court.

Cap.4
s.8

(2) Procedures for lodging complaints and appeals under this Act shall be prescribed in the regulations.

Penalty for
failure to pay
royalty

66.-(1) Where the holder of a mineral right fails to pay annual rent, royalty or to make payment in lieu of royalty payable by him under this Act or the regulations, shall, after ninety days from the date upon which such amount becomes due, in addition to the amount payable by him, pay a penalty-

- (a) in case of an individual person, twenty five *per centum* of the amount which is due; and
- (b) in case of a body corporate, fifty *per centum* of the amount which is due.

(2) The liability to pay penalties under this section shall not exempt any person from any other liability under this Act.

(3) Any unpaid annual rent, royalty or payment in lieu of royalty, shall be a debt which shall be recovered in a court of competent jurisdiction.

Extension of mineral rights during applications

Cap.4 s.8

67. Where the holder-

- (a) of a mineral right applies, during the currency of that mineral right for a renewal of the licence in respect of that mineral right;
- (b) of a prospecting licence applies, during the currency of that licence, for a
- (c) mineral right to which he is entitled, the current licence shall remain in force until-
 - (i) the date of the renewal or grant of the licence for which application is made; or
 - (ii) the application is refused,

as the case may be.

Enlargement of mineral right

68.-(1) The holder of mineral right may apply to the licensing authority for the enlargement of the area for which his licence is granted and the licensing authority may, subject to subsections (2) and (3) and any relevant development agreement, approve the application or refuse to do so.

(2) Subject to the provisions of subsection (1), the licensing authority shall not approve an application under this section unless the land in respect of which the application is made is a vacant area which is not part of a reserved area and the relevant area shall not, as enlarged, exceed the maximum area prescribed in accordance with section 70.

(3) An approval under this section may be given unconditionally or subject to such conditions as the licensing authority may determine and any such conditions shall be specified in the document signifying the licensing authority's approval.

(4) An approval under this section, together with any conditions to which it is subject, shall be endorsed on the applicant's licence and the licence shall be deemed to be amended in accordance with the endorsement.

Holder of
certain mineral
right
suspending
mining
operations

69.-(1) The holder of a mineral right other than a mineral right under Division A shall, within two weeks prior to the date of suspension notify the licensing authority if he intends to suspend production from the mining area.

(2) Such notification shall be accompanied by a report giving details of the intended suspension, the reasons therefor and the duration of such suspension.

(3) On receiving notification under subsection (1) or, if he otherwise becomes aware of a cessation or suspension, the licensing authority shall cause the matter to be investigated and-

- (a) in any case in which the cessation or suspension has been caused by an event beyond the reasonable control of the holder, shall give his approval to the cessation or suspension for so long as that event continues to affect mining operations or processing operations, as the case may be;
- (b) in any other case, after reference to the Commission and subject to any relevant stipulations in a development agreement, shall-
 - (i) if it is fair and reasonable to do so, give his approval to the cessation or suspension;
 - (ii) otherwise direct the holder to continue mining operations in substantial compliance with the programme of mining operations or processing operations as the case may be.

(4) A person who fails to comply with the requirement or direction given under this section shall be deemed to be in default, and the licensing authority may, in addition to other penalties under this Act, cancel the licence in accordance with the provisions of this Act.

Maximum
area for
Mineral
Rights

70. The maximum area for which a mineral right may be granted shall be prescribed and for that purpose the Regulations may prescribe different maximum areas for different minerals and in respect of different mineral rights.

Allocation
of mining
licence by
tender

71.-(1) An application for a mining licence in an area designated as an area in which applications for the relevant licence are invited by tender shall be-

- (a) in the prescribed tender form;
- (b) accompanied by the prescribed tender fee; and
- (c) subject to the terms and conditions of the invitation to tender, shall include the matters required to be included in applications of Division B of this Part.

(2) All applications under this section shall be referred to the Commission for its advice.

(3) On receipt of a report from the Commission, the Minister shall consider the competing bids and shall select the bid which in his opinion will be most likely to promote the expeditious and beneficial development of the mineral resources of the area having regard to-

- (a) the programme of prospecting or as the case may be, mining operations which the applicant proposes to carry out and the commitments as regards expenditure which the applicant is prepared to make;
- (b) the financial and technical resources of the applicant; and
- (c) the previous experience of the applicant in the conduct of prospecting and mining operations.

(4) The successful application under this section shall be treated as an application under section 49, which has priority over any other application.

Termination of mining licence where production is insufficient

Cap. 4
s.8

72.-(1) Where over a continuous period, not being less than three years, the holder of a mining licence has in each year of production recovered less than fifty per centum of-

- (a) in the case of the holder of a mining licence for minerals specified in the licence the quantity of minerals which should have been recovered under the estimated recovery rate specified in his feasibility study submitted in accordance with section 49; or
- (b) the shortfall in the quantities recovered has not been caused by events beyond the reasonable control of the holder and the continuous period does not include any period during which the Commission under section 69, has approved the cessation or suspension of production, the Commission may, terminate the licence.

(2) The Commission shall, upon termination of the mining licence under section (1) notify the licence holder in writing requiring him to cease the operations with effect from the date specified in the notification, and pay all liabilities, including employees entitlement, mine closure and environmental rehabilitation costs as may be necessary for the termination of mining operations.

PART V
LICENCES FOR DEALING IN MINERAL OR MINERALS

(i) Dealer licence

Application for dealer licence
Acts Nos
23 of 2015
s. 49
7 of 2017
s. 4(f)

73.-(1) An application for a dealer licence shall be addressed to the Commission in the prescribed form and be accompanied by the prescribed fee.

(2) The applicant under subsection (1) shall state the type of mineral or minerals for which the licence is sought.

(3) An application for dealer licence in respect of gemstones shall be accompanied by commitment to acquire and utilize, in case of Tanzanian five lapidary machines

and in the case of foreigner thirty (30) lapidary machines within three months from the date of grant of the licence.

(4) No dealer licence shall be granted to or held by a person who by reason of subsection (1) or (2) of section 8 is not qualified to be granted a primary mining licence unless the dealer licence is held by such person in undivided participating shares with a person or persons qualified to hold the licence under subsection (1) or (2) of section 8 and whose undivided participating share or shares amount to not less than twenty five per centum either alone, in the case of one person, or in the aggregate, in the case of more than one person.

(5) For the purpose of this section, dealer licence shall be applied for any of the following mineral or minerals-

- (a) gold;
- (b) metallic minerals;
- (c) coloured gemstones;
- (d) diamond;
- (e) coal;
- (f) industrial minerals; and.
- (g) building materials.

Grant of
dealer
licence

74.-(1) An applicant for a dealer licence whose application was properly made as provided in section 73 shall be entitled to the grant of a dealer licence for which he has applied unless-

- (a) he has previously held a dealer licence and-
 - (i) he is not entitled to renew that dealer licence as provided in subsection (4) of section 75; or
 - (ii) he has surrendered his dealer licence without sufficient reason for so doing;
- (b) he has been convicted of a criminal offence relating to the buying and selling or possession of mineral or minerals.

Duration
and renewal
of dealer
licence

75.-(1) A dealer licence granted under section 74 shall be valid for a maximum period of twelve months from the date of issue, and shall expire on 30th June of each year.

(2) A holder of a dealer licence may, not less than one month from the date on which his licence or any renewal thereof would expire, apply in the prescribed form, accompanied by the prescribed fee, for a renewal of the licence.

(3) Any application made under subsection (2) shall be accompanied by evidence of turnover for the last ten months or less immediately following the date of the application made or issued in the form of official receipt for the making of payment instead of payment of royalty.

(4) The holder of a dealer licence who applies in the proper manner shall be granted a renewal of his licence for a maximum period of twelve months unless:-

- (a) he is in default;
- (b) he is disqualified from holding or renewing a dealer licence under subsection (3) of section 73 or subsection (2) of section 78.

Rights of
holder of
dealer
licence

76. Subject to the provisions and the regulations made under this Act, a dealer licence shall authorize the holder-

- (a) to buy or otherwise acquire or to sell or otherwise dispose of minerals as specified in the licence, and for the purpose of carrying on business as a dealer, to have possession thereof;
- (b) to export minerals specified in the licence.

Holder to
keep records
and accounts
Acts Nos.
23 of 2015
s. 50
7 of 2017

77. The holder of a dealer licence shall keep full and accurate records and accounts of all transactions undertaken by him as a dealer and such records and accounts shall-

- (a) be kept in such form and shall include details as may be prescribed; and

s.4(f) (b) be submitted to a Commission on a monthly basis.

Minimum turnover requirements

78.-(1) The Minister, after referring the matter to the Commission, may by notice in the *Gazette*, publish minimum turnover requirements for the holder of a dealer licence.

(2) A holder of a dealer licence who in three successive years of his licence fails to disclose, by production of official receipts for payments in lieu of royalty, evidence of a turnover of not less than fifty per centum of the minimum turnover requirement referred to in subsection (1) shall be disqualified from obtaining a renewal of his licence.

Termination of dealer licence for default
Acts Nos 23 of 2015 s. 51
7 of 2017 s. 3A

79. Where the holder of a dealer licence is in default the Commission may serve on the holder a default notice specifying the nature of the default and if within thirty days from the date of receipt of the default notice, the default has not been corrected the Commission shall, by notice to the holder terminate the dealer licence.

(ii) Broker Licence

Application for broker licence

80.-(1) An application for the grant of a broker licence shall be addressed to the Commission in the prescribed form and be accompanied by the prescribed fee.

(2) The application shall-

- (a) state the names and physical address of the applicant;
- (b) state the mineral or minerals sought; and
- (c) append two recent passport size photographs.

(3) No broker licence shall be granted to or held by a person who by reason of subsection (1) or (2) of section 8 is not qualified to be granted a primary mining licence.

Grant of
broker
licence

81.-(1) An applicant for a broker licence whose application was properly made as provided under section 80 shall be entitled to the grant of a broker licence unless-

- (a) he is disqualified from holding a broker licence under subsection (3) of section 80;
- (b) he previously held a broker licence and was disqualified from obtaining a renewal of that licence under section 82;
- (c) he has been convicted of a criminal offence relating to the buying, possession, export or selling of mineral or minerals.

(2) A broker licence granted under this section shall be valid for a maximum period of twelve months from the date of issue, and shall expire on the 30th June of each year.

Duration
and renewal
of broker
licence

82.-(1) Any holder of a broker licence may, not less than one month from the date on which his licence or any renewal would expire, apply in the prescribed form and on payment of the prescribed fee for a renewal of the licence.

(2) A holder of a broker licence who applies in the proper manner shall be granted a renewal of his licence unless-

- (a) he is in default;
- (b) he is disqualified from holding a broker licence under subsection (1) of section 81.

Rights of
holder of
broker
licence

83.-(1) A broker licence shall authorize the holder of the licence to buy or acquire gold or, as the licence may specify gemstones from an authorized miner and to sell or dispose of mineral or minerals so acquired to a licensed dealer.

(2) A broker licence shall not authorize the holder to export any mineral or minerals.

Holder to
keep records
and accounts

84. The holder of a broker licence shall keep full and accurate records and accounts of all transactions undertaken by him as a broker and such records and accounts shall-

- (a) be kept in such form and shall include details as may be prescribed; and
- (b) be submitted to the Commission on expiry of his licence.

Termination of broker licence for default

85.-(1) Where the holder of a broker licence is in default, the Commission may serve on the holder a default notice specifying the nature of the default.

(2) If within such reasonable time as the default may specify in the notice, the default has not been corrected, the Commission may, by notice to the holder terminate the broker licence.

Prohibition against dealing in certain minerals
Act No. 23 of 2015
s. 52

86. No person shall be eligible for grant of a licence as a broker or a dealer in uranium minerals.

PART VI ROYALTIES, FEES AND OTHER CHARGES

Royalties
Act No. 7 of 2017
s. 23

87.-(1) Every authorized miner shall pay to the Government of the United Republic a royalty on the gross value of minerals produced under his licence at the rate

- (a) in the case of uranium, of five *per centum*;
- (b) in the case of gemstone and diamond, of six *per centum*;
- (c) in the case of metallic minerals such as copper, gold, silver, and platinum group minerals, of six *per centum*;
- (d) in the case of gem, of one per centum; and
- (e) in the case of other minerals, including building materials, salt, all minerals within the industrial minerals group, of three *per centum*.

(2) Notwithstanding the provisions of subsection (1), where an authorized miner of any mineral elects to sell his production to a licensed dealer or licensed broker, the royalties of such minerals shall be paid by the licensed

dealer or broker in accordance with the provisions of this Act.

(3) The Minister where he considers that the realised price does not correspond to the price which would have been paid for the minerals if they had been sold on similar terms in a transaction at arm's length between a seller and a buyer, may give notice to that effect to the licence holder.

(4) Where such notice has been given under subsection (3) the amount of the market value shall be settled by agreement between the Minister and the licence holder or, if no agreement is reached, the matter shall be referred for determination by an independent expert appointed in a manner prescribed by the Regulations.

(5) Subject to this section, samples of minerals acquired for the purposes of assay, analysis or other technical examination shall be exempt from royalty payment if the market value of such samples of minerals is not more than shillings fifty thousand.

(6) In this section-
“gross value” means the market value of minerals as determined through valuation pursuant to section 100B of this Act:

Provided that-

- (a) for the purposes of calculating the amount of royalties payable, the Government shall be entitled to reject the valuation if such value is steeply low on account of deep negative volatility, unless the raw minerals are disposed of for beneficiation within the United Republic; and
- (b) where the Government rejects the valuation, it shall have the option to buy the minerals at the low value ascertained.

Payment
in lieu of
royalties
Act No
7 of 2017
s. 24

88.-(1) Every person who is a licensed dealer shall, in accordance with the terms and conditions of his licence and this Act, make to the Government payment in lieu of royalty on the gross value of any mineral specified in subsection (1) of section 87-

- (a) exported by him;
- (b) in the case of gold or any metallic minerals, sold to a smelter or refinery in Tanzania;
- (c) in the case of gemstones, sold to a duly authorized lapidary or jewellery maker in Tanzania; or
- (d) in the case of industrial minerals, energy minerals and building materials groups, sold to any user in Tanzania.

(2) One-third of the royalty payable shall be paid to the Government by depositing refined minerals equivalent to the ascertained royalty into the National Gold and Gemstone Reserve.

(3) This section shall not apply where the licensed dealer is a mineral right holder who has paid royalty on the minerals in accordance with the provisions of subsection (1) of section 87.

(4) For the purpose of subsection (1), “gross value” has the meaning attributed to those words in subsection (6) of section 87 and that provision shall apply, with the necessary variations, to the export or a sale of minerals by a licensed dealer as they apply under section 87 to the payment of royalty by a mineral right holder.

Provisional
Assessment
of royalties

89.-(1) The Minister may, where for any reason, it is impractical to assess the amount of any royalty, or payment in lieu of royalty, assess, and the mineral right holder or as the case may be, the licensed dealer, shall be liable to pay, a provisional royalty, or make a provisional payment in lieu of royalty.

(2) When, in any such case, the amount of the royalty or payment in lieu of royalty is ascertained, the mineral right holder or the licensed dealer shall be liable for any balance or, as the case may be, repay any excess sum paid by him on such provisional assessment.

Sorting fees
Act No.
23 of 2015
s. 53

90-(1) There shall be a sorting and valuation fee prescribed in the regulations, which shall be payable to the Government by a mineral right holder who sells gemstones produced or acquired by such mineral right holder

(2) The Minister shall, by notice published in the *Gazette*, prescribe the fees to be payable for purposes of sorting and valuation of gemstones produced or acquired by the mineral right holder.

Clearance
Centres
Acts Nos.
4 of 2017
s.37
4 of 2018
s.38

90A-(1) The Minister shall, for the purposes of regulating the transportation or domestic use of mineral or minerals, establish mineral clearance centres.

(2) Save as provided in subsection (1), clearance centres shall be established within mining areas, ports, airports, border posts and any other areas as the Minister may prescribe.

(3) There shall be clearance fee payable to the Government by any person in possession of mineral or minerals prior to clearance for domestic use or export

(4) The clearance fee shall be one percentum of the gross value of mineral or minerals.

(5) In this section, "gross value" means the market value of mineral or, minerals at the point of refining or sale or, in the case of consumption within Tanzania, at the point of delivery within Tanzania.

(6) This section shall not apply to salt producers.

Prohibition
on disposal
of minerals
Cap.4
s.8

91-(1) Where an authorized miner or a licensed dealer fails to pay any royalty or provisional royalty, or make any payment or provisional payment in lieu of royalty on or before the due date, or any extension allowed by the Minister, the Minister may-

- (a) in the case of any such mineral right holder, by order served on him, prohibit the disposal of any mineral from the mining area concerned, or from any other mining area held by that person; or
- (b) in the case of a licensed dealer, prohibit the disposal of any mineral by that dealer until all outstanding royalties or payments in lieu of royalties have been paid or until an arrangement has been made acceptable to the Minister for the payment thereof.

(2) A mineral right holder, or licensed dealer, who contravenes or fails to comply with an order given under subsection (1), and any person who, knowing of such order and receives any mineral the disposal of which has been prohibited, commits an offence and is liable on conviction-

- (a) in the case of an individual, to a fine not exceeding ten million shillings or to imprisonment for a period not exceeding two years, or to both;
- (b) in the case of a body corporate, the fine not exceeding fifty million shillings;
- (c) in the case of a person receiving minerals knowing their disposal have been prohibited, to forfeiture of the minerals, or where the Court is satisfied that the minerals so obtained by the defendant are no longer in his possession or under his control, to a penalty payable to the Government in an amount equal to the estimated market value of the minerals for which the defendant and the mineral right holder or dealer shall be jointly and severally liable.

Charges in respect of mineral rights and licences

92.-(1) In addition to any application fee there shall be payable to the Government in respect of every mineral right, dealer's licence or broker's licence granted under this Act an annual charge payable on the grant of the mineral right or dealer's or broker's licence and thereafter annually

on the anniversary of the grant so long as the mineral right subsists.

(2) The annual charges referred to in subsection (1) shall be of such amount as may be calculated and prescribed in the regulations.

Recovery of fees

93. The Commission may demand, sue for, recover and receive all fees, charges, dues, rents, royalties or payments which may become due in respect of any mineral right or any licence, or otherwise due under the provisions of this Act.

Act No. 7 of 2017 s. 25(a)

**PART VII
GENERAL PROHIBITIONS, RESTRICTIONS,
REPORTS AND RIGHT OF ENTRY**

Repealed

94. [Repealed by Act No. 7 of 2017 s. 25(b).]

Restriction of rights of entry of holder of mineral right
Act No. 23 of 2015 s. 54

95.-(1) The holder of a mineral right shall not exercise any of his rights under his licence or under this Act-

- (a) except with the written consent of the responsible Minister, in respect of:
 - (i) any land dedicated or set apart for any public purpose other than mining;
 - (ii) any land dedicated as a place of burial;
 - (iii) any land which is the site of or is within 200 metres of any building, reservoir or dam owned by the Government;
 - (iv) any land forming part of a licensed or Government aerodrome or of any Government landing ground, or which is within 1,000 metres of the boundaries thereof;
 - (v) any land on which there is a military installation, or on land which is

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- within 200 metres of the boundaries thereof; or
- (vi) any reserved area, or any protected monument declared under the Antiquities Act;
- (b) except with thorough consultation with the relevant Local Government Authority, including the Village Council, and thereafter, the written consent of the lawful occupier, in respect of:
 - (i) any land which is the site of, or which is within 200 metres of, any inhabited, occupied or temporarily unoccupied house or building;
 - (ii) any land within 100 metres of land which has been cleared or ploughed or otherwise prepared in good faith for the growing of agricultural crops or upon which agricultural crops are growing;
 - (iii) any land from which, during the year immediately preceding, agricultural crops have been reaped;
 - (iv) any land forming part of an aerodrome, other than an aerodrome referred to in paragraph (a) (iv); or
 - (v) land use plan, compensation, relocation and resettlement matters involved,

where any consent so required is, in the opinion of the Minister and on the advice of the Commission being unreasonably withheld, the Minister may, on such conditions if any as he may impose, direct that the need for the consent shall be dispensed with, and in that event this paragraph shall not have effect in so far as it required the consent of the lawful occupier to be given;

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- (c) in respect of land in a national park declared under the National Parks Act, in any forest reserve declared under the Forests Act, in any game reserve declared under the Wildlife Conservation Act, in a range development area

declared under the Range Development and Management Act or in the Ngorongoro Conservation Area Act, except with the written consent of the authority having control over the park, reserve or area;

- (d) in respect of any land reserved for the purpose of any railway, or which is within 100 metres of the boundaries of any land so reserved, except with the written consent of the responsible railway authority;
- (e) in respect of any land within any city, municipality, township registered villages or demarcated settlement, except with the written consent of holders of surface rights and of the responsible Minister or the authority having control over the city, municipality, township registered villages or demarcated settlement;
- (f) in respect of any street, road or highway, and any land within 100 metres of any bridge, public ferry, culvert or drift in any street, road or highway, pipeline or power line, except with the written consent of the responsible Minister or of the authority having the control of the street, road, highway, bridge, ferry, culvert, drift, pipeline or power line;
- (g) in respect of any land within 100 metres of every point which has been notified to the Commission by a licensee under the Petroleum Act, as a site for the drilling of a well in connection with exploring for petroleum, except with the written consent of the Minister;
- (h) in respect of any land over which an exploration licence or a development and production licence has been granted under the Petroleum Act, except with the written consent of the Minister;

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(i) in respect of any land occupied by any installations or works used in the course of prospecting operations by the holder of a prospecting licence who has prospecting rights over the same area of land as the holder of the first mentioned mineral right.

(2) Any consent by the Minister or the responsible Minister under this section may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

(3) In this section, "the responsible Minister", in relation to any matter, means the Minister for the time being having responsibility for that matter.

Rights under mineral right to be exercised reasonably
Act No. 17 of 2010
s. 6

96.-(1) The rights conferred by a mineral right shall be exercised reasonably and shall not be exercised so as to affect injuriously the interest of any owner or occupier of the land over which those rights extend.

(2) The lawful occupier of land in a mining area shall not erect any building or structure in the area without the consent of the registered holder of the mineral rights concerned but if the Minister considers that the consent is being unreasonably withheld, he may give his consent to the lawful occupier to do so.

(3) Where, in the course of prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused, the registered holder of the mineral right by virtue of which the operations are carried on, is liable to pay the lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interest of the lawful occupier in the property concerned.

(4) Where the amount of compensation to be paid pursuant to subsection (3) in any particular case is in dispute, either party may refer the matter to the Commission who shall, subject to section 119, deal with the matter in accordance with Part XI.

Compensation,
relocation and
resettlement

97.-(1) Where the rights conferred by a mineral right cannot reasonably be exercised without affecting injuriously the interest of any owner or occupier of the land over which those rights extend as required under section 96, the mineral right holder shall -

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(a) advise the owner or occupier of the land to vacate the area, and consult the relevant local government authority on amendment of the land use plan;

(b) submit a proposed plan on compensation, relocation and resettlement of the owner or occupier of the land as per the Land Act.

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and 114

(2) The procedures established under the Land Act and the Village Land Act with regard to establishing the market value of land shall apply in determining fair and reasonable compensation of land referred in this section and section 96.

Removal
of
minerals

98. The holder of a prospecting licence shall not, without the written permission of the Commission, and subject to such conditions as the Commission may specify in the instrument of permission, remove any mineral from the prospecting area, except for the purpose of having the mineral analysed, determining the value of the mineral or conducting tests on the mineral.

Wasteful
practices

99.-(1) Where the Commission considers that a holder of a mineral right is using wasteful mining practices he shall give notice to the holder accordingly (giving in the notice particulars of the practices) and require the holder to show cause, by notice within such period as the Commission shall specify in the notice, why he should not cease to use those practices.

(2) Where, within the period specified in the notice given under subsection (1), the holder fails to satisfy the Commission that he is not using the wasteful practices concerned, or that the use of those practices is justified, the Commission may give notice to the holder directing him to cease using all of those practices, or the practices specified in the notice, by such date as is specified in the notice, and the holder shall do as directed.

(3) Where the holder of a mineral right is aggrieved by a notice given by the Commission under subsection (2) he may appeal to the Minister against the directions given in the notice.

Reports,
records and
information
Act No.
7 of 2017
s. 4
Cap. 4
s.8

100.-(1) The holder of a mineral right shall keep records within the Mining areas or at the mineral rights holders' office located in Tanzania for as long as the mineral right subsist, and shall submit reports and furnish such information as required in the Second Schedule.

(2) The holder of a mineral right shall maintain an address in Tanzania to which communications may be sent and shall give notice to the Commission of that address and of any changes of such address.

(3) The Commission may direct the holder of a mineral right, at a reasonable time and place specified in the direction, to make available to, or to produce for inspection by, the Commission or any public officer specified in the direction any books, accounts, vouchers, documents or records of any kind concerning the mineral right, and the holder of the mineral right shall comply with the direction.

(4) Without prejudice to subsection (3), the provisions of Second Schedule shall apply with regard to the obtaining of information relating to minerals obtained, or the value of minerals obtained, in exercise of a mineral right.

Storage of raw minerals

Act No.
7 of 2017
s. 25

100A.-(1) Every mineral right holder shall construct a secure storage facility for storing of won raw minerals.

(2) Access to the raw minerals storage shall be procured from joint authorisation by an appointed official of the mining company and the Mines Resident Officer and shall be entered in special logbook showing date and time of entry and the purpose for the entry.

(3) Any won raw minerals shall be stored at the mine for not more than five days before they are moved to the Government Minerals Warehouse to await disposal for home refining, authorized mineral dealers or, where so permitted, for export.

(4) The Minister shall by rules published in the *Gazette* prescribe procedures and standards for storage of minerals.

Sorting and valuation
Act No.
7 of 2017
s.25

100B.-(1) All won raw minerals shall be mined, sorted and valued in the presence of Mines Resident Officer, an Officer from the Tanzania Revenue Authority and the relevant institutions of state organ for that purpose before being entered for storage at the mine storage facility.

(2) All minerals won from the mines shall be beneficiated within the United Republic before they can be dealt with in any way.

(3) Reports on the mining, sorting and valuation of raw minerals shall be made and verified by both an authorized official of the mineral right holder and the Mines Resident Officer and submitted to the Commission.

(4) The report referred to under subsection (3) shall be used for the purpose of calculating Government royalties.

Control over removal of raw minerals
Act No.
7 of 2017
s.25

100C.-(1) Raw minerals shall only be removed from the mine under the supervision of the Government and shall be kept secured in the Government Minerals Warehouse established in accordance with the regulations.

(2) It shall be an offence to remove minerals stored at the Mine without Government authorisation and by means of transportation not approved by the Government.

(3) For avoidance of doubt, no licence or permit shall be issued under this Act or any other written law for exportation of raw minerals and mineral concentrates.

(4) Raw minerals shall only be withdrawn from the Government Minerals Warehouse for beneficiation within the United Republic or for use by authorized mineral dealers.

(5) Where Government authorisation is given for the exportation of raw minerals, any benefits given under any law for the promotion of Tanzanian products in external markets shall not be extended to such exportation of raw minerals.

(6) Subject to the regulations prescribed by the Minister, all minerals shall be processed within the United Republic.

(7). For purposes of subsections (3), (4), (5) and (6) any raw minerals impounded during or after an attempted illegal exploration or handling shall be confiscated by the Government and shall forthwith be deposited as part of the National Gold and Gemstone Reserve.

Handling of mineral concentrates

Act No. 7 of 2017 s.25

100D.-(1) The Government shall subject to the provisions of section 5A, have lien in all mineral concentrates.

(2) Mineral concentrates shall be stored in a secure yard within the mines in a manner prescribed in the regulations.

(3) Mineral concentrates shall not, after being analysed and valued by the Commission, be disposed for mineral processing within Tanzania as trading commodity.

(4) The provisions relating to removal and transportation of raw minerals shall apply to transportation of minerals.

Regulations over use of stabilization clauses
Act No. 7 of 2017 s.25

100E.-(1) In any negotiations for the provision of a stabilization regime in the extractives sector, it shall be prohibited to use stabilization arrangements that entail the freezing of laws or contracting away the sovereignty of the United Republic.

(2) Stabilization arrangement shall be specific and time bound and it shall be unlawful to conclude stabilization arrangement or agreement guaranteed to last for a lifetime of any mine.

(3) Stabilization arrangements shall make provision for renegotiation from time to time as may be necessary and, as much as possible, be based on the economic equilibrium principle.

(4) Any stabilization arrangement involving tax expenditures by the Government shall provide for the quantification of the value of the tax expenditures and how the mining company shall recompense the Government for the foregone revenues.

(5) The Government shall have the option to convert the quantified values into equity holdings in the mining company.

Plough-back of profits from minerals sector

100F.-(1) Any mineral right holder shall undertake to participate in the growth of the Tanzanian economy by investing a portion of the returns from the exploitation of the country's mineral wealth.

Act No. 7 of 2017 s.25

(2) The mineral right holder shall file annual returns showing the efforts undertaken to enhance the performance of the Tanzanian economy and the value of such annual returns.

(3) In considering any extension or renewal or permission to transfer any mineral right, the Government shall take into account the extent of ploughed back returns into the Tanzanian economy.

(4) Any mineral right holder may agree with the Commission on planned investments to enhance the Tanzanian economy.

Authorised officer's power of entry

101.-(1) The Commission or an authorised officer may at any time, enter upon any area over which a Mineral Right has been granted or any premises or working places other than a dwelling house for the purpose of-

- (a) inspecting that area, premises or working places and examining prospecting or mining operations or the treatment of minerals being performed or carried out;
- (b) ascertaining whether or not the provisions of this Act or the Regulations, or the conditions of a mineral right, are being complied with;
- (c) ascertaining whether any nuisance exists upon that area, premises or working places;
- (d) giving directions, and taking steps, to enforce any provision of this Act or the Regulations, or to abate or remove any nuisance;
- (e) taking soil samples or specimens of rocks, ores concentrates, tailings or minerals situated upon that area, premises or working places for the purpose of examination or assay;
- (f) examining books, accounts, vouchers, documents, maps, drilling logs, or records of any kind; or
- (g) obtaining any information which he may deem necessary for the administration of this Act.

(2) The Commission or an authorised officer may, at all reasonable times, inspect and take copies of any book of accounts, vouchers, documents, maps, drilling logs or records of any kind, kept by the holder of a mineral right, dealer's or broker's licence pursuant to the provisions of this Act and Regulations made there under.

(3) The holder of the mineral right shall provide such reasonable assistance (including the provision of necessary means of transport) as is required to enable the Commission or an authorised officer to exercise or perform any power or function under this section.

(4) Any person who, without reasonable excuse, hinders or obstructs the Commission or an authorised officer in carrying out any function under subsection (1) or (2) commits an offence and on conviction is liable to a fine not exceeding twenty five million shillings or to imprisonment for a term, not exceeding twelve months, or to both such fine and imprisonment.

(5) Where the Commission or authorized officer has reasonable grounds to believe that evidence relating to the commission of an offence under this Act may be located in any premises, vehicle, vessel or aircraft, he may, without warrant enter the premises, vehicle, vessel or aircraft in question and search for such evidence.

PART VIII
LOCAL CONTENT, CORPORATE SOCIAL
RESPONSIBILITY AND INTEGRITY PLEDGE

Provision of
goods and
services by
Tanzanian
entrepreneurs
Act No.
7 of 2017
s.28

102.-(1) A mineral right holder shall give preference to goods which are produced or available in Tanzania and services which are rendered by Tanzanian citizens and or local companies.

(2) Where goods required by the mineral right holder are not available in Tanzania, the goods shall be provided by a local company which has entered into a joint venture with a foreign company.

(3) The local company referred to in subsection (2) shall own share of at least twenty five percent in the joint venture or otherwise as provided for in the regulations.

(4) For purposes of subsections (1) and (2), every mineral right holder shall prepare and submit to the Commission a procurement plan for a duration of at least five years indicating among others, use of-

(a) local services in insurance, financial, legal, accounts, security, cooking, catering, health and others services provided or available in Tanzania; and

(b) Works, goods and equipment manufactured, produced or available in Tanzania.

(5) A mineral right holder shall ensure that entities referred to in subsection (4) notify the Commission on-

(i) quality, health, safety and environment standards required by mineral right holder;

(ii) upcoming contracts as early as practicable; and

(iii) compliance with the approved local content plans.

(6) The entities referred to in subsection (1) shall-

- (a) have capacity to add value to meet health, safety and environment standards of mining operations carried out by mineral right holder; and
- (b) be approved in accordance with criteria prescribed in the regulations.

(7) Within sixty days after the end of each calendar year, the mineral right holder shall submit to the Commission a report of its achievements in utilising Tanzanian goods and services during that calendar year.

(8) The mineral right holder shall submit to the Commission:

- (a) a report on the execution of a programme prescribed in the regulations; and
- (b) a detailed local supplier development program in accordance with approved local content plans.

(9) For the purpose of this Act,-

“local company” means a company or subsidiary company incorporated under the Companies Act, which is one hundred percent owned by a Tanzanian citizen or a company that is in a joint venture partnership with a Tanzanian citizen or citizens whose participating shares are not less than fifty one percent.

Cap. 212

Training and
employment
of Tanzanians
Act No.
7 of 2017
s.28

103.-(1) A mineral right holder shall, within twelve months after the grant of a licence, and on each subsequent anniversary of that grant, submit to the Commission for approval, a detailed programme for recruitment and training of Tanzanians in accordance with an approved local content plans.

(2) The programme shall provide training and recruitment of Tanzanians in all phases of mining operations and take into account gender, equity, persons with disabilities, host communities and succession plan in accordance with the Non-Citizens (Employment Regulation) Act.

Cap. 436

(3) For purposes of subsections (1) and (2) and for the promotion of equality and fairness in the treatment of employees at the workplace, it is prohibited to practice discrimination including payment of salaries to employees of the same cadre irrespective of colour, faith and nationality.

(4) Where a programme or a scholarship proposed to be awarded under this section is approved by the Commission, it shall not be varied without permission of the Commission.

(5) The mineral right holder shall submit to the Commission annually, a report on the execution of the programme in a manner prescribed in the regulations.

Training and
technology
transfer

Act No.
7 of 2017
s.28

104.-(1) A report referred to under subsection (4) of section 103 shall include:

- (a) a clearly defined training programme for the Tanzanian employees of the mineral right holder, which may be carried out within or outside Tanzania and may include scholarships and other financial support for education;
- (b) a commitment by the mineral right holder to maximize knowledge transfer to Tanzanians and establish management and technical capabilities and any necessary facilities for technical work, including interpretation of data; and
- (c) a commitment to reserve adequate practical training opportunities to students from local training institutions.

(2) The technology transfer required under sub section (1) shall be a shared responsibility between the Government and mineral right holder.

(3) A mineral right holder shall be required to provide a report on the progress made by Tanzanians on training program and steps taken by licensee to close any identified learning gaps.

(4) The Minister may make regulations prescribing requirements for mineral right holder to provide technology transfer and skills relating to mining operations to Tanzanians who are employed in that sector.

Corporate
social
responsibility
Act No.
7 of 2017
s.28

105.-(1) A mineral right holder shall on annual basis, prepare a credible corporate social responsibility plan jointly agreed by the relevant local government authority or local government authorities in consultation with the Minister responsible for local government authorities and the Minister responsible for Finance.

(2) The plan prepared under subsection (1) shall take into account environmental, social, economic and cultural activities based on local government authority priorities of host community.

(3) The corporate social responsibility plan referred to under subsection (1) shall be submitted by a mineral right holder to a local government authority for consideration and approval.

(4) Subject to the provision of this section, every local government authority shall-

- (a) prepare guidelines for corporate social responsibility within their localities;
- (b) oversee the implementation of corporate social responsibility action plan; and
- (c) provide awareness to the public on projects in their areas.

(5) In this section “host communities” means inhabitants of the local area in which mining operations activities take place.

Integrity
pledge
Act No.
7 of 2017
s.28

106.-(1) A mineral right holder who undertakes mining shall be required to comply with the integrity pledge.

(2) The integrity pledge referred to under sub-section (1) implies the following national requirements-

- (a) the conduct of mining operation or activities with utmost integrity;
- (b) desist to engage in any arrangement that undermines or is in any manner prejudicial to

the country's financial and monetary systems, in particular, all earnings, payments or receivables derived from or in respect of mining operations or activities shall be received in, and accounted for in Tanzania;

- (c) desist to engage in any arrangement that undermines or is otherwise prejudicial to Tanzania's tax system;
- (d) disengage in arrangement that is inconsistent with the country's economic objectives, policies and strategies;
- (e) maintenance of satisfactory and effective insurance coverage against losses, injuries or damage to environment, communities, individuals and properties, that may be occasioned in the course of carrying out mining operations or activities; or
- (f) disengage in arrangement that undermines or is otherwise prejudicial to Tanzania's national security.

(3) The Minister may make regulations guiding compliance with the integrity pledge.

(4) Any person who fails to comply with integrity pledge shall breach the conditions of licence or permission to engage in mining operation or activity and such licence or permission shall be deemed to have been withdrawn or cancelled and the Government shall exercise the right of takeover facilities provided for under this Act.

PART IX ENVIRONMENTAL PRINCIPLES AND LIABILITIES

Compliance
with
environmental
principles
Act No.
7 of 2017
s.28
Cap.191

107.-(1) The licence holder and any other person who exercise or perform functions, duties or powers under this Act in relation to mining operations shall comply with environmental principles and safeguards prescribed in the Environmental Management Act and other relevant laws.

(2) The licence holder and contractor shall ensure that the management of production, transportation, storage,

treatment and disposal of waste arising out of mining operations is carried out in accordance with environmental principles and safeguards prescribed under the Environmental Management Act and other relevant written laws.

(3) The licence holder shall contract a separate and competent entity to manage transportation, storage, treatment or disposal of waste arising out of mining operations.

(4) The licence holder shall be responsible for activities referred to under subsection (3).

(5) The National Environmental Management Council in consultation with the Commission may, grant a licence for management, transportation, storage, treatment or disposal of waste arising out of mining operations to an entity contracted by a licence holder under subsection (3) on terms and conditions prescribed in the licence.

(6) A person contracted by the licence holder under subsection (3) shall not carry out mining operations without having a licence issued by the Minister responsible for environment.

(7) A person who carries on management of productions transportation, storage, treatment or disposal of waste arising out of mining operations without a licence or fails to comply with the terms and conditions prescribed in the licence, commits an offence and shall be liable on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than six months.

Pollution
damage
Act No.
7 of 2017
s.28

108.-(1) This Part applies in relation to damage caused by pollution from a facility if the damage occurs in Tanzania or affects a Tanzanian vessel or facility in adjacent areas.

(2) The Minister may, make regulations relating to liability for pollution or damage caused by mining operations with agreement with a foreign State.

(3) Regulations made under subsection (2) shall not restrict the right to compensation in accordance to this Act

and relevant written laws in respect of any injury, death or damage of property under Tanzania Jurisdiction.

Liability of
licence holder
for pollution
damage
Act No.
7 of 2017
s.28

109.-(1) The licence holder shall be liable for pollution damage without regard to fault.

(2) Where it is demonstrated that an inevitable event of nature, act of war, exercise of relevant Commission or a similar event of act of God has contributed to a considerable degree to the damage or its extent under circumstances, which are beyond the control of the licence holder or contractor, the liability may be reduced to the extent that is reasonable, with particular consideration to the-

- (a) scope of the activity;
- (b) situation of the party that has sustained the damage; and
- (c) opportunity for taking out insurance on both sides.

Liability for
pollution
damage
caused without
licence
Act No.
7 of 2017
s.28

110.-(1) Where pollution or damage occurs during mining operations and the operation has been conducted without a licence, the party conducted the mining operations is liable for the damage, regardless of fault.

(2) The liability shall be applied to any other person who has taken part in the mining operations, and who knew, or should have known that the activity was conducted without a licence.

Claiming of
damages
Act No.
7 of 2017
s.28

111.-(1) The liability of a licence holder and contractor for pollution damage may be claimed in accordance with this Act and any other applicable law.

(2) Liability for pollution damage may not be claimed against-

- (a) any person other than a licence holder and contractor who undertakes measures to avert, limit pollution damage, save life or rescue values which have been endangered in connection with the mining operations, unless

the measure taken conflict with prohibitions imposed by the Commission or express prohibition by the law values threatened; or

- (b) any person employed by a licence holder or person referred to in paragraph (a).

(3) Where the licence holder and contractor have been ordered by court to pay compensation for pollution damage, but fail to pay within the time stipulated in the judgment, the party that has sustained damage may bring an action against the party that has caused the damage to the same extent as the licence holder and contractor may bring an action for recourse against the party who caused the damage.

(4) The licence holder and contractor may claim compensation from the party who caused pollution damage to the licence holder and contractor to the same extent as the licence holder and contractor may bring action for recourse against the party caused the damage.

Claiming
compensation
for pollution
Act No.
7 of 2017
s.28
Cap. 4
s.8

112.-(1) The licence holder and contractor may not claim compensation for damage caused by pollution against a person exempted from liability, except where such person acted wilfully or negligently.

(2) Recourse liability may be mitigated to the extent that it is considered reasonable in view of manifested conduct, economic ability and the circumstances in general.

(3) Any agreement on further recourse in respect of a person against whom liability is imposed contrary to subsection (1) shall be invalid and not claimable for damages.

Jurisdiction
Act No.
7 of 2017
s.28

113. A legal action for compensation for pollution damage shall be brought before a competent court in the area where the effluence or discharge of mining operations takes place or where damage is caused.

**PART X
FINANCIAL PROVISIONS**

Funds of
Commission

Act No.
7 of 2017
s.28

114.-(1) The funds of the Commission shall consist of-

- (a) moneys appropriated by Parliament for the purposes of the Commission;
- (b) grants received by the Commission; and
- (c) any other moneys legally acquired and received by the Commission for the execution of its function.

(2) The funds of the Commission shall be used for payment of-

- (a) salaries and allowances of staff members of the Commission; and
- (b) any other expenses incurred by the Commission in the execution of its functions.

Financial year

Act No.
7 of 2017
s.28

115. The financial year of the Commission shall be the period of one year ending on the 30th June.

Budget

Act No.
7 of 2017
s.28

116.-(1) The Commission shall, before the end of each financial year, prepare a budget for the following financial year showing estimates of its receipts and expenditure for the following year.

(2) The Commission shall, submit to the Minister the annual budget and every supplementary budget for approval.

Accounts and
audit

Act No.
7 of 2017
s.28

117.-(1) The accounts of the Commission shall, at the end of each financial year, be audited by the Controller and Auditor-General.

(2) The Commission shall cause to be kept proper books and audited records of accounts of the income, expenditure and assets.

(3) Within a period of three months after the end of each financial year, the Commission shall submit to the Controller and Auditor-General the accounts of the Commission together with-

- (a) a statement of income and expenditure during the previous year; and
- (b) a statement of assets and liabilities of the Commission on the last day of that year.

Annual report
Act No.
7 of 2017
s.28

118.-(1) The Commission shall, on or before the 30th December of each year, prepare an annual report in respect of that financial year up to immediately preceding 30th June, and submit the report to the Minister who shall lay the report before the National Assembly.

(2) The annual report shall consist of-

- (a) detailed information regarding the activities of the Commission during the year to which it relates;
- (b) a copy of the audited accounts; and
- (c) any other information as the Commission may be required to provide by this Act.

PART XI DISPUTES SETTLEMENT

Commission
may decide
disputes
Cap. 4
s.8

119.-(1) The Commission may inquire into and decide all disputes between persons engaged in prospecting or mining operations, either among themselves or in relation to themselves and third parties other than the Government not so engaged, in connection with-

- (a) the boundaries of any area subject to a mineral right;
- (b) the claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes, or to have priority of water taken, diverted, used or delivered, as against any other person claiming the same;

- (c) the assessment and payment of compensation pursuant to this Act; or
- (d) any other matter which may be prescribed.

(2) The Commission may make any order which may be necessary for the purpose of giving effect to the decision in proceedings pursuant to this Part, and may order the payment, by any party to a dispute, of such compensation as may be reasonable, to any other party to the dispute.

[s.102]

Enforcement
of
Commission's
orders

120.-(1) The Commission may file for execution any order made under section 119(2) to a court presided over by a Resident Magistrate within the local limits of whose jurisdiction the subject matter of the order is situated.

(2) On receiving the order under subsection (1), the court shall cause the order to be enforced as if that order was made by the court.

(3) The fees payable upon the enforcement of an order shall be those which would be payable upon the enforcement of the like order made by the court concerned.

[s.103]

Appeal to
High Court

121. Any person aggrieved by a decision or order of the Commission made or given pursuant to this Part may appeal to the High Court within the period of thirty days from the date on which the decision or order is given or made.

[s.104]

Rules

122. The Commission may make rules providing for the initiation and conduct of proceedings under section 119 and the keeping of records and notes of evidence concerning any such proceedings.

[s.105]

**PART XII
REGISTRATION OF MINERAL RIGHTS**

Registers of mineral rights

123.- (1) The Commission shall -

- (a) maintain a central register of all mineral rights which shall include a record of all applications, grants, variations and dealings in, assignments, transfers, suspension and cancellation of the rights;
- (b) cause similar registers to be maintained in every regional mines office with regard to all mineral rights.

(2) A register required to be maintained under this section shall be open for public inspection on payment of the prescribed fee.

