

COURTS ACT 1993 (ACT 459)

As amended by

COURTS (AMENDMENT) ACT, 1993 (ACT 464)<sup>1</sup>

THE CHILDREN'S ACT 1998 (ACT 560)<sup>2</sup>

COURTS (AMENDMENT) ACT, 2002 (ACT 620)<sup>3</sup>

THE COURTS (AMENDMENT) ACT, 2004 (674)<sup>4</sup>

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THE FOUR HUNDRED AND FIFTY-NINTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

## ENTITLED

### THE COURTS ACT, 1993

AN ACT to incorporate into the law relating to the courts, the provisions of chapter eleven of the Constitution; to provide for the jurisdiction of Regional Tribunals; to establish lower courts and tribunals, provide for their composition and jurisdiction; to consolidate and reenact the Courts Act, 1971 and to provide for connected purposes.

DATE OF ASSENT: 6TH JULY, 1993

BE IT ENACTED by Parliament as follows:

#### PART I—SUPERIOR COURTS OF JUDICATURE

##### Sub Part I—The Supreme Court.

##### Section 1—Composition of Supreme Court and Qualification of its Justices.

(1) The Supreme Court shall consist of the Chief Justice and not less than nine other Justices of the Supreme Court.

(2) The Supreme Court shall be duly constituted for its work by not less than five Supreme Court Justices except as otherwise provided in section 7 of this Act.

(3) The Chief Justice shall preside at sittings of the Supreme Court and in his absence, the most senior of the Justices of the Supreme Court, as constituted, shall preside.

(4) A person shall not be qualified for appointment as a Justice of the Supreme Court unless he is of high moral character and proven integrity and is of not less than fifteen years' standing as a lawyer.

##### Section 2—General Jurisdiction of Supreme Court.

(1) The Supreme Court shall be the final court of appeal and shall have such appellate and other jurisdiction as may be conferred on it by the Constitution or by any other law.

(2) The Supreme Court shall not be bound to follow the decisions of any other court.

(3) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.

(4) For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by the Constitution or any other law, the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by the Constitution or any other law.

(5) The determination of any question before the Supreme Court shall be in accordance with the opinion of the majority of the members hearing the case.

##### Section 3—Original Jurisdiction of Supreme Court.

(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of the Constitution, the Supreme Court shall have exclusive original jurisdiction in—

(a) all matters relating to the enforcement or interpretation of the Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution.

(2) Where an issue that relates to a matter or question referred to in subsection (1) of this section arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

##### Section 4—Appellate Jurisdiction of Supreme Court.

(1) An appeal shall lie from a judgment of the Court of Appeal to the Supreme Court—

(a) as of right, in any civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a Judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction;

(b) with the leave of the Court Appeal, in any other cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest;

(c) as of right, in any cause or matter relating to the issue or refusal of writ or order of habeas corpus, certiorari, mandamus, prohibition or quo warranto.

(2) Notwithstanding subsection (1) of this section, the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in any cause or matter (including interlocutory matter) civil or criminal, and may grant leave accordingly.

(3) The Supreme Court shall have appellate jurisdiction, to the exclusion of the Court of Appeal to determine matters relating to the conviction or otherwise of a person for high treason or treason by the High Court.

(4) An appeal from a decision of the Judicial Committee of the National House of Chiefs shall lie to the Supreme Court with the leave of that Judicial Committee or the Supreme Court.

(5) Subject to subsection (2) of this section, the Supreme Court shall not entertain any appeal unless the appellant has fulfilled all the conditions of appeal prescribed under the Rules of Court.

#### Section 5—Supervisory Jurisdiction of Supreme Court.

The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions including orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto for the purpose of enforcing or securing the enforcement of its supervisory power.

#### Section 6—Power of Supreme Court to Review its Decisions.

(1) The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of court.

(2) The Supreme Court, when reviewing its decisions under this section, shall be constituted by not less than seven Justice of the Supreme Court.

#### Section 7—Powers of a Single Justice of Supreme Court.

A single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the decision of a cause or matter before the Supreme Court except that—

(a) in criminal matters, where that Justice refuses or grants an application in the exercise of any such power, a person affected by it is entitled to have the application determined by the Supreme Court constituted by three Justices of the Supreme Court; and

(b) in civil matters, any order, direction or decision made or given under this section may be varied, discharged or reversed by the Supreme Court, constituted by three Justices of the Supreme Court.

#### Section 8—Production of Official Documents in Court.

(1) The Supreme Court shall have exclusive jurisdiction to determine whether an official document shall not be produced in court because its production or the disclosure of its contents will be prejudicial to the security of the State or will be injurious to the public interest.

(2) Where any issue referred to in subsection (1) of this section arises as to the production or otherwise of an official document in any proceedings before any court, other than the Supreme Court the proceedings in that other court shall be suspended while the Supreme Court examines the document and determines whether the document should be produced or not; and the Supreme Court shall make the appropriate order.

(3) The proceedings of the Supreme Court as to whether an official document may be produced shall be held in camera.

(4) For the purpose of this section, the Supreme Court may—

(a) order any person or authority that has custody, legal or otherwise of the document to produce it; and any person so ordered shall produce the document for the purpose of inspection by the Supreme Court; and

(b) determine whether or not the document shall be produced in the Court from which the reference was made after hearing the parties to it or their legal representatives or after having given them the opportunity of being heard.

(5) Where the Supreme Court is of the opinion that the document should be produced it shall make an order that the person or authority that has custody of the document shall produce it or shall produce so much of the contents of it as is essential for the proceeding in accordance with the terms of the order.

(6) Where the question of the production of an official document arises in any proceedings in the Supreme Court in the circumstances mentioned in subsection (1) of this section, the Supreme Court shall be governed, with such modifications as may be necessary, by the provisions of this section for the determination of the question that has arisen.

(7) Where there is a doubt as to whether any document referred to in clause (2) of article 121 of the Constitution (which prohibits the production by public officers of certain documents in proceedings before the Parliament) is injurious to the public interest or prejudicial to the security of the State, the Speaker or the National Security Council as the case may be, shall refer the matter to the Supreme Court for determination by that Court whether the production or the disclosure of the contents of the document would be injurious to the public interest or prejudicial to the security of the state.

(8) Subsections (4) and (5) of this section shall, with such modifications as may be necessary, apply to a determination by the Supreme Court under subsection (7) as they apply to a determination under subsection (2) of this section.

Section 9—Certain Functions of Supreme Court Relating to the Prerogative of Mercy.

Where a person has been convicted or sentenced for an offence by a court established under this Act and a petition is presented to the President for the grant of the prerogative of mercy in respect of the conviction or sentence, the President may, except in the case of sentence of death—

(a) refer the whole case to the Supreme Court and the case shall then be heard and determined by that Court as in the case of an appeal by a person convicted; or

(b) if the President desires the assistance of the Supreme Court on any point arising in the case with a view to the determination of the petition, refer that point to that Court for its opinion and the Supreme Court shall consider the point referred and furnish the President with its opinion.

Sub-Part II—Court of Appeal.

Section 10—Composition of Court of Appeal and Qualification of its Justices.

(1) The Court of Appeal shall consist of—

(a) the Chief Justice;

(b) subject to subsections (2) and (3) of this section, not less than ten Justices of the Court of Appeal; and

(c) such other Justices of the Superior Court of Judicature as the Chief Justice may, for the determination of a particular cause or matter by writing signed by him, request to sit in the Court of Appeal for any specified period.

(2) The Court of Appeal shall be duly constituted by any three of the Justices referred to in subsection (1) of this section and when so constituted, the most senior of the Justices shall preside.

(3) A person shall not be qualified for appointment as a Justice of the Court of Appeal unless he is of high moral character and proven integrity and is of not less than twelve years' standing as a lawyer.

(4) The Chief Justice may create such divisions of the Court of Appeal as he considers necessary to sit in such places as he may determine.

(5) subject to clause (3) of article 129 of the Constitution, the Court of Appeal shall be bound by its own previous decisions; and all courts lower than the Court of Appeal shall follow the decisions of the Court of Appeal on questions of law.

(6) The determination of any question before the Court of appeal shall be according to the opinion of the majority of the members hearing the case

Section 11—Jurisdiction of Court of Appeal.

(1) The Court of appeal shall have jurisdiction throughout Ghana to hear and determine, subject to the provisions of the Constitution, appeals from a judgment, decree or order of the High Court and

Regional Tribunals and such other appellate jurisdiction as may be conferred on it by the Constitution or any other law.

(2) Except as otherwise provided in the Constitution, an appeal shall lie as of right from a judgment, decree or order of the High Court and Regional Tribunal to the Court of Appeal.

(3) The Court of Appeal shall also have jurisdiction—

(a) to hear appeals from any judgment of a Circuit Court in a civil cause or matter; and

(b) in any matter in which jurisdiction is conferred on the Court under any other enactment. [As substituted by the Courts (Amendment) Act, 2002 (Act 620), s.1]

(4) A person aggrieved by a judgment of a Circuit Court in a civil cause or matter may appeal against the judgment to the Court of Appeal.[As substituted by the Courts (Amendment) Act, 2002 (Act 620), s.1]

(5) A person aggrieved by any interlocutory order or decision made or given by a Circuit Court may appeal to the Court of appeal against the order or decision with the leave of the Circuit Court and upon a refusal with the leave of the Court of Appeal and the Court of Appeal shall have jurisdiction to hear and determine any such appeal.

(6) Where a party desires to appeal to the Court of Appeal in a criminal case, he shall give notice of appeal or notice of application for leave to appeal within one month of the decision appealed against; except that the time specified may at any time be extended by the court to which the appeal is being made or by the court whose decision is being appealed against.

(7) The Court of Appeal shall not entertain any appeal unless the appellant has fulfilled all the conditions prescribed in that behalf by Rules of Court.

(8) For the purpose of hearing and determining an appeal within its jurisdiction and the amendment, execution or enforcement of a judgment or order made on any appeal, and for the purpose of any other authority expressly or by necessary implication given to the Court of appeal by the Constitution, this Act or any other law, the Court of appeal shall have all the powers, authority and jurisdiction vested in the court from which the appeal is brought.

Section 12—Powers of Single Justice of the Court of Appeal.

A single Justice of the Court of Appeal may exercise a power vested in the Court of Appeal that does not involve the decision of a cause or matter before the Court of Appeal, except that —

(a) in criminal matters where that Justice refuses or grants an application in the exercise of such power, a person affected by it is entitled to have the application determined by the Court of Appeal as duly constituted; and

(b) in civil matters any order, direction or decision made or given in exercise of the powers conferred by this section may be varied, discharged or reversed by the Court of Appeal as duly constituted.

Section 13—Powers of the Court of Appeal in Special Cases.

(1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the indictment or charge, has been properly convicted on some other count or part of the indictment or charge, the Court may either confirm the sentence passed on the appellant cases at the trial, or pass a sentence in substitution for it as it thinks proper and as may be warranted in law by the verdict on the count or part of the indictment or charge on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the Judge, the jury or panel who tried him, could on the indictment or charge have found him guilty of some other offence, and on the finding of the Judge, jury or panel it appears to the Court of Appeal that the Judge, jury or panel must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing the appeal, substitute for the verdict found by the Judge, jury or panel a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence.

(3) Where on the trial of the appellant, the jury or panel have found a special verdict and the Court of Appeal considers that a wrong conclusion had been arrived at by the Court before which the appellant was convicted on the basis of that verdict, the Court of Appeal may instead of allowing

the appeal, order such conclusion to be recorded as appears to the Court of appeal to be in law required by the verdict, and make such other order as may be warranted in law.

(4) Where after the trial of the appellant a special verdict has been found and the Court of Appeal is satisfied that the special verdict was wrongly found the Court of Appeal may set aside the verdict and substitute an order of conviction or acquittal or may make such other order as may be warranted in law.

(5) If on any appeal it appears to the Court of Appeal that although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the Court may set aside the sentence passed at the trial and order the appellant to be kept in custody as a criminally insane person in a place and in such manner as the Court shall direct until the pleasure of the President is known and the President may give orders for the safe custody of the appellant.

(6) Where the Court of Appeal is of the opinion that the proceedings in the trial court were a nullity either through want of jurisdiction or otherwise, the Court of Appeal may order the appellant to be tried by a court of competent jurisdiction.

(7) If the Court Appeal is satisfied that owing to exceptional circumstances the interest of justice requires that there should be a re-trial, the Court may order a re-trial on such terms and conditions as it thinks fit.

### Sub-Part III—High Court.

#### Section 14—Composition of High Court and Qualification of its Justices.

(1) The High Court shall consist of—

(a) the Chief Justice;

(b) not less than twenty Justices of the High Court; and

(c) such other Justices of the Superior Court of Judicature or Chairmen of Regional Tribunals as the Chief Justice may, by writing signed by him, request to sit as High Court Justices for any period.

(2) The High Court shall be constituted —

(a) by a single Justice of the Court; or

(b) by a Chairman of a Regional Tribunal; or

(c) by a single Justice of the Court and jury; or

(d) by a single Justice of the Court with assessors; or

(e) by three Justices of the Court for the trial of the offence of high treason or treason as required by article 19 of the Constitution.

