

CHAPTER 16

THE PENAL CODE

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 16

THE PENAL CODE

An Act to establish a code of criminal law.

[28th September, 1945]

R.L. Cap. 390

R.L. Cap. 400

R.L. Cap. 440

Ords. Nos.

11 of 1930

10 of 1936

24 of 1939

16 of 1943

21 of 1945

11 of 1954

47 of 1954

19 of 1958

Acts Nos.

5, 23, 44 and 60 of 1961

12, 61 and C.A. No. 2 of 1962

15, 20 and 55 of 1963

16 and 65 of 1964

2 of 1965

12, 24, 31 and 65 of 1966

23 of 1967

50 of 1968

2 of 1970

5, 15 and 26 of 1971

2, 13 and 31 of 1972

23 of 1973

3 of 1976

14 of 1980

11 of 1983

13 of 1984

7 and 9 of 1985

12 of 1987

3 of 1988

10 and 17 of 1989

1, 5 and 17 of 1990

19 of 1992

1 of 1993

13 of 1994

3 of 1995
31 of 1997
4 and 12 of 1998
10 of 2001
9 of 2002
25 of 2002
4 of 2004
19 of 2004
8 of 2006
19 of 2007
G.Ns. Nos.
478 of 1962
222 of 1971
67 of 1972
15 of 1981

PART I GENERAL PROVISIONS

CHAPTER I PRELIMINARY PROVISIONS

Short title Ord.
No. 21 of 1945 s.
2

1. This Act may be cited as the Penal Code, and hereinafter is referred to as "this Code".

Disapplication

2. [Disapplication of Indian Penal Code.]

Saving of certain
laws Ord. No. 49
of 1955 s. 2;
R.L. Cap. 500 s.
36

3.-(1) Nothing in this Code shall affect—

- (a) the liability, trial or punishment of a person for an offence against the common law or against any other law in force in Mainland Tanzania other than this Code;
- (b) the liability of a person to be tried or punished for an offence under the provisions of any law in force in Mainland Tanzania relating to the jurisdiction of the courts in respect of acts done beyond the ordinary jurisdiction of those courts;
- (c) the power of any court to punish a person for contempt of court; or
- (d) any power of the President to grant a pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed.

(2) If a person commits an offence which is punishable under this Code and is also punishable under another law of any of the kinds mentioned in this section, he shall not be punished for that offence both under that law and also under this Code.

CHAPTER II INTERPRETATION

General rule of construction Act No. 14 of 1980 s. 3

4. Subject to the provisions of the Interpretation Act and the expressions specifically defined in this Code, the Code shall be construed according to the principles of construction which may be applied to any written law, with regard to Tanzanian conditions and without applying any principle of strict construction relating to penal legislation.

Interpretation R.L. Cap. 500 ss. 8 and 36; R.L. Cap. 537 6th Sch.; R.L. Cap. 553 2nd Sch.; Acts Nos: 2 of 1965 Sch; 24 of 1966 2nd Sch.; 50 of 1968 1st Sch.; 14 of 1980 s. 4

5. In this Code, unless the context requires otherwise—

"court" means a court of competent jurisdiction;

"dwelling house" includes any building or structure which is for the time being kept by the owner or occupier for the residence therein of himself, his family or servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling house is deemed to be part of the dwelling house if there is communication between that building or structure and the dwelling house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

"harm" means any bodily hurt, disease or disorder whether permanent or temporary;

"dangerous harm" means harm endangering life;

"grievous harm" means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;

"judicial proceeding" includes any proceeding had or taken in or before court, tribunal, commission or person in which or before whom evidence may be taken on oath;

"knowingly" used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

"local government authority" means a local government authority established by law;

"maim" means the destruction or permanent disabling of any external or internal organ, member or sense;

"money" includes bank notes, currency notes, bank drafts, cheques and other orders, warrants or requests for the payment of money;