[s.106]

Evidentiary provisions

124. A certificate of the Commission that-

- (a) a mineral right was granted, transferred, suspended or cancelled on, or with effect from, a date specified in the certificate;
- (b) any land identified in the certificate is, or was, on a date specified in the certificate the subject of a specified mineral right;
- (c) a mineral specified in the certificate is a mineral of which a mineral right relates;
- (d) any condition specified in the certificate is, or was, on a date so specified a condition of a mineral right;
- (e) a certificate of surrender was issued in respect of land identified, and on a date specified, in the certificate;
- (f) any condition specified in the certificate is a condition on which a certificate of surrender was issued or on which any consent or approval so specified was given;

(g) a person named in the certificate is, or was, on a date specified in the certificate the holder of a specified mineral right,
may be received in proceedings before any court as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

[s. 107]

**PART XIII
MISCELLANEOUS PROVISIONS**

Radioactive
minerals
Cap. 188

125.-(1) A person shall not export or import any radioactive mineral except in accordance with the terms and conditions as stipulated under the Atomic Energy Act.

(2) An application for a permit to export or import radioactive minerals shall be submitted to the Commission in the prescribed form and shall be accompanied by the prescribed fee and such other information as the Commission may require or as may be prescribed.

(3) Any person who exports or imports or attempts to export or import any radioactive mineral otherwise than required by the preceding provisions of this section shall be proceeded against in accordance with the provisions of the Atomic Energy Act.

(4) In this section, "radioactive mineral" means a mineral which contains by weight at least one-twentieth of one per centum of uranium or thorium or any such combination and includes-

- (a) monazite sand and other ores containing thorium;
- (b) carbonite, pitchblende and other ores containing uranium.

(5) The Minister shall make special regulations for the purpose of ensuring public safety and-

- (a) regulating mining, processing, hauling, transporting, conveying, marketing and disposition of radioactive minerals; and

Cap. 188 (b) such regulations shall not be inconsistent with the Atomic Energy Act and its regulations made there under.

[s.108]

Listing with stock exchange

Cap. 79

126. The Minister shall, in consultation with holders of special mining licence, make regulations prescribing the minimum shareholding requirement and procedure for selling shares to the Tanzania nationals, in accordance with the provisions of the Capital Market and Securities Act, offering shares to the public through listing with the stock exchange.

[s.109]

Transfer of control over company

127.-(1) Where a mineral right or dealer's licence is granted to a company, or other body corporate, the company, or such body corporate, shall not, after the date of the grant of the right, without the written consent of the licensing authority-

- (a) register the transfer of any share or shares in the company to any particular person or his nominee; or
- (b) enter into an agreement with any particular person, if the effect of doing so would be to give that person control of the company or other body corporate.

(2) On an application for consent under this section, the Licensing Authority shall require the applicant to submit document and information which are necessary for the purpose of obtaining a consent.

(3) For the purpose of this section-

- (a) a person is deemed to have control of a company or other body corporate-
 - (i) if the person or his nominee holds, or the person and his nominee hold, a total of fifty per centum or more of the equity shares of the company; or
 - (ii) if the person is entitled to appoint, or to prevent the appointment of, half or more than half of the number of directors of the company;

- (b) "equity shares" means shares other than preference shares;
 - (c) "preference shares" means shares which carry the right to the payment of a dividend of a fixed amount or not exceeding a fixed amount in priority to another class or classes of shares, whether with or without other rights.
- (4) The consent of the licensing authority under this section shall not be unreasonably withheld.

[s.110]

Insurance
and
indemnities
Act No.
7 of 2017
s. 26

128.-(1) The holder of a mineral right under Division A, B or D of Part IV and his contractors shall-

- (a) obtain and at all times during the subsistence of the mineral right maintain in respect of mining operations insurance coverage of such amounts and against such risks as are customarily or prudently insured in the international mining industry in accordance with good international mining industry practice; and
 - (b) furnish to the Minister certificates evidencing that such coverage is in effect and provide copies of any policies requested.
- (2) The insurance under paragraph (a) shall cover-
- (a) loss or damage to all installations, equipment and other assets for so long as they are used in or in connection with mining operations;
 - (b) loss of property damage or bodily injury suffered by any third party, incurred in the course of or as a result of mining operations;
 - (c) pollution and environmental damage, caused in the course of or as a result of mining operations for which the holder or the United Republic may be held responsible;
 - (d) liabilities of the holder to indemnify the United Republic pursuant to subsection (4); and
 - (e) the holder's liability to its employees engaged in mining operations.

(3) The holder of a mineral right granted under Division C of Part IV shall-

- (a) if so directed by the Commission by a notice in writing, obtain and maintain in force in respect of the mining operations carried on by the holder such insurance cover as the Commission may consider reasonably necessary in the public interest:
- (b) where the holder of any such mineral right considers that any obligation imposed under this subsection, is onerous or unreasonable, he may appeal against the direction of the Commission to the Minister.

(4) The holder of a mineral right shall indemnify, defend and hold the United Republic harmless against all actions, claims, demands, injury, losses or damages of any nature whatsoever, including claims for loss or damage to property or injury or death to persons, resulting from any act or omission in the conduct of mining operations by or on behalf of the holder.

(5) Such indemnity under subsection (4) shall not apply to the extent, if any, that any action, claim, demand, loss, damage or injury has resulted from any direction given by, or wrongful act committed on behalf of, the United Republic.

[s.111]

Regulations
Acts Nos
4 of 2017
s.38
7 of 2017
s. 27
Cap.4
s.8

129.-(1) The Minister may, on recommendation of the Commission, make regulations for any matter which, in accordance with this Act, is to be provided for by the regulations or which may be prescribed.

(2) In particular, but without limiting the generality of subsection (1) such regulations may provide for-

- (a) the making of applications and the fees to be paid on applications and issuances of licences, whether or not provided for in the foregoing provisions of this Act;

- (b) any other fee, charge, rent, due, royalty or other sum which may be charged under this Act or the regulations and the manner of calculation of the same;
- (c) the procedures for inviting tenders and the conditions for tendering in response to such invitations;
- (d) the allocation of primary mining licences within areas declared to be reserved for such primary licences and for the regulation of Mineral Rights in such areas;
- (e) the demarcation of prospecting and mining areas;
- (f) the standard model of development agreement and other various forms to be used under this Act;
- (g) the proper and efficient working of prospecting areas, mining areas and mines;
- (h) the avoidance of wasteful practices as described in this Act or otherwise;
- (i) prescribing safety standards for work and machinery connected with prospecting and mining;
- (j) the avoidance of pollution to the air, surface and ground waters and soils and the regulation of all matters relating to the protection of the environment and the minimisation of all adverse impacts to the environment including the restoration of land on which mining operations have been conducted;
- (k) the regulation of all matters relating to sanitation and health, including the establishment of cemeteries, as regards mining areas;
- (l) the reporting of accidents and deaths occurring on any prospecting area or mining area in connection with prospecting or mining;
- (m) making safe any land, works or machinery over or with which prospecting or mining

- operations have been conducted;
 - (n) procedures for renewal, suspension and cancellation of licences issued under this Act;
 - (o) procedures for termination, of mining operations and closure of mines;
 - (p) procedures for lodging complaints, handling complaints and appeals;
 - (q) such further matters as may be necessary or expedient for the security of operations for the mining, recovery, treatment, storage and transport of raw gold or gemstones;
 - (r) the circumstances and procedures for referring matters for determination of an expert, and the procedures for selecting and appointing an expert;
 - (s) the inspection of records, accounts, books and documents;
 - (t) operationasation of inspection of mineral or minerals as required under this Act;
 - (u) local content principles including the requirements for provision of goods and services by Tanzanian entrepreneurs, training and employment of Tanzanians and technology transfer;
 - (v) principles relating to corporate social responsibility;
 - (w) principles and procedures relating to integrity pledge; and
 - (x) conduct of mineral auctions and mineral houses.
- (3) Regulations made under this Act may-
- (a) make separate provision in respect of mineral rights granted under Divisions A, B and D of Part IV;
 - (b) the Minister, the Commission, the authorized officers or the Resident Mines Officer to give directions.

(4) Where any matter is to be provided for by Regulations relating to royalties, fees or other charges, the Minister shall, before making such Regulations, consult the Minister responsible for financial matters.

(5) Where any matter is to be provided for by Regulations relating to protection of environment and rehabilitation bond, the Minister shall, before making such Regulations, consult the Minister responsible for environment matters.

(6) Any regulations made under this Act may prescribe for any breach thereof a fine not exceeding two million shillings or imprisonment for a period not exceeding twelve months or both such fine and imprisonment.

[s.112]

Obstruction
of holder of
mineral rights

130. Any person who, without reasonable excuse, obstructs or hinders the holder of a mineral right from doing any act which that holder is authorised to do by this Act, the regulations or his mineral right commits an offence and on conviction is liable to a fine not exceeding ten million shillings or imprisonment for a period not exceeding twelve months or to both.

[s.113]

Miscellaneous
offences

131. Any person who-

- (a) in any application under this Act knowingly makes any statement which is false or misleading in a material particular;
- (b) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly includes or permits to be included any information which is false or misleading in a material particular;
- (c) places or deposits, or is accessory to the placing or depositing of, any material in any place with the intention of misleading any other person as to the mineral possibilities of that place;

- (d) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of the ore with the intention to cheat, deceive or defraud,

commits an offence and on conviction is liable –

- (i) in the case of an individual, to a fine not exceeding ten million shillings or to imprisonment for a period not exceeding twelve months or to both; or
- (ii) in the case of a body corporate, to a fine not exceeding fifty million shillings.

[s.114]

Offence
committed
by body
corporate

132. Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or of any person who was purporting to act in any such capacity, he, as well as the body corporate, commits an offence and shall be punished accordingly.

[s.115]

PART XIV REPEALS AND SAVINGS PROVISIONS

Repeal and
savings
Act No.
5 of 1998

133.-(1) [Repeals Cap.123 R.E.2002.]

(2) Notwithstanding the repeal of the Mining Act, under subsection (1) any subsidiary legislation made under the repealed Act shall continue to have effect as if made or done under this Act until they are revoked or replaced.

(3) Notwithstanding the repeal of the Mining Act, under subsection (1), all mineral rights, licences, permits and authorisations granted or issued and Agreements entered in accordance with the provisions of the repealed Act shall be deemed to have been granted, issued or authorised under this Act, subject to the modifications as may be determined under this Act in respect of the

particular grant or authorisation.

(4) All Agreements made and entered in terms of the repealed Act, all appointments and decisions made under the repealed Act shall be deemed to have been made under this Act, until terminated, surrendered, reviewed, removed, cancelled or expired.

[s.116]

Act No
7 of 2017
s.28 (c)

FIRST SCHEDULE

(Made under section 21)

PROCEDURES RELATING TO MINING COMMISSION

Tenure of
office of
members

1.-(1) Subject to the provisions of this Schedule, every member of the Commission shall hold office for the period of three years from the date of his appointment but may be eligible for re-appointment for one more term.

(2) Notwithstanding subparagraph (1), a member may resign at any time by giving notice in writing to the appointing authority and from the date specified in the notice or, if no notice is specified in the notice, from the date of receipt of the notice by the appointing authority he shall cease to be a member.

(3) A person who is a member by virtue of his holding some other office shall cease to be a member upon ceasing to hold the office by virtue of which he is a member.

Termination of
appointment

2. Where any member of the Commission absents himself form three consecutive meeting of the Commission without reasonable excuse, the Commission shall advise the appointing authority of the fact and the appointing authority may terminate the appointment of such a member and appoint a new member in his place.

Cessation of
membership

3. Where a member of the Commission ceases to be such a member by resignation, or dearth or is unable to perform his functions as such member by reason of his absence from the United Republic or by reason of any infirmity of the body or mind or where the appointing authority terminates his appointment under paragraph 2, the appointing authority may appoint another member in his place and a member so appointed shall subject to the provisions of this schedule, hold office for the remainder of the term of his predecessor.

Vice Chairman	<p>4. The Commission shall elect one of its members to be a Vice Chairman and any member elected as a Vice Chairman shall, subject to his continuing to be a member hold office of Vice Chairman for a term to be fixed by the Commission and shall be eligible for re-election at the end of that period.</p>
Meetings and procedures of Commission	<p>5.(1) The Chairman shall preside at all meeting of the Commission, and where at any meeting of the Commission the Chairman is absent then the Vice Chairman shall preside.</p> <p>(2) In the absence of both the Chairman and Vice Chairman at any meeting of the Commission the members present may form amongst their number elect a temporary chairman who shall preside at that meeting.</p> <p>(3) The Chairman, Vice Chairman or temporary chairman presiding at any meeting of the Commission shall have a vote and in the event of an equality of votes, shall have a casting vote in addition to his deliberative vote.</p>
Number of meetings	<p>6.(1) Subject to any general or specific directions of the Chairman the Commission shall meet not less than four times during every financial year and at such additional times as may be fixed by the Chairman or if he is absent or unable for any reason to act, the Vice Chairman.</p> <p>(2) The Secretary to the Commission shall give to each member of the Commission fourteen days notice of the time and place of every meeting of the Commission.</p>
Quorum	<p>7. One half of the total number of members shall form a quorum for the meeting of the Commission.</p>
Decision by votes	<p>8.(1) Subject to the provisions relating to casting of votes, all questions at the meeting of the Commission shall be determined by the majority of the votes of the members present and if any members refuses or fails to vote on any question, he shall be deemed to have casted a negative vote.</p> <p>(2) Notwithstanding subparagraph (1), the decision may be made by the Commission without the meeting by circulation of relevant papers among the members and the expression of the views of the majority thereof in writing shall be deemed to be the decision of the Commission.</p> <p>(3) Any member of the Commission shall be entitled to require that any decision of the Commission made under subparagraph (2),</p>
Procedures of Commission	<p>9. Subject to the provisions of this Act, the Commission shall have power to regulate its own procedures.</p>

SECOND SCHEDULE

(Made under section 100)

REPORTS AND RECORDS

licence shall-

1.-(1) Subject to subparagraph (2), the holder of a prospecting

(a) keep at the address referred to subsection (2), of section 100, full and accurate records of his prospecting operations which indicate:

- (i) boreholes drilled;
- (ii) aerial photographs;
- (iii) strata penetrated with detailed logs of the strata;
- (iv) minerals discovered;
- (v) the results of any seismic survey or geochemical or geophysical analysis;
- (vi) the results of any analysis or identification of minerals;
- (vii) the geological interpretations of the records maintained under items (i) to (vi) inclusive;
- (viii) the number of persons employed;
- (ix) other work done in connection with the prospecting licence;
- (x) costs incurred; and
- (xi) such other matters as may be prescribed.

(b) submit within the first month of every calendar quarter to the Commission copies of records of his prospecting operations together with any records prepared as a result of those records.

(2) The Commission may, on the application of the holder of a prospecting licence, modify any of the requirements of subparagraph (1).

2. The holder of a special mining licence shall-

(a) keep at the address referred to in subsection (2) of section 100 –

- (i) complete and accurate technical records of his operations in the mining area, including the implementation of his environmental management plan, in such form as the Commission may approve;
- (ii) copies of all maps, geological reports, including interpretations, mineral analyses, aerial photographs, ore logs, analyses and tests and all

other data obtained and compiled by the holder in respect of the mining area;

- (iii) accurate and systematic financial records of his operations in the mining area and such other books of account and financial records as the Commission may require; records of the production of minerals from the mining area; records of the number of persons employed by the holder in the mining area and the capacity in which they are employed and of the employment and training of citizens of Tanzania;
- (b) submit within the first month of every calendar quarter to the Commission such reports, records and other information concerning the conduct of operations;
- (c) furnish the Commission with a copy of every annual financial report within three months of the end of each financial year showing the profit and loss for the year and the state of the financial affairs of the holder at the end of each financial year.

3. The holder of a mining licence or a primary mining licence shall keep the address referred to in section 100(2) such of the records, and shall furnish to the licensing authority, within the first month of every calendar quarter such of the reports specified in paragraph 2 of this Schedule.

4. Where-

- (a) a mineral right terminates in accordance with provisions of this Act; or
- (b) the term of a prospecting licence or a special mining licence expires, the person who was the holder of the Mineral Right immediately before the termination or expiration shall deliver to the licensing authority concerned_
 - (i) all records which the former holder maintained in accordance with this Act with respect to the Mineral Right;
 - (ii) all plans or maps of the area of land that was subject to the Mineral Right and which were prepared by or on the instructions of the former holder;
- (c) such other documents as the licensing authority concerned may, by notice in writing given to the former holder, require him to so deliver.

5. Where the term of a mining licence, gemstone mining licence or primary mining licence expires, the person who was the holder of the Mineral Right immediately before the expiration shall deliver to the licensing authority concerned, all records that he was required to keep under this Schedule and all plans or maps of the prospecting operations or mining operations on the area.

6. Where the Commission has reason to believe that a person is capable of giving information or producing or making available books or documents relating to minerals obtained or the value of minerals obtained, he may, by notice in writing served on that person, require that person-

- (a) to furnish to him in writing, within the period and in the manner specified in the notice, any such information;
- (b) to attend before him or a person specified in the notice at such time and place as is so specified and there to answer questions relating to minerals obtained, or the value of minerals obtained; or
- (c) to make available to a person specified in the notice at such time and place as is so specified books or documents in his custody or power relating to minerals obtained or the value of minerals obtained.

7. A person is not excused from furnishing information, answering a question or making available books or documents when required to do so under this Part of this Schedule on the ground that the information so furnished, the answer to the question, or the production of; or making available, any books or documents might tend to incriminate him or make him liable to a penalty, but the information so furnished shall not be admissible in evidence against him in any proceedings other than proceedings for a contravention of paragraph 9.

8. Where books or documents are made available in accordance with paragraph 6, the person to whom they are made available may make copies of, or take extracts from, the books or documents.

9.-(1) A person shall not-

- (a) refuse or fail to comply with a requirement under paragraph 6 to the extent that he is capable of complying with it;
- (b) in purported compliance with such a requirement, knowingly furnish information that is false or misleading in a material particular;
- (c) when attending the Commission or any other person in accordance with such a requirement, knowingly make a statement or produce a book or document that is false or misleading in a material particular; or

(d) when making available books or documents in accordance with such a requirement, knowingly make available a book or document that is false or misleading in a material particular.

(2) Any person who contravenes subparagraph (1) of paragraph 9 shall be guilty of an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a period not exceeding six months or to both.

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 268

**THE OFFICE OF THE ATTORNEY GENERAL
(DISCHARGE OF DUTIES) ACT**

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Office of the Attorney General (Discharge of Duties) Act, Chapter 268, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

10. Relationship of Office of Attorney General and other offices.
11. [Repealed].

(b) Provisions in Relation to Other Matters of Legal Nature

12. Drafting and publication of Bills.
13. [Repealed].
14. [Repealed].

**PART IV
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CHAPTER 268
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THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF
DUTIES) ACT

An Act to provide for the discharge of duties and the exercise of powers of the Attorney General, and to provide for the relationship of the Office of the Attorney General with other public offices and officers performing legal functions in the Government and local government authorities and to provide for related matters.

[1st JULY, 2005]
[GN. No.171 of 2005]

Acts Nos.
4 of 2005
8 of 2017
7 of 2018

**PART I
PRELIMINARY PROVISIONS**

- Short title **1.** This Act may be cited as the Office of the Attorney General (Discharge of Duties) Act.
- Application **2.** This Act shall apply to persons who perform or discharge legal functions in the Office of the Attorney General and other offices in the public service who, by virtue or nature of their job description are required to seek or consult for legal advice from the Office of the Attorney General.
- Interpretation **3.** In this Act, unless the context otherwise requires-
Act No. “Act” means the Office of the Attorney General
7 of 2018 (Discharge of Duties) Act;
s.60 “Attorney General” has the meaning ascribed to it under
Cap.268 Article 59 of the Constitution, and shall include, the

Deputy Attorney General, Law Officers and State Attorneys when discharging the duties or exercising the powers of the Attorney General;

“Code of Ethics” means the Code of Ethics referred to under section 27;

“Constitution” means the Constitution of the United Republic of Tanzania, 1977;

“Court” means a court of law and includes a tribunal;

Cap.2 “Deputy Attorney General” has the meaning ascribed to it under Article 59A of the Constitution;

Cap.1 “Law Officer” has the meaning ascribed to it under the Interpretation of Laws Act;

“Minister” means the Minister responsible for legal affairs;

Cap.2 “Office of the Attorney General” in relation to the functions of the Attorney General, means the Office established by the Article 59(1) of the Constitution;

“public service” for purpose of the discharge of the duties of the Office of the Attorney General, means the service in the Ministry of the Government, Government department and Government Agency;

“State Attorney” means a person appointed as such under section 24 and includes a Parliamentary Draftsman and a Local Government Solicitor;

Objectives of Act
Act No.
7 of 2018
s.61

3A. The objectives of this Act shall be to enhance and strengthen the capacity-

- (a) to deliver advice on matters of law to the Ministries, independent departments, agencies and the local government;
- (b) for efficiency in drafting of legislative instruments and draft resolutions for debate by the National Assembly;
- (c) to deliver advice to Ministries, independent departments, Agencies and the local government on legislative process;

- (d) of the Government in dealing with matters instituted or filed in courts of law or arbitral tribunals; and
- (e) of the Government in the negotiation of agreements of commercial or political nature both local or international in which the Government is a party or has interest.

PART II
OFFICE OF THE ATTORNEY GENERAL

Administration of
Office
Act No.
7 of 2018
s.62
GN. No.
48 of 2018

4. The administration of the Office of the Attorney General, the discharge of duties, the exercise of the powers and the relationship of the Office of the Attorney General with other officers discharging legal duties in the public service shall be governed by the Constitution, the office of the Attorney General (Re-structure) Order, 2018.

Attorney General
and his functions
Act No.
7 of 2018
s.63

5.-(1) The Attorney General shall be the head of the Office of the Attorney General.

(2) The Attorney General shall, by virtue of his office, be the head of the bar and shall, through the Solicitor General, take precedence over all civil matters whenever he appears in court.

(3) Subsection (2) shall apply in relation to the Deputy Solicitor General, Law Officers and State Attorneys appearing in court in the name of the Attorney General.

Powers of
Attorney General
Act No.
7 of 2018
s.64
Cap.4
s.8

6. In the discharge of the functions under sub-article (3) of Article 59 of the Constitution, the Attorney General shall have and exercise the following powers:

- (a) to require any officer in the public service to furnish any information in relation to any matter which is the subject of legal advice;
- (b) to issue directions to any officer performing legal functions in any Ministry of the

Government, Government Department or Government Agency, other than those working in the National Prosecutions Service or the Office of the Solicitor-General.

Deputy Attorney General and his functions

7.-(1) The Deputy Attorney General shall carry out any function, discharge any duty and exercise any power as may be directed by the Attorney General and shall:

Act No. 7 of 2018 s.65

- (a) be the administrative head of the Office of the Attorney General;
- (b) carry out the general supervisory role of the legislative drafting or Bills and other legislative instruments;
- (c) carry out the general supervision of Law Officers and State Attorney in the Ministries, Government departments, agencies and local government;
- (d) administer legal functions performed by Law Officers and State Attorneys in the Office of the Attorney General; and
- (e) be responsible for the discipline of Law Officers and State Attorneys in the Office of the Attorney General.

(2) In performing the duties stipulated under this Act, the Deputy Attorney General shall uphold the division of duties and functions performed by officers in the Office of the Attorney General independent of others and those reserved to the Attorney.

Functions of Office of Attorney General Act No. 7 of 2018 s.64 Cap. 2 G. N. No. 48 of 2018

8. Without prejudice to the generality of Articles 59 and 59A of the Constitution and the Office of the Attorney General (Re-structure) Order, 2018 the functions of the Office of the Attorney General shall be to:

- (a) advise ministries, independent departments, agencies, local government authorities, public corporations, parastatal organizations and other government institutions and organisations on

- the legislative process and legal opinion on general issues;
- (b) draft legislative proposals into Bills for enactment into law;
 - (c) draft all legislative instruments and resolutions for ratification by the National Assembly;
 - (d) advise on proper and purposeful meaning of enactment of Parliament, subsidiary legislation and other legal instruments;
 - (e) carry out the general supervision of Law Officers and State Attorneys appointed or employed in the Office of the Attorney General, ministries, local government authorities, independent departments, executive agencies, public corporations, parastatal organisations and government institutions other than those under the National Prosecutions Service and the Office of the Solicitor-General;
 - (f) carry out the general supervision of staff employed in the office of the Attorney General;
 - (g) administer legal functions performed by Law Officers and State Attorneys in the Office of the Attorney General;
 - (h) summon any public officer to give explanation, or information regarding any matter which is the subject of advice;
 - (i) prepare and submit biannual report to the Minister;
 - (j) appoint or employ and discipline Law Officers, State Attorneys and other staff of the Office of the Attorney General; and
 - (k) perform any function as may be necessary for effective discharge of the duties and the exercise of the powers of the Attorney General.

Appointment or
employment of
officers
Act No.
7 of 2018
s.67

9. There shall be employed or appointed in the Office of the Attorney General, Ministries of the Government, Government Departments and Agencies, Law Officers and State Attorneys of the titles explanatory of their functions and duties as prescribed by this Act or any other written law.

PART III
FUNCTIONS OF THE OFFICE OF THE ATTORNEY GENERAL

*(a) Special Provisions in Relation to the National Prosecutions Service,
the Office of the Solicitor General and the Administrator-General*

Relationship of
Office of
Attorney General
and other offices
Act No.
7 of 2018
s.69

10.-(1) Without prejudice to the generality of Article 59B of the Constitution, the Office of the Attorney General shall advise and maintain a link with the National Prosecutions Service, the Office of the Solicitor-General and the Administrator-General for better carrying out of their respective duties.

(2) For the purposes of subsection (1), the Office of the Attorney General shall-

- (a) receive copies of biannual performance reports from the National Prosecutions Service, Office of Solicitor General and the Administrator General;
- (b) follow-up on the implementation of the decisions reached by the Government Legal Team; and
- (c) advise the Government, the National Assembly and the Judiciary accordingly.

(3) The Minister may make rules for better carrying out the provisions of this section.

Repealed

11. [Repealed by Act No.7 of 2018 s.70].

(b) Provisions in Relation to Other Matters of Legal Nature

Drafting and publication of Bills

12.-(1) The Attorney General shall, through the Chief Parliamentary Draftsman, define drafting instructions and exercise exclusive mandate on drafting legislative proposals into Government Bills.

(2) Where drafting instructions are received, the Chief Parliamentary Draftsman shall draft legislative proposals for approval by the Cabinet.

(3) Where the Cabinet approves the draft legislative proposals, the Chief Parliamentary Draftsman shall cause the Bill to be published in the *Gazette*.

(4) The term “drafting instructions” as used in this section means, directives given by the Cabinet for drafting legislative proposals into a Bill or by an authority delegated by Parliament through an enactment to make a subsidiary legislation.

Repealed

13. [Repealed by Act No.7 of 2018 s.70].

Repealed

14. [Repealed by Act No.7 of 2018 s.70].

**PART IV
THE ATTORNEY GENERAL, LAW OFFICERS AND STATE ATTORNEYS IN THE PUBLIC SERVICE**

Law Officers and State Attorneys Act No. 7 of 2018 s.74

15.-(1) There shall continue in existence in ministries, local government authorities, independent departments, government institutions, agencies, public corporations, parastatal organizations, Law Officers and State Attorneys who by virtue of their qualifications, job description and duties, perform legal functions.

(2) The Attorney General may issue directions either general or specific to any Law Officer or State Attorney in public service other than those under the National Prosecutions Service or the Office of the

Solicitor-General with regard to the manner of performing the legal functions within their respective offices.

(3) The Solicitor-General may issue each Law Officer and State Attorney in ministries, local government authorities, independent departments and other government institutions, agencies and organisations with Practice Instrument that will entitle the bearer to appear in court in cases where the Attorney General is a party.

(4) Without prejudice to subsection (2) the Attorney General may direct Ministries, local Government authorities, independent departments, agencies, public corporations, parastatal organizations or other government organizations to submit reports on the performance of legal functions.

Functions to be performed by Law Officers and State Attorneys
Act No. 7 of 2018
s.74

16.-(1) The functions which are, by the Constitution, this Act or by any other written law, required to be performed by or on behalf of the Attorney General, may be performed by a Law Officer or a State Attorney authorised by the Attorney General pursuant to the provisions of this Act.

(2) A person shall not become a Law Officer or State Attorney only for the reason that his job description includes performing legal functions.

(3) For the avoidance of doubt, nothing in this Act shall entitle any officer who is not qualified in law to perform legal functions in the public service.

Professional Association of lawyers in public service
Act No. 7 of 2018
s.74

16A.-(1) The Attorney General may establish a professional association of lawyers in the public service.

(2) The association shall be a professional forum of lawyers in the public service to meet once a year and deliberate on various legal issues including professional development and other matters of concern.

(3) The report of the meeting shall be submitted to the Minister.

(4) The Minister may make regulations for the proper management, leadership, organisation and conduct of the business of the association.

(5) Without prejudice to the foregoing provisions, the Minister may, from time to time, call meetings of lawyers in the public service in order to inform them of policy development issues with regard to the legal sector and the public service in general.

Roll of State Attorneys Act No. 7 of 2018 s.74

16B.-(1) The Attorney General shall establish and keep a Roll of all State Attorneys.

(2) The Attorney General shall enter in the Roll the name of every State Attorney and the order of entry of such names shall be according to precedence of such State Attorneys as between themselves.

(3) Nothing in this section shall prejudice or affect the qualification or status of any person who before the establishment of the Roll of State Attorneys was a State Attorney.

Audience by Attorney General in matters of public interest, etc. Acts Nos. 8 of 2018 s.74 7 of 2018 s.75

17.-(1) Notwithstanding the provisions of any written law to the contrary, the Attorney General shall through the Solicitor-General have the right to audience in proceedings of any application suit, appeal or petition in court or inquiry on administrative body which the Attorney General considers-

- (a) to be public interest or involves public property; or
- (b) to involve the legislative, the judiciary or an independent department or agency of the Government.

(2) In the exercise of the powers vested in the Attorney General with regards to the provisions of subsection (1), Solicitor-General shall-

- (a) notify any court, tribunal or any other administrative body of the intention to be joined to the suit, inquiry or administrative proceedings; and
- (b) satisfy the court, tribunal or any other administrative body of the public interest or public property involved,

and comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the Office of the Attorney General.

(3) Where a suit, inquiry or any other proceeding is pending before the court, tribunal or any other administrative body to which the Solicitor-General does not have a right of audience, it shall be sufficient for the Solicitor-General to file a certificate of the intention of the Attorney General to be joined and the court, tribunal or any such administrative body shall immediately forward the record of the proceedings to the nearest court, tribunal or administrative body for purposes of enabling the Solicitor-General to appear.

PART V
LEGAL FUNCTIONS OF THE LOCAL GOVERNMENT
AUTHORITIES

Appointment of a
Law Officer for
local government
authorities
Act No.
7 of 2018
s.76

18.-(1) There shall continue in existence in the Minister responsible for local government authorities, an office of a Law Officer who shall be responsible for the coordination of State Attorneys of the local government authorities.

(2) Where there is a need for appointing a Law Officer to head or to perform the functions referred to in subsection (1), the Permanent Secretary of the Ministry responsible for local government authorities may, after consultation with the Attorney General and Solicitor-General, appoint the Law Officer from the Ministry responsible for local government authorities, Office of the Attorney General or Office of the Solicitor-General.

(3) A Law Officer appointed pursuant to the provisions of subsection (3) shall bear a title of any description that deposits the nature of the functions performed and the position held, provided however, that such title is commensurate to the structure of office acceptable by the Public Service Management Office.

(4) In the coordination of legal functions of the local government authorities, the Attorney General, Director of Public Prosecutions and the Solicitor-General may issue any directive of a general or specific nature concerning professional matters and the Law Officer shall cause such directive to be implemented.

(5) The Law Officer appointed in accordance with this section or any other Law Officer or State Attorney in the service of the local government authority shall, under the auspices of the Solicitor-General, have the right of audience in any matter before the court in which a local government authority or the Attorney-General is a party.

PART VI
CONTROL OF THE PERFORMANCE OF FUNCTIONS AND
THE DISCHARGE OF DUTIES OF THE ATTORNEY GENERAL

Reserve of
matters to
Attorney
General
Act No.
7 of 2018
s.77

19. No Law Officer, State Attorney shall render advice in any matter stipulated under this section without approval of the Attorney General, namely-

- (a) interpretation of the Constitution;
- (b) any matter relating to international agreements and treaties;
- (c) any matter which the law reserves to the Attorney General.

Procedure of
sourcing
consultancy
Act No.
7 of 2018
s.78
Cap.4
s.8

20.-(1) The engagement of consultants by any Ministry, Government Department or Agency for rendering legal services shall be made after obtaining written approval of the Attorney General in respect of issues that require consultancy.

(2) For the purpose of observing standards, maintaining quality or capacity building, the Attorney General may-

- (a) direct a Law Officer, State Attorney to whom the provisions of this Act apply to participate in the work of the consultant;

- (b) prescribe the terms and conditions for a Law Officer or State Attorney who participates in such consultancy.

Power to issue directives and practice notes
Act No. 7 of 2018
s.79
Cap.4
s.8

21.-(1) The Attorney General shall exercise powers, issue directives or practice notes to any officer to whom this Act applies for the purpose of maintaining standards and uniformity.

(2) The directives or practice notes issued pursuant to subsection (1) shall be in such form and manner as the Attorney General may determine.

(3) Notwithstanding the provisions of this section, all matters regarding administration or discipline in respect of Law Officers and State Attorneys in the ministries, local government authorities, independent departments, agencies, public corporations and parastatal organizations shall be under the supervision and control of their respective employers.

(4) Employers of law officers and state attorneys shall have the duty to notify the Attorney General on all disciplinary cases against law officers and state attorneys under their supervision and control.

Reference of matter for opinion of the Attorney General
Act No. 7 of 2018
s.22

22.-(1) Any ministry, local government authority, independent department, government institution, agency or organisation may refer or seek the opinion of the Attorney General on any legal matter.

(2) Where the opinion of the Attorney General is requested in relation to any matter reserved to the Attorney General, the ministry, local government authority, independent department, government institution, agency or organisation shall state clearly the matter and issues involved together with any opinion that may have been given from within such ministry, local government authority, independent department, government institution, agency or organisation.

Opinion of
Attorney
General to be
position of
Government
Act No.
7 of 2018
s.23

23.-(1) The opinion of the Attorney General given pursuant to the provisions of subsection (2) of this section shall remain the legal position of the Government on the matter unless it is otherwise revised by a court of competent jurisdiction, the Cabinet or otherwise recalled by the Attorney General at the instance of the Attorney General.

(2) The Attorney General or the Deputy Attorney General may at the instance of the Attorney General recall any opinion given by a Law Officer, State Attorney or any legal officer in the public which is made in the name of the Attorney General.

(3) An officer who makes a decision in disregard of the opinion of the Attorney General:

- (a) on a matter that sustains loss to the Government, shall be surcharged or otherwise made to make good of the loss sustained in addition to other appropriate disciplinary measures that may be taken against such officer;
- (b) in any other case, shall be a breach of discipline and may be dealt with according to the Public Service Regulations, 2003.

GN No. 168 of
2003

Act No.
7 of 2018
s.82
Cap.4
s.8

PART VII
ATTORNEY GENERAL, LAW OFFICERS AND
OTHER STATE ATTORNEYS IN THE PUBLIC
SERVICE

Qualifications
for employment
and appointment
of Law Officers
and State
Attorneys
Act No.
7 of 2018
s.83

24.-(1) Subject to the procedure determined by the Public Service Management, the ministry, local government authority, independent department, government institution, agency or organisation shall employ legally qualified officer in law to be a Law Officer or a State Attorney.

(2) A person shall be qualified for appointment as a Law Officer or a State Attorney who possesses a minimum of a first degree in law or the equivalent qualification from an institution of higher learning accredited or recognized as such by the competent authority.

(3) Where a person takes up employment as a Law Officer or a State Attorney, the Attorney General shall, by an instrument under his hand, appoint that person to be a Law Officer or State Attorney, and in the same or subsequent instruments direct on the nature of functions the officer will discharge.

(4) The Deputy Attorney General shall cause to be published in the *Gazette*, the names of all persons appointed to be Law Officers and State Attorneys.

Government
Legal Team
Act No.
7 of 2018
s.84

25.-(1) There is established a Team to be known as the Government Legal Team which shall undertake strategic legal analysis and forecast with regard to legal services rendered as well as prosecutorial and adjudicatory services provided.

(2) The Team shall consist of-

- (a) the Attorney-General who shall be the Chairman;
- (b) the Director of Public Prosecutions;
- (c) the Solicitor-General;
- (d) the Administrator-General;
- (e) the Executive Secretary of the Law Reform Commission of Tanzania;
- (f) the Chief Parliamentary Draftsman;
- (g) the Director of Legal Services in the Ministry responsible for legal affairs; and
- (h) the Director of Legal Services in the Ministry responsible for local governments.

(3) The Attorney General shall appoint a Law Officer from the Office of the Attorney General to be a Secretary to the Team.

(4) The Team may co-opt any person as it deems necessary.

(5) The Team shall meet at least twice a year but may meet at any time if there is any issue to be discussed for the purpose of improving the legal services.

(6) The quorum at any meeting of the Team shall be half of the members.

(7) The Team may regulate its own proceedings.

(8) The Team shall prepare a report of its deliberations and submit the same to the Minister.

Register of Law
Officers and
State Attorneys
Act No.
7 of 2018
s.85
Cap.4
s.8

26.-(1) There shall a Register into which shall be entered and kept particulars of Law Officers and State Attorneys in the public service.

(2) The Deputy Attorney General shall keep and maintain the Register of the Law Officers and State Attorneys in public service who perform the functions in accordance with this Act.

(3) The Register shall contain names, qualifications titles and occupation of each of such officers.

Code of Ethics
Act No.
7 of 2018
s.84

27.-(1) There shall be a Code of Ethics for Law Officers and State Attorneys in the public service to be prescribed by the Minister.

(2) All matters regarding administration or enforcement of the Code of Ethics for Law Officers and State Attorneys in the public service shall be under the supervision and control of their respective employers.

GN No. 168 of
2003

(3) Notwithstanding the Public Service Regulations, 2003 the Attorney General may refer allegations of professional misconduct against a Law Officer or a State Attorney to the Advocates Committee.

(4) Each Permanent Secretary and every head of the independent department, government institution, agency or organisation shall liaise with the Ministry in the administration of the Code of Ethics in respect of Law Officers and State Attorneys employed in their respective offices.

(5) The Chief Justice may, in consultation with the Minister, make rules for better carrying out referrals to the Advocates Committee by the Attorney General under subsection (3) of this section.

Orders, etc and
sanctions for
breach of Code
of Ethics
Act No.
7 of 2018
s.86
GN. No.
168 of 2003

28.-(1) The Attorney General may issue General or Standing Orders, Practice Notes and other instruments as he may deem fit for purposes of better management and organisation of the Office of the Attorney General.

(2) Any Law Officer or State Attorney who breaches the Code of Ethics commits a professional misconduct and shall be liable to disciplinary actions through the employer in accordance to the Public Service Regulations, 2003.

Regulations

29. The Minister may make regulations for the better carrying out of the provisions of this Act.

Omitted

30 - 33 [Amend various written laws.]

SCHEDULE

[Repealed by Act No.7 of 2018 s.87]

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 329

**THE PREVENTION AND COMBATING OF
CORRUPTION ACT**

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Prevention and Combating of Corruption Act, Chapter 329, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

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CHAPTER 329
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**THE PREVENTION AND COMBATING OF
CORRUPTION ACT**
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[PRINCIPAL LEGISLATION]

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PREAMBLE

WHEREAS corruption is an obstacle to principles of democracy, good governance and human rights and poses a threat to peace, tranquility and security in the society;

AND WHEREAS the Government has resolved to undertake protracted measures that would ensure that Tanzania remains a corruption free State adhering to the principles of freedom, equality, justice, brotherhood, peace and wherein all people are equal and every person has a right to ownership and protection of property acquired by lawful means;

AND WHEREAS technological changes ushered in by globalization and development of science in communication and information technology has made it necessary to re-institute the Bureau, to devise modern tactics and strategies of preventing and combating corruption, and to review the current legal framework for the purposes of enabling the Bureau to effectively control corruption and corrupt practices;

AND WHEREAS it is necessary to make comprehensive provisions for the prevention, investigation and combating of corruption and related offences and to ensure that the Bureau conducts its operations independently and performs its functions effectively;

NOW THEREFORE, be it ENACTED by Parliament of the United Republic of Tanzania as follows:

[1st JULY, 2007]
[GN No. 153 of 2007]

Acts. Nos.
11 of 2007
7 of 2018

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Prevention and Combating of Corruption Act.

Application of Act

2.-(1) This Act shall apply in Mainland Tanzania.

(2) This Act shall also apply to a person who commits any act or omission constituting an offence under this Act where-

- (a) the act or omission occurs elsewhere than in Tanzania; or
- (b) the act or omission is done by that person, or for him, by another person elsewhere than in Tanzania.

Interpretation

3. In this Act, unless the context otherwise requires-

“advantage” means a gift or any property movable or immovable, loan, fee, reward or favour and includes valuable consideration of any kind, discount, commission, rebate, bonus, deduction or percentage and employment or services or an agreement to give employment or render services in any capacity;

“agent” includes-

- (a) any person in the employment of whether under a contract of service, a contract for services or otherwise, whether permanent or temporary, whether paid or unpaid, and whether full-time or part-time and whether such person is a natural person or body of persons or acting for another;

- (b) a trustee;
- (c) an administrator or an executor;
- (d) a public official;

“bank account” includes any ledger, day book, cash book, account book and any other document including generated, stored, and displayed electronically used in the ordinary course of business by any person carrying on, whether on his own behalf as an agent for another, and whether exclusively or otherwise, any banking business whatsoever or not such person is a bank within the meaning of any law for the time being in force relating to banks;

“Bureau” means the Prevention and Combating of Corruption Bureau established by section 5;

“conflict of interest” means a clash between public interest and the private pecuniary or any other interest of the individual concerned;

“confiscation” which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court;

“controlled delivery” means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to investigating an offence and the identification of persons involved in the commission of the offence;

“Director-General” means the Director-General of the Prevention and Combating of Corruption Bureau;

“Director” means a person appointed under this Act to hold the position of a Director in the Bureau;

“foreign public official” means any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

“freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

“informer” includes a person who in good faith reports the commission of an offence to the Bureau and includes a whistle blower;

"Minister" means the Minister responsible for good governance;

“officer” means an investigator of the Bureau including the Director- General;

“official of a public international organization” means an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

“principal” includes an employer, a beneficiary under a trust, a trust estate as though it were a person, any person beneficially interested in the estate of a deceased person as though it were a person, and, in relation to a public official, the authority or body of persons in which the public office is held;

“private sector” means the sector of the economy under private ownership in which the allocation of productive resources is controlled by market forces;

“proceeds of crime” means any property derived from or obtained, directly or indirectly, through the commission of an offence under this Act;

“property” includes money, assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible and any document or legal instrument evidencing title to, or interest in such assets;

“public body” includes a corporation established by or under the Companies Act in which the Government has vested interest;

“public duty” means a duty in the discharge of which the Government, the public or the community at large has an interest;

“public official” means any person holding a legislative, executive, judicial, administrative, political, military, security, law enforcement, and local government authority or any other statutory office and includes-

- (a) any person performing a public function or providing a public service; and
- (b) any other person natural or legal so defined in any other written laws.

Objective of Act

4.-(1) The objective of this Act is to provide for promotion and enhancement of good governance and eradication of corruption.

(2) In the promotion of the objectives referred to under subsection (1), this Act provides an institutional and legal framework necessary for prevention and combating corruption by-

- (a) examining and advising on practices and procedures of public, parastatal and private organisations, in order to facilitate the detection of corruption or prevent corruption;
- (b) disseminating information to the public on evils and effects of corruption and corrupt practices as well as negative traditions and usage;
- (c) cooperating and collaborating with local and international institutions, agencies or organisations in the fight against corruption;
- (d) promoting and fostering public support in combating corruption; and
- (e) investigating and prosecuting offences relating to corruption.

**PART II
ESTABLISHMENT OF THE BUREAU**

Establishment of
Bureau

5.-(1) There is hereby established the Bureau to be known as the Prevention and Combating of Corruption Bureau.

(2) The Bureau shall be an independent public body.

Composition of
Bureau

6.-(1) The Bureau shall consist of the Director-General, Deputy Director-General, and such other officers as may be necessary for efficient and effective carrying out of the functions of the Bureau.

(2) The Director-General and Deputy Director-General shall be appointed by the President.

(3) The Bureau shall employ such number of staff as may be necessary for efficient performance of the functions of the Bureau.