(3) There shall be in the High Court such divisions consisting such number of Justices respectively as the Chief Justice may determine.

(4) A person shall not be qualified for appointment as a Justice of the High Court unless he is a person of high moral character and proven integrity and is of at least ten years' standing as a lawyer.

#### Section 15—Jurisdiction of High Court.

(1) Subject to the provisions of the Constitution, the High Court shall have—

(a) an original jurisdiction in all matters;

(b) appellate jurisdiction in a judgment of the Circuit Court in the trial of a criminal case;

(c) appellate jurisdiction in any judgment of a District Court or Juvenile Court;

(d) jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution; and

(e) any other jurisdiction conferred by the Constitution, this Act or any other enactment.[As substituted by the Courts (Amendment) Act, 2002 (Act 620), s.2]

(1a) For the purposes of paragraph (c) of subsection (1), an order requiring a person to enter into a recognisance is a sentence. [As inserted by Courts (Amendment) Act, 2004 (Act 674) para. (b)]

(3) The High Court shall have no power, in a trial for the offence of high treason or treason, to convict any person for an offence other than high treason or treason.

(4) A Justice of the High Court may, in accordance with rules of court, exercise in court or in chambers, all or any of the jurisdiction vested in the High Court by the Constitution, this Act or any other law.

#### Section 16—Supervisory Jurisdiction of the High Court.

The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority; and may, in the exercise of that jurisdiction, issue orders and directions including orders in the nature of habeas corpus, certiorari, mandamus-prohibition and quo warranto for the purpose of enforcing or securing the enforcement of its supervisory powers.

#### Section 17—High Court Jurisdiction Over Acts of Piracy.

(1) Subject to any right of appeal conferred by any enactment, only the High Court shall have jurisdiction to try an act of piracy.

(2) An act of piracy shall, for the purposes of this Act, have the meaning assigned to it under section 19 of the Criminal Code, 1960 (Act. 29).

#### Section 18—High Court Jurisdiction in Relation to Infants.

(1) In addition to any jurisdiction conferred by any enactment, the High Court shall have power, subject to the provisions of any other enactment—

(a) on application by any person, and after hearing any objections to the application, to appoint any person as a guardian or as joint-guardian for an infant, where the Court is of the opinion that the appointment is desirable in the circumstances having regard to the welfare of the infant;

(b) on application by any person, and after hearing any objections to the application, to make such orders concerning the custody of an infant, the right of access to an infant, and weekly or other periodic payments towards the maintenance of an infant, as the Court may consider just in the circumstances, having regard to the means of the persons concerned and the welfare of the infant;

(c) for good cause to remove any guardian or joint-guardian and to appoint a new guardian or joint-guardian;

(d) to determine any dispute between a guardian and a parent, or between joint-guardians;

(e) to intervene in any guardianship where in the opinion of the Court the guardian has acted or is likely to act prejudicially to the welfare of an infant, and to make such consequential orders as the Court may consider desirable having regard to the welfare of the infant;

(f) in respect of any infant to make such orders and give such directions for the control and administration of the estate of that infant, including the investment of money, as the Court may consider desirable having regard to the welfare of the infant;

(g) in respect of any infant to make such orders and give such directions permitting the use of moneys for the education of the infant, or for setting him up in any occupation or career, as the court may consider desirable having regard to the welfare of the infant.

(2) The welfare of the infant shall be the primary consideration of the High Court in the exercise of its powers under this section.

(3) In this section, "infant" means a person under the age of eighteen years.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7].

#### Section 19—High Court Jurisdiction in Relation to Persons of Unsound Mind.

In addition to any jurisdiction conferred by any enactment, the High Court shall have power subject to the provisions of any other enactment—

(a) on application by any person, and after hearing any objections to the application, to appoint any person as a guardian or as joint-guardian for a person of unsound mind or to direct the person of unsound mind to be delivered into the care of a responsible authority or a relative, where the Court is satisfied that such course is desirable to ensure the welfare of the person of unsound mind;

(b) to vary or rescind for good cause an appointment made under paragraph (a) and to attach such conditions to an appointment as may appear desirable;

(c) to make such orders and give such directions as appear necessary or desirable to secure the maintenance, safety and welfare of a person of unsound mind, the efficient administration, disposition and management of any of his property or affairs, and for purposes ancillary to them;

(d) to make such orders as appear necessary or desirable to secure the carrying out of any contract entered into by a person of unsound mind, or the conduct of any legal proceedings in his name or on his behalf.

#### Section 20—High Court Jurisdiction in Maritime Matters.

(1) The High Court shall, subject to the provisions of any other enactment, have jurisdiction to hear and determine any of the following questions or claims—

- (a) a question as to the title to or ownership of a ship, or the proceeds of the sale of a ship, arising in an action relating to possession, salvage, damage, necessities, wages or bottomry;
- (b) a question arising between the co-owners of a ship registered at a port in Ghana as to the ownership, possession, employment or earnings of that ship, or any share of it, with power to settle any account outstanding and unsettled between the parties in relation to it, and to direct the ship, or any share of it, to be sold, or to make such order as the Court thinks fit,
- (c) a claim for damage to a ship (whether received on the high seas or within the territorial waters or for damage done by a ship);
- (d) subject to section 249 of the Merchant Shipping Act, 1963 (Act 183), a claim in the nature of salvage for services rendered to a ship (including services rendered in saving life from a ship), whether rendered on the high seas or within the territorial waters, and whether a wreck in respect of which the salvage is claimed is found on sea or land;
- (e) a claim in the nature of towage, whether the services were rendered on the high seas or within the territorial waters;
- (f) a claim for necessities supplied to a foreign ship (whether supplied on the high seas or within the territorial waters) and a claim for necessities supplied to a ship elsewhere than in the port to which the ship belongs;
- (g) a claim by a seaman for wages earned by him on board a ship, whether due under a special contract or otherwise, and a claim by the master of a ship for salary earned by him on board the ship and for disbursements made by him on account of the ship;
- (h) a claim in respect of a mortgage of any ship, being a mortgage duly registered under the Merchant Shipping Act, 1963 (Act 183), or in respect of any mortgage of a ship which is, or the proceeds of which are, under the arrest of the Court;
- (i) a claim for building, equipping or repairing a ship, if at the time of the institution of the proceedings the ship is, or the proceeds of it are, under the arrest of the Court;
- (j) a claim arising out of an agreement relating to the use or hire of a ship, or the carriage of goods or persons in a ship, or in tort in respect of goods or persons carried in a ship.

(2) The High Court also has power—

- (a) in an action of restraint instituted by part-owners, to give such relief as it considers just and equitable, including the imposition of bail on defendant part-owners to ensure the safe return of any ship;
- (b) to remove for good cause the master of any ship within the jurisdiction of the High Court and to appoint a new master;
- (c) to give such relief as it considers just and equitable including the granting of injunctions, in respect of injurious acts done upon the high seas.

(3) In this section, "damage" includes loss of life and personal injuries, and "ship" includes any description of vessel used in navigation not propelled by oars.

#### Section 21—Rights of Appeal to the High Court.

(1) The prosecution or a person convicted of an offence in a criminal case, tried by a Circuit Court or tried by a District or Juvenile Court may appeal against the judgment to the High Court.

(2) A person aggrieved by any judgment of a District Court in a civil matter may appeal against the judgment to the High Court.

(3) A person aggrieved by an interlocutory order or decision made or given by a District Court may appeal against the decision or order to the High Court with the leave of the District Court or of the High Court and the High Court shall have jurisdiction to hear and determine the appeal.

(4) An appeal under this section against a judgment of a Circuit, District or a Juvenile Court, shall, subject to any transfer directed by the Chief Justice, be made to the Judge of the High Court exercising jurisdiction over the area of jurisdiction of the Circuit, District or Juvenile Court.

(5) The High Court shall not entertain any appeal unless the appellant has fulfilled all conditions imposed in that behalf by Rules of Court.[As substituted by the Courts (Amendment) Act, 2002 (Act 620), s.3]

#### Section 22—High Court Masters.

(1) The Chief Justice acting in accordance with the advice of the Judicial Council and with the approval of the President, may appoint a lawyer of not less than ten years standing as a Master of the High Court for such period and subject to such terms and conditions as the Chief Justice may determine.

(2) A Master appointed under this section shall have such powers and duties as may be prescribed by legislative instrument issued by the Chief Justice and shall perform such other functions as the Chief Justice may direct.

(3) A person aggrieved by an order or decision of a Master may by leave of that Master or of the Court of Appeal, appeal to the Court of Appeal against the order or decision and the Court of appeal shall have power to hear and determine the appeal.

#### Sub-Part IV—Regional Tribunals

##### Section 23—Regional Tribunal.

(1) A Regional Tribunal shall consist of—

(a) the Chief Justice;

(b) one Chairman; and

(c) such members who may or may not be lawyers as shall be designated by the Chief Justice to sit as panel members of a Regional Tribunal and for such period as shall be specified in writing by the Chief Justice.

(2) A Regional Tribunal shall in the exercise of its original jurisdiction be duly constituted by a panel consisting of the Chairman and not less than two or more than four other panel members.

(3) A person shall not be appointed to be a Chairman of a Regional Tribunal unless he is qualified to be appointed a Justice of the High Court.

(4) A panel member of a Regional Tribunal shall be a person of high moral character and proven integrity.

(5) The Chief Justice or any Justice of the High Court or Court of Appeal nominated by the Chief Justice may sit as a Chairman of a Regional Tribunal.

##### Section 24—Original and Appellate Jurisdiction of Regional Tribunal.

(1) Subject to the provisions of the Constitution, this Act and any other law, a Regional Tribunal shall have concurrent original jurisdiction with the High Court in all criminal matters and shall in particular try—

(a) the special offences specified under Chapter 4 of Part III of the Criminal Code 1960 (Act 29);

(b) offences arising under—

(i) Customs, Excise and Preventive Services Management Law, 1993 (P.N.D.C.L. 330);

(ii) Income Tax Decree, 1975 (S.M.C.D 5);

(iii) Narcotic Drugs (Control, Enforcement and Sanctions) Law, 1990 (P.N.D.C.L.236); and

(c) any other offence involving serious economic fraud, loss of state funds or property.

(2) A Regional Tribunal does not have jurisdiction to try a criminal offence if the trial requires the participation of a jury or assessors.

(3) [Repealed by the Courts (Amendment) Act, 2002 (Act 620), s.8(2)]

(4) [Repealed by the Courts (Amendment) Act, 2002 (Act 620), s.8(2)]

(5) [Repealed by the Courts (Amendment) Act, 2002 (Act 620), s.8(2)]

(6) [Repealed by the Courts (Amendment) Act, 2002 (Act 620), s.8(2)]

##### Section 25—Trial by Regional Tribunal.

(1) Subject to the Constitution, this Act and any other enactment, a Regional Tribunal shall in the exercise of its jurisdiction have and exercise all the powers conferred on the High Court by this Act

or any other enactment and shall have power to issue in criminal matters any order or impose any sentence which a High Court may issue or impose.

(2) For the avoidance of doubt, the Criminal Procedure Code, 1960 (Act 30), the Evidence Decree 1975, (N.R.C.D. 323), the Rules of court and all other rules of evidence and procedure applicable to the High Court in criminal trials shall, subject to the provisions of this Sub-Part, apply to trials before a Regional Tribunal.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7].

Section 26—Decision of Regional Tribunal and Appeals Against Decisions of Regional Tribunal.

(1) The determination of any question before a Regional Tribunal in the exercise of its original jurisdiction shall be in accordance with the opinion of the majority of the members hearing the case.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

(2) Where the majority does not include the Chairman and the accused is convicted, the accused shall, where he gives notice to appeal against the decision, be granted bail by the Tribunal, subject to such conditions as the Tribunal may determine.

(3) A person aggrieved by a judgment, decision or order of a Regional Tribunal in any matter before the Tribunal may appeal against it to the Court of Appeal.

(4) The Court of Appeal shall not entertain an appeal under this section unless all conditions prescribed by rules of court have been complied with.

Section 27—Appointment of Panel Members of Regional Tribunal other than the Chairman.

(1) The panel members of a Regional Tribunal other than the Chairman shall be appointed by the Chief Justice in consultation with the Regional Co-ordinating Council for the region and on the advice of the Judicial Council.

(2) Except as otherwise provided in this Act, the Chief Justice on the advice of the Judicial Council shall determine the qualifications and tenure of office of members of Regional Tribunal other than the Chairman.

Sub-Part V—Provisions Relating to Appeals before the Superior Courts and Other General Provisions Relating to the Superior Courts.

Section 28—Death Sentence not to be Executed while Appeal is Pending.

Where an appeal to a Superior Court relates to a conviction involving a sentence of death—

(a) the sentence shall not be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given; and

(b) if notice is given the sentence shall not be executed until the expiration of seven days after the determination or discontinuance of the appeal or until the expiration of seven days after the application for leave to appeal is finally refused or withdrawn.

Section 29—Suspension of Court Order Where There is Appeal.

