

0/211  
149/273

PARLIAMENT  
OF KENYA  
LIBRARY



PARLIAMENT  
OF KENYA  
LIBRARY

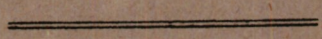
COLONY AND PROTECTORATE OF KENYA

PARLIAMENT  
OF KENYA  
LIBRARY

# REPORT

OF

SELECT COMMITTEE OF LEGISLATIVE  
COUNCIL APPOINTED TO CONSIDER AND  
REPORT ON THE PROVISIONS OF A  
BILL TO MAKE PROVISIONS FOR THE  
PROCEDURE TO BE FOLLOWED IN  
CRIMINAL CASES.



NAIROBI:


PRINTED BY THE GOVERNMENT PRINTER,  
1930.

25.37  
CPK

F. G. 316  
K/CR1

Report of Select Committee of Legislative Council  
appointed to Consider and Report on the Provisions  
of a Bill to make Provisions for the Procedure to be  
followed in Criminal Cases.

---

KENYA NATIONAL ASSEMBLY  
Session: 10013776  
No. 328-37 CP 10  


Report of the Select Committee of Legislative Council  
appointed to Consider and Report on the Provisions  
of a Bill to make Provisions for the Procedure to be  
followed in Criminal Cases.

YOUR EXCELLENCY,

We, the members of the above Committee, recommend that the Criminal Procedure Code be amended in the following respects :—

1. That Clause 2 be amended by deleting the definition of “ European ” and substituting therefor the following :—

“ ‘ European ’ means a person of European origin or descent and includes an American who is not of origin or descent other than European ” ;

by deleting the definition of “ Proclaimed person ” and “ Proclaimed offender ”, and by substituting the figures “ 83 ” for the figures “ 82 ” in the definition of “ Public prosecutor.”
2. That Clause 14 be amended by inserting the words “ if satisfied that the necessity exists ” after the word “ Council ” in the first line of the clause.
3. That Clauses 10 and 15 be amended by substituting the figures “ 36 ”, “ 37 ” and “ 38 ” for the figures “ 35 ”, “ 36 ” and “ 37 ” where they occur in the clauses.
4. That Clause 21 be amended by inserting the words “ or otherwise effect entry into such house or place ” after the word “ person ” where it occurs for the second time in the ninth line of sub-section (2).
5. That Clause 22 be amended by substituting the word “ out ” for the words “ open any outer or inner door or window ” in the second line of the clause.

(Note.—The marginal note requires corresponding amendment.)
6. That Clause 27 be amended—
  - (a) by deleting paragraph (d) and by substituting therefor the following :—

“ (d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing ” ;
  - (b) by adding the words “ or Air Force ” at the end of paragraph (e) ;
  - (c) by deleting the words “ lying or loitering ” in paragraph (f) ; and
  - (d) by substituting the figures “ 330 ” for the figures “ 337 ” in paragraph (i).
7. That Clause 29 be amended by substituting the words “ such officer’s ” for the word “ his ” in the third line of the clause.
8. That Clause 32 be amended by deleting all the words in sub-clause (1) after the word “ felony ” in the third line of the sub-clause.

9. That Clause 34 be amended by substituting the word "warrant" for the word "warrant" in the second line of the clause.
10. That Clause 35 be amended by substituting the word "not" for the word "otherwise" at the end of the clause.
11. That under the heading "Escape and Retaking" after Clause 39 there be inserted the following clause :—
  - " 40. Every person is bound to assist a magistrate or police officer reasonably demanding his aid—
    - (a) in the taking or preventing the escape of any other person whom such magistrate or police officer is authorised to arrest ;
    - (b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property."
12. That Clauses 40 to 110 be renumbered 41 to 111.
13. That Clause 40 be amended by inserting the words "on oath" after the word "informed" in the second line, and by deleting the words "to fix" in the last line of sub-clause (1).
14. That Clause 41 be deleted, and the following clause substituted therefor :—
  - " 42. Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit."
15. That Clause 42 be amended by substituting the words "is informed on oath" for the words "receives information" in the second line, and by deleting the words "to fix" at the end of the clause.
16. That Clause 44 be amended by substituting the figures "41," "42" and "43" for the figures "40," "41" and "42."
17. That Clause 47 be amended by substituting the figures "45" for the figures "44" in the third line of the clause.
 

