

THE UNITED REPUBLIC OF TANZANIA



No. 9 OF 2002

I ASSENT

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President

An Act to amend certain Written Laws

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ENACTED by the Parliament of the United Republic of Tanzania.

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| 1. This Act may be cited as the Written Laws (Miscellaneous Amendments)(No.2) Act, 2002. | Short
title |
| 2. The Written Laws set out in the first and second columns of the Schedule to this Act are hereby amended in manner specified opposite to those laws in the third column of that Schedule. | Amend-
ment of
certain
written
laws |

SCHEDULE

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
Act No.9 of 1995	The Drugs and Prevention of Illicit Traffic in Drugs Act 1995	The principal Act is amended- (a) by repealing the whole of section 26 and replacing it with the following: Burden of proof 26.-(1) In any prosecution for an offence of possessing, dealing in, trafficking, selling, cultivating, purchasing, using or financing of any narcotic or psychotropic substance, the burden to prove that the narcotic or psychotropic substance, was possessed, dealt in, trafficked, sold, cultivated, purchased, used or financed pursuant to and in accordance with the terms of a licence, permit or authority granted under this Act; Regulations, Rules or Orders made thereunder, shall lie on the person charged. (2) Notwithstanding the provisions of sub-section (1), it shall be a defence for any person charged for an offence involving possession of narcotic or psychotropic substance if he proves to the satisfaction of the court that his possession of such narcotic or psychotropic substance was, considering all the circumstances of the case not conscionable. (b) by repealing section 27 and substituting for it the following Unbailable offences 27.-(1) A police officer in charge of a police station, or a court before which an accused is brought or appears shall not admit that person to bail if. (a) that person is accused of an offence involving trafficking in drugs, narcotic or psychotropic substances but does not include a person charged for an offence of being in possession of drugs which taking into account all circumstances in which the offence was committed, was not meant for conveyance or commercial purpose;

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(b) that person is accused of an offence involving heroin, cocaine, prepared opium poppy (Papaver setigerum) POPPY straw, coca plant, coca leaves, cannabis sativa or cannabis resin (Indian hemp), methaqualone (mandrax) catha edulis (khat) or any other narcotic drug or psychotropic substance specified in the Schedule to this Act which has an established value certified by the Commissioner for the National Coordination of Drug Control Commission exceeding ten million shillings. (2) The conditions on granting bail specified in section 148 of the Criminal Procedure Act 1985 shall apply <i>mutati Mutandis</i> to all available offences under this Act
	(b) in the Schedule to the Act -	
	W	by adding the words "catha edulis (khat) in the appropriate alphabetical order in the list of narcotic drugs;
	(ii)	by adding the word "(MANDRAX", immediately after the word "METHAQUALONE" which appears in the list of PSYCHOTROPIC substances;

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
Act No.9 of 1985	The Criminal Procedure Act 1985	The principal Act is hereby amended - (a) in section 9 subsection (3), by deleting the words "under subsection (3) of section 10 by the person against whom or in respect of whom the accused is alleged to have committed an offence", and substituting for them the words "by him under subsection (3) of section 10"; (b) in section 10 - (i) by deleting the words "and the person shall attend as so required" appearing in the fifth and sixth lines of subsection (2), and substituting for them the words "or who is in possession of a document or any other thing relevant to investigation of the case to attend or to produce such document or any other thing, and that person shall attend and produce a certified copy of the document or any other thing as so required: Provided that where a police officer receives any certified copy of a document or any other thing he shall issue to the person from whom he received such document or that thing a receipt thereof," (ii) by adding immediately after subsection (2) the following new subsection - "(2A) Any person summoned to attend or to produce a document or any other thing relevant to investigation of the case under subsection (2), who refuses or willful neglects so to do or who