(1) Where a court has on conviction of a person ordered payment of compensation, payment of any expenses of the prosecution or the restoration or revesting of property in a person, the operation of the order shall be suspended —

(a) until the expiration of the period within which an appeal may be brought; and

(b) where notice of appeal or notice of application for leave to appeal is given in accordance with law, until the determination of the appeal or until the refusal of leave to appeal or withdrawal of the application for leave to appeal.

(2) Where the operation of an order is suspended pending determination of the appeal, the order shall, unless the appellate court otherwise directs, not take effect if the conviction is quashed on appeal.

(3) Notwithstanding the other provisions of this section the trial court may in the case of stolen property where the title to the property is not in dispute, order the immediate enforcement of the order.

Section 30—Orders available to Superior Courts over appeals.

Subject to the provisions of this Sub-Part, an appellate court may in a criminal case—

(a) on an appeal from a conviction or acquittal—

- (i) reverse the finding and sentence and acquit and discharge or convict the accused as the case may be or order him to be retried by a court of competent jurisdiction, or commit him for trial; or
  - (ii) alter the finding, maintaining the sentence or with or without altering the finding, reduce or increase the sentence; or the sentence; or
  - (iii) with or without such reduction or increase and with or without altering the finding alter the nature of the sentence; or
  - (iv) annul the conviction and substitute a special finding to the effect that the accused was guilty of the act or omission charged but was criminally insane so as not to be responsible for his action at the time when he did the act or made the omission and order the accused to be confined as a criminally order insane person in a mental hospital, prison or other suitable place of safe custody;
  - (v) annul or vary any order of imprisonment or other punishment imposed on the person convicted;
  - (vi) annul or vary any order for payment of compensation or of expenses of the prosecution or for the restoration of property to any person whether or not the conviction is quashed;
- (b) on an appeal from any other order, alter or reserve the order, and in either case make any amendment or any consequential or incidental order that may appear just and proper.

#### Section 31—Appeal in Criminal Matters Allowed on Substantial Miscarriage of Justice.

(1) Subject to subsection (2) of this section an appellate court on hearing any appeal before it in a criminal case shall allow the appeal if it considers that the verdict or conviction or acquittal ought to be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment in question ought to be set aside on the ground of a wrong decision of any question of law or fact or that on any ground there was a miscarriage of justice and in any other case shall dismiss the appeal.

(2) The court shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred or that the point raised in the appeal consists of a technicality or procedural error or a defect in the charge or indictment but that there is evidence to support the offence alleged in the statement of offence in the charge or indictment or any other offence of which the accused could have been convicted upon that charge or indictment.

(3) Without prejudice to the generality of subsections (1) and (2) of this section—

- (a) where the charge upon which a person is being tried is amended in the course of the trial and the accused is not called upon to plead to the amended charge, but the case proceeds as if the accused had pleaded not guilty to the amended charge, an appeal based only on the failure to call upon the accused to plead to the amended charge shall be dismissed;
- (b) where a person is charged with an offence such as defrauding by false pretences or forgery and the particulars of the offence in the charge or indictment omit to allege an intent to defraud or any other intent forming part of the offence but evidence is led of such intent, an appeal based only on the omission in the charge or indictment shall be dismissed;
- (c) where a person is charged with corruption or extortion as a public officer and the charge or indictment omits to allege in the particulars of offence that the accused is a public officer but evidence is led that the accused is such an officer, an appeal based only on the omission shall be dismissed; or
- (d) where a person is charge with false pretences, stealing or other offence relating to property and the charge omits to allege the ownership of the property in question or that the person defrauded parted with the ownership of the property but evidence is led of the particulars omitted, an appeal based only on the omission shall be dismissed

#### Section 32—Order for Production of Document.

Subject to article 135 of the Constitution, in the exercise of its jurisdiction the appellate court may if it thinks it necessary or expedient in the interest of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (c) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they were or were not called at the trial, or order the examination of the witnesses to be conducted in a manner provided by rules of court, or in the

absence of rules of court, in such manner as the Court may direct, before any Justice of the Court or before any officer of the Court or other person appointed by the court for the purpose, and allow the admission of any depositions taken as evidence before the court.

Section 33—Other General Provisions Relating to Appeals before Superior Courts.

(1) The court before which a person is convicted or the court to which an appeal is made may if it thinks fit on the application of an appellant grant the appellant bail pending the determination of his appeal.

(2) Where an appeal has been lodged by a person entitled to appeal, the court to which the appeal is made may, pending the hearing and for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended.

(3) The time during which an appellant is released on bail pending the determination of his appeal shall not count as part of any term of imprisonment under his sentence.

(4) Subject to subsection (3) and to any directions which may be given by the court, a sentence of imprisonment shall begin to run as from the day on which the prisoner is received into prison under the sentence.

(5) Where a question of law is reserved for the consideration of the Court of Appeal under section 100 of this Act, the provisions of this section shall, with the necessary modifications apply to the person in relation to whose conviction the question of law is reserved as it applies to an appellant.

(6) An appellant who is in custody shall, if he so desires, be entitled to be present at the hearing of the appeal unless he conducts himself in such a manner as to render the continuation of the proceedings in his presence impracticable and the Court orders him to be removed for the trial to proceed in his absence; but the appellate court may exercise any power to pass sentence notwithstanding that the appellant is for any reason not present.

(7) Where the appeal is by the prosecution the respondent shall be entitled, with such modifications as may be necessary, to the rights of the appellant under this section.

(8) Subject to the provisions of the Constitution the judgment of an appellate court on any appeal shall be enforced in the same manner as if it were a judgment of the court from whose decision the appeal was brought.

(9) For the removal of doubt an appellate court shall, in a criminal case have power to impose only such sentence as could have been imposed by the court by which the case was tried.

(10) An appeal in a criminal case shall abate on the death of the person to whom the decision against which the appeal is brought relates except that this subsection shall not apply to any order requiring the payment of a fine, costs or compensation or the delivery or restitution of any property or the payment of its value or the destruction or forfeiture of any property.

Section 34—Dismissal of Frivolous Appeals.

(1) Where the Supreme Court considers that an appeal made to the Court is frivolous or vexatious or does not show any substantial ground of appeal, the Court may dismiss the appeal summarily without calling on any person to attend the hearing.

(2) Without prejudice to the generality of subsection (1) of this section an appeal against a conviction in a criminal case may be dismissed summarily under that subsection where the appellant has pleaded guilty and has been convicted on his own plea.

Section 35—Offer of Compensation or Restitution.

(1) Where a person is charged with an offence before the High Court or a Regional Tribunal, the commission of which has caused economic loss, harm or damage to the State or any State agency, the accused may inform the prosecutor whether the accused admits the offence and is willing to offer compensation or make restitution and reparation for the loss, harm or damage caused.

(2) Where an accused makes an offer of compensation or restitution and reparation, the prosecutor shall consider if the offer is acceptable to the prosecution.

(3) If the offer is not acceptable to the prosecution the case before the Court shall proceed.

(4) If the offer is acceptable to the prosecution, the prosecutor shall in the presence of the accused, inform the Court which shall consider if the offer of compensation or restitution and reparation is satisfactory.

(5) Where the Court considers the offer to be satisfactory, the Court shall accept a plea of guilty from the accused and convict the accused on his own plea, and in lieu of passing sentence on the accused, make an order for the accused to pay compensation or make restitution and reparation.

(6) An order of the Court under subsection (5) shall be subject to such conditions as the Court may direct.

(7) Where a person convicted under this section defaults in the payment of any money required of the person under this section or fails to fulfil any condition imposed by the Court under subsection (6), any amount outstanding shall become due and payable and upon failure to make the payment, the Court shall proceed to pass a custodial sentence on the accused. [As substituted by the Courts (Amendment) Act, 2002 (Act 620), s.4]

#### Section 36—Contempt of Superior Court of Judicature Etc.

(1) The Superior Courts of Judicature shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of the Constitution in relation to contempt of court.

(2) In the exercise of the judicial power conferred upon the Judiciary by the Constitution, this Act or any other law, the Superior Court of Judicature shall have power, in relation to any matter within its jurisdiction, to issue such orders as may be necessary to ensure the enforcement of any judgment, decree or order of the Court.

#### Section 37—Seals of Superior Court of Judicature.

(1) The Supreme Court, the Court of Appeal, the High Court and the Regional Tribunal shall each have a seal which shall—

(a) be used as occasion may require;

(d) have a device or an impression of the Arms of Ghana with the inscription of the words "Superior Court of Judicature" together respectively, with the words "Supreme Court", "Court of Appeal", "High Court of Justice", or "Regional Tribunal", and

(c) be in such form as the Chief Justice may prescribe.

(2) The seal of the Supreme Court shall be kept by the Chief Justice and a duplicate of the seal shall be kept by each Justice of the Court or by any other public officer approved by the Chief Justice.

(3) The seal of the Court of Appeal shall be kept by the Chief Justice and a duplicate of the seal shall be kept by each Justice of the Court or by any other public officer approved by the Chief Justice.

(4) The seal of the High Court of Justice shall be kept by the Chief Justice and a duplicate of the seal shall be kept by each Justice of the Court or by any other public officer approved by the Chief Justice.

(5) The seal of a Regional Tribunal shall be kept by the Chief Justice and a duplicate shall be kept by the Chairman of the Regional Tribunal or by any other public officer approved by the Chief Justice.

#### Section 38—Places of sittings of Superior Court of Judicature.

Subject to the provisions of clause (4) of article 136 of the Constitution, the sittings of the Supreme Court, the Court of Appeal, the High Court or a Regional Tribunal shall be usually held in such places as the Chief Justice may determine, except that the proceedings of any such Court shall not be invalidated by the fact that the sittings of the Court in relation to any proceedings took place in a place other than a place determined under this section.

#### PART II—LOWER COURTS.

##### Section 39—Establishment of Lower Courts.

The following are by this Act established as the lower courts of the country—

(a) Circuit Courts;

(b) District Courts;

(c) Juvenile Courts;

(d) the National House of Chiefs, Regional Houses of Chiefs and every Traditional Council, in respect of the jurisdiction of any such House or Council to adjudicate over any cause or matter affecting chieftaincy; and

(e) such other lower courts as Parliament may by law establish.

#### Section 40—Circuit Courts and Judges.

(1) There shall be established in each Region such Circuit Courts as the Chief Justice may determine.

(2) The Chief Justice shall specify the area of jurisdiction of each Circuit Court.

(3) There shall be assigned for each Circuit Court a Judge who shall be appointed, subject to the approval of the President, by the Chief Justice acting on the advice of the Judicial Council.

(4) A person shall not be appointed a Circuit Court Judge unless he is of high moral character and proven integrity and is of not less than five years standing as a lawyer .

(5) Every Circuit Court Judge shall exercise the jurisdiction conferred upon him by this Act or any other enactment for the time being in force in respect of causes and matters arising within his area of jurisdiction.

(6) A Circuit Court shall hold its sittings at such places and times as the Chief Justice may direct.

(7) Subject to any direction of the Chief Justice, the sittings of a Circuit Court shall be held at such places and times as the Circuit Court Judge may think fit.

#### Section 41—Superior Court Judge to sit as Circuit Court Judge.

Without prejudice to subsection (3) of section 40, the Chief Justice, or any Justice of the Superior Court of Judicature nominated by the Chief Justice may sit as a Circuit Court Judge.

#### Section 42—Jurisdiction of Circuit Courts Civil in Matters.

(1) The civil jurisdiction of a Circuit Court consists of the following—

(a) original jurisdiction in civil matters—

(i) in personal actions arising under contract or tort or for the recovery of any liquidated sum, where the amount claimed is not more than €100 million;

(ii) in actions between landlord and tenant for the possession of land claimed under lease and refused to be delivered up;

(iii) in causes and matters involving the ownership, possession, occupation of or title to land;

(iv) to appoint guardians of infants and to make orders for the custody of infants;

(v) to grant in any action instituted in the Court, injunctions or orders to stay waste, or alienation or for the detention and preservation of any property the subject matter of that action or to restrain breaches of contract or the commission of any tort;

(vi) in claims of relief by way of interpleader in respect of land or other property attached in execution of an order made by a Circuit Court;

(vii) in applications for the grant of probate or letters of administration in respect of the estate of a deceased person, and in causes and matters relating to succession to property of a deceased person, who had at the time of his death a fixed place of abode within the area of jurisdiction of the Circuit Court and the value of the estate or property in question does not exceed €100 million; and

(b) any other jurisdiction conferred by this Act or any other enactment.

(2) Where there is a dispute as to whether or not any amount claimed or the value of any property in any action, cause or matter is in excess of the amount or value specified in subsection (1) of this section in relation to that action, cause or matter, the Circuit Court in question shall call evidence as to the said amount or value and if it finds that it exceeds the amount or value specified in subsection

(1) it shall transfer the case to the High Court.

(3) Where the amount claimed or the value of any property exceeds the amount or value specified in subsection (1) of this section the Circuit Court shall, notwithstanding that subsection, proceed to hear the case if the parties agree that it should do so.

(4) The Attorney-General may by legislative instrument amend the amount or value specified in subsection (1) of this section.

#### Section 43—Criminal Jurisdiction of Circuit Court.

A Circuit Court has original jurisdiction in all criminal matters other than treason, offences triable on indictment and offences punishable by death.

