

THE UNITED REPUBLIC OF TANZANIA



No. 10 OF 1969

I ASSENT,


President

6th FEBRUARY, 1969

An Act to amend the Criminal Procedure Code

[Sections 1, 2, 3, 4, 11, 18, 32, 33, 34, 35 (3) and 35 (4)- 1ST MARCH, 1969]

ENACTED by the Parliament of the United Republic of Tanzania.

1.- (1) This Act may be cited as the Criminal Procedure Code (Amendment) Act, 1969 and shall be read as one with the Criminal Procedure Code (hereinafter referred to as the Code).

Short title
and com-
mencement
Cap. 20

(2) Sections 1, 2, 3, 4, 11, 18, 32, 33 and 34 and subsections (3) and (4) of section 35 shall come into operation on 1st March, 1969. The remaining provisions of this Act shall come into operation on such date as the Minister for the time being responsible for legal affairs may, by notice in the Gazette, appoint.

2. Section 2 of the Code is amended in the definition "preliminary inquiry" by inserting immediately after the words and symbols "preliminary inquiry" the words and symbols "or 'inquiry' "

Section 2 of
Cap. 20
amended

3. Section 12 of the Code is amended in subsection (2) by deleting the proviso thereto and substituting therefor the following new proviso:

Section 12 of
Cap. 20
amended

"Provided that where the case is tried by a subordinate court the aggregate punishment shall not exceed twice the amount of punishment which the court may in the exercise of its ordinary jurisdiction lawfully impose."

4. Section 137 of the Code is amended by re-numbering the same as subsection (1) and by adding immediately below thereto the following new subsection: -

Section 137
of Cap. 20
amended

"(2) For the avoidance of doubts it is hereby declared that nothing in this section or in this Code shall be construed as preventing persons who have been committed for trial separately from being joined in one charge or information and being tried together if they are persons who fall under any of the categories specified in subsection (1)."

- Section 151 of Cap. 20 amended
- 5.** Section 151 of the Code is amended by deleting the word and comma "inquiry", which occur in the first line.
- Section 154 of Cap. 20 amended
- 6.** Section 154 of the Code is amended in subsection (3) by inserting immediately after the words "so used" in the first line, the words "in any proceeding other than an inquiry."
- Section 154A of Cap. 20 amended
- 7.** Section 154A of the Code is amended in subsection (3) by deleting the words inquiry, trial or other proceeding under this Code" and substituting therefor "trial or proceeding under this Code other than an inquiry"
- Section 154B of Cap. 20 amended
- 8.** Section 154B of the Code is amended in subsection (3) by deleting the words inquiry, trial or other proceeding under this Code" and substituting therefor the words "trial or proceeding under this Code other than an inquiry,"
- Section 154C of Cap. 20 amended
- 9.** Section 154C of the Code is amended in subsection (3) by deleting the comma immediately after the word "evidence" in the first line and substituting therefor the following "in any trial or proceeding under this Code other than an inquiry,"
- Section 164 of Cap. 20 amended
- 10.** Section 164 of the Code is amended-
- (a) in subsection (1) by deleting the words "or preliminary inquiry" which occur in the first two lines;
- (b) by adding immediately below subsection (3) the following new subsection: -
- "(3A) When in the course of a preliminary inquiry the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall proceed to enquire into the fact of unsoundness of mind of the accused and for this purpose may order him to be detained in a mental hospital for medical examination or, in a case where bail may be granted, may admit him to bail on sufficient security as to his personal safety and that of the public and on condition that he submits himself to medical examination or observation by a medical officer as may be directed by the court. ,
- (c) in subsection (4) by inserting immediately after the words "subsection (3)" in the fifth line the words "or subsection (3A)".
- New section 168A added
- 11.** The Code is amended by adding the following new section immediately below section 168: -
- "Courts power to inquire into sanity
- 168A.**-(1) Where any act or omission is charged against any person as an offence and it appears to the court during the trial of such person for that offence that such person may have been insane so as not to be responsible for his action at the time when the act was done or omission made, a court may, notwithstanding that no evidence has been adduced or given of such insanity, adjourn the proceedings and order the accused person to be detained in a mental hospital for medical examination.

