THE JUDICIARY
OF GHANA

CRIMINAL

BENCH BOOK

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FOREWORD

As part of the efforts to make justice delivery more efficient, the Judicial Training Institute (JTI) on behalf of the Judiciary and the Judicial Service of Ghana has developed this bench book as a guide to District Magistrates in the performance of their judicial duties.

The effort to produce a guide of this kind underscores the fact that the work of a District Magistrate comprises a significant portion of the work load of our courts.

We are mindful of the fact that the bench book may not embody all the essential guidelines covering all areas critical to the functions of the District Court. We remain convinced however, that it will serve as a beneficial starting point and a basis for standardizing practice in the operations of courtroom work in our District Courts.

We hope that all Magistrates will diligently study and apply the guidelines contained therein alongside the new District Court rules as well as other relevant legislations and regulations such as the Juvenile Justice Act and Practice Directions.

We trust that this benchbook will serve the District Courts very well.

Ag. Director,
Judicial Training Institute (JTI)

May, 2011
Accra

ESTABLISHMENT, COMPOSITION AND JURISDICTION OF THE DISTRICT COURTS IN CRIMINAL MATTERS

The composition of the Judiciary of Ghana is spelt out in article 126 (1) of the Constitution of Ghana 1992. The judiciary consists of;

a. the Superior Court of Judicature comprising
b. the Supreme Court
c. the Court of Appeal
d. the High Court and Regional Tribunals;
e. such lower courts or tribunal as Parliament may by law establish.

Section 39 of the Courts Act 1993 (Act 459) deals with the establishment of the lower Courts in Ghana and the District Court is listed as one of such Courts. Section 45 of the same Act states that there shall be in each district such district court as the Chief Justice may determine. This means the Chief Justice has the mandate to open or establish courts in the districts and to assign to the district courts magistrates to sit on cases there. The magistrates appointed shall be of high moral character and proven integrity.

VENUE

Except as provided by the constitution or an enactment, all criminal proceedings shall be held in public.

JURISDICTION OF THE DISTRICT COURT

Section 48 of the Courts Act 1993 Act 459 sets out the criminal jurisdiction of the district courts. The district court has jurisdiction to try summarily the following:

a. An offence punishable by a fine not exceeding 500 penalty units. A penalty unit is twelve Ghana Cedis (GH¢12);
b. An offence punishable by a term of imprisonment not exceeding two years;
c. An offence punishable by both (a) and (b).
d. Pursuant to section 300 of the Criminal Procedure Act, Act 30 and section 48 (4) of the Courts Act, the District Court can however impose increased punishment or twice the maximum punishment on an accused person with a previous conviction.

OBJECTION TO JURISDICTION

Where a person is charged before the district court for committing an offence within the area of the jurisdiction of another court, the magistrate shall send the person to the appropriate district court under a warrant, unless the magistrate is authorised to proceed with the case in his court. *(See section 42 of Act 30)*

COMMENCEMENT OF ACTION

a. Application for criminal summons

The district court has general authority to cause an accused person to be brought before it. The accused person must be within the area of the magistrate's jurisdiction or district and the offence must have been committed in his area of jurisdiction. (See section 41 of Act 30/1960)

INSTITUTING CRIMINAL ACTION

The normal process frequently used by the general public in instituting criminal proceedings, is by a report of the crime, the offence or the perpetrator to the police. The perpetrator is invited or arrested by the police and statements taken by the investigating officer in charge of the case. Three things happen:

a. If it is a minor offence, the suspect is granted police inquiry bail and told when to report at the police station for further investigations.
b. As soon as the police conclude that there is sufficient evidence against the suspect he is charged. A charged statement is taken from the suspect and he is arraigned before Court.
c. The police may also apply for criminal summons to issue. In practice the police fill in the criminal summons forms and the magistrate within whose jurisdiction the offence was allegedly committed appends his signature. The summons is served on the suspect. Upon receipt of the summons the suspect reports to the police station from where the summons emanated.
d. Where the suspect refuses to honour police invitation he can be served with criminal summons to attend court at a date specified on the summons. After court he reports to the police where his charged statement is taken and then put before court for his plea to be taken.