#### Section 44—Appeals from Circuit Courts.

(1) A person aggrieved by a judgment of a Circuit Court in any civil action may, subject to this Act and Rules of Court, appeal to the Court of Appeal against the judgment.

(2) A person aggrieved by a judgment of a Circuit Court in criminal trial may, subject to this Act and Rules of Court, appeal to the High Court.

#### Sub-Part II—District Courts

##### Section 45—Establishment of District Courts.

(1) There shall be in each District of the country such District Courts as the Chief Justice may determine.

(2) There shall be assigned to each District Court, a Magistrate who shall be appointed, subject to the approval of the President, by the Chief Justice on the advice of the Judicial Council.

(3) The Chief Justice shall specify the area of jurisdiction of each District Court.

##### Section 46—Qualification of a Magistrate and Sitting of the District Court.

(1) A person does not qualify to be appointed a magistrate of a District Court unless the person is of high moral character and proven integrity and

(2) The Chief Justice, any Justice of the Superior Court of Judicature or a Circuit Court Judge nominated by the Chief Justice may sit as a Magistrate of any District Court.

(3) Sittings of a District Court shall be held at such places and times as the Chief Justice may direct.

(4) Subject to any such directions, the sittings may be held at such places and times as the Magistrate thinks appropriate.

##### Section 47—Civil Jurisdiction of District Courts.

(1) A District Court shall within the area of its jurisdiction have civil jurisdiction in the following matters—

(a) in personal actions arising under contract or tort for the recovery of any liquidated sum where the amount claimed does not exceed ø50 million;

(b) to grant in any action instituted in the District Court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject matter of that action, or restrain breaches of contracts or the commission of any tort;

(c) in claims for relief by way of interpleader in respect of land or other property attached in execution of a decree made by the District Court;

(d) in civil causes or matters relating to the landlord and tenant of any premises or any person interested in such premises as required or authorised by any law relating to landlord and tenant;

(e) in actions relating to ownership, possession or occupation of land where the value of the land does not exceed ø50 million;

(f) in divorce and other matrimonial causes or matters and actions for paternity and custody of children;

(g) in applications for the grant of probate or letters of administration in respect of the estate of a deceased person, and in causes and matters relating to succession to property of a deceased person, who had at the time of his death a fixed place of abode within the area of jurisdiction of the District Court and the value of the estate or property in question does not exceed ø50 million; and

(h) [Repealed by Courts (Amendment) Act, 2004 (Act 674) para. (c)].

(2) Where there is dispute as to whether or not any amount claimed or the value of any land or property in any action, cause or matter is in excess of the amount or value specified in subsection (1) of this section in relation to that action, cause or matter the District Court in question shall call evidence as to the said amount or value and if it finds that it exceeds the amount or value specified in subsection (1) it shall, subject to the powers of transfer of the Chief Justice, transfer the case to a Circuit Court.

(3) Where in any action, cause or matter the amount claimed or the value of any land or property exceeds the amount or value specified in subsection (1), the District Court shall notwithstanding that subsection, proceed to hear the case if the parties agree that it should do so.

(4) The Attorney-General may by legislative instrument amend the amount or value specified in subsection (1) of this section.

##### Section 48—Jurisdiction of District Court in Criminal Matters.

- (1) In criminal matters a District Court has jurisdiction to try summarily—
- (a) an offence punishable by a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years or both;
  - (b) any other offence (except an offence punishable by death or by imprisonment for life or an offence declared by any enactment to be a first degree felony) if the Attorney-General is of the opinion that having regard to the nature of the offence, the absence of circumstances which would render the offence of a grave or serious character and all other circumstances of the case, the case is suitable to be tried summarily;
  - (c) an attempt to commit an offence to which paragraph (a) or (b) of this subsection applies;
  - (d) abetment of or conspiracy in respect of any such offence.
- (2) Subject to the other provisions of this section, a District Court shall in the exercise of its jurisdiction in criminal matters not impose a term of imprisonment exceeding 2 years or a fine exceeding 500 penalty units or both.
- (3) A District Court does not have jurisdiction to try an offence under paragraph (b), (c) or (d) of subsection (1) where the enactment creating the offence has prescribed in relation to the offence a minimum penalty that exceeds the penalty permitted to be imposed by a District Court under subsection (2).
- (4) Where under any enactment increased punishment may be imposed upon any person previously convicted of a crime, a District Court may impose the increased punishment, or twice the maximum punishment prescribed by subsection (2) whichever is the lesser.
- (5) The Attorney-General may by legislative instrument amend the amount or value specified in subsections (1) and (2) of this section.

#### Section 49—Juvenile Courts.

- (1) The Chief Justice may designate any District Court as a Juvenile Court.
- (2) A Juvenile Court shall be composed of the Magistrate of the District Court as the presiding person and two other persons one of whom shall be a Social Welfare Officer and the other, a person of not less than 25 years both of whom shall be appointed by the Chief Justice on the recommendation of the Director of Social Welfare .
- (3) A Juvenile Court has power to hear and determine any matter civil or criminal that involves a person under the age of eighteen and shall for that purpose have and exercise all the powers of a District Court.

#### Section 50—Jurisdiction of District Court under the Children's Act.

A District Court also has jurisdiction to hear and determine any action that arises under the Children's Act, 1998 (Act 560) and shall for the purposes of that enactment be the Family Tribunal and exercise the powers conferred on a Family Tribunal under that Act and any other enactment.

#### Section 51—General powers of District Courts.

- (1) Every District Court shall in addition to the jurisdiction conferred by this Act, have such other functions as may be conferred or imposed on it by any other enactment.
- (2) Every Magistrate may administer oaths, take solemn affirmations and declarations, make such decrees and orders, issue such process and exercise such powers, judicial and ministerial in relation to the administration of justice as are prescribed by any enactment, Rules of Court, or special order of the District Court.
- (3) A writ of summons for the commencement of any action in the High Court or a Circuit Court may, without prejudice to any power conferred on the High Court or a Circuit Court by any other provision of this Act or Rules of Court, be filed with any District Court and it shall be the duty of the District Court with which the writ is filed to transmit the writ immediately to the High Court or Circuit Court at which the action in respect of which the writ is filed is to be determined.
- (4) No act done by or under the authority of a Magistrate shall be void or impeachable by reason only that the act was done, or that any act, offence, or matter in respect of or in relation to which the act was done, occurred beyond the limits of the district or area for which the Magistrate was appointed.

(5) Where in any proceedings before a District Court a defendant raises an objection to the jurisdiction of the Court, which might but for this section have been valid, if—

(a) in a civil case, the objection is raised at a time before the plaintiff calls his first witness in support of his claim; or

(b) in a criminal case, the objection is raised at or before the time when the defendant is required to plead to the charge,

the Magistrate shall consider the objection, and if it appears to the Magistrate that there is prima facie proof of the objection, the Magistrate shall, in a civil case report the matter to the High Court and in a criminal case, report the matter to the Circuit Court, and the High Court or Circuit Court shall as the case may be, direct where the matter shall be heard and determined.

(6) Every Magistrate shall, when required by a court, execute any order or process issuing from the District court and shall take security from any person named in the order or process for his appearance in the court, and shall, in default send the person to the place named in the order or process.

Section 52—Monthly lists to be sent to High Court and Power of High Court to revise decision of Magistrates.

(1) At the end of every month, every Magistrate shall forward to the High Court for the time being exercising jurisdiction over the District, a complete list of all criminal cases decided by or brought before the Magistrate during that month, setting out the name of the accused, the offence with which he was charged, and the date of conviction and the sentence, or of acquittal or discharge, as the case may be, and in every case the order of the Magistrate in full.

(2) Upon receipt of the list referred to in subsection (1) of this section the High Court Judge may, if he thinks fit, call for a copy of the record of any case included in the list and, either without seeing the record or after seeing it, and either without hearing argument or after hearing argument, may—

(a) subject to any enactment fixing a minimum penalty, vary the sentence or impose such other sentence warranted in law by the verdict which the District Court could have imposed in substitution for the sentence imposed as the Judge thinks ought to have been imposed;

(b) subject to any enactment requiring a particular order to be made, set aside an order or modify an order in such form as the Judge thinks fit;

(c) set aside the conviction, in which case the person if under detention shall be immediately released from detention, and any fine already paid shall be refunded to the person fined, and any security given shall be released;

(d) set aside the acquittal, record a conviction and impose any sentence which the District Court could have imposed;

(e) set aside the conviction or acquittal and order a new trial or a preliminary enquiry before the District Court which made the conviction or acquittal or before any other District Court;

(f) order further evidence to be taken either generally or on some particular point by the District Court which passed the sentence or which ordered the acquittal or by any other District Court and order in the meantime any person who has been convicted and imprisoned to be released on bail with surety or on his own recognisance; or

(g) make such other order as interest of justice may require, and give all necessary and consequential directions .

(3) Upon the receipt of the list referred to in subsection (1) of this section, if the High Court is of the view that a conviction for another offence ought to have been imposed or that the accused was guilty of the act charged, but was insane so as not to be responsible for his action at the time when he did the act, the High Court shall set aside the conviction and send back the case for rehearing by the appropriate District Court, subject to such directions as the Judge may think fit and the Judge shall further inform the prosecution and the defence that he has so directed.

(4) When a person convicted has appealed against the conviction, or has applied for a case to be stated by the District Court under subsection (6) of section 100 of this Act, the Judge shall not exercise jurisdiction under this section in relation to the case to which the appeal or application relates.

(5) When action on the list as provided in subsection (1) is complete or if the Judge decides to take no such action, the Judge shall direct that the list be filed; but the direction shall not have the effect of preventing the Judge from subsequently taking any action prescribed in that subsection if he thinks fit.

(6) Three months after the last day of the month to which the list relates the Judge shall become functus officio in respect of all cases on the list in respect of which no action has been taken.

(7) Proceedings under this section may be taken by the Judge on his own motion or on the petition of any person interested praying for the exercise of the revisional powers of the Judge and the powers may be exercised notwithstanding that the monthly list has not been transmitted to or received by the Judge.

Section 53—Magistrate subject to the Directions of High Court.

(1) Every Magistrate is subject to the orders and directions of the High Court as any other officer of the Court.

(2) The Judge of the High Court for the time being exercising jurisdiction over the District may, whenever he thinks fit, require the Magistrate of the District Court to render to the High Court in such form as the Court directs a report of any case which may be brought before the Magistrate.

(3) The Chief Justice may also exercise the jurisdiction and functions conferred by section 52 and subsection (2) of this section on the High Court and may give directions as to the Judge by whom and the manner in which the jurisdiction and the functions are to be exercised in any particular case or class of cases.[As substituted by the Courts (Amendment) Act, 2002 (Act 620), s.5]

PART III—COMMON LAW AND CUSTOMARY LAW.

Section 54—Choice of Law.

(1) Subject to this Act and any other enactment, a court when determining the law applicable to an issue arising out of any transaction or situation, shall be guided by the following rules in which references to the personal law of a person are references to the system of customary law to which he is subject or to the common law where he is not subject to any system of customary law:

Rule 1. An issue arising out of a transaction shall be determined according to the system of law intended by the parties to the transaction to govern the issue or the system of law which the parties may, from the nature or form of the transaction be taken to have intended to govern the issue.

Rule 2. In the absence of any intention to the contrary, the law applicable to any issue arising out of the devolution of a person's estate shall be the personal law of that person.

Rule 3. In the absence of any intention to the contrary, the law applicable to an issue as to title between persons who trace their claims from one person or group of persons or from different persons all having the same personal law, shall be the personal law of that person or those persons.

Rule 4. In applying Rules 2 and 3 to disputes relating to titles to land, due regard shall be had to any overriding provisions of the law of the place in which the land is situated.

Rule 5. Subject to Rules 1 to 4, the law applicable to any issue arising between two or more persons shall, where they are subject to the same personal law, be that law; and where they are not subject to the same personal law, the court shall apply the relevant rules of their different systems of personal law to achieve a result that conforms with natural justice, equity and good conscience.

Rule 6. In determining an issue to which the preceding Rules do not apply, the court shall apply such principles of the common law, or customary law, or both, as will do substantial justice between the parties, having regard to equity and good conscience.

Rule 7. Subject to any directions that the Supreme Court may give in exercise of its powers under article 132 of the Constitution, in the determination of any issue arising from the common law or customary law, the court may adopt, develop and apply such remedies from any system of law (whether Ghanaian or non-Ghanaian) as appear to the court to be efficacious and to meet the requirements of justice, equity and good conscience.

(2) Subject to this Act and any other enactment, the rules of law and evidence (including the rules of private international law) that have before the coming into force of this Act been applicable in

proceedings in Ghana shall continue to apply, without prejudice to any development of the rules which may occur.

#### Section 55—Ascertainment of Customary Law.

(1) Any question as to existence or content of a rule of customary law is a question of law for the court and not a question of fact.

(2) If there is doubt as to the existence or content of a rule of customary law relevant in any proceedings before a court, the court may adjourn the proceedings to enable an inquiry to be made under subsection (3) of this section after the court has considered submissions made by or on behalf of the parties and after the court has considered reported cases, textbooks and other sources that may be appropriate to the proceedings.