(2) The medical officer in charge of a mental hospital in which an accused person has been ordered to be detained pursuant to subsection (1) shall, within forty-two days of such detention, prepare and transmit to the court ordering the detention a written report on the mental condition of the accused stating whether, in his opinion, at the time when the offence was committed the accused was insane so as not to be responsible for his action and such written report purporting to be signed by the medical officer preparing the same may be admitted as evidence unless it is proved that the medical officer purporting to sign the same did not in fact sign it.

(3) Where the court admits a medical report signed by the medical officer in charge of the mental hospital where the accused was detained, the accused and the prosecution shall be entitled to adduce such evidence relevant to the issue of insanity as they may consider fit.

(4) If, on the evidence on record, it appears to the court that the accused did the act or made the omission charged but was insane so as not to be responsible for his action at the time when the act was done or omission made, the court shall make a special finding in accordance with the provisions of subsection (1) of section 168 and all the provisions of section 168 shall apply to every such case."

12. The title to Part V of the Code is amended by deleting the words "Inquiries and".

Title of
Part V of
Cap. 20
amended
Section 191
of Cap. 20
amended

13. Section 191 of the Code is amended by deleting the words " in any inquiry or" which occur in the first two lines.

Section 192
of Cap. 20
amended

14. Section 192 of the Code is amended in subsection (1) by deleting the words "inquiries and" which occur in the first line.

Section 196
of Cap. 20
amended

15. Section 196 of the Code is repealed and replaced by the following new section:-

"Conviction
or committal
where
proceedings
heard partly
by one
magistrate
and partly
by another

196. (1) Where any magistrate, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any preliminary inquiry, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under the provisions of this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the magistrate so succeeding may act on the evidence or proceeding recorded by his predecessor, or partly recorded by his predecessor and partly by himself, or he may, in the case of a trial, re-summon the witnesses and recommence the trial or, in the case of an inquiry, recommence the inquiry:

Provided that-

- (a) in any trial the accused may, when the second magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard and shall be informed of such right by the second magistrate when he commences his proceedings;
- (b) the High Court may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the magistrate before the conviction was had, if it is of the opinion that the accused has been materially prejudiced thereby and may order a new trial.

(2) Nothing in subsection (1) shall be construed as preventing a magistrate who has heard and recorded the whole of the evidence in any trial and who has, before passing the judgment, ceased to exercise jurisdiction therein, from writing the judgment and forwarding the record of the proceedings together with the judgment to the magistrate who has succeeded him for the judgment to be read over and, in the case of conviction, for the sentence to be passed by such other magistrate."

Section 217 of Cap. 20 amended

16. Section 217 of the Code is amended-

- (a) in subsection (1) by deleting the words "informed by the prosecutor" and substituting therefor the words "advised by the Director of Public Prosecutions in writing or otherwise"]
- (b) by deleting subsection (2).

Sections 218 to 231 (inclusive) repealed and replaced

17. Sections 218 to 231 (inclusive) of the Code are repealed and replaced by the following sections:-

218.-(1) The magistrate conducting a preliminary inquiry shall, at the commencement of such inquiry, read over and explain to the accused person the charge or charges, set out in the charge sheet in respect of which the inquiry is being held, but the accused person shall not be required to make any reply thereto.

(2) The Court shall, after having read and explained to the accused the charge or charges, address to him the following words or words to the like effect:-

"This is not your trial. You will be tried later in the High Court where the evidence against you will be adduced. You will then be able to make your defence and call witnesses on your behalf".