Functions of
Bureau

7. Functions of the Bureau shall be to take necessary measures for the prevention and combating of corruption in the public, parastatal and private sectors and in that regard, the Bureau shall-

- (a) examine and advise the practices and procedures of public, parastatal and private organisations, in order to facilitate the detection of corruption or prevent corruption and secure the revision of methods of work or procedure which appear to add to the efficiency and transparency of the institution concerned;
- (b) enlist and foster public support in combating corrupt practices;
- (c) advise public, private and parastatal bodies on ways and means of preventing corrupt practices, and on changes in methods of work

or procedures of such public, private and parastatal bodies compatible with the effective performance of their duties, which the Bureau considers necessary to reduce the incidences of corrupt practices;

- (d) cooperate and collaborate with international institutions, agencies or organisations in the fight against corruption;
- (e) investigate and, subject to the directions of the Director of Public Prosecutions, prosecute offences under this Act and other offences involving corruption; and
- (f) investigate any alleged or suspected-
 - (i) offence under this Act;
 - (ii) conspiracy to commit an offence under this Act;
 - (iii) conduct of a public official which is connected to corruption.

Power of
Director-General

8.-(1) The Director-General shall have and exercise powers as stipulated under this Act.

(2) A person authorised by the Director-General to perform functions under this Act shall have and exercise the powers-

Cap. 322

- (a) of the Director-General;
- (b) of a police officer of or above the rank of Assistant Superintendent of Police and the provisions of the Police Force and Auxiliary Services Act conferring upon police officers, powers necessary or expedient for the prevention, combating and investigation of offence; and
- (c) to arrest, enter premises, search, detain suspects and seize property where there is a reasonable cause to believe that an offence involving corruption has been or is about to be committed by the suspect in the premises or in relation to the property.

(3) Where any property is seized in pursuance of the powers conferred in paragraph (b) of subsection (2) the Director-General or a person authorised by him seizing the property shall issue a receipt acknowledging seizure of that property, bearing the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises and the signatures of witnesses to the search.

(4) The Director-General or a person authorized by him who, without reasonable ground for so doing, orders, authorizes or conducts search on a person, place, building, vessel, carriage or receptacle, commits an offence and upon conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(5) Where the Director-General is satisfied that-

(a) an offence under this Act may have been committed by any person; and

(b) any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatsoever kind or subscription, any banker's books, company books, documents or any information from any other source, other article of or relating to any person named or otherwise identified in writing by the Director-General are likely to be relevant for the purpose of investigation of such offence, he may, for that purpose, authorise in writing an officer of the Bureau to-

(i) investigate and inspect such account, book or documents or other articles of or relating to the person named or otherwise identified by the Director-General;

(ii) require from any person the production of such accounts, books, documents or

other articles of or relating to the person named or otherwise identified by the Director- General as is required for the purpose of such investigation and the disclosure of all or any information relating thereto; and

- (iii) take copies of such account, books or documents or, of any relevant entry therein and photographs of any other article.

(6) Any person who fails to produce a bank account or any other information from other sources, referred to in subsection (2) or to permit the officer or authorized person to scrutinize or to take copies of any relevant entry, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Institution of
criminal
proceedings

9.-(1) The Director-General or a person authorized by him who seizes any property in pursuance of the powers conferred under this Act shall institute criminal proceedings against the owner of that property within six months from the date of seizure.

(2) The Director-General or a person authorized by him who fails to institute criminal proceedings as provided for under subsection (1) shall, where there is a reasonable cause to continue with the detention of that property, apply to the Director of Public Prosecutions for an extension of time stating reasons for continued detention for a period not exceeding six months from the date of expiry of the initial six months.

(3) The Director-General or a person authorised by him who fails to institute criminal proceedings within the period specified under subsection (1) or (2) shall be required to return the seized property to the person from whom it was seized.

Cap. 76

(4) The provisions of the Specified Officer (Recovery of Debts) Act shall apply to any officer who causes the Government to incur loss, costs or damages as a result of failure to discharge his duties in a reasonable manner.

(5) The powers conferred on the Director-General shall include the power to require information from and to procure attendance of any person for the purpose of answering among others, questions of-

- (a) any person or an employee of a person, who has acted for or is acting for any party to any particular land or property transaction; and
- (b) any person or an employee of a person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, in respect of any particular land or property transaction, as to any of the following matters, that is to say-
 - (i) the full names, including aliases, and addresses of any of the persons referred to in paragraphs (a) and (b) and any other information in his possession which may be helpful in identifying or locating any such person;
 - (ii) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transactions; and
- (c) the terms and conditions of any such land or property transaction.

Special powers of investigation

10.- (1) An officer of the Bureau investigating an offence under this Act may-

- (a) order any person to attend before him for the purpose of being interviewed orally or in writing in relation to any matter which may assist investigation of the offence;

- (b) order any person to produce any book, document or any certified copy thereof, and any article which may assist the investigation of the offence; or
- (c) by written notice, require any person to furnish a statement on oath or affirmation setting out such information which may be of assistance in the investigation of the offence.

(2) Subject to the direction of the Director of Public Prosecutions, the Director-General may assume prosecution commenced by the police or any other law enforcement agency for an offence involving corruption.

(3) Any person who, in the course of investigation of, or in any proceedings relating to an offence alleged or suspected to have been committed under this Act, knowingly-

- (a) makes or cause to be made a false report of the commission of an offence to any investigating officer; or
- (b) misleads any investigating officer,

commits an offence and shall be liable on conviction to a fine of not less than one hundred thousand shillings but not more than two million shillings or to imprisonment for a term of one year or to both.

Identification
request for
assistance

11.-(1) The Director-General shall issue to a member of the Bureau an identity card which shall be *prima facie* evidence of appointment as a member of the Bureau.

(2) Every member of the Bureau shall, on demand, produce his identity card to the person demanding that identity card.

(3) Any officer of the Bureau conducting investigations into an offence alleged or suspected to have been committed under this Act or any other law relating to corruption may request any public official for assistance in the reasonable exercise of his powers or the discharge of his duties under this Act.

Search warrant

12.-(1) The Director-General may, by writing, authorize any officer to search any person, if it is reasonably suspected that such person is in possession of property corruptly or illicitly acquired or to search any premises, vessel, boat, aircraft or other vehicle whatsoever in or upon which there is reasonable cause to believe that any property corruptly or illicitly acquired has been placed, deposited or concealed.

(2) The appropriate officer of the Bureau authorized to make any search under this section may make any search and, for the purpose of so doing may enter, using any reasonable force and accompanied by such other persons as he seems necessary to assist him, into or upon any premises, vessel, boat, aircraft or any other vehicle whatsoever.

Malicious arrest, prosecution, seizure and exercise of powers

13.-(1) Any person being an officer of Bureau who maliciously or without lawful cause procures arrest prosecution, seizure of property of another person or the exercise of powers vested in the Bureau by this Act against such person commits an offence.

(2) Any person who contravenes subsection (1) shall on the conviction be liable to a fine not exceeding one million shillings or to imprisonment for the term not exceeding six months or to both.

(3) The provisions of subsection (2) shall not prejudice the provisions of subsection (4) of section 9 in relation to recovery by the Government of loss, cost or damage suffered by reason of an officer of the Bureau.

Report of activities

14. The Bureau shall, on or before 31st March in every year, or by such later date as the President may allow, submit to the President a report on its activities in the previous year.

**PART III
CORRUPTION AND RELATED OFFENCES**

Corrupt
transactions

15.-(1) Any person who corruptly by himself or in conjunction with any other person-

- (a) solicits, accepts or obtains, or attempts to obtain, from any person for himself or any other person, any advantage as an inducement to, or reward for, or otherwise on account of, any agent, whether or not such agent is the same person as such first mentioned person and whether the agent has or has no authority to do, or for bearing to do, or having done or forborne to do, anything in relation to his principal's affairs or business, or
- (b) gives, promises or offers any advantage to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of, any agent whether or not such agent is the person to whom such advantage is given, promised or offered and whether the agent has or has no authority to do, doing, or forbearing to do, or having done or forborne to do, anything in relation to his principal's affairs or business,

commits an offence of corruption.

(2) A person who is convicted of an offence under this section, shall be liable to a fine of not less than five hundred thousand shillings but not more than one million shillings or to imprisonment for a term of not less than three years but not more than five years or to both.

(3) In addition to a penalty provided for under subsection (2), the court shall where such person-

- (a) is an agent, order him to pay to his principal, in such manner as the court may direct-
 - (i) the amount or value of any advantage received by him or any of its part;

- (ii) part of the amount or value of any advantage received by him, and that the whole or part of the residue be confiscated to the Government; or
- (b) is an agent or not, order that the amount or value of any advantage received by him, or any of its part, be confiscated to the Government.

Corrupt
transactions in
contracts

16.-(1) Any person who offers an advantage to a public official as an inducement to or reward for or otherwise on account of such public official's giving assistance or using influence in or having given assistance or used influence to assist in the promotion, execution or procuring of-

- (a) any contract with a public body for the performance of any work, the supply of any service, the doing of anything, the supplying of anything or the supplying of any article, material or substance;
- (b) any subcontract to perform any work, supply of service, the doing of anything or supply any article, material or substance required to be performed, supplied, done under any contract with a public body,

commits an offence of corruption.

(2) Any public official who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in or having given assistance or used influence to assist in the promotion, execution or procuring of the payment of the price, consideration or other moneys stipulated or otherwise provided for in, any such contract or subcontract as is referred to in paragraphs (a) and (b) of subsection (1), commits an offence.

(3) A person convicted of an offence under this section shall be liable to a fine of not less than one million shillings but not more than three million shillings or to imprisonment for a term of not less than three years but not more than five years or to both.

(4) In addition to the penalty prescribed for under this section, the court shall, if such person-

- (a) is an agent, order him to pay to his principal, in such manner as the court may direct-
 - (i) the amount or money value of any advantage received by him or any part of it; or
 - (ii) part of amount or money value of any advantage received by him, and that the whole or part of the residue be confiscated;
- (b) is an agent or not, order that amount or value of any advantage received by him, or any part of it, be confiscated to the Government.

Corrupt
transactions in
procurement

17.-(1) Any person who-

- (a) offers any advantage to another person as an inducement for or a reward for or otherwise on account of the withdrawal of a tender, or refraining from inviting a tender, for any contract with a public or private body for the performance of any work, the supply of service, the doing of anything or the supplying of any article, material of substance; or
- (b) solicits or accepts any advantage as an inducement for or a reward for or otherwise on account of the withdrawal of a tender, or refraining from inviting a tender, for such a contract as is referred to in paragraph (a), commits an offence.

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding fifteen million shillings or to imprisonment for a term not exceeding seven years or to both.

(3) In addition to the penalty prescribed for under this section, the court shall, if such person-

- (a) is an agent, order him to pay to his principal, in such manner as the court may direct-
 - (i) the amount or money value of any advantage received by him or any part of it; or
 - (ii) part of amount or money value of any advantage received by him, and that the whole or part of the residue be confiscated;
- (b) is an agent or not, order that amount or value of any advantage received by him, or any part of it, be confiscated to the Government.

Corrupt
transactions in
auctions

18.-(1) Any person who-

- (a) offers any advantage to another person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at an auction conducted by or on behalf of any public or private body; or
 - (b) solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public or private body,
- commits an offence of corruption under this Act,

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding fifteen million shillings or to imprisonment for a term not exceeding seven years or to both.

(3) In addition to the penalty prescribed for under this section the court shall, if such person-

- (a) is an agent, order him to pay to his principal, in such manner as the court may direct-
 - (i) the amount or money value of any advantage received by him or any part of it; or

- (ii) part of amount or money value of any advantage received by him, and that the whole or part of the residue be confiscated;
- (b) is an agent or not, order that amount or value of any advantage received by him, or any part of it, be confiscated to the Government.

Application of
Cap.410

19. The provisions of the Public Procurement Act shall apply in relation to investigation of offences and institution of proceedings for offences of corruption in procurement of goods, works and the supply of consultancy services.

Corrupt
transactions in
employment

20.-(1) Any person who offers an advantage to another person as an inducement to or reward for or otherwise on account of such another person's giving assistance or using influence in or having given assistance or used influence to assist in obtaining employment, promotion or any other matter relating to employment commits an offence of corruption.

(2) Any person who solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence to assist in obtaining of employment, promotion or any other matter relating to employment commits an offence of corruption.

(3) A person convicted of an offence under this section shall be liable to a fine not exceeding five million or to imprisonment for a term not exceeding three years or to both.

Bribery of
foreign public
official

21.-(1) Any person who intentionally promises, offers or gives to a foreign public official or an official of a public international organisation, directly or indirectly, an undue advantage, for that foreign public official himself or another person or entity, in order that the foreign public official acts or refrain from acting in the exercise of his

official duties to obtain or retain business or other undue advantage in relation to a local or international economic undertaking or business transaction, commits an offence and shall be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

(2) Any foreign public official or an official of a public international organisation who intentionally solicits or accepts, directly or indirectly an undue advantage, for himself or another person or entity in order that he acts or refrains from acting in the exercise of his official duties, commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

Use of documents intended to mislead principal

22. A person who knowingly gives to any agent, or an agent knowingly uses with intent to deceive, or defraud his principal, any receipt, account or other document such as a voucher, a profoma invoice, an electronically generated data, minute sheet relating to his principal's affairs or business, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, commits an offence and shall be liable on conviction to a fine not exceeding seven million shillings or to imprisonment for a term not exceeding five years or to both.

Persons obtaining advantage

23.-(1) A person who solicits, accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any advantage without lawful consideration or for a lawful consideration which he knows or has reason to believe to be inadequate-

- (a) from any person whom he knows or has reason to believe to have been, or to be, or to be likely or about to be, concerned in any matter or transaction with himself or having any connection with his official functions or of any official to whom he is subordinate; or

- (b) from any person whom he knows or has reason to believe to be interested in or related to or acting for or on behalf of the person so concerned, or having such a connection,

commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

(2) In addition to the penalty imposed under subsection (1), the court shall order that the amount of money value of any advantage received by the public officer, or any part of it be confiscated to the Government.

Advantage
received on
behalf of accused
person

24. Where any advantage has been received with the knowledge of the accused person, or by any person other than accused person, and the court is satisfied, having regard to the relationship of that other person to the accused person or any other circumstances, that such person has received the advantage for or on behalf of the accused person, or by reason of his relationship to the accused person or otherwise on account of or in connection with the official functions of the accused person, the advantage shall be deemed to have been received by the accused person.

Sexual or any
other favours

25. Any person being in a position of power or authority, who in the exercise of his authority, demands or imposes sexual favours or any other favour on any person as a condition for giving employment, a promotion, a right, a privilege or any preferential treatment, commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

Public official to
give accounts of
properties

26.-(1) Any officer of the Bureau authorised in writing by the Director-General may, by notice in writing addressed to any public official require such public official to give, within such time and in such manner as may be specified in the notice, a full and true account of all or any

class of properties which such public official or his agent possess or which he or his agent had in possession at any time during which the public official held any public office, and such officer of the Bureau may by the same or subsequent notice, require such public official to give a true account of how he acquired such property.

(2) In any prosecution for an offence, any statement or account in writing given by the accused person pursuant to a notice given to him under subsection (1) shall be admissible in evidence.

(3) A public official who fails to comply with the requirement of a notice addressed to him pursuant to this section, or knowingly gives a false account in relation to any property, commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

(4) In a prosecution for an offence under subsection (3), evidence of the fact that a notice under subsection (1) was given by an officer of the Bureau shall be conclusive evidence that such officer of the Bureau was authorised as such.

(5) For the purpose of this section-

“agent” means the husband, wife or child of the public official, any debtor of the public official, or any other person acting for or on behalf of the public official, and includes any person in possession or ownership of property, the acquisition of which is or was met wholly or partly by the public official;

“public official” includes any person who held a public office at any time during the five years immediately preceding the date on which a notice under subsection (1) is given.

Possession of unexplained property

27.-(1) A person commits an offence who, being or having been a public official-

(a) maintains a standard of living above that which

is commensurate with his present or past lawful income;

- (b) owns property disproportionate to his present or past lawful income,

unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such property came under his ownership.

(2) Where in proceedings for an offence under paragraph (b) of subsection (1) the court is satisfied that, having regard to the closeness or relationship to the accused and other circumstances, there is reason to believe that any person is or was holding property in trust for or otherwise on behalf of the accused or has acquired such property as a gift from the accused, such property shall, in the absence of evidence to the contrary, be presumed to be in the control of the accused.

(3) Subject to this section, a person who is convicted of an offence under this section shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

(4) The court shall, in addition to the penalty imposed under subsection (3), order the confiscation of any pecuniary gain or property-

- (a) found to be in the ownership of the accused; and
- (b) of an amount or money value not exceeding the amount or value of pecuniary gain or property the acquisition of which was not explained to the satisfaction of the court.

(5) Any application for an order under subsection (4) shall be made by the Director-General within twenty eight days after the date of the conviction, except that such order shall not be made in respect of property held by a person other than the person convicted-

- (a) unless that other person has been given reasonable notice that such an order may be made and had an opportunity to show cause why it should not be made; or

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- (b) if that other person satisfies the court in any proceedings to show cause that he had-
 - (i) acted in good faith as regards to the circumstances in which the property came to his possession; and
 - (ii) so acted in relation to the property that an order in the circumstances would be unjust.

(6) Nothing in subsection (5) shall be construed as limiting the court's discretion to decline to make an order under subsection (4) on grounds other than those specified in subsection (5).

(7) An order under subsection (4) may be made subject to such conditions as the court thinks fit regard being made to all circumstances of the case.

(8) A court may make orders under both paragraphs of subsection (4) in respect of the same offence but shall not make orders under both provisions in respect of the same pecuniary gain or property.

(9) An order under subsection (4) may make provisions for taking possession of property to which the order applies and for the disposal of such property by or on behalf of the Government.

Embezzlement
and
misappropriation

28.-(1) A person being a public official who dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public official or allows any other person to do so, commits an offence, and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

(2) If any person in the private sector dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control or allow any other person to do so, commits an offence and shall be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

(3) In addition to a penalty imposed under subsections (1) and (2), the court shall order the confiscation of the misappropriated or converted property or an equivalent sum where that property cannot be traced.

(4) Where a court orders confiscation or payment of the amount or money value, or any part of it, of any advantage, or the confiscation of any property, under this Act-

- (a) the payment or any sum ordered to be paid or forfeited may be enforced in the same manner and subject to the same process as in the case of payment of a fine;
- (b) all moneys forfeited shall be paid into the Treasury and shall form part of the Government revenue;
- (c) where any property other than money is forfeited, it shall be disposed of in accordance with section 76 of the Interpretation of Laws Act; and
- (d) any such order shall, for the purpose of any appeal, be deemed to form part of the sentence or relationship to the accused and other circumstances, there is reason to believe that any person is or was holding property in trust for or otherwise on behalf of the accused or has acquired such property as a gift from the accused, such property shall, in the absence of evidence to the contrary, be presumed to be in the control of the accused.

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Diversion

29. Any person being a public official or not who diverts, for the purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party any property belonging to the Government or its agencies to an independent agent, or to an individual, which property that official has received by virtue of his position, commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or

to imprisonment for a term not exceeding two years or to both.

Aiding and
abetting

30. Any person who aids or abets another person in commission of an offence under this Act commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.

Abuse of position

31. Any person who intentionally abuses his position in the performance or failure to perform an act, in violation of law, in the discharge of his functions or use of position for the purpose of obtaining an undue advantage for himself or for another person or entity, commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

Conspiracy

32. Any person who conspires with another person to commit an offence under this Act commits a like offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

Trading in
influence

33.-(1) Any person who promises, offers or gives to a public official or any other person directly or indirectly, an undue advantage in order that the public official or that other person to abuse his real or supposed influence with a view to obtaining from the administration or a public authority an undue advantage for the original instigator to the act or for any other person, commits an offence and shall be liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years or to both.

(2) Any public official or any other person who directly or indirectly solicits or accepts an undue advantage for himself or for other person in order that such public official or the other person abuse his real or supposed influence with a view to obtaining from an administration or a public authority an undue advantage, commits an offence and shall be liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years or to both.

Transfer of
proceeds of
corruption
Act No.
7 of 2018
s.89

34.-(1) Any person who -

- (a) converts, transfers or disposes of property knowing such property to be proceeds of corruption or related offences for the purpose of concealing or disguising the origin of the property or helping any person who is involved in the commission of the offence to evade the legal consequences of his action; or
- (b) acquires, possesses or uses property with the knowledge that such property is the proceeds of corruption or related offences,

commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

(2) Where the Director of Public Prosecutions has reason to believe that any person having illicitly received or acquired an advantage or property, he may by notice addressed to that person or to any other person to whom the advantage, property, the proceeds or money value, or any part of the proceeds or money value, the advantage or property money is believed to have been transferred or conveyed by the person suspected of having illicitly received or acquired it or by an agent of such person, directing the person to whom the notice is addressed not to transfer, dispose of or part with the possession of the property or money value specified in the notice.

(3) The Director of Public Prosecutions may, subject to subsection (1) issue a notice to any other person to whom the money or property under this section may pass by operation of law.

(4) Every notice issued under subsection (2) shall remain in force and binding on the person to whom it is addressed 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 advantage or property commenced against any of such person until the determination of those proceedings.

(5) Any person who has been served with a notice under subsections (2) and (3) who, on contravention of the notice, transfers disposes of, or parts with, the possession of the sum of money value or a property specified in the notice, commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

(6) In any proceedings for an offence under this section, it shall be a defence to an accused person if he satisfies the court that-

- (a) the sum of money or other property specified in the notice was delivered to an officer of the Bureau, or to some other person as directed in the notice;
- (b) the sum of money or other property specified in the notice was produced to the court and has been retained by such court; or
- (c) the notice was subsequently withdrawn by the Director of Public Prosecutions by notification in writing.

Presumption of
corruption

35. Where, in proceedings under this Act, it is proved that an advantage was offered, promised or given, or solicited, accepted or obtained or agreed to be accepted or obtained by a public official by or from a person, or agent of a person holding or seeking to obtain contract from a public office the advantage shall be deemed to have

been offered, promised or given, solicited, accepted or obtained or agreed to be accepted or obtained as an inducement or reward as referred to in section 18 unless the contrary is proved.

False pretence to be an officer

36. Any person who falsely pretends that he is-

- (a) an officer or has any of the powers of the officer under this Act or any other laws relating to prevention and combating of corruption under any authorization or warrant under either of those laws; or
- (b) able to procure an office to do or refrain from doing anything in connection with the duty of such officer,

commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding one year or to both.

Offence of disclosure of identity

37.-(1) Any person who, knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under this Act or any other law relating to corruption is taking place, without lawful authority or reasonable excuse, discloses to the-

- (a) person who is the subject of investigation the fact that he is so subject or any detailed of such investigation; or
- (b) public, section of the public or any particular person the identify of the subject person or the fact that the subject person is so subject or any details of such investigation,

commits an offence and shall be liable on conviction to a fine of one hundred thousand shillings or to imprisonment for one year or to both.

(2) Subsection (1) shall not apply to the disclosure of investigation where-

- (a) a warrant has been issued for the arrest of the subject person;
- (b) the subject person has been arrested whether with or without warrant;

- (c) the subject person has been required to furnish a statement in writing by a notice served on him under this Act; and
- (d) the subject person has been summoned and or his statement recorded.

(3) Without prejudice to the generality of the expression "reasonable excuse" referred to in subsection (1), a person referred to shall have a reasonable excuse as regards to disclosure of any of the descriptions mentioned in that subsection (1) if, but only to the extent that, the disclosure reveals-

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- (a) unlawful activity, abuse of power serious neglect of duty, or other serious misconduct by the Director-General, a Director or any officer of the Bureau; or
- (b) a serious threat to public order or to the security of the United Republic or to the health or safety of members of the public.

Freezing of
assets

38.-(1) Where a person is charged or is about to be charged in any court with a corruption offence or any other related offences, the court may order, on an application by the Director of Public Prosecutions subject to such conditions as to the duration of the order or otherwise as the court deems fit-

- (a) the attachment in the hands of any person named in the order all moneys and other property due or owing or belonging to or held on behalf of the accused; and
- (b) the prohibition of the accused or any other person named in the order from transferring, pledging or otherwise disposing of any money or other property so attached.

(2) The court may, in respect of any order under subsection (1), specify moneys or salaries, wages, pensions, or other benefits that shall be paid to or received by the accused indicating the source, manner and circumstances of payment or receipt.

(3) In making an order under subsection (1), the court may authorise-

- (a) the payment of debts incurred in good faith and due to creditors of the accused before the request for the order was made by the Director of Public Prosecutions; or
- (b) the sale, transfer or disposal of any property by the accused where the court is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming interest in the property.

(4) An order made pursuant to this section shall take effect forthwith and the Director of Public Prosecutions shall-

- (a) cause notice of the order to be published in the next issue of the *Government Gazette* and in at least two daily newspapers widely circulated in Tanzania; and
- (b) give notice of the order to-
 - (i) all notaries;
 - (ii) banks, financial institutions and cash dealers; and
 - (iii) any other person who may hold or be vested with property belonging to or held on behalf of the accused.

(5) An order under this section shall, subject to any condition to the contrary imposed under subsection (1), remain in force until-

- (a) the Director of Public Prosecutions decides not to proceed with a prosecution; or
- (b) the final determination of the charge.

(6) Where an order under this section ceases to have effect or is revoked, the Director of Public Prosecutions shall cause notice to be published in the *Government Gazette* and in at least two daily newspapers widely circulating in Tanzania.

(7) Any payment, transfer, pledge or other disposition of property made in contravention of an order made under this section shall be null and void.

Duty to give information

39.-(1) Every person who is or becomes aware of the commission of or the intention by another person to commit an offence under this Act shall be required to give information to the Bureau.

(2) Procedures for giving and handling of information under this section shall be as may be prescribed by the regulations.

**PART IV
FORFEITURE OF PROCEEDS OF CORRUPTION**

Forfeiture of proceeds of corruption

40.-(1) The Bureau may, in collaboration with the office of the Director of Public Prosecutions recover proceeds of corruption through confiscation to the Government.

(2) Where a person is convicted of an offence of corruption under this Act, the Director of Public Prosecutions may apply to the convicting court or to any other appropriate court not later than six months after conviction of the person for forfeiture order against any property that was obtained through corruption.

(3) For the purpose of this Part, “proceeds of corruption” means any property that is derived or obtained by a person from the commission of corruption offences.

Notice of application

41.-(1) Where the Director of Public Prosecutions makes an application for a forfeiture order against property in respect of a person’s conviction of corruption offence-

- (a) the Director of Public Prosecutions shall give written notice of the application to the person or to any other person he has reason to believe may have an interest in the property;
- (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and

(c) the court may, at any time before the final determination of the application, direct the Director of Public Prosecutions to give notice of the application to a specified person or class of persons in a manner and within such time as the court considers appropriate.

(2) Where the Director of Public Prosecutions makes an application for an order for pecuniary, he shall give the person together whom the application is made a read notice about such application and that person shall have the right to appear and adduce evidence at the hearing of the application.

Forfeiture Order

42.-(1) Where the Director of Public Prosecutions applies to a court for a forfeiture order under section 43 against property in respect of a person's conviction of an offence and the court is satisfied that the property was obtained through corruption offence, the court may if it considers appropriate, order that the property or such of the property as it may specify in the order, be forfeited to the United Republic.

(2) In granting an application forfeiture order, the court may give any directions necessary or convenient for giving effect to the order, including, without limiting the generality of the foregoing, directions to an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of any property subject to registration in the Registry of Titles.

Effects of
forfeiture order

43.-(1) Subject to subsection (2), where a court makes a forfeiture order against property, the property shall vest in the United Republic.

(2) Where a forfeiture order is made against property subject to registration in the Registry of Titles, any rights in the property shall lie with the United Republic until the registration is affected.

(3) The Treasury Registrar shall be registered as owner of any property subject to a forfeiture order and the

Minister shall do or authorize to be done anything necessary or convenient to obtain the registration of the Treasury Registrar as owner, including the execution of an instrument required to be executed by a person transferring an interest in property of that nature.

Principal may
recover secret
gift

44.-(1) Where any advantage has, in contravention of this Act, been given by any person to an agent, the principal may recover as a civil debt the amount or the money value from the agent and no conviction or acquittal of the agent or of that person in respect of an offence under this Act shall operate as a bar to civil proceedings for the recovery of such amount or money value.

(2) Nothing in this section shall be deemed to prejudice or affect any right which any principal may have under any law in force to recover from any person any money or property.

PART V INSTITUTIONAL COOPERATION

Cooperation with
agencies and
other authorities

45.The Bureau shall establish and maintain a system of collaboration, consultation and cooperation with law enforcement agencies and other national authorities within the United Republic engaged in investigation and prosecution and may, for that purpose-

- (a) grant immunity from prosecution to a person who provides cooperation in investigation or prosecution of an offence under this Act;
- (b) inform the authorities, on their own initiatives, where there are reasonable grounds to believe that any of the offences under this Act has been committed; and
- (c) upon request, provide to the authorities all necessary information.

Cooperation with
private sector

46. The Bureau shall establish and maintain a system of-

- (a) cooperation with the private sector, and in particular, financial institutions on matters relating to the commission of offence under this Act; and
- (b) encouraging the private sector to report to the Bureau the commission of an offence under this Act.

**PART VI
FINANCIAL PROVISIONS**

Funds of Bureau **47.**-(1) The funds and resources of the Bureau shall consist of the sums of money as may be appropriated by Parliament, and shall be applied for purposes for which the Bureau is established.

(2) The Director-General shall keep proper audited accounts and other records relating to the funds and resources of the Bureau.

Estimates **48.**-(1) The Director-General shall within three months before the end of each financial year, prepare and submit to the Minister for approval, estimates of income and expenditure of the Bureau for the next ensuing financial year.

(2) Upon approval of estimates, the Director-General shall forward the estimates to the Minister for approval.

(3) The report on estimates on income and expenditure shall contain a report of performance of functions of the Bureau for the year ending.

(4) Upon receipt of the report, the Minister shall lay the report before the National Assembly during the sessions immediately following the date of submission of the report.

**PART VII
GENERAL PROVISIONS**

Valuation of property **49.** In proceedings for an offence under this Act where the subject matter involves buildings, the method for evaluation of building shall be based-

- (a) where it is established that such property or building was built-
 - (i) on the market value of building materials at the time of construction; or
 - (ii) on actual construction value;
- (b) where the building was purchased-
 - (i) on the actual price of purchase;
 - (ii) on the valuation market value of such property or building.

General immunity for members

50. No act or thing done or omitted to be done by an officer of the Bureau shall, if the act or omission was done or omitted *bona fide* in the exercise of his functions under this Act, render the officer personally liable for the act or omission.

Protection of informers

51.-(1) No information relating to commission of an offence under this Act shall be admitted in evidence in any civil or criminal proceedings and no witness in any civil or criminal proceedings shall be obliged to-

- (a) disclose the name or address of any informer who has given information to the Bureau with respect to an offence under this Act or the name or address of any person who has assisted the Bureau in any way in relation to such an offence; or
- (b) answer any question if the answer to such question would lead, or would tend to lead to discovery of the name or address of such informer or person.

(2) If any book, document or paper which is the subject of evidence or liable for inspection in any civil or criminal proceedings contain an entry in which that informer or person is named or described, or which might lead to the discovery of that informer or person by public, the court shall cause all such passages to be concealed from view by public or to be obliterated so far as may be necessary to protect the informer or such other person from discovery by public.

(3) Any informer who shall suffer reprisal or retaliation or victimization or injury or any harm from a person accused of corruption, perpetrators of offences of corruption and their accessories shall be afforded reasonable protection, compensation and assistance by the Government upon ascertainment by the Bureau of the magnitude of victimization, injury or harm.

Protection of witnesses, experts and victims

52.-(1) Notwithstanding any written law, rule of law or practice to the contrary no witness shall, in any proceedings for an offence under this Act be regarded as an accomplice by reason only of receiving or making any payment or delivery by him or on his behalf of any advantage to the person accused or, as the case may be, by reason only of receiving or making any payment or delivery of any advantage by or on behalf of the person accused to or from him.

(2) Where a person-

- (a) discloses to an officer that a person, public official, body corporate or public body is or has been involved in an act of corruption; and
- (b) at the time he makes the disclosure, believes on reasonable grounds that the information he discloses may be true and is of such a nature as to warrant an investigation under this Act, he shall not incur civil or criminal liability as a result of such disclosure.

(3) Any person who victimises a person who has made a disclosure under subsection (2) commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term of not exceeding one year or to both.

(4) In this Part, “victimization” means an act-

- (a) which causes injury, damage or loss;
- (b) of intimidation or harassment;
- (c) of discrimination, disadvantage to adverse treatment in relation to person's employment; or
- (d) amounting to threats of reprisals.

Defect in
appointment
nomination or
election

53. No conviction for an offence against this Act shall be invalid by reason only of a defect in the appointment, nomination or election of a person to any office.

Mutual legal
assistance
Cap. 254

54. Mutual legal assistance in relation to offence of corruption and other related offences shall be made in accordance with the provisions of the Mutual Assistance in Criminal Matters Act.

Extradition
Cap. 368

55. Extradition matters in relation to offences of corruption and other related offences shall be dealt with in accordance with the provisions of the Extradition Act.

Disclosure of
information
without prior
request
Cap.4
s.8

56. Without prejudice to the preceding provisions of this Part, a foreign state or Government may disclose such information which might assist the Bureau in initiating or carrying out investigation, prosecution, judicial proceedings and information on process of offence.

Sanction of
Director of
Public
Prosecutions

57.-(1) Except for offences under section 15, prosecution for an offence under this Act shall be instituted with written consent of the Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall, within sixty days, give or withhold consent for prosecution.

Trial court

58. Unless the Director of Public Prosecutions directs otherwise an offence under this Act may be tried in the District Court, Court of Resident Magistrate or, as the case may be, the High Court.

Regulations
Cap.4
s.8

59.-(1) The Minister may make regulations for the better carrying into effect the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing-

- (a) a code of conduct for officers of the Bureau;
- (b) procedures and processes for management of complaints under this Act;
- (c) procedures for provision of information to the Bureau on the commission of corruption offences; and
- (d) such other matters as may be necessary or expedient for preventing the abuse or neglect of duty and for upholding the efficiency and integrity of the Bureau.

Repeal

60. [Repeals the Prevention of Corruption Act No. 16 of 1971.]

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 256

THE PROCEEDS OF CRIME ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Proceeds of Crime Act, Chapter 256, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

CHAPTER 256

THE PROCEEDS OF CRIME ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 256

THE PROCEEDS OF CRIME ACT

An Act to make better provisions for dealing with proceeds of crime.

[1st May, 1994]

[G.N. No. 299 of 1994]

Acts Nos.
25 of 1991
9 of 1995
21 of 2002
2 of 2007
6 of 2012
7 of 2018

**PART I
PRELIMINARY PROVISIONS**

Short title **1.** This Act may be cited as the Proceeds of Crime Act.

Application **2.**-(1) This Act shall apply to Tanzania Zanzibar as well as to Mainland Tanzania.
(2) This Act, other than section 57, shall not apply to the conviction of a person of an offence if he was convicted of it before the commencement of this Act.

Interpretation
Acts Nos.
9 of 1995
s.66
2 of 2007
s.4
6 of 2012
s.16
7 of 2018
ss.93& 94

3.-(1) In this Act, unless the context otherwise requires-
“account” means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes a facility or arrangement for-
(a) a fixed term deposit box; or
(b) a safety deposit box;
“agent” includes, if the agent is a body corporate, the officers and agents of that body corporate;

- “appropriate officer” means the Director of Public Prosecutions or a person in a category of persons declared by the regulations to be within this definition;
- “approved” means approved by the Minister in writing for the purposes of the provision in which the term occurs;
- Cap 342 “bank” has the meaning ascribed to it under the Banking and Financial Institutions Act;
- “benefit” includes a service or an advantage;
- “building society” means a society registered or incorporated as a building society, co-operative housing society or similar society under a law for the time being in force relating to such societies;
- “confiscation order” means a forfeiture order or a pecuniary penalty order;
- “corresponding law” means a law that is declared to be a law that corresponds to this Act;
- “director” in relation to a financial institution or a body corporate means-
- (a) if the institution or body corporate is incorporated for a public purpose by an Act of Parliament or House of Representatives, a constituent member of the institution or body corporate;
 - (b) any person occupying or acting in the position of director of the institution or body corporate by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
 - (c) any person in accordance with whose directions or instructions the directors of the institution or body corporate are accustomed to act;
- Cap. 6 “document” has the meaning ascribed to it under the Evidence Act;
- “encumbrance” in relation to property, includes any interest, mortgage charge, right, claim or demand in respect of the property;
- “executive officer” in relation to a financial institution or body corporate, means any person, by whatever name

called and whether or not he is a director of the institution or body corporate, who is concerned, or takes part in the management of the institution or body corporate;

Cap. 342 “financial institutions” has the meaning ascribed to it under the Banking and Financial Institutions Act;

“financial transaction” means-

- (a) the opening, operating or closing of an account held with a financial institution;
- (b) the opening or use of a deposit box held by a financial institution;
- (c) the telegraphic or electronic transfer of funds by a financial institution on behalf of one person to another person;
- (d) the transmission of funds between the United Republic, and foreign countries or between foreign countries on behalf of any person; or
- (e) an application by any person for, or the receiving of, a loan from a financial institution;
- (f) receiving or making a monetary or financial gift;
- (g) selling and buying of gold, foreign currency and negotiable instruments.

Cap. 254 “foreign forfeiture order” means a forfeiture order made under the law of a foreign country and registered in the United Republic in terms of section 32 of the Mutual Assistance Act, for enforcement against property believed to be located in the United Republic in respect of a foreign serious offence;

Cap. 254 “foreign pecuniary penalty order” means an order made under the law of a foreign country and registered in the United Republic in terms of section 32 of the Mutual Assistance Act, and which imposes a pecuniary penalty in respect of a foreign serious offence, but does not include an order for the payment of money by way of compensation, restitution or damages;

“foreign restraining order” means an order made under the law of a foreign country and registered in the United Republic in terms of section 32 of the Mutual

- Assistance Act for enforcement against property believed to be located in the United Republic in respect of a foreign serious offence;
- “foreign serious offence” means a serious offence committed against the law of a foreign country;
- “forfeiture order” means an order made in terms of section 14;
- “the Government” means the Government of the United Republic or the Revolutionary Government of Zanzibar, as the case may be;
- “interest” in relation to property means-
- (a) a legal or equitable estate or interest in the property; or
 - (b) a right, power or privilege in connection with the property, whether present or future and whether vested or contingent;
- “law enforcement agency” means the Police Force, and includes any person authorised in writing by the Inspector-General of Police to perform investigative or monitoring duties under this Act;
- “magistrate” means a resident magistrate;
- “Minister” means the Minister for the time being responsible for legal affairs;
- Cap 423 “money-laundering offence” has the meaning ascribed to it under the Anti-Money Laundering Act;
- Cap 254 “monitoring order” means an order made under section 65;
- “the Mutual Assistance Act” means the Mutual Assistance in Criminal Matters Act;
- Cap 95 “narcotic or and psychotropic substances” means-
- (a) a prohibited drug in terms of the Drugs and Prevention of illicit Traffic in Drugs Act;
 - (b) a substance declared by or under any written law to be a substance to which this definition applies;
- “officer” means a director, secretary, executive officer or employee;
- “ordinary arrestable offence” means an arrestable offence that is not a serious offence;
- “penalty amount” in relation to a pecuniary penalty order against a person, means the amount that the person is

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- liable to pay under the order;
- “pecuniary penalty order” means an order under section 22;
- “police officer” means any member of the police force of or above the rank of corporal;
- “premises” includes-
 - (a) a structure, building, aircraft, vehicle or vessel;
 - (b) a place, whether enclosed or built upon or not; and
 - (c) a part of premises, including premises of a kind referred to in paragraph (a) or (b);
- “proceeds” in relation to an offence, means any property that is derived or realised, directly or indirectly by any person from the commission of the offence, and the term “proceeds of an offence” or “profits of crime” shall be construed accordingly;
- “proceeds of crime” means any property is derived or realized directly or indirectly by any person from out of the commission of a serious offence and includes-
 - (a) at a proportional basis, property derived or realized directly from the commission of that offence or was later successively converted, transformed or intermingled into another property; and
 - (b) capital, income or other economic gains derived or realized from such property;
- “production” includes growing and manufacture;
- “production order” means an order made under section 62;
- “property” includes-
 - (a) assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible;
 - (b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets; or
 - (c) bank credits, travelers cheques, bankers cheques, money order, shares, bonds and other securities, drafts and letters of credits, and any interest, dividends or other income on or value from or generated by such assets whether situated in or

outside the United Republic;

“property-tracking document” means a document relevant for-

- (a) identifying, locating or quantifying the property of a person who committed a serious offence;
- (b) identifying or locating any document necessary for the transfer of the property of a person who committed a serious offence;
- (c) identifying, locating or quantifying tainted property in relation to a serious offence; or
- (d) identifying or locating any document necessary for the transfer of tainted property in relation to a serious offence;

“registrable property” means property the title to which is passed by registration on a register kept pursuant to a provision of any law;

“relevant application period” in relation to a person’s conviction of an arrestable offence, means the period of six months after-

- (a) where the person is to be taken to have been convicted of the offence by reason of section 4(1)(a), the day on which the person was convicted of the offence;
- (b) where the person is to be taken to have been convicted of the offence by reason of section 4(1)(b), the day on which the person was discharged without conviction;
- (c) where the person is to be taken to have been convicted of the offence by reason of section 4(1)(c), the day on which the court took the offence into account in passing sentence for the other offence referred to in paragraph (c); or
- (d) where the person is to be taken to have been convicted of the offence by reason of section 4(1)(c), the day on which the person is to be taken to have absconded in connection with the offence;

“relevant offence”, in relation to tainted property, means an offence by reason of the commission of which the property is tainted property;

“restraining order” means an order made under section 38;

“serious narcotic drugs and psychotropic substances offence” means any offence relating to narcotic drugs and psychotropic substances-

(a) which is punishable in the United Republic or in a foreign country by imprisonment for a period of not less than three years or by a more severe punishment; or

(b) the market value of the property derived or obtained from the commission of which is or is likely to be not less than two million shillings or such greater or lesser amount as may be prescribed;

“serious offence” means an offence against provisions of any law in Tanzania of which the maximum penalty is death or imprisonment for a period of not less than twelve months and includes any offence in which property has been used or proceeds have been generated or benefits have been derived;

“specified offence” means an offence against the provisions of any law in a foreign state for conduct which, had it occurred in Tanzania would constitute a serious offence under the laws of Tanzania;

“tainted property”, in relation to a serious offence, means-

(a) any property used in, or in connection with, the commission of the offence;

(b) any proceeds of crime; or

(c) any property in the United Republic which is the proceeds of a foreign serious offence in respect of which an order may be registered in terms of Part VI of the Mutual Assistance Act,

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and when used without reference to a particular offence means tainted property in relation to an arrestable offence;

“trustee” means a trustee appointed by the court in terms of paragraph (b) of subsection (2) of section 38;

“unlawful activity” means an act or omission that constitutes an offence against any law for the time being in force in the United Republic.

(2) Any reference in this Act to a person being

charged with an offence is a reference to an information being laid against the person for the offence whether or not-

- (a) summons to require the attendance of the person to answer the information has been issued; or
- (b) a warrant for the arrest of the person has been issued.

(3) A reference in this Act to a benefit derived, directly or indirectly, by another person at the request or direction of the first person.

(4) Any reference in this Act to the property of a person includes a reference to property in respect of which the person has a beneficial interest.

(5) A reference in this Act to acquiring property, or an interest in property, for sufficient consideration is a reference to acquiring the property or the interest for a consideration that is sufficient and that, having regard solely to commercial considerations, reflects the value of the property or the interest.

(6) For the purposes of this Act, a person shall not be regarded as a director within the meaning of paragraph (c) of the definition of “director” in subsection (1) by reason only that the director acts on advice given by him in the proper performance of the functions attaching to his professional capacity or to his business relationship with the directors of the financial institution or body corporate, as the case may be.

Meaning of
“conviction”,
etc., of offence

4.-(1) For the purposes of this Act a person shall be taken to be convicted of an offence if-

- (a) he is convicted, whether summarily or otherwise, of the offence;
- (b) he is charged with, and found guilty and convicted of the offence but is discharged conditionally or unconditionally or pardoned; or
- (c) the person absconds in connection with the offence.

(2) This section shall not apply to a foreign serious offence.

Meaning of
“absconding”
Act No.
6 of 2012
s.17

- 5.** For the purposes of this Act, a person shall be taken to abscond in connection with an offence if and only if-
- (a) an information is laid alleging the commission of the offence by the person;
 - (b) a warrant for the arrest of the person is issued in relation to that information; and
 - (c) one of the following occurs, namely-
 - (i) the person dies before the warrant is executed;
 - (ii) at the end of a period of six months from the date of issue of the warrant-
 - (aa) the person cannot be found; or
 - (bb) the person is, for any other reason, not amenable to justice and, if the person is outside the United Republic, extradition proceedings are not instituted;
 - (iii) at the end of the period of six months from the date of issue of the warrant-
 - (aa) the person is, by reason of being outside the United Republic, not amenable to justice; and
 - (bb) extradition proceedings are instituted, and subsequently those proceedings terminate without an order for the person’s extradition being made.

Meaning of
“serious
offence”
Acts Nos.
21 of 2002
s. 52
7 of 2018
s.93

- 6.** In this Act, the expression “serious offence” means-
- (a) any dealing which amounts to drug trafficking under the law for the time being relating to drugs;
 - (b) any serious offence;
 - (c) any offence against the prevention of Terrorism Act;
 - (d) any offence which the Minister may, by order published in the *Gazette*, prescribe as such, subject to approval by resolution of the National Assembly.