(3) The inquiry shall be held as part of the proceedings in such manner as the court considers expedient, and the provisions of this Act relating to the attendance and testimony of witnesses shall apply with such modifications as may appear to the court to be necessary.

(4) The decision as to the persons who are to be heard at the inquiry shall be one for the court, after hearing the submissions on it made by or on behalf of the parties.

(5) The court may request a House of Chiefs, Divisional or Traditional Council or other body with knowledge of the customary law in question to state its opinion which may be laid before the inquiry in written form.

### PART IV —EXERCISE OF JURISDICTION, EVIDENCE AND RULES OF COURT

#### Section 56—Criminal Jurisdiction of Courts of Ghana.

(1) Subject to this section, the jurisdiction of the courts of Ghana in criminal matters is exercisable only in respect of an offence committed within the territory of Ghana including its territorial waters and air space and in respect of offences committed on any ship or aircraft registered or licensed in Ghana.

(2) When an act which if done within the jurisdiction of a court, would be a criminal offence, is done partly within and partly outside the jurisdiction, every person who within or outside the jurisdiction does or abets any part of the act may be tried and punished as if the act had been done wholly within the jurisdiction.

(3) A citizen of Ghana who—

(a) while employed in the service of the Republic of Ghana or of any statutory corporation does an act outside Ghana which if done in Ghana is punishable as an offence; or

(b) does an act outside Ghana which if done in Ghana would constitute the offence of murder or an offence under section 183A of the Criminal Code, 1960 (Act 29); or

(c) does outside Ghana any act which if done in Ghana constitutes an offence involving or resulting in the misappropriation, dissipation or loss of—

(i) public funds;

(ii) government property including damage to government property;

(iii) property belonging to a statutory corporation including damage to the property of the statutory corporation;

(d) does any act on the premises of a Ghanaian diplomatic mission which if done in Ghana would be punishable as an offence,

commits an offence as if the offence was done in Ghana and may, subject to section 46 of the Criminal Procedure Code, 1960 (Act 30) be prosecuted and punished in Ghana.

(4) Any person (whether a citizen of Ghana or not) is liable to be tried and punished in Ghana for the respective offence if he does an act which if done within the jurisdiction of the courts of Ghana would have constituted any of the following offences—

(a) slave trade or traffic in slaves;

(b) piracy;

(c) traffic in women or children;

(d) falsification or counterfeiting or uttering of false copies or counterfeits of any official seal of Ghana or any currency, instrument of credit, stamp, passport or public document issued by the Republic or under its authority;

- (e) genocide;
- (f) any offence against the property of the Republic;
- (g) any offence against the security, territorial integrity or political independence of the Republic;
- (h) hijacking;
- (i) unlawful traffic in narcotics;
- (j) attacks on any international communications system, canal or submarine cable;
- (k) unauthorised disclosure of an official secret of the Republic;
- (l) an offence by or against a person in the employment of the Republic or a statutory corporation while acting in the course of the duties of such employment;
- (m) traffic in obscene publications; and
- (n) any other offence which is authorised or required by a convention or treaty to which the Republic is a signatory to be prosecuted and punished in Ghana wherever the offence was committed.

**Section 57—Limitation of Jurisdiction in Chieftaincy Matters.**

Subject to the provisions of the Constitution, the Court of Appeal, the High Court, Regional Tribunal, a Circuit and Community Tribunal shall not have jurisdiction to entertain either at first instance or on appeal any cause or matter affecting chieftaincy.

**Section 58—Summoning Witnesses.**

In any proceedings, and at any stage of the proceedings, a court either on its own motion or on the application of any party, may summon any person to attend to give evidence, or to produce any document in his possession or excerpts from it subject to any enactment or rule of law.

**Section 59—Warrant in Criminal Cases.**

In a criminal case if the court is satisfied by evidence on oath that a person can give material evidence and will not attend court unless compelled to do so, the court may immediately issue a warrant for the arrest and production of the witness before the court at a time and place specified in the warrant.

**Section 60—Witness Arrested under Warrant.**

- (1) Where a witness has been arrested on warrant the court may order the release of the witness from custody for his appearance at the hearing of a case, on such security as it may determine.
- (2) If the witness fails to furnish proper security, the court shall order his detention for production at the hearing.

**Section 61—Penalty for Non-attendance by Witness.**

- (1) Any person summoned as a witness who—
  - (a) without reasonable excuse fails to attend court as required by the summons after having had reasonable notice of the time and place at which he is required to attend; or
  - (b) having attended court departs without reasonable excuse and without having obtained the permission of the court; or
  - (c) fails without reasonable excuse to attend after adjournment of the court after being ordered to attend,
 may be proceeded against by warrant to compel his attendance, and commits an offence and may be dealt with summarily by the court for contempt of court and sentenced immediately to a fine not exceeding 50 penalty units or six months imprisonment or both.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]
- (2) The fine may be levied by attachment and the sale of any movable property belonging to the witness.
- (3) For good cause shown, the High Court, Regional Tribunal or Circuit Tribunal may remit or reduce a fine imposed under this section by a Community Tribunal.

**Section 62—Examination of Witnesses.**

- (1) Subject to any enactment or rule of law to the contrary, a court shall require any witness to be examined on oath.
- (2) The court may at any time if it thinks just and expedient for reasons to be recorded in the proceedings, take without oath the evidence of any person who declares that the taking of any oath

whatsoever is according to his religious belief unlawful or who by reason of immature age or want of religious belief ought not in the opinion of the court to be admitted to give evidence on oath.

(3) The fact that the evidence has been taken without oath shall be recorded in the proceedings and the evidence taken shall be treated as if it had been taken on oath.

(4) Whenever a person, appears in court to give evidence and—

(a) refuses to be sworn; or

(b) having been sworn, refuses without lawful excuse to answer a question put to him; or

(c) refuses or neglects to produce any document or thing which he is required to produce; or

(d) when lawfully required to do so refuses to sign his deposition, without offering any lawful or sufficient excuse for his refusal or neglect,

that person shall, independently of any other liability, be guilty of contempt of court and the court before which he commits the contempt may deal with him summarily and sentence him as if he had been convicted of a misdemeanour.

Section 63—By stander May be Required to Give Evidence.

A person present in court, whether a party or not in the proceedings before the court may be compelled by the court to give evidence, or to produce any document in his possession or under his control, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce the document, and may be punished in the same manner for refusal to obey the order of the court.

Section 64—Prisoners may be Brought by Warrant to Give Evidence.

(1) A Judge, Chairman of a Regional, Circuit or Community Tribunal may issue a warrant for a prisoner, or a person in custody to appear as a party or be examined as a witness, in any proceedings in a Court or Tribunal.

(2) A warrant shall not be issued unless the Judge, Chairman of a Regional, Circuit or Community Tribunal has probable grounds for believing that the appearance of the prisoner is necessary or desirable or that his evidence is likely to be material.

(3) The Director of Prisons or any other person in whose custody the prisoner may be, shall immediately obey the warrant by bringing the prisoner to the court in his custody, or by delivering him to an officer of the court as ordered and if the prisoner, under the terms of the warrant, is delivered to an officer of the court, the Director or other person shall not be liable for his escape.

Section 65—Allowances to Witnesses.

(1) A court may, in any proceedings order and allow to all persons required to attend, or be examined as witnesses such sums of money as seem fit both for defraying their reasonable expenses and for giving them reasonable compensation for their trouble and loss of time.

(2) It shall not be lawful in any proceedings for a person to refuse to attend as a witness, or to give evidence when so required by order of the court on the grounds that his expenses have not first been paid or provided for.

Section 66—Defrayment of Witness Allowances.

All sums of money allowed under section 65 shall be paid—

(a) in civil proceedings by the party on whose behalf the witness is called and shall be recoverable as ordinary costs of the suit if ordered by the court; or

(b) in criminal proceedings out of the Consolidated Fund if not paid by the convicted party or the prosecutor.

Section 67—Penalty on Giving False Evidence.

Any person who in relation to any proceedings before a court gives false evidence on a declaration without oath, commits an offence and shall be convicted and punished in the same manner as if he had given the evidence on oath.

Section 68—Inspection.

In any proceedings a court may, on the application of either party or on its own motion make an order for the inspection by the court, the jury, the panel, the parties, or witnesses, of any movable or immovable property, the inspection of which may be material to the proper determination of the

question before the court, and the court may give such directions in respect of the inspection, as it thinks fit.

#### Section 69—Recording of Proceedings Before a Court.

(1) In any proceedings before a court the court may cause oral evidence to be recorded by shorthand, tape recorder or by such other means as the Chief Justice may determine.

(2) The recording shall be done by an officer of the court or any other person appointed for that purpose.

(3) A record taken under subsection (1) shall be transcribed by a person referred to in subsection (2) and the transcript shall for all purposes be the official record of the proceedings in question.

(4) Before any person, other than the Judge, Chairman of a Regional Tribunal or the Magistrate records or transcribes any evidence under this section, an oath shall be tendered to be taken by that person for the accurate and faithful recording of that evidence.[As substituted by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

(5) An officer of the court who has once duly taken the oath shall not again be required to take the oath in respect of the same or of any subsequent case.

(6) The evidence shall be recorded under the supervision and control of the presiding Judge, Chairman or Magistrate who may at any time before appending his signature to the written statement of the evidence amend anything in it which he considers requires to be amended.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

(7) Before signing, the presiding Judge, Chairman or Magistrate shall examine the statement and satisfy himself that it is in substance an accurate and faithful record of the oral evidence given.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

(8) If an officer or other person employed to record or transcribe evidence under this section wilfully falsifies or misrepresents the true meaning of any oral evidence recorded under this section—

(a) he commits an offence and is liable on conviction to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding one year or to both; or [As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

(b) he may be dealt with summarily by the court as for contempt of court and be sentenced immediately to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding six months.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

#### Section 70—Access to Record of Court.

(1) No person is entitled, to inspect or to have a copy of the record of evidence given in a case before a court or to a copy of the court's notes, except as may be expressly provided by the Constitution, a rule of court or any other enactment.

(2) If a person affected by a judgment or a court order desires to have a copy of the judgment, order, deposition or other part of the record, he shall on application for the copy be furnished with it if he pays its cost except where the court for some special reason thinks fit to furnish it free of charge.

#### Section 71—Minutes of Proceedings.

(1) In every civil or criminal proceedings dealt with in the High Court, Regional or Circuit Tribunal, Circuit Court, or Community Tribunal, minutes of the proceedings shall be drawn up and shall be signed by an officer of the Court duly authorised by the Judge or Chairman of the Tribunal.

(2) The minutes, with the notes of evidence taken at the hearing or trial including any record of proceedings taken under section 69 of this Act, shall be preserved as records of the Court.

(3) The minutes and notes of evidence including the record referred to in subsection (2) of this section or a copy of it signed and certified as a true copy by the officer referred to in subsection (1) shall at all times, without further proof, be admitted as evidence of the proceedings and of the statements made by the witnesses.

#### Section 72—Courts to Promote Reconciliation in Civil Cases.

(1) Any court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the court has jurisdiction.

(2) When a civil suit or proceeding is pending, any court with jurisdiction in that suit may promote reconciliation among the parties, and encourage and facilitate the amicable settlement of the suit or proceeding.

#### Section 73—Reconciliation in Criminal Cases.

Any court, with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of any offence not amounting to felony and not aggravated in degree, on payment cases of compensation or on other terms approved by the court before which the case is tried, and may during the pendency of the negotiations for a settlement stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person.

#### Section 74—Vexatious Proceedings.

(1) On an application by the Attorney-General the High Court may order that no legal proceedings shall be instituted by a person in any court proceed without its leave if the person has habitually and persistently without reasonable ground instituted vexatious legal proceedings in any court whether against the same person or not.

(2) The leave of the High Court shall not be given unless it is satisfied that the proceedings are not an abuse of the court process and that there is prima facie ground for the proceedings.

#### Section 75—Order for the Examination of Witnesses in Matters Pending before a Foreign Tribunal.

(1) The High Court may order the examination of a witness within its jurisdiction on such terms as it considers necessary when an application is made by a court or tribunal of competent jurisdiction in another country for the testimony in respect of criminal, civil or commercial matters before that court or tribunal.

(2) The High Court may order the attendance of the person before any person named in the other—

(a) to be examined on oath, on interrogatories; or

(b) to produce specific documents and shall give such directions as it thinks fit.

(3) Any order of the High Court made under this section may be enforced in the same manner as an order made in a cause pending in the High Court.

#### Section 76—Certificate of Ambassador, Etc. Sufficient Evidence in Support of Application.

(1) An ambassador, minister, diplomatic agent or consular officer may issue a certificate that a matter the subject of an application under section 75 is a criminal, civil or commercial matter and that the court or tribunal requires the evidence pending before a court or tribunal in the country in which he is employed.

(2) If no certificate under subsection (1) is issued, other evidence shall be admissible to show that the matter for which the evidence is required is pending before a court or tribunal in another country.

#### Section 77—Examination of Witnesses to be Taken Upon Oath.

A person authorised to take the examination of a witness by an order made under section 75 of this Act may take all the examinations on oath.

#### Section 78—Expenses of Witnesses.

Every person whose attendance is required under section 75 of this Act shall be entitled to the same allowances as a witness appearing at a trial in the High Court.