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		being a witness at such investigation refuses to answer any question put to him or to produce any document or any other thing relevant to investigation commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.";
	(c) in section 1 48, by adding immediately after paragraph (a) (ii) the following new subparagraph -	
	"(iii)	an offence involving heroin, cocaine, prepared opium, opium poppy (papaversetigerum), poppystraw, coca-plant, coca leaves, cannabis sativa or cannabis resin (Indian hemp), methaqualone (mandamx), catha edulis (khat) or any other narcotic drug or psychotropic substance specified in the Schedule to this Act which has an established value certified by the Commissioner for National Coordination of Drugs Control Commission, as exceeding ten million shillings."
	(d) in section]70by-	
	(a) by adding immediately after subsection (5) the following new subsection -	
		"(6) The police officer incharge of a police station may, where he is satisfied that any person has committed an offence of which the penalty does not exceed

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		two hundred thousand shillings by order under his hand compound such offence by requiring such person to make payment of a sum of money, Provided that - (a) such sum of money shall behalf the maximum fine provided for such offence, (b) the power conferred by this subsection shall only be exercised where the person admits in writing that he has committed the offence; (c) the police officer shall issue to the person from whom he received such sum of money a receipt thereof " (e) in section 214 - (i) by deleting the words "subject to subsection (2)" appearing in subsection (1), and substituting for them the words "if he considers it necessary"; (ii) by deleting subsection (2) and substituting for it the following: "(2) Whenever the provisions of subsection (1) applies 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.";

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(f) in section 21 6 -
		(i) by deleting the words "in safe custody in such place and manner as it may think fit and transmit the court record ora certified copy thereof to the Minister"which appear in subsection (6), and substituting for them the words "as a criminal lunatic in a mental hospital or othersuitable place of custody until released orother- wise dealt with in the manner provided for in sections 21 7 or 21 8. ";
		(ii) by deleting subsection (7);
		(iii) by renumbering subsection "(8)" as subsection "(7)";
		(9) in section 21 7 -
		(i) by deleting the words "the Director of Public Prosecu- tions a certificate to that effect stating therein also whether the accused would, but for the charge against hirri, be fit for unconditional discharge from detention" which appear in subsection (I), and substituting for them the words "the respective court a certificate start- ing therein also whether the accused would, but for the charge against him, be fit to stand trial, and a certi- fied copy of such certificate to the Director of Public Prosecutions";

(ii) by deleting subsections (2) and (3) and substituting

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		for them with the following: "(2) Where the Director of Public Prosecutions intends to continue proceedings against the accused, he may within fourteen days from the date of receiving a certified copy of certificate issued under subsection (i), inform the court which issued the warrant under section 216 or 281 that he wishes to continue proceedings against the accused. "(3) Where the court receives a certificate provided for in subsection (1), or where the court is informed by the Director of Public Prosecutions that the Republic intends to continue proceedings against the accused, it shall order removal of the person from the place where he is detained and shall cause him to be brought before it in the manner provided by section 218." (h) in section 219- (i) by deleting the figure "(1)" which appears in the opening words of subsection (3), and substituting for it the figure "(2)"; (ii) by deleting the words "submit the record of the proceedings or a certified copy of it to the Minister and shall meanwhile order the person to be kept in custody as a criminal lunatic;" appearing in subsection 3(a), and substituting for them the words "order the person to be kept in a mental hospital, prison or other suitable place of custody as a criminal lunatic;"
	(iii) by deleting subsection (4);	

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SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(iv) by deleting subsection (5) and substituting for it the following -
		"(5) The superintendent of a mental hospital, prison or other place in which any criminal lunatic is detained by an order of the court under subsection (3)(a), shall make a report in writing to the Minister of the condition, history and circumstances of any such lunatic at the expiration of a period of three years from the period of the court's order and thereafter at the expiration of a period of two years from the date of the last report.1;
		(v) by renumbering subsections (5), (6), (7) and (8) as (4), (5), (6) and (7);
		(vi) by deleting the words "subsections (4) and (5)" which appear in subsection (6) as renumbered, and substituting for them the words "subsection (4)";
		(vii) by deleting the word "Minister" which appears in subsection (7) as renumbered and substituting for it the word "court";
		(i) by adding immediately after section 224 the following new section -
		224A. Every trial under this Part shall abate on the death of the accused person"