Meaning of “dealing with property”

7. For the purposes of this Act, dealing with property of a person includes-
- (a) if a debt is owed to that person, making payment to any person in reduction of the amount of the debt;
 - (b) removing the property from the United Republic;
 - (c) receiving or making a gift of the property.

Appropriate court in relation to serious offence

8. Where a person is convicted of a serious offence before any court other than a Primary Court, that court shall be the appropriate court in relation to the conviction.

PART II
FORFEITURE AND CONFISCATION

(a) Application for Forfeiture and Confiscation Orders

Application for confiscation order
Act No. 7 of 2018
s.93

9.-(1) Where a person is convicted of a serious offence, the Director of Public Prosecutions may, subject to subsection (2), apply to the convicting court, or to any other appropriate court, not later than six months after the conviction of the person, for-

- (a) a forfeiture order against any property that is tainted property in respect of the offence; or
- (b) a pecuniary penalty order against the person in respect of any benefit derived by the person from the commission of the offence.

(2) The Director of Public Prosecutions shall not, except with the leave of the court, make an application in terms of subsection (1) for a forfeiture order or a pecuniary penalty order-

- (a) if an application has previously been made under that subsection or in terms of any other enactment; and
- (b) if the application has been finally determined on the merits.

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(3) The court shall not grant leave in terms of subsection (2) unless it is satisfied that-

- (a) the tainted property, or the benefit to which the new application relates was identified only after the first application was determined;
- (b) necessary evidence became available only after the first application was determined; or
- (c) it is otherwise in the interests of justice to grant the leave.

(4) An application may be made under this section in relation to one or more than one arrestable offence.

(5) An application may be made in terms of this section for a pecuniary penalty order in respect of an offence even if section 26 applies to the offence.

Notice of
application
Acts Nos
2 of 2007
s.6
7 of 2018
s.93

10.-(1) Where the Director of Public Prosecutions makes an application in terms of subsection (1) of section 9 for a forfeiture order against property in respect of a person's conviction of an offence-

- (a) the Director of Public Prosecutions shall within fourteen days give written notice of the application to the person or to any other person he has reason to believe may have an interest in the property;
- (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the court may, at any time before the final determination of the application, direct the Director of Public Prosecutions to give notice of the application to a specified person or class of persons who appear to have an interest in the property in a manner and within such time as the court considers appropriate.

(2) Where the Director of Public Prosecutions makes an application for a pecuniary penalty order against a person-

- (a) the Director of Public Prosecutions shall within fourteen days give the person written notice of the application; and
- (b) the person may appear and adduce evidence at the hearing of the application.

Amendment of
application
Acts Nos.
2 of 2007
s.7
7 of 2018
s.93

11.-(1) Subject to subsection (2), where the Director of Public Prosecutions applies for a confiscation order, the court hearing the application may amend the application at the request, or with the consent, of the Director of Public Prosecutions.

(2) The court may not amend an application so as to include additional property in an application for a forfeiture order or an additional benefit in an application for a pecuniary penalty order unless it is satisfied that-

- (a) the property or the benefit was not reasonably capable of identification when the application was originally made; or
- (b) necessary evidence became available only after the application was originally made.

(3) Where the Director of Public Prosecutions requests to amend an application for a forfeiture order and the amendment has or would have the effect of including additional property in the application for the forfeiture order, then-

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- (a) the Director of Public Prosecutions shall within fourteen days give written notice of the request to amend to any person who he has reason to believe may have an interest in the property to be included in the application for the forfeiture order; and
- (b) any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the request to amend.

(4) Where the Director of Public Prosecutions applies to amend an application for a pecuniary penalty order against a person and the effect of the amendment has or would be to include an additional benefit in the application for the pecuniary penalty order, he shall within fourteen days, give that person a written notice of the application to amend.

Making of

12. Where a person is, by reason of section 4(1)(c),

confiscation
order where
person has
absconded
Act No.
6 of 2012
s.18

taken to have been convicted of an arrestable offence, a court shall not make a confiscation order in reliance on the person's conviction of the offence unless the court is satisfied, on the balance of probabilities, that the person has absconded and-

- (a) a person was under investigation for the offence;
- (b) the person has been committed for trial for the offence; or
- (c) the court is satisfied that having regard to all the evidence before it, a reasonable court could lawfully find the person guilty of the offence.

Procedure
on application
Act No.
2 of 2007
s.8

13.-(1) Where an application is made to a court for a confiscation order in respect of a person's conviction of a serious offence, the court may, in determining the application, have regard to the transcript record of any proceedings against the person in relation to the offence.

(2) Where an application is made for a confiscation order to the court before which the person was convicted and the court has not, at the time the application is made, passed sentence on the person for the offence, the court may, if satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the confiscation order.

(3) Where a person is to be taken to have been convicted of an offence by reason of section 4(1)(c), and application is made to a court for a confiscation order in respect of the conviction, the reference in subsection (1) to a proceeding against the person for the offence shall include a reference to a proceeding against the person for the other offence referred to in that paragraph.

Confiscation
order where
person has
died
Act No.
6 of 2012
s.19

13A.-(1) Where a person dies while under investigation or after being charged but before a conviction, the Attorney General may apply to the court for a confiscation order.

(2) The court may grant an application for confiscation order where it is satisfied, on balance of probabilities, that-

- (a) a person was under investigation when he died and reasonable steps have been taken to conduct investigation of an offence alleged to have been committed;
- (b) a person has been charged but dies before the conclusion of the trial, and there are reasonable grounds to believe that a confiscation order would have been issued against that person if he was alive.

(b) Forfeiture Orders

Forfeiture
Orders
Act No.
7 of 2018
s.93

14.-(1) Where the Director of Public Prosecutions applies to a court for a forfeiture order under section 9 against property in respect of a person's conviction of an offence and the court is satisfied that the property is tainted property in respect of the offence, the court may if it considers it appropriate, order that the property or such of the property as it may specify in the order, be forfeited to the United Republic.

(2) Where the court orders that property other than money is forfeited to the United Republic, it shall specify in the order the amount that it considers to be the value of the property at the time the order is made.

(3) In granting an application for a forfeiture order in respect of any property, the court may have regard to-

- (a) any hardship that may reasonably be expected to be caused to any person by the operation of such an order;
- (b) the use that is ordinarily made, or was intended to be made, of the property; and
- (c) the gravity of the offence concerned.

(4) Any evidence given at the hearing of the application for a forfeiture order in respect of any property that the property concerned was in the possession of the convicted person at the time of, or immediately after, the commission of the offence and no evidence is given to show that the property was not used in, or in connection with, the commission of the offence, the court shall assume that the

property was used in, or in connection with, the commission of the offence.

(5) In granting an application for a forfeiture order, the court may give any directions necessary or convenient for giving effect to the order, including, without limiting the generality of the foregoing, directions to an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of any property subject to registration in the Registry of Titles.

(6) In granting a forfeiture order the court may, if it is satisfied that it would be in the public interest for a person's interest in the property to be transferred to him, determine the nature, extent and value of the interest and declare that the forfeiture order may, to the extent to which it relates to the interest, be discharged in accordance with section 30.

Effects of forfeiture order

Act No. 7 of 2018 s.93

15.-(1) Subject to subsection (2), where a court makes a forfeiture order against property, the property shall vest in the United Republic.

(2) Where a forfeiture order is made against property subject to registration in the Registry of Titles, any rights in the property shall lie with the United Republic until the registration is effected.

(3) The Permanent Secretary in the Ministry responsible for Treasury shall be registered as owner of any property subject to a forfeiture order and the Minister shall do or authorise to be done anything necessary or convenient to obtain the registration of the Permanent Secretary in the Ministry responsible for Treasury as owner, including the execution of an instrument required to be executed by a person transferring an interest in property of that nature.

Effect of forfeiture order on third parties

16.-(1) Where an application for a forfeiture order is made against property, any person who has an interest in the property may, before the forfeiture order is made, apply to the court for an order under subsection (6).

(2) Subject to subsections (3) and (7), where a forfeiture order against property has been made, any person who has an interest in the property may apply to the court for

an order under subsection (6).

(3) A person who was given notice of an application for a forfeiture order or who appeared at the hearing of the application shall not make an application to court in terms of subsection (2) except with the leave of the court.

(4) The leave of the court referred to in subsection (3) may be granted if the court is satisfied that there are special grounds for granting the leave.

(5) Without limiting the generality of subsection (4), the court may grant a person leave to apply if it is satisfied that the evidence which the person intended to adduce in connection with the application under subsection (2) was not available to him at the time of the hearing of the application.

(6) Where a person applies to a court for an order under this subsection in respect of his interest in property against which an application for a forfeiture order or a forfeiture order has been made and the court is satisfied that-

- (a) the applicant was not in any way involved in the commission of the offence concerned; or
- (b) if the applicant acquired his interest at the time, or after the commission of the offence, the applicant did so-
 - (i) for sufficient value; and
 - (ii) without knowing and in circumstances such as not to arouse reasonable suspicion that the property was, at the time of the acquisition, tainted property,

the court shall make an order for the transfer of the interest by the Permanent Secretary in the Ministry responsible for Treasury to the applicant or for the payment by the Permanent Secretary in the Ministry responsible for Treasury to the applicant of an amount equal to the value of the interest, as the court thinks fit.

(7) Subject to subsection (8), an application under subsection (2) shall be made before the expiration of a period of six months commencing on the day on which the forfeiture order is made.

(8) Where a forfeiture order is made against property, the court that made the order may, on application being

made to it, grant a person claiming an interest in the property leave to apply in terms of subsection (2), after the expiration of the period referred to in subsection (7) if it is satisfied that the person's failure to make his application within that period was not due to any neglect on his part.

(9) Any person who makes an application in terms of subsection (1) or (2) shall notify the Director of Public Prosecutions.

(10) The Director of Public Prosecutions shall be a party to proceedings upon an application in terms of subsection (1) or (2).

Discharge of
forfeiture order
on appeal or on
quashing of
conviction
Acts Nos.
2 of 2007
s.9
7 of 2018
s.93

17.-(1) A forfeiture order against property shall be discharged on the quashing of the conviction upon which the forfeiture order is based.

(2) Where a forfeiture order against property is discharged in terms of subsection (1) or on an appeal against the making of the order, the Director of Public Prosecutions shall-

- (a) within fourteen days after the discharge of the order, give written notice of the discharge of the order to any person whom he has reason to believe had an interest in the property immediately before the making of the order; or
- (b) if required by the court, publish in the *Gazette* a notice of the discharge of the order in such manner and within such time as the court considers appropriate.

(3) A notice referred to in subsection (2) shall specify, in accordance with subsection (4), the manner in which any person who claims an interest in the property shall apply for the transfer of the interest to the person.

(4) Where a forfeiture order is discharged in terms of subsection (1) or on appeal against the making of the order, any person who, immediately before the making of the forfeiture order, claimed an interest in the property may apply to the Director of Public Prosecutions, in writing, for the transfer of the interest to him and on receipt of the application, the Director of Public Prosecutions shall-

- (a) where the interest is vested in the Permanent Secretary in the Ministry responsible for Treasury, arrange for the transfer of the interest to the person; or
- (b) in any other case, pay to the person an amount equal to the value of the interest.

(5) Where the Director of Public Prosecutions is to arrange for the transfer of property to a person, he may do or authorise to be done anything necessary or convenient to effect the transfer, including the execution of any instrument and the making of an application for registration of an interest in the property.

Registered
foreign
forfeiture
orders
Act No.
7 of 2018
s.93
Cap. 254

18.-(1) Where a foreign forfeiture order is registered with the High Court in terms of Part VI of the Mutual Assistance Act, this Part shall, *mutatis mutandis*, apply in relation to the foreign order.

(2) Any property in relation to which a foreign forfeiture order has been registered in terms of subsection (1) may be disposed of or otherwise be dealt with in accordance with any direction of the Director of Public Prosecutions or of a person authorised by the Director of Public Prosecutions in writing for that purpose.

**PART III
PECUNIARY PENALTY ORDERS**

Application of
Part III

- 19.** This Part shall apply to-
- (a) property that comes into the possession, or under the control, of a person, whether within or outside the United Republic and whether before or after the commencement of this Act; and
 - (b) benefits that accrued to a person, whether within or outside the United Republic and whether before or after the commencement of this Act.

Special
provision
relating to
serious
offences
Act No.
7 of 2018
s.93

20. An application for a pecuniary penalty order against a person in respect of his conviction of a serious offence shall not be granted by a court before the expiry of a period of six months commencing on the date of the conviction upon which the application is based or after the expiry of a period of twelve months from that date.

Pecuniary
penalty
orders
Act No.
7 of 2018
s.93

21.-(1) Where an application is made to a court for a pecuniary penalty order in respect of benefits derived by a person from the commission of an offence and the court is satisfied that the person derived benefits from the commission of the offence, the court may, in terms of section 22, assess the value of the benefits so derived and order that person to pay to the Permanent Secretary in the Ministry responsible for Treasury, subject to subsections (2) and (3), a pecuniary penalty equal to the value of the benefits assessed.

(2) Where property that is the proceeds of an offence has been forfeited in terms of this Act or any other enactment or a forfeiture order is proposed to be made against property that is the proceeds of an offence, the penalty referred to in subsection (1) shall be reduced by an amount equal to the value as at the time of the making of the pecuniary penalty order of the property forfeited.

(3) Where any amount of tax, whether under the law of Tanzania or a foreign country, has been paid by a person

and that tax is attributable in whole or in part to the benefits in respect of which the pecuniary penalty order is being made, such amount may, if the court so directs, be deductible from the penalty assessed in terms of subsection (1).

(4) The court may reduce the amount payable by a person under a pecuniary penalty order made in relation to an offence by an amount equal to the amount paid by the person by way of restitution, compensation, damages or a fine in relation to the offence.

(5) In calculating the amount payable under a pecuniary penalty order, if the court took into account a forfeiture of, or a proposed forfeiture order in respect of, property and an appeal against the forfeiture order is allowed or the proceedings for the proposed forfeiture order are terminated before the order is made, the Director of Public Prosecutions may apply to the court for a variation of the pecuniary penalty order to increase the pecuniary penalty by the value of the property concerned and the court may vary the order accordingly.

(6) In calculating the amount payable under a pecuniary penalty order, if the court took into account an amount of tax paid by the person and an amount is repaid or refunded to the person in respect of that tax, the Director of Public Prosecutions may apply to the court for a variation of the pecuniary penalty order to increase the pecuniary penalty by the amount repaid or refunded and the court may vary the order accordingly.

(7) Any amount payable by a person to the United Republic in terms of a pecuniary penalty order shall be a civil debt due to the United Republic and shall be recoverable by civil process.

Assessment of
pecuniary
penalty
Act No.
7 of 2018
s.93

22.-(1) For the purposes of a pecuniary penalty order against a person (hereinafter referred to as “the respondent”), the value of the benefits derived by the respondent from the commission of an offence shall be assessed by the court having regard to-

(a) the amount of money or value of property that came into the possession or under the control of-

- (i) the respondent; or
 - (ii) any other person at the request or direction of the respondent,
- by reason of the commission of the offence;
- (b) the value of any other benefit gained by-
 - (i) the respondent; or
 - (ii) any other person at the request or direction of the respondent,
- by reason of the commission of the offence;
- (c) if the offence consisted of the doing of an act or thing in relation to narcotic drugs and psychotropic substances-
 - (i) the market value, at the time of the offence, of similar or substantially similar narcotic drugs and psychotropic substances; and
 - (ii) the amount that was, or the range or amounts that were, ordinarily paid for doing a similar or substantially similar act or thing;
 - (d) the value of the respondent's property before and after the commission of the offence; and
 - (e) the respondent's income and expenditure before and after the offence.

(2) In assessing the value of a benefit for the purposes of this section the court may treat as the value of the benefit the value that benefit would have had if the benefit derived at the time the valuation is being made and may have regard to any decline in the purchasing power of money between the time the benefit was arrived at and the time the valuation is being made.

(3) Where an application is made for a pecuniary penalty order against a person's property in respect of a serious offence other than a serious offence-

- (a) if evidence is adduced that the value of the person's property after the commission of the offence exceeded before the commission of the offence, then the court shall for the purposes of subsection (1) of section 23 but subject to paragraph (b) and subsection (7), treat the value of the benefits derived by the person from the

commission of the offences as being not less than the amount of the excess;

- (b) if, following the evidence referred to in paragraph (a), the person satisfies the court that-
 - (i) the whole of the excess was due to causes unrelated to the commission of the offence, paragraph (a) shall not apply; or
 - (ii) a part of the excess was due to causes unrelated to the commission of the offence, paragraph (a) shall apply only to that part of the excess which is related to the commission of the offence.

(4) Where an application is made for a pecuniary penalty order against a person's property in respect of a serious offence or offences-

- (a) all the property of that person at the time the application is made; and
- (b) all the property of that person at any time-
 - (i) between the day the offence, or the earliest offence, was committed and the day on which the application is made; or
 - (ii) within the period of five years immediately before the day on which the application is made,

shall, whichever is the shorter, be deemed, unless the contrary is proved, to be property that came into the possession or under the control of the person by reason of the commission of the serious offence or offences.

(5) A benefit shall not be taken into account for the purposes of this section if a pecuniary penalty has been imposed in respect of the benefit in terms of this Act or any other enactment.

(6) For the purposes of this section, where the property of a person has vested in a trustee of the person's insolvency, the property shall be taken to continue to be the property of the person.

(7) At the hearing of an application for a pecuniary penalty order, a police officer who has experience in the investigation of narcotic drugs and psychotropic substances

offences may testify, to the best of his information, knowledge and belief-

- (a) as to the market value of narcotic drugs and psychotropic substances at a particular time or during a particular period;
- (b) as to the price, or range of prices, paid at a particular period for the doing of an act or thing in relation to narcotic drugs and psychotropic substances,

notwithstanding any law or practice relating to hearsay evidence, and the testimony shall be *prima facie* evidence of the matters testified to.

Court may lift
corporate veil
Acts Nos.
21 of 2007
s. 10
7 of 2018
s.93

23.-(1) In assessing the value of benefits derived by a person from the commission of any serious offence, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person whether or not the person has-

- (a) any legal or other interest in the property; or
- (b) any right, power or privilege in connection with the property.

(2) Without limiting the generality of subsection (1), the court may have regard to-

- (a) shareholdings in, debentures over or directorships of any company that has an interest, whether direct or indirect in the property;
- (b) any trust that has relationship to or interest in the property; and
- (c) any family, domestic or business relationships between persons having an interest in the property, or in any company or trust referred to in paragraph (a) or (b), and any other persons.

(3) Where for the purposes of making a pecuniary penalty order against a person, a court treats particular property as that person's property pursuant to subsection (1), it may on application by the Director of Public Prosecutions make an order declaring that the property is available to satisfy the order.

(4) Where the Director of Public Prosecutions makes

an application in terms of subsection (3)-

- (a) he shall give written notice of the application to the person and to any other person whom he has reason to believe may have an interest in the property; and
- (b) any person referred to in paragraph (a) may appear and adduce evidence at the hearing of the application.

Amounts paid in respect of registered foreign pecuniary penalty orders

24. Where a foreign pecuniary penalty order is registered in a court in the United Republic under the Mutual Assistance Act, any amount paid, whether in the United Republic, in the foreign country in which the order was made or elsewhere, in satisfaction of the foreign pecuniary penalty order, shall be taken to have been paid in satisfaction of the debt that arises by reason of the registration of the foreign pecuniary penalty order in that court.

**PART IV
FORFEITURE IN RESPECT OF SPECIFIED OFFENCES¹**

Forfeiture of restrained property in relation to specified offences Act No. 7 of 2018 s.93

25.-(1) Subject to section 43(4), if at the expiration of six months from the day of conviction a restraining order issued in respect of the property of a person convicted of a specified offence is still in force, the property shall be forfeited to the United Republic.

(2) Subject to subsection (3), property forfeited to the United Republic under subsection (1) shall vest in the Permanent Secretary in the Ministry responsible for Treasury.

(3) Where immovable property or other property whose ownership passes through registration is forfeited to the United Republic, the Permanent Secretary in the Ministry

¹ Having regard to the definition of “specified offence” as introduced by section 94(a) of Act No. 7 of 2018 and bearing in mind that Part IV generally deals with forfeiture and recovery of property associated with foreign offences, and for the avoidance of ambiguity, the general amendment of section 94(a) of Act No. 7 of 2018 is not considered under Part IV.

responsible for Treasury shall be entitled to be registered as the owner of the property and the Minister shall have power to do, or to authorise to be done, anything necessary or convenient to effect the registration of the Permanent Secretary in the Ministry responsible for Treasury as the owner, including execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(4) Where property is forfeited to the United Republic in accordance with this section-

(a) the property shall not, except with the leave of the court that issued the restraining order and in accordance with any directions the court may make, be disposed of or otherwise dealt with by or on behalf of the Permanent Secretary in the Ministry responsible for Treasury until any appeal instituted in relation to the matter has been determined or the time for instituting an appeal has lapsed without any appeal being instituted; and

(b) if, at the end of the period referred to in paragraph (a), the conviction has not been quashed, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Minister or of a person authorised by the Minister for the purposes of this paragraph.

(5) Any direction in terms of paragraph (b) of subsection (4) may include a direction that the property shall be disposed of in accordance with any enactment specified in the direction.

Recovery of
property to
which section
25 applies
Act No.
7 of 2018
s.93

26.-(1) Where property is forfeited to the United Republic in terms of section 25, any person who claims an interest in the property may, subject to subsections (2) and (4), apply to the court which issued the restraining order for an order under subsection (6) or (7).

(2) The application referred to in subsection (1) shall, subject to subsection (3), be made before the expiry of the

period of six months commencing on the day on which the property is forfeited to the United Republic.

(3) The court may grant a person leave to apply after the expiry of the period referred to in subsection (2) if it is satisfied that the delay in making the application was not due to neglect.

(4) An application for an order under subsection (6) or (7) in relation to an interest in property shall not, except with the leave of the court, be made by a person who was given notice of the proceedings at the time of the application for the issue of the interdict.

(5) The court may grant a person leave in terms of subsection (4) if it is satisfied that his failure to have the property excluded from the restraining order was not due to any neglect on his part.

(6) Where a person applies for an order in respect of an interest in property and the court is satisfied-

- (a) that the applicant was not in any way involved in the commission of the relevant specified offence;
- (b) where the applicant acquired the interest at the time of or after the commission of the offence, that he did so lawfully and for sufficient value; and
- (c) that the property was acquired in circumstances such as would not arouse a reasonable suspicion that the property was tainted property,

the court may make an order declaring the nature, extent and value of the interest of the applicant and direct the Permanent Secretary in the Ministry responsible for Treasury to transfer the interest to the applicant or order the payment to the applicant by the Permanent Secretary in the Ministry responsible for Treasury of an amount equal to the value of the interest.

(7) Where a person applies for an order in respect of an interest in property and the court is satisfied that it would not be contrary to public interest for the interest to be transferred to the person and that there is no other reason why the interest should not be transferred to the person, the court may-

- (a) determine the nature, extent and value of the interest; and
- (b) order that section 25 shall cease to operate in relation to the interest if payment for the interest is made in terms of section 29.

Effect of
quashing of
conviction
Act No.
7 of 2018
s.93

27.-(1) Where a conviction in respect of property forfeited to the United Republic in terms of section 25 is quashed, the Director of Public Prosecutions shall-

- (a) as soon as practicable after the quashing of the conviction, give notice of the quashing of the conviction to any person whom the Director of Public Prosecutions has reason to believe may have had an interest in the property immediately before the property was forfeited; and
- (b) if ordered to do so by the court, give written notice or publish a notice in the *Gazette* of the quashing of the conviction to a specified person or class of persons within such time as the court may fix.

(2) A notice in terms of subsection (1) shall include a statement to the effect that a person claiming an interest in the property may apply in terms of subsection (3) for the transfer of the interest to the person.

(3) Any person who claims to have had an interest in property immediately before it was forfeited to the United Republic may apply to the Minister, in writing, for the transfer of the interest to himself and on receipt of application, the Minister shall-

- (a) if the interest is in respect of property which is still vested in the United Republic, arrange for the transfer of the interest to the person;
- (b) in any other case, arrange for the payment to the person of an amount equal to the value of the interest.

(4) In arranging for the transfer of any property in terms of paragraph (a) of subsection (3), the Minister shall have power to do, or authorise to be done anything necessary or convenient to effect the transfer, including the execution

of any instrument.

Person with interest in forfeited property may buy back interest
Act No. 7 of 2018
s.93

28.-(1) Where a court makes an order in terms of subsection (6) of section 16 in respect of an interest in property, the payment to the Permanent Secretary in the Ministry responsible for Treasury of the amount specified in the order as the value of the interest shall discharge the forfeiture order to the extent to which it relates to the interest.

(2) Where a court makes an order in terms of subsection (7) of section 26, and a payment to the Permanent Secretary in the Ministry responsible for Treasury of an amount specified in the order as the value of the interest is made, section 25 shall cease to apply in relation to the interest.

(3) The Minister shall arrange for the interests referred to in subsections (1) and (2) to be transferred to the person in whom they were vested immediately before the property was forfeited to the United Republic and shall have power to do, or authorise to be done, anything necessary or convenient to effect the transfer, including the execution of any instrument.

Buying out other interests in forfeited property
Act No. 7 of 2018
s.93

29. Where a person is, in terms of this Part, authorised to take transfer of any interest in property which is forfeited to the United Republic, he may, on giving notice to any other person otherwise interested in the property immediately before the forfeiture took place, purchase that other interest from the Permanent Secretary in the Ministry responsible for Treasury; save that the persons served with the notice may, within twenty-one days of the receipt of the notice, lodge with the Minister a written objection to the purchase of that interest.

Forfeiture where person cannot be brought before court

30.-(1) Where the Director of Public Prosecutions suspects on reasonable grounds that any person has acquired, holds or is dealing with tainted property and it is not possible-

(a) for any reason to bring the person before the

Acts Nos.
6 of 2012
s.20
7 of 2018
s.93

court on a charge for any serious offence; or
(b) for a foreign pecuniary penalty order or a foreign forfeiture order to be made in respect of the person,

he may apply to the High Court for an order to declare the property forfeited to the United Republic.

(2) The High Court may, on an application in terms of subsection (1), if it is satisfied that the property concerned is tainted property and that it is in the interests of justice that the property be forfeited to the United Republic, order accordingly.

**PART V
CONTROL OF PROPERTY LIABLE TO CONFISCATION**

(a) Powers of Search and Seizure

Powers to
search for and
seize tainted
property
Act No.
2 of 2007
s.11

31.-(1) Subject to subsection (2), a police officer may search a person for, and seize, any property which he believes, on reasonable grounds, to be tainted property.

(2) The search or seizure referred to in subsection (1) shall be made-

- (a) with the consent of the person concerned;
- (b) under warrant issued under section 32; or
- (c) in emergencies in accordance with section 34.

(3) Subject to subsection (2), a police officer may enter upon any land or upon or into premises, search the land or premises for tainted property and seize any property found in the course of the search which the officer believes, on reasonable grounds, to be tainted property.

(4) In conducting a search in terms of this section, a police officer may also search the clothing that is being worn by the person and any property under or apparently under the person’s immediate control; save that nothing contained in this section shall be construed as authorising a police officer to carry out a search by way of an examination of body cavities.

Freezing of bank
account

31A.-(1) Where the Inspector General of Police or

Act No.
7 of 2018
s.95

the Director of Criminal Investigation suspects on reasonable grounds that any person has been involved in the commission of a serious offence, he may authorise and direct a police officer of the rank of Assistant Superintendent of Police or above to freeze a bank account and seize any document from that bank or financial institution for fourteen days during which leave of the court for continued seizure and freezing shall be obtained.

(2) Upon application, the court may order extension of a period of seizure or freezing an account where there are reasonable grounds to suspect that the money held in the account is related to the commission of a serious offence.

(3) Where the court orders an extension of period of seizure or freezing of an account under sub section (2), it may, at any later time vary or set aside that order where the continued seizure or freezing is no longer required or upon production of additional evidence, and where the court is satisfied that money held into the account is not related to the commission of a serious crime.

Collecting
information or
document
relating to
property
Act No.
7 of 2018
s.96

31B.-(1) For the purpose of collecting information about the property under this Act or any other law, an investigation officer may summon, interrogate and record a statement from any person who has information or document relating to the property.

(2) Any person who fails without reasonable cause to appear before the investigation officer for interrogation or to produce a document or any other thing relevant to investigation of the property under subsection (1) or being a witness at such investigation refuses to answer any question put to him or to produce any document or any other thing relevant to investigation commits an offence and upon conviction shall be liable to a fine of not less than one million shillings or to imprisonment for a term of not less than three years or to both.

Disclosure of
investigation
information
Act No.
7 of 2018

31C.-(1) Any person who discloses to a suspect or unauthorised third party the information relating to an ongoing or impending investigation under this Act or any

s.96

other law with the intent to interfere or otherwise frustrate the investigation commits an offence and upon conviction shall be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than five years or to both.

(2) Where a person who contravenes the provisions of subsection (1) is a body corporate, such person shall be liable to a fine of not less than five hundred million shillings or three times the value of the property under investigation, whichever is greater.

Search warrants in relation to tainted property

32.-(1) Where a police officer has reasonable grounds for believing that there is tainted property of a particular kind on a person, his clothing or under his immediate control, or upon any land or upon or in any premises, he may apply to a magistrate for the issue of a search warrant for the tainted property.

(2) On an application in terms of subsection (1), a police officer shall lay before the magistrate information on oath setting out the grounds upon which the warrant is sought and the magistrate may, subject to subsection (4), issue a warrant authorising a police officer-

- (a) in the case of a search warrant in respect of land or premises, to enter upon the land, or upon or into the premises;
- (b) to search for the tainted property; and
- (c) to seize property found in the course of the search which the police officer on reasonable grounds believes to be tainted property.

(3) A search warrant may be issued in terms of subsection (2) in relation to tainted property whether or not information has been laid before the magistrate in respect of the relevant offence.

(4) A magistrate shall not issue a warrant in terms of this section unless he is satisfied that-

- (a) there are reasonable grounds for issuing the warrant; and
- (b) where information has not been laid before him in respect of the relevant offence at the time of the

application for the warrant-

- (i) the property is tainted property; and
- (ii) information will be laid before him in respect of the relevant offence within forty-eight hours.

(5) A warrant issued in terms of this section shall specify-

- (a) the purpose for which the warrant is issued, including the nature of the relevant offence;
- (b) the kind of property authorised to be seized;
- (c) the date on which the warrant shall cease to have effect; and
- (d) the time during which entry upon any land or premises is authorised.

(6) If in the course of searching under a search warrant issued in terms of this section for tainted property in relation to a particular offence, a police officer finds-

- (a) property which he believes on reasonable grounds to be tainted property in relation to the offence, although not of a kind specified in the warrant; or
- (b) tainted property relating to another serious offence; or
- (c) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence,

and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing or continuing or repeating the offence or any other offence, the warrant shall be deemed to authorise the police officer to seize that property or thing.

(7) A police officer acting in accordance with a warrant issued in terms of this section may require a person to remove any clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person.

(8) A person shall not be searched in terms of this section except by a person of the same sex and with strict regard to decency.

Search warrant
may be granted
by telephone

33.-(1) Where, by reason of circumstances of urgency, a police officer considers it necessary to do so he may apply for a search warrant to a magistrate by telephone.

(2) Before making the application referred to in subsection (1), the police officer shall prepare the information referred to in section 32(2).

(3) On an application in terms of subsection (1), a magistrate may, if satisfied after considering the information referred to in subsection (2) or any other information he may receive concerning the grounds upon which the issue of the search warrant is sought, that there are reasonable grounds for issuing the warrant, he shall issue the warrant and record thereon the reason for granting it.

(4) Where a magistrate has issued a warrant in terms of subsection (3), he shall inform the police officer of the terms of the warrant and the date on which and the time at which it was signed and the police officer shall in turn complete a form of warrant in terms furnished by the magistrate, including the name of the magistrate.

(5) Not later than the day next following the date of the execution of the warrant or the expiry of the warrant, whichever is the earlier, the police officer shall give the magistrate who authorised the warrant the form of the warrant completed by him and the information in connection with the warrant, duly sworn.

(6) On receipt of the documents referred to in subsection (5), the magistrate shall attach to them the warrant signed by him and deal with the documents in the manner in which he would have dealt with them had the application been made in terms of section 32.

(7) A form of warrant duly completed by a police officer in accordance with subsection (4) shall be authority for any search, entry or seizure.

Searches in
emergencies

34. A police officer may search a person for tainted property or enter upon land or into premises and search for tainted property and may seize any tainted property he finds in the course of the search if-

- (a) he believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of the tainted property; and
- (b) the search, entry or seizure is made in circumstances of such seriousness and urgency as to require and justify immediate search, entry or seizure without the authority of an order of the court or a warrant issued in terms of this Act.

Responsibility
for
seized property

35. Where property is seized in terms of this Part, the Inspector-General of Police or other officer authorised by him in writing, shall arrange for the property to be kept and shall ensure that all reasonable steps are taken to preserve it while it is so kept until it is required for the purposes of this Act or disposed of in terms of this Act.

Return of
seized property

36.-(1) Where property has been seized in terms of this Part and-

- (a) it appears that the property was seized otherwise than because it may afford evidence of the commission of an offence;
- (b) at the end of the period of forty-eight hours after its seizure, the matter has not been laid before a magistrate; or
- (c) no forfeiture order is made in respect of the property within fourteen days after the conviction of a person in connection with the property,

any person who claims an interest in the property may apply to the court for an order that the property be returned to him.

(2) Where an application for an interdict or a forfeiture order in respect of property seized in terms of this Part is refused, the Inspector-General of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the refusal of the application.

Search for and
seizure of

37.-(1) Where a police officer is authorised under the Mutual Assistance Act to apply to a magistrate for a search

tainted
property in
relation to
foreign
offences
Act No.
7 of 2018
s.93
Cap. 254

warrant under this Act in relation to tainted property in respect of a foreign serious offence, the provisions of this Part shall, mutatis mutandis, apply in relation to the application for the search warrant.

(2) If, in the course of searching for tainted property in relation to a foreign serious offence, a police officer finds-

- (a) any property which he believes, on reasonable grounds, to be tainted property in relation to the foreign serious offence although not of the kind specified in the warrant;
- (b) any property which he believes, on reasonable grounds, to be tainted property in relation to another foreign serious offence in respect of which a search warrant is in force; or
- (c) anything which he believes, on reasonable grounds-
 - (i) to be relevant to criminal proceedings in the foreign country in respect of the foreign serious offence; or
 - (ii) will afford evidence as to the commission of a criminal offence,

and he believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or any other offence, the warrant shall be deemed to authorise the police officer to seize that property or thing.

(3) Any person who claims an interest in property seized under a warrant issued in respect of a foreign serious offence may apply to court for an order that the property be returned to him.

(4) On an application in terms of subsection (3), if the court is satisfied that-

- (a) the person is entitled to the property; and
- (b) the property is not tainted property in relation to the foreign serious offence,

the court shall order the Inspector-General of Police to return the property to that person.

(5) Where property has been seized in respect of

foreign serious offence and, at the end or thirty days after the day on which the property was seized-

Cap. 254

- (a) neither a foreign interdict nor a foreign forfeiture order in relation to the property has been registered in accordance with the Mutual Assistance Act; and
- (b) an interim restraining order has not been issued in terms of this Act in relation to the foreign serious offence,

the Inspector-General of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the expiry of that period.

(b) Restraining Orders

Restraining
orders
Acts Nos.
6 of 2012
s.21
7 of 2018
ss. 93 & 97

38.-(1) The Director of Public Prosecutions may make an *ex parte* application to the court for a restraining order in terms of this section against all or any specified property of the person who is under investigation for a serious offence or has been charged with or convicted of a serious offence including the property acquired following issuance of restraining order and property of a person other than the person who is under investigation or has been charged with or convicted of a serious offence.

(2) On an application in terms of subsection (1), the court may, subject to section 39-

- (a) order that the property specified in the application shall not be disposed of, or otherwise dealt with, by any person except in the manner and in the circumstances specified in the order;
- (b) if it is satisfied that the circumstances so require, direct that the property or such part of the property as is specified in the order, be taken into the custody and control of a trustee appointed for that purpose by the court; or
- (c) order the Administrator-General or any other public trustee to take care and control of property under restraint

(3) A restraining order against a person's property

may be granted subject to such conditions as the court thinks fit and may make provision for meeting out of the property-

- (a) that person's reasonable living expenses, including the reasonable living expenses of his dependants and reasonable business expenses;
- (b) that person's reasonable expenses in defending a criminal charge; and
- (c) a specified debt incurred by that person in good faith, being a debt to which neither paragraph (a) nor (b) applies.

(4) A court shall not make any provision referred to in subsection (3) unless it is satisfied that the respondent cannot meet the expense or debt concerned out of property that is not subject to the interdict.

(5) Where a trustee takes charge of any property in terms of this section, he may do anything that is reasonably necessary for the purpose of preserving the property, including-

- (a) becoming a party to any civil proceedings affecting the property;
- (b) ensuring that the property is insured; and
- (c) if the property consists, in whole or in part, of a business, employing or terminating the employment of persons in the business.

(6) In appointing a trustee in terms of subsection (2)(b), the court shall have regard to the qualifications of a trustee of the property which is under restraining order.

(7) In addition to the order granted under subsection (2), the court may order-

- (a) disposal of any property under restraint which is subject to natural decay, wear and tear, depreciation or whose maintenance may cause substantial expenses;
- (b) proceeds of sale of the property disposed to be kept in a special interim management account until forfeiture application in respect of that property is concluded or the court orders otherwise.

(8) A property to which a restraining application has

been made shall not be disposed until the application or an appeal as the case may be has been determined.

Grounds for
issuing
restraining
order
Acts Nos.
6 of 2012
s.22
7 of 2018
s.93

39.-(1) Where the offence concerned is a serious offence, the court shall, subject to this section, issue a restraining order against the property.

(2) Where the offence concerned is a serious offence other than a serious offence, the court shall, subject to this section, issue an interdict against the property unless the court is satisfied that it is not in the public interest to make such an order.

(3) Where the respondent has not been convicted of the offence concerned, the court shall not issue a restraining order unless-

- (a) the application for the interdict is supported by an affidavit of a police officer stating that he believes that the respondent committed the offence; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(4) Where the application is made before a person is charged, the court shall not issue a restraining order unless the court is satisfied that having regard to the matters contained in the affidavit, the reasonable step has been taken to investigate the offence concerned.

(5) Where the offence concerned is a serious offence other than a serious offence, the court shall not issue a restraining order against the property of the respondent unless-

- (a) the application is supported by an affidavit of a police officer stating that he believes that-
 - (i) the property is tainted property; or
 - (ii) The respondent derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(6) Where a restraining order is sought against a person other than the respondent, the court shall not issue the restraining order unless-

- (a) the application is supported by an affidavit of a police officer stating that he believes that-
 - (i) the property is tainted property in relation to the offence; or
 - (ii) the property is subject to the effective control of the respondent who derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(7) In determining whether there are reasonable grounds to believe that property is in the effective control of the respondent, the court may have regard to the matters referred to in subsection (2) of section 23.

(8) A restraining order shall be granted in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.

(9) A court may refuse to grant a restraining order if the Republic fails to give the court such undertakings as the court considers appropriate with respect to the payment of damages or costs in relation to the granting and operation of the order.

(10) An affidavit made by a police officer for the purposes of this section shall set out the grounds on which the officer holds any particular belief.

Repealed **40.** [Repealed by Act No 7 of 2018, s. 98]

Repealed **41.** [Repealed by Act No 7 of 2018, s. 98]

Notice of restraining orders Act No. **42.**-(1) Subject to subsection (2), where a restraining order is made against a person's property, the Director of Public Prosecutions shall give the person written notice of the order.

7 of 2018
ss. 93 & 99

(2) Where a court makes a restraining order, but it is satisfied that it would be in the public interest to delay giving notice of the order to a person, the court may order that giving the person notice of the restraining order be delayed for such period as is specified in the order under subsection (1) and the Director of Public Prosecutions shall give the person notice of the restraining order as soon as practicable after the end of the period specified.

(3) Any person affected by the restraining order may, within fourteen days after being served with notice of the restraining order, apply to court for variation or rescission of the restraining order or any other order which the court may issue under section 43.

Court may
make further
orders
Act No.
7 of 2018
ss. 93 & 100

43.-(1) Where a court grants a a restraining order, it may, at the time it makes the order or at any later time, make any ancillary order which it may consider necessary, including-

- (a) an order varying the property to which the restraining order relates;
- (b) an order varying any condition to which the restraining order is subject;
- (c) an order for the examination on oath of the person (in this section called the “respondent”) whose property is subject to the restraining order, or any other person, concerning the affairs of the respondent, including the nature and location of the property of the respondent;
- (d) an order for the carrying out of any undertaking given by the United Republic in relation to the payment of damages or costs arising from the granting of the restraining order; or
- (e) where the property is in the custody or under the control of a trustee-
 - (i) an order directing the manner in which the trustee may exercise his powers or perform his duties in relation to the property;
 - (ii) an order determining any question relating to the property including any question relating

- to the liabilities of the respondent; or
- (iii) an order directing the respondent to furnish the trustee, within a specified period, with a statement setting out such particulars of the property as the court may think proper.

(2) An order under subsection (1) may be made on application by-

- (a) the Director of Public Prosecutions ;
- (b) the respondent;
- (c) the trustee; or
- (d) with the leave of the court, any other person,

and every person with an interest in the matter shall be notified by the applicant, in writing, of the application.

(3) The court may, upon application by a person affected by the restraining order, vary or rescind a restraining order where it is satisfied that-

- (a) the property involved is not tainted; or
- (b) the interest in the property was acquired for sufficient value, without knowledge, and in circumstances such as not to arouse suspicion that the property was tainted..

(4) An application in terms of subsection (3) may be granted by the court if the court is satisfied that it is in the public interest to do so having regard to all the circumstances of the case including-

- (a) any financial hardship or other consequence of the interest remaining subject to the restraining order;
- (b) the seriousness of the offence; and
- (c) the likelihood that the interest may be subject to a forfeiture order or to section 25 or be required to satisfy a pecuniary penalty order.

(5) A person who has been convicted of or has been charged or is about to be charged with, a serious offence and whose property is subject to a restraining order may apply to a court for the exclusion of any property from the restraining order and the court shall grant the application if it is satisfied that—

- (a) the property was not used in, or in connection

with, the commission of the offence; and

(b) the interest in the property was lawfully acquired.

(6) Where a person is examined before a court pursuant to an order under subsection (1), the person shall not be excused from answering any question on the ground that the answer might tend to incriminate him or make him liable to a penalty.

(7) Where a person other than a person against whom charges have been or are to be laid is examined before a court pursuant to an order under subsection (1), a statement or disclosure made by that person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, shall not be admissible against him in any criminal proceedings except proceedings for giving false testimony in the course of examination.

(8) For the purposes of subsection (7), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order shall not be regarded as criminal proceedings.

(9) Where the Director of Public Prosecutions applies to court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the court is satisfied that answering of the question or production of the document may prejudice the investigation of, or the prosecution of any person for, an offence.

Trustee to
discharge
pecuniary
penalty order

44.-(1) Where a court has made a pecuniary penalty order against a person whose pecuniary property is in the custody or under the control of a trustee, the court may direct the trustee to pay to the United Republic an amount equal to the penalty amount out of the property held by him.

(2) The court may, for the purposes of subsection (1), direct the sale or otherwise dispose of any of the property in the custody of the trustee or under his control and authorise him to execute any deed or instrument in the name of the person who owns or has an interest or right in the property.

(3) The trustee shall not apply any money in terms of subsection (1) or dispose of any property in terms of subsection (2) until any appeal lodged in relation to the matter has been determined or the time for lodging any appeal has lapsed without any appeal having been lodged.

Charge on
property
subject to
restraining
order
Act No.
7 of 2018
s.93

45.-(1) Where-

- (a) a pecuniary penalty order is made against a person in reliance on his conviction of an offence; and
- (b) a restraining order is or has been made against his property or the property of another person in relation to which an order under section 23(3) is, or has been, made in reliance on his conviction of the offence or a related offence or in reliance on his being charged, or proposed charging, with the offence or a related offence,

then, upon the making of the later of the orders there shall be created, by virtue of this section and without any further assurance, a charge on the property to secure the payment to the United Republic of the penalty amount.

(2) Where a charge is created by subsection (1) on property of a person, the charge shall cease to have effect in respect of the property-

- (a) upon the quashing of the conviction in reliance on which the pecuniary penalty order was made;
- (b) upon the discharge of the pecuniary penalty order or the restraining order by a court hearing an appeal against the making of the order;
- (c) upon payment to the United Republic of penalty amount in satisfaction of the pecuniary penalty order;
- (d) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge, whichever occurs first.

(3) A charge created on property by subsection (1)-

- (a) shall be subject to every encumbrance on the property that came into existence before the

charge and that would, apart from this subsection, have priority over the charge;

- (b) shall have priority over all other encumbrances; and
- (c) subject to subsection (2), shall not be affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law in the United Republic provide for the registration of title to, or charges over, property of that kind, the Public Trustee or the Director of Public Prosecutions, as the case be, may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge shall, for the purposes of subsection (2)(d), be deemed to have notice of the charge at the time of the purchase or acquisition.