"night" or "night-time" means the period between seven o'clock in the evening and six o'clock in the morning;

"offence" means an act, attempt or omission punishable by law;

"person" and "owner" and other like terms when used with reference to property include corporations of all kinds and any other association of persons capable of owning property, and also when so used include the Government;

"person employed in the public service" means any person holding any of the following offices or performing the duty thereof, whether as a deputy or not, namely–

- (i) any public office of the President, and any office the power of appointing a person to which or of removing from which is vested in the President or in a commission or board to which the President has delegated his function of, or which is established by written law for the purpose of, making appointments to any office;
- (ii) any office to which a person is appointed or nominated under any law;
- (iii) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in paragraph (i) or (ii); or
- (iv) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any law;

and also means–

- (i) a justice of the peace;
- (ii) a member of a commission of inquiry appointed under or in pursuance of any law;
- (iii) any person employed to execute any process of a court;
- (iv) a member of the Regular Force of the Defence Forces, a member of the National Service, and any other member of the Defence Forces when on duty;
- (v) a person in the employment of any government department;
- (vi) a person acting as a minister of religion of whatsoever denomination in so far as he performs functions in respect of the notification of intended marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;
- (vii) a member of a local government authority;
- (viii) a municipal councillor;
- (ix) a person in the employment of a local government authority;
- (x) any person employed by or in the service of any public corporation established under the Public Corporations Act or a corporation established by or under any written law other than the Companies Act or a company incorporated under the Companies Act which is wholly owned by the Government or which is a subsidiary of any public corporation.

Cap.257

Cap.212

"possession", "be in possession of" or "have in possession" includes–

- (a) not only having in one's own personal possession, but also

knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person;

- (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

"property" includes everything animate or inanimate capable of being the subject of ownership;

"public" refers not only to all persons within Mainland Tanzania but also to the persons inhabiting or using any particular place, or any number of those persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used;

"public place" or "public premises" includes any public way and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings, or assembly or as an open court;

"public way" includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

"publicly" when applied to an act means either—

- (a) that it is so done in any public place as to be seen by any person whether such person is in a public place; or
- (b) that it is so done in any place not being a public place as to be likely to be seen by any person in a public place;
- (c) "utter" includes using or dealing with and attempting to use or deal with and attempting any person to use, deal with or act upon the thing in question;

"valuable security" includes any document which is the property of any person and which is evidence of the ownership of any property or of the right to recover or receive any property;

"vessel" includes a ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters, and includes aircraft;

"wound" means any incision or puncture which divides or pierces any exterior membrane of the body; and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane.

**CHAPTER III
TERRITORIAL APPLICATION OF THIS CODE**

Extent of jurisdiction of local courts Acts Nos: 31 of 1966 2nd Sch.; 14 of 1980 s. 5

- 6.** The jurisdiction of the Courts of Mainland Tanzania for the purposes of this Code extends to—
- (a) every place within Mainland Tanzania and within the territorial waters;
 - (b) any offence committed by a citizen of Mainland Tanzania in any place outside Mainland Tanzania; and
 - (c) any offence committed by any person on an aircraft registered in Mainland Tanzania.

Offences committed partly within and partly beyond the jurisdiction

- 7.** When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

**CHAPTER IV
GENERAL RULES AS TO CRIMINAL RESPONSIBILITY**

Ignorance of law

- 8.** Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

Bona fide claim of right

- 9.** A person is not criminally responsible in respect of an offence relating to property if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

Relevance of intention or motive

- 10.**-(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will or for an event which occurs by accident.
- (2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.
- (3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

Mistake of fact

- 11.**-(1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent

than if the real state of things had been such as he believed to exist.

(2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

Presumption of
sanity

12. Every person is presumed to be of sound mind and to have been of sound mind at any time which comes in question until the contrary is proved.

Insanity
Act No.31
of 1997 Sch.