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
	"Abate- ment of trial in subordi- nate courts	224A. Every trial under this Part shall abate on the death of the accused per- son.";
	(J) by adding in-u-nediately after section 284 the following new sec- tion -	
	"Abate- mentof trial before the High Court	284A- Every trial before the High Court shall abate on the death of the ac- cused person.";
	(k) by inserting the following new section immediately after see- tion 339 -	
	" Release of offenderon community service	339A-(1) Incaseinwhichaper- son is convicted before any court of any offence not punishable with death, either on its own motion, or application by the offender or any other competent author- ity, it appears to the court before,which he is convicted that, having regard to the Youth, character, antecedents, or health condition of the offender, or to the trivial nature of the offender, or to any extenu- ating circumstances under which the of- fence was committed, it is expedient to

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(m) in section 362, by inserting the word "proceedings" immediately before the word "judgment" which appears in the last line of subsection (I);
		(n) by inserting immediately after section 370 the following new section-
	"Withdrawal of appeal	371.-(I) An appeal may be withdrawn at any time before hearing by a written notice to the Registrar signed by the appellant or his advocate, and upon that notice being given the appeal shall be marked withdrawn. (2) When any appeal is withdrawn, the Registrar shall forthwith notify the respondent and the subordinate court in which that case originated. (3) An appeal which has been withdrawn may be restored by leave of the Court on the application of the appellant if the court is satisfied that";
		(o) by renumbering section 371 as section 371 A,
		(p) in section 379, by inserting the word "proceedings," immediately before the word "judgment" which appears in paragraph b(i);
Act No.34 of 1967	The Prisons Act 1967	(q) in sections 380 and 381 by inserting the word "proceedings" immediately before the word "judgment";

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
Act No.17 of 1992	The National Bank of Commerce (Reorganization and Vesting of Assets and Liabilities Act 1997)	(r) by inserting immediately after section 385 the following new section -
		"Withdrawal of appeal by Director of Public Prosecutions 386.-(1) The Director of Public Prosecutions may at any time before hearing withdraw an appeal by a written notice to the Registrar, and upon that notice being given the appeal shall be marked withdrawn. (2) When an appeal is withdrawn, the Registrar shall forthwith notify the respondent and the subordinate court in which that case originated. (3) An appeal withdrawn under subsection (2), may be restored by leave of the court on the application by the Director of Public Prosecutions if the court is satisfied there are sufficient reasons that the appeal be heard."
		(s) by renumbering section 386 as section 386A, The principal Act is amended by - inserting the words „a period of up to" between the words "within" and "six" appearing in 4th line Of subsection (1) of section 5.

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
Cap. 16	The Penal Code	The Penal Code is hereby amended - (a) in section 26, by adding new subsection (4) and (5) immediately after subsection (3) as follows: "(4). The superintendent of a prison or other place in which a person under the age of eighteen years is detained by a direction of the Minister under subsection (2), shall make a report in writing to the Minister of the condition, history and character of such person at the expiration of a period of ten years from the period of the Ministers direction. (5) Upon receipt and consideration of the report under subsection (4), the Minister may order that a person under the age of eighteen years be discharged or otherwise dealt with on such conditions as to his remaining under the supervision in any place or by any person and to such other conditions for ensuring the safety and welfare of the said person and the public as the Minister shall think fit."; (b) in section 27 subsection (3) - (i) by substituting "comma" for a full stop which appears immediately after the word "imprisonment";

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(ii) by adding immediately after the word "imprisonment" the following words -
		"where the court so determines under the Community Service Act, 2002, to community service under a community service order.";
		(c) in section] 40, by deleting the marginal notes and substituting for it the following:
		"Procuring rape";
		(d) by adding immediately after section 160 the following new section-
	"Punishment for sexual offences	160A. Where any person is convicted of any sexual offence specified under Chapter XV of this Code, as amended by Sexual Offences Special Provisions Act, 1 998, the court shall sentence such person to imprisonment for a term prescribed under the Chapter.";
		(e) by adding immediately after section 222 the following new section
	"Possession of human being parts	222A. Any person who is found in unlawful possession of human being parts commits an offence and shall upon conviction be liable to imprisonment for a period not exceeding thirty years";