Registration of
restraining
orders
Act No.
7 of 2018
s.93

46. Where a restraining order has been of granted in respect of immovable property or any property or interest in property that is subject to registration, the Director of Public Prosecutions shall apply to the appropriate registrar for a recording in the register of the particulars of the restraining order.

Contravention
of restraining
orders

47.-(1) Every person who disposes of, or otherwise deals with, property which to his knowledge is subject to a restraining order commits an offence and is liable on conviction-

Act No.
7 of 2018
s.93

- (a) in the case of an individual, to a fine not exceeding five hundred thousand shillings or the value of the property, whichever is the greater, or to imprisonment for a period not exceeding fifteen years, or to both that fine and that imprisonment; or
 - (b) in the case of a body corporate, to a fine not exceeding five million shillings or three times the value of the property, whichever is the greater.
- (2) Any unauthorised dealing with property which is

subject to a restraining order may be set aside by the court at the instance of the Director of Public Prosecutions .

Duties of trustee

48.-(1) If, after a trustee has been directed to pay a pecuniary penalty out of the property of a person, the trustee is given notice in writing of proceedings in terms of the law for the time being in force in relation to insolvency against the person, he shall not take any action to sell or otherwise dispose of any property or pay the United Republic any money until the proceedings have been disposed of.

(2) Where a person whose property is in the custody or under the control of a trustee becomes insolvent, the property shall be deemed to be in the possession or under the control of the trustee as, or on behalf of, the trustee of the estate of the insolvent person.

Protection of trustee from personal liability

49.-(1) A trustee shall not be personally liable for-

- (a) any loss or damage arising from his having taken custody or control of the property which is sustained by any person claiming the property or an interest in the property unless the court in which the claim is made is of the opinion that the trustee is guilty of negligence in respect of the taking of custody or control of the property; or
- (b) the cost of proceedings instituted to establish a claim to the property or an interest in the property.

(2) A trustee shall not be personally liable for any rate or tax due under any enactment in respect of property which is in his custody or under his control.

Remuneration and expenses of trustee
Act No.
7 of 2018
s. 101

50.-(1) A trustee shall be entitled to remuneration and expenses in respect of the performance of his duties in relation to property in his custody or under his control.

(2) The Minister shall by regulations published in the *Gazette* provide for or in respect of the qualifications, supervision, remuneration and expenses of a trustee in relation to the performance of his duties under this Act.

Court may
revoke
restraining
orders

51.-(1) A court may, on application by a person against whom a restraining order has been issued, revoke the order if the person gives security to the satisfaction of the court for the payment of any pecuniary penalty that may be imposed upon him.

Act No.
7 of 2018
s.93

(2) A person who makes an application in terms of subsection (1) shall notify the Director of Public Prosecutions and, where the property is in the custody or under the control of a trustee, the trustee.

When
restraining
order ceases to
have effect

52.-(1) A restraining order shall cease to have effect if the charge against the person in relation to whom the order was issued is withdrawn or if the person is acquitted.

(2) Where a court has made a confiscation order, a restraining order shall cease to have effect once the confiscation order is satisfied or otherwise discharged.

Interim
restraining
order in
respect of
foreign offence
Act No.
7 of 2018
s.93
Cap. 254

53.-(1) Where the Director of Public Prosecutions is authorised under the Mutual Assistance Act to obtain the issue of a restraining order in terms of this act in respect of a foreign serious offence, the provisions of this Part relating to the application for a restraining order shall, *mutatis mutandis*, apply in relation to the application for a restraining order in respect of the foreign serious offence.

(2) A restraining order, granted in respect of a foreign serious offence shall cease to have effect on the expiry of a period of thirty days commencing on the day on which the order was granted.

(3) On application by the Director of Public Prosecutions before the expiry of the period referred to in subsection (2), a court may extend the period of operation of the restraining order.

(4) Where a foreign restraining order is not registered the High Court in terms of the Mutual Assistance Act, before the expiry of the period referred to in subsection (2) or (3), the order referred to in subsection (1) shall cease to have effect.

Registered

54. Where a foreign restraining order has been

foreign
restraining
orders
Act No.
7 of 2018
ss. 102
Cap. 254

registered with the High Court in terms of the Mutual Assistance Act, the provisions of this Part relating to restraining orders shall, subject to sections 55 and 56 *mutatis mutandis*, apply in relation to registered foreign restraining orders.

Trustee to take
control of
property in
relation to
registered
foreign
restraining
order
Act No.
7 of 2018
s.93

55.-(1) Where a foreign restraining order has been registered in the United Republic, the court may, upon application by the Director of Public Prosecutions, direct that the property, or any part of the property, be taken into the custody of or under the control of a trustee appointed by the court.

(2) The owner of the property or any other person whom the Director of Public Prosecutions has reason to believe may have an interest in the property shall be notified in writing of any application in terms of subsection (7).

(3) The court may, before making a direction in terms of subsection (1), direct the Director of Public Prosecutions to give or publish notice of the application to a specified person or class of persons, in such manner and within such time as the court considers appropriate.

(4) Any person who claims an interest in property in respect of which an application in terms of subsection (1) has been made may appear and adduce evidence at the hearing of the application.

(5) Where a direction in terms of subsection (1) has been made, the court may at any time make any one or more of the following orders-

- (a) an order regulating the manner in which the trustee may exercise his powers or perform his duties;
- (b) an order determining any question relating to that property; or
- (c) an order directing the owner of the property to furnish the trustee with such particulars relating to the property as the court thinks fit.

(6) A trustee may do anything that is reasonably necessary for the purpose of preserving the property,

including-

- (a) becoming a party to any civil proceedings relating to or affecting the property;
- (b) ensuring that the property is insured; and
- (c) if the property consists, in whole or in part, of a business, employing or terminating the employment of persons in the business.

Undertaking
by Director of
Public
Prosecutions
Act No.
7 of 2018
s.93

56. The court may, on application by any person claiming an interest in property which is subject to a foreign restraining order and which is in the custody of or under the control of a trustee, make an order requiring the Director of Public Prosecutions to give or carry out the undertaking with respect to the payment of damages or costs in relation to that foreign restraining order.

Discharge of
registered
foreign
pecuniary
penalty
Act No.
7 of 2018
s.93

57.-(1) Where-

- (a) a foreign restraining order is registered in the United Republic in respect of property of a person convicted of or alleged to have committed, a foreign serious offence;
- (b) a foreign pecuniary penalty order against the person is registered in the United Republic in relation to the matter; and
- (c) the property is in the custody, or under the control, of a trustee,

the court in which the foreign pecuniary penalty order is registered may direct the trustee to pay to the United Republic an amount equal to the penalty amount out of the property.

- (2) For the purposes of subsection (1), the court may-
 - (a) direct the trustee to sell or otherwise dispose of such of the property under his control as the court may specify; and
 - (b) authorise the trustee to execute any deed or instrument in the name of the person who owns or has an interest or right in the property.

PART VI
INFORMATION GATHERING POWERS

(a) Production Orders

Production
orders
Act No
2 of 2007
s.12

58.-(1) Where a person has been convicted, or is reasonably suspected of having committed, a serious offence and a police officer has reasonable grounds for suspecting that any person has possession or control of any property-tracking document in relation to that offence he may apply to a court for an order directing the person, subject to subsection (5), to produce to a police officer any document described in the order which is in that person's possession or control.

(2) An application in terms of subsection (1) shall be supported by an affidavit setting out the grounds upon which the suspicion is based.

(3) Where, in an application for an order in terms of subsection (1), a police officer includes in the affidavit referred to in subsection (2) information that he has reasonable grounds to believe that the person concerned derived a benefit, directly or indirectly, from the commission of the offence and that the property specified in the affidavit is subject to the effective control of the person, the court may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(4) In determining in terms of subsection (3) whether to treat a document as a property-tracking document in relation to an offence, a court may have regard to matters referred to in subsection (2) of section 25.

(5) An order for production of documents shall not be made unless the court is satisfied that there are reasonable grounds for making the order.

(6) Where a document is produced to a police officer, the police officer may-

- (a) inspect the document;
- (b) take extracts from the document;

- (c) make copies of the document; or
- (d) retain the document if, and for as long as, retention of the document is reasonably necessary.

(7) A police officer referred to in subsection (6) shall, at the request of the person to whom the order was addressed-

- (a) give the person a copy of the document certified by the police officer in writing to be a true copy of the document; or
- (b) permit the person to-
 - (i) inspect the document;
 - (ii) take extracts from the document; or
 - (iii) make copies of the document.

(8) A person shall not be excused from producing a document on the ground that its production-

- (a) might tend to incriminate him or make him liable to a penalty; or
- (b) would be in breach of any obligation or privilege not to disclose the existence or contents of the document.

(9) The production of a document in terms of this section or any information, document or thing obtained as a direct or indirect consequence of the production of the document, shall not be admissible against any person, other than the person against whom charges have or are to be laid, in any criminal proceedings except proceedings relating to-

- (a) a contravention of an order of the court; or
- (b) the production of a document known to the person to be false or misleading in a material particular.

(10) For the purposes of subsection (9) proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order shall not be regarded as criminal proceedings.

Variation of
production
order

59. Where a court makes a production order requiring a person to produce a document to a police officer, that person may apply to the court for a variation of the order and

if the court is satisfied that the document is essential to the business activities of the person, it may vary the production order so as to require the person to make the document available to the police officer for inspection.

Failure to
comply with
production
order

60.-(1) Where a person is required by a production order to produce a document to a police officer or make a document available to a police officer for inspection, that person commits an offence under this section if he-

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available a document known to them to be false or misleading in a material particular without-
 - (i) indicating to the police officer to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) An offence against subsection (1) shall be punishable, upon conviction, by-

- (a) if the offender is a natural person, a fine not exceeding one million shillings or imprisonment for a term not exceeding five years, or both that fine and imprisonment; or
- (b) if the offender is a body corporate, a fine not exceeding five million shillings.

Production
orders in
relation to
foreign
offences
Act No.
7 of 2018
s.93
Cap. 254

61.-(1) Where a police officer is authorised in terms of the Mutual Assistance Act to apply to court for a production order under this Act in respect of a foreign serious offence, he may apply for an order and sections 63 and 64 shall, *mutatis mutandis*, apply in respect of the foreign serious offence.

(2) Where a police officer takes possession of a

document under a production order made in respect of a foreign serious offence, he may retain the document for a period of one month pending a written direction from the Attorney General as to the manner in which the document is to be dealt with, which may include a direction that the document be sent to an authority of the foreign country which requested obtaining of the production order.

(b) Search Powers

Powers to search for property-tracking document

62.-(1) A police officer may enter upon any land or into any premises and-

- (a) search the land or premises for any property-tracking document in relation to a serious offence; and
- (b) seize any document found in the course of the search which he believes, on reasonable grounds, to be a property- tracking document in relation to the serious offence.

(2) Entry by a police officer shall be made with the consent of the occupier of the land or premises or under a warrant issued in terms of section 68.

Disclosure of information about property Act No. 7 of 2018 s. 103

62A.-(1) An investigation officer may, by notice in writing, require any person under investigation or suspected to have committed a serious offence to furnish, within such time and in such manner as may be specified in the notice, a full and true account of all or any property which he-

- (a) possesses, controls, directs or is entitled to the benefit from; or
- (b) had in his possession, control, direction or was entitled to the benefit from.

(2) A person who is required to furnish information pursuant to the provisions of subsection (1) may, in addition to the requested information, provide details of the basis upon which he asserts that the property is not the benefit of criminal activity.

(3) A person responding to a request under subsection (1) shall provide the information requested to the

investigation officer within thirty days from the date of request unless he satisfies the investigation officer that more time is required to comply with the request.

(4) In any application for a confiscation order under this Act a response to a request under subsection (1) may be admitted in evidence to the confiscation proceedings.

(5) A person who in compliance with a request under subsection (1) gives false information commits an offence and upon conviction shall be dealt with in accordance to the provisions of section 122 of the Penal Code.

Cap. 16

Search warrant
for property-
tracking
document

63.-(1) Where a person has been convicted of, or is reasonably suspected of having committed, a serious offence, and a police officer has reasonable ground for suspecting that there is upon any land or upon or in any premises, a property-tracking document in relation to the offence, that police officer may apply to a court for a search warrant in respect of the land or premises and the court may subject to subsection (5), issue a search warrant authorising a police officer, with such assistance as is necessary-

- (a) to enter upon the land or into premises specified in the warrant to search for documents described in the warrant; and
- (b) to seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a property-tracking document.

(2) An application in terms of subsection (1) shall be supported by an affidavit setting out the grounds upon which the suspicion is based.

(3) Where, in an application for a warrant in terms of subsection (1), a police officer includes in the affidavit referred to in subsection (2) information that he has reasonable grounds to believe that the person concerned derived a benefit, directly or indirectly, from the commission of the offence and that the property specified in the affidavit is subject to the effective control of the person, the court may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in

relation to the offence for the purposes of this section.

(4) In determining, in terms of subsection (3), whether to treat a document as a property-tracking document in relation to an offence, the court may have regard to the matters referred to in subsection (2) of section 23.

(5) A search warrant shall not be issued in terms of this section unless the court is satisfied that-

- (a) the document concerned cannot be identified or described with sufficient particularity for the purposes of obtaining a production order;
- (b) a production order has been given in respect of the document and has not been complied with;
- (c) a production order is unlikely to be complied with;
- (d) the investigation for the purposes of which the search warrant is sought might be seriously prejudiced if the police officer does not gain immediate access to the document without notice to any person; and
- (e) there are reasonable grounds for issuing the warrant.

(6) The search warrant shall state-

- (a) the purpose for which it has been issued, including the nature of the serious offence which has been or is believed to have been committed;
- (b) the time during which entry is authorised;
- (c) a description of the kind of documents authorised to be seized; and
- (d) a date, being not later than thirty days after the date of issue of the warrant, on which the warrant shall cease to have effect.

(7) If, in the course of searching for a particular document in relation to an offence, a police officer finds—

- (a) another document which is not of the kind described in the warrant but which he believes, on reasonable grounds, to be a property-tracking document in relation to the offence concerned or a property-tracking document in relation to another serious offence; or

(b) anything that he believes, on reasonable grounds, will afford evidence as to the commission of an offence,

he may, if he believes on reasonable grounds that is necessary to seize the document or thing in order to prevent its concealment, loss or destruction, seize the document or thing.

Investigation
of bank
account
Act No
2 of 2007
s. 13

63A.-(1) Notwithstanding the provisions of any other written law, the Inspector General of Police may, where he considers that any evidence of the commission of serious offence, predicate offence or money laundering by a person is likely to be found in a bank account kept by that person, spouse or child or any person reasonably believed to be a trustee or agent of such person, and that procedure for obtaining an order of the court is likely to defeat the course for investigation, authorize in writing, any police officer of or above the rank in of Assistant Superintendent of Police, either alone or with any other officer, to investigate the bank account and such authorization shall be sufficient to warrant the production of the bank account for scrutiny by that police officer and such officer may take copies of any relevant entries from that account.

(2) Where in the course of investigation, it appears necessary that the bank account be held for a period exceeding seven days, the police officer referred to under subsection (1) shall be required to obtain leave of the court for continued holding of such bank account.

Cap 4
s.8

(3) Any person who, pursuant to the provisions of subsection (1), fails to produce a bank account when required to do so or obstruct a police officer from scrutinizing the bank account or taking copies of any relevant entries from that bank account commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine of not less than one million shillings or to both.

(4) In this section, “bank account” includes any ledger, log book, cash book and any other document used in the ordinary course or business by any person carrying on,

Cap 342 whether on his own behalf or as an agent for another, and whether exclusively or otherwise, any banking business whatsoever, whether or not such person is a bank within the meaning of Banking and Financial Institutions Act.

Placing under surveillance
Act No 2 of 2007
s. 13 **63B.** For the purposes of obtaining evidence in relations to serious offences, predicate offences or money laundering, a police officer of the rank of Assistant Superintendent of Police or above authorized as such be the Inspector-General of police or the Director of Criminal Investigations may with leave of the court-

- (a) have access to computer data systems, networks and services;
- (b) place under surveillance means of preservation of information including facsimile machines, electronic transmission and communication facilities;
- (c) make audio or video recording of acts and behaviors or conversations; and
- (d) have access to notarial and private deeds or financial institutions and commercial records.

Protection of investigators
Act No 2 of 2007
s. 13 **63C.** No punishment shall be imposed to any person investigating a serious offence, predicate offence or money laundering who, for the sole purpose of obtaining evidence, performs in the manner specified, acts which would rather be construed as elements constituting a serious offence, predicate offence or money laundering or a conspiracy or to commit a predicate offence or money laundering.

Leave of court
Act No 2 of 2007
s. 13 **63D.** For purposes of obtaining leave of the court pursuant to the provisions of sections 63A and 63B, it shall be sufficient for the Inspector General of Police or the Director of Criminal Investigation to file chamber application supported by affidavit whether or not there is a pending case in the court.

Search warrants in **64.-(1)** Where a police officer is authorised in terms of the Mutual Assistance Act, to apply to a court for a search

relation to
foreign
offences
Act No.
7 of 2018
s.93
Cap. 254

warrant under this Act for a property-tracking document in respect of a foreign serious offence, the police officer may apply for the warrant and section 63 shall, *mutatis mutandis*, apply in respect of the application.

(2) Where a police officer takes possession of a document under a warrant in respect of a foreign serious offence, he may retain it for a period not exceeding thirty days pending a written direction from the Director of Public Prosecutions as to the manner in which the document is to be dealt with, which may include a direction that the document is to be sent to an authority of the foreign country that requested the issue of the warrant.

(c) Monitoring Orders

Monitoring
orders
Act No.
7 of 2018
s.93

65.-(1) The Director of Public Prosecutions may apply to a court for a monitoring order directing a financial institution to give information to the Inspector-General of Police about financial transactions conducted through an account held by a particular person with that financial institution.

(2) A monitoring order shall apply in relation to financial transactions conducted during the period specified in the order.

(3) A court shall not make a monitoring order unless it is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought-

- (a) has committed or is reasonably suspected of having committed a serious offence;
- (b) was involved in the commission of or is reasonably suspected of having been involved in the commission of, a serious offence; or
- (c) has benefited, directly or indirectly, from the commission of a serious offence.

(4) A monitoring order shall specify the name or names in which the account is believed to be held and the type of information that the financial institution is required to give.

(5) Any financial institution which contravenes a monitoring order or provides false or misleading information commits an offence and is liable on conviction to a fine not exceeding one million shillings.

Existence and operation of monitoring order not to be disclosed

66.-(1) A financial institution that is or has been subject to a monitoring order shall not disclose the fact to any person except a legal practitioner for the purpose of obtaining legal advice or representation in relation to the order.

(2) The Inspector-General of Police shall not disclose to any person other than a member of the Police Force in the performance of his duties, the existence of a monitoring order.

(3) The Inspector-General of Police shall not be required by any court to disclose the existence of a monitoring order.

(4) Any person who contravenes this section commits an offence and liable to-

- (a) in the case of an individual, a fine not exceeding two hundred thousand shillings or to imprisonment for a period not exceeding ten years or to both that fine and imprisonment;
- (b) in the case of a body corporate, to a fine not exceeding one hundred thousand shillings.

Monitoring orders in relation to foreign offences Act No. 7 of 2018 s.93 Cap. 254

67.-(1) Where a police officer is authorised in terms of the Mutual Assistance Act, to apply to a court for a monitoring order under this Act in respect of a foreign serious offence, section 66 shall, mutatis mutandis, apply in respect of the foreign serious offence.

(2) Where the Inspector-General of Police is informed pursuant to a monitoring order made in relation to a foreign serious offence, he shall forthwith pass the information on to the Director of Public Prosecutions .

(d) Obligations of Financial Institutions

Repealed

68. [Repealed by Act No. 2 of 2007, s.14]

Repealed **69.** [Repealed by Act No. 2 of 2007, s.15]

Repealed **70.** [Repealed by Act No. 2 of 2007, s.16]

**PART VII
MISCELLANEOUS PROVISIONS**

Obstruction of
justice
prohibited
Act No.
2 of 2007
s.17

71. Any person who uses physical force, threat, intimidation, promises, offers or gives an undue advantage in order to-

- (a) induce false testimony;
- (b) interfere with the giving of testimony or the production of evidence in a proceeding; or
- (c) interfere with the exercise of official duties by a magistrate, judge, public prosecutor, state attorney or any law enforcement official in relation to the commission of offences under this Act,

commits an offence and shall, on conviction, be liable to imprisonment for a term of not less than five years.

Prohibition in
dealing in
tainted
property
Act No.
7 of 2018
s.93

72.-(1) No person shall acquire, hold or in any other way deal in any tainted property.

(2) Any tainted property in relation to a foreign serious offence acquired, held or dealt with in contravention of this section shall be liable to be forfeited to the United Republic by order of the High Court on application by the Director of Public Prosecutions.

Conduct of
directors,
officers,
employees or
agents

73.-(1) For the purposes of this Act, where it is necessary to establish the state of mind of a body corporate in respect of conduct engaged in or deemed, in terms of subsection (2), to have been engaged in, by the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in the course of his employment, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate by-

- (a) a director, officer, employee or agent of the corporate body in the course of his employment; or
- (b) any other person at the direction or with the consent, whether express or implied, of a director, employee or agent of the body corporate, where the giving of the direction or consent is within the scope of authority of the director, officer, employee or agent,

shall, for the purposes of this Act, be deemed to have been engaged in by the body corporate.

(3) Any conduct engaged in on behalf of a person other than a body corporate by-

- (a) an employee or agent of the person within the scope of his authority; or
- (b) any other person at the direction or with the consent, whether express or implied, of an employee or agent of the first- mentioned person, where the giving of the direction or consent is within the scope of authority of the employee or agent,

shall, for the purposes of this Act, be deemed to have been engaged in by the first-mentioned person.

(4) Where it is necessary to establish the state of mind of a person in relation to conduct deemed in terms of subsection (3) to have been engaged in by that person, it shall be sufficient to show that the employee or agent of that person, being an employee or agent by whom the conduct was engaged in within the scope of his authority, had that state of mind.

(5) Any reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of that person and that person's reasons for that intention, opinion, belief or purpose.

Dealings with
forfeited

74.-(1) A person who knows that a forfeiture order has been made in respect of registrable property shall not,

property unless the forfeiture order has been discharged, disposed of, or otherwise deal with the property before the interest of the United Republic has been registered in the appropriate register.

(2) A person who contravenes or fails or refuses to comply with subsection (1) shall commits an offence and is liable on conviction-

- (a) if he is an individual to a fine not exceeding two hundred thousand shillings or imprisonment for a period not exceeding five years or to both the fine and imprisonment;
- (b) if the person is a body corporate, to a fine not exceeding five million shillings.

Standard of proof **75.** Subject to section 12, any question of fact to be decided by a court on an application under this Act shall be decided on a balance of probabilities.

Appeals Act No. 7 of 2018 s. 104 **76.**-(1) Any person aggrieved by the order of the Court made under this Act may appeal against that order.

(2) Where an appeal is preferred under subsection (1), the execution of the order shall be stayed until the appeal is determined.

Cap.20 (3) The appeals under this Act shall be governed by the provisions of the Criminal Procedure Act..

Costs **77.** Where a person brings, or appears at, proceedings under this Act before a court in order to-

- (a) prevent a forfeiture order or restraining order from being made against his property; or
- (b) to have his property excluded from a forfeiture order or restraining order,

if he is successful in those proceedings, and the court is satisfied that that person was not involved in any way in the commission of the offence in respect of which the forfeiture order or restraining order was sought or made, then the court may order the Government to pay all costs incurred by that person in connection with the proceedings or such part of these costs as is determined by the court.

Operation of
other laws not
affected

78. Nothing in this Act shall be taken as limiting or restricting-

- (a) the operation of any law of the United Republic or of the Revolutionary Government of Zanzibar providing for the forfeiture of property or the imposition of pecuniary penalties; or
- (b) the remedies available to the Government, apart from this Act, for the enforcement of its rights and the protection of its interests.

Regulations

79. The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and prescribing matters which are-

- (a) required or permitted by this Act to be prescribed;
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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THE UNITED REPUBLIC OF TANZANIA



CHAPTER 103

THE PUBLIC PRIVATE PARTNERSHIP ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of the Public Private Partnership Act, Chapter 103, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

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CHAPTER 103

THE PUBLIC PRIVATE PARTNERSHIP ACT

An Act to provide for the institutional framework for the implementation of public private partnership agreements between the public sector and private sector entities; to set rules, guidelines and procedures governing public private partnership procurement, development and implementation of public private partnerships and to provide for other related matters.

[26th May, 2011]
[G.N. No156A of 2011]

Acts Nos.
18 of 2010
3 of 2014
9 of 2018
GN. No.
483 of 2018

**PART I
PRELIMINARY PROVISIONS**

- Short title **1.** This Act may be cited as the Public Private Partnership Act.
- Application **2.** This Act shall apply to Mainland Tanzania in respect of projects undertaken in partnership between the public sector and private sector.
- Interpretation
Acts Nos.
3 of 2014
s.2
9 of 2018
s.2 **3.** In this Act, unless the context otherwise requires:
"accounting officer" means a Permanent Secretary or a Chief Executive of a Contracting authority and includes account in g officers of a local government authority;

"affordable" in relation to an agreement, means that the contracting party shall meet any financial commitment to be incurred in relation to that agreement;

"agreement" means a public private partnership agreement entered into in terms of this Act;

"asset" includes an existing asset of a relevant Contracting authority or a new asset to be acquired for the purposes of entering into an agreement;

"contingent liability" means a legal or contractual obligation to make payment depending on the outcome of uncertain future event arising from project transaction including all other contingent liabilities that may be borne by the Government in relation to or associated with public private partnership projects;

"contracting authority" means any Ministry, government department or agency, local government authority, public or statutory corporation;

"Executive Director" means the Executive Director for the PPP Centre appointed under section 6;

"Facilitation Fund" means the Public Private Partnership Facilitation Fund established under section 10A;

Caps. 287 and
288

"local government authorities" shall have the meaning ascribed to it under the Local Government (District Authorities) Act and the Local Government (Urban Authorities Act);

"Minister" means the Minister responsible for public private partnership;

"Ministry" means the Ministry responsible for public private partnership;

"PPP agreement" means a written contract defining terms of the public private partnership agreement concluded between a contracting authority and one or more private parties;

"PPP Centre" means the Public Private Partnership Centre established under section 4;

"private party" in relation to an agreement, means a party to the agreement other than a Contracting authority;

"project" means a project or service to be implemented under an agreement entered into under this Act;

"private sector" means a sector other than a public sector including non-profit making non-governmental organisations;

"public private partnership" or known in its acronym as "PPP" means a contractual arrangement between a contracting authority and a private party in which the private party-

- (a) undertakes to perform for contracting authority function on behalf of the contracting authority for a specified period;
- (b) assumes substantial financial, technical and operation risks in connection with the performance on behalf of the contracting authority function or use of government property; or
- (c) receives a benefit for performing on behalf of contracting authority function or from utilizing the public property, either by way of:
 - (i) consideration to be paid by the contracting authority which derives from a revenue fund, or where the contracting authority is a central government or local government authority, from revenues of such authority;
 - (ii) charges or fees to be collected by a private party or its agent from users or customers; or
 - (iii) a combination of such consideration and such charges or fees;

"Public Private Partnership Steering Committee" means the Private Public Partnership Steering Committee established under section 7;

"public sector" means a government ministry, department or agency, local government authority and any other person acting on behalf of the government ministry, department or agency or local government authority;

"request for proposals " means the specific terms of the project requirement, the procedures for submission of bids, the criteria for the evaluation of bids and includes a model agreement;

"sector Ministry" means a ministry responsible for the Contracting authority;

“small scale PPP project” means a PPP project approved under this Act of an amount not exceeding twenty million US dollars.

PART II
ESTABLISHMENT AND ADMINISTRATION OF THE PPP
CENTRE

PPP Centre
Acts Nos.
3 of 2014
s.4
9 of 2018
s.4
GN. No
483 of 2018

4.-(1) There is established a PPP Centre to be known as the Public Private Partnerships Centre.

(2) There shall be such other number of departments as the Executive Director may, upon approval of the authority responsible for establishment in the public service, determine.

(3) The centre shall be a body corporate with perpetual succession and common seal and shall, in its own name, be capable of-

- (a) acquiring and holding movable property, to dispose of property and to enter into a contract or other transactions;
- (b) suing and being sued; and
- (c) doing or suffering to do all other acts and things which bodies corporate may lawfully do or suffer to do, for the proper performance of its functions under this Act.

(4) The PPP Centre shall deal with promotion and co-ordination of all matters relating to public private partnership projects

(5) The projects referred to under subsection (4) shall, subject to subsections (6) and (7), be undertaken in productive and social sectors, including but not limited to the

following sectors:

- (a) agriculture;
- (b) infrastructure;
- (c) industry and manufacturing;
- (d) exploration and mining;
- (e) education;
- (f) health;
- (g) environment and waste management;
- (h) information and communication technology (ICT);
- (i) trade and marketing;
- (j) sports, entertainment and recreation
- (k) natural resources and tourism; and
- (l) energy.

(6) Every contracting authority shall, at the beginning of every budget cycle, submit to the PPP Centre concept note and prefeasibility study of potential public private partnership projects:

Provided that-

- (a) the potential public private partnership project complies with the national development priorities; and
- (b) the concept note and prefeasibility study of potential public private partnership projects is approved by the respective Minister.

(6A) The PPP Centre shall, within twenty one working days, analyse the potential public private partnership project received in terms of subsection (6) and forward to the Public Private Partnership Steering Committee.

(7) For the purposes of subsection (6), the Minister shall, at least two months before the beginning of the financial year, ask each contracting authority to submit to the PPP Centre a concept note and prefeasibility study of potential public private partnership projects.

(8) In this section, the term “budget cycle” shall have the meaning ascribed to it under the Budget Act.

Functions of
PPP Centre
Acts Nos.
3 of 2014
s.5
9 of 2018
s. 5

- 5.-**(1) The functions of the PPP Centre shall be to-
- (a) mobilize resources for project development and Government support to public private partnership projects;
 - (b) develop a mechanism to ensure that all ministries, Government departments and agencies and local government authorities integrate public private partnership into their sector strategies and plans;
 - (c) develop operational guidelines for contracting authorities;
 - (d) design and implement a fair, transparent, competitive and cost effective procurement process;
 - (e) deal with fiscal risk allocation and other financial matters of all public private partnership projects;
 - (f) advise contracting authorities on all matters relating to public private partnership projects;
 - (g) provide technical assistance to ministries, Government departments, agencies, local government authorities and private sector in planning, managing and appraising public private partnership projects;
 - (h) examine requests for proposals to ensure conformity with the approved feasibility study;
 - (i) monitor, review and evaluate implementation of Public Private Partnership Facilitation Fund;
 - (j) ensure relevance and adequacy of proposals submitted to it by contracting authorities;
 - (k) monitor and evaluate the performance of the public private partnership projects and prepare periodic performance reports;
 - (l) design and implement programmes for public private partnership capacity building to public and private sectors;

(m) develop and implement programmes intended to promote public awareness on public private partnership issues; and

(n) undertake research on public private partnership matters.

(2) Without prejudice to the generality of subsection (1), the PPP Centre shall analyse projects submitted by contracting authorities within thirty working days from the date of receipt.

(3) The PPP Centre shall, upon completion of analysis under subsection (2), submit the feasibility study, selection of preferred bidder and PPP agreements to the Public Private Partnership Steering Committee for approval.

(4) The PPP centre be a One Stop Center, and in so being, it shall, for effective discharge of its functions seek recommendations from the Ministries responsible for investment, finance, planning or any other ministry, department or agency.

(5) Nothing in this section shall prevent the contracting authorities from undertaking necessary technical analysis relevant for project within their jurisdiction.

(6) The Minister shall, for the purpose of ensuring investment in PPP projects and in consultation with the Minister responsible for investment, prepare programmes for development and maintenance of favourable environment for investment through public private partnership arrangement.

Executive
Director
Act No.
3 of 2014
S.6
Cap.298

6.-(1) The PPP Centre shall be headed by a Executive Director who shall be appointed on competitive basis in accordance with the Public Service Act.

(2) A person shall be qualified for appointment as Executive Director if that person-

(a) possesses at least a degree in the field of project management, accounting, law, engineering, economics or other related fields; and

(b) has knowledge and experience on the development, formation or implementation of projects or undertakings of a public or private

nature.

(3) There shall be appointed to the PPP Centre such persons who are qualified and possess knowledge and experience on the formation, development or implementation of projects or undertakings of a public or private nature.

(4) The appointment of persons to the PPP Centre shall be made on competitive basis in accordance with the Public Service Act.

Public Private
Partnership
Steering
Committee
Acts Nos.
3 of 2014
s.7
9 of 2018
s. 6

7.-(1) There shall be a Public Private Partnership Steering Committee comprised of -

- (a) the Permanent Secretary of the Ministry who shall be the Chairman;
- (b) the Permanent Secretary Prime Minister's office;
- (c) the Permanent Secretary of the Ministry responsible for lands;
- (d) the Deputy Attorney General;
- (e) a representative of authority responsible for national planning;
- (f) the Executive Director of the Tanzania Investment Centre;
- (g) the Executive Director of the Tanzania Private Sector Foundation;
- (h) the Commissioner General of Tanzania Revenue Authority;
- (i) the Permanent Secretary, Ministry responsible for Local Government;
- (j) two persons from private sector nominated by the Minister on recommendation of Tanzania Private Sector Foundation.

(2) The Permanent Secretary of the sector Ministry whose project is the subject of deliberation shall attend meetings of the Public Private Partnership Steering Committee.

(3) The Public Private Partnership Steering Committee may co-opt any other person who has knowledge and experience in the subject matter of the deliberation.

(4) The Executive Director shall be the Secretary to the Public Private Partnership Steering Committee.

(5) The Public Private Partnership Steering Committee shall meet at least once in every three months.

(6) Notwithstanding subsection (5), the Public Partnership Steering Committee may meet as often as it may be necessary for effective discharge of its functions.

Functions of
Public Private
Partnership
Steering
Committee
Acts Nos.
3 of 2014
s.8
9 of 2018
s. 7

7A.-(1) The functions of the Public Private Partnership Steering Committee shall be to-

- (a) review policy, legislation, plans and strategies pertaining to the promotion, facilitation and development of public private partnership and to advise the Minister accordingly;
- (b) advise the Minister on matters relating to implementation of the National Public Private Partnership Programme;
- (c) approve feasibility study, detailed project report and design, selection of preferred bidder, public private partnership agreement or any amendment to the agreement;
- (d) approve allocation of project development funds from the Facilitation Fund; and
- (e) assign to contracting authorities terms and conditions for utilisation of the Facilitation Fund.

(2) Subject to the recommendation made by the PPP Centre, the Public Private Partnership Steering Committee shall, within twenty one working days, approve feasibility studies, detailed project report and design, selection of preferred bidder, agreements and amendment to agreements.

(3) Subject to the recommendation made by the PPP Centre, the Public Private Partnership Steering Committee shall approve feasibility studies, selection of preferred bidder agreements and amendment to agreements.

Public funding and other support of PPP project Act No. 9 of 2018 s. 8

7B.-(1) Notwithstanding the provisions of section 7A, the Public Private Steering Committee shall, where a project requires public funding, any other government support or determination of matters of policy, refer the matter to the Minister for determination.

(2) The Minister shall, within twenty one working days from the date of receipt of matters from the Public Private Partnership Steering Committee in terms of subsection (1)-

Cap. 134

(a) in the case of matters requiring public funding, process the matter in the manner prescribed under the Government Loans, Guarantees and Grants Act;

(b) in the case of matters requiring any government support or determination of matters of policy, make determination and direct the Public Private Partnership Steering Committee accordingly.

(3) Notwithstanding subsection (2), the Minister shall, where a matter has not been determined within twenty one working days, notify the Public Private Partnership Steering Committee with reasons thereof.

Powers of Minister generally Act No. 9 of 2018 s. 9

7C.-(1) The Minister shall, through the official *Gazette*, newspaper of wide circulation or public media, notify the general public of all approved projects under this Act.

(2) The Minister shall monitor and manage fiscal risks and other financial matters relating to the implementation of PPP projects in accordance with the respective agreement.

(3) Subject to the provisions of this Act, the Minister shall issue directives to accounting officers of contracting authorities on the analysis and approval or disapproval of small scale PPP projects.

**PART III
PARTICIPATION OF THE PUBLIC AND PRIVATE PARTY**

Roles of Public
and Private
sector

8.-(1) The public sector shall facilitate the implementation of the public private partnership projects by:

- (a) identifying projects;
- (b) carrying out feasibility studies;
- (c) monitoring and evaluation;
- (d) risk sharing; and
- (e) putting in place an appropriate enabling environment, including:
 - (i) favourable policies;
 - (ii) implementation strategies;
 - (iii) the legal and institutional framework.

(2) The private sector, shall play the role of identifying and implementing public private partnership projects by:

- (a) carrying out feasibility studies;
- (b) mobilizing resources;
- (c) risk sharing;
- (d) monitoring and evaluation; and
- (e) providing technical expertise and managerial skills.

(3) The public sector and private sector shall, have the duty to prepare a communication strategy for awareness creation and consensus building for acceptance by all stakeholders of public private partnerships and their outcomes benefits and associated costs and risks.

Responsibilities of
contracting
authority
Act No.
3 of 2014
s.9

9.-(1) The contracting authority shall for the purpose of this Act:

- (a) identify, appraise, develop, manage and monitor a project to be implemented under this Act;

- (b) undertake or cause to be undertaken a feasibility study where it considers that the project is suitable for implementation under an agreement; and
- (c) submit the proposed project together with the feasibility study to the PPP Centre for consideration.

(2) The contracting authority shall make consultation with the relevant regulatory authorities prior to submission of feasibility study of the proposed project to the PPP Centre.

(3) Sections 7A and 7B shall not be construed as removing or abrogating powers of the contracting authority or accounting officer for assuming overall responsibility on matters assigned to it under this section.

Feasibility
Study
Act No.
9 of 2018
s. 10

10.-(1) Every contracting authority shall undertake or cause to be undertaken a feasibility study where it considers that a project may be implemented under Public Private Partnership agreement for purposes of assessing whether the proposed project is feasible.

- (2) The feasibility study shall:
 - (a) identify and define the activity which the Government intends to outsource from a private party;
 - (b) assess the projected impact of intended outsourcing of the activity to a private party on the staff, assets, liabilities and revenues of the Government;
 - (c) assess the need for the Government in relation to such activity including:
 - (i) options available to the Government to satisfy those needs;
 - (ii) the advantages and disadvantages of each option;
 - (d) demonstrate comparative advantage in terms of strategic and operational benefits for

implementation under the agreement;

- (e) describe, in specific terms:
 - (i) the nature of the contracting authority's functions, the specific functions to be considered in relation to the project and the expected inputs and deliverables;
 - (ii) the extent to which those functions can lawfully and effectively be performed by a private party in terms of an agreement;
- (f) demonstrate that the agreement shall:
 - (i) be affordable to the Contracting authority;
 - (ii) provide value for money;
 - (iii) transfer appropriate technical, operational or financial risks to the private party;
- (g) assess the capacity of the contracting authority to effectively implement the agreement, including the ability to monitor and regulate project implementation and the performance of the private party in terms of the agreement; and
- (h) assess the capacity, resources and ability of the private party to implement the project.

(3) For the purposes of subsection (2), the feasibility study shall include technical and socio-economic impact analysis.

(4) The assessment under paragraph (c) of subsection (2) shall indicate comparative projections of:

- (a) the full costs to the Government or the activity if that activity is not outsourced through Public Private Partnership agreement; and
- (b) the full costs to the Government for the activity if that activity is outsourced through a Public Private Partnership agreement.

(5) Without prejudice to the provisions of subsection (2), the Minister may, by regulations, prescribe additional or detailed contents of a concept note and feasibility study as may be required under a PPP project.

Cap. 191

(6) Where the project which is to be undertaken is of such a nature or type for which an environmental impact assessment is required under Part VI of the Environmental Management Act, to be carried on, the contracting authority shall ensure that the environmental impact assessment certificate is obtained by the private party before undertaking the project.

Facilitation Fund
Acts Nos.
3 of 2014
s.10
9 of 2018
s. 11

10A.-(1) There shall be a Facilitation Fund to be known as the Public Private Partnership Facilitation Fund.

(2) The PPP Centre shall open a bank account into which shall be kept all moneys constituting the Facilitation Fund.

(3) The Executive Director shall be the accounting officer of the Facilitation Fund.

(4) The use of funds from the Facilitation Fund shall require approval of the Public Private Partnership Steering Committee.

Sources of funds
Acts Nos.
3 of 2014
s.10
9 of 2018
s. 2

10B.-(1) The sources of funds of the Facilitation Fund shall be such sums of moneys appropriated by Parliament for that purpose, and any other funds mobilized from any of following sources –

- (a) development partners, public entities, parastatal organizations and social security funds; and
- (b) funds previously advanced to contracting authorities wholly or partially recovered by the Facilitation Fund in accordance with agreements for project support.

(2) Upon approval by the Public Private Partnership Steering Committee, the Facilitation Fund shall be used for-

- (a) financing wholly or partly the feasibility studies and other project preparation costs as may be required by a contracting authority;
- (b) providing resources to enhance the viability of projects which have high economics benefits

that have demonstrated to be of limited financial viability; and

(c) any such other purposes as may be prescribed in the regulations.

(3) The provisions of subsection (2) shall not be construed as limiting or preventing contracting authorities from using own funds to finance feasibility studies and other project preparation costs.

Books of accounts, records and annual reports
Act No. 3 of 2014
s.10

10C.-(1) The PPP Centre shall keep books of accounts and maintain proper records of operations of the Facilitation Fund in accordance with acceptable accounting standards.

(2) The PPP Centre shall, at any time, and at the end of each financial year, have the accounts of the Fund audited by the Controller and Auditor General.

(3) The PPP Centre shall submit to the Minister audited report and annual report containing detailed information regarding activities of the Facilitation Fund during the previous year ending on the 30th June.

(4) The Minister shall cause to be tabled to the National Assembly statement of audited accounts and report of the PPP Centre.

(5) The Minister shall prepare and submit to the Cabinet annual report on implementation of the Public Private Partnership programme.

Agreement
Act No. 3 of 2014
s.11

11.-(1) Notwithstanding the provisions of any other written laws, a contracting authority may enter into an agreement with a private party for the performance of one or more of the functions of that contracting authority.

(2) For the purposes of subsection (1), the accounting officer of a contracting authority shall, for the purposes of advising the Minister responsible for contracting authority, form a multi disciplinary negotiating team possessing knowledge, skills and experience on the subject matter of the proposed project.

(3) Without prejudice to subsection (2), the negotiating shall ensure that the agreement is made in writing and-

- (a) specifies the responsibilities of the contracting of authority and the private party;
- (b) specifies the relevant financial terms;
- (c) ensures for the management of performance of the private party;
- (d) provides for undertaking by the Contracting authority to the private party in obtaining licences and permits which may be necessary for the implementation of the project;
- (e) provides for the return of assets, if any, to the contracting authority, at the termination or expiry of the agreement;
- (f) specifies the roles and risks undertaken by either party;
- (g) provides for the payment to the private party, by way of compensation from a revenue fund of charges or fees collected by the private party from users or customers of the service provided by it;
- (h) specifies payment of the private party to the contracting authority;
- (i) provides for remedies in the event of default by either party;
- (j) imposes financial management duties on part of the private party, including procedures relating to internal financial control, budgeting, transparency, accountability and reporting;
- (k) provides for the termination of the agreement in case of breach of terms and conditions by either party;
- (l) provides for the conditions for the provision of service, where necessary;
- (m) provides for the period of execution; and
- (n) contains such other information as may be necessary.

(4) Without prejudice to the provisions of subsection (3), the agreement shall contain conditions that ensures that:

- (a) the private party undertakes to perform a contracting authority's function on behalf of the contracting authority for a specified period;
- (b) the private party is liable for the risks arising from the performance of its functions;
- (c) the environmental impact assessment certificate has been issued in respect of the project;
- (d) government facilities, equipment or other state resources which are necessary for the project and are transferred or made available to the private party on a timely basis; and
- (e) the public and private assets are clearly specified.

(5) Every agreement entered into under this Act shall be governed and construed in accordance with the laws of Mainland Tanzania.

(6) The rights, obligation and controlling interests of the private party in any project performed under the agreement shall not be transferred or assigned to a third party without the prior written consent of the contracting authority.

(7) The contracting authority shall ensure that an agreement involving public private partnership project is executed under procedures stipulated and through institutions specified under this Act.

Land
acquisition
Caps.
113, 114,
I 16 and
118

12. Where the project requires acquisition of land for its implementation, the acquisition shall be carried out in accordance with the Land Act, the Village Land Act, the Land Use Planning Act, the Land Acquisition Act and any other relevant laws.

Duration and extension of agreement

13.-(1) The duration of an agreement shall be provided for in the agreement and shall not be extended unless:

- (a) there is a delay in completion or interruption of operations due to circumstances beyond any party's control;
- (b) there was an increase in costs arising from requirements of the Co-ordination Unit or contracting authority which were not foreseen or included in the agreement; and
- (c) the service is required and the contracting authority has no capacity or immediate intention to take over and run the project.

(2) A violation of the provisions of subsection (1) by either of the parties to an agreement shall render a defaulting party liable for any pecuniary loss incurred by the other party.