SUMMONS DISOBEYED

Where the court is satisfied that the accused person has been served or properly warned to attend court but has refused to attend court, the court may issue a bench warrant for his arrest. *(see Section 72 of Act 30)*

CHARGES/ THE CHARGE SHEET

There shall be a separate charge or count for each distinct offence on the charge sheet. The charge or count shall contain the following:

a. The specific crime and statute creating the offence
b. The statement of offence
c. The particulars of offence

JOINDER OF CHARGES

For each offence for which a person is accused of, there shall be a separate charge or count. The counts arising out of same facts or form part of a series of offences may be joined and tried together. *(see Section 109 of Act 30).*

JOINDER OF ACCUSED PERSONS

The following accused persons may be charged and tried together:

a. Persons accused of the same offence committed in the same transaction
b. Persons accused of an offence, abetment, conspiracy and attempt.
c. Persons accused of different offences emanating from the same facts, or form or are part of a series of offences of similar character
d. Persons accused of different offences but committed in the course of the same transaction. *(see Section 110 of Act 30)*

STATEMENT OF OFFENCE

It describes the offence and contains the section and enactment creating the offence.

PARTICULARS OF OFFENCE

The particulars of offence must contain the necessary information or particulars as to the nature of the charge.

THE TRIAL

1. PROCEDURE PRIOR TO THE TRIAL

When a case is called in court the following procedure takes place:

a. The accused person responds and moves to the dock
b. The prosecutor announces himself
c. Defence lawyer, if any, announces himself
d. The charge is then read and explained to the accused in the language he understands and same is recorded.
e. Plea of the accused is taken
f. Where the accused pleads not guilty, the accused is admitted to bail upon an application by his lawyer. If the accused person is unrepresented the court on its own motion (suo motu) will consider if it is appropriate to admit accused to bail.
g. Case proceeds to trial or is adjourned for trial at a future date.
h. Where accused pleads guilty with explanation, the explanation of the accused is recorded
i. If the explanation given shows that the accused has a defence to the charge or is simply not guilty, the court will enter a plea of not guilty for the accused. The court would then consider if it is appropriate to grant the accused bail and then adjourn for hearing. If on the other hand the explanation shows that the accused is guilty, the court shall enter a guilty plea for him and proceed to convict him accordingly.
j. Where the accused pleads guilty, the accused is convicted on his own plea. Counsel or the accused if not represented, is allowed to make a submission for mitigation of sentence. This is referred to as the "allocutus" in certain jurisdictions.
k. Before sentencing, the court would ask the prosecutor whether or not the accused is known to have previous conviction for similar offence(s).
l. If the accused is known, the court ascertains that fact from a certified true copy of his previous conviction and then proceeds to sentence the accused accordingly.

BAIL

The court has discretion to grant bail to a person brought before it. In doing so the court shall consider the amount involved in the offence and the circumstance of the case. Bail shall not be excessive or harsh or withheld as a punishment.

The court shall however refuse to grant bail if it is satisfied that the accused:

a. may not appear to stand trial, or
b. may interfere with a witness or
c. interfere with the evidence or
d. hamper police investigations or
e. may commit a further offence when on bail or
f. is charged with an offense punishable by imprisonment exceeding six months which is alleged to have been committed during the time the accused was on bail.

FACTORS TO TAKE INTO ACCOUNT WHEN CONSIDERING WHETHER ACCUSED MAY APPEAR TO STAND TRIAL

a. The nature of the offence
b. The nature of the evidence in support of the charge
c. The severity of the punishment attached to the offence
d. Whether having been released on bail in a previous case accused failed to attend court or
e. Failed to comply with the conditions for the bail
f. Whether or not the accused person has a fixed place of abode
g. Whether or not he is in gainful employment
h. Whether the sureties are independent, and of good character and of sufficient means.

