

**THE CRIMINAL PROCEDURE CODE
(AMENDMENT) ACT 1967**

No. 13 of 1967

Date of Assent: 14th June 1967

Date of Commencement: 16th June 1967

An Act of Parliament to amend the Criminal Procedure Code

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Criminal Procedure Code (Amendment) Act 1967.

Short title.

2. There shall be substituted for section 213 of the Criminal Procedure Code (hereinafter referred to as the Code) a new section as follows—

Replacement of section 213 of Cap. 75.

Order of speeches.

213. The prosecutor or his advocate and the accused and his advocate shall be entitled to address the court in the same manner and order as in a trial under this Code before the High Court.

3. There shall be inserted in the Code, immediately after section 348 thereof, a new section as follows—

Insertion of new section 348A in Code.

Right of appeal against acquittal, order of refusal or order of dismissal.

348A. When an accused person has been acquitted on a trial held by a subordinate court, or where an order refusing to admit a complaint or formal charge, or an order dismissing a charge, has been made by a subordinate court, the Attorney-General may appeal to the High Court from such acquittal or order on a matter of law.

4. There shall be inserted in the Code, immediately after section 389 thereof, a new section as follows—

Insertion of new section 389A in Code.

Procedure on forfeiture of goods.

389A. (1) Where, by or under any written law (other than section 29 of the Penal Code), any goods or things may be (but are not obliged to be) forfeited by a court, and such law does not provide the procedure by which forfeiture is to be effected, then, if it appears to the court that the goods or things should be forfeited, it shall cause to be served on the person believed to be their owner notice that it will, at a specified time and place, order the goods or things to be forfeited unless good cause to the contrary is shown; and,

at that time and place or on any adjournment, the court may order the goods or things to be forfeited unless such cause is shown by the owner or some person interested in the goods or things:

Provided that, where the owner of the goods or things is not known or cannot be found, the notice shall be advertised in a suitable newspaper and in such other manner (if any) as the court thinks fit.

(2) If the court finds that the goods or things belong to some person who was innocent of the offence in connexion with which they may or are to be forfeited and who neither knew nor had reason to believe that the goods or things were being or were to be used in connexion with that offence and exercised all reasonable diligence to prevent their being so used, it shall not order their forfeiture; and where it finds that such a person was partly interested in the goods and things it may order that they be forfeited and sold and that such person shall be paid a fair proportion of the proceeds of sale.

Repeal of sections 173 and 368 to 378 of Code.

5. Section 173 and sections 368 to 378 (inclusive) of the Code are repealed, and the heading above section 368 is deleted.

Amendment of various provisions of Code.

6. The provisions of the Code specified in the first column of the First Schedule to this Act are amended in the manner specified in relation thereto in the second column of that Schedule.

Amendment of First Schedule to Code.

7. The First Schedule to the Code is amended in the manner specified in the Second Schedule to this Act.

FIRST SCHEDULE

(s. 6)

Provision

Amendment

Section 2.

In the definition of "officer in charge of a police station", delete "President", and substitute "Attorney-General".

Section 26 (1).

Delete "Inspector-General of Police or a Regional Commissioner of Police", and substitute "Commissioner of Police".

Section 29 (e).

Delete "the Kenya Military Forces or Her Majesty's Army or Navy or Air Force", and substitute "the armed forces".

Section 29 (h).

Delete all the words after "under the", and substitute "liable to be extradited under the Extradition Act 1966".

SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 82 (1) and the heading immediately above.	Delete "Crown" in each case, and substitute "Republic".
Section 95.	Delete "or of a province".
Section 126.	Insert ", or to deposit property" immediately after "fix", and delete the words after "such a bond".
Section 137 (c) (iii).	Delete "the Nairobi Area or a province as the case may be".
Section 143 (1).	Delete "Commonwealth citizen for an offence committed on the open sea within three nautical miles of the coast of Kenya measured from low-water mark", and substitute "Kenya citizen for an offence committed within territorial waters".
Section 143 marginal note.	Delete "Minister", and substitute "Attorney-General".
Section 162 (4).	Delete "for the time being responsible for legal affairs".
Section 163 (2).	Delete "Crown", and substitute "Republic".
Section 166 (2) and (4), and section 167 (4).	Delete "for the time being responsible for legal affairs" in each case.
Section 171 (3).	Delete the subsection.
Section 171 (4).	Delete "Crown", and substitute "Republic".
Section 174.	Delete "or compensation" and "or section 173".
Section 190.	Delete "section 10", and substitute "section 9".
Section 207 (5).	Delete "Queen's pardon", and substitute "President's pardon".
Section 210.	Insert "and after hearing such summing up, submission or argument as the prosecutor, the accused person or his advocate may wish to put forward," immediately after "charge".
Section 211 (1).	Insert "and after hearing such summing up, submission or argument as may be put forward," immediately after "in support of the charge,".
Section 260.	Delete "Our Lady the Queen", and substitute "the Republic of Kenya".
Section 266 (b).	Delete "and the Presidents and members of Regional Assemblies".

SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 266 (g).	Delete "the Kenya Military Forces or Her Majesty's Army, Navy or Air Force on full pay", and substitute "the armed forces".
Section 266 (k).	Delete "Minister", and substitute "Attorney-General".
Section 279 (1) (b).	Delete "Queen's pardon", and substitute "President's pardon".
Section 353.	Delete "Attorney-General" in both places, and substitute "respondent or his advocate" in each case.
Section 354 (1) (2).	Delete "Attorney-General", and substitute "respondent or his advocate".
Section 354 (3).	Insert, immediately after paragraph (b) a new paragraph as follows— (bb) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High Court thereon to the subordinate court for determination, whether by way of re-hearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as the High Court may think fit;

SECOND SCHEDULE

(s. 7)

1. There shall be deleted from the First Schedule to the Code the following items relating to the Penal Code—

<i>Section of Penal Code</i>	<i>Offence</i>
41	Instigating foreign invasion
44	Promoting war on chiefs, etc.
57 (1)	Sedition
(2)	Possessing seditious publication
(10)	Using or attempting to use printing machine which has been confiscated
(11)	Printing or publishing newspaper in contravention of order
69	Piracy
140	Rape
141	Attempted rape
144 (1)	Indecent assault on female
145 (1)	Defilement of girl under sixteen
(2)	Attempted defilement of girl under sixteen
182	Being an idle or disorderly person
278	Stealing stock, etc.
279	Stealing from the person, in a dwelling-house, in transit, etc.
296 (2)	Robbery with violence
304 (2)	Burglary
306	Breaking into building and committing felony

2. There shall be inserted in the First Schedule to the Code in their proper numerical places the following new items relating to the Penal Code—

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (N.B.—Under section 26 (2) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 36 of the Penal Code.)	5 Court (in addition to the High Court) by which offence is triable
43 A 44	Treachery Promoting warlike undertakings.	May arrest without warrant May arrest without warrant	Imprisonment for life Imprisonment for life	
57 (1)	Sedition	May arrest without warrant	Imprisonment for ten years	Subordinate court of the first or second class
(2)	Possessing seditious publication	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first or second class
(10)	Using or attempting to use printing machine which has been confiscated.	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first or second class
(11)	Printing or publishing newspaper in contravention of order.	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first or second class
69	Piracy	May arrest without warrant	Imprisonment for life	
112	Contradictory statements	Shall not arrest without warrant.	Imprisonment for two years	Subordinate court of the first or second class
140	Rape	May arrest without warrant	Imprisonment for life with or without corporal punishment	Subordinate court of the first class
141	Attempted rape	May arrest without warrant	Imprisonment for life with or without corporal punishment	Subordinate court of the first class
144 (1)	Indecent assault on female	May arrest without warrant	Imprisonment for five years with or without corporal punishment	Subordinate court of the first class

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145 (1)	Defilement of girl under 14	May arrest without warrant	Imprisonment for 14 years with corporal punishment	Subordinate court of the first class
145 (2)	Attempted defilement of girl under 14	May arrest without warrant	Imprisonment for five years with or without corporal punishment	Subordinate court of the first class
182	Being an idle or disorderly person	May arrest without warrant	Imprisonment for one month or a fine of 100 shillings or both, and for each subsequent offence imprisonment for one year	Any Magistrate
278	Stealing stock	May arrest without warrant	Imprisonment for 14 years with corporal punishment	Subordinate court of the first or second class
278 A	Stealing motor vehicle	May arrest without warrant	Imprisonment for seven years with corporal punishment	Subordinate court of the first or second class
279	Stealing from the person, in a dwelling-house, in transit, etc.	May arrest without warrant	Imprisonment for 14 years with corporal punishment	Subordinate court of the first or second class
296 (2)	Robbery with violence	May arrest without warrant	Imprisonment for life with corporal punishment	Subordinate court of the first class
304 (2)	Burglary	May arrest without warrant	Imprisonment for ten years with corporal punishment	Subordinate court of the first or second class
306	Breaking into building and committing felony	May arrest without warrant	Imprisonment for seven years with corporal punishment	Subordinate court of the first or second class