Vetting of agreements

14. Every agreement intended to be entered into under this Act shall be submitted to the Office of the Attorney General for a legal opinion.

Procurement process Acts Nos. 3 of 2014 s.12 9 of 2018 s. 12

15.-(1) All public private partnership projects under this Act shall be procured through an open and competitive bidding process.

(2) Notwithstanding subsection (1), the Minister may exempt procurement of an unsolicited project from competitive bidding process where it meets the following criteria:

- (a) the project shall be of priority to the Government at the particular time and broadly consistent with the government strategic objectives;
- (b) the private proponent does not require Government guarantee or any form of financial support from the Government;

- (c) the project shall have unique attributes that justify departing from a competitive tender process;
 - (d) the project is of significant size, scope and requires substantial financing as per conditions provided in the regulations;
 - (e) the project shall demonstrate value for money, affordability and shall transfer significant risks to the private proponent;
 - (f) the project has wide social economic benefits including improved services, employment and taxation; and
 - (g) the proponent commits to bear cost of undertaking a feasibility study.
- (3) Upon approval of project concept for unsolicited proposals, the private proponent shall make a commitment to undertake the project by depositing a refundable amount of not exceeding three percent of the estimated cost of the project to be conducted.
- (4) The Minister may make regulations prescribing procedure for deposit and refund of commitment deposits under subsection (3)
- (5) All solicited and unsolicited projects shall be procured in a manner prescribed in the regulations made under this Act.
- (6) The regulations under this section, shall among other things, prescribe the following-
- (a) inclusion of local firms and experts in consultancy contracts;
 - (b) use of local goods and experts in works and non-consultancy services;
 - (c) preference to local goods in process of evaluation;
 - (d) capacity building of local firms; and
 - (e) any other matter relating to empowerment of local company and Tanzanian citizens.

Unsolicited
bids
Act No.
3 of 2014
s.13

16.-(1) The private party shall undertake a feasibility study in respect of unsolicited project proposals and submit the feasibility study to the relevant contracting authority.

(2) The feasibility study undertaken under subsection (1) shall take into consideration technical, financial, social environmental impact, economic or any other relevant issues as may be required under this Act.

(3) Without prejudice to the generality of subsection (2), the feasibility study of unsolicited project proposal shall:

- (a) specify the proposed project activities;
- (b) prescribe environmental issues;
- (c) explain the significance and benefits of the proposed project to the government; and
- (d) explain the financial capacity and ability of the private party in the implementation and management of the proposed project.

(4) The Minister shall make regulations prescribing procedures for handling public private partnership project proposals initiated through unsolicited bids under this Act.

Project officers

17.-(1) As soon as a contracting authority initiates a project that may be a public private partnership, the accounting officer shall appoint a person with appropriate skills and experience, either from within or outside the contracting authority, as a project officer for the project.

- (2) The project officer shall be responsible for:
- (a) assisting the accounting officer in monitoring the performance of the private party and ensure that the agreement is properly implemented; and
 - (b) any other duties or powers delegated to him by the accounting officer under this Act.

Signing of
Agreements
Acts Nos.
3 of 2014
s.14
9 of 2018
s. 12

18.-(1) The agreements entered into under this Act shall be signed by the accounting officer of the relevant contracting authority after it has been considered and approved by the Public Private Partnership Steering Committee and vetted by the Office of the Attorney General.

(2) The accounting officer shall sign an agreement upon fully satisfying himself that the agreement has complied with the provisions of this Act and any other relevant laws.

(3) Any person who contravenes any provision of this section commits an offence.

Responsibilities
of accounting
officers

19. The accounting officer who has entered into an agreement shall in addition to any other responsibilities under this Act, take all necessary and reasonable steps to ensure that:

- (a) the outsourced activity is effectively and efficiently carried out in accordance with the agreement;
- (b) any public property which is placed under the control of the private party, in terms of the agreement, is appropriately protected against forfeiture, theft, loss, wastage and misuse; and
- (c) the Contracting authority has adequate contract management and monitoring capacity.

Amendment of
Agreements
Act No.
9 of 2018
s.13

20. Subject to section 7B, an agreement may be reviewed and amended by parties if the review or amendment is consented to by the Public Private Partnership Steering Committee and vetted by the Attorney General.

Enjoyment of
benefits

21.-(1) A project undertaken in accordance with the provisions of this Act which ought to qualify for benefits granted to similar investment under the Tanzania

Cap 38

Investment Act, shall be entitled to such benefits granted under that Act.

(2) The benefits referred to under subsection (1) shall not apply to tax incentives.

Dispute
resolutions
Act No.
9 of 2018
s. 14

22. Any dispute arising during the course of the agreement shall-

- (a) be resolved through negotiation; or
- (b) in the case of mediation or arbitration, be adjudicated by judicial bodies or other organs established in the United Republic and in accordance with laws of Tanzania.

PART IV MISCELLANEOUS PROVISIONS

Monitoring
and evaluation

23.-(1) All public private partnership projects under this Act shall be monitored by the Ministry, Sector Ministries, Government Departments; Agencies or local government authorities under which they are carried out.

(2) The purpose of monitoring under sub-section (1) shall be to incorporate coherent oversight and regular review mechanisms that would include:

- (a) measurable performance targets;
- (b) meaningful incentives and rewards; and
- (c) effective penalties.

(3) The Ministry, sector ministry, Department, Agency or local government authority shall, as much as practicable, involve other relevant stakeholders for better implementation and conduct of monitoring and evaluation.

Periodic
performance
reports
Act No.
9 of 2018
s. 15

23A.-(1) An accounting officer shall submit to the PPP Centre mid-year performance report on the implementation of public private partnership projects in the manner prescribed in the Regulations.

(2) The PPP Centre shall consolidate mid-year performance reports of contracting authorities and submit the report to the Minister.

Conflict of
Interest
Acts Nos.
3 of 2014
s.16
9 of 2018
s. 2
Cap 4
s.8

24.-(1) Where a member of the Public Private Partnership Steering Committee, an officer of the PPP Centre or the contracting authority has any pecuniary interest, direct or indirect, in any project, proposed project or other matter, and is involved or participating in a process at which the project, proposed project or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of that process, disclose that fact and shall not take part in or be present at the consideration or discussion of, or involved in any question relating to the project, proposed project or that other matter.

(2) Subject to this subsection, for the purposes of this section a person shall be treated as having direct or indirect pecuniary interest in a project or other matter, if:

(a) he or his nominee is a member of a company or other body, or is the holder of shares or debentures in a company with which the project is made or proposed to be made or he has a direct or indirect pecuniary interest in the project, proposed project or matter under consideration; or

(b) he is a partner or in the employment of a person with whom the project is made or proposed to be made or who has a direct or indirect pecuniary interest in the project, proposed project or other matter under consideration.

(3) In this section a direct or indirect interest of a spouse or any members of the family of an officer of the PPP Centre or the contracting authority shall, if known to that officer, be deemed to be a direct or indirect interest of the officer of the PPP Centre or the contracting authority.

(4) A person who contravenes the provision of this section, commits an offence.

Empowerment
of citizens
Cap. 386

25. Public private partnerships agreements shall endeavour to provide opportunity for empowerment of the

citizens of Tanzania as provided for under the National Economic Empowerment Act.

Projects relating to natural wealth and resources Acts Nos 5 of 2017 6 of 2017 9 of 2018 s. 16

25A. The public private partnership project that relates to natural wealth and resources shall take into account the provisions of the Natural Wealth and Resources (Permanent Sovereignty) Act and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act.

Duty to take care and exercise due diligence

26. Every public officer performing any functions, discharging any duty or exercising any power under this Act or any other written law related to a public private partnership shall be under the obligation to take reasonable care and exercise due diligence in the performance of the functions and discharge of duties and exercise of powers in accordance with the provisions of this Act and any other relevant laws.

General penalty Act No. 9 of 2018 s.16

27. Any person who commits an offence under this Act to which no specific penalty is prescribed shall be liable to a fine not less than five million shillings and not exceeding fifty million shillings or to imprisonment for a term of not less than three months and not exceeding three years or both.

Regulations Act No. 3 of 2014 s.17 9 of 2018 s.17

28.-(1) The Minister may make regulations for better carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the Minister may make regulations prescribing:

- (a) levying of fees and charges;
- (b) investment opportunities and promotion;
- (c) functions of local government authorities under this Act and clear linkages of roles between the implementing ministries and appropriate bodies at the local government;

- (d) evaluation, operation and management of projects under this Act;
 - (e) the management of, and terms and conditions for accessing the Facilitation Fund;
 - (f) procedures for procurement of private parties and matters incidental thereto;
 - (g) the manner in which the empowerment of citizens of Tanzania may be implemented including provision of goods and services by Tanzanian entrepreneurs, training and technology transfer, employment of Tanzanians and corporate social responsibility;
 - (h) process and procedure for scrutiny and analysis of projects that require provision of Government support;
 - (i) the manner in which the Empowerment of the citizens of Tanzania may be implemented; and
 - (j) any other matter in the promotion and furtherance of objectives of this Act.
- (3) Notwithstanding the provisions of subsections (1) and (2), the Minister may make rules and guidelines for the better implementation of this Act.

Saving provisions

29. All existing agreements or memoranda of understanding entered into by any contracting authority with the private party before the commencement of this Act, shall not be affected by the coming into force of this Act.

THE UNITED REPUBLIC OF TANZANIA



CHAPTER 114

THE VILLAGE LAND ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2018

This Edition of The Village Land Act, Chapter 114, has been revised up to and including 31st October, 2018 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
30th October, 2018

ADELARDUS L. KILANGI
Attorney General

CHAPTER 114

THE VILLAGE LAND ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 114

THE VILLAGE LAND ACT

An Act to provide for the management and administration of land in villages, and for related matters.

[1st MAY, 2001]
[G.N. No. 486 of 2001]

Acts Nos.
5 of 1999
2 of 2010

**PART I
PRELIMINARY PROVISIONS**

Short title	1. This Act may be cited as the Village Land Act.
Interpretation	2. In this Act, unless the context otherwise requires— "adjudication officer" means a person appointed to be an adjudication officer under section 56 of this Act; "certificate of approval to a derivative right" means a certificate granted under section 31 of this Act; "certificate of customary right of occupancy" means a certificate issued under section 29 of the Land Act; "certificate of village land" means a certificate issued under section 7 of this Act;
Cap 113	"Commissioner" means the Commissioner of Lands appointed under section 9 of the Land Act ;
Cap. 113	"communal right of way" has the meaning ascribed to it by section 157 of the Land Act;
Cap. 113	"communal village land" has the meaning ascribed to it by section 13 of this Act;
Cap. 2	"Constitution" means the Constitution of the United Republic of Tanzania;
Act No. 2 of 2010 s.35	"Court" means the Court established under section 167 of the Land Act to hear and determine land disputes and includes the Ward Tribunals, the Village Land Council, the District Land and Housing Tribunal, and the High Court;

- Cap. 1 "customary law" has the meaning ascribed to it by the Interpretation of Laws Act;
- "customary lease" means a lease the mode of creation and incidents of which including its termination are governed by customary law;
- "customary mortgage" means a mortgage the mode of creation and incidents of which are governed by customary law;
- "customary right of occupancy" means right of occupancy created by means of the issuing of a certificate of customary right of occupancy under section 27 of this Act and includes deemed right of occupancy;
- "deemed right of occupancy" means the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and in accordance with customary law;
- "derivative right" means a right to occupy and use land created out of a right of occupancy and includes a lease, a sublease, a licence, a usufructuary right and any interest analogous to those interests;
- "disposition" means, in relation to a right of occupancy, any sale, mortgage, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the creation of an easement, a usufructuary right, or other servitude or any other interest in a right of occupancy and any other act by an occupier of a right of occupancy whereby his rights over that right of occupancy are affected but does not include an agreement to undertake any of the dispositions so defined;
- "district adjudication" has the meaning ascribed to it under section 56;
- "district authority" means a district council, a township authority or a village council;
- "Elders Council" means the Elders Council established under section 60;
- Cap. 1 "*Gazette*" has the meaning ascribed to it by the Interpretation of Laws Act;

- "general land" means all public land which is not reserved land or village land;
- "hazard land" means land declared to be hazard land under section 6 of this Act;
- "immediate family" means, in relation to a person, any other person related to that person in the third or a closer degree of affinity or consanguinity and in all cases shall include persons within those degrees of affinity and consanguinity whether born in or out of wedlock, whether born in or outside Tanzania, and where any person referred to above has had more than one spouse, shall include all such spouses and persons to the fourth or closer degree of affinity thereto;
- "joint village land use agreement" means the agreement made, adopted and approved under section 11 of this Act;
- "land" includes the surface of the earth and the earth below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water;
- "land sharing arrangement" means a land sharing arrangement prepared under section 58;
- "lender" means a person to whom a mortgage has been given as security for the payment of an advance of money or money's worth or to secure a condition;
- "lessee" means a person to whom a lease is granted and includes a person who has accepted a transfer or assignment of a lease;
- "lessor" means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;
- "lien" means the holding by a lender of any document of title relating to a right of occupancy or a lease as security for an advance of money or money's worth or the fulfilment of a condition;
- "local government authority" means a district authority or an urban authority;
- "Minister" means the Minister for the time being responsible for land;

- "mortgage" means an interest in a right of occupancy or a lease securing the payment of money or money's worth or the fulfilment of a condition and includes a submortgage and the instrument creating a mortgage;
- "notice of temporary assignment" means a notice issued under section 43 of this Act;
- "non-village organisation" means an organisation referred to by section 18 of this Act;
- "Operation Vijiji" means and includes the settlement and resettlement of people in villages commenced or carried out during and at any time between the first day of January, 1970 for or in connection with the purpose of implementing the policy of villagisation, and includes the resettlement of people within the same village, from one part of the village land to another part of that village land or from one part of land claimed by any such person as land which he held by virtue of customary law to another part of the same land, and the expropriation of it in connection with Operation Vijiji so defined;
- "order of abandonment" means an order made under section 45 of this Act and includes a provisional and a final order of abandonment;
- "order of temporary assignment" means an order issued under section 43 of this Act;
- "public land" means and includes all the land of Tanzania;
- "register" means a register prescribed under section 21 of this Act for the recording of rights and interests in and dispositions of and in connection with customary rights of occupancy;
- "reserved land" means land referred to by section 7 of this Act;
- "right of occupancy" means a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law;
- "spot adjudication" has the meaning ascribed to it by section 49 of this Act;

"supervision order" means an order issued under section 42 of this Act;

"transfer land" means general or reserved land which is to be transferred to become a part of village land;

"unexhausted improvement" means anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and increasing the productive capacity, the utility, the sustainability or the environmental quality thereof and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature but does not include the results of ordinary cultivation;

Cap. 287 "village" means a village registered as such under the Local Government (District Authorities) Act;

"village adjudication" means the process of adjudication provided for by sections 51 to 55 of this Act;

"village adjudication adviser" means the person appointed to be a village adjudication adviser under section 52 of this Act;

"village adjudication committee" means the committee established under section 53 of this Act;

Cap. 287 "village assembly" has the meaning ascribed to it by the Local Government (District Authorities) Act;

"village council" has the meaning ascribed to it by the Local Government (District Authorities) Act;

"village land" means the land declared to be village land under and in accordance with section 7 of this Act and includes any transfer land transferred to a village;

"village land council" means the village land council established under section 60 of this Act;

"village register" means the register of interests and rights in village land kept in accordance with section 21 of this Act;

"village transfer land" means village land which is to be transferred to become part of general or reserved land;

"villager" means a person ordinarily resident in a village or who is recognised as such by the village council of the village concerned.

PART II
APPLICATION OF FUNDAMENTAL PRINCIPLES OF
THE NATIONAL LAND POLICY

Fundamental
principles of
National
Land Policy
Cap.113

3.-(1) The fundamental principles of National Land Policy which are the objectives of the Land Act, to promote and to which all persons exercising powers under, applying or interpreting this Act are to have regard to are-

- (a) to make sure that there is established an independent, expeditious and just system for adjudication of land disputes which will hear and determine land disputes without undue delay;
- (b) to recognise that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens;
- (c) to ensure that existing rights in and recognised long standing occupation or use of land are clarified and secured by the law;
- (d) to facilitate an equitable distribution of and access to land by all citizens;
- (e) to regulate the amount of land that any one person or corporate body may occupy or use;
- (f) to ensure that land is used productively and that any such use complies with the principles of sustainable development;
- (g) to take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest;
- (h) to pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act;
- (i) to provide for an efficient, effective, economical and transparent system of land administration;
- (j) to enable all citizens to participate in decision making on matters connected with their occupation or use of land;

Cap. 118

- (k) to facilitate the operation of a market in land;
 - (l) regulate the operation of a market in land so as to ensure that rural and urban small-holders and pastoralists are not disadvantaged;
 - (m) to set out rules of land law accessibly in a manner which can be readily understood by all citizens;
 - (n) to establish an independent, expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay;
 - (o) to encourage the dissemination of information about land administration and land law as provided for by this Act through programmes of public and adult education, using all forms of media.
- (2) The right of every adult woman to acquire, hold, use, deal with and transmit by or obtain land through the operation of a will, shall be to the same extent and subject to the same restrictions as the right of any adult man.

**PART III
TRANSFERS AND HAZARD LAND**

Transfer of village land to general or reserved land and vice versa

4.-(1) Where the President is minded to transfer any area of village land to general or reserved for public interest, he may direct the Minister to proceed in accordance with the provisions of this section.

(2) For the purposes of subsection (1), public interest shall include investments of national interest.

(3) The Minister shall cause to be published in the *Gazette* and sent to the village council having jurisdiction over the land which is the subject of the proposed transfer, hereinafter called "village transfer land" a notice specifying-

- (a) the location of the area of the village transfer land;
- (b) the extent and boundaries of the village transfer land;
- (c) a brief statement of the reasons for the proposed transfer;

(d) the date, being not less than sixty days from the date of the publication of the notice, when the President may exercise his power to transfer the land or a part of it.

(4) Where any portion of the village transfer land has been allocated to a villager or a group of villagers under a customary right of occupancy or a derivative right or a person or a group of persons to use the land, the village council shall inform those villagers or, where any one of those villagers is absent, a member of the family occupying or using the land with that villager, of the contents of the notice.

(5) Any person referred to in subsection (4) may make representations to the Commissioner and to the village council on the proposed transfer of the land and the persons to whom those representations are made shall take them into account in any decisions or recommendations that they may make on the proposed transfer.

(6) Where the village transfer land is-

(a) less than 250 hectares in extent, the village council shall prepare and submit recommendations for the proposed transfer to the village assembly for it to approve or refuse and the village assembly shall hold a meeting under section 103(3) of the Local Government (District Authorities) Act to consider the recommendations of the village council and any representations made by the district council of the area where the land is situate, and decide whether to approve or refuse to approve the proposed transfer;

(b) greater than 250 hectares, the Minister shall, after considering any recommendations made by the village assembly through the village council, district council and any representations on the matter made by the village and district councils of the area where the land is situate, by resolution, signify his approval or refusal to approve the proposed transfer.

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(7) The Commissioner or an authorised officer shall be under a duty to attend a meeting of the village council or village assembly as the case may be to explain the reasons for the proposed transfer and answer questions thereon and any person or a representative of any organisation who or which is proposing to use and occupy the village transfer land under a right of occupancy may, at the invitation of the village council or village assembly as the case may be, address the meeting and answer questions if any about the proposed use of the land.

(8) No village transfer land shall be transferred-

(a) until the type, amount, method and timing of the payment of compensation has been agreed upon between-

(i) the village council and the Commissioner; or

(ii) where subsections (3) and (9) apply, the persons referred to in those subsections and the Commissioner; or

(b) if the matters of compensation referred to in paragraph (a) cannot be agreed until the High Court has agreed as an interim measure, pending final determination of the matters of compensation, to the payment of any sum on account which it thinks proper by the Commissioner to the village council and to the persons referred to in subsection (3) as the case may be; or

(c) if general or reserved land is to be exchanged with the village transfer land, that general or reserved land has been identified and is ready to be transferred to the village.

(9) Where the relevant body under subsection (5) has, by resolution, approved the transfer of the village transfer land or a part of it, the President may exercise his power to transfer that village land or a part of it to general or reserved land.

(10) Where village transfer land or any part of it is occupied by persons to whom subsection (3) applies, the President shall, where he is minded to exercise his power to

transfer that land to general or reserved land, determine whether those persons may continue to occupy and use the land, subject to any terms and conditions, which he may impose, or whether the rights of those persons shall be compulsorily acquired, subject to the payment of compensation.

(11) The President may direct that any compensation payable under this section shall be paid by the person or organisation to whom or which the village transfer land which has been transferred to general land is granted by a right of occupancy.

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(12) The President may direct the Minister to appoint an inquiry under section 19 of the Land Act into a proposed transfer and where that inquiry has been appointed, no further action in accordance with this section shall be taken on that proposed transfer until after the inquiry has reported.

(13) A transfer of village land to general or reserved land shall be notified in the *Gazette* and shall come into effect thirty days after the date of the publication of the notice.

(14) The provisions of this section shall be in addition to any provisions in any Act referred to in section 7 which set out the manner in which land is brought under any of those Acts and any powers which may be exercised under any of the provisions of those Acts shall be exercised in a manner which will ensure that the provisions of this section are complied with.

Transfer of
general or
reserved land
to village
land
Cap 113

5. The President may direct the transfer of any area of general or reserved land to village land subject to the provisions of section 6 of the Land Act.

Declaration
of hazard
land

6.-(1) The Minister may declare any area of a village land to be hazard land subject to the provisions of subsection (3).

(2) Notwithstanding the provisions of subsection (1), any local authority having jurisdiction in any village may advise the Minister to declare any of the village land as hazard land if in its opinion it is necessary to do so.

(3) For purposes of this section, hazard land is land the development of which is likely to pose a danger to life or to lead to the degradation of or environmental destruction on that or contiguous land and includes but is not limited to-

- (a) mangrove swamps and coral reefs;
- (b) wetlands and offshore islands in the sea and lakes;
- (c) land designated or used for the dumping of hazardous waste;
- (d) land within sixty metres of a river bank or the shoreline of an inland lake;
- (e) land on slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice, specify;
- (f) land specified by the appropriate authority as land which should not be developed on account of its fragile nature;
- (g) land specified by the appropriate authority as being land which should not be developed on account of its environmental significance.

(4) The declaration of any land to be hazard land shall be in accordance with the provisions of this section.

(5) Where the Minister considers that an area of land should be declared to be hazard land, in this section referred to as “proposed hazard land” he shall publish a notice in the *Gazette* specifying-

- (a) the location of the proposed hazard land;
- (b) the boundaries and extent of the proposed hazard land;
- (c) a brief statement of the reasons for the proposed declaration;
- (d) the date, being not less than sixty days from the date of the publication of the notice, when the declaration may be made.

(6) A copy of the notice referred to in subsection (5) shall be-

- (a) served on all persons occupying and using the proposed hazard land in a manner and form as will be understandable to those persons;

- (b) on all local authorities having jurisdiction in the area of the proposed hazard land;
- (c) put up in conspicuous places within the area of the proposed hazard land.

(7) All persons and authorities on whom a notice has been served and all persons and organisations on whom a notice should have been served but was not and any other person or organisation with an interest in land may, within not less than thirty days after the date of the service of the notice, make representations to the Commissioner on the proposed declaration and the Commissioner shall be under a duty to hear and record the representations and take them into account in determining whether to recommend to the Minister that the land or any part of it be declared to be hazard land.

(8) Where the Minister, after considering a report prepared by the Commissioner under subsection (7) determines that the proposed hazard land or a part of it shall be declared to be hazard land, he may, subject to subsection (9), make a declaration accordingly.

(9) Where the proposed hazard land or a part of it is occupied and used by any person under a granted or customary right of occupancy, the Minister shall, if he considers that that land or a part of it should be declared to be hazard land, report the matter to the President.

(10) The President may, after considering the report of the Minister, declare any land to which subsection (9) applies to be hazard land and any such declaration shall operate to compulsorily acquire, subject to compensation, any right of occupancy in that land.

(11) A notice of a declaration of hazard land shall be published in the *Gazette* and shall come into force thirty days after the date of the publication of the notice.

**PART IV
VILLAGE LANDS**

A: Management and Administration

Village land
Cap. 287

- 7.-(1) Village land shall consist of-
- (a) land within the boundaries of a village registered

Act No. 27
of 1965

- in accordance with the provisions of section 22 of the Local Government (District Authorities) Act;
- (b) land designated as village land under the Land Tenure (Village Settlements) Act, 1965¹;
 - (c) land, the boundaries of which have been demarcated as village land under any law or administrative procedure in force at any time before this Act comes into force, whether that administrative procedure based on or conducted in accordance with any statute law or general principles of either received or customary law applying in Tanzania and whether that demarcation has been formally approved or gazetted or not;
 - (d) land, the boundaries of which have been agreed upon between the village council claiming jurisdiction over that land and—
 - (i) where the land surrounding or contiguous to that village is village land, the village councils of the contiguous village;
 - (ii) where the land surrounding or contiguous to that village is general land, the Commissioner;
 - (iii) where the land surrounding or contiguous to that village is reserved land, the official or public organisation for the time being responsible for that reserved land;
 - (iv) where the land which is claimed as a part of the land of, or is surrounding or contiguous to, that village is land which has been declared to be urban land or pre-urban land, the local authority having jurisdiction over that urban land or peri-urban land; or
 - (v) where the land which is claimed as a part

¹ Note: The Land Tenure (Village Settlements) Act, 1965 was repealed under section 182 of the Land Act, Cap. 113

of the land of or is surrounding or contiguous to that village is land which is occupied and used by a person or body under a right of occupancy, that person or body;

- (e) land, other than reserved land, which the villagers have, during the twelve years preceding the enactment of this Act been regularly occupying and using as village land, in whatever manner such persons or the village assembly or village council were allocated such land including land—
 - (i) lying fallow at any time during the said preceding twelve years;
 - (ii) used for depasturing cattle belonging to villagers or to persons using that land with the agreement of the villagers or in accordance with customary law;
 - (iii) land customarily used for passage to land used for depasturing cattle.

(2) Where a village claiming or occupying and using land as village land is unable to agree with or is in dispute with a person or body referred to in paragraph (c) of subsection (1) as to the boundaries of the land which it is claiming or occupying and using as village land, or wishes to determine the boundaries of the land it is occupying and using in accordance with paragraph (d) of subsection (1), the Minister shall, on being satisfied that every effort has been made to try and reach an agreement on the boundaries either-

- (a) appoint a person to act as a mediator between the village and the person or body with which the village is unable to reach agreement, the function of that person shall be to work with and persuade the village authorities and that person or body to reach a compromise over the boundaries; or
- (b) where the mediator reports to the Minister that despite his best endeavours, he is unable to persuade the parties to the dispute to reach a compromise on the boundaries, advise the

Minister to appoint an inquiry under section 18 of the Land Act to adjudicate on and demarcate the boundaries of that village land.

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(3) An inquiry appointed under section 18 of the Land Act to adjudicate and demarcate the boundaries of village land shall conduct such an inquiry in accordance with any specific directions and procedures set out in the document appointing the person or persons to conduct that inquiry.

(4) Where the Minister has exercised any of his powers under subsection (2), all parties to a dispute shall forthwith refrain from taking any action which may or is calculated or likely to affect the outcome of the dispute and where any party to a dispute takes such action, the mediator or as the case may be the inquiry shall hold that action against the party that took it in conducting the mediation or as the case may be in determining any recommendations at the conclusion of the inquiry.

(5) The Minister shall, unless there are overriding reasons of public interest to the contrary, accept the recommendations of the inquiry appointed under paragraph (b) of subsection (2) as to the boundaries of the village land which was the subject of the inquiry.

(6) The Commissioner shall issue to every village in respect of which the boundaries to village land have been demarcated or agreed in accordance with the provisions of this section or under any law or administrative procedure referred to in this section, a certificate of village land in the prescribed form.

(7) A certificate of village land shall-

- (a) be issued in the name of the President;
- (b) confer upon the village council the functions of management of the village land;
- (c) affirm the occupation and use of the village land by the villagers under and in accordance with the customary law applicable to land in the area where the village is situate;
- (d) where the villagers are pastoralists or have a predominantly pastoral way of life, shall affirm

the use, for purposes of depasturing cattle, of land other than village land which is customarily so used by those persons.

(8) It shall be the responsibility of the village council of the village to which a certificate of village land has been granted to maintain and at all times to keep secure that certificate of village land.

(9) Where the boundaries of any village land are altered or amended, the Commissioner shall direct the village council of the village, the boundaries of whose land has been altered to send the certificate of village land to the Commissioner for endorsement on that certificate of the alteration or amendment of the boundaries and the village council shall comply with that direction.

(10) The Commissioner shall maintain a register of village land in accordance with such rules as may be prescribed.

(11) References to the boundaries of village land in this Part shall be to general boundaries.

Cap. 287

(12) A certificate or other document of registration issued to any village registered under the provisions of section 22 of the Local Government (District Authorities) Act shall, where the Ministry responsible for lands approves that it satisfies the conditions for the grant of certificate of village land, have the same effect and force as regards village land as a certificate of village land issued to a village under this section.

Management
of village
land

8.-(1) The village council shall, subject to the provisions of this Act, be responsible for the management of all village land.

(2) The village council shall exercise the functions of management in accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under, a trust of the village land.

(3) In the management of village land, a village council shall have regard to-

- (a) the principle of sustainable development in the management of village land and the relationship between land use, other natural resources and the environment in and contiguous to the village and village land;
- (b) the need to consult with and take account of the views and, where it is so provided, comply with any decisions or orders, any public officer or public authority having jurisdiction over any matter in the area where the village land is;
- (c) the need to consult with and take account of the views of other local authorities having jurisdiction in the area where the village land is.

(4) A village council may establish a committee to advise and make recommendations to it on the exercise of any of the functions of the management of village land but, notwithstanding the provisions of section 110 of the Local Government (District Authorities) Act such committee shall have no power to take any decisions concerning the management of village land.

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(5) A village council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly.

(6) A village council shall-

- (a) at every ordinary meeting of the village assembly, report to and take account of the views of the village assembly on the management and administration of the village land; and
- (b) brief the Ward Development Committee and the district council, having jurisdiction in the area where the village is situated on the management of the village land.

(7) The Commissioner may give any advice, either generally to all village councils or to a specific village council on the management of village land which he considers

necessary or desirable and all village councils to which that advice is given shall have regard to that advice.

(8) Where on a complaint made to a district council by a village assembly or by not less than one hundred villagers that the village council is not exercising the function of managing village land in accordance with this Act and other laws applying to village land or with due regard to the principles applicable to the duties of a trustee, the district council shall inform the Commissioner of the matter and subject to any agreement he may make with that district council, the council shall either-

- (a) advise the complainants to amicably settle the matter with the machinery of village or other local government authority to resolve the issue;
- (b) through a full meeting of the district council, use its best endeavours to resolve the issue and advise the village council as to its future conduct of the management of village land;
- (c) request the Commissioner to issue a directive to the village council on the management of that village land which that village council shall be required to comply with; or
- (d) recommend to the Commissioner on the appointment of an inquiry under section 18 of the Land Act, to investigate the complaint and make recommendations on it.

Cap. 113

(9) An inquiry appointed under paragraph (d) of subsection (8) may recommend to the Minister that the management of the village land be removed from the jurisdiction of the village council the subject of the inquiry either for a fixed or an indeterminate period and transferred to either-

- (a) the district council having jurisdiction in the area where the village whose village council is being inquired into is situate; or
- (b) the Commissioner.

(10) Where the Commissioner, or an inquiry, determines that the village council has taken or omitted to take any action on village land which is contrary to law, the

Commissioner shall take all such action as may be necessary to re-establish the lawful management of that village land and the proper allocation of interests in that village land.

(11) The Minister may, in consultation with the Minister responsible for local government, by regulations, make arrangements for the management of village lands jointly between—

- (a) two or more villages;
- (b) one or more village and the district council having jurisdiction in the area where the village or villages which are to be part of an arrangement of joint management are situate; or
- (c) one or more village and an urban authority within whose boundaries that village or those villages are situate,

and that arrangement may provide for the Commissioner to be involved in that joint management of village land.

(12) Any villager who is aggrieved by the management of village land by a village council, including management by a village council as part of any arrangement for joint management has standing to sue that village council in respect of the management of that village land.

Advice by district council

9.-(1) A district council may provide advice and guidance to any village council situate within its area of jurisdiction concerning the administration by that village council of village land, either in response to a request for that advice and guidance from a village council or of its own motion and any village council to which that advice and guidance is given shall have regard to that advice and guidance.

Cap.113

(2) No advice and guidance given by a district council shall contradict or conflict with any directive or circular issued by the Commissioner under subsection (3) of section 11 of the Land Act.

Conflict of interest

10.-(1) Where any matter concerning land in which any member of the village council exercising functions under this Act or any member of his immediate family has an

interest is allocated to, referred to or otherwise comes to that member of the village council for his advice, assistance or decision that member shall not exercise any function under this Act in respect of that land.

(2) For the purposes of this section "immediate family" means, any other person related to that person as a father or mother, son or daughter, wife or husband and brother or sister whether born in or out of wedlock, whether born in or outside Tanzania, and where any person referred to above has more than one spouse, shall include all those spouses.

(3) Where a conflict of interest arises in respect of administration of village land, any member of a village council who or a committee of the council dealing with land which is covered by that description shall declare his conflict of interest and shall take no further part in nor attend any meeting of the village council or its committee where the land the subject of the conflict of interest is on the agenda, and any person who fails to declare that conflict of interest or who contravenes this provision shall render himself liable to disciplinary proceedings applicable to a member of the village council.

Joint village
land use
agreements
between
villages

11.-(1) In the exercise of the powers of management, a village council shall have power to enter into an agreement, to be known as a joint village land use agreement with any other village council concerning the use by any one or more groups of persons, of land traditionally so used by those groups, being the land which is partly within the jurisdiction of one village and partly within the jurisdiction of another village with which an agreement is to be entered into and that agreement may be amended, modified or varied from time to time.

(2) Where an agreement which is referred to in subsection (1) is to be entered into, the village councils proposing to enter into that agreement shall—

- (a) first, convene one or more meetings of the groups of persons using the land which is to be the subject of the agreement—

- (i) to give groups an opportunity to make representations about their use of land and the content of any agreement about that use;
- (ii) explain the nature, purpose and proposed content of that agreement to those groups;
- (b) second, prepare a draft agreement which shall take account of any representations made at any meeting convened under subparagraph (i) of paragraph (a);
- (c) third, inform the district council or district councils having jurisdiction in the area where the land covered by the proposed agreement is located of the contents of the draft agreement;
- (d) fourth, place that draft agreement before a meeting of the village assembly of each of the villages proposing to enter into an agreement for the approval of each such village assembly.

(3) An agreement made in accordance with this section shall not take effect unless and until it is approved by each village assembly of the villages proposing to enter into that agreement.

(4) An agreement made under and in accordance with this section may include matters concerning-

- (a) the boundaries of the land covered by the agreement;
- (b) the use of the land, or parts of it, by different groups of persons, and the periods of time when that group may so use the land or part of it including arrangement for the dual use of land or part of it by one or more group of persons using that land for different purposes at the same time;
- (c) the nature and scope of any rights to or interests in land recognised by the rules of customary law applicable to the land covered by the agreement, and where more than one set of rules of customary law are applicable to that land, the manner of resolving any conflict between the sets of rules;

- (d) the manner of resolving disputes about the use of the land covered by the agreement;
- (e) any other matters which may be prescribed or which the village councils shall consider necessary and desirable.

(5) An agreement reached by villagers of two or more villages about the use, by those villagers jointly of village land which falls within the jurisdiction of two or more villages or an agreement reached between the traditional leaders of a group of persons using village land which falls within the jurisdiction of two or more villages and the village councils of those villages may be adopted and approved as a joint village land use agreement by the village assembly of the village of those villagers or, as the case may be, of that village council.

(6) A district council having jurisdiction in the area where the land covered by a proposed agreement is located may require the village council to place any comments which that district council may have about the proposed agreement before the meeting of the village assembly called to approve the agreement.

Division of
village land

12.-(1) Village land shall be divided into—

- (a) land which is occupied and used or available for occupation and use on a community and public basis, to be known as communal village land, by all villagers and any other persons who are, with the agreement of the village council, living and working in the village whether those persons are occupying and using village land under a derivative right or not and that communal village land shall not be made available for individual occupation and use by any person through a grant of a communal or individual customary right of occupancy or a derivative right or any other disposition;
- (b) land which is being occupied or used by an individual or family or group of persons under customary law; or

- (c) land which may be made available for communal or individual occupation and use through allocation by the village council in accordance with the provisions of this Part.

(2) Village land referred to in paragraphs (b) and (c) of subsection (1) may be made the subject of a grant, in accordance with the provisions of this Part, by a village council to the occupier of that land or a citizen who is a villager or a group of citizens who are villagers or any other citizens who may be provided for in this Part, of a customary right of occupancy, by means of a document to be known as a "certificate of customary title".

(3) Village land referred to in paragraph (c) of subsection (1) may be made the subject of a derivative right granted by a village council in accordance with the provisions of this Part.

Communal
village land

13.-(1) The village council shall recommend to the village assembly what portions of village land shall be set aside as communal village land and for what purposes.

(2) The recommendations of the village council may be put forward as—

- (a) a land use plan for the village or part of it;
- (b) specific recommendations on specific portions of village land; or
- (c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(3) The district council shall provide advice and guidance to village councils on the exercise of their functions under this section.

(4) A village council shall, when exercising functions under this section, have regard to any advice and guidance provided under subsection (3).

(5) On receipt of the recommendations of the village council under this section, the village assembly shall—

- (a) approve;
- (b) approve with amendments;

- (c) refer back for further consideration; or
- (d) reject,

the recommendations and where the village assembly rejects the recommendations, the village council shall bring forward, as soon as may be, different recommendations.

(6) The village council shall maintain a register of communal village land in accordance with any rules which may be prescribed.

(7) Any land which has been set aside by a village council or village assembly for community or public occupation and use or any land which is and has been, since the formation of the village, habitually used whether as a matter of practice or under customary law or regarded by village residents as available for use as community or public land before the enactment of this Act, shall be deemed by this Act to be communal village land approved as such by the village assembly and shall be registered by the village council under subsection (6).

(8) Where there is a dispute between a person occupying land which is claimed as communal village land under subsection (7) and the village council, the Minister may, on being satisfied that—

- (a) the dispute cannot be resolved through the organs of village government; or
- (b) the continuation of the dispute may lead to serious disruption in the village,

exercise his powers or direct the Commissioner to exercise his powers under the provisions of subsections (6) to (10) of section 8 of this Act in relation to that dispute.

Land which is or may be held for customary rights of occupancy

14.-(1) Land which is or may be held for a customary right of occupancy shall be—

- (a) any village land;
- (b) any general land occupied by persons who immediately before the coming into operation of this Act held that land under and in accordance with a deemed right of occupancy.

(2) It is hereby affirmed that, notwithstanding any of the provisions of-

Cap. 355
Cap. 118

- (a) the Urban Planning Act; and
- (b) Part III of the Land Acquisition Act,

Cap. 62

a person who occupies and has for not less than a total of ten out of twelve years immediately preceding the enactment of this Act, occupied land in an urban or peri-urban area as his principal place of residence and does not occupy that land as a tenant of another person to whom the Urban Leaseholds (Acquisition and Regrant) Act could be applicable, or under a granted right of occupancy, occupies that land under a customary right of occupancy and shall-

- (i) where that land or part of it is from the date of the enactment of this Act to be compulsorily acquired; or
- (ii) has been or is to be declared to be a part of any scheme which involves the extinguishing of all private rights in the land or any injury to the land or the occupation and its use under the provisions referred to in this subsection or any other law,

be entitled to receive full, fair and prompt compensation from the loss or diminution of the value of that land and the buildings and other improvement on it.

(3) For purposes of subsection (2) occupation by the family of the person claiming to have been in occupation for the specified time shall be deemed to be occupation by that person.

(4) If any question arises as to whether a person in occupation of land is a person to whom the provisions of subsection (2) applies, that person shall be deemed to be the person unless the contrary is proved to the satisfaction of a court and he and all parties claiming under him or consistently with his occupation shall be deemed to be entitled to compensation.

Cap. 323

(5) Any rights in relation to land which have been determined under section 6 of the Forests Act to be lawfully exercisable within any area declared to be a forest reserve by any person or group of persons are hereby affirmed to be and

to have always been rights arising from a customary right of occupancy.

Cap. 284
Cap. 113

(6) In section 8 of the Ngorongoro Conservation Area Act, the reference to land held under a right of occupancy granted under the Land Act, shall be deemed to include land held under a customary right of occupancy.

Cap. 282
Cap. 284

(7) Persons who traditionally and in accordance with customary law occupied and used land in any National Park or in the land under the jurisdiction of the Ngorongoro Conservation Area Authority but who, since the enactment of the National Parks Act and the Ngorongoro Conservation Area Act may occupy that land only with the permission of or under a licence from the Director of the National Parks or the Ngorongoro Conservation Area Authority shall be deemed to occupy that land under a customary right of occupancy.

Cap. 338

(8) Any person or group of persons occupying land under the provisions of section 5 of the Public Land (Preserved Areas) Act, shall be deemed to be occupying and to have always occupied that land under a customary right of occupancy.

(9) Nothing in subsections (5), (6) and (7) shall affect the power of authorities exercising functions under the statutes referred to in those provisions from continuing to regulate the use of land by persons, who by virtue of this section, are occupying land under a customary right of occupancy.

Confirmation
of validity of
interests in
land created
under and by
Operation
Vijiji

15.-(1) An allocation of land made to a person or a group of persons residing in or required to move to and reside in a village at any time between first day of January, 1970 and the thirty first day of December,1977, whether made under and in pursuance of a law or contrary to or in disregard of any law, is hereby confirmed to be and to have always been a valid allocation capable of and in law giving rise to rights and obligations in the party to whom the allocation was made and extinguishing any rights and obligations vested in any person under any law which may have existed in that land prior to that allocation.

Cap. 113
Cap. 334

(2) A granted right of occupancy made to a person or group of persons residing in or required to move to and reside in a village at any time between first day of January, 1970 and the thirty first day of December, 1977 whether granted in accordance with the procedures of the Land Act or not, and whether registered under and in accordance with the provisions of the Land Registration Act, or not is hereby confirmed to be and to have always been from the time of the grant a valid granted right and obligations in the grantee as from the date of the grant and extinguishing any rights and obligations vested in any person under any law which may have existed in that land prior to that grant.

Cap. 113
Cap. 117

(3) A written offer of a granted right of occupancy or a letter of offer of a granted right of occupancy issued by an officer authorised to do so, made to a person or group of persons residing in or required to move to and reside in a village between the first day of January, 1970 and the thirty-first day of December, 1977, whether made in accordance with the provisions of the Land Act or not, and whether registered under and in accordance with the provisions of the Registration of Documents Act, or not is hereby confirmed to be and to have always been a valid offer or as the case may be, a valid letter of offer which may, at any time before first day of January 2000, be acted upon so as to create a right of occupancy which shall be a customary right of occupancy and that customary right of occupancy shall extinguish any rights and obligations vested in any person by any law which may have existed prior to the written offer of or the letter of offer for a granted right of occupancy.

(4) The interest in land created by an allocation of land to which subsection (1) refers and the right of occupancy to which subsection (2) refers are hereby confirmed to be and to have always been a customary right of occupancy.

(5) A person or group of persons who, by virtue of this section occupy land under a customary right of occupancy may, subject to and in accordance with the provisions of this Part, obtain a certificate of customary title in respect of that occupation of land.

(6) Where a customary right of occupancy confirmed by subsections (1) and (2) or capable of being created under subsection (3) is or would be held in respect of an acreage of land which exceeds the maximum acreage of village land which a person is permitted under this Act to occupy, that customary right of occupancy shall, subject to the payment of any compensation or that grant of a right of occupancy in general land which is provided for by this Part, and taking account of the views of the customary right holder as to the portion of land to be exercised as excess land, be terminated in respect of that exercised land by the village council exercising management powers over that village land.

(7) Every derivative right granted out of a customary right of occupancy confirmed by this section is hereby confirmed to be and to have always been a valid derivative right in any manner it was created and to whom it was granted.

(8) A derivative right referred to in subsection (7) which conflicts with any of the provisions of this Act relating to the persons to whom, the period for which and amount of land which a derivative right granted out of a customary right of occupancy is required to comply with, may subject to the payment of any compensation which is required by this Act and any other conditions which may be prescribed, be terminated by the village council having management powers over the land.

(9) Where there is a dispute between two or more persons, family units or groups of persons as to which of the parties is entitled to land under any of the provisions of subsections (1), (2) or (3), the village council shall refer the matter to the village land council to mediate between the parties and where the village land council is unable to resolve the dispute between the parties, the village council shall refer the dispute to the Ward Tribunal and may further refer the matter to court having jurisdiction in the area where the land is situated.

(10) For the avoidance of doubt, this section does not apply to—

- (a) any right to occupy or use any land in accordance with any custom or rule of customary law existing in any village which existed before and was not established or transformed by the addition of significant numbers of persons from outside the district as a result of Operation Vijiji or in any land which was not brought within the jurisdiction of any village established as a result of Operation Vijiji;
- (b) any right to occupy and use land in accordance with any custom or rule of customary law which existed prior to first day of January, 1970, where that right was being exercised.