THE COURT SHALL REFUSE BAIL IN THE FOLLOWING CIRCUMSTANCES:

a. In treason cases
b. Subversion
c. Murder
d. Robbery
e. Hijacking
f. Piracy
g. Rape
h. Defilement
i. Escape from lawful custody
j. Extradition Cases
k. Where the offence is before the district court for committal purpose only
(See section 96 of Act 30)

2. PROCEDURE DURING TRIAL

In criminal matters the prosecution, has the burden of proof unless otherwise prescribed by statute. Hence it is the prosecution that starts to lead evidence to prove the charges preffered against the accused person.

The standard of proof of each ingredient of the charge is proof beyond reasonable doubt (NOT beyond all reasonable doubt). The procedure for leading evidence in proof of charges is as follows:

a. The prosecution calls its witnesses and each of them is cross examined by the defence counsel or the accused when he is not represented by a lawyer. Thereafter he may be re-examined by the prosecutor.
b. The prosecution determines the order of calling its witnesses and who to call as a witness.
c. At the close of the case for the prosecution the court has a duty to determine whether or not a case has been made against the accused to warrant him being called upon to open his defence. *(Sections 173 and 174 of Act 30/60*
d. When the court determines that the prosecution has not made a case against the accused on any or all the charges, the court shall acquit and discharge the accused on such or all the charges. This may be done upon a submission of no case on behalf of the accused or by the court on its own initiative (suo motu).
e. When the court determines that a case is made against the accused on any or all the charges, the accused shall be called upon to open his defence. He is then reminded of the charge(s), his right to give evidence on oath personally or make a statement from the dock and to call witnesses if he desires.
f. When the accused opts to give evidence he may be cross examined by the prosecution. If the accused calls any witnesses, they may also be subject to cross examination by the prosecution. Thereafter the witnesses may be re-examined by the accused or his lawyer.
g. Where the prosecution is conducted by an attorney and the accused is represented by a lawyer they may each file addresses for the court's consideration. The addresses are a summary of the case presented either by the attorney on behalf of the prosecution or by the defence lawyer on behalf of the accused.

GUIDELINES FOR JUDGES/MAGISTRATES PRESIDING OVER MATTERS IN WHICH ONE OR MORE OF THE PARTIES IS SELF REPRESENTED

a. A judge/magistrate should ensure as far as is possible that procedural fairness is afforded to all parties whether represented or appearing in person in order to ensure a fair trial.
b. A judge/magistrate should inform the litigant in person of the manner in which the trial is to proceed, the order of calling witnesses and the right which he or she has to cross examine the witnesses.
c. A judge/magistrate should explain to the litigant in person any

procedures relevant to the litigation.

d. A judge/magistrate should generally assist the litigant in person by taking basic information from witnesses called, such as name, address and occupation.
e. If a change in the normal procedure is requested by the other parties such as the calling of witnesses out of turn the judge/magistrate may, if he/she considers that there is any serious possibility of such a change causing any injustice to a litigant in person, explain to unrepresented party the effect and perhaps the undesirability of the interposition of witnesses and his or her right to object to that course.
f. A judge/magistrate may provide general advice to a litigant in person that he or she has the right to object to inadmissible evidence, and to inquire whether he or she so objects. A Judge is not obliged to provide advice on each occasion that particular question or documents arise.
g. If a question is asked, or evidence is sought to be tendered in respect of which the litigant in person has a possible claim of privilege, to inform the litigant of his or her rights.
h. A judge/magistrate should attempt to clarify the substance of the submissions of the litigant in person, especially in cases where, because of garrulous or misconceived advocacy, the substantive issues are either ignored, given little attention or obfuscated- (Neil v Nott (1994) 121 ALR 148 at 150).
i. Where the interests of justice and the circumstances of the case requires it, a judge/magistrate may:

- Draw attention to the law applied by the court in determining issues before it.
- Question witnesses;
- Identify applications or submissions which ought to be put to the court;
- Suggest procedural steps that may be taken by a party;
- Clarify the particulars of the orders sought by a litigant in person or the bases for such orders.
- Source: Diana Bryant, Chief Justice – Family Court of Australia