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(i) by deleting the words "not exceeding shillings one million, shall notwithstanding any written law to the contrary, be guilty of an offence and be liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or to both such fine and imprisonment" appearing in subsection (I), and substituting for them the words "of not less than ten million shillings, shall notwithstanding any written law to the contrary, be guilty of an offence and be liable on conviction to a fine of not less than five million shillings or imprisonment for a term of not less than three years or to both,"; (ii) by deleting the definition of the term "specified authority" which appears in subsection (2), and substituting for it with the following- "specified authority" means - (a) the Government or any Department of the Government in the United Republic; (b) a local government authority, (c) an executive agency established under the Executive Agencies Act, 1997; (d) the East African Community, (e) a parastatal organization;

SCHEDULE - *(Contd.)*

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(f) any company registered under the Companies Ordinance in which a specified authority, owns any percentage of the issued share capital or has guaranteed to pay any sum in the event of that company being wound up, (g) a village registered under any written law for the time being relating to the registration of villages; (h) a Cooperative society registered under any written law for the time being relating to cooperatives.,,; The principal Act is hereby amended by inserting a new section 51 A immediately after section 51 as follows: "Eligibility for release on community service 51A.-(I) Where an Officer in Charge of a Prison is satisfied that a prisoner under his custody is eligible for release on community service under the Community Service Act. 2002, he shall advise the prisoner of the eligibility and if the prisoner consents to the certification being made for his release on community service, he shall certify the matter to the court of competent jurisdiction for arrangement to be made for the release of the prisoner on community service. (2) The court to which the matter has
Act No. 34 of 1967	The Prisons Act 1967	

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		been certified under subsection (I) Of this section, shall cause an inquiry to be carried out in accordance with the provisions of section 3 of the Community Service Act~ 2002, and if satisfied that c0l"Inunity service order should be niade, it shall proceed to make the order and issue a release warrant in accordance with the provisions of this Act" ;
Act No.25 of 1994	The Parole Boards Act 1994	The principal Act is hereby amended by inserting immediately after the word" commuted" appealing in Paragraph (c) of section 4 the following word, - "or subjected to community service order under the Community Service Act 2002" -
Act No. 1 7 of 1 992	The Open university Act, 1 992	The principal Act is amended- (a) in section 7 - (i) byadding immediately after subsection (2) the to]- lowing new subsection - "(3) Whenever the Chancellor is abserit from the,United Republic or is forany other reason unable to Perforin the functions of his office, the president or any Person authorized by him in that behalf, may appoint a Pelson to perform the functions of the office of the Chancellor during such absence or inability,-; (ii) by renumbering subsection (3) as subsection (4);

SCHEDULE - (Co,jtd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(b) in section 45, by deleting the proviso which appears immediately after Paragraph (d) Of subsection (I);
		The principal Act is amended -
Act No. 56 of 1963	The Explosive Act 1963	(a) by inserting the words "components improvised for explosives-, between the words "lead" and "and" appearing in Paragraph (a) of the definition of the word "explosives";
		(b) in section 3 by -
		(i) inserting the words "sell, convey, deal or traffic in" between the words "Of ,and "any" appearing in subsection (I);
		(ii) deleting the words "not exceeding five thousand shillings or to imprisonment for a term not exceeding two Years" appearing in subsection (2), and substituting for them the words "of not less than five million shillings or to imprisonment for a terin of not less than three years but not exceeding seven years.
		(c) in section 7, by deleting the words "not exceeding five thousand shillings or to imprisonment fora term not exceeding two years" appearing in subsection (2), and substituting for them the words "of not less than five million shillings or to imprisonment for a term not less than three years but not exceeding seven years"
		(d) in section 8 -