13.-(1) A person shall not be criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind—

- (a) incapable of understanding what he is doing;
- (b) incapable of appreciating that he ought not to do the act or omission; or
- (c) does not have control of the act or omission.

(2) A person may be criminally responsible for an act or omission although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects referred to in subsection (1) to that act or omission.

Intoxication

14.-(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to a criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not understand what he was doing and—

- (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
- (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) of that subsection the accused shall be discharged and in a case falling under paragraph (b) of that subsection the provisions of this Code and of the Criminal Procedure Act relating to insanity shall apply.

Cap.20

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purpose of this section "intoxication" shall be deemed to include a state produced by narcotics or drugs.

Immature age
Act No. 4 of
1998 s. 4

15.-(1) A person under the age of ten years is not criminally responsible for any act or omission.

(2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he

ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having sexual intercourse.

General immunity for officers Act No. 2 of 1970

16. Save as is expressly provided by this Code, no act or thing done or omitted to be done by a judicial officer shall, if the act or omission was done or omitted bona fide in the exercise of his judicial function; render the judicial officer criminally liable for the act or omission.

Compulsion

17. A person is not criminally responsible for an offence if it is committed by two or more offenders and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse any offence.

Defence of person or property Act No. 14 of 1980 s. 6

18. Subject to the provisions of section 18A, a person is not criminally liable for an act done in the exercise of the right of self defence or the defence of another or the defence of property in accordance with the provisions of this Code.

The right of defence Act No. 14 of 1980 s. 7

18A.-(1) Subject to the provisions of this Code every person has the right—

- (a) to defend himself or any other person against any unlawful act or assault or violence to the body; or
- (b) to defend his own property or any property in his lawful possession, custody or under his care or the property of any other person against any unlawful act of seizure or destruction or violence.

(2) In this section, the expression "property of any other person" includes any property belonging to the Government or a public corporation or an employer or any property communally owned by members of the public as a co-operative society or a village, whether or not that village is registered under the Local Government (District Authorities) Act.

Cap.287

Use of force in defence Act No. 14 of 1980 s. 7

18B.-(1) In exercising the right of self defence or in defence of another or in defence of property, a person shall be entitled to use only such reasonable force as may be necessary for that defence.

(2) A person shall be criminally liable for any offence resulting from excessive force used in self defence or in defence of another or in defence of property.

(3) Any person who causes the death of another as the result of excessive force used in defence, commits an offence of manslaughter.

When the right of defence extends to causing death Act. No. 14 of 1980 s. 7

18C.-(1) The right of self defence or the defence of another or defence of property shall extend to a person who, in exercising that right, causes death or grievous harm to another and the person so acting, acts in good faith and with an honest belief based on reasonable grounds that his act is necessary for the preservation of his own life or limb or the life or limb of another or of property, in the circumstances where—

- (a) the lawful act is of such a nature as may reasonably cause the apprehension that his own death or the death of another person could be the consequence of that act;
- (b) the lawful act is of such a nature as may reasonably cause the apprehension that grievous harm to his own body or the body of another could be the consequence of that unlawful act;
- (c) the unlawful act is with the intention of committing rape or defilement or an unnatural offence;
- (d) the unlawful act is with the intention of kidnapping or abducting; or
- (e) the unlawful act is burglary or robbery or arson or any offence which endangers life or property.

(2) If in the exercise of a right of defence in accordance with this Code, the person exercising that right is in such a situation that he cannot effectively exercise that right without risk of harm to an innocent person or property, his right of defence extends to the running of that risk.

Use of force in effecting arrest

19. Where any person is charged with a criminal offence arising out of the arrest, or attempted arrest, by him or a person who forcibly resists such arrest or attempts to evade being arrested, the court shall, in considering whether the means used were necessary or the degree of force used was reasonable for the apprehension of such person, have regard to the gravity of the offence which had been, or was being, committed by that person and the circumstances in which such offence had been, or was being, committed by that person.