PROOF IN CRIMINAL TRIAL

In criminal trials the prosecution has the burden of proof of the charge(s) beyond reasonable doubt. However when the burden of persuasion is on the accused person as to a fact the converse of which is essential to guilt, the accused is required only to raise a reasonable doubt. *[See section 11 (3) and 13 of the Evidence Act, 1975 (NRCD 323)]*

3. DECISION/JUDGEMENT

The court upon hearing the totality of evidence led in support and against the charges would make findings of fact and apply the relevant law and come to a decision of either:

a. Finding the accused guilty of the offence
b. Finding the accused not guilty of the offence

4. CONVICTION/SENTENCING

When the accused is found guilty he is convicted of the offence(s) committed. The court will then find out if the accused is "known" or has previous conviction on a similar offence(s) before passing sentence. The court shall inform the convict of his right to appeal. *(see Section 177 of Act 30/60).*

NB. It is important for a court to first find an accused person guilty, convict him, before proceeding to sentence him.

5. RESTITUTION ORDER: (R/O)

This is an order for the return of any item taken from the accused or any other person in respect of the offence committed to the person who appears to the court to be entitled to the property. The court may make further directions as to the retrieved item(s). *(See sections 145 to 147of Act 30)*

6. ORDER FOR DESTRUCTION OF ARTICLES

The Court may make orders it considers fit for the destruction or for the forfeiture and disposal of an article produced before it, which has been used for the commission of an offence. *(see Section 144 of Act 30/60)*

C. GENERAL RULES FOR PUNISHMENT

WHAT IS PUNISHMENT

Punishment in its ordinary sense connotes making somebody suffer because he/she has broken the law or done something wrong. It can also mean sanction, such as fine, penalty, confinement leading to loss of certain rights or privileges. This concept is deeply engrained in the views generally held even in contemporary times as the basis for imposing sentences after a trial in a court of law.

KINDS OF PUNISHMENT OPEN TO THE DISTRICT COURT

The district court tries criminal cases summarily. The kinds of punishment open to the district court on summary trial are; (See section 48 of the Court's Act 1993 (Act 459)

a. Fines not exceeding five hundred (500) penalty units
b. Imprisonment for a term not exceeding 2 years or both.
c. In exceptional circumstances provided under Section 48 (4) of Act 459 as amended by Act 620, the District Court may impose increased punishment.

The section 48(4) provides:

> "*Where under an enactment increased punishment may be imposed upon a 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 lesser"*

Subsection 2 states:

> "*Subject to this section, a District Court, in the exercise of its jurisdiction in criminal matters shall not impose a term of imprisonment exceeding two (2) years or a fine exceeding five hundred penalty units or both the fine and the imprisonment".*

d. Executing a bond to be of good behavior or to keep the peace.
e. Conditional discharge
f. Unconditional discharge

JUVENILES – SENTENCING

A juvenile is a person who is under 18 years who is in conflict with the law. Juveniles are given special treatment in order to reform them. In considering what penalty to impose on the juvenile for contravention of the law, the court is obliged to consider the best interest of the Juvenile. The Court may consider the following options:

a. Diversion from the criminal justice system. – S.25 of Act 653
b. Discharge conditionally or unconditionally – See S. 29(1) (a) of Act 653
c. Release on probation – S.31 (1) of Act 653
d. Commit the offender to the care of a relative or a fit person – S. 29 (1) (d) of Act 653
e. Order parent/relative to pay fine damages or cost but subject to the parent contributed to make the commission of the offence by neglect to exercise due care on the juvenile – S. 29 (1) & 30 of Act 653.
f. No court has power to pass a sentence of death on a juvenile

offender – S. 32 (2) of Act 653.

g. A juvenile offender shall not be sentenced to imprisonment by a juvenile court or a court of summary jurisdiction – See S. 32 (1) of Act 653.