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(i) by deleting "a fulstop', appearing at the end of subsection (I) and substituting for it with "a colon"; (ii) by adding a proviso immediately after subsection 0) as follows: Provided that the Ministershall notgrant a licence under this section, unless he has first consulted the Minister responsible for Home Affairs.,%
	(e) in section 9 -	(i) by substituting "a colon" for "a fulstop,, which appears at the end of subsection (I); (ii) by adding Proviso immediately after the end of subsection (I) as follows: "Provided that the Commissioner shall not grant a Pen-nit under this section unless he has first consulted the Director of Criminal Investigations.-,;
	(f) in section 13 by deleting the word, "not exceeding five thousandshillings or to imprisonment for a term not exceeding two years" and substituting for them the words "of not less than five million shillings or to imprisonment for a term of not less than three years but not exceeding seven yea,"	
	(9) in section 14 -	

SCHEDULE - (Contd.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(i) by substituting "a color,, for "a fulstop- <i>which ap-</i> pears at the end Of Paragraph (b) of subsection (I);
		(ii) by adding a proviso immediately after subsection (1)(b) as follows:
		"Provided that, the Commissioner shall not issue any pen-nit under this subsection unless he has first consulted the Director Of Criminal Investiga- tions";
	(h) in section 1 6 -	
		(i) by adding immediately after subsection (4) the fol- lowing news ubsection -
		"(5) The Com, - - issuing any pen-nit under this section consult the Director of Cril-ninal Inves- tigation" -
		(ii) by renumbering subsection (5) as subsection (6);
	(i) in section 24 -	
		0) by inserting between subsections (I) and (2) the fol- lowing new subsection -
		"(2) The Commissioner <i>shall</i> before issuing a licence under subsection

SCHEDULE - (C,,td.)

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
		(1)(a), consult the Director of Criminal Investigations.,,;
		(ii) byremilliberilglubsections (2) and (3) as,ub- sections (3) and (4);
		(J) in section 26 by deleting subsection (2) and substituting for it the following -
		"The Commissioner shall, before Pluing any permit under subs ec- lion (I)(b), consult the Directorof Criminal 'nvestigations and such Pennit shall be 'ubject to such conditions as may be specified therein. %
		(k) in section 45 by deleting the words "not exceeding two hundred shillings" appealing in the sixth and seventh
		.1 (3)andsubsdtuang for them ^{the word,}
		(1) in section 5 1, by deleting the words i. not exceeding fo" thousand shillings or to 'rnPrisOnment for a tenn not ex- ceeding three Yeats" and substituting for the,,, the words "of not less than two 1-million shillings o, to imprison- ment for a ten-n of not less than three years but not ex- ceeding seven years.,,
		The Minimunt Sentences Act is amended -

SCHEDULE - (Contd.)

<i>FIRST COLUMN</i>	<i>SECOND COLUMN</i>	<i>THIRD COLUMN</i>
ActNO.1 0171972	The Minimum Sentences Act, 1972	(a) in section 4 - (i) by deleting paragraph (a), (ii) by renumbe,i,g paragraphs (h), (c) and (d) as paragraphs (a), (b) and (c); (b) in section 5 - (i) by deleting Palag,,ph (a), (d) and (h); 00 by r,naming paragniphs (b) (c), (e), (f), and (g) as (a), (b), (c), (d) and (,); (c) by deleting the First Schedule, (d) by renumbering the Second, Third and Fourth Schedules as First Second and Third Schedules respectively The Principal Act is amended in section 1 7, by adding immediately after subsection (2) the fOLLOwing ne, subsection- "(3) For purposes Of subsection (2) a Parliamen-tarY candidate declared by Electoral Commission as having been elected unopposed in the constituency, shall be deemed to have been elected by fifth one per; cent of the total number of the registered vot&zs in the respective constituency. 1
Act No.5 of 1992	The Political Parties Aq 1 992	

Passed in the National Assembly on the 12th April, 2002

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Clerk of the National Assembly