(Note.—The marginal note requires corresponding amendment.)
18. That Clause 49 be amended by substituting the figures "45," "46" and "47" for the figures "44," "45" and "46," and by substituting the words "comes within the provisions of section 43" for the words "is an habitual offender" in the second line of sub-clause (3).
19. That Clause 50 be amended by substituting the figures "45" for the figures "44" in proviso (a).
20. That Clause 51 be amended by substituting the figures "50" for the figures "49" in the first line of the clause.
21. That Clause 52 be amended by substituting the figures "45" and "51" for the figures "44" and "50" in the second line of the clause.

22. That Clause 58 be amended by substituting the figures " 54," " 55," " 56," " 57 " and " 51 " for the figures " 53," " 54," " 55," " 56 " and " 50 " in sub-clause (3).
23. That Clause 66 be amended by substituting the figures " 82 " for the figures " 81 " in the fourth line of the clause.
24. That Clause 68 be amended by substituting the figures " 67," " 77 " and " 79 " for the figures " 66," " 76 " and " 78 " in the first and second lines of the clause.
25. That Clause 88 be amended by substituting the word " with " for the word " for " in the last line but one of the clause.
26. That Clause 92 be amended by substituting the figures " 90 " for the figures " 89 " in the sixth line of the clause.
27. That Clause 93 be amended by inserting after the word " Colony " in the fifth line of the clause the words " at the registered office of such company or body corporate ".
28. That Clause 97 be amended by adding at the end of the clause the words " But no such warrant shall be issued unless a complaint or charge has been made upon oath."
29. That Clause 98 be amended by substituting the figures " 97 " for the figures " 96 " in the third line of the clause.
30. That Clause 102 be amended by deleting the words " proclaimed offender " in sub-clause (1) and by substituting the figures " 101 " for the figures " 100 " at the end of sub-clause (3).
31. That Clause 105 be amended by substituting the figures " 101 " for the figures " 100 " in the second line of the clause.
32. That Clause 109 be amended by substituting the figures " 101 " for the figures " 100 " wherever these figures occur in the clause.
33. That Clauses 111, 112 and 113 be deleted.
34. That Clauses 114 to 149 be renumbered 112 to 147.
35. That Clause 119 be amended by substituting the words " sunrise and sunset " for the words " sunset and sunrise ".
36. That Clause 121 be amended by substituting the word " or " for the word " and " in the third line of sub-clause (3).
37. That Clause 122 be amended by substituting the figures " 100," " 102," " 104," " 107," " 108," " 109 " and " 116 " for the figures " 99," " 101," " 103," " 106," " 107," " 108 " and " 118."
38. That Clause 123 be amended by inserting at the beginning of sub-clause (3) the words " Notwithstanding anything contained in sub-section (1) of this section ".
39. That Clause 125 be amended by substituting the figures " 121 " for the figures " 123 " in sub-clause (2).
40. That Clause 136 be amended by substituting the figures " 132 " for the figures " 134 " in the last line of the clause.

## 41. That Clause 139 be amended—

- (a) by deleting the words “ or acquittal ” in the second line of sub-clause (1) and in the third line of sub-clause (1) (a) ;
- (b) by deleting the words “ in case of a conviction, either ” at the beginning of sub-clause (1) (b) ;
- (c) by deleting the words “ or acquitted ” in the last line of sub-clause (1) and in the fifth line of sub-clause (2) ; and
- (d) by adding the following sub-clause as sub-clause (3) :—

“ (3) A previous conviction in any place outside the Colony may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order, and the finger prints, or photographs of the finger prints of the person so convicted, together with evidence that the finger prints of the person so convicted are those of the accused person.

Such a certificate as aforesaid shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.”

(Note.—The marginal note should read “ Previous conviction how proved.”)

## 42. That Clause 150 be deleted.

## 43. That Clause 151 be renumbered 148, and be amended by substituting the words “ under any law in force for the time being ” for the words “ under the common law of England ” in paragraph (a).

## 44. That Clause 152 be deleted.

## 45. That Clauses 153 to 182 be renumbered 149 to 178.

## 46. That Clause 156 be amended by substituting the figures “ 149 ” and “ 151 ” for the figures “ 153 ” and “ 155 ” in sub-clause (1).