COMPENSATION

An accused person may be ordered by the court to pay compensation to the person injured by his offence. The court shall specify the amount to be paid.
This shall be taken into account in assessing damages in a civil action for the same injury. *(see Section 148 of Act 30)*

NB. Under no circumstance can compensation be paid out of a fine imposed for an offence. (see section 32(1) of Act 653)

FINES

Fines are paid into the consolidated fund.

a. The court may direct the accused person to suffer imprisonment where he fails to pay the fine.
b. The accused person shall be released on payment of the fine.
c. Fines shall not be excessive.(see Section 297 of Act 30)

PREVIOUS CONVICTION

Where a person having been convicted of an offence is again convicted of the same or similar offence that person is liable to:

a. Twice the maximum imprisonment and twice the maximum fine.
b. Where the first conviction was a misdemeanour, a conviction for a similar misdemeanour attracts an imprisonment of five (5) years at the discretion of the court.
c. Two summary convictions for similar criminal offence also attract five (5) years at the discretion of the court. (Section 300) of Act 30/1960.
d. A conviction of a person for a criminal offence be committed before attaining eighteen (18) years shall not be admitted in evidence against him – See s. 300 (4) of Act 30/1960.

D. CONCURRENT AND CONSECUTIVE SENTENCES

Where an accused is convicted on more than one count, the court should impose separate sentences on each count. The court should make it clear which sentence relates to which count and whether the sentences are concurrent or consecutive. If it fails to do so, it is presumed that the sentences are concurrent. In the same vein, where a court passes a prison sentence on a person who is already serving one or more sentences of imprisonment, it must make it clear whether the fresh sentence is to be served concurrently with or consecutively to the existing sentence or sentences.

Generally, where offences arise out of the same transaction, the sentences should be concurrent – e.g. driving recklessly and driving while disqualified on the same occasion.

A consecutive sentence arises where two or more jail sentences imposed on the convict are to be served in sequence. For example, if a convicted criminal receives consecutive sentences of fifteen (15) years and five (5) years, the total period of imprisonment to be served is twenty (20) years.

Consecutive sentences are normally imposed where an offender has used violence to resist arrest for another offence. (e.g. violence against a police officer).

Concurrent sentences on the other hand, arise where two or more sentences of imprisonment period are to be served simultaneously. For example, if a convicted criminal receives concurrent sentences of ten (10) years and five (5) years, the total period of imprisonment is ten (10) years. *(See section 301 of Act 30)*

E. DEATH OF AN ACCUSED PERSON

Criminal charges or case terminates with the death of the accused person.

F. WHERE LAND IS AN ISSUE

Where in a charge of unlawful entry/or intentionally and unlawfully causing damage and the issue of ownership arises the court must determine the issue of ownership first. [Okoe Vrs the Republic (1979) GLR 137]

G. DEPOSITIONS OF PERSONS DANGEROUSLY ILL

Evidence can be taken outside the course of an enquiry, trial or other proceedings and preserved for the purposes of a future trial if a judge or magistrate forms the view that a person dangerously ill or hurt and unlikely to recover is able and willing to give material information relating to an indictable offence. The judge or magistrate may then take the statement on oath or affirmation in writing.

The magistrate or judge must certify that it is an accurate representation of the whole statement made. It shall also contain a personal statement of the judge/magistrate as to the reason (s) why the statement was taken, the date of and place when the statement was taken. (see Section 194 of Act 30)

H. COMMISSION FOR EXAMINATION OF WITNESSES

This is the means by which the evidence of a witness whose attendance is necessary for the ends of justice and cannot be procured for examination without delay, expense or inconvenience to the High or Circuit Courts which may then commission the district court where the witness resides to take the evidence. – *See s. 124 (1) of Act 30.*

The Magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness and shall take down the evidence.

Application by the Magistrate for Commission
An application for commission shall be made by the Magistrate to the High Court or Circuit Court where it appears in the course of an inquiry, a trial or other proceeding before him that:

a. a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and
b. the attendance of that witness cannot be procured without the delay, expense, or inconvenience which in the circumstances of the case, would be unreasonable. (see Section 125 of Act 30/60)
c. The magistrate shall state the reasons for the application and the court may issue a commission or reject it.