"Proceedings at the inquiry

219.-(1) After the charge has been read over and explained to the accused and the accused has been addressed as required by section 218, the court shall call upon the prosecutor to produce to the court statements of the witnesses whom the prosecution proposes to call at the trial.

(2) The prosecutor shall produce to the court a copy or copies of the statement or statements made to, the police by every witness whom the prosecution proposes to call at the trial and every such statement shall be read over to the accused and explained to him in the language understood by him.

(3) When a witness whom the prosecution proposes to call at the trial has made no statement to the police the prosecutor shall produce to the court a document giving the substance of the evidence which such witness will give at the trial and for the purposes of this Code references to statements of witnesses produced at inquiry include any such document.

(4) The prosecutor shall also produce to the court copies of all documents which he proposes to adduce in evidence at the trial and the contents of such documents shall be explained to the accused in a language understood by him.

(5) After complying with the provisions of the foregoing subsections the court shall address to the accused person the following words or words to the like effect:-

"You have now heard the substance of the evidence that the prosecution intends to call at your trial. You may either reserve your defence, which you are at liberty to do, or say anything which you may wish to say relevant to the charge against you. Anything you say will be taken down and may be used in evidence at your trial."

(6) Before the accused person makes any statement the court shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat.

(7) Everything that the accused person says shall be recorded in full and shall be shown or read over to him and he shall be at liberty to explain or add to anything contained in the record thereof.

(8) When the record of the statement, if any, made by the accused is made conformable to what he declares, is the truth, the record shall be attested by the magistrate who, shall certify that such statement was taken in his presence and hearing and contains accurately the whole statement made by the accused person. The accused person shall sign or attest by his mark such record. If he refuses the court shall add a note of his refusal and the record may be used as if the accused had signed or attested it.

"Witnesses for prosecution and defence

220. Immediately after complying with the provisions of section 219 the court shall make a list of all witnesses copies of whose statements have been produced to the court and shall ask the accused person whether he intends to, call witnesses at the trial and, if so, whether he desires to give their names and addresses so that they may be summoned. The court shall thereupon record the names and addresses of any such witnesses whom the accused may mention.

"Committal for trial

221. When the provisions of section 220 have been complied with the court shall commit the accused person for trial to the High Court and shall, until the trial, either admit him to bail or send him to prison for safe-keeping. The warrant of such first named court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial, although out of the jurisdiction of such court.

"Withdrawal of public prosecutor from preliminary inquiry

222. In any preliminary inquiry a public prosecutor may at any time before the accused person is committed for trial, withdraw from the inquiry, and upon such withdrawal the accused person shall be discharged but such discharge shall not operate as a bar to subsequent proceedings against him on account of the same facts.

"Adjournment of proceedings

223.-(1) If from any reasonable cause to be recorded in the proceedings the court considers it necessary or advisable to adjourn the proceedings the court may from time to time by warrant remand the accused for a reasonable time, not exceeding fifteen days at any one time, to, some prison or other place of security.

(2) Where the remand is for not more than three days, the court may by word of mouth, order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody and to bring him up at the time appointed for the commencement or continuance of the inquiry.

(3) During a remand the court may at any time order the accused to, be brought up before it.

(4) Subject to the provisions of section 123 the court may on a remand admit the accused to bail.

"Accused entitled to copy of proceedings

224.-(1) A person who has been committed for trial before the High Court shall be entitled at any time before the trial to have a copy of the record of the proceedings, of the inquiry without payment.

(2) The court shall at the time of committing him for trial inform the accused person of his right to a copy of the record of the proceedings without payment.

(3) Every record of the proceedings supplied to the accused pursuant to this section shall contain a copy of the charge or charges, copies of the statements and documents produced to the court during the preliminary inquiry and a copy of the record of the proceedings before the court."