Confirmation of validity of allocations of land made by village councils since 1 January 1978

16. For the avoidance of doubt and in order to facilitate security of tenure and contribute to the development of village land, the provisions of section 15, other than subsections (2) and (3), shall apply to any and every allocation of village land made by village council or by any other authority on and after the first day of January, 1978 until the date of the commencement of this Act as if for the dates referred to in subsection (1) of that section, there were substituted the dates between the first day of January, 1978 and the date of commencement of this Act.

Occupation of village land by non-village organisation

17.-(1) A non-village organisation to which this Part applies is—

- (a) a government department or any office or part of it;
- (b) a public corporation or other parastatal body or any office, part, division or its subsidiary body;
- (c) a corporate or other body, a majority of whose members or shareholders are citizens registered or licensed to operate under any law for the time being in force in Tanzania applicable to that corporate or other body which does not consist of a majority of the members of the village; or any similarly composed subsidiary of that corporate or other body.

(2) Where, at the commencement of this Act, any non-village organisation occupies village land under a granted right of occupancy, that granted right of occupancy shall, notwithstanding that it exists in village land, continue to be a granted right of occupancy for the remainder of its term.

Cap. 113

(3) Subject to the provisions of the Land Act, relating to disposition of a right of occupancy the Commissioner shall continue to be responsible for the management of the right of occupancy to which this section applies.

(4) Where the Commissioner is satisfied that a village council is managing the village land in an efficient manner, he may, in writing delegate his functions of managing a right of occupancy to which this section applies to that village council subject to any conditions which he shall think fit to include in the instrument of delegation.

(5) On and after the coming into operation of this Act, a non-village organisation which wishes to obtain a portion of village land for the better carrying on of its operations may apply to the village council for that land, and the village council shall recommend to the Commissioner for the grant or refusal of such grant.

(6) Any association of persons formed in accordance with customary law for the purpose of occupying, using and managing land or any association which has come together and is recognised with the community of which it is a part as an association of persons formed to occupy, use and manage land in an urban or peri-urban area, shall, if the persons forming the association registers it in accordance with the provisions of the Trustees Incorporation Act, be recognised as such by this Act and according the provisions of that Act shall apply in relation to such associations.

Cap. 318

Incidents of customary right of occupancy

18.-(1) A customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy and shall, subject to the provision of this Act, be—

- (a) capable of being allocated by a village council to a citizen, a family of citizens a group of two or more citizens whether associated together under any law or not, a partnership or a corporate body

- the majority of whose members or shareholders are citizens;
- (b) in village land, general land or reserved land;
 - (c) capable of being of indefinite duration;
 - (d) governed by customary law in respect of any dealings, including intestate succession between persons residing in or occupying and using land—
 - (i) within the village having jurisdiction over that land; or
 - (ii) where the customary right of occupancy has been granted in land other than village land, contiguous to or surrounding the land which has been granted for a customary right of occupancy;
 - (e) subject to any conditions which are set out in section 29 or as may be prescribed and to any other conditions which the village council having jurisdiction over that land shall determine;
 - (f) may be granted subject to a premium and an annual rent, which may be varied from time to time;
 - (g) capable of being assigned to a citizen or a group of citizens, having a residence or place of business in the village where the land is situate, or a body corporate the majority of whose shareholders or members are citizens having a place of business in that village;
 - (h) inheritable and transmissible by will;
 - (i) liable, subject to the prompt payment of full and fair compensation, to acquisition by the State for public purposes in accordance with any law making provision for that action.

(2) The Minister shall make regulations providing for an area of land which a person can hold under a single right occupancy or derivative right of occupancy or in any way otherwise disposed of to any person or body of persons.

Incidents of
customary
lease

19. Subject to the provisions of Part IX of the Land Act, 1998, a lease and a sublease granted out of a customary

Act No. 1 of
1965
Cap. 377

right of occupancy shall be called a "customary lease" and "customary sublease", as the case may be, and shall be governed by the customary law applying to the land out of which a lease or sublease, as the case may be, has been granted provided that this section shall not be taken to affect any customary leaseholds enfranchisement under the Nyarubanja Tenure (Enfranchisement) Act, 1965 or the Customary Leaseholds (Enfranchisement) Act, or to permit or sanction the reintroduction of any form of customary leaseholds similar in nature to Nyarubanja tenure.

Law
applicable to
customary
right of
occupancy

20.-(1) Subject to the provisions of this Act, on any matter concerning the rights and obligations of a person, a group of persons or a non-village organisation occupying land under a customary right of occupancy or of any person in dispute with any persons referred to above or of any person alleging that he or she is entitled to succeed to or otherwise occupy that land on the death or permanent incapacity of a person occupying land under a customary right of occupancy or on another matter affecting land held under a customary right of occupancy and persons ordinarily resident in the village where the land is situate shall, where that matter is not otherwise provided for under this Act or any other enactment determined in accordance with customary law.

(2) Any rule of customary law and any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall have regard to the customs, traditions and practices of the community concerned to the extent that they are in accordance with fundamental principles of the National Land Policy and of any other written law and subject to the foregoing provisions of this subsection, that rule of customary law or any such decision in respect of land held under customary tenure shall be void and inoperative and shall not be given effect to by any village council or village assembly of any person or body of persons exercising any authority over village land or in respect of any court or other body, to the extent to which it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land.

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(3) Notwithstanding the provisions of the Judicature and Application of Laws Act, no Act of the Parliament of the United Kingdom referred to in that Act shall apply to land held for a customary right of occupancy or otherwise governed by customary law.

(4) The customary law which shall be applied to determine any matters referred to in subsections (1), (2) and (3) shall be—

(a) in the case of a village not established as a result of Operation Vijiji, the customary law which has hitherto been applicable in that village;

(b) in the case of a village established in whole or in part as a result of Operation Vijiji, the customary law applicable in the village immediately before the extinguishing of customary rights in the land under any rules or regulations made under the Rural Lands (Planning and Utilisation) Act, 1973 or the enactment of the Regulation of Land Tenure (Established Villages) Act;

(c) in the case of general land held for a customary right of occupancy, the customary law recognised as such by the persons occupying that land;

(d) in the case of any land customarily used by pastoralists, the customary law recognised as such by those pastoralists.

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of 1973

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(5) The grantor and grantee of of a derivative right may stipulate as a condition of that derivative right that the law applicable to it shall be the provisions of Part VIII which relates to Dispositions affecting Land and Part IX which relates to leases of the Land Act and other relevant parts of the laws of Tanzania to the exclusion of customary law.

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Register of
village land

21.-(1) A village council shall maintain a register of village land in accordance with any rules which may be prescribed by the Minister and the village executive officer shall be responsible for keeping that register.

(2) The village executive officer shall not make any entry on the register in respect of any customary right of occupancy unless and until he is satisfied that any premia,

rent, taxes and dues payable in respect of that customary right of occupancy or that derivative right in respect of that customary right of occupancy or that derivative right in accordance with the customary rules applicable in that area have been paid and a receipt or acknowledgement for the same has been validly endorsed on the certificate of customary title or of that derivative right.

(3) A registry for the purpose of records under this section shall be a village branch of the district land registry for the district in which that village is situate and all persons working in that district land registry shall fall under the jurisdiction and be subject to the supervision and direction of the Registrar.

B: Grant and Management of Customary Right of Occupancy

Application
for
customary
right of
occupancy in
village land

22.-(1) A person, a family unit, a group of persons recognised as such under customary law or who have formed themselves together as an association, a primary co-operative society or as any other body recognised by any law which permits that body to be formed, who is or are villagers, or if a married person who has been divorced from, or has left for not less than two years, his or her spouse, was, prior to the marriage, a villager, and all of whom are citizens, may apply to the village council of that village for a customary right of occupancy.

(2) A person or group of persons not ordinarily resident in a village may apply for a customary right of occupancy.

(3) An application for a customary right of occupancy shall be—

- (a) made on a prescribed form;
- (b) signed—
 - (i) by the applicant;
 - (ii) where the application is made by a family unit, by not less than two persons from the family unit;
 - (iii) where the application is by a group of persons recognised as such under customary law, by not less than two persons who are recognised by that law as leaders or elders of the group;

- (iv) where the application is by a group of persons formed into an association, a primary co-operative society or a body under a law which recognises that body, by not less than two duly authorised officers;
- (v) where the applicant is a person or group of persons referred to in subsection (2), by not less than five villagers who are not related to any of those applicants; or
- (vi) a duly authorised agent of any of the applicants referred to in paragraphs (i) to (iv);
- (c) supported by a declaration concerning any other land in Tanzania held by the applicant;
- (d) accompanied by any documents and information which may be prescribed or which the village council may require;
- (e) accompanied by any fee which may be prescribed;
- (f) where the applicant is a person or group of persons referred to in subsection (2), accompanied by a signed and witnessed statement that the applicants intend to establish or commence the construction of their principal place of residence in the village within three months of obtaining a customary right of occupancy;
- (g) submitted to the village council or its authorised officer.

(4) A village council may require any applicant to submit any further relevant information which it may specify and shall not be obliged to determine an application until that further information has been submitted or a satisfactory explanation has been submitted as to why that further information cannot be submitted.

Determination of application for customary right of occupancy

23.-(1) A village council shall, within ninety days of the submission of an application or within ninety days of the submission of further information or a satisfactory explanation for its non-availability, determine that application.

- (2) In determining whether to grant a customary right of occupancy, the village council shall—
- (a) comply with the decisions that have been reached by any committee or other body on the adjudication of the boundaries to and rights in the land which is the subject of the application for a customary right of occupancy;
 - (b) have regard to any guidance from the Commissioner concerning an application from a non-village organisation;
 - (c) have special regards in respect of the equality of all persons, such as—
 - (i) treat an application from a woman, or a group of women no less favourably than an equivalent application from a man, a group of men or a mixed group of men and women; and
 - (ii) adopt or apply no adverse discriminatory practices or attitudes towards any woman who has applied for a customary right of occupancy;
 - (d) where the application is from a non-village organisation in respect of which no guidance under paragraph (b) has been received, have regard to—
 - (i) any advice which has been given to the application by the district council or as the case may be the urban authority having jurisdiction in the area where the village is situate;
 - (ii) the contribution that the non-village organisation has made or has undertaken to make to the community and public facilities of the village;
 - (iii) the contribution to the national economy and well-being that the development for which the customary right of occupancy is being applied for is likely to make;
 - (iv) whether the amount of land in respect of

- which the non-village organisation is seeking a customary right of occupancy is so extensive or is located in such an area that it will or is likely to impede the present and future occupation and use of village land by persons ordinarily resident in the village;
- (v) any other matters which may be prescribed;
- (e) where the application is from a person or group of persons ordinarily resident in the village, have regard to—
- (i) where the applicant already occupies village land under a customary right of occupancy whether the allocation of additional land under a customary right of occupancy would cause that applicant to exceed the prescribed amount of land which a person or group of persons may occupy in that village;
 - (ii) where the applicant already occupies land under a customary right of occupancy, whether all the terms and conditions subject to which that right of occupancy is held and all other regulations relating to the use of that land have been strictly complied with and if they have not, the reasons for any non-compliance;
 - (iii) whether the applicant has or is likely to be able to obtain access to the necessary skills and knowledge to be able to use the land applied for productively and in accordance with the terms and conditions subject to which the customary right of occupancy will be granted and all other regulations applying to the use of the land for which the right of occupancy is being applied for;
 - (iv) the extent and manner in which the applicant, if an individual, intends to make provision for any dependants that the applicant may have or will, if the applicant dies, have, out of the land;

- (v) any other matters which may be prescribed;
 - (f) where the applicant already occupies village land under a customary right of occupancy consider whether the allocation of additional land under a customary right of occupancy would cause that applicant to exceed the prescribed amount of land which a person or group of persons may occupy in that village;
 - (g) where the applicant is a person or group of persons referred to in subsection (2) of section 21 have regard to—
 - (i) the amount and location of the land the applicant is applying for;
 - (ii) the purpose for which the applicant is intending to use the land and whether that purpose accords with any village development or land use plan;
 - (iii) the matters referred to in subparagraphs (i) and (ii) of paragraph (d); and subparagraphs (iii) and (iv) of paragraph (e);
 - (iv) any other matters which may be prescribed.
- (3) A village council shall, after considering an application in accordance with subsection (2)—
- (a) grant in respect of all or a part of the land applied for subject to any conditions which—
 - (i) are set out in section 29 or which may be prescribed;
 - (ii) the village council is directed by the Commissioner to impose in respect of a grant to a non-village organisation; and
 - (iii) may be prescribed; or
 - (b) refuse to grant, a customary right of occupancy to the applicant.
- (4) Where an application is refused, the village council shall, at the request of the applicant, furnish that applicant with a statement of reasons for the refusal.

Contract for
customary
right of
occupancy

24.-(1) Where a village council has determined to grant a customary right of occupancy to an applicant, it shall send or deliver to the applicant an offer in writing, signed by the chairman and secretary of the village council, in a prescribed form, setting out the terms and conditions subject to which it will grant that customary right of occupancy to that applicant.

(2) Where an applicant has received an offer in writing under subsection (1), he shall, within not more than ninety days, reply in writing signed by the person or persons required under paragraph (b) of subsection (3) of section 21 to sign an application for a customary right of occupancy to that offer in the prescribed form either—

- (a) accepting that offer; or
- (b) refusing to accept that offer,

and send or deliver that reply to the village council or its authorised officer.

(3) Where the acceptance of an offer made under subsection (1) is conditional upon the payment of a sum of money by way of a premium, an advance payment of rent, a deposit or any tax or due to the village council or any other person or organisation named in the offer, that acceptance shall not operate to conclude a contract for the grant of a customary right of occupancy unless and until that sum of money is paid in full to the payee.

(4) A payee who has received a sum of money under subsection (3) shall immediately provide a receipt for that payment to the person who has made that payment.

(5) Where, at any time after the conclusion of a transaction it is shown to the satisfaction of that person or organisation charged with the responsibility for preventing or combating corruption that any part of the process of obtaining a customary right of occupancy was effected by a corrupt practice, that customary right of occupancy shall without any further action, and notwithstanding any other rule of law to the contrary, be deemed to be void and of no effect and the grantee of that void customary right of occupancy shall, without prejudice to any action which may be taken against that person under any law dealing with corruption,

immediately become a trespasser on that land, liable to suffer all such action and penalties applicable to trespassers.

Grant of customary right of occupancy

25.-(1) Where a contract for a grant of a customary right of occupancy has been concluded, a village council shall, within not more than ninety days of that conclusion, grant a customary right of occupancy to the applicant who accepted the offer referred to in section 23 by issuing a certificate, to be known as a 'certificate of customary right of occupancy' to that applicant.

(2) A certificate of customary right of occupancy shall be—

- (a) in a prescribed form;
- (b) signed by the Chairman and secretary of the village council;
- (c) signed or marked with a personal mark by the grantee of the customary right of occupancy to which it relates at the foot of each page of the certificate;
- (d) signed, sealed and registered by the District Land Officer of the district in which the village is situate.

Payment of premium on grant of right of occupancy to non-village organization

26.-(1) Subject to the provisions of subsections (3), (4) and (5) of section 17 the village council may, require the payment of a premium on the grant of a customary right of occupancy to a non-village organisation or a person or group of persons referred to in subsection (3) of section 22.

(2) In determining the amount of any premium, the village council shall seek and take account of the advice of the Commissioner, who in giving that advice which may be in the form of published advice to all village councils shall have regard to the principles governing the determination of a premium in respect of granted rights of occupancy set out in subsection (3) of section 31 of the Land Act.

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(3) Where the payment of a premium as aforesaid is required, a demand for that payment shall be sent or delivered to the person to whom the certificate of customary title is to

be sent or delivered at the same time as or before that certificate is sent or delivered to that person.

(4) No certificate of customary right of occupancy shall be valid or of any effect and no occupation of land under a contract for a customary right of occupancy or otherwise shall be lawful until a premium which has been demanded in accordance with subsection (2) has been paid in full or in any other way which may be provided in the contract for the grant of a customary right of occupancy.

(5) Where it has been provided under a contract for a customary right of occupancy that a premium may be paid in instalments or in some other manner than in full at the time of or before the issuing of a certificate of customary right of occupancy, and failure to comply with any term of that contract shall be deemed to be a failure to comply with a condition of the right of occupancy which shall give rise to revocation by the village council.

Length of term of customary right of occupancy

27.-(1) A customary right of occupancy may be granted—

- (a) for a term which may be indefinite or any length of time less than an indefinite term to a person who is a citizen or a group of persons all of whom are citizens provided that there shall be a presumption that that person or group of persons shall be granted a customary right of occupancy for an indefinite term;
- (b) for a term together with an option for a further term or terms which together with the original term may be up to but shall not exceed ninety nine years;
- (c) from year to year or for periods of less than a year determinable by the village council by one year's notice or less, whether or not the grant includes an initial fixed term does not exceed four years.

(2) Where a right of occupancy has been granted for a term certain, with or without an option for a further term or terms certain, no reduction in the length of that term certain or the term or terms certain contained in the option or options

shall be made to or introduced in the option or options shall be made to or introduced into that right of occupancy by the village council without the agreement of the occupier.

Rent

28.-(1) The village council may require the payment of an annual rent—

- (a) for a right of occupancy from a person or group of persons referred to in subsection (2) of section 23;
- (b) from a non-village organization, subject to the provisions of subsections (3), (4) and (5) of section 17.

(2) The rent shall be paid in any instalments and at any intervals of time during the year which shall be provided in the certificate of customary title.

(3) The rent shall be paid to the village council or an authorised officer of that council and a signed receipt in respect of each payment of rent that is made shall be given to the payer of that rent.

(4) In determining the amount of any rent, the village council shall—

- (a) comply with any directives from the Commissioner on the amount of, or the method of, or the factors to take into account in, determining the amount of any rent which is to be paid;
- (b) where no such directives have been issued, take account of—
 - (i) any advice given by the Commissioner on the amount of, or the method of or the factors to take into account in determining any rent which is to be paid;
 - (ii) the use of land permitted by the customary right of occupancy which has been granted;
 - (iii) the value of land as evidenced by any dispositions of land in the area where the customary right of occupancy has been granted, whether those dispositions were made in accordance with customary law or not;

- (iv) an assessment by a qualified and authorised value or other person with knowledge of the value of land of the appropriate amount of rent which should be paid for land;
- (v) the amount of any premium required to be paid on the grant of a customary right of occupancy.

(5) Notwithstanding anything to the contrary contained in any certificate of customary right of occupancy or in any of the provisions of any conditions of a customary right of occupancy, in every case in which the village council requires the payment of a rent, that council shall, subject to the approval of the Commissioner, have the power to revise that rent at intervals of not less than five years and in any exercise of that power, the determination of any revised rent shall be in accordance with subsection (4).

(6) Where the village council determines to grant a customary right of occupancy to any person or organisation of land which is to be used exclusively for religious worship or for burial or exclusively both for religious worship and for burial, that council shall not require the payment of any rent in respect of that customary right of occupancy.

(7) The village council may grant a customary right of occupancy at a nominal rent if the land is to be used exclusively for a charitable purpose by a non-village organisation and is empowered to review and increase that rent if the land ceases to be used exclusively for a charitable purpose.

(8) Where any rent or instalment of any rent payable in respect of a customary right of occupancy or any part of that rent or instalment remains unpaid for a period of six months after the date on which the same is required to be paid, interest at a rate of two *per centum* a month or part of it, or at any other rate which the Minister may by order prescribed, shall be payable on the amount of the arrears as it is from time to time until payment of the whole amount is made from the date from which the rent or instalment first fell into arrears and shall be collected and recoverable in the same manner as rent.

(9) The acceptance by or on behalf of the village council of any rent shall not be held to operate as a waiver by that council of any right to revoke the customary right of occupancy accruing by reason of the breach of any covenant or condition, express or implied in any contract for a customary right of occupancy or in any certificate of customary title granted under this Act.

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(10) The provisions of section 50 of the Land Act in relation to the summary proceedings for recovery of rent shall apply to rent due and owing under this Part as they apply to rent due and owing under Part VI of the Land Act.

Conditions

29.-(1) Every customary right of occupancy shall be granted subject to the conditions set out in this section and any other conditions which may be prescribed.

(2) Every grant of a customary right of occupancy shall contain the implied conditions that—

- (a) the occupier will use and will take steps to ensure that those persons occupying and working the land with him or occupying and working the land with his permission will—
 - (i) keep and maintain the land in good state;
 - (ii) in the case of land to be used for farming, farm the land in accordance with the practice of good husbandry customarily used in the area; and
 - (iii) in case of land to be used for pastoral purposes, use the land in a sustainable manner in accordance with the highest and best customary principles of pastoralism practised in the area;
- (b) any permissions that are required to be obtained before any buildings are erected will be obtained and no building will be erected until those permissions have been so obtained;
- (c) the occupier will pay any rent, fees, charges, taxes and other required payments due in respect of his occupation of the land as and when such imposts fall due;

- (d) the occupier will comply with all rules, including all rules of customary law and all by-laws applicable to the land and all lawful orders and directions given to him by the village council or any person acting with the authority of the village council relating to his use and occupation of the land or any orders of any local or other authority having jurisdiction over land in the area where the land is situate or any orders of any officer exercising powers under this Act;
- (e) the occupier will retain and keep safe all boundary marks, whether natural or otherwise on or at the boundaries to the land;
- (f) the occupier will remain residing in the village but where he is to be temporarily absent, will make all proper arrangements for the land to be managed and used in accordance with the conditions set out in this subsection.

(3) A person who signs a certificate of customary right of occupancy in accordance with the provisions of section 24 shall, where he signs on his own behalf, be deemed to have bound himself and, be deemed to have bound that group of village organisation, be deemed to have bound that group of persons or that non-village organisation as the case may be, to the village council to observe and comply strictly with each and every condition contained in that certificate of customary right of occupancy.

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(4) The Commissioner and any authorised officer of the village council or other department of government may, subject to the provisions of section 171 of the Land Act relating to the right of entry enter on land the subject of customary right of occupancy and to inspect whether the conditions under which the customary right has been granted are being complied with.

Assignment
of customary
right of
occupancy
by villager
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30.-(1) A villager or group of villagers or a lender of monies on the security of a mortgage exercising the powers of sale provided for by sections 131 to 133 of the Land Act in relation to power of sale may assign a customary right of

occupancy in the land held for that customary right of occupancy or a part of it to—

- (a) a villager or a group of villagers;
- (b) the village council;
- (c) a person or group of persons, being citizens, to whom subsection (2) applies.

(2) An assignment of a customary right of occupancy may be made to a person or group of persons not ordinarily resident in a village if and only if—

- (a) the village council approves of the assignment;
- (b) there is an agreement prior to the assignment;
- (c) in event of termination of the agreement the assignment shall be made to a citizen;
- (d) that person or the authorised representative of that group of persons make and sign a deposition that he or they will make that village his or their principal place of residence or work or commence the construction of one or more houses to be a principal place of residence within six months of that deposition;
- (e) that person or that group of persons make and sign a deposition that he or they will within six months of the making of that deposition commence the construction of some industrial, commercial or other building which is likely to provide benefit for villagers or the village; or
- (f) that person or that group of persons make and sign a deposition that he or they intend within six months of the making of that deposition to commence some agricultural, mining, tourist or other development which is be likely to provide benefit to villagers or the village.

(3) The parties to a proposed assignment shall notify the village council on a prescribed form of that proposed assignment not less than sixty days before it is proposed.

(4) The village council shall disallow an assignment which—

- (a) would result in the assignee occupying an amount

of land in excess of the prescribed maximum for that village;

- (b) would operate or would be likely to operate to defeat the right of any woman to occupy land under a customary right of occupancy, a derivative right or as a successor in title to the assignor;
- (c) would result in the assignor occupying an amount of land insufficient to provide for his livelihood or where he has a family or other dependants, for their livelihood;
- (d) is to be made to a person or group of persons referred to in subsection (2) and—
 - (i) those persons have not made the required deposition; or
 - (ii) the village council is in possession of clear evidence that, notwithstanding that a deposition has been made, the person or persons who made the deposition do not intend to comply with it;
- (e) is to be made to a person who occupies land under a customary right of occupancy but is and has been for not less than six months in breach of—
 - (i) one or more terms and conditions subject to which he occupies land under that customary right of occupancy; or
 - (ii) any rules applicable to the land or the use of the land which he occupies under that customary right of occupancy;
- (f) does not comply with any other matters which may be prescribed.

(5) Where a village council determine to disallow an assignment, it shall send or deliver to the parties within sixty days of the receipt of a notice of assignment, a notice to disallow the proposed assignment in the prescribed form.

(6) An assignment that infringes the criteria set out in subsection (4) or that is made notwithstanding the service of a notice to disallow on one or both parties to the assignment shall be void.

- (7) A village council shall—
 - (a) send a copy of any notification of assignment and any notice to disallow to the Commissioner;
 - (b) record any assignment of a customary right of occupancy and any notice to disallow in the register of village land.

Approval
required for
private
disposition
of derivative
right

31.-(1) This section applies to the disposition, by the holder of a certificate of occupancy or right of occupancy, of a derivative right in the land held for a customary right of occupancy.

(2) A disposition of a derivative right to which this section applies shall—

- (a) comply with the provisions of this section and the sections 32 and 33;
- (b) be void if the provisions of the sections referred to in paragraph (a) are not complied with.

(3) Unless otherwise provided for by this Act or regulations made under this Act, a disposition of a derivative right shall require the approval of the village council having jurisdiction over the village land out of which that right may be granted.

(4)(a) The grant of a lease, a licence, a usufruct or an equivalent interest in customary law from year to year or for a lesser period to a person ordinarily residing in the village from a person ordinarily residing in the village; and

- (b) The creation of—
 - (i) a small mortgage;
 - (ii) a mortgage for an amount equal to or less than the amount for which a small mortgage may be created;
 - (iii) a mortgage, reasonable sale or pledge under and in accordance with customary law in favour of a person ordinarily residing in the village by a person ordinarily residing in the village for a sum not greater than the sum which may be obtained by a loan through a small mortgage; or

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- (iv) a lease for not more than ten years by a lender excising the powers of leasing contained in section 29 of the Land Act relating to the leader's power of leasing,

shall not require the approval of the village council.

(5) An application for approval to a grant of a derivative right shall be—

- (a) made to the village council on a prescribed form;
- (b) signed by the applicants;
- (c) accompanied by a simple plan showing the location and boundaries of the land and any further information which may be prescribed;
- (d) accompanied by any fees which may be prescribed.

(6) The village council may require relevant information additional to that which is referred to in subsection (5) and shall not be under any obligation to determine an application in respect of which it has required additional information until that additional information has been submitted to it or a satisfactory explanation of why that additional information cannot be submitted to it has been submitted to it.

(7) The village council may consult with any person or organisation on an application for an approval to which this section applies but shall not be obliged to accept any advice received as a result of any consultation, nor, shall it be obliged to delay a determination on the application where it has requested for an advice within a certain time and that advice has not been submitted within that certain time.

(8) An approval of a derivative right under this section shall—

- (a) be personal to the applicant; and
- (b) not be assignable.

(9) An approval of a derivative right shall be—

- (a) in the prescribed form to be known as a 'certificate of approval to a derivative right' with the specific derivative right for which approval has been given named in brackets;
- (b) signed by the chairman and secretary of the village council;

- (c) accompanied by a demand for any premium, rent, taxes or dues which may be prescribed or which may be determined by the village council;
- (d) delivered or sent by registered letter to the holder of the certificate of customary right of occupancy to his last known abode or his usual place of business;
- (e) entered in a register of appeals to be kept by the village council.

(10) A derivative right shall be made subject to any terms and conditions which may be prescribed or which the grantor shall determine.

(11) Where the derivative right permits the grantee to occupy and use any land in the village, that occupation and use shall be subject to the provisions of section 29 of this Act.

(12) A derivative right may be registered in the register of village land and that registration shall—

- (a) constitute notice of the existence and content of that derivative right;
- (b) confer priority on that derivative right as against any derivative right created out of the same customary right of occupancy before the registered derivative right which has not been registered, whether or not that prior created derivative right was known to the grantee of the later created derivative right.

Grant of derivative right by village council

32.-(1) This section applies to the grant by a village council of a derivative right in village land.

(2) An application for a grant of a derivative right shall be—

- (a) made to the village council on a prescribed form;
- (b) signed by the party applying for the derivative right or his duly appointed agent or representative;
- (c) accompanied by simple plan showing the location and boundaries of the land and any other information which may be prescribed or which may be required by the village council;

- (d) accompanied by any fees which may be prescribed;
- (e) notified to the members of the village by any means of publicity which will bring the matter to their attention.

(3) The village council may require any relevant information additional to that referred to in paragraph (c) of subsection (2) and shall not be under any obligation to determine an application in respect of which additional information has been required until that information has been submitted to it or a satisfactory explanation as to why it cannot be submitted has been submitted to it.

(4) The village council may consult with any person or organisation on an application made for a derivative right under this section but shall not be obliged to accept any advice which it obtains as a result of any consultation, nor, shall it be obliged to delay making a determination if it has requested for an advice within a specific period and that advice has not been received within that period.

(5) An application for the grant of a lease under this section—

- (a) of five hectares or less and for five years or less, to be known as a class A application, shall be determined by the village council;
- (b) of more than five but less than thirty hectares and for more than five but less than ten years, to be known as a Class B application, shall be determined by the village council subject to confirmation by the village assembly;
- (c) of more than thirty hectares or for more than ten years, to be known as a Class C application, shall be determined by the village council subject to confirmation by the village assembly and the advice of the Commissioner.

(6)(a) A Class A application shall be—

- (i) determined within sixty days of the receipt of the application or within sixty days of the receipt of additional information required under subsection (3);

- (ii) deemed to be approved if the village council does not determine it within the period referred to in paragraph (i);
- (b) a Class B application shall be—
 - (i) determined by the village council upon that determination being submitted for confirmation to the village assembly within ninety days of the receipt of the application or within ninety days of the receipt of additional information required under subsection (3);
 - (ii) submitted to the village assembly not less than seven days before the meeting at which that application is to be considered for approval;
 - (iii) approval or refused by the village assembly within thirty days of the period referred to in paragraph (i);
 - (iv) deemed to be determined in accordance with the decision of the village council if it is refused by the village assembly within the periods referred to in paragraph (i);
- (c) a Class C application shall be—
 - (i) determined by the village council and that determination submitted to the village assembly to be considered for confirmation within one hundred and twenty days of the receipt of the application or within one hundred and twenty days of the receipt of additional information required under subsection (3);
 - (ii) submitted to the village assembly not less than fourteen days before the meeting at which that application is to be considered for approval;
 - (iii) approval or refused by the village assembly within sixty days of the periods referred to in paragraph (i);
 - (iv) submitted to the Commissioner, together with all information for his advice if any within thirty days of the approval by the village assembly;

- (v) approval or refused by the village council within thirty days or any longer period which may be determined by village council;
- (vi) deemed to be refused if the Commissioner advises the village council against it and the village council agrees with him within two hundred and ten days or any longer period which is referred to in paragraph (v) of the receipt of the application by the village council or of the receipt by the village council of additional information required under subsection (3).

(7) A grant of a derivative right under this section shall be—

- (a) personal to the applicant;
- (b) not assignable without the consent of the village council after the approval of the village assembly.

(8) An application for an approval to assign a derivative right granted under this section shall be made on a prescribed form and shall comply in every respect with and be governed by the provisions of this section as if it were an application for a grant of a derivative right.

(9) A grant of a derivative right shall be—

- (a) in the prescribed form;
- (b) signed by the chairman and secretary of the village council;
- (c) accompanied by a demand for any premium, rent, fees, taxes and dues which are prescribed or which may be determined by the village council;
- (d) where it is the grant of a lease for which a Class C application had been made, counter-signed by the Commissioner and shall unless and until it is so counter signed;
- (e) delivered or sent to the applicant at his last known abode or usual address;
- (f) entered in the register of village land.

(10) A grant of a derivative right under this section shall be made subject to section 29 and such other terms and

conditions as may be prescribed or as are determined by the village council.

Criteria for determining application for approval or for grant of derivative right

33.-(1) A village council and, in respect of a Class B and Class C application under section 32, a village assembly, shall, in determining whether to give approval to a private disposition of a derivative right under section 34 or to grant a derivative right under section 32 have regard to all or any of the following matters which appear to the village council to be relevant to the application, that is to say—

- (a) any land use plan prepared or in the process of being prepared by or for the village;
- (b) the likely benefits to be derived by the village as a whole by the grant of the derivative right;
- (c) the need to ensure the maintenance of sufficient reserve of land for occupation and use by villagers and for community and public use by those persons;
- (d) the need to ensure that the special needs of women for land within the village is and will continue to be adequately met;
- (e) the need to ensure that the special needs of landless people and the disabled within the village will continue to be adequately met;
- (f) any advice received from any person or organisation which has been consulted on the application;
- (g) any advice or information given by any department of Government on the application;
- (h) any other matters which may be prescribed.

(2) Where the derivative right which is the subject of an application is a lease for more than ten years to be granted by a lender exercising the powers of leasing contained in section 181, of the Land Act relating to lenders power of leasing there shall be a presumption that, notwithstanding the provisions of subsection (1), approval will be given to the lease and notwithstanding the provisions of subsection (3), that approval will be deemed to have been given if the village

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council have not made a decision on the application within sixty days of the receipt.

(3) A village council shall, in determining an application under sections 31 and 32—

- (a) grant, subject to any conditions which may be prescribed or determined by the village council; or
- (b) refuse,

the application and unless this Act provides otherwise, a failure to make a decision within the time specified in this section shall operate as a refusal to approve an application.

(4) Where a consent to a grant of a derivative right is refused by a village council or, in the case of a Class B or Class C application made under section 32 is not confirmed by the village assembly or in case a Class C application, is not confirmed by the Commissioner, the village council or as the case may be the Commissioner shall, at the request of the applicant furnish that applicant with reasons for the refusal or non-confirmation of that application.

Duties of
grantee of
derivative
right

34.-(1) A grantee of a derivative right shall pay all the premia, rent, taxes and dues which are required to be paid in connection with that grant and no such grant shall be valid or effective to transfer any interest in any village land or give rise to any rights in the grantee unless and until all the premia, rent, taxes and dues have been paid accordingly.

(2) The chairman and secretary of the village council or any other officer of the village council to whom any premia, rent, taxes or dues are required to be paid under this section shall endorse and sign a receipt for that premium, rent, tax or due on the certificate of the grant of the derivative right.

(3) A grantee of a derivative right shall comply with—

- (a) all the terms and conditions subject to which the derivative right has been granted;
- (b) all lawful orders issued and all bye-laws made by the village council of the village having jurisdiction over the land subject to the derivative right or any local or other authority having jurisdiction over land in the area or any orders issued by an official exercising powers under any

law in the United Republic;

- (c) all directives issued to him by any public officer or public body exercising powers under any Act, if the derivative right is a lease for which a Class C application was made.

(4) A grantee who does not comply with the provisions of this section shall be liable to suffer the termination of his derivative right.

Surrender of
customary
right of
occupancy
by villager

35.-(1) A villager or group of villagers or any other person or persons holding a customary right of occupancy may, subject to the provisions of this section, at any time surrender the customary right of occupancy which has been granted to him or them.

(2) A surrender of land held under a customary right of occupancy, whether made in accordance with customary law or otherwise which has or which it is reasonable to deduce has its purpose or its effect the depriving, or the placing of impediments in the way of a woman from occupying land which she would, but for that surrender of land, be entitled to occupy under customary law or otherwise shall not operate and shall be of no effect to prevent that woman from occupying that land in accordance with customary law or otherwise.

(3) A surrender of land held under a customary right of occupancy, whether made in accordance with customary law or otherwise which has or which it is reasonable to deduce has as its purpose or its effect the fraudulent, dishonest or unjust deprivation of a derivative right-holder of his derivative right shall not be a valid surrender and shall not operate to deprive that right-holder of his derivative right.

(4) Anybody referred to in subsection (1) who surrender land held under a customary right of occupancy shall remain liable to pay all rent, interest on a loan taken out on the security of the customary right of occupancy, taxes, fees and dues owing and due for payment at the time of the surrender of the customary right of occupancy, and—

- (a) a village council shall continue to be able to exercise all the powers provided for by this Act to

recover rent owned by an occupier of land held for a customary right of occupancy; and

- (b) a lender who has lent money on the security of the customary right of occupancy shall continue to be able to exercise all the powers of a lender in respect of that loan.

(5) Any person who surrenders a customary right of occupancy shall remain liable for any breaches of any conditions subject to which the customary right of occupancy was granted and for breaches of any rules relating to the use of that land which occurred during the occupation or to the use of the land for which he was responsible up to the time of the surrender of the customary right of occupancy.

(6) Where a villager surrenders a customary right of occupancy for reasons of age, infirmity, disability, poverty or other similar grounds, the village council may, take over from that villager the responsibility for paying any debts to which subsection (4) refers.

(7) A surrender of a customary right of occupancy shall be—

- (a) made on a prescribed form;
- (b) signed by the person or the authorised representatives of the group of persons surrendering the customary right of occupancy;
- (c) accompanied by any evidence which may be prescribed or which is considered by the village council to be satisfactory that all persons—
 - (i) dependent on a person who is surrendering that customary right of occupancy are aware of the surrender and have agreed to it;
 - (ii) having derivative rights in that customary right of occupancy are aware of the surrender;
- (d) any other information which may be prescribed;
- (e) sent or delivered to the village council of the village where the land is situate.

(8) The village council shall make entries prescribed in the register of village land recording the surrender of customary right of occupancy.

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(9) A derivative right granted out of a customary right of occupancy which is surrendered under this section, shall, as from the date of the surrender, be held on the village council on the same terms and conditions which it was held on the person who has surrendered the customary right of occupancy.

Regrant of
surrendered
customary
right of
occupancy

36.-(1) The regrant of a surrendered customary right of occupancy by a village council shall be in accordance with the provisions of this Part applicable to the grant of a customary right of occupancy.

(2) Where the person who has surrendered a customary right of occupancy has dependants, or if a woman, a spouse and if a man one or more spouses, the village council shall, before publicising the fact that the land is available to be granted to any villager or other person to whom section 22 refers first offer the land to the following persons in the following order, that is to say—

- (a) where the person who has surrendered the customary right of occupancy is a man—
 - (i) his wife;
 - (ii) where he has more than one wife, his wives in order of seniority;
 - (iii) where he has no wife or all wives have declined to accept the offer, his dependants;
- (b) where the person who has surrendered the customary right of occupancy is a woman—
 - (i) her husband;
 - (ii) where she has no husband or is divorced from her husband or her husband has declined to accept the offer, her dependants in accordance.

(3) A customary right of occupancy to which this section applies shall be granted to a person other than a person referred to in subsection (2), free of any outstanding debts which may have burdened the surrendered customary right of occupancy.

When breach of condition of customary right of occupancy arises

37.-(1) A breach of a condition requiring continuous performance shall arise as soon and continue as long as the condition is not complied with.

(2) A breach of a condition subject to a fixed term shall arise—

(a) in the case of a condition requiring the doing of any act within any time specified and upon that time being extended by the village council, within that extended time, upon the expiry of that time without that act having been done;

(b) in the case of a condition requiring any act to be refrained from until any time specified in the condition or where that time has been extended by the village council, within that extended time, upon the doing of that act before that time.

(3) Where any condition consists of two or more separate obligations or liabilities, a failure to fulfil any of those obligations or liabilities shall constitute a breach of the condition.

(4) Where any condition consists of an obligation to comply with regulations made by any local or other authority or the lawful orders of a village council having jurisdiction in the area where the land held for a customary right of occupancy is situated, a failure to comply with any of those regulations or any lawful order shall constitute a breach of a condition, whether that failure is made the subject of criminal proceedings or not.

(5) Where any condition consists of an obligation to comply with any rule of customary law applicable to the land held for a customary right of occupancy, or to the person occupying that land, a failure to comply with that rule shall constitute a breach of condition.

Remedies for breach of condition

38.-(1) Upon any breach of any condition subject to which any customary right of occupancy has been granted, or upon any failure to pay any rent, taxes or other dues, the village council may—

(a) exercise any remedy available under customary law;

- (b) impose a fine on an occupier in accordance with section 40;
- (c) serve a notice on the occupier in accordance with section 41 requiring the breach to be remedied;
- (d) serve a supervision order on the occupier in accordance with section 42;
- (e) temporarily assign the customary right of occupancy to another person in accordance with section 4

(2) The village council may take action under sections 39 to 43 in respect of the same breach.

(3) The village council may, at any time, withdraw from taking action under sections 39 to 43.

(4) For purposes of this section and sections 39 to 43, every breach of condition shall be taken as capable of being remedied, and the action required for remedying any breach shall be taken to consist—

- (a) in the case of a positive condition or a requirement in a regulation or order, to do some act or thing, or the doing of any act or thing the omission of which constituted or formed part of the breach;
- (b) in the case of a negative condition, or a prohibition in a regulation or order, of the doing of those acts and things which are necessary or which the village council may direct to be done to put the land into the state in which it would be if the breach had not occurred.

(5) The Commissioner may provide advice, in writing, either generally or to a specific village on any remedies referred to in this section and all village councils shall have regard to that advice in so far as it applies to their exercise of power under this section or sections 39 to 43.

(6) Before proceeding to take any action in respect of a breach of a condition of the customary right of occupancy, the village council shall consider—

- (a) the nature and gravity of the breach and whether it could be waived;
- (b) the circumstances of the occupier;

(c) whether the condition that has been breached could be remedied so as to obviate the breach, and shall in all cases where the village council is minded to proceed to take action on a breach, first issue a warning to the occupier advising him that he is in breach of the conditions of the customary right of occupancy and how he may rectify that breach.

Remedies in accordance with customary law

39.-(1) Where a village council proposes to exercise any customary law remedy or a breach of a condition imposed under and in accordance with customary law, it shall—

- (a) inform the person alleged to have committed the breach of—
 - (i) the alleged breach;
 - (ii) the proposed remedy;
 - (iii) where some act or thing is required to be done, the time, being not less than twenty-one days, within which it must be done;
 - (iv) the consequences of a failure to remedy the alleged breach;
- (b) give the person alleged to have committed the breach an opportunity, of not less than fourteen days notice, to make representations on the matter;
- (c) take all such representations into account before determining whether to proceed to exercise a customary law remedy.

(2) A customary law remedy which permits or requires that a person be deprived of his land, either for a stated period or permanently, shall not take effect unless and until the Commissioner has assented to that remedy.

(3) Where the village council propose to exercise the remedy referred to in subsection (2), it shall—

- (a) inform the Commissioner in writing of the proposal and the reasons for it;
- (b) provide the Commissioner with any material which was before it, including a summary of any representations made under paragraph (b) of subsection (1), when it determined to exercise that remedy;

- (c) provide the Commissioner with any additional information which the Commissioner may, in writing within twenty-one days of the receipt of the information and material referred to in paragraphs (a) and (b), require;
- (d) not exercise the remedy unless and until the Commissioner has signified, in writing, his assent to that remedy.

(4) Where a village council is required by the Commissioner to provide additional information under paragraph (c) of subsection (3), it shall provide that additional information within forty days of the receipt of the request from the Commissioner.

(5) The Commissioner shall signify, in writing, that he assents or that he does not assent to the remedy referred to in subsection (2) within thirty days after he has received all that information which is referred to in subsection (3).

Fine for
breach of
condition

40.-(1) Where any breach of a condition has arisen, the village council may serve a notice in the prescribed form on the occupier who has committed the breach requiring him to show cause as to why a fine should not be imposed upon him in respect of that breach.

(2) The occupier shall, within the time specified in the notice, respond to the notice.

(3) Where the occupier has not responded to the notice or where he has failed to show cause, to the satisfaction of the village council, as to why a fine should not be imposed, the village council may serve a notice on the occupier requiring him to pay a fine within any time which may be specified in the notice and in the case of a continuing breach, the occupier shall be liable without further notice to pay a further during which the breach continues.

(4) The Minister may make regulations prescribing fines which may be imposed by a village council in respect of breach of conditions.

(5) The village council may, where the occupier has not committed any other breach of a condition of the customary

right of occupancy, suspend the payment of any fine of up to two years if the occupier does not commit that breach again within the period during which the fine is suspended, the fine shall lapse and shall no longer be payable.

(6) Where the fine is paid in full, no further action shall be taken by the village council in respect of that breach.

(7) If the village council is satisfied, after due inquiry, which shall include an opportunity for the occupier to make representations on the matter, that the breach in respect of which a fine has been paid is continuing or has recommenced, it may take action in respect of that continuing or recommenced breach under section 39 or 41 to 43.

Summary
action to
remedy
breach of
condition

41.-(1) Where any breach of condition has arisen, and it appears to the village council that the breach is capable of being remedied by the occupier who has committed the breach within a reasonable time, it may serve a notice in the prescribed form on the occupier specifying the action required for remedying the breach and requiring the occupier to take that action within the time specified in the notice.

(2) The occupier on whom a notice under this section is served shall comply strictly with the notice.

(3) Where a notice served under this section is strictly complied with, no further action shall be taken by the village council in respect of that breach.

(4) Where it appears to the village council that the notice has not been strictly complied with or that the breach in respect of which the notice was served is continuing or has recommenced, it shall take action in respect of that continuing or recommenced breach in accordance with section 42 or 43.