Parties May Examine Witnesses
a. The parties to proceedings in which the commission is issued, may forward interrogatories in writing and the District Magistrate to

whom the commission is directed shall examine the witness on those interrogatories.

b. A party to proceedings in which the commission is issued may appear before the Magistrate by lawyer, or in person, and may examine, cross-examine, and re-examine the witness.
c. It is not necessary for the deposition to be taken in the presence of the accused if the accused or lawyer of the accused had the opportunity to cross-examine the witness. *(see Section 126 of Act 30/60)*

Return of Commission
The record of proceedings shall be returned to the court which issued the commission, and shall form part of its record on the case.

A deposition so taken may also be received in evidence at any subsequent stage of the case before another court. *(Section 127 of Act 30/60)*

Proceedings may be adjourned for a reasonably sufficient time to allow for execution and return of the commission.

I. THE CORONER

A coroner is a public official who investigates by inquest any death not due to natural causes. The District Magistrate is a coroner for the area of jurisdiction of the district court to which the Magistrate is appointed.

NOTIFICATION OF DEATH

a. Where a dead body is found or where a person has died a violent or any other unnatural death or a death of which the cause is unknown, a person finding the body shall immediately notify the officer in charge of the nearest police station.
b. The person in charge of a prison, lock-up, a psychiatric hospital or public institution, shall inform the coroner of the district of the death of an inmate.
c. The person in charge of a hospital in which a person has died an unnatural death shall give notice of the death to the coroner for the district. *(see Section 2 of Coroners Act 18/60)*

Preliminary Investigation and Report to Coroner
Where an officer in charge of a police station has reasonable cause to suspect that a person has died a violent or any other unnatural death, or a sudden death of which the cause is unknown, shall inform the coroner for the district. *(see section 4 of Act 18/60)*

WHEN ENQUIRY IS TO BE HELD

Examination of Body of Deceased
The coroner where necessary may direct a registered medical practitioner or any other person the coroner considers possesses special qualifications for the purpose to make

a. a post-mortem examination of the body to discover the cause of death, or
b. Cause a special examination by way of analysis, test or otherwise of part or contents of the body or any other substances or things. *(See section 7 of the Coroners Act 1960)*

Issue of Burial Certificate
Where the registrar of Birth, Death and Burials is prohibited by law to issue permit/certificate for burial, the coroner of the district in which the dead body was found shall personally sign as soon as practicable certificate for burial of the deceased. *See Section 6 of Act 18/60*

Removal of Body
The coroner can order the removal of dead bodies from the place where it was found or from the place provided for dead bodies to another place even if that place is not within his area of jurisdiction. *Section 8 of Act 18/60*

The coroner may prohibit the burial of a dead body and he may order the exhumation of a dead body within his area of jurisdiction. The exhumation order may however not be granted if in the opinion of the coroner it will be harmful to the public.

Scope of the Enquiry
The enquiry shall establish the following

a. the identity of the deceased
b. the time, place and cause of death

Where the coroner suspects that the deceased committed suicide, he shall not inquire into the state of mind of the deceased. He shall inquire what is reasonably expected to assist him to determine whether the deceased died by his own hand.

An enquiry may be lawfully held on Sunday or on a public holiday. *[see section 14 (3) of Act 18/60]*

Procedure upon Conclusion of Inquiry
The coroner shall record his findings as to the time, place and cause of death. He may also add recommendations to prevent similar fatalities. Where the coroner finds that the deceased committed suicide he shall not make reference to the deceased state of mind. He shall transmit the record of proceedings and his findings to the High Court. *(see Section 17 of Act 18/60)*

Register of Death
The coroner for each district shall keep a register of the deaths reported to the coroner. **(see Section 20 of Act18/60)**

J. ALIBI

Where an accused intends to put forward a defence of alibi, the accused shall give notice of the alibi, to the prosecutor or defence lawyer together with particulars as to the time and place and of the witnesses by whom it is proposed to prove.

In summary trials, this shall be done before the examination of the first witness for the prosecution, and where the notice is given, the court may, on the application of the prosecution, grant a reasonable adjournment.

Where the accused puts forward a defence of alibi without having given notice, the court shall call on the accused to give such notice immediately or within the time allowed by the court to the prosecution. The prosecution if it so desires may cause the case to be adjourned.