Compulsion by husband

20. A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband; but on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence and under the coercion of the husband.

Person not to be punished twice for same offence Ord. No. 49 of 1955 s. 3

21. A person shall not be punished twice, either under the provisions of this Code or under the provisions of any other law, for the same offence.

CHAPTER V PARTIES TO OFFENCES

Principal
offenders

22.-(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing namely—

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) every person who aids or abets another person in committing the offence;
- (d) any person who counsels or procures any other person to commit the offence, in which case he may be charged either with committing the offence or with counselling or procuring its commission.

(2) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(3) A person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission the act or omission would have constituted an offence on his part, commits an offence of the same kind and is liable to the same punishment as if he had himself done the act or the omission.

Offences
committed by
joint offenders in
prosecution of
common purpose

23. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Counselling
another to
commit an
offence

24. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel and in either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

CHAPTER VI PUNISHMENTS

Kinds of
punishments

25. The following punishments may be inflicted by a court—

- (a) death;
- (b) imprisonment;
- (c) corporal punishment;
- (d) fine;
- (e) forfeiture;
- (f) payment of compensation;
- (g) finding security to keep the peace and be of good behaviour or to come up for judgment;
- (h) any other punishment provided by this Code or by any other law.

Sentence of
death Acts Nos.
55 of 1963 6th
Sch.; 31 of 1997
Sch.; 9 of 2002
Sch.

26.-(1) When a person is sentenced to death, the sentence shall direct that he shall suffer death by hanging:

Provided that, if a woman convicted of an offence punishable with death is alleged to be pregnant, the court shall inquire into the fact and, if it is proved to the satisfaction of the court that she is pregnant the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death.

(2) The sentence, of death shall not be pronounced on or recorded against any person who at the time of the commission of the offence was under eighteen years of age, but in, lieu of the sentence of death, the court shall sentence that person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Minister for the time being responsible for legal affairs may direct, and whilst so detained shall be deemed to be in legal custody.

(3) When a person has been sentenced to be detained during the President's pleasure under subsection (2), the presiding judge shall forward to the Minister for the time being responsible for legal affairs a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing such recommendation or observation on the case as he may think fit to make.

(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 Minister's 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.

Imprisonment

27.-(1) [Omitted by virtue of s. 30 of Cap. 357.]

Cap.291

(2) A person liable to imprisonment may be sentenced to pay a fine in addition to, or instead of, imprisonment, or where the court so determines under the Community Service Act, to community service under a community service order.

Corporal
punishment
Cap.90
Cap.17
Cap.11
6th Sch.

28. Subject to the provisions of the Minimum Sentences Act, where in this Code it is provided that any person shall be liable to undergo corporal punishment, such punishment shall, if awarded, be inflicted in accordance with the provisions of the Corporal Punishment Act.

Fines Act No. 13
of 1972 Sch.

29. Where a fine is imposed under any law, in the absence of express provisions relating to the fine in that law the following provisions shall apply—

- (a) where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited but shall not be excessive;
- (b) in the case of an offence punishable with a fine or a term of imprisonment, the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court;
- (c) in the case of an offence punishable with imprisonment as well as a fine in which the Offender is sentenced to a fine with or without imprisonment and in every case of an offence punishable with a fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion—
 - (i) direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and
 - (ii) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant:

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so;

Act No.25
of 2002
Sch.

- (d) the term of imprisonment ordered by a court in respect of money adjudged to be paid upon conviction or in respect of the default of a sufficient distress to satisfy any such sum shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale:—

Not exceeding Shs. 5,000/-	14 days
Exceeding Shs. 5,000/- but not exceeding Shs.50,000/=	2 months
Exceeding Shs. 50,000/- but not exceeding Shs.100,000/=	6 months
Exceeding Shs. 100,000/- but not exceeding 500,000/-	12 months
Exceeding shs. 500,000/-	24 months

(e) the imprisonment which is imposed in default of payment of a fine shall terminate when the fine is either paid or levied by process of law.

