

**THE CRIMINAL APPEAL (AMENDMENT) ACT 2013**

**Act No. 20 of 2013**

*I assent*

*01 August 2013*

**Rajkeswur PURRYAG**  
*President of the Republic*

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**An Act**

**To amend the Criminal Appeal Act**

ENACTED by the Parliament of Mauritius, as follows –

**1. Short title**

This Act may be cited as the Criminal Appeal (Amendment) Act 2013.

## **2. Interpretation**

In this Act –

“principal Act” means the Criminal Appeal Act.

## **3. Section 2 of principal Act amended**

Section 2 of the principal Act is amended, in subsection (1), in the definition of “appellant”, by adding the words “and includes, where appropriate, the Director of Public Prosecutions where he desires to appeal under section 5”.

## **4. Section 3 of principal Act amended**

Section 3 of the principal Act is amended, in subsection (2), by inserting, after the words “appeals”, the words “and applications for review”.

## **5. Section 5 of principal Act amended**

Section 5 of the principal Act is amended by repealing subsection (2) and replacing it by the following subsection –

(2) The Director of Public Prosecutions may appeal to the Court against a final decision of the Supreme Court or a verdict of the jury where –

- (a) a charge has been dismissed or a person has been acquitted;
- (b) a person has been convicted of a lesser offence than the one with which he was charged; or
- (c) he is of opinion that the sentence passed is wrong in law or unduly lenient.

(3) No appeal shall lie against an acquittal following a verdict of not guilty except on the ground that –

- (a) the trial Judge gave a substantial misdirection in the course of his summing-up to the jury;

- (b) the verdict is unreasonable or cannot be supported having regard to the evidence; or
- (c) a serious irregularity occurred in the course of or in relation to the trial, or the acquittal is otherwise tainted.

## **6. Section 6 of principal Act amended**

Section 6 of the principal Act is amended by inserting, after subsection (2), the following new subsection –

(2A) On appeal against –

- (a) the dismissal of a charge, the Court may –
  - (i) affirm or reverse the dismissal of the Supreme Court and substitute therefor the appropriate determination or order a new trial; or
  - (ii) declare the trial to be a nullity and order a fresh hearing where the Court is of opinion that a serious irregularity has occurred;
- (b) a conviction for a lesser offence than the one with which a person was charged, the Court may –
  - (i) affirm or reverse, amend or alter the conviction, order or sentence and substitute therefor the appropriate determination or order a new trial, and may, if the order made or sentence passed is one which the Supreme Court had no power to make or pass, as the case may be, amend the judgment by substituting for the order or sentence such order or sentence as the Supreme Court had power to make or pass, as the case may be; or
  - (ii) declare the trial to be a nullity and order a fresh hearing where the Court is of opinion that a serious irregularity has occurred.

**7. Section 9 of principal Act amended**

Section 9 of the principal Act is amended, in subsection (1) –

- (a) by inserting, after the words “Supreme Court”, the words “or the Director of Public Prosecutions”;
- (b) by adding the words “or dismissal of the charge, as the case may be”.

**8. New section 19A inserted in principal Act**

The principal Act is amended by inserting, after section 19, the following new section –

**19A. Application to Court for review and retrial**

(1) (a) Where a person has been acquitted following a trial before the Supreme Court or appellate proceedings before the Court, the Director of Public Prosecutions may, subject to paragraph (b), apply to the Court for a review of the proceedings relating to the acquittal.

(b) Paragraph (a) shall not apply to a person who has been acquitted following a retrial ordered pursuant to subsection (5).

(2) Where a person has been convicted following a trial before the Supreme Court or appellate proceedings before the Court, the convicted person may apply to the Court for a review of the proceedings relating to the conviction.

(3) (a) Subject to paragraph (b), an application under subsection (1) or (2) shall be made in accordance with Rules of Court.

(b) Sections 10, 11, 14, 15, 16, 17 and 18 shall apply *mutatis mutandis* to an application for review under this section.

(4) (a) Notwithstanding subsection (2), where a person, who has been convicted following a trial before the Supreme Court, makes an application to the Human Rights Division under section 4A of the Protection of Human Rights Act, the Human Rights Division may, subject to paragraph (b), refer the conviction to the Court for a review of the proceedings relating to the conviction.

(b) The Human Rights Division shall not refer a conviction to the Court unless it is satisfied, having regard to any fresh and compelling evidence, that there is a real possibility that the conviction will not be upheld if the reference is made.

(c) Any reference by the Human Rights Division to the Court shall be made and determined in accordance with Rules of Court.

(5) Where the Court is satisfied that –

- (a) there is fresh evidence and compelling evidence in relation to the offence or a lesser offence; and
- (b) it is likely that the retrial will be fair, having regard to the circumstances, including the length of time since the offence is alleged to have been committed,

the Court –

- (i) shall, where an application has been made under subsection (1) or (2), grant the application;
- (ii) shall quash the conviction or acquittal, as the case may be;
- (iii) shall order that the person be retried for the offence with which he was originally charged or a lesser offence; and
- (iv) may make such other order as it considers appropriate.

(6) In this section –

“compelling evidence” means evidence which is –

- (a) reliable;
- (b) substantial; and
- (c) highly probative in the context of the issues in dispute at the trial;

“fresh evidence” means evidence which –

- (a) was not adduced at the trial of the offence; and
- (b) could not, with the exercise of reasonable diligence, have been adduced at the trial;

“Human Rights Division” has the same meaning as in the Protection of Human Rights Act.

## 9. Consequential amendment

The Protection of Human Rights Act is amended –

- (a) by inserting, after section 4, the following new section –

### **4A. Application by convicted person for reference to Court under Criminal Appeal Act**

(1) Notwithstanding this Act, a convicted person, or his representative, may apply to the Human Rights Division, in such form as may be prescribed, for an enquiry to be conducted as to whether there exists sufficient fresh and compelling evidence that may satisfy the Human Rights Division that a reference should be made under section 19A(4) of the Criminal Appeal Act.

(2) On receipt of an application under subsection (1), the Human Rights Division shall –

- (a) conduct such preliminary investigation as it considers necessary;
- (b) determine, within a period of 30 days from receipt of the application, whether it will conduct an enquiry into the matter; and
- (c) inform the convicted person, or his representative, accordingly.

(3) The Human Rights Division shall, without prejudice to its other powers under this Act, conduct the enquiry in such manner as it considers appropriate and shall, as far as practicable, complete its enquiry within 6 months from receipt of the complaint.

(4) On completion of the enquiry, the Human Rights Division may –

- (a) grant the application and refer the conviction to the Court of Criminal Appeal in accordance with section 19A(4) of the Criminal Appeal Act; or
- (b) reject the application,

and shall forthwith inform the convicted person or his representative of its decision.

(b) in section 6 –

- (i) in the heading, by deleting the words “**and duties**”;
- (ii) in subsection (1)(b), by inserting, after the words “of any”, the words “Court record or a certified copy thereof,”.

## 10. Application of Act

This Act shall apply whether a person was or is convicted, or acquitted, before or after the commencement of this Act.

Passed by the National Assembly on the twenty fourth day of July two thousand and thirteen.

**Ram Ranjit Dowlutta**  
*Clerk of the National Assembly*