



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE PUBLIC ORDER ACT

CHAPTER 56

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CHAPTER 56

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CHAPTER 56

PUBLIC ORDER ACT

[Date of assent: 13th June, 1950.]

[Date of commencement: 13th June, 1950.]

An Act of Parliament to make provision for the maintenance of public order, and for purposes connected therewith

[Act No. 26 of 1950, Act No. 36 of 1950, Act No. 7 of 1958, Act No. 10 of 1958, Act No. 23 of 1960, Act No. 54 of 1960, Act No. 53 of 1960, Legal Notice 402 of 1963, Legal Notice 87 of 1964, Legal Notice 2 of 1964, Act No. 3 of 1964, Act No. 19 of 1964, Legal Notice 153 of 1965, Act No. 12 of 1968, Act No. 10 of 1997, Act No. 12 of 2012, Act No. 19 of 2014.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Public Order Act.

2. Interpretation

In this Act, except where the context otherwise requires—

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for the administration;

"excluded meeting" means—

- (a) any meeting convened and held exclusively for the lawful purposes of any public body; or
- (b) any meeting of the members of any registered organisation, whether corporate or unincorporate, convened in accordance with the constitution of the organisation and held exclusively for the lawful purposes of that organisation;
- (c) any meeting of the members of any trade union convened and held exclusively for the lawful purposes of that trade union;
- (d) any meeting convened and held exclusively for social, cultural, charitable, educational, commercial or industrial purposes;
- (e) any meeting of the organs of a political party, convened in accordance with the constitution of the party and held exclusively to discuss the affairs of the party;
- (f) impromptu "meet-the-people" tours by Members of Parliament and councillors;

"hours of darkness" means the hours between half-past six in the evening and half-past six on the following morning;

"hours of daylight" means the hours between half-past six in the morning and half-past six in the evening;

"meeting" means any gathering of persons (not being an excluded meeting) convened and held for any purpose, including any political purpose;

"offensive weapon" means any article made or adapted for use for causing injury to the person, or intended by the person having it in his possession or under his control for such use;

"political organisation" means any organisation which either has among its objects any political purpose or pursues any political purpose;

"premises" includes any land, any building and any other place whatsoever;

"private premises" means premises which are not public places;

"public gathering" means a public meeting, a public procession, and any other meeting, gathering or concourse of ten or more persons in any public place;

"public meeting" means any meeting held or to be held in a public place, and any meeting which the public or any section of the public or more than fifty persons are or are to be permitted to attend whether on payment or otherwise;

"public place" means any place to which for the time being the public or any section of the public are entitled or permitted to have access whether on payment or otherwise, and, in relation to any meeting to be held in the future, includes any place which will, on the occasion and for the purposes of such meeting, be a public place;

"public procession" means any procession in, to or from a public place;

"regulating officer" means the officer-in-charge of the police station in the area in which a proposed public meeting is proposed to be held, or in the case of a public procession, the police officer-in-charge of the police station in the area in which the procession is proposed to start and to end;

"school" means any premises or any part of any premises where persons are habitually or for the time being taught, whether in one class or more.

[Act No. 7 of 1958, s. 2, Act No. 53 of 1960, s. 3,
L.N. 402/1963, L.N. 153/1965, Act No. 10 of 1997, Sch.]

PART II – QUASI-MILITARY ORGANISATIONS AND POLITICAL UNIFORMS

3. Prohibition of organisations equipped to usurp functions of police, etc.

(1) If the members or adherents of any association of persons, whether incorporated or not, are—

- (a) organised or trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the Kenya Defence Forces; or
- (b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose, then any member or adherent of such association shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding two years, or to both such fine and such imprisonment, and any person who promotes or conspires with another to promote or who takes part in the control or management of the association, or in so organising or training or equipping as aforesaid any member or adherent thereof, shall be guilty of an offence and liable to a fine of two thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and such imprisonment:

Provided that in any proceedings against a person charged with the offence of taking part in the control or management of such an association as aforesaid it shall be a defence to that charge to prove that he neither consented to nor connived at the organisation, training or equipment of members or adherents of the association in contravention of the provisions of this section.

(2) No prosecution under this section shall be instituted without the consent of the Director of Public Prosecutions.