#### Section 79—Extent of Right of Refusal to Answer Questions and to Produce Documents.

(1) Every person examined under an order made under section 75 of this Act shall have the same right to refuse to answer questions tending to incriminate himself and other questions as a witness in any cause pending in the High Court would be entitled to.

(2) No person shall be compelled to produce under any such order any writing or other document that he would not be compellable to produce at a trial of such a cause.

#### Section 80—Rules of Court.

(1) Subject to the provisions of the Constitution, the Rules of Court Committee established by article 157 of the Constitution may in accordance with clause (2) of article 157 of the Constitution by constitutional instrument, make Rules of Court for regulating the practice and procedure of all

courts in Ghana, which shall include regulations relating to the prevention of frivolous and vexatious proceedings.

(2) Without prejudice to the generality of subsection (1) of this section the Rules of Court Committee may, subject to the provisions of the Constitution, make rules of court—

(a) for regulating the practice and procedure of the Superior Court of Judicature for the purposes of article 33 of the Constitution, (which relates to the protection of rights by the courts);

(b) for the practice and procedure for petitions to the Supreme Court challenging the election of a President under article 64 of the Constitution;

(c) for the practice and procedure of the High Court of Justice with respect to the exercise of the jurisdiction conferred on it by article 99 of the Constitution (which inter alia relates to the determination of the validity of the election of a Member of Parliament and of the Speaker of Parliament);

(d) for the practice and procedure of the High Court in respect of appeals against a disallowance or charge by the Auditor-General for the purposes of clause (10) of article 187 of the Constitution;

(e) for regulating the award of interest on sums claimed and found by any court to be due and prescribing the rates of such interest;

(f) for regulating matters relating to the costs of the proceedings in court and prescribing fees and allowances to be paid in respect of any matter relating to the proceedings of any court;

(g) for regulating the sittings of the courts and prescribing the periods of the vacations of the courts;

(h) for prescribing forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of any court.

(3) The Rules of Court Committee may also make rules—

(a) for the practice and procedure for the removal of a President under article 69 of the Constitution;

(b) for regulating the practice and procedure of inquiries conducted before a Commission of Inquiry for the purposes of clause (2) of article 281 of the Constitution and for regulating the practice and procedure of any committee or other body of inquiry appointed by the Government or established under any enactment; and

(c) regarding any matter in relation to which the Rules of Court Committee is authorised or required by any enactment to make rules.

## PART V—ENFORCEMENT IN GHANA OF FOREIGN JUDGMENTS AND MAINTENANCE ORDERS

### Sub-Part I—Foreign Judgments.

#### Section 81—Application of Sub-Part I.

(1) Where the President is satisfied that, in the event of the benefits conferred by this Sub-Part being extended to judgments given in the superior courts of any country, substantial reciprocity of treatment will be assured in respect of the enforcement in that country of judgments given in the Superior Court of Judicature of Ghana, the President may by legislative instrument order—

(a) that this Sub-Part shall extend to that country; and

(b) that such courts of that country as are specified in the order shall be the superior courts of that country for the purposes of this Sub-Part.

(2) Any judgment of a superior court of a country to which this Sub-Part extends, other than a judgment of the court given on appeal from a court which is not a superior court, shall be a judgment to which this Sub-Part applies, if—

(a) it is final and conclusive between the parties; and

(b) there is payable under it a sum of money, not being a sum payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty; and

(c) it is given after the coming into operation of the order directing that this Sub-part shall extend to that country.

(3) For the purpose of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it or that it may still be subject to appeal in the courts of the country of the original court.

#### Section 82—Registration of Judgment.

- (1) A judgment creditor under a judgment to which this Sub-Part applies may apply to the High Court to have the judgment registered.
- (2) The application for registration of the judgment shall be made within six years after the date of judgment or where there has been an appeal, after the last judgment given in those proceedings.
- (3) The High Court may order the judgment to be registered subject to proof of the prescribed matters and to the provisions of the Sub-Part.
- (4) A judgment shall not be registered if at the date of the application—
  - (a) it has been wholly satisfied; or
  - (b) it could not be enforced by execution in the country of the original court.
- (5) Subject to the provisions of this Sub-Part with respect to the setting aside of a registration—
  - (a) a registered judgment shall, for the purposes of execution, be of the same force and effect;
  - (b) proceedings may be taken on a registered judgment;
  - (c) the sum for which a judgment is registered shall carry interest; and
  - (d) the registering court shall have the same control over the execution of a registered judgment, as if the judgment had been a judgment originally given in the registering court and entered on the date of registration.
- (6) Execution shall not issue on the judgment under this Sub-Part or any rules of court made in pursuance of it, so long as it is competent for any party to make an application to have the registration of the judgment set aside, or, where an application is made, until after the application has been finally determined.
- (7) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Ghana the judgment shall be registered as if it were a judgment for a sum in the currency of Ghana based on the rate of bank exchange prevailing at the date of the judgment of the original court.
- (8) If at the date of the application for registration, the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court but only in respect of the balance remaining payable at that date.
- (9) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of those that could be registered but not in respect of any other provisions contained in it.
- (10) In addition to the sum of money payable under the judgment of the original court and any interest due up to the time of registration by the law of the country of the original court, the following costs shall also be paid—
  - (a) reasonable costs of and incidental to registration of the judgment; and
  - (b) costs of obtaining a certified copy of the judgment from the original court.

#### Section 83—Instances when Registered Judgments shall or may be Set Aside.

- (1) On an application made by a party against whom a registered judgment may be enforced, the registration of the judgment—
  - (a) shall be set aside if the registering court is satisfied—
    - (i) that the judgment is not a judgment to which this Sub-Part applies or was registered in contravention of this Sub-Part; or
    - (ii) that the original court had no jurisdiction in the case; or
    - (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or
    - (iv) that the judgment was obtained by fraud; or
    - (v) that the enforcement of the judgment would be contrary to public policy in Ghana; or

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had prior to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court that had jurisdiction in the matter.

(2) For the purpose of this section the original court shall, subject to subsection (3) of this section be deemed to have had jurisdiction—

(a) in the case of a judgment given in an action in personam—

(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of property seized, or threatened with seizure, in the proceeding or of contesting the jurisdiction of that court; or

(ii) if the judgment debtor was plaintiff in or counter-claimed in the proceedings in the original court; or

(iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of that country; or

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situated in the country of that court; or

(c) in the case of a judgment given in an action other than an action in (a) or (b) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in subsection (2) of this section, the original court shall not be deemed to have had jurisdiction—

(a) if the subject matter of the proceedings was immovable property outside the country of the original court; or

(b) except as provided in sub-paragraphs (i), (ii) and (iii) of paragraph (a) and paragraph (c) of subsection (2) of this section, if bringing the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or

(c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

Section 84—Powers of Registering Court on Application to set Aside Registration.

(1) If the applicant on an application to set aside the registration of a judgment satisfies the registering court that—

(a) an appeal is pending; or

(b) he is entitled and intends to appeal,

the court may set aside the registration or adjourn the application until the expiry of such time as the court considers necessary to enable the applicant to have the appeal disposed of by a competent tribunal.

(2) Where the registration of a judgment is set aside under subsection (1) of this section or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or when the judgment becomes enforceable by execution in the country of the original court.

(3) Where the registration of a judgment is set aside because the judgment was registered for the whole sum payable under it, even though at the date of application for the registration of the judgment it had been partly satisfied, the registering court shall order judgment to be registered for the outstanding balance payable at the date of the application by the judgment creditor.

Section 85—Foreign Judgments which can be Registered not to be Enforceable Otherwise.

No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Sub-Part applies other than proceedings by way of registration of the judgment, shall be entertained by any court in Ghana.

Section 86—General Effect of Certain Foreign Judgments.

(1) Subject to this section, a judgment to which this Sub-Part applies or would have applied if a sum of money had been payable under it, shall be recognised in any court in Ghana as conclusive between the parties to it in all proceedings founded on the same cause of action and may be relied upon as a defence or counter-claim in any such proceedings.

(2) Subsection (1) shall apply whether the judgment can be registered, is registered or is not registered.

(3) This section shall not apply in the case of any judgment—

(a) Where the judgment has been registered and the registration has been set aside on some ground other than—

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or

(b) where the judgment has not been registered and it is shown (whether it could have been registered or not) that if it had been registered, the registration would have been set aside on application on some ground other than those specified in paragraph (a) of this subsection.

Section 87—Power to make Foreign Judgments Unenforceable in Ghana if no Reciprocity.

If it appears to the President that the treatment in respect of recognition and enforcement accorded by the court of any country to judgments given in the Superior Courts of Ghana is substantially less favourable than that accorded by the courts of Ghana to judgments of the superior courts of that country, the President may by legislative instrument order that no proceedings shall be entertained in any court in Ghana for the recovery of any sum alleged to be payable under a judgment given in a court of that country.

Section 88—Issue of Certificates of Judgments Obtained in Ghana.

(1) Where a judgment for a sum of money which is not for taxes or similar charges or is not a fine or other penalty is entered by the High Court against any person, and the judgment creditor wants to enforce the judgments in a country to which this Sub-Part applies, he may apply to the court in Ghana to issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action, including the cause of action, and the rate of interest, if any, payable on the sum under the judgment as may be prescribed by the court that gave the judgment.

(2) Where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

Sub-Part II—Maintenance Orders

Section 89—Application of Sub-Part II.

(1) This Sub-Part shall apply to any country in respect of which the President, having regard to reciprocal provisions under the law of that country, may by legislative instrument direct the application of this Sub-Part.

(2) If it appears to the President that the law of any country to which this Sub-Part applies no longer contains reciprocal provisions in relation to this Sub-Part, the President may by legislative instrument discontinue the application of this Sub-Part to that country.

Section 90—Registration of Foreign Maintenance Orders.

- (1) A maintenance order made in a country to which this Sub-Part applies may be registered in the appropriate court in the prescribed manner and shall be of the same force and effect and may be enforced as if the order had been an order originally given in that court on the date of registration.
- (2) The appropriate court for the purposes of this Sub-Part shall, if the court by which the order was made was a superior court, be the High Court and, in any other case, be the Community Tribunal.
- (3) A certified copy of the order shall in the first instance be sent to the Minister for transmission to the appropriate court for registration.

Section 91—Confirmation of Foreign Provisional Order.

- (1) Where a maintenance order has been made in a country to which this Sub-Part applies and by the law of that country the order is provisional only unless confirmed by a court in Ghana the provisions of this section shall apply.
- (2) If a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, is transmitted to the Minister and it appears to him that the person against whom the order was made is resident in Ghana the Minister may send the documents to any Community Tribunal with a requisition that summons be issued calling upon the person to show cause why the order should not be confirmed, and the court shall issue the summons and cause it to be served on that person.
- (3) The summons may be served in the same manner as if it had been originally issued or subsequently endorsed by a court with jurisdiction in the place where the persons happens to be.
- (4) At the hearing it shall be open to the person on whom the summons was served to state that he was not a party at the hearing and to raise any defence which he might have raised in the original proceedings had he been a party to it, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, shall be conclusive evidence that those grounds are grounds on which objection may be taken.
- (5) If at the hearing the person served with the summons does not appear or, on appearing fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without modification or with such modifications as the court upon hearing the evidence thinks fit.
- (6) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order to take further evidence, the court may remit the case and adjourn the proceedings for that purpose.
- (7) Where a provisional order has been confirmed under this section, it may be varied or rescinded as if it had originally been made by the confirming court and where on an application for rescission or variation, the court is satisfied that it is necessary to remit the case to the court which made the order to take further evidence, the court may so remit the case and adjourn the proceedings for that purpose.
- (8) Where an order has been confirmed under this Sub-Part it shall have the same effect as if it were an order made by the court which confirmed it.

Section 92—Transmission of Maintenance Order for Registration Abroad.

Where a court has made a maintenance order against a person and it appears to the court that he is resident in a country to which this Sub-Part applies, the court shall, at the request of the applicant for the order, send a certified copy of the order to the Minister for transmission to the appropriate authority in that country for the order to be registered in that county.

Section 93—Making of Provisional Order Against Persons Resident Abroad.

- (1) Where—
  - (a) an application has been made to a Community Tribunal for a maintenance order against any person; and
  - (b) that person does not appear at the hearing; and
  - (c) it appears to the Tribunal that he is resident in a county to which this Sub-Part applies and the Tribunal is not satisfied that the summons had been duly served upon him,

the Tribunal may upon hearing the evidence make such order at it might have made if the summons had been duly served on that person and he had failed to appear at the hearing but in that case the order shall be provisional and shall not have effect unless confirmed by a competent court in that country.

(2) The evidence of each witness shall be put into writing and the deposition shall be read to him and signed by him.

(3) The court shall send to the Minister for transmission to the appropriate authority in the foreign country, a certified copy of the order with the depositions and a statement of the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a summons and had appeared at the hearing, and such other information as the court may possess to facilitate the identification of that person and ascertaining his whereabouts.

(4) Where the order has come before a court in the foreign country for confirmation, and has been remitted to the court which made the order for the purpose of taking further evidence, that court shall, after giving the prescribed notice, proceed to take the evidence in the same manner and subject to the same conditions as the evidence in support of the original application.