Where the accused refuses to furnish the particulars as required, the case shall proceed but evidence in support of a plea of alibi is not admissible in evidence. *(Section 131 of Act 30/60)*

K. ENQUIRY AS TO LUNACY OF ACCUSED

a. In the course of a trial or preliminary proceedings if the court has reason to believe that the accused is of unsound mind and consequently incapable of making a defence, it shall enquire into the fact of the unsoundness by:
   - Causing the accused to be medically examined and
   - Shall take medical and any other available evidence regarding the state of the accused person's mind.

a. Where the court is satisfied from evidence on oath that there is a prima facie case against the accused, but is of opinion that the

accused is of unsound mind it shall record a finding to that effect and postpone further proceedings in the case.

b. The court shall however grant the accused bail where the case is one in which bail may be granted, for him to be properly taken care of and shall be prevented from causing injury to his person or injury to any other person. The court shall adjourn the matter to a stated time:

c. Where the case is one in which bail may not be granted, or if sufficient security is not given, the court:
   - shall order the accused to be detained in safe custody in a place and manner it may determine, and
   - Shall transmit the court's record or a certified copy of the record to the Minister through the Judicial Secretary.

d. Upon consideration of the record the Minister may by warrant signed personally by him directed to the court, order the accused to be confined as a criminal lunatic in a lunatic asylum or other suitable place of custody, and the court shall give the directions necessary to carry out the order.

e. A warrant of the Minister given above is sufficient authority for the detention of the accused until the Minister makes a further order in the matter or until the Court finding the accused incapable of making a defence, orders the accused to be brought before it again in the manner prescribed under sections 134 and 135 of Act 30/60

PROCEDURE WHEN CERTIFIED AS CAPABLE OF MAKING A DEFENCE

a. Where an accused confined in a lunatic asylum or other place of custody under section 133 is found by the medical officer in charge of the asylum or other place of custody to be capable of making a defence, the medical officer shall forthwith forward a certificate to that effect to the Attorney-General.

b. The certificate shall state whether, in the opinion of the medical officer, the accused person is fit to be unconditionally discharged.

c. The Attorney-General shall on receipt of the certificate inform the Court which recorded the finding against the accused under section 133 whether it is the intention of the Republic that the proceedings against the accused shall continue or otherwise. *(See section 134 of Act 30/60)*

CONVICTIONS FOR OFFENCES OTHER THAN CHARGED

ATTEMPT

A person charged with committing an offence may be convicted of 'attempt to commit' that particular offence even though not charged separately with the attempt to commit that offence.
Where an accused is charged with an attempt to commit an offence and the evidence establishes the commission of the offence, the accused may not be convicted of the offence but may be convicted of the attempt. *(see section 153 of Act 30/60)*

WHEN OFFENCE PROVED IS INCLUDED IN OFFENCE CHARGED

Where a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and the combination is proved but the remaining particulars are not proved, that person may be convicted of the lesser offence even though he was not charged with it. *(S. 154 (1) of Act 30).*

Where a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with that lesser offence. S. 154 (2) of Act 30.

L. COMMITTAL PROCEEDINGS

PROCEDURE

When a person is before a District Court charged with an offence triable on indictment or information there shall be a preliminary hearing of the case at the District Court.

The process by which accused persons are brought before the District Court for preliminary hearing is called committal proceedings. Such first degree felonies as murder, rape, possession of weapons and ammunitions and treason are triable on indictment. In essence an offence is triable on indictment if it is punishable by death or is declared by an enactment to be a first degree felony or the enactment creating the offence provides that the mode of trial is on indictment; see section 2(2) of Act 30/1960. The procedure for Committal is as follows:

a. The prosecution shall furnish the Court and the accused with the following;
   - a bill of indictment (information) which shall state in writing the charge against the accused, and
   - the list of the witnesses the prosecution intends to call.
   - a summary of the evidence to be given by each witness
   - a list of the documents and things the prosecution proposes to put in evidence at the trial; *section 182 of Act 30/60*

