

THE CRIMINAL PROCEDURE AND EVIDENCE (AMENDMENT) ACT, 1970

No. 35



of 1970.

AN ACT TO AMEND THE CRIMINAL PROCEDURE AND EVIDENCE PROCLAMATION (CHAPTER 18) BY MAKING PROVISION FOR PRIVATE PROSECUTIONS BY PUBLIC BODIES AND PERSONS AND EMPOWERING TOWN AND DISTRICT COUNCILS AND TOWNSHIP AUTHORITIES TO PROSECUTE IN RESPECT OF OFFENCES AGAINST THEIR BYE-LAWS, AND BY MAKING CERTAIN CONSEQUENTIAL AND SUPPLEMENTARY AMENDMENTS, AND BY MAKING MORE EXTENSIVE PROVISION FOR EVIDENCE TO BE GIVEN ON AFFIDAVIT AND BY MEANS OF WRITTEN REPORT.

Date of Assent: 14.8.1970.

Date of Commencement: 26.8.1970

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Criminal Procedure and Evidence (Amendment) Act, 1970.

Insertion of section 15A into Chapter 18

2. The Criminal Procedure and Evidence Proclamation (hereinafter referred to as the principal law) is amended by the insertion immediately after section 15 of the following section --

"Private prosecutions by certain public bodies and persons

15A. (1) Any public body or any person on whom the right to prosecute in respect of any offence is expressly conferred by law, may prosecute in any court competent to try the offence the person alleged to have committed it.

(2) The right is hereby conferred on Town Councils, District Councils and Township Authorities (other than Town Councils) to prosecute in respect of offences against their bye-laws."

Amendment of section 16 of Chapter 18

3. Section 16 of the principal law is amended —

- (a) by the deletion of "Where, in virtue of the right of prosecution hereinbefore given to private parties, any private party" and the substitution therefor of "Whenever any private prosecutor";
- (b) by the deletion of "such private party" and the substitution therefor of "such private prosecutor".

Amendment of section 17 of Chapter 18

4. Section 17 of the principal law is amended by the insertion immediately after "private party" of "referred to in section *fifteen*".

Amendment of section 18 of Chapter 18

5. Section 18 of the principal law is amended by the insertion immediately after "private party" of "referred to in section *fifteen*".

Amendment of section 19 of Chapter 18

6. Section 19 of the principal law is amended —

- (a) in subsection (1) —
 - (i) by the deletion of "If the prosecutor being a private party" and the substitution therefor of "If a private prosecutor";
 - (ii) by the deletion of "such party" and the substitution therefor of "such prosecutor";
- (b) in subsection (2) by the deletion of "party" and the substitution therefor of "prosecutor".

Amendment of section 20 of Chapter 18

7. Section 20 of the principal law is amended by the addition of the following subsection, the existing section becoming subsection (1) —

"(2) (a) A private prosecution by a Town Council in a subordinate court may be initiated and conducted by the Town Clerk or Treasurer or a person authorised by the Town Clerk in writing, which person may be a police officer.

(b) A private prosecution by a District Council in a subordinate court may be initiated and conducted by the District Council Secretary or Treasurer or a person authorised by the District Council Secretary in writing, which person may be a police officer.

(c) A private prosecution by a township authority (other than a town council) in a subordinate court may be initiated and conducted by any member of the township authority or a person authorised by the township authority in writing, which person may be a police officer.

Amendment of sections 21, 22 and 23 of Chapter 18

8. Sections 21, 22 and 23 of the principal law are amended by the deletion of the word "party" wherever it occurs and the substitution therefor of the word "prosecutor".

Insertion of section 23A into Chapter 18

9. The principal law is amended by the insertion immediately after section 23 of the following section —

"Disposal of fines in certain private prosecutions

23A. Whenever in any proceedings initiated in pursuance of subsection (2) of section 15A a fine is imposed, such fine shall be paid into the court which imposed the fine, and of any amount of such fine which may be recovered such court shall pay half into the general revenues of the Republic and half into the general fund of the prosecuting council or authority."

Amendment of Section 218 of Chapter 18

10. Section 218 of the principal law is amended by the deletion of subsection (4), exclusive of the proviso thereto, and the substitution of —

"(4) Whenever any fact ascertained by any examination or process requiring any skill in bacteriology, biology, chemistry, physics, astronomy, geology, geography, anatomy, pathology, toxicology, or the identification of finger or palm prints is or may become relevant to the issue in any criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of the Republic of Botswana or of the Republic of South Africa or a province thereof or in the service of, or attached to, the South African Institute for Medical Research or any university in Southern or Central Africa or any institution designated by the President for the purposes of this section by notice in the Gazette, and that he has ascertained any such fact by means of such examination or process, and that he possesses the requisite skill in the relevant subject, shall on its mere production in those proceedings by any person, but subject to the provisions of subsection (5), be admissible to prove that fact."

Amendment of Section 218A of Chapter 18

11. Section 218A of the principal law is amended by the insertion immediately after "trial" of "or at any preparatory examination."

Passed by the National Assembly this day, the 9th July, 1970.

G.T. MATENGE,
Clerk of the National Assembly