18. Section 232 of the Code is repealed and replaced by the following section: -

Section 232
repealed and
replaced

"Taking
deposition
of person
dangerously
ill or unable
to attend
trial

232. Where it appears to a magistrate that any person, who is dangerously ill or hurt and not likely to recover or who, for any other reason whatsoever, may not be available to give evidence at the trial, is able to and willing to give material evidence relating to any offence, such court may take in writing a statement on oath or affirmation of such person, and shall subscribe the same, and certify that it contains accurately the whole of the statement made by such person, and the magistrate taking the statement shall certify his reason for taking the same and shall state the date and place when, and where the same was taken, and shall preserve such statement and file it for record:

Provided that where the statement is that of a person who by reason of immature age or want of religious belief ought not, in the opinion of the magistrate, to, be sworn or affirmed, the statement may be taken without oath or affirmation."

19. Section 235 of the Code is amended in subsection (1) by deleting the words "summary trial, preliminary inquiry or trial before the High Court" which occur in the third and fourth lines and substituting therefor the words "trial, whether before the High Court or a subordinate court."

Section 235
of Cap. 20
amended

20. Sections 236 to 239 (inclusive) of the Code are repealed and replaced by the following sections: -

Section 236
to 239
(inclusive)
repealed and
replaced

"Transmis-
sion of
records to
High Court

236. When an accused person has been committed for trial the charge, copies of the statements and documents produced to the court during the inquiry, and the record of the proceedings of the inquiry, duly signed and authenticated by the magistrate, shall be transmitted without delay by the committing court to the Registrar of the High Court and authenticated copies of the charge, the statements, documents and proceedings aforesaid shall be forwarded to, the Director of Public Prosecutions.

"D.P.P. may
request
summary
trial

237. The Director of Public Prosecutions may, at any time during a preliminary inquiry, or, if the preliminary inquiry has been concluded, at any time before the trial before the High Court, request the court which is conducting or which conducted the preliminary inquiry, to proceed to try the accused person on the charge in respect of which the inquiry is being or has been conducted, or where the charge is for an offence not triable by a subordinate court, on a charge for

some other offence triable by a, subordinate court and upon such request being made such court shall proceed to, try the accused on such charge as if proceedings by way of preliminary inquiry had never been commenced."

Section 240
of Cap. 20
amended

21. Section 240 of the Code is amended:-

- (a) in subsection (1) by deleting the word "depositions" which occurs in the first line and substituting therefor the words "proceedings in an inquiry."
- (b) in subsection (2) by deleting the word "depositions" which occurs in the third line and substituting therefor the words "proceedings in the inquiry."

Section 244
of Cap. 20
amended

22. Section 244 of the Code is amended in subsection (1) by deleting the comma after the words "subsequent sessions" which occur in the fifth line, substituting therefor a full-stop and deleting the remainder of the subsection.

New section
246A added

23. The Code is amended by adding the following section immediately below section, 246: -

"Witnesses to be summoned 246A. The Registrar of the High Court shall, before the commencement of the trial, issue summonses for the attendance at the trial of all witnesses whose statements were produced during the inquiry and all witnesses whose names and addresses were given to the committing magistrate by the accused."

Section 250
of Cap. 20
amended

24. Section, 250 of the Code is amended by deleting the word "male" which occurs in the second line.

Section 251

25. Section 251 of the Code is amended by inserting immediately below paragraph (j) the following paragraph: -

"(k) Women."

New section
252 added

26. The Code is amended by adding immediately below section 251 the following new section:-

"Exempt person may serve as assessor 252. For the avoidance of doubts it is hereby declared that no proceeding shall be invalid by reason only of a person who is an exempt person under the provisions of section 251, serving as an assessor."

Section 273
of Cap. 20
repealed and
replaced

27. Section 273 of the Code is repealed and replaced by the following new section:-

"Additional witness for replaced **273.**-(1) No witness whose statement was not produced at the preliminary inquiry shall be called by the prosecution at the trial unless the prosecution has given reasonable notice in writing to the accused person or his advocate of the intention to call such witness.