(5) If upon the hearing of the evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Minister and dealt with in the same manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a court to vary or rescind that order.

(7) On the making of a varying or rescinding order, the court shall send a certified copy of it to the Minister for transmission to the appropriate authority and in the case of an order varying the original order the order shall not have any effect unless and until confirmed in the same manner as the original order.

(8) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had summons been duly served on the person against whom the order is sought to be made.

Section 94—Communications Between Courts.

The Minister may by legislative instrument provide for the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order and generally for facilitating communications between the courts.

Section 95—Mode of Enforcing Orders.

(1) A court in which an order has been registered under this Sub-Part or by which an order has been confirmed under this Sub-Part, shall take such steps for enforcing the order as may be prescribed.

(2) Every order shall be enforceable in the same manner as a decree for the payment of money by instalments or in such other manner as may be prescribed.

(3) A warrant of distress or committal issued by a Community Tribunal for the purpose of enforcing any order registered or confirmed may be executed in any part of Ghana in the same manner as if the warrant had been originally issued or subsequently endorsed by a Community Tribunal having jurisdiction in the place where the warrant is executed.

Section 96—Proof of Documents Signed by Officers of Foreign Court.

Any document purporting to be signed by a judge or officer of a court in a country to which this Sub-Part applies shall, until the contrary is proved, be deemed to have been signed without proof of the signature, or judicial or official character of the person appearing to have signed it and the officer of a court by whom a document is signed shall be deemed to have been the proper officer of the court to sign the document until the contrary is proved.

Section 97—Depositions to be Evidence.

Depositions taken for the purposes of this Sub-Part in a court in a country to which this Sub-Part applies may be received in evidence in proceedings before a court under this Sub-Part.

Sub Part III—General Provisions Relating to this Part.

Section 98—Rules of Court to be Made in Respect of this Part.

- (1) The Rules of Court Committee may make rules of court—
- (a) for the giving of security for costs by persons applying for the registration of judgments;
  - (b) for matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
  - (c) for the service on the judgment debtor of notice of the registration of a judgment;
  - (d) for fixing of a period within which an application may be made to have the registration of the judgment set aside and the extension of the period fixed;
  - (e) for the method by which issues arising under this Part for the enforcement of a foreign judgment by execution in the country of the original court or what interest is payable under a foreign judgment under the law of the original court are to be determined;
  - (f) for any matter which under this Part is to be prescribed.

(2) Rules made for the purposes of this Part shall in their application to proceedings under Sub-Part I of this Part have effect subject to the provisions of any order made under section 89 of this Act.

Section 99—Interpretation of this Part.

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

“appeal” includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

“certified copy” in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

“country of the original court” means the country in which the original court is situated;

“court” includes a Community Tribunal;

“dependants” means such individuals as a person is liable to maintain according to the law in force in the country in which the maintenance order was made;

“judgment” means a judgment or order given or made by a court in any civil proceedings or judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

“judgment creditor” means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

“judgment debtor” means the person against whom the judgment is enforceable under the law of the original court;

“judgment given in the High Court” includes judgment given on appeal against that judgment;

“maintenance order” means an order, other than an order of affiliation, for the periodic payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and includes an order or decree for the recovery or repayment of the cost of public relief or maintenance;

“original court” in relation to a Judgment means the court which gave the judgment;

“prescribed” means prescribed by rules of court;

“registration” means registration under this Part;

“registering court” in relation to any judgment, means the Court to which an application to register the judgment is made;

“the Minister” means the Minister responsible for Justice.

(2) For the purpose of this Part, “action in persona” shall not include any matrimonial cause or any proceedings in connection with matrimonial matters, administration of the estates of deceased persons, insolvency, winding up of companies, lunacy or guardianship of infants.

(3) This Part applies to a maintenance order whether made before or after the commencement of this Act.

## PART VI—MISCELLANEOUS PROVISIONS.

Section 100—Reservation of Questions of Law to the Supreme Court, Court of Appeal and High Court.

(1) This section shall have effect without prejudice to any right of appeal conferred by the Constitution, this Act or any other enactment.

- (2) The Court of Appeal may before giving judgment in any proceedings before it reserve a question of law by case stated for the consideration of the Supreme Court.
- (3) A Judge of the High Court or of a Circuit Court may at any time before judgment in any civil cause or matter before it, reserve for the consideration of the Court of Appeal, by case stated, any question of law which may arise in the proceedings.
- (4) A Judge of the High Court or of a Circuit Court in any criminal trial may before judgment, reserve for the consideration of the Court of Appeal by case stated, any question of law which may arise in the proceedings. [As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]
- (5) A Regional Tribunal or a Circuit Tribunal in any trial before it may before giving judgment, reserve for the consideration of the Court of appeal by case stated by the Regional or Circuit Tribunal any question of law arising in the proceedings.
- (6) A District Court may at any time before giving judgment in any action before it, reserve any question of law that may arise in the proceedings for the consideration of the High Court by case stated by the District Court.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]
- (7) Any court to which a question of law is referred under this section shall have power to hear and determine that question.
- (8) Where a question of law has been reserved for the consideration of a court under this section, the court which reserved the question shall adjourn the proceeding in question until the decision of the first mentioned court on it is given and the court which reserved the question shall, after the decision is known given judgment in the case in accordance with that decision.
- (9) The court to which any question of law is reserved under this section shall ensure that the question referred to it is heard and determined by it as expeditiously as possible and that its decision is communicated to the court which reserved the question.

#### Section 101—Jurisdiction of High Court and Regional Tribunal Concurrent with Community Tribunals.

- (1) No jurisdiction conferred upon any Community Tribunals shall in any way restrict or affect the jurisdiction of the High Court or a Circuit Court and the High Court or a Circuit Court shall have in all cases and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of a or Community Tribunal.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]
- (2) For the removal of doubt it is declared that in the exercise by the High Court of the jurisdiction referred to in subsection (1) of this section the Court may—
- (a) act independently of the Community Tribunal; and
  - (b) in a criminal case, impose penalty and exercise any power prescribed or conferred by an enactment in relation to an offence tried by it up to any limit set by this Act in relation to the High Court and shall not be limited to the imposition of only such penalties as may be imposed by a Community Tribunal and shall have the powers specified in subsection (2) of this section in respect of Community Tribunals.
- (3) [Repealed by the Courts (Amendment) Act, 2002 (Act 620), s.8(2)]

#### Section 102—Court and Tribunal Proceedings to be Generally Held in Public.

- (1) Except as may be otherwise ordered by a court or tribunal in the interest of public morality, public safety or public order, the proceedings of every court or tribunal including the announcement of the decision of the court or tribunal shall be held in public.
- (2) Nothing contained in subsection (1) of this section shall prevent a court or tribunal from excluding from the proceedings persons other than the parties to the case or action and their counsel, to such an extent as the court or tribunal may consider necessary or expedient —
- (a) in circumstances where publicity would prejudice the interest of justice or any interlocutory proceedings; or
  - (b) in the interest of defence, public safety, public morality, the welfare of persons under the age of majority or the protection of the private lives of persons concerned in the proceedings.

(3) Subject to the provisions of article 125 and clause (4) of article 140 of the Constitution and to any rules of court, a court or member of the court or tribunal exercising a function under the Constitution, this Act, of any other enactment may discharge the function in chambers.

(4) The parties to any proceeding to which subsection (3) of this section applies shall be informed in writing of the decision to discharge in chambers any function referred to in that subsection.

#### Section 103—Duty of Judges to Give Judgment in Cases Part Heard.

Where any cause or matter is for determination by a court or Tribunal and the Court or Tribunal has heard the arguments of the parties on the cause or matter, no Judge or Chairman, or panel member of the Court or Tribunal shall withdraw from the proceedings unless the judgment or decision has been delivered.

#### Section 104—Power to Transfer by the Chief Justice.

(1) Subject to the provisions of the Constitution, the Chief Justice may by order under his hand transfer a case at any stage of the proceedings from any Judge or Magistrate to any other Judge or Magistrate and from one court to another court of competent jurisdiction at any time or stage of the proceedings and either with or without an application from any of the parties to the proceedings.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

(2) The order may be general or special and shall state the nature and extent of the transfer and in any case of urgency the power of transfer may be exercised by means of a telegraphic, telephonic or electronic communication from the Chief Justice.

(3) A transfer of a case made by telegraph telephone or electronic communication and not confirmed immediately by order signed and sealed in a manner specified by the Chief Justice or any other person authorised in that behalf by him shall be of no effect.

#### Section 105—Power of Judge of High Court, Chairman of Regional Tribunal to Report Case transfer.

(1) Any Judge of the High Court or Chairman of a Regional Tribunal may on his own initiative or on application by any person concerned, report to the Chief Justice any case civil or criminal pending before him, which in his opinion ought for any reason to be transferred from him to any other court, Judge or Regional Tribunal.

(2) If the Chief Justice is satisfied that a transfer is desirable he shall specify the court or tribunal to which or the Judge to whom that case is to be transferred for hearing and determination and give such other directions as may be necessary.

#### Section 106—Power of Transfer by a Judge of the High Court and Chairman of Regional Tribunal.

(1) Subject to subsection (2) of this section a Judge of the High Court shall in respect of civil matters, or a Chairman of a Regional Tribunal shall in respect of criminal matters, have and exercise all the powers of the Chief Justice with respect to the transfer of a case from one Community Tribunal to another Community Tribunal or from a Community Tribunal to a Circuit Court or to a Circuit Tribunal as the case may be.

(2) Nothing in this section shall be deemed to restrict the power of transfer vested in the Chief Justice and an order of transfer made by a judge or a Regional Tribunal under this section shall have no effect where the Chief Justice has transferred the case in question or the Judge or Tribunal has, at the time of the making of the order, notice of an application to the Chief Justice for a transfer.

#### Section 107—Remission of Civil Causes by a Judge of the High Court.

(1) A Judge of the High Court may either on his own motion or on the application by any of the parties to the motion and at any stage of the proceedings before judgment, remit to a Community Tribunal any civil cause or matter pending before him which he considers may suitably be proceeded with by that Community Tribunal.

(2) The Power to remit conferred by this section may be exercised in the same manner and shall be subject to the same limitations as the power conferred by section 106 of this Act.

#### Section 108—Chief Justice to Select Court or Tribunal in Case of Doubt.

(1) The Chief Justice shall in case of doubt select the court or tribunal where any cause or matter should be heard and determined.

(2) Where the Chief Justice has under this section selected a court or tribunal for the hearing and determination of a case, that case shall be heard and determined by that court or tribunal.

Section 109—Wrong Ruling as to Stamping.

Where an objection is taken in any court to the admissibility of a document in evidence on the ground of absence or insufficiency of a stamp, the decision of the court shall not be reversed, set aside or otherwise interfered with by reason only of a ruling of the court that the document requires a stamp or that the stamp on the document is insufficient or because the document does not require a stamp.

Section 110—Execution of Process.

The execution of any process of the court may be performed by such police officers or other persons as may be authorised by law and any police officer or other person who is in possession of the process shall be presumed to be duly authorised and shall for the purposes of the execution and any matter relating to it be an officer of court.

Section 111—Negligence or Misconduct of Officers.

If an officer employed to execute an order of a court wilfully or by neglect or omission loses the opportunity of executing it, on complaint by the person aggrieved and proof of the fact alleged, the High Court may if it thinks fit, order the officer to pay the damage sustained by the aggrieved person and the order shall be enforced as an order directing the payment of money.

Section 112—Procedure for Enquiring into Allegations Against Certain Officers.

(1) Where it is alleged in respect of an officer of a court that—

(a) he has committed extortion under pretence of executing the process of the court or otherwise under the pretext of acting with the authority of the court; or

(b) he has failed to pay over money levied; or

(c) he is guilty of any other misconduct in relation to his duties,

the High Court or a Regional Tribunal may, without prejudice to any other liability or punishment to which the officer would, in the absence of this subsection be liable, enquire into the allegation in a summary manner.

(2) The High Court or Regional Tribunal may for the purpose of subsection (1) summon and enforce the attendance of any person before it and shall make such order for the payment of money levied and for the payment of damages and costs as it thinks fit.

(3) The Court may also impose on the officer a fine not exceeding 250 penalty units.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

Section 113—Non Liability of Judges, Magistrates and Tribunal Members in Exercise of Functions.

A Judge of the Superior Court, a Circuit Judge, a Magistrate, panel members of a Regional Tribunal, and Juvenile Courts shall not be liable to any action or suit for any matter or thing done in the performance of their functions as such officers.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

Section 114—Legal Aid.

(1) The Supreme Court, the Court of Appeal, the High Court or Regional Tribunal may assign a lawyer by way of legal aid to any party to any proceedings before the Court or Tribunal where the Court or Tribunal is of the opinion that it is desirable in the interest of justice that the party should have legal aid and that he is financially unable to obtain the services of a lawyer.

(2) A Circuit Court, a Circuit or Community Tribunal may also with the prior approval of the Chief Justice unless otherwise provided in this Act assign a lawyer by way of legal aid to any party in any proceedings before the Court or Tribunal where it appears to the Court or Tribunal desirable in the interest of justice that the party should have legal aid and that he has not sufficient means to enable him to obtain the services of a lawyer.