b. The bill of indictment shall comply with sections 201 and 202 of Act 30/60 as to form and content.
c. The bill of indictment and summary of evidence may by leave of the court be amended at any time during the proceedings.
d. The prosecution shall, unless the court otherwise directs, deliver into the custody of the court the documents and things which, according to the summary of evidence, are intended to be put in evidence at the trial.
e. The registrar of the court to whom the documents and things referred above are delivered is responsible for the custody of those documents and things and shall;
   - as far as may be practicable, affix or make identifying marks on those documents and things; and
   - maintain a book in which the registrar shall enter a complete description of those documents and things together with particulars of those identifying marks and sign the entry. *(see section 181 of Act 30/60)*

CONDUCT OF PRELIMINARY HEARING (COMMITTAL)

a. The prosecution may address the court in explanation of the case against the accused.
b. An address may be made in reply by or on behalf of the accused.
c. The address shall not be recorded but the accused may make a statement to be recorded under section 187 of Act 30.

RULES AS TO TAKING STATEMENT OF ACCUSED PERSONS

a. Accused must not be cross-examined on that statement. However questions may be asked to clear all ambiguities in the statement
b. The court shall remind the accused of the requirements relating to alibis (see section 131 Act 30/60). The court shall take down all explanations relating to alibis if any.
c. The court shall point out all the inconsistencies in his previous statement(s) (which is intended to form part of the evidence) to the statement now made, and invite him to make explanation if he so desires.

d. The court may grant an adjournment if the magistrate thinks the prosecution should give further consideration to the case in view of the explanation given by the accused person. See section 187(2) of act 30/60
e. Where the Court is of opinion that there is a case for the accused to answer, it shall commit the accused for trial to the trial Court.
f. Where the Court is of opinion that there is no case for the accused to answer it shall discharge the accused, but, subject to clause (7) of article 19 of the Constitution, the discharge shall not be a bar to a subsequent charge in respect of the same facts.

M. CONFESSION STATEMENT OF THE ACCUSED

A confession statement is admissible in evidence if the statement was made voluntarily, in the presence of an independent witness, in the language that the accused understands or explained to him in the language that he understands if written by someone other than the accused. The accused should also sign or thumb print the statement.

The independent witness shall certify in writing that the statement was made voluntarily, in his presence and that the contents were read over and interpreted to the accused in a language understood by him (if accused is illiterate and/or blind) and it was fully understood by the accused before signing or thumb printing. *(Section 120 of the Evidence Act, Act 323)*

N. MINI TRIAL OR VOIRE DIRE OR TRIAL WITHIN TRIAL

Where the accused person or his lawyer raises an objection to the tendering of a statement obtained from the accused in the course of investigation to the effect that the statement was not obtained voluntarily, i. e. the accused was forced to thumb print, or beaten or because a promise of his freedom was held out to him etc a voire dire or trial within trial or a mini trial will be held to determine the admissibility of the statement. The prosecution has the initial burden of leading evidence in proof of the voluntariness of the statement. This is done by calling witnesses who will be identified as VD1, VD2 etc. The witnesses shall be cross examined by the accused person or his lawyer. When the prosecution closes its case the accused and his witnesses, if any, will also testify if they so desire and be cross examined. The accused and his witnesses shall be designated VDD1, VDD2, etc.

The accused or his lawyer and the prosecutor will address the magistrate on the question of admissibility of the statement. The magistrate will give his ruling as to whether or not the statement was obtained voluntarily. Where the court determines the exhibit as voluntarily obtained the court shall mark it as an exhibit. If on the other hand the court determines that the statement was involuntarily obtained, it shall be marked as a rejected exhibit.

REFERENCES

1. The Constitution of the Republic of Ghana 1992
2. The Courts Acts Act 1993, Act 459
3. The Criminal Offences Act 1960, Act 29
4. Criminal and Other Offences (Procedure) Act 1960
5. The Evidence Act, Act 323
6. The Coroners Act, Act 18 (1960)
7. Practice and Procedure in the Trial Courts and Tribunals of Ghana 2nd Ed. by S. A. Brobbey.