## 47. That Clause 157 be amended by substituting the figures “ 151 ” and “ 153 ” for the figures “ 153 ” and “ 155.”

## 48. That Clause 158 be amended by substituting the word “ hereinbefore ” for the word “ hereinafter ” in proviso (3), and by substituting the figures “ 218 ” for the figures “ 222 ” in proviso (8).

## 49. That Clause 160 be amended by adding at the end thereof the following :—

“ Provided that the Attorney General or Solicitor General, when appearing personally as advocate for the prosecution, shall in all cases have the right of reply.”

## 50. That Clause 165 be amended by substituting the words “ medical officer in charge ” for the word “ superintendent ” in the second line of the clause, and the words “ medical officer ” for the word “ superintendent ” in the sixth line of the clause.

(Note.—The marginal note should read “ Certificate of medical officer of asylum, etc.”)

## 51. That Clause 167 be amended by substituting the figures “ 367 ” for the figures “ 373 ” in sub-clause (4).

52. That Clause 170 be amended by substituting the figures " 168 " for the figures " 172 " in sub-clause (3).
53. That the following clause be inserted after Clause 182 :—
- " 179. When a person is charged with any offence under sections 257, 258 or 259 of the Penal Code it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates."
54. That Clauses 183 to 187 be renumbered 180 to 184.
55. That Clause 183 be amended by substituting the figures " 131 " for the figures " 114," where the latter figures occur twice in the clause.
56. That Clause 187 be amended by substituting the figures " 187 " for the figures " 191 " in the second line of the clause.
57. That Clause 188 be deleted.
58. That Clauses 189 to 219 be renumbered 185 to 215.
59. That Clause 189 be amended by substituting the words " in a language understood by him " for the words " in the language of the Court " and by adding as sub-clause (4) the following :—
- " (4) The language of the Supreme Court shall be English, and the language of a subordinate court, other than a subordinate native court, shall be English or Swahili."
60. That Clause 191 be amended by substituting the figures " 228 " for the figures " 208 " in sub-clause (2) (c).
61. That Clause 192 be amended by adding at the end of proviso (a) the words " and shall be informed of such right by the second magistrate when he commences his proceedings " ; and by substituting the word " had " for the word " held " in the fourth line of proviso (b).
62. That Clause 195 be amended by substituting the figures " 97 " for the figures " 96 " in the fifth line of the clause.
63. That Clause 197 be amended by substituting the word " fifteen " for the word " eight " in the second line of the proviso.
64. That Clause 204 be amended by deleting the second paragraph.
65. That Clause 207 be amended by substituting the word " twelve " for the word " six " in the fifth line of the clause.
66. That Clause 208 be amended by substituting the figures " 77 " for the figures " 76 " in the last line of sub-clause (2).
67. That Clause 210 be amended by substituting the figures " 187 " for the figures " 191 " in paragraph (e).
68. That Clause 213 be amended by adding at the end thereof the following :—
- " On trials for murder or treason the number of the jury shall be twelve ; on trials for other offences the number of the jury shall be nine."



69. That the following clause be inserted after Clause 219 :—
- “ 216. (1) At any preliminary inquiry under this Part any document purporting to be a report under the hand of a medical officer or a Government analyst upon any examination or analysis carried out by him shall, if it bears his signature, be admitted in evidence.
- (2) The magistrate may presume that the signature to any such document is genuine and that the person signing it held the office which he professed to hold at the time when he signed it.”
70. That Clauses 220 to 225 be renumbered 217 to 222.
71. That Clause 221 be amended by substituting the word “ fifteen ” for the word “ eight ” in the fifth line of the clause.
72. That Clause 222 be amended by substituting the figures “ 221 ” for the figures “ 224 ” in the fourth line of the clause.
73. That Clauses 226 and 227 be deleted.
74. That Clauses 228 to 251 be renumbered 223 to 246.
75. That Clause 237 be amended by substituting the word “ complainant ” for the word “ complanant ” in the third line of the clause.
76. That Clause 239 be deleted and the following clause substituted therefor :—
- “ 234. If, after receipt of the authenticated copy of the depositions and statement as aforesaid and before the trial before the Supreme Court, the Attorney General shall be of opinion that there is in any case committed for trial any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Attorney General—
- (a) may require the subordinate court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided ; or
- (b) may call such witness or witnesses before the Supreme Court notwithstanding that such witness or witnesses did not give evidence before the court which committed the accused ; provided that in such case he shall give to the Registrar of the Supreme Court and to the accused person notice of his intention to call such witness or witnesses together with a copy of the evidence which each such witness will give.”
77. That Clause 246 be amended by substituting the figures “ 236 ” and “ 81 ” for the figures “ 241 ” and “ 80.”
78. That Clause 251 be deleted and the following clause substituted therefor :—
- “ 246. Subject to the provisions of Part VII, all trials before the Supreme Court shall be with the aid of assessors.”
79. That Clauses 252 and 253 be deleted.
80. That Clauses 254 to 294 be renumbered 247 to 287.
81. That Clause 257 be amended by deleting paragraph (b) and substituting therefor the following :—
- “ (b) Members of the Legislative Council ” ;
- and by adding as (g) “ Members of the Police Force ” ; and by lettering (g), (h) and (i) as (h), (i) and (j).