Forfeiture R.L.
Cap. 400 s. 15;
R.L. Cap. 500 s.
12

30. When a person is convicted of an offence under section 111 or 112, the court may, in addition to or in lieu of, any penalty which may be imposed, order the forfeiture to the Republic of any property which has passed in connection with the commission of the offence, or if the property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property and payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

Compensation
Cap.20

31. In accordance with the provisions of section 348 of the Criminal Procedure Act, any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence and the compensation may be either in addition to or in substitution for any other punishment.

Costs
Cap.20

32. Subject to the limitations imposed by section 345 of the Criminal Procedure Act, a court may order any person convicted of an offence to pay the costs of and incidental to the whole or part of the prosecution.

Security for
keeping the
peace

33. A person convicted of an offence not punishable with death may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognisance, with or without sureties, in such amount as the court thinks fit, requiring him to keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognisance, with sureties, if so directed, is entered into; but so that the imprisonment for not entering into the recognisance shall not extend for a term longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

Repealed

34. [Repealed by Ord No. 5 of 1961 s. 2.]

General punishment for offences where penalty not prescribed

35. When in this Code no punishment is expressly provided for any offence, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.

Sentences cumulative unless otherwise ordered

36. Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence any sentence, other than a sentence of death or of corporal punishment which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence unless the court directs that it shall be executed concurrently with the former sentence or any part of that sentence:

Provided that a court shall not direct that a sentence of imprisonment in default of payment of a fine be executed concurrently with a former sentence under section 29(c)(i) or with any part of that a sentence.

Escaped convicts to serve unexpired sentences when recaptured

37. When sentence is passed under this Code on an escaped convict the sentence, if of death, fine or corporal punishment shall, subject to the provisions of this Code, take effect immediately and, if of imprisonment, shall take effect according to the following rules, that is to say—

- (a) if the new sentence is severer than the sentence which the convict was undergoing when he escaped, the new sentence shall take effect immediately and he shall serve any period of imprisonment in respect of his former sentence which remained unexpired at the time of his escape after he has completed serving his new sentence;
- (b) when the new sentence is not severer than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has served imprisonment for a further period equal to that part of his former sentence which remained unexpired at the time of his escape.

Absolute and conditional discharge Ord. No. 5 of 1961

38.-(1) Where a court by or before which a person is convicted of an offence is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging him absolutely or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified in the order.

(2) An order discharging a person subject to the condition referred to in subsection (1) is hereinafter referred to as "an order for conditional discharge" and the period specified in any order as "the period of

conditional discharge".

(3) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(4) Where an order discharging an offender is made under this section the court may order him to pay any compensation adjudged under section 31 or any costs ordered under section 32 of this Code.

Commission of
further offence
Ord. No. 5 of
1961 s. 3

38A.-(1) If it appears to a judge or a magistrate that a person in respect of whom an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge he may, upon information in writing and on oath, issue a summons requiring that person to appear at the place and time specified therein or may issue a warrant for his arrest;

(2) A summons or warrant issued under this section shall direct the person so convicted to appear or to be brought before the court by which the order for conditional discharge was made.

(3) Where a person in respect of whom an order for conditional discharge has been made is convicted by a magistrate of an offence committed during the period of conditional discharge, the magistrate may commit him to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the order for conditional discharge was made.

(4) Where it is proved to the satisfaction of the court by which the order for conditional discharge was made that the person in respect of whom the order was made has been convicted of an offence committed during the period of conditional discharge, the court may pass any sentence upon him which it could pass if he had just been convicted by that court of the original offence.

(5) Where a person in respect of whom an order for conditional discharge has been made by a magistrate is convicted by the High Court of an offence committed during the period of conditional discharge, the High Court may pass any sentence upon him which the court made the order for conditional discharge could pass as if he had just been convicted by that court of the original offence.