Supervision
order to
remedy
breach of
condition

42.-(1) Where any breach of condition has arisen and it appears to the village council that the occupier who has committed the breach is unlikely or is not capable of remedying the breach unless his use of the land is supervised, it may serve an order, to be known as a "supervision order" in the prescribed form on that occupier.

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(2) A supervision order shall specify –

- (a) the acts or things that must be undertaken to remedy the breach;
- (b) the time, being not less than sixty days, within which the acts or things must be undertaken;
- (c) the person, being an officer from—
 - (i) the village council;
 - (ii) another local authority having jurisdiction in the area; or
 - (iii) a department of government, who will supervise the undertaking of the acts or things that must be undertaken.

(3) Where the village council is of the opinion that the breach of condition is of such a severity or of such a technical nature or that the occupier is unlikely to comply with any orders of an officer of the village council that an officer referred to in subparagraphs (ii) and (iii) of paragraph (c) of subsection (2) should supervise the remedying of the breach, it shall—

- (a) inform that local authority or department of Government of the facts of the case;
- (b) request that local authority or department of government to provide an officer to supervise the remedying of the breach; and
- (c) take no further action on the matter unless and until it is informed that an officer referred to in paragraph (b) has been authorised to exercise the functions of supervision under this section.

(4) A local authority or government department shall, on receipt of a request referred to in paragraph (b) of subsection (3), inform the village council as soon as may be as to whether it will or will not accede to the request and authorise an officer to exercise the functions of supervision.

(5) Where a local authority or government department informs the village council that it will not accede to the request referred to in paragraph (b) of subsection (3), the village council may either—

- (a) authorise an officer employed by the village council to exercise the functions of supervision; or
- (b) withdraw from taking action under this section and

take—

- (i) no further action; or
- (ii) action under sections 39 to 42 or 43.

(6) At the end of the period referred to in paragraph (b) of subsection (2) or any longer period which may be agreed to by the village council, the supervising officer shall report to the village council on whether the occupier has completed the acts or things which he was required to undertake by the supervision order.

(7) Where the report of the supervising officer is to the effect that—

- (a) the occupier has completed the acts or things required to be undertaken, the village council shall take no further action under the supervision order;
- (b) the occupier has not completed the acts or things required to be undertaken, the village council shall either—
 - (i) extend the operation of the supervision order for any period which it considers necessary to ensure compliance with the order; or
 - (ii) take action under section 42.

(8) The provisions of subsection (6) shall apply to a supervision order extended under the provisions of subparagraph (i) of paragraph (b) of subsection (7).

(9) Where it appears to the village council that the breach in respect of which a supervision order was served has recommenced, it shall either—

- (a) reactivate the supervision order and the provisions of this section shall apply to any reactivated order;
- (b) take action under section 43.

Temporary assignment of customary right of occupancy on account of breach of condition

43.-(1) Where any breach of condition has arisen and it appears to the village council that, notwithstanding any action taken against the occupier in breach of those conditions under sections 39 to 42, the breach is—

- (a) seriously affecting the sustainable productivity of the land;
- (b) seriously harming the land of persons occupying

land contiguous to the land where the breach is taking place; or

- (c) continuing on account of the continued refusal or neglect of the occupier to undertake the necessary acts or things to remedy the breach,

the village council may determine to take action in respect of that breach under this section.

(2) Where the village council determines to take action under this section, it shall—

- (a) inform the Commissioner of—

- (i) all the facts of the case;
- (ii) the actions the village council has hitherto taken to remedy the breach;
- (iii) the reasons why action under this section is necessary;

- (b) request the authorisation of the Commissioner to proceed under this section;

- (c) take no further action unless and until it receives an authorisation to proceed from the Commissioner.

(3) On receipt of the information and request under subsection (2), the Commissioner—

- (a) may direct the village council to send any further information within any time which is specified in the direction;

- (b) shall within forty days of the receipt of the information and request under subsection (2) or the receipt of further information under paragraph (a), send or deliver to the village council a notice in writing either—

- (i) authorising action to be taken under this section; or
- (ii) forbidding action to be taken under this section.

(4) A village council shall comply with any directive or notice received from the Commissioner under subsection (3).

(5) Where a village council has been authorised to proceed under this section, it shall serve a notice, to be known

as a “notice of temporary assignment” in the prescribed form on the occupier referred to in subsection (1) requiring him to show cause as to why his customary right of occupancy should not be assigned to another person ordinarily residing in the village for a specified period of time.

(6) The occupier who has been served with a notice of temporary assignment shall respond to that notice, either in person or through a representative within the time specified in the notice, and may adduce any evidence which he considers necessary to enable him to show cause as to why a temporary assignment of his customary right of occupancy should not take place.

(7) Where the occupier has not responded to the notice or has failed to show cause, to the satisfaction of the village council as to why a temporary assignment of his customary right of occupancy should not take place, the village council shall serve on that occupier an order, to be known as a ‘conditional order of temporary assignment’ in the prescribed form.

(8) A conditional order of temporary assignment shall—

- (a) specify the length of time, being a period of not less than one year nor more than for the duration of the life of the occupier, for which his customary right of occupancy is to be temporarily assigned;
- (b) state the name of the person or persons to whom the customary right of occupancy is to be temporarily assigned;
- (c) set out the rights and duties of the person against whom the order is being made in relation to the assignee;
- (d) specify the date, being not less than sixty days from the date of the conditional order, on which the village council will apply to the court for the conditional order to be made absolute.

(9) The persons to whom a temporary assignment of a customary right of occupancy shall be made and the order in which they shall be offered that temporary assignment are—

- (a) where the occupier has a spouse living with the occupier and working on the land, that spouse;
- (b) where the occupier is a man and has more than one spouse living with him and working on the land, those spouses as joint occupiers without the power to sever the joint occupancy;
- (c) where the occupier has no spouse or if a man spouses, living with that occupier and working on the land, or the spouse, as the case may be, all the spouses decline to take the customary right of occupancy on a temporary assignment, those of the adult dependants of the occupier living with that occupier and working on the land as joint occupier without the power to sever the joint occupancy;
- (d) where there are no persons in the categories set out in paragraphs (a), (b) or (c) or all those persons have declined to take the customary right of occupancy on a temporary assignment, not more than two of the persons who may be a brother, half-brother, sister or half-sister to the occupier, who are ordinarily residing in the village as joint occupiers without the power to sever the joint occupancy;
- (e) where there are no persons in the categories set out in paragraphs (a), (b), (c) or (d), or all those persons have declined to take the customary right of occupancy on a temporary assignment, not less than two or more than four villagers, who shall be from the same clan as the occupier nominated by the village council and approved by the Commissioner as joint occupiers without the power to sever the joint occupancy.

(10) Any person who takes a temporary assignment of a customary right of occupancy shall act as and shall be deemed to be, in relation to the land which is the subject to the temporary assignment, a trustee of that land, the beneficiary of which is the person from whom the temporary assignment has been taken.

(11) A person shall not be disqualified from taking a temporary assignment of a customary right of occupancy under this section only on the grounds that by so doing, he would be occupying land in excess of the prescribed maximum for that village.

(12) Any person may make an application to a court having jurisdiction over land matters to make a conditional order of temporary assignment absolute that court shall consider the matter *de novo* and hear the occupier and the village council and may—

- (a) make absolute the order specified by the village council;
- (b) amend the order specified by the village council and make that amended order absolute;
- (c) suspend the operation of the order for a specified period;
- (d) substitute an alternative remedy for the order;
- (e) dismiss the application and rule that the order be discharged;
- (f) make any ancillary order which appear to the court to be just and proper in all the circumstances of the case.

(13) An order of temporary assignment absolute shall, without more, operate as an assignment of the customary right of occupancy to which it refers to the assignee or assignees named in the order.

(14) A village council shall—

- (a) hold that customary right of occupancy on the same terms and conditions as the occupier who, prior to the assignment, held that customary right of occupancy;
- (b) have no power to assign that customary right of occupancy;
- (c) where the former occupier wishes to continue to reside on the land—
 - (i) grant that former occupier a residential licence to reside on the land subject to any terms and conditions which the village

- council shall approve or which may be prescribed;
- (ii) provide that former occupier with sufficient income for him to be able to meet his basic needs;
- (d) apply any surplus income derived from the land in the following order to—
 - (i) paying any taxes or other public imposts owned by the former holder of the customary right of occupancy;
 - (ii) repairing any damage done to the land by the former holder of the customary right of occupancy;
 - (iii) meeting any obligations which the former holder of the customary right of occupancy has to his family which he has not met or is not meeting;
 - (iv) paying the residue to the former holder of the right of occupancy.

Revocation
of customary
right of
occupancy

44.-(1) The President may revoke a customary right of occupancy granted to a non-village organisation or a group of persons not being villagers.

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(2) The provisions of sections 46 and 47 of the Land Act, which relates to fines for breach of condition and to summary action to remedy breach of condition of customer right of occupancy respectively shall, as near as may be, apply to the revocation of a customary right of occupancy as they apply to the revocation of a granted right of occupancy provided for in those sections.

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(3) The Commissioner may direct the village council of the village where the land held of a customary right of occupancy which may be revoked is situate to give him any information and documents and take any action in any time which may be specified in the direction, being not less than forty days, to enable him to exercise his functions under sections 46 and 47 of the Land Act, in relation to that customary right of occupancy.

(4) A village council in receipt of which the directive is referred to in subsection (3) shall comply with that directive in every particular.

Abandonment of land held for customary right of occupancy

45.-(1) Land held for a customary right of occupancy shall be taken to be abandoned where one or more of the following factors are present:

- (a) the occupier has not occupied or used the land for any purpose for which land may lawfully be occupied and used, including allowing land to lie fallow, in the village for not less than five years;
- (b) the occupier, other than a villager whose principal means of livelihood is agricultural or pastoral, owes any rent, taxes or dues on or in respect of the land and has continued to owe that rent, taxes or dues or any portion of it for not less than two years from the date on which that rent, taxes or dues or any portion of it first fell to be paid;
- (c) the occupier has left the country without making any arrangement for any person to be responsible for the land and for ensuring that the conditions subject to which the customary right of occupancy was granted are complied with and has not given any appropriate notification to the village council.

(2) In determining whether land has been abandoned in terms of paragraphs (a) and (b) of subsection (1), regard shall be had to—

- (a) the means of the occupier of the land, and where the occupier is an individual, the age and physical condition of the occupier;
- (b) the weather conditions in the area during the preceding three years;
- (c) any customary practices, particularly practices amongst pastoralists which may have contributed to the non-use of the land during the preceding three years;
- (d) any advice on the matter sought by the village council or given to it by the Commissioner.

(3) Land shall not be taken to be abandoned under subsection (1) where a spouse or dependants of the occupier are occupying and using that land, notwithstanding that the occupier—

- (a) is not and has not for not less than three years occupied or used that land;
- (b) owes, in accordance with paragraph (b) of that subsection any rent, taxes, fees or dues on that land; or
- (c) has not specifically appointed a spouse or a dependant to manage the land in his absence.

(4) Where a village council considers that any village land held for a customary right of occupancy has been abandoned, it shall publish a notice in the prescribed form at the offices of the village council and affix a copy of the notice in a prominent place on that land—

- (a) stating that the question of whether that land has been abandoned will be considered by the village council at a time which shall be not less than thirty days from the date of the publication of the notice;
- (b) inviting any person in the village with an interest in that land to show cause as to why that land should not be declared to be abandoned.

(5) A copy of a notice referred to in subsection (3) shall be sent to the Commissioner who shall be entitled to make representations to the village council on the matter.

(6) Where either no person interested in the land has shown cause or a person interested in the land has shown cause to the satisfaction of the village council as to why the land should not be declared to be abandoned, the village council may make an order, to be known as a 'provisional order of abandonment' in the prescribed form declaring the land to be abandoned.

(7) A copy of a provisional order of abandonment shall be—

- (a) posted up in the offices of the village council;
- (b) affixed in a prominent place on the land to which it refers;

(c) sent to the Commissioner.

(8) A provisional order of abandonment shall, without more, unless a person claiming an interest in the land applies to the court for relief against that order, become a final order of abandonment ninety days from the date of the declaration of the provisional order.

(9) On the coming into effect of a final order of abandonment—

- (a) the customary right of occupancy in the land which has thereby been declared to be abandoned, shall immediately and without further action being required stand revoked; and
- (b) the land which has been declared to be abandoned shall, immediately and without any further action being required, revert back to land held by the village council as available for allocation to persons ordinarily resident in the village.

(10) The village council shall, on a claim being made within sixty days of the coming into effect of a final order of abandonment by an occupier of land declared by that final order to be abandoned, on being satisfied by that claim, pay compensation for any unexhausted improvements on that land at the time of the coming into effect of the final order, but shall, where the occupier is an individual after taking account of the means, age and physical condition of that occupier, deduct from any payment or compensation—

- (a) all the costs incurred by the village council in the process of declaring the land to be abandoned, including any costs incurred in any action in court where a person claiming an interest in the land is applying for relief from a provisional order;
- (b) all the costs incurred in restoring the land or any buildings on the land to the condition that it would be reasonable to expect they should have been in if they had not been abandoned,

any rent, taxes, fees or other dues owing and not paid by the occupier.

(11) A village council shall record a provisional and a final order of abandonment in the register of village land.

Application
for relief

46.-(1) An occupier referred to in sections 39 to 45 may apply to a Court having jurisdiction for relief against any of the actions, notices, orders, or declarations which may be made against him by the village council or the Commissioner under any of those sections.

(2) Where the effect of an action, notice, order or declaration made under any of the referred sections adversely affects any other person with an interest in land of the occupier against whom the action, notice, order or declaration has been made, that other person may, with leave of the court, apply for relief against so much of the action, notice, order or declaration that affects him.

(3) Where an application is made by one or more but not all co-occupiers, then unless the court orders otherwise, that application must be served on every co-occupier who is not already a party.

(4) An application for relief is not to be taken as an admission by the occupier or any other person applying for relief that—

- (a) there has been a breach of condition or an abandonment of land in respect of which the action, notice order or declaration has been served;
- (b) by reason of that breach or abandonment, the village council or Commissioner has the right to revoke the customary right of occupancy or make a declaration of abandonment;
- (c) all notices which were required to be served by the village council were properly served;
- (d) a period for remedying the breach was reasonable.

(5) A court may grant any relief against the operation of an action, notice, order, or declaration which the circumstances of the case require and without limiting the generality of that power, may—

- (a) cancel that notice, order or declaration;

- (b) vary the operation of that action, notice, order or declaration;
- (c) postpone the operation of that notice, order or declaration;
- (d) substitute a different remedy for the one determined upon by the village council or Commissioner;
- (e) confirm the action, notice, order, or declaration made, notwithstanding that some procedural errors took place during the making of that action, notice, order or declaration if the court is satisfied that—
 - (i) the occupier or other person applying for relief was made fully aware of the substance of the action, notice, order or declaration; and
 - (ii) no injustice will be done by confirming that action, notice, order or declaration,

and may grant that relief on any condition as to expenses, damages, compensation or any other relevant matter which the court thinks fit.

Appeals

47. An applicant for—

- (a) the grant of a customary right of occupancy;
- (b) approval to the assignment of a customary right of occupancy;
- (c) approval to any disposition of a derivative right which requires consent; or
- (d) the grant of a derivative right by a village council,

who is refused that grant or approval by a village council or where that grant or approval requires the confirmation or approval of the village assembly, is refused that confirmation or approval may appeal against that refusal to the District Council having jurisdiction over where the land the subject of appeal is situate and may further appeal to the Commissioner and further to the Court.

C: Adjudication of Interest in Land

Application of this Subpart

48. Except where the boundaries of and interest in land is registered under any law applicable to the

registration of village land, or notwithstanding such registration, the boundaries and interests in land are fully accepted and agreed to by all persons with an interest in that land and in respect of the boundaries of that land and land bordering that land, no grant of a customary right of occupancy shall be made to any person, group of persons or non-village organisation unless and until the boundaries of and interest in that land have been adjudicated in accordance with the provisions of this Subpart.

Spot adjudication

49.-(1) A person, group of persons or non-village organisation may, on making an application to a village council for a customary right of occupancy, apply, on a prescribed form to that village council for adjudication, to be known as "spot adjudication" to be applied to that land in respect of which they have applied for a customary right of occupancy.

(2) The village council shall determine whether spot adjudication may be applied to the land in respect of which it has been requested or whether it is necessary, in order for adjudication to be applied to land in a proper and just manner, to apply adjudication to land contiguous to or in the vicinity of the land for which adjudication has been requested.

(3) Where the village council determines that spot adjudication may be applied to the land, it shall commence the process of adjudication in respect of that land.

(4) Where the village council determines that it is necessary to apply adjudication to land contiguous to and in the vicinity of the land for which adjudication has been requested, it shall—

- (a) submit the determination in the form of a recommendation to the village assembly for its approval;
- (b) inform the district council having jurisdiction over that village of the determination and the reasons for it;

(c) inform the applicants of the determination and the reasons for it.

(5) Where, either—

(a) a village assembly rejects the recommendation of the village council submitted to it under paragraph (a) of subsection (3); or

(b) an applicant for adjudication submits an objection, in writing, to the determination to the village council,

that village council shall report that rejection or as the case may be send a copy of that objection to the district council having jurisdiction over that village.

(6) The district council may, if that considers that spot adjudication ought to be applied to land for which it has been requested, notwithstanding the determination by the village council made under subsection (2), after taking account of the rejection by the village assembly of, or the objection by an applicant for spot adjudication to that determination by the village council, direct that village council to apply spot adjudication to the land of the applicant.

(7) A village council shall comply with a directive issued to it by the district council under this section.

Village or district adjudication

50.-(1) Adjudication shall be either—

(a) village adjudication; or

(b) district adjudication.

(2) The responsibility for village adjudication is hereby vested in the village council and shall be conducted in accordance with the provisions of this section or section 54.

(3) The responsibility for central adjudication is hereby vested in the district council and shall be conducted in accordance with the provisions of section 56.

(4) Where a complaint is made to the district council by not less than twenty persons with interests in land to which village adjudication is being applied that

the village adjudication is being applied improperly or unfairly, the district council shall investigate the complaint and on being satisfied of the accuracy of the complaint, the district council shall—

- (a) issue any directive which it considers necessary to the village council to correct and improve the process of village adjudication; or
- (b) issue a directive to the village council to—
 - (i) cease exercising any powers under the process of village adjudication;
 - (ii) send all records and other information specified in the directive to the district council;
 - (iii) cooperate fully with any officers whom the district council shall authorise to apply central adjudication to the land to which village adjudication was being applied.

(5) The issuing of a directive under paragraph (b) of subsection (4) shall operate to—

- (a) terminate forthwith village adjudication;
- (b) apply central adjudication,

to the land to which village adjudication was being applied.

(6) Where central adjudication has been applied to land under subsection (5), the district council shall thereupon be empowered to—

- (a) re-examine;
- (b) cancel;
- (c) revise;
- (d) add to;
- (e) make any other decisions which seem just on,

any determination made by any person or body in the village in connection with village adjudication of that land.

Determination to
apply village
adjudication

51.-(1) A village council may, either of its own motion and shall, on the application of not less than fifty

villagers, recommend to the village assembly that a process of village adjudication be applied to the whole or a defined portion of village land available for grants of customary rights of occupancy.

(2) A recommendation made under this section shall—

- (a) contain a brief statement of reasons for the recommendation;
- (b) specify the approximate area of land to which it is proposed to apply village adjudication;
- (c) summarise the procedures to be followed in the process of village adjudication;
- (d) be posted in a public place within the village and explained to villagers so that the members of the village assembly may have notice of the recommendation not less than fourteen days before the meeting of the village assembly which is to vote on the recommendation;
- (e) be copied to the Commissioner.

(3) Where the village assembly approves a recommendation made under this section, the village council shall, as soon as may be after that, begin the process of village adjudication.

(4) A refusal by the village assembly to approve a recommendation of the village council shall not operate to bar any villager or group of villagers from applying for spot adjudication to be applied to land in respect of which any of those persons have applied for a customary right of occupancy.

Appointment and functions of village adjudication adviser

52.-(1) Where a village assembly has approved a recommendation that a village adjudication process shall take place, the village council of that village shall appoint a villager—

- (a) known and respected for his knowledge of and impartial judgment about land matters in that village;

- (b) qualified in a prescribed discipline or profession;
- (c) any public servant appointed by the Commissioner at the request of the village council, to act as a village adjudication adviser;
- (d) an official with responsibilities for land matters of a local authority having jurisdiction in the area where the land to be adjudicated is situate; or
- (e) a magistrate appointed by the Judicial Service Commissioner at the request of the village council to act as a village adjudication adviser.

(2) A village adjudication adviser shall be responsible to the village adjudication committee and shall assist that committee to implement and manage the village adjudication process and without limiting the generality of that function, shall—

- (a) carry out any lawful orders and directions from the village adjudication committee on any matters connected with the village adjudication process which appear to the committee to be necessary;
- (b) draw to the attention of the committee any error or omission in any adjudication register at any time before it is completed;
- (c) make a claim or otherwise act on behalf of any person who is absent or under a disability if he considers it necessary to avoid injustice;
- (d) attempt to resolve any dispute concerning the boundaries of or interests in land arising out of the village adjudication process through conciliation before it is referred to a village adjudication committee;
- (e) conduct any inquiries which he may be directed to conduct by the committee to implement a village adjudication process.

Village
adjudication
committee

53.-(1) Where a village assembly which has approved a recommendation that a village adjudication process shall take place, the village council shall establish a village adjudication committee, the members of which shall be elected by the village assembly.

(2) A village adjudication committee shall consist of not less than six nor more than nine persons, of whom not less than three persons shall be women, who shall serve for a term of three years and shall be eligible to be re-elected for one further term of three years.

(3) The functions of a village adjudication committee shall be to—

- (a) determine the boundaries of and interest in land which is the subject of a village adjudication;
- (b) set aside or made reservations of land or demarcate rights of way and other easements which it considers necessary for the more beneficial occupation of land;
- (c) adjudicate upon and decide in accordance with customary law any question referred to it by any person with an interest in land which is the subject of a village adjudication;
- (d) advise the village adjudication adviser or any person subordinate to him who is assisting in the village adjudication process upon any question of customary law as to which its guidance has been sought;
- (e) safeguard the interests of women, absent persons, minors and persons under a disability;
- (f) take account of any interest in land in respect of which for any reason, no claim has been made.

(4) Each village adjudication committee shall elect one of its members to be chairman who shall preside at all meetings at which he is present; and if at any meeting the chairman is absent, the members present shall elect one of themselves to preside over that meeting.

(5) The quorum of a village adjudication committee shall, where the number of the committee is six members, be four, of which at least two members shall be women and where the number of the committee is greater than six members, be five, of which at least two members shall be women.

(6) In the event of an equality of votes, the chairman or other member presiding shall have a casting vote as well as an original vote.

(7) Any decision of a village adjudication committee shall be signed by the chairman or other member presiding and the village adjudication adviser.

(8) The village adjudication adviser shall be the executive officer for the village adjudication committee and shall keep the records of the committee.

(9) The village adjudication committee shall in the exercise of any of its powers under this section which involve a hearing comply with the rules of natural justice and, subject to that duty, may—

- (a) hear evidence which would not be admissible in a court of law;
- (b) call evidence of its own motion;
- (c) use evidence contained in any official record or adduced in any other claim; and
- (d) generally determine its own procedures.

(10) A village adjudication committee shall have jurisdiction over all claims made during the course of a village adjudication process and for this purpose and in order to discharge the functions referred to in subsection (3), the chairman of that committee shall be legally competent to administer oaths and to issue summonses, notices and orders requiring the attendance of any persons and the production of any documents which he may consider necessary for the carrying out of the village adjudication.

Procedures for
village
adjudication

54.-(1) The chairman of a village adjudication committee shall be responsible for ensuring that the procedures set out in this section and any other procedures that may be prescribed are complied with.

(2) Where village adjudication is to be applied to village land or a portion of that land, a notice shall be published and posted in a prominent place in the village and on the land which is to be adjudicated—

- (a) specifying the approximate area of land to be adjudicated (the adjudication area);
- (b) requiring all persons who claim any interest in the land to attend a meeting of the village adjudication committee at a specified time and put forward their claims;
- (c) requiring any person who claims to occupy land within the adjudication area to mark or indicate the boundaries of the land in the manner and before the date which may be specified by the notice.

(3) On the specified date, the village adjudication committee shall hear and determine all claims made under paragraphs (b) and (c) of subsection (2).

(4) The village adjudication committee may adjourn any hearing into any claim and direct the village adjudication adviser to conduct further investigations into that claim.

(5) In hearing and determining any claim, the village adjudication committee shall use its best endeavours to mediate between and reconcile parties having conflicting claims to the land.

(6) The village adjudication committee shall cause to be prepared a provisional adjudication record in the prescribed manner of the claims to the adjudicated land which it has determined under subsection (3) and shall post that record in a prominent place within the village.

(7) A provisional adjudication record shall, unless an appeal is made under the provisions of section 55,

become a final adjudication record thirty days after it has been published and shall thereupon become a part of the register of village land.

(8) A provisional adjudication record shall, where any appeal has been made under section 55, become a final adjudication record thirty days after the final disposition of that appeal.

Appeals

55.-(1) Any person who is aggrieved by a determination of a village adjudication committee may, within thirty days of the publication of the adjudication record, appeal to the village land council against that determination.

(2) The village land council shall, in hearing any appeal—

- (a) have all the powers and comply with all the procedures applicable to a village adjudication committee; and
- (b) reach any decision which appears to it to be just in all the circumstances, and, without limiting the generality of that power, may—
 - (i) amend the adjudication record;
 - (ii) correct any error in the adjudication record;
 - (iii) direct that the village adjudication adviser conduct further investigations into the subject matter of the appeal.

(4) Where the village land council proposes to make a decision which may adversely affect the interests of any person in the adjudication area who has not appealed, the panel shall give that person an opportunity to be heard before it shall make that decision.

(5) Any applicant or person referred to in subsection (4) aggrieved by a decision of the village land council given under this section may, with the leave of the district land court, appeal to that court against that decision and the court may make any decision or order which it considers just in all the circumstances and to that end may make any rectification of the provisional

adjudication record which it considers will achieve a just result.

District
adjudication

56.-(1) Where the district council has issued a directive under paragraph (b) of subsection (4) of section 50 or where a village assembly has determined that district adjudication shall be applied to land within the village, the provisions of this section shall apply to the process of district adjudication.

(2) The district council shall appoint a public officer to be an adjudication officer for that village land, and that officer shall be in charge of and shall exercise general supervision and control over the adjudication process and without limiting the generality of that power, that officer may—

- (a) where a village adjudication adviser has been appointed—
 - (i) give that adviser orders and directives which that adviser shall comply with;
 - (ii) dispense with the services of that adviser;
- (b) where a village adjudication committee has been elected—
 - (i) appoint further members to that committee;
 - (ii) remove all or any elected members from that committee;
 - (iii) arrange for the election of new members to that committee by the village assembly;
 - (iv) nominate a chairman of the committee who will replace the chairman elected by that committee;
 - (v) appoint an executive officer for the committee who will replace a village adjudication adviser;
- (c) where a village adjudication committee has not been elected, appoint a village adjudication committee the composition, powers and procedures of which shall, with the exception of paragraphs (a) and (b) of

- subsection (3) of section 53 comply with the provisions of that section;
- (d) exercise those powers of the village adjudication committee—
 - (i) to the exclusion of that committee, set out in paragraphs (a) and (b) of subsection (3) of section 53; and
 - (ii) in conjunction with that committee set out in paragraphs (a) and (b) of subsection (3) of section 53;
 - (e) refer any matter to a village adjudication committee for its opinion;
 - (f) exercise, to the exclusion of the chairman of a village adjudication committee, the responsibility for ensuring compliance with subsection (2) of section 57;
 - (g) exercise, to the exclusion of a village adjudication committee, the powers set out in subsections (3), (4) and (5) of section 54, and accordingly substitute a reference to himself for a reference to a village adjudication committee in a notice published under subsection (2) of section 54;
 - (h) prepare, to the exclusion of a village adjudication committee, the provisional adjudication record under subsection (6) of section 54;
 - (i) issue any orders to any officer subordinate to him and to a village adjudication committee which he thinks necessary for the carrying out of the process of adjudication;
 - (j) at any time before a provisional adjudication record becomes final, correct any error or supply any omission occurring in that provisional record.

(3) An adjudication officer shall have jurisdiction in all claims made under a process of central adjudication relating to interests in land in an adjudication area, with power to determine any question that needs to be

determined in connection with any claims and for that purpose he shall be legally competent to administer oaths and to issue summonses, notices or orders requiring the attendance of any persons or the production of any documents which he may consider necessary for the carrying out of that adjudication.

(4) Any person who has made a claim under a process of district adjudication who is aggrieved by any act or decision of an adjudication officer done or taken under the process of district adjudication may, within thirty days of the publication of a provisional adjudication record, appeal to the Commissioner and may further appeal to the High Court.

(5) On any appeal which is made under subsection (4), the court may make any decision or order which it may consider just in all the circumstances and to that end it may make any rectification of the provisional adjudication record which it considers necessary to achieve a just result.

(6) The provisions of subsections (7) and (8) of section 54 shall apply to a provisional adjudication record prepared by an adjudication officer under this section.

Principles of
adjudication

57.-(1) In preparing the provisional adjudication record, a village adjudication committee, or as the case may be, an adjudication officer, if it or he is satisfied that—

- (a) a person is and has been or his predecessor in title was in peaceable, open and uninterrupted occupation of village land under customary law for not less than twelve years, shall determine that person to be entitled to a customary right of occupancy;
- (b) a person is in occupation of village land allocated to him or his predecessor in title during Operation Vijiji, shall determine that person to be entitled to a customary right of occupancy;

- (c) a group of persons are and have been in peaceable, open and uninterrupted occupation of or have similarly used the village land for pastoral purposes for not less than twelve years, shall determine that group of persons to be entitled to a customary right of occupancy over that land;
- (d) a group of persons are in occupation of or have been using for pastoral purposes, village land allocated to them during Operation Vijiji, shall determine that group of persons to be entitled to a customary right of occupancy over that land;
- (e) a person or group of persons are in peaceable, open and uninterrupted occupation of land or are similarly using the land under an arrangement or as a result of a transaction whether under customary law or any written law relating to land, and whether that occupation can be evidenced by a document in writing or not which does not fall within any of the above categories of land occupancy, shall determine the nature, incidents and extent of that occupancy and declare that person or group of persons to occupy that land under the type of occupancy so determined, whether it be a customary right of occupancy or a derivative right;
- (f) a person or group of persons or a non-village organisation are in occupation of or are using village land without any right or interest so to be, shall determine those persons or non-village organisation to be unauthorised occupiers, permitted to remain on the land temporarily as licensees;
- (g) a person or group of persons are entitled to an interest in village land, whether under customary law or otherwise, not amounting to occupation under customary law, or under a

derivative right, shall determine the nature, incidents and extent of those interests to enable it to be recorded in the name of the person or group or persons entitled to benefit from it;

- (h) the village land is entirely free of any occupation or use or any right of occupation or use by any person or group of persons, shall determine that land to be communal village land;
- (i) the village land is entirely free of any occupation or use by any person or group of persons shall determine that land to be communal land;
- (j) the land alleged to be village land is not village land, shall declare that land to be general land.

(2) In making any determinations under subsection (3), a village adjudication committee or as the case may be an adjudication officer shall have regard treat the rights of women and the rights of pastoralists to occupy or use or have interest in land not less favourably than the rights of men or agriculturalists to occupy or use or have interests in land.

(3) In determining whether occupations of land has been peaceable, open and uninterrupted—

- (a) no account shall be taken of any order, declaration or scheme issued or made under the Urban Planning Act, which purports to alter, amend or add to the incidents of any deemed right of occupancy or other right to occupy land of any person so as to render any aspect of that occupation unlawful;
- (b) a person occupying land in an urban or peri-urban area at the will or sufferance of or as a trespasser (relative to a person or organisation having a title to that land) but whose occupation is recognised and accepted as

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being in accordance with the customs of the community of which he is a part, shall be deemed to be in peaceable open and uninterrupted occupation of that land;

- (c) it shall not be necessary that occupation be continuous provided that when land is not occupied by a person or group of persons claiming peaceable, open and uninterrupted occupation of that land, it is not occupied by any other person or group of persons claiming peaceable open and uninterrupted occupation.

(4) A village adjudication committee or an adjudication officer may record that two or more persons or groups of persons are co-occupiers and users of land, whether those persons or groups of persons have claimed to be co-occupiers or are disputing occupation or use of that land and where that determination is made, the committee or adjudication officer as the case may be, shall determine and record the nature, incidents and extent of that co-occupation and whether those persons and group of persons are joint occupiers or occupiers in common as provided for in Part XIII of the Land Act, relating to co-occupancy whose rights between themselves are governed by customary law.

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(5) References to "land" in this section are to land the boundaries of which have been agreed to by the parties claiming an interest in that land and contiguous land or have, in the absence of that agreement, been determined by a village adjudication committee or an adjudication officer.

(6) Where a provisional adjudication record has been completed, it shall be signed by the chairman and executive officer of the village adjudication committee and by each person or an authorised representative of each person or group of persons or non-village organisation whose interests in land have been adjudicated.

Land sharing
arrangements
between
pastoralists and
agriculturalists

58.-(1) Where, in respect of any land the subject of adjudication, the village adjudication committee or, as the case may be, the adjudication officer is satisfied that there is a dual use of the land between groups of persons using the land for pastoral purposes and groups of persons using the land for agricultural purposes and that both groups claim to be using that land in accordance with customary law applicable to their respective uses, the committee or, as the case may be the adjudication officer shall—

- (a) determine and record the nature, extent and incidents of each use and so far as it is possible to do so, the length of time that each group has used or claimed the use of that land for their respective uses;
- (b) where the village adjudication committee or the adjudication officer is satisfied that the groups of persons so using the land have in the past and are likely to continue in the future to carry out their respective uses of the land in co-operation with each other, he or as the case may be it prepare an arrangement for that continued dual use which records—
 - (i) the rights to the use and occupation of the land by each group as recognised by each group; and
 - (ii) the arrangements for resolving any disputes between the dual uses adopted and used by those groups;
- (c) where the village adjudication committee or an adjudicating officer or he is satisfied that the groups of persons using the land are in continuous dispute about the uses of the land, it or he as the case may be, shall—
 - (i) record the rights to the use and occupation of the land claimed by each group;
 - (ii) prepare a draft sharing arrangement for the continued dual use of the land

either for a limited period or indefinitely based on the claimed uses of the land modified so as to reduce the likelihood of disputes;

- (iii) discuss the arrangement with each group of persons or their representatives with a view to obtaining their agreement to the said arrangement or the said arrangement modified to take account of the views of those groups their representatives; and
- (iv) adopt the draft arrangement as a scheme.

(2) An arrangement prepared or adopted under subsection (1) shall be known as a "land sharing arrangement" and shall provide—

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- (a) for each group using the land to which it relates, rights to the occupation and use of that land based on the provisions on easements and analogous rights and on co-occupancy contained in Parts XI and XII of the Land Act, respectively;
- (b) arrangements for the resolution by a joint mediation panel composed of equal members of each group, of disputes about the rights so provided for by the scheme.

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(3) A land sharing arrangement may, notwithstanding the provisions of Part XI of the Land Act, provide that different groups of persons may occupy or use different parts of the land the subject of the scheme exclusively for specified purposes or for a specified period.

(4) A land sharing arrangement shall be registered in the Village Land Registry and in the District Land Registry.

Staying of suits

59.-(1) Except with the consent of the chairman of the village adjudication committee or where central adjudication is taking place, of the adjudication officer,

no person shall institute any civil action or proceedings of any kind concerning land or any interest in land which is the subject of an adjudication process until the adjudication record is final.

(2) Where any action or proceedings has begun before the publication of a notice under section 51 or section 54, they shall be discontinued unless the chairman of the village adjudication committee or, as the case may be, the adjudication officer, having regard to the stage which the action of proceedings have reached, otherwise directs.

(3) Any persons who is aggrieved by a refusal of the chairman of the village adjudication committee or, as the case may be, the adjudication officer to give his consent under subsection (1) or make a direction under subsection (2), within fourteen days of the refusal, may appeal to the village land council against that refusal and may further appeal to the court having jurisdiction over land matters.

**PART V
DISPUTE SETTLEMENT**

Village land council

60.-(1) For the purposes of this Part, every village shall establish a village land council to mediate between and assist parties to arrive at a mutually acceptable solution on any matter concerning village land.

(2) Where a village council establishes a village land council, that council shall consist of not less than five nor more than seven persons, of which not less than two shall be women, who shall be—

- (a) nominated by the village council; and
- (b) approved by the village assembly.

(3) Where a person is not approved as a member of village land council or, a member of a council resigns dies or falls within one of the categories set out in subsection (4), the village council shall nominate another person to be a member of the village land council and that person shall be required to be approved in accordance with subsection (2).

(4) In determining persons to be nominated as members of the village land council, a village council shall have regard to the standing and reputation of a nominee in the village as a person of integrity and with knowledge of customary land law.

(5) No person shall be eligible to be nominated as a member of the village land council or continue as a member of a traditional Elders Council if he is—

- (a) not ordinarily resident in the village in which the village land council is to function;
- (b) a member of the National Assembly;
- (c) a magistrate having jurisdiction in the district in which the village council is to function is situate;
- (d) a person under the apparent age of eighteen years;
- (e) a mentally unfit person;
- (f) a person who has been convicted of a criminal offence involving dishonesty or moral turpitude;
- (g) a person who is not a citizen.

(6) A person who falls within one of the categories set out in subsection (5) while serving as a member of the village land council shall automatically cease to be a member of that council but where that person was acting as a mediator in any case, then, except where the provisions of paragraph (e) or (f) of subsection (5) apply that person may continue to act as a mediator in that case until the process of mediation has been concluded.

(7) A member of an appointed village land council shall, unless he sooner resigns, dies or falls within a category set out in subsection (5), serve for three years and shall be eligible for reappointment which shall comply with the provisions of subsections (2) and (3).

(8) An appointed village land council shall elect one of its members to be convener of the council who shall keep the records of the council and preside at all meetings at which he is present; and if at any meeting the

convener is absent, the members present shall elect one of themselves to preside at that meeting.

(9) The quorum of a meeting of the village land council shall be four persons, of which at least one shall be a woman.

(10) In the event of an equality of votes, the chairman or other member presiding shall have a casting vote as well as an original vote.

(11) The provisions of section 10 shall apply to the members of a panel.

Functions of
village land
council

61.-(1) Where any villager or person residing or working in a village or the village council or a non-village organisation within the village or a person coming within an agreement made under section 11 or an arrangement made under section 58 has a dispute with any other villager or person residing or working in a village or with the village council or a non-village organisation within the village or a person coming within an agreement made under section 11 or an arrangement made under section 58 over any matter concerning village land within that village or land to which section 11 or 58 apply, all parties to that dispute may agree to call in the services of the village land council or its member to mediate between and assist those parties to arrive at a mutually acceptable solution to the dispute.

(2) Where the parties to a dispute referred to in subsection (1) agree to call in the village land council, the convener of the village land council shall, after discussing the matter with the parties to the dispute, either—

- (a) convene a meeting of the village land council;
- or
- (b) appoint one or more members of the village land council, to act as mediators between the parties to the dispute.

(3) Where the convener or any member of the Village Council becomes aware of or is informed of a dispute as referred to in subsection (1), the convener shall use his best endeavours to persuade all parties to the

dispute to make use of the services of the village land council or one or more of its members to act as mediators in the dispute.

(4) The village land council shall exercise its functions of mediation in accordance with—

- (a) any customary principles of mediation;
- (b) natural justice in so far as any customary principles of mediation do not already provide for them;
- (c) any principles and practices of mediation in which the members may have received any training.

(5) A member of an village land council shall not act as a mediator in any case in which he or a member of his immediate family has interest and for the avoidance of doubt, a member of the village land council who is a member of or an employee of the village council or any non-village organisation which is involved in a case, the subject of mediation by the Council, is deemed to have an interest in that case.

(6) No person or non-village organisation shall be compelled or required to use the services of the village land council for mediation in any dispute concerning village land.

References of
disputes from
village land
council to court
Act No.
2 of 2010
s. 36

62.-(1) Where the parties or any of them do not accept the conclusions of any mediation into a dispute or wish to cease to make use of the services of the village land council, they may refer the dispute to a court having jurisdiction over the subject matter of the dispute.

(2) The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of Part XIII of the Land Act, to hear and determine all manner of disputes, actions and proceedings concerning land, that is to say—

- (a) the Court of Appeal;
- (b) the High Court;
- (c) the District Land and Housing Tribunal;
- (d) the Ward Tribunal; and

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- (e) the Village Land Council.

PART VI
MISCELLANEOUS PROVISIONS

Offences

- 63.**-(1) Any person who—
- (a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act;
 - (b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information or in connection with any investigation into the commission of any offence under this Act;
 - (c) fraudulently procures—
 - (i) the registration or issue of any certificate of occupancy, customary certificate of occupancy or any other document or instrument relating to land;
 - (ii) the making of any entry or the endorsement or any matter on any such document or instrument referred to in subparagraph (1); or
 - (iii) the cancellation or amendment of any of the aforesaid documents or instruments or entries or endorsements;
 - (d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any documents or instrument relating to land or any entry on or endorsement of any such document or instrument; or
 - (e) suppresses or conceals from the Commissioner, the Registrar, any authorised officer or any officer of a village council exercising powers under this Act or assists or joins in so doing, any material document, fact or matter,

commits an offence and upon conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both, the fine and imprisonment.

(2) Any person who without reasonable excuse, fails to produce any document as required under this Act an offence and upon conviction is liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months or to both the fine and imprisonment.

(3) Any person who unlawfully occupies land commits an offence and upon conviction is liable, to a fine not exceeding ten thousand shillings, and in the case of a continuing offence to an additional fine not exceeding five hundred shillings for every day during which the offence continues.

(4) Any person who wrongfully obstructs or encroaches on a public right of way and who does not within the time specified in any notice served on him remove that obstruction or cease that encroachment commits an offence and upon conviction is liable, to a fine not exceeding ten thousand shillings and in the case of a continuing offence, to an additional fine not exceeding two hundred shillings for every day during which the offence continues.

(5) Any person who willfully—

- (a) delays;
- (b) obstructs;
- (c) hinders;
- (d) intimidates; or
- (e) assaults,

any person authorised under this Act to enter and inspect any land in the lawful exercise of power in that behalf commits an offence and upon conviction is liable, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

(6) Any person who, under this Act, whether generally or for a specific function, in the course of any

official function or otherwise, unlawfully or with force enters on the land of any person or while on land, willfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land or crops planted or buildings erected on the land commits an offence and upon conviction is liable to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.

(7) Where a court has convicted any person of an offence under this section and the commission of that offence enabled that person to obtain or retain or regain any interest in land which he would otherwise not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on that person, make any order in relation to that interest in land so obtained, retained or regained by that person as appears to the court necessary to ensure that that person does not profit by the offence of which he has been convicted.

Corrupt transactions

64.-(1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to any grant of a customary certificate of occupancy, or any disposition, or any contract for any of transaction which was obtained or induced by any corrupt action, on the part of any government or public or local government official and such a transaction is hereby declared to be and to have been from its inception an illegal transaction, void and having absolutely no legal effect.

(2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption when either—

- (a) any party involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption and all final appeals arising from that conviction have been concluded;

- (b) any public servant or other public official is interdicted, or is retired in the public interest, from his post on the grounds that he has been engaged in corrupt actions and that these actions involved that transaction; or
- (c) an investigatory body reports that it is satisfied or that transaction was procured by corrupt practices.

(3) Any person occupying land which he obtained as a consequence of participating in any of the transactions covered by subsections (1) and (2) shall be liable to forfeit that land to the President without any entitlement to any compensation.

(4) Notwithstanding that a transaction covered by this section is void, a person occupying land as a consequence of that transaction shall be and shall always have been obliged to comply with all the terms and conditions of the transaction as if it had been a valid transaction and shall be liable to all the remedies which may be applied to a person who fails to comply with the terms and conditions of a valid transaction in addition to any penalties which may be applied under this section.

Regulations

65.-(1) The Minister may make regulations generally for the better carrying into effect of the purposes and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe—

- (a) the forms to be used in connection with this Act;
- (b) the procedures to be followed by village adjudication committees, village adjudication advisers and other officers exercising powers under of Part IVC of this Act;
- (c) procedures to be followed with respect to the making of any claim for compensation and the payment of any compensation under this Act;
- (d) the alteration from time to time of the amount

which may be advanced by way of a small mortgage;

(e) the form and scope of joint village land use agreements.

(2) A village council may, with the approval of the district council and subject to any general directive of the Minister, make by-laws for the better management and administration of land matters within the jurisdiction of the village land.

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(3) The procedure for making by-laws under subsection (2) shall be as prescribed *mutatis mutandis*, by the provisions of Part VI of the Local Government (District Authorities) Act.

Translation

66.-(1) The Minister shall as soon as practicable after the enactment of this Act cause this Act to be translated into Kiswahili and such translation shall be published in the *Gazette* and in such other manner and form as will enable the citizens of Tanzania to gain access to such translation.

(2) The Minister shall, by order published in the *Gazette* cause to be incorporated into the Kiswahili version of this Act and published in the *Gazette* any amendments made to this Act.

(3) Any form prescribed under this Act shall be made available to the members of the public in both English and Kiswahili.