82. That Clause 259 be amended by substituting the figures " 250 " for the figures " 257 " in the eighth line of the clause.
83. That Clause 263 be amended by substituting the figures " 252 " for the figures " 259 " in the last line of sub-clause (1).
84. That Clause 273 be amended by substituting the figures " 264 " for the figures " 271 " in the third line of the clause.
85. That Clause 294 be amended by inserting the words " absent from the Colony or " after the word " be " in the fifth line of condition (a), and by substituting the figures " 227 " for the figures " 232 " in the fourth line of that condition.
86. That Clause 295 be deleted.
87. That Clauses 296 to 300 be renumbered 288 to 292.
88. That Clause 297 be amended by deleting all the words between the word " offence " in the fourth line of sub-clause (4) and the words " the court " in the eighth line of sub-clause (4).
89. That the following clause be inserted under the heading " Case for the Defence " after Clause 300 :—
- " 293. If the accused person says that he does not mean to give or adduce evidence and the court considers that there is evidence that he committed the offence, the advocate for the prosecution shall then sum up the case against the accused person and the court shall then call on the accused person personally or by his advocate to address the court on his own behalf."
90. That Clauses 301 to 352 be renumbered 294 to 345.
91. That Clause 322 be amended by inserting after the word " burial " in the seventh line of sub-clause (3) the words " or cremation "; and by adding at the end of sub-clause (3) the following proviso :—
- " Provided that the Governor's order may direct that the execution shall take place at such time and at such place, and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the order."
92. That Clause 335 be amended by substituting the figures " 326 " for the figures " 333 " in the second line of the clause.
93. That Clause 340 be amended by adding at the end of sub-clause (1) the words " and shall be so informed by the magistrate at the time when sentence is passed."
94. That Clause 345 be amended by substituting the figures " 336 " for the figures " 343 " in the second line of the clause.
95. That Clause 347 be amended by deleting the word " not " in the first line of sub-clause (2) and adding at the end of that sub-clause the words " unless his appeal is being conducted by an advocate."
96. That Clause 351 be amended by deleting the words " the appeal shall be dismissed " at the end of the clause and substituting therefor the words " the appeal shall be reheard before three judges."
97. That the following clause be inserted after Clause 352 :—
- " 346. Any person aggrieved by a decision of the Supreme Court in its appellate jurisdiction under this Part may appeal to the Court of Appeal for Eastern Africa on a matter of law (not including severity of sentence) but not on a matter of fact.

Every such appeal shall be entered within thirty days of the date of the order appeal against and the provisions of sections 336 to 345 inclusive shall apply *mutatis mutandis* to appeals from the Supreme Court to the Court of Appeal for Eastern Africa."