(3) If, upon application being made by the Attorney-General, it appears to the High Court that any association is an association of which members or adherents are organised, trained or equipped in contravention of the provisions of this section, the Court may make such order as appears necessary to prevent any disposition without the leave of the Court of property held by or for the association, and may direct an inquiry and report to be made as to any such property as aforesaid and as to the affairs of the association, and may make such further orders as appear to the Court to be just and equitable for the application of such property in or towards the discharge of the liabilities of the association lawfully incurred before the date of the application or since that date with the approval of the Court, in or towards repayment of moneys to persons who became subscribers or contributors to the association in good faith and without knowledge of any such contravention as aforesaid, and in or towards any costs incurred in connexion with any such inquiry and report as aforesaid or in winding up or dissolving the association, and may order that any property which is not directed by the Court to be so applied as aforesaid shall be forfeited.

(4) In any criminal or civil proceedings under this section, proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the control or management of an association or in organising, training or equipping members or adherents of an association shall be admissible as evidence of the purposes for which, or the manner in which, members or adherents of the association (whether those persons or others) were organised, or trained or equipped.

(5) If a judge of the High Court or magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this section has been committed, and that evidence of the commission thereof is to be found at any premises or place specified in the information, he may, on an application made by a police officer of a rank not lower than that of Inspector, grant a search warrant authorising any such police officer named in the warrant together with any other persons named in the warrant and any other police officers to enter the premises or place at any time within one month from the date of the warrant, if necessary by force, and to search the premises or place and every person found therein, and seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of such an offence as aforesaid:

Provided that no woman shall, in pursuance of a warrant issued under this subsection, be searched except by a woman.

(6) Nothing in this section shall be construed as prohibiting the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises, or the making of arrangements for that purpose or the instruction of the persons to be so employed in their lawful duties as such stewards, or their being furnished with badges or other distinguishing signs.

[L.N. 87/1964, Act No. 12 of 2012, Sch., Act No. 19 of 2014, s. 2.]

4. Prohibition of uniforms, etc., in connexion with political objects

(1) The Cabinet Secretary may from time to time by order prohibit the wearing in public places or at public meetings of—

- (a) *repealed by Act No. 10 of 1997, Sch.;*
- (b) any uniform, distinctive dress or emblem by members or adherents of any organisation or association specified or described in the order, whether incorporated or not—
 - (i) when, in the opinion of the Cabinet Secretary, members of that organisation or association are organised or trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the Defence Forces; or
 - (ii) when, in the opinion of the Cabinet Secretary, members of that organisation or association are organised or trained or equipped for the purpose of enabling them to be employed for the use or display of physical force in promoting any political or other object or in such a manner as to arouse reasonable apprehension that they are organised or trained or equipped for that purpose.

(2) Any person who contravenes the provisions of any order made under subsection (1) of this section shall be guilty of an offence.

[Act No. 53 of 1960, s. 5, L.N. 402/1963, L.N. 87/1964, Act No. 10 of 1997, Sch.]

PART III – PUBLIC GATHERINGS**5. Regulation of Public meeting and Processions**

(1) No person shall hold a public meeting or a public procession except in accordance with the provisions of this section.

(2) Any person intending to convene a public meeting or a public procession shall notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the public meeting or procession.

(3) A notice under subsection (2) shall be in the prescribed form and shall specify—

- (a) the full names and physical address of the organiser of the proposed public meeting or public procession;
- (b) the proposed date of the meeting or procession and the time thereof which shall be between six o'clock in the morning and six o'clock in the afternoon;
- (c) the proposed site of the public meeting or the proposed route in the case of a public procession.

(4) Where, upon receipt of a notice under subsection (2), it is not possible to hold the proposed public meeting or public procession for the reason that notice of another public meeting or procession on the date, at the time and at the venue proposed has already been received by the regulating officer, the regulating officer shall forthwith notify the organiser.

(5) The notification by the regulating officer under subsection (4) shall be in writing and shall be delivered to the organiser at the physical address specified pursuant to the provision of subsection (3).

(6) Where the regulating officer notifies the organiser of a public meeting or public procession in accordance with subsection (3) that it is not possible to hold the proposed meeting or procession, such public meeting or procession shall not be held on the date, at the time and venue proposed, but may, subject to this section, be held on such future date as the organiser may subsequently notify.