(2) The notice shall state the name and address of the witness and the substance of the evidence which he intends to give.

(3) The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and determined to, call him as a witness. No such notice need be given if the prosecution first became aware of the evidence which the witness would give on the date on which he is called."

- 28.** Sections 275 and 276 of the Code are repealed. Sections 275 and 276 of Cap. 20 repealed
- 29.** Section, 277 of the Code is amended by deleting the words "or evidence" which occur in the first line. Section 277 of Cap. 20 amended

- 30.** Section 278 of the Code is amended- Section 278 of Cap. 20 amended
- (a) in subsection (1) by deleting the words "or evidence" which occur in the second line;
- (b) in subsection (2) by deleting the words "or evidence" which occur in the second line.

- 31.** Section 280 of the Code is repealed and replaced by the following section:- Section 280 of Cap. 20 repealed and replaced
- "Additional witnesses for the defence **280.**-(1) In addition to the witnesses summoned pursuant to, the provisions of section 246A the accused shall be allowed to examine any witness who is in attendance at the trial.

(2) The accused shall not be entitled as of right to have any witness summoned other than the witnesses whose names and addresses were given by him to the magistrate conducting the preliminary inquiry, but any subordinate court may, after committal for trial and before the trial begins, and the court of trial may, either before or during the trial, issue a summons for the attendance of any person as a witness for the defence if the court is satisfied that his evidence is in any way material to the case.

- 32.** Section 314 of the Code is amended- Section 314 of Cap. 20 amended
- (a) in paragraph (b) by deleting the word "thirty" which occurs in the first line and substituting therefor the words "forty-five";
- (b) in the first proviso by deleting the word "thirty" which occurs in the first line and substituting therefor the words "forty-five"

- 33.** The Code is amended by deleting the subheading "Case Stated" in Part X and by repealing sections 333 to 343 (inclusive) and replacing the same by the following sub-heading and sections:- Amendment of the Code by deletion of provision relating to case stated and substituting therefor provision for appeals against acquittals, etc.

"Inter-pretation **333.** In the following sections in this Part unless the context otherwise requires-

"Director of Public Prosecutions" shall include any Officer subordinate to him acting in accordance with his general or special instructions;

"respondent" means the person who was the accused in the proceedings to which the appeal under section 334 relates and who may be affected by any order made by the High Court on such appeal.

"Appeals by
Director
of Public
Prosecutions

334.-(1) Where the Director of Public Prosecutions is dissatisfied with any acquittal, finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended powers by virtue of an order made under section 13 of this Code he may appeal to the High Court.

(2) An appeal to the High Court under this section may be on a matter of fact as well as on a matter of law.

"Limitation

335. No appeal under section 334 shall be entertained unless the Director of Public Prosecutions-

- (a) shall have given notice of his intention to appeal to the subordinate court within thirty days of the acquittal, finding, sentence or order against which he wishes to appeal; and
- (b) shall have lodged his petition of appeal within forty-five days from the date of such acquittal, finding, sentence or order:

Provided that-

- (i) in computing the said period of forty-five days the time requisite for obtaining a copy of the judgment or order appealed against shall be excluded; and
- (ii) the High Court may for good cause admit an appeal notwithstanding that the periods of limitation prescribed in this section have elapsed.

"Petition
of appeal

336.-(1) Every appeal under section 334 shall be made in the form of a petition in writing presented by the Director of Public Prosecutions and shall, unless the High Court otherwise directs, be accompanied by a copy of the judgment or order appealed against.

(2) The petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred.

"Notice o
time place
and hearing

337. Where a petition of appeal is lodged with the High Court in accordance with the provisions of section 336 the High Court shall cause notice to be given to the respondent or to his advocate, and every such notice shall state the time and place at which such appeal will be heard and shall be accompanied by a copy of the petition of appeal and a copy of the judgment or order appealed against.