98. That Clauses 353 to 384 be renumbered 347 to 378.
99. That Clause 355 be amended—
  - (a) by deleting paragraph (a);
  - (b) by renumbering paragraph (b) as (a) and by substituting therein the figures 340, 342 and 343 for the figures 347, 349 and 350; and
  - (c) by renumbering paragraph (c) as (b) and inserting therein after the word "order" in the first line of the paragraph the words "other than an order of acquittal".
100. That Clause 366 be amended by substituting the figures "333" for the figures "340."
101. That Clause 368 be amended by substituting the words "the case stated shall be reheard before three judges" for the words "the decision of the subordinate court shall be affirmed."
102. That Clause 369 be amended by substituting the figures "353," "354" and "356" for the figures "359," "360" and "362."
103. That Clause 373 be amended by substituting the figures "252" for the figures "259."
104. That Clause 380 be amended by inserting the words "justice of the peace or" before the word "commissioner" in the last line of the clause.
105. That the First Schedule be amended in the following respects :—
  - (a) that the numbers in the first column be altered where necessary to correspond with the numbers of the sections of the Penal Code as finally approved by Legislative Council;
  - (b) that the entry in the third column of the Schedule relating to section 80, "Personating public officers," be deleted, and the words "may arrest without warrant" be substituted;
  - (c) that the entry in the third column relating to section 207, "Causing danger or obstruction in public way or line of navigation" be deleted, and the words "shall not arrest without warrant" be substituted;
  - (d) that the fourth column be amended by substituting the figures "34" for the figures "33" in the note at the top of each page of the Schedule.
  - (e) that the fourth column be further amended by substituting the word "seven" for the word "three" opposite section 72; the word "seven" for the word "fourteen" opposite section 273 (1); the words "two years" for the words "three months" opposite section 274; the words "fourteen years" for the word "life" opposite section 285; the word "seven" for the word "fourteen" opposite section 286; and the word "seven" for the word "ten" opposite sections 294 and 301;
  - (f) that the entry relating to section 287 be deleted and the following substituted therefor :—

1.	2.	3.	4.	5.
287.	Killing or wounding animals.	May arrest without warrant.	Imprisonment for two years.	Any magistrate.

(g) that the entry relating to section 46, "Seditious conspiracy and libel," be deleted;

(h) that the following new matter be inserted in the Schedule, in each case in its appropriate numerical position:—

1.	2.	3.	4.	5.
47.	Seditious conspiracy, libel and publication.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
47.	Seditious conspiracy, libel and publication (after previous conviction).	Do.	Imprisonment for seven years.	Subordinate court of the first class.
48.	Possessing seditious publications.	Do.	Imprisonment for one year.	Subordinate court of the first or second class.
60.	Publishing false reports.	Shall not arrest without warrant.	Imprisonment for two years.	Do.
65.	Managing unlawful society.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
66.	Being member of unlawful society.	Do.	Imprisonment for three years.	Subordinate court of the first or second class.
108.	Contempt of court.	Do.	Imprisonment for three months.	Any magistrate.
270.	Unlawfully using vehicle, animal, etc.	Do.	Imprisonment for six months and/or fine of fifty pounds.	Subordinate court of the first or second class.
357.	Corrupt practices.	Shall not arrest without warrant.	Imprisonment for two years and/or fine of three hundred pounds.	Do.
358.	Secret commission on Government contracts.	Shall not arrest without warrant.	Imprisonment for seven years and/or fine of five hundred pounds.	Subordinate court of the first class.
364.	Soliciting or inciting others to commit offence in Colony or elsewhere.	May arrest without warrant if arrest for offence solicited or incited may be made without warrant, but not otherwise.	Same punishment as for the offence solicited or incited.	Any court by which offence solicited or incited would be triable.

(i) that the portion of the Schedule relating to offences under Chapter XXXVI be deleted, and the following substituted therefor :—

1.	2.	3.	4.	5.
337.	Counterfeiting coin.	May arrest without warrant.	Imprisonment for life.	
338.	Making preparations for coining.	Do.	Do.	
339.	Clipping coin.	Do.	Imprisonment for seven years.	Subordinate court of the first class.
340.	Being in possession of clippings.	Do.	Do.	Do.
341.	Uttering counterfeit coin.	Do.	Imprisonment for two years.	Do.
342.	Repeated uttering of counterfeit coin.	Do.	Imprisonment for three years.	Do.
343.	Uttering piece of metal as coin.	Do.	Imprisonment for one year.	Do.
344.	Exporting counterfeit coin.	Do.	Imprisonment for two years.	Do.

106. That the Second Schedule be amended by altering the numbers in each statement of offence throughout the Schedule to correspond with the numbers of the appropriate sections of the Penal Code as finally approved by Legislative Council.

107. That the Third Schedule be amended by substituting the figures " 354 " for the figures " 360 " in the first and sixth lines of the Schedule.

[Major E. S. Grogan did not attend any meetings of the Committee and has not signed this report.]

We have the honour to be,  
Your Excellency's most obedient servants,

A. D. A. MACGREGOR,  
*Chairman.*

T. D. H. BRUCE,  
H. E. SCHWARTZE,  
E. V. KENEALY

(Subject to certain reservations  
to be mentioned in Legislative  
Council).

A. H. MALIK.