(7) The organiser of every public meeting or public procession or his authorised agent shall be present throughout the meeting or procession and shall assist the police in the maintenance of peace and order at the meeting or procession.

(8) The regulating officer or any police officer of or above the rank of inspector may stop or prevent the holding of—

- (a) any public meeting or public procession held contrary to the provisions of subsections (2) or (6);
- (b) any public gathering or other meeting or procession which, having regard to the rights and interests of the persons participating in such gathering, meeting or procession, there is clear, present or imminent danger of a breach of the peace or public order, and may, for any of the purposes aforesaid, give or issue such orders, including orders for the dispersal of the meeting, procession or gathering as are reasonable in the circumstances, having regard to the rights and freedoms of the persons in respect of whom such orders are issued and the rights and freedoms of others.

(9) Any person who neglects or refuses to obey any order given or issued under subsection (7) shall be guilty of an offence.

(10) Any public meeting or public procession held contrary to the provisions of subsections (1) and (5) shall be deemed to be an unlawful assembly.

(11) Any person who takes part in any public meeting or public procession deemed to be an unlawful assembly under subsection (10), or holds, convenes or organises or is concerned in the holding, convening or organising of any such meeting or procession shall be guilty of the offence of taking part in an unlawful assembly under Chapter IX of the Penal Code and liable to imprisonment for one year.

(12) The organiser of any excluded meeting may request the regulating officer that the police be present at such meeting to ensure the maintenance of peace and order.

(13) A request under subsection (12) shall be in writing and shall be delivered to the regulating officer at least three days before the proposed date of the meeting.

(14) The regulating officer shall keep a public register of all notices received under subsection (2).

(15) Any person may, during working hours, inspect the register kept under subsection (14).

[Act No. 10 of 1997, Sch.]

6. Prohibition of offensive weapons at public meetings and processions

(1) Any person who, while present at any public meeting or on the occasion of any public procession, has with him any offensive weapon, otherwise than in pursuance of lawful authority, shall be guilty of an offence.

(2) For the purposes of this section, a person shall not be deemed to be acting in pursuance of lawful authority unless he is acting in his capacity as a police officer

or member of a fire brigade or otherwise in his capacity as a public officer or as a servant of a local authority.

[Act No. 53 of 1960, s. 6.]

7. Power to prohibit entertainments and sporting events

(1) If at any time it appears to the Inspector-General of National Police Service that serious public disorder is likely to arise at or on the occasion of any race-meeting, sporting event or other entertainment of any description, he may, by notice addressed to the promoter, organiser or manager thereof, prohibit the holding or continuance thereof in any area or place or on any particular day.

(2) A notice under subsection (1) of this section shall be served on the person, or one of the persons if more than one, promoting, organising or managing the race-meeting, sporting event or entertainment.

(3) If such race-meeting, sporting event or entertainment is held or continued in contravention of the terms of a notice issued under subsection (1) of this section, any person taking part in the promotion, organisation or management thereof shall be guilty of an offence.

(4) Any police officer may give or issue such orders and use such force as may be necessary to prevent the holding or continuance of a race-meeting, sporting event or other entertainment the holding or continuance of which has been prohibited by a notice issued under subsection (1) of this section and to disperse any gathering of persons thereat.

(5) Any person who neglects or refuses to obey any order given or issued under subsection (4) of this section shall be guilty of an offence.

(6) A certificate under the hand of the Inspector-General of the National Police Service, specifying the terms, and the date and manner of service, of a notice under this section, shall be *prima facie* evidence thereof in all legal proceedings.

[Act No. 53 of 1960, s. 6, L.N. 402/1963, L.N. 153/1965, Act No. 19 of 2014, s. 3.]

PART IV – CURFEW ORDERS AND CURFEW RESTRICTION ORDERS

8. Curfew orders

(1) The Cabinet Secretary, on the advice of the Inspector-General of the National Police Service may, if he considers it necessary in the interests of public order so to do, by order (hereinafter referred to as a curfew order) direct that, within such area and during such hours as may be specified in the curfew order, every person, or, as the case may be, every member of any class of persons specified in the curfew order, shall, except under and in accordance with the terms and conditions of a written permit granted by an authority or person specified in the curfew order, remain indoors in the premises at which he normally resides, or at such other premises as may be authorised by or under the curfew order.