338.-(1) At the hearing of an appeal under section 334 the Director of Public Prosecutions may address the court in support of the particulars set out in the petition of appeal and the respondent or his advocate may then address the court. The court may invite the Director of Public Prosecutions to reply upon any matter of law or fact raised by the respondent or his advocate. The court may then, if it considers there is not sufficient ground for interfering, dismiss the appeal or may-

- (a) in an appeal from acquittal:-
 - (i) reverse the finding, convict the respondent of the offence with which he was charged or any other offence of which he could have been convicted by the subordinate court, and either proceed to sentence him or remit the case to the subordinate court for passing the sentence; or
 - (ii) order the respondent to be retried by a court of competent jurisdiction; or
 - (iii) direct the subordinate court to hold preliminary inquiry.
- (b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;
- (c) in an appeal from any other order, alter or reverse such order and in any such case may make any amendment or any consequential or incidental order that may appear just and proper.

"Non-attendance of parties

339.-(1) Where, on the day fixed for the hearing of an appeal under section 334 or any other date to which the hearing may be adjourned, the Director of Public Prosecutions does not appear when the appeal is called on for hearing, the High Court may make an order that the appeal be dismissed.

(2) Where the Director of Public Prosecutions appears and the respondent or his advocate does not appear and the High Court is satisfied that the respondent or his advocate was duly served with notice of appeal, the High Court may proceed to hear the appeal *ex parte* or may adjourn the hearing to another date and give notice thereof to the respondent or his advocate.

(3) When an appeal is dismissed under subsection (1) the Director of Public Prosecutions may apply to the court for the re-admission of the appeal, and where he satisfies the court that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the High Court may re-admit the appeal.

(4) Where at the hearing of an appeal the respondent does not appear personally the High Court may make an order requiring the personal attendance of the respondent

and, if the respondent fails to comply with such order, may issue a warrant for the arrest and production of the respondent before the High Court on a date and time specified in the warrant.

"Further evidence

340.-(1) In dealing with an appeal under section 334 the High Court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court such court shall certify such evidence to the High Court which shall thereupon proceed to dispose of the appeal.

(3) No additional evidence shall be taken under this subsection save in the presence of the respondent or his advocate and such evidence shall be taken as if it were evidence taken at a trial before a subordinate court.

"Number of judges on appeal

341. The provisions of section 323 shall apply to appeals under section 34.

"Abatement of appeals

342. Every appeal under section 334 shall abate on the death of the respondent."

General amendment of the Criminal Procedure Code

34. The Code is amended by deleting the words "proceedings by way of case stated" and "case stated" wheresoever they occur, and substituting therefor "appeals under section 334" or "appeal under section 334" as may be appropriate, and all references in any written law to proceedings by way of case stated shall be construed as if they were references to appeals under section 334 of the Criminal Procedure Code.

Transitional provisions

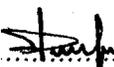
35. (1) Notwithstanding the provisions of this Act which modify the procedure in a preliminary inquiry, any preliminary inquiry commenced immediately before the coming into operation of this Act shall be continued and concluded in accordance with the provisions of the Code as in force immediately before the commencement of this Act.

(2) For the purposes of subsection (1) a preliminary inquiry shall be deemed to have been commenced where any evidence in such inquiry has been taken in accordance with the provisions of the Code as in force immediately before the commencement of this Act.

(3) Notwithstanding the repeal of sections 333 to 343 (inclusive) of the Code as in force immediately before the coming into operation of this Act all proceedings by way of case stated instituted before the coming into operation of this Act shall be continued and concluded in accordance with the provisions of those sections as if this Act had not been enacted.

(4) For the purposes of subsection (3) proceedings by way of case stated shall be deemed to have been instituted where an application has been made under section 333 as in force immediately preceding the commencement of this Act.

Passed in the National Assembly on the ninth day of January, 1969.


.....sekwa.....
Clerk of the National Assembly