(3) For the purpose of enforcing any provision of the Constitution a person shall have legal aid in connection with any proceedings relating to the Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.

(4) For the purpose of this section, legal aid shall consist of representation by a legal practitioner including assistance in preliminary or incidental matters to any proceedings or arriving at or giving effect to a compromise to avoid or to bring an end to any proceedings.

(5) Any lawyer assigned to a party under this section for his services to that party in relation to the proceeding shall be paid out of the Consolidated Fund such fees as the Minister responsible for Justice may in consultation with the Chief Justice determine.

(6) The Minister responsible for Justice may after consultation with the Chief Justice, by legislative instrument make regulations for the purposes of giving full effect to the provisions of this section and the regulations shall prescribe—

(a) the conditions for a grant of legal aid, to which subsection (4) of this section applies;

(b) the extent of contribution to be made by a person granted legal aid under this section;

(c) the assessment of disposable capital, income or property for the purposes of contributions towards legal aid; and

(d) the grant of assistance to a person in respect of legal advice, the right to and nature of legal advice for the purposes of this section.

Section 115—Succession of Courts and Pending Cases.

(1) For the purpose of this Act and in accordance with the Constitution, the Supreme Court, Court of Appeal and High Court specified in this Act are successors to the Supreme Court, Court of Appeal and High Court respectively in existence immediately before the coming into force of the Constitution.

(2) The Regional Tribunal established under this Act shall subject to the provisions of this Act, be successor to the Regional Public Tribunal in existence immediately before the coming into force of this Act.

(3) All proceedings pending before any of the courts referred to in subsection (1) and (2) of this section immediately before the coming into force of this Act may be proceeded with and concluded in that court.

(4) The Circuit Court provided for under this Act shall be the successor to the Circuit Court in existence immediately before the coming into force of this Act and shall have and exercise the jurisdiction conferred on the Circuit Court under this Act.

(5) The Circuit Tribunals in existence immediately before the coming into force of this Act are abolished.

(6) Any criminal case pending before a Circuit Tribunal immediately before the coming into force of this Act, is by this Act transferred to the Circuit Court with jurisdiction for the trial and where the case is part-heard, the Circuit Court shall try the case de novo unless the parties agree that the Court adopts the proceedings.

(7) The Community Tribunals in existence immediately before the coming into force of this Act are abolished.

(8) Any civil or criminal case pending before a Community Tribunal immediately before the coming into force of this Act is transferred to the relevant District Court for hearing and determination and where the case is part-heard, the case shall be heard de novo by the District Court unless the parties agree that the Court adopts the proceedings.

(9) For the purposes of subsections (6) and (8) a case pending include any proceedings or case before the court or tribunal, partly heard or mentioned, and recorded by the court or tribunal, and proceedings or case, the documents in respect of which have been filed in the registry of the court or tribunal before the coming into force of this Act.

(10) A reference in any enactment, Rules of Court or any other document in force or in existence immediately before the coming into force of this Act to a Circuit Tribunal or Community Tribunal shall upon the coming into force of this Act be read and construed as a reference to the Circuit Court or District Court respectively specified for under this Act.

(11) A reference in any enactment, Rules of Court or other document in force immediately before the coming into force of this Act to a Chairman of a Circuit Tribunal or a Chairman of a Community Tribunal, shall upon the coming into force of this Act be read and construed as a

reference to a Circuit Court Judge or District Court Magistrate respectively.[As substituted by the Courts (Amendment) Act, 2002 (Act 620), s.6]

#### Section 116—Regional Tribunals and High Court.

For the purposes of Part III of this Act (which relates to Common Law and Customary Law), Part IV (which relates to Jurisdiction, Evidence and Rules of Court) and Part VI (Miscellaneous), unless the context otherwise requires and subject to the jurisdiction and power conferred specifically by this Act on the Regional Tribunal, a reference to the High Court includes a reference to the Regional Tribunal.

#### Section 117—Interpretation.

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

“cause or matter affecting chieftaincy” means any cause, matter, question or dispute relating to any of the following—

(a) nomination, election, selection, installation or deposition of a person as a chief or the claim of a person to be nominated, elected, selected, installed as a chief,

(b) the destoolment or abdication of an Chief;

(c) the right of any person to take part in the nomination, election, selection, appointment or installation of any person as a Chief or in the deposition of any Chief;

(d) the recovery or delivery of stool property in connection with any such nomination, election, appointment, installation, deposition or abdication;

(e) the constitutional relations under customary law between Chiefs,

“civil case” includes any action, suit or other original proceedings between plaintiff and defendant;

“Constitution” means the Constitution of Ghana, 1992;

“court” means a court of competent jurisdiction established under this Act and includes a tribunal;

“judgment” includes a decree, order, decision or any other finding whatsoever;

“Juvenile Court” includes Family Tribunal;[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

“panel” means the Chairmen and other members of a Regional Tribunal;[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

“rules of court” means, rules of court made by the Rules of Court Committee;

“tribunal” means a Regional Tribunal established under this Act.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]

(2) In this Act and in any other enactment a reference to an officer of a court shall, unless the contrary intention appears, include counsel in any proceedings and also any person required to assist in the initiation or conduct of any court proceedings or in the enforcement of any judgment or decree or order of a court but does not include the parties in the case.

#### Section 118—Modifications of, and Consequential Amendments to Existing Enactments.

(1) Any enactment in existence immediately before the commencement of this Act shall have effect subject to such modifications as may be necessary to give effect to the provisions of this Act.

(2) The enactment set out in the first column of the First Schedule to this Act are amended to the extent indicated in the second column of that Schedule.

#### Section 119—Application of English Statutes of General Application.

(1) Until provision is made by law in Ghana, the Statutes of England specified in the Second Schedule to this Act shall continue to apply in Ghana as statutes of general application subject to any statute in Ghana.

(2) Until provision is made by law in Ghana sections 49, 50, 51, 59, 71 (1) and (2), 131, 139, 145, 150, 151, 154, 158, 161, 164, and 184 of the Law of Property Act, 1925 (15 Geo. V. c. 20) shall apply in Ghana subject to such verbal amendments, not affecting substance as may be necessary to enable those sections to be conveniently applied in Ghana.

#### Section 120—Repeals and Savings.

(1) The enactments set out in the Third Schedule to this Act are repealed.

(2) Notwithstanding the repeal of the Courts Act 1971 (Act 372) the statutory instruments specified in the Third Schedule to this Act shall continue in force until revoked, altered or otherwise modified under this Act.

(3) The rules of court applicable to the Supreme Court, Court of Appeal, High Court and Circuit Courts and in force immediately before the coming into force of this Act shall, subject to the provisions of this Act, continue to apply to those Courts.

(4) The rules of court applicable to the High Court in the exercise of its criminal jurisdiction shall subject to the provision of this Act and with necessary modifications apply to the Regional Tribunals in the exercise of its jurisdiction.

(5) The rules of court and procedure applicable to the District Court Grade I, the Juvenile Court and Family Tribunal and in force on the coming into force of this Act shall subject to the provisions of this Act, apply to the Community Tribunal in exercising its jurisdiction under this Act with such modifications as may be necessary.

(6) The Courts (Amendment) Act, 1993 (Act 464) is repealed. [Repealed by the Courts (Amendment) Act, 2002 (Act 620), s.8]

(7) Section 24(3), (4), (5) and (6) and section 101 (3) of the principal enactment are repealed. [Repealed by the Courts (Amendment) Act, 2002 (Act 620), s.8]

(8) Lawyers holding office as Chairmen of Circuit Tribunals and Community Tribunals immediately before the commencement of this Act shall on the coming into force of this Act, hold office as Circuit Court Judges or District Court Magistrates respectively. [Inserted and to be cited as the Courts (Amendment) Act, 2002 (Act 620), s.8(3)]

(9) The provisions of this Act shall apply notwithstanding anything to the contrary in the principal enactment or any other enactment. [Inserted and to be cited as the Courts (Amendment) Act, 2002 (Act 620), s.8(3)]

Section 121—Instruments Continued in Force.

The instruments set out in the Fourth Schedule to this Act are by this section continued in force.

## SCHEDULES

### FIRST SCHEDULE

(Section 118 (2))

### CONSEQUENTIAL AMENDMENTS

Trade Unions Ordinance

(Cap 91) In section 12 (4) for "article 121" substitute "article 157"

Public Trustee Ordinance, 1952 (No.24)

Legal Profession Act 1960 (Act 32.) In section 10 (9), for "The Rules of Court Committee established by article 121 of the Constitution" substitute "The Rules of Court Committee established under article 157 of the Constitution".

In section 21 paragraph 2 of the First Schedule, for "article 102 of the Constitution". Substitute "The Rules of Court Committee established under article 157 of the Constitution".

Habeas Corpus Act 1964 (Act. 244) In section 4 (2) as amended by the Second Schedule of Act 372, substitute "article 121" by "clause (2) of article 130".

Maintenance of Children Decree 1977 (SMCD 133) (a) For section 1 substitute the following —

"1. For the purposes of this Decree a Community Tribunal shall, when constituted in accordance with section 2 of this Act, be a Family Tribunal."

(b) For section 6 substitute the following —

6. Enforcement of maintenance orders against non-resident

Where a maintenance order is made under section 4 of this Decree against any person who is resident in a country to which Sub-Part II of Part V of the Courts Act 1993 (Act 459) applies, the order enforced against the person in accordance with the provisions of that Sub-Part."

(c) In section 7 substitute "section 16 and 37

(1) (f) of the Courts Act, 1971 (Act, 372)"

by "sections 18 and 47 (1) of the Courts Act

1993 (Act 459)".

## SECOND SCHEDULE

(Section 119)

### STATUTES OF GENERAL APPLICATION

Date of Statute	Short Title	Extent of application
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1539	(31 Hen. VIII cl.)	
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1540	(32 Hen. VIII c.32)	
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1540	(32 Hen. VIII,c.32)	
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1832	(2&3 Will IV,c.71)	
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1845	(8 & 10 Vic, c. 106)	
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1843	(6 & 7 Vict, c.96)	
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1860	(23 & 24 Vic, c.1)	
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1868	(31 & 32 Vic, c.60)	
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1869	(32 & 33 Vict, c.110)	Partitions Act
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Partitions Act

Cestuique Vic Act

Prescription Act

Real Property Act

Libel Act

Trustee Act

Partitions Act

Charitable Trusts Act sections 1 and 2

section 1 and 2

section 4

sections 1 to 8

sections 6 to 8

sections 1 & 2

sections 1 to 5 and 7 to 34

sections 2 to 9

section 12

## THIRD SCHEDULE

### REPEALS

(Section 120)

Courts Act 1971 (Act 372);

Courts (Amendment) Decree, 1972 (NLCD 101);

Courts (Amendment) (No. 2) Decree 1972 (NRCD 137);

Courts (Amendment) Law, 1987 (PNDCL. 191);

Public Tribunals Law, 1984 (PNDCL. 78);

Public Tribunals (Amendment) Law, 1985 (PNDCL. 108);

Public Tribunals (Amendment) Law, 1989 (PNDCL. 213);

District and Community Tribunals (Establishment and Procedure)

Regulations, 1988 (L.I. 1372)

## FOURTH SCHEDULE

### STATUTORY INSTRUMENTS CONTINUED IN FORCE

(Section 121)

Supreme Court Rules, 1970 (C.I. 13)

Court of Appeal Rules, 1962 (L.I. 218)

Court of Appeal (Legal Vacation) (Amendment) Rules, 1967 (L.I. 547)

Court of Appeal (Amendment) Rules, 1969 (L.I. 618)

Court of Appeal (Amendment) Rules, 1975 (L.I. 1002)

Court of Appeal (Amendment) Rules, 1977 (L.I. 1128)

High Court (Civil Procedure) Rules, 1954 (L.N. 140A)

High Court (Civil Procedure) (Amendment) Rules, 1958 (L.N. 93.)

High Court (Civil Procedure) (Amendment) (No. 2) Rules, 1958 (L.N.208)

High Court (Exchange Control) (Amendment) Rules, 1961 (L.I. 131)

High Court (Civil Procedure) (Legal Vacation) (Amendment) Rules, 1967 (L.I. 548)

High Court (Civil Procedure) (Amendment) Rules, 1975 (L.I. 1001)

High Court (Civil Procedure) (Amendment) Rules, 1977(L.I. 1107)

High Court (Civil Procedure) (Amendment) Rules, 1977 (L.I. 1129)

District Court Rules, 1977 (L.I. 1127)

Inferior Court Order, 1972 (L.I. 730)

Juvenile Court Procedure Rules, 1946 (No. 22) Vol. VII of Laws Of the Gold Coast (1954)

Civil Procedure (Amendment) Rules, 1963 (L.I.248)

Civil Proceedings (Fees and Allowances) Rules, 1978 (L.I.1190)

Courts (Award of Interest) Instrument, 1984 (L.I. 1295)

Probate and Administration Rules, 1991 (L.I. 1515)

Civil Proceedings (Fees and Allowances) Rules, 1992 (L.I. 1540).