(2) (a) It shall be a condition of every permit granted under subsection (1) of this section that the holder thereof shall at all times while acting under the authority thereof during the hours of darkness carry a light visible at a distance of twenty-five feet.

(b) Subject to paragraph (a) of this subsection, a permit under subsection (1) of this section may be granted subject to such conditions, to be specified in the permit, as the authority or person granting it may think fit.

(3) A curfew order shall be published in such manner as the authority making it may think sufficient to bring it to the notice of all persons affected thereby, and shall come into force on such day, being the day of or a day after the making thereof, as may be specified therein, and shall remain in force for the period specified therein or until earlier rescinded by the same authority or by the Cabinet Secretary as hereinafter provided:

Provided that no curfew order which imposes a curfew operating during more than ten consecutive hours of daylight shall remain in force for more than three days, and no curfew order which imposes a curfew operating during any lesser number of consecutive hours of daylight shall remain in force for more than seven days.

(4) *Deleted by Act No. 19 of 2014, s. 4(b).*

(5) The variation or rescission of a curfew order shall be published in like manner as that provided in subsection (3) of this section for the publication of a curfew order.

(6) Any person who contravenes any of the provisions of a curfew order or any of the terms or conditions of a permit granted to him under subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

(7) A certificate under the hand of the authority making, varying or rescinding a curfew order, specifying the terms, and the date and manner of publication, of such order, variation or rescission, shall be *prima facie* evidence thereof in all legal proceedings.

(8) Any person who, without lawful excuse, carries or has in his possession, in any area in which a curfew order is in force and during the hours during which the curfew imposed thereby is operative, any offensive weapon shall be guilty of an offence:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the Court that he carried or had in his possession the offensive weapon—

- (i) solely for domestic or defensive purposes within enclosed premises which he lawfully occupied or in which he was lawfully present; or
- (ii) with the authority of his employer and solely for domestic or defensive purposes within enclosed premises in the lawful occupation of his employer.

[Act No. 53 of 1960, s. 6, LN 402 of 1963, LN 153 of 1965, Act No. 19 of 2014, s. 4.]

9. Curfew restriction orders

(1) A police officer in charge of the police in a county or a police officer in charge of a police division may, if he considers it necessary in the interests of public order within the area of his responsibility so to do, by order (hereinafter referred to as a curfew restriction order) prohibit, during such hours as may be specified in the curfew restriction order, all persons, or, as the case may be, all members of any class of persons specified in the curfew restriction order, from entering, being or remaining, except under and in accordance with the terms and conditions of a written permit granted by an authority or person specified in the curfew restriction order, in or at any premises specified in the curfew restriction order:

Provided that no person shall, by or in pursuance of a curfew restriction order, be prohibited or prevented from entering, being or remaining in any premises at which he normally resides, or, during reasonable hours of business, work or employment, any premises at which he normally has his place of business, work or employment.

(2) A permit under subsection (1) of this section may be granted subject to such conditions, to be specified in the permit, as the authority or person granting it may think fit.

(3) A curfew restriction order shall be published in such manner as the authority making it may think sufficient to bring it to the notice of all persons affected thereby, and shall come into force on such day, being the day of or a day after the making thereof, as may be specified therein, and shall remain in force for such period, not exceeding twenty-eight days, as may be specified therein or until earlier rescinded by the same authority or by the Cabinet Secretary as hereinafter provided.

(4) Every curfew restriction order shall, forthwith on its being made, be reported to the Inspector General of Police, and the Inspector General of Police may, if he thinks fit, vary or rescind the curfew restriction order.

(5) The variation or rescission of a curfew restriction order shall be published in like manner as that provided in subsection (3) of this section for the publication of a curfew restriction order.

(6) Any person who contravenes any of the provisions of a curfew restriction order or any of the terms or conditions of a permit granted to him under subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

(7) A certificate under the hand of the authority making, varying or rescinding a curfew restriction order, specifying the terms, and the date and manner of publication, of such order, variation or rescission, shall be *prima facie* evidence thereof in all legal proceedings.

[Act No. 53 of 1960, s. 6, L.N. 402/1963, L.N. 153/1965, Act No. 19 of 2014, s. 5.]

