

The following Bill, which will in due course be presented to Parliament for enactment, is published for general information.

CRIMINAL PROCEDURE (CAPITAL SENTENCES) (AMENDMENT) BILL

MEMORANDUM

Sections 94 to 96 of the Constitution of Nigeria contain provisions relating to the exercise of the Prerogative of Mercy. These provisions differ from those applicable before Independence, in that the powers of the Governor-General are now to be exercised in accordance with the advice of a Minister to be designated by him. In the case of a death sentence the Minister in making his recommendation must first have obtained the advice of the Advisory Council appointed for the purpose.

The object of this Bill is to amend those provisions of the Criminal Procedure Ordinance which relate to capital sentences so as to reflect the new procedure. At the same time, the necessity for a warrant of execution (where no reprieve takes place) is removed as execution in fact takes place in accordance with an order of the court.

T. O. ELIAS,  
*Attorney-General of the Federation  
and Minister of Justice*

(Bills 710)

CRIMINAL PROCEDURE (CAPITAL SENTENCES)  
(AMENDMENT) BILL

ARRANGEMENT OF CLAUSES

*Clause*

1. Citation and application.
2. Amendment of section 370, Cap. 43.
3. Repeal and replacement of sections 371 to 375 in certain application thereof.
4. Forms in Fourth Schedule to cease to apply.
5. Transitional.

# A BILL FOR

## AN ACT TO AMEND THE CRIMINAL PROCEDURE ORDINANCE

Title.

Commence-  
ment.

Enactment.

Citation and  
application.Amendment  
of section  
370.  
Cap. 43.Repeal and  
replacement  
of sections  
371 to 375  
in certain  
application  
thereof.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows—

1. This Act may be cited as the Criminal Procedure (Capital Sentences) (Amendment) Act, 1960, and shall be of Federal application.

2. Section 370 of the Criminal Procedure Ordinance is amended by the deletion from subsection (2) of the words "in respect of sentence for an offence in respect of which the power of pardon is vested in the Governor-General mean the Governor-General,".

3. Without prejudice to the operation of such sections in respect of sentence for any offence other than one in respect of which the power of pardon is vested in the Governor-General, sections 371 to 375 of the Criminal Procedure Ordinance are repealed and there shall be substituted therefor the following new sections—

371A. The provisions of sections 371B to 371G shall apply in the case of a sentence of death for an offence in respect of which the power of pardon is vested in the Governor-General.

15 "Procedure where power or pardon vested in Governor-General.

Judge's certificate of death to be sufficient and full authority for execution of offender, unless he is pardoned or reprieved. 371B. Any judge who pronounces a sentence of death shall issue under his hand and the seal of the court a certificate to the effect that sentence of death has been pronounced upon the person named in the certificate, and such certificate shall be sufficient and full authority in law for the detention of the offender in safe custody until the sentence of death pronounced upon him can be carried into effect and for carrying such sentence of death into effect in accordance with and subject to the provisions of this Part. 5

Steps to be taken by the registrar. 371C. The registrar of the court by which the person is sentenced to death shall, as soon as practicable after sentence has been pronounced— 10

(a) hand two copies of the certificate issued by the judge under the provisions of section 371B to the police officer responsible for the safe custody of the sentenced person, one of which copies shall be retained by the police officer and the other handed to the superintendent or other officer in charge of the prison in which the person is to be confined ; 15

(b) transmit to the sheriff one copy of the said certificate ; and 20

(c) file one copy of the said certificate with the record of the proceedings in the case. 25

Judge to forward report to Minister. 371D. The judge who passed sentence shall as soon as practicable after sentence has been pronounced, transmit to the Minister designated to advise the Governor-General on the exercise of the Prerogative of Mercy (hereafter in this Part referred to as the Minister) a certified copy of the record of the proceedings at the trial, together with a copy of the certificate issued by him under the provisions of section 371B, and a report in writing signed by him containing any recommendations or observations with respect to the sentenced person and with respect to his trial that he thinks fit to make. 30

State at which Minister to consider report. 371E. (1) Where a person— 35

(a) has been sentenced to death ; and

(b) has exercised his legal rights of appeal against the conviction and sentence and the conviction and sentence have not been quashed or the sentence has not been reduced, or has failed to exercise his legal rights of appeal or having filed an application for leave to appeal or an appeal, has failed to perfect or prosecute such application or appeal within the time prescribed by law, 40

the Minister shall, after considering the report made under section 371D and after obtaining the advice of the Advisory Council on the Prerogative of Mercy, decide whether or not to recommend that the sentence should be commuted to imprisonment for life, or that the sentence should be commuted to any specific period, or that the offender should be otherwise pardoned or reprieved.

(2) Where, for the purposes of subsection (1), the Advisory Council on the Prerogative of Mercy is required to advise the Minister in relation to any person sentenced to death, the Attorney-General of the Federation shall cause a record of the case to be prepared and submitted to the Advisory Council, and the Advisory Council shall, in giving its advice, have regard to the matters set out in that record.

Where no  
commu-  
tation  
pardon or  
reprieve.

371F. If the Minister decides not to recommend that the sentence should be commuted or that the offender should be otherwise pardoned or reprieved he shall cause the sheriff to be informed and the sentence of death pronounced upon the offender shall be carried into effect in accordance with and subject to the provisions of this Part and the sheriff shall thereupon make arrangements accordingly pursuant to the sentence of death pronounced upon the offender.

Where a  
commu-  
tation  
pardon or  
reprieve is  
granted.

371G. (1) Where the Minister decides to recommend that the sentence should be commuted or that the offender should be otherwise pardoned or reprieved, he shall issue an order, one copy of which shall be sent to the superintendent or other officer in charge of the prison in which the offender is confined, and another copy of which shall be sent to the sheriff, directing that the execution be not proceeded with, and, as the case may be, that the offender be imprisoned in accordance with the recommendation, or that the offender be released, subject in either case to such conditions, if any, as may be specified.

(2) The sheriff and the superintendent or other officer in charge of the prison in which the offender is confined shall comply with and give effect to every order issued under the provisions of subsection (1)."

4. The forms in the Fourth Schedule to the Criminal Procedure Ordinance shall cease to apply in relation to sentences of death in respect of which the power of pardon is vested in the Governor-General.

Forms in  
Fourth  
Schedule to  
cease to  
apply.

5. The provisions of this Act shall take effect in respect of any sentence of death for an offence in respect of which the power of pardon is vested in the Governor-General, whether such sentence was pronounced before or after the coming into operation of this Act.

Transitional.