PART V – FLAGS, BANNERS AND EMBLEMS

10.

[Repealed by Act No. 10 of 1997, Sch.]

PART VI – FURTHER PROVISIONS TO SAFEGUARD PUBLIC ORDER

11. Possession of offensive weapon in public place

(1) Any person who, without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any street or public place any offensive weapon shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand shillings, or to both such imprisonment and such fine.

(2) Where any person is convicted of an offence under subsection (1) of this section, the Court may make an order for the forfeiture of any weapon in respect of which the offence was committed.

(3) Every offence under this section shall be cognisable to the police.

(4) In this section, "offensive weapon" means any article made or adapted for use for causing injury to the person, or capable of being so used, or intended by the person having it with him for such use, and includes any panga, simi or similar weapon.

- (5) (a) This section shall apply to such areas, and during such hours, as the Cabinet Secretary may, by notice in the *Gazette*, declare.
- (b) A notice under this section may apply the section during different hours in respect of different areas.

[Act No. 10 of 1958, ss. 1, 2 and 3, Act No. 23 of 1960, ss. 2, 3 and 4, Act No. 19 of 2014, s. 6.]

12.

[Repealed by Act No. 19 of 2014, s. 7.]

13. Award of compensation to sufferers from misconduct of inhabitants of area declared under section 106 of Cap. 84

(1) If in any area, in regard to which any declaration issued under section 106 of the National Police Service Act (Cap. 84) is in force, death or grievous harm, or loss of or damage to property has been caused by, or has ensued from, the misconduct of the inhabitants of such area, or of any class or section of such inhabitants, any person who claims to have suffered loss, damage or injury by reason of such misconduct may, within one month from the date of such loss, damage or injury, make an application for compensation to a magistrate appointed under the said section or, where no magistrate has been so appointed, to a magistrate having jurisdiction within the district in which the declared area is situated.

(2) Upon receipt of any such claim, the Magistrate may, after such inquiry as he may consider necessary, and whether or not any additional police officers have been stationed in the declared area under section 106 of the National Police Service Act (Cap. 84)—

- (a) assess the amount of compensation, if any, to be paid to such person or persons as he may determine;
- (b) determine the manner, and proportions, in which such compensation shall be distributed;
- (c) assess the proportions in which such compensation shall be paid by the inhabitants of the declared area; and
- (d) order the payment of such compensation:

Provided that the Magistrate—

- (i) shall not make any assessment or order under the provisions of this subsection, unless he is of opinion that such loss, damage or injury has arisen from a riot or an unlawful assembly within the declared area, and that the person who suffered such loss, damage or injury was himself free from blame in respect of the events which led to such loss, damage or injury; and
- (ii) shall, in making any assessment under paragraph (c) of this subsection, have regard to the means of the persons ordered to pay compensation.

(3) Before holding any inquiry under subsection (2) of this section, the Magistrate shall give notice, either generally with reference to the declared area or particularly with reference to any specified premises, property or person, stating—

- (a) the time and place at which he proposes to hold his inquiry; and
- (b) the manner in which any claims for compensation, and any objections thereto and to the payment of compensation, shall be presented to him.

(4) The provisions of sections 9, 10 and 16 of the Commissions of Inquiry Act (Cap. 102) shall apply to the Magistrate and any inquiry held by him in pursuance of this section, as if he had been appointed a commissioner under that Act.

(5) All moneys payable under this section shall be recoverable in the manner provided for the recovery of compensation by sections 173, 334 and 335 of the Criminal Procedure Code (Cap. 75).

(6) If in any civil suit it is proved to the satisfaction of the Court that the plaintiff in such suit has accepted in respect of his claim compensation ordered under subsection (2) of this section to be paid to him, the amount of the compensation shall be taken into account to diminish any damages which he would otherwise receive in that suit.

(7) For the purposes of this section, "inhabitants" means all persons who occupy any building, or part thereof, in the declared area.

[Act No. 53 of 1960, s. 7, Act No. 3 of 1964, s. 3, Act No. 19 of 1964, s. 2, Act No. 19 of 2014, s. 8.]

PART VII – GENERAL

14. Restriction on use of force

(1) Whenever in this Act it is provided that force may be used for any purpose, the degree of force which may be so used shall not be greater than is reasonably necessary for that purpose; whenever the circumstances so permit without gravely jeopardising the safety of persons and without grave risk of uncontrollable disorder, firearms shall not be used unless weapons less likely to cause death have previously been used without achieving the purpose aforesaid; and firearms and other weapons likely to cause death or serious bodily injury shall, if used, be used with all due caution and deliberation, and without recklessness or negligence.

(2) Nothing in this section shall derogate from the lawful right of any person to use force in the defence of person or property.

[Act No. 53 of 1960, s. 6.]

15. Service of documents

Where any order, notice or other document is required by or under this Act or any regulations made thereunder to be given to or served on any person, service thereof may be effected either personally on such person or by registered post; and, where the person to be served is a body corporate or a society or other body of persons, service of any such order, notice or document may be effected by serving it personally on any secretary, director or other officer thereof or on any person concerned or acting in the management thereof, or by leaving it or sending it by registered post addressed to the body corporate, society or body of persons at its registered office, or, where there is no registered office, at any place where it carries on business.

[Act No. 53 of 1960, s. 6.]

16. Presumption of authenticity of certificates

A certificate under any of the provisions of this Act, purporting to be signed by the Cabinet Secretary or by any other authority specified in that behalf in such provision, shall be presumed, until the contrary is proved, to have been signed by such Cabinet Secretary or other authority.

[Act No. 53 of 1960, s. 6.]

17. Penalty

Every person who is guilty of an offence under this Act, or under any regulations made thereunder, in respect of which no special penalty is provided shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

[Act No. 53 of 1960, s. 6, Act No. 19 of 2014, s. 9.]

18. Offences by corporations, societies, etc.

Where any offence under this Act or under any regulations made thereunder is committed by any company, or other body corporate, or by any society, association or body of persons, every person charged with, or concerned or acting in, the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.

[Act No. 53 of 1960, s. 6.]

19. Offences to be cognisable; and consent of Director of Public Prosecutions

All offences under this Act shall be cognisable to the police; and, where it is provided in this Act that a prosecution for an offence thereunder shall not be instituted without the consent of the Director of Public Prosecutions, a person may be arrested for and charged with such an offence, and may be remanded in custody or on bail, notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until such consent has been obtained:

Provided that no person shall be arrested for or charged with an offence under section 3 of this Act save with the consent of the Director of Public Prosecutions first had and obtained.

[Act No. 53 of 1960, s. 6, Act No. 19 of 2014, s. 10.]

20. Proof of instigation, lawful authority or excuse

(1) Where it is an offence for a person to instigate another to do or omit to do any act or thing, it is immaterial whether or not the instigation succeeds in its purpose.

(2) For the avoidance of doubt, it is hereby declared that the burden of proving lawful or reasonable excuse or lawful authority shall be upon the person alleging the same, and accordingly in any proceedings for an offence under this Act or any regulations made thereunder it shall not be incumbent on the prosecution to prove the lack of any such excuse or authority.

[Act No. 53 of 1960, s. 6.]

21. Jurisdiction

Notwithstanding anything contained in any other written law, a subordinate court may try any offence under this Act or under any regulations made thereunder and—

- (a) if presided over by a Senior Resident Magistrate, or by any Resident Magistrate upon whom such power has, by notice in the *Gazette*, been

conferred, may pass any sentence authorised for such offence other than a sentence of imprisonment for a term exceeding ten years;

- (b) if presided over by a Resident Magistrate, may pass any such sentence other than a sentence of imprisonment for a term exceeding seven years; and
- (c) in any other case, may pass any such sentence other than a sentence of imprisonment for a term exceeding five years.

[Act No. 53 of 1960, s. 6, L.N. 87/1964, Act No. 19 of 2014, s. 11.]

22. Regulations

(1) The Cabinet Secretary may make regulations prescribing anything which may be prescribed under this Act, and generally to give effect to the provisions of this Act.

(2) Notwithstanding the provisions of paragraph (e) of section 31 of the Interpretation and General Provisions Act (Cap. 2), regulations under this section may prescribe such penalties as the Cabinet Secretary may think fit for the contravention thereof, not exceeding, however, the penalties specified in section 17 of this Act.

[Act No. 53 of 1960, s. 6.]