(6) Where under the provisions of this section a person who has been conditionally discharged is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

Effect of
conviction and
discharge

38B.-(1) Subject to the provisions of subsection (2), where a person is convicted of an offence and discharged either absolutely or conditionally under the provisions of section 38, his conviction for that offence shall be deemed not to be a conviction for any purpose other than

the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against him under the provisions of section 38A:

Provided that where a person who has been conditionally discharged is subsequently sentenced under section 38A for the offence in respect of which the order for conditional discharge was made, this section shall cease to apply in respect of that offence and he shall be deemed to have been convicted on the date of the sentence.

(2) Nothing in this section shall affect—

- (a) the right of any person who has been convicted and discharged either absolutely or conditionally to appeal against his conviction or to rely thereon in bar of any subsequent proceedings for the same offence; or
- (b) the revesting or restoration of any property in consequence of the conviction of that person.

PART II CRIMES

Division I. – Offences against Public Order

CHAPTER VII TREASON AND OTHER OFFENCES AGAINST THE REPUBLIC

Treason Act No
2 of 1970 Sch.

39.-(1) Any person who, being under allegiance to the United Republic—

- (a) in the United Republic or elsewhere, murders or attempts to murder the President; or
- (b) in the United Republic, levies war against the United Republic,

commits an offence of treason and shall be liable on conviction to suffer death.

(2) Any person who, being under allegiance to the United Republic, in the United Republic or elsewhere, forms an intention to effect or to cause to be effected, or forms an intention to instigate, persuade, counsel or advise any person or group of person to effect or to cause to be effected, any of the following acts, deeds or purposes, that is to say—

- (a) the death, maiming or wounding, or the imprisonment or restraint, of the President;
- (b) the deposing by unlawful means of the President from his position as President or from the style, honour and name of Head of State and Commander-in-Chief of the Defence Forces of the United Republic;
- (c) the overthrow by unlawful means, of the Government of the

United Republic; or
(d) the intimidation of the Executive, the Legislature or the Judiciary of the United Republic,
and manifests such intention by publishing any writing or printing or by any overt act or deed whatsoever commits an offence of treason and shall be liable on conviction to be sentenced to death.

(3) Any person who, being under allegiance to the United Republic—

- (a) adheres to the enemies of the United Republic or gives them aid or comfort, in the United Republic or elsewhere;
- (b) instigates, whether in the United Republic or elsewhere, any person to invade the United Republic with an armed force; or
- (c) takes up arms within the United Republic in order, by force of constraint, to compel the Government of the United Republic to change its measures or counsels, or in order to put any force or constraint on, or in order to intimidate or overawe, the Government of the United Republic,
commits an offence of treason and shall be liable on conviction to suffer death.

(4) Any person who, being under allegiance to the United Republic, in the United Republic or elsewhere, with intent to help any enemy of the United Republic does any act which is designed or likely to give assistance to such enemy, or to interfere with the maintenance of public order or the Government of the United Republic, or to impede the operation of the Defence Forces or the Police Force, or to endanger life, commits an offence of treason and shall be liable on conviction to suffer death.

Treasonable
offences Act No.
2 of 1970

40. Any person who, not being under allegiance to the United Republic, in the United Republic or elsewhere, with intent to help any enemy of the United Republic, would amount to the offence of treason under section 39, commits an offence and shall be liable on conviction to be sentenced to death.

Misprision of
treason

41. Any person who—
(a) becomes an accessory after the fact to treason or to a treasonable offence; or
(b) knowing that any person intends to commit treason or treasonable offence does not give information thereof with all reasonable despatch to an administrative officer or a magistrate or a police officer, or use other reasonable endeavours to prevent the commission of the offence,
commits an offence termed "misprision of treason" and shall be liable on conviction to imprisonment for life.

Omitted

42. [Omitted.]

Promoting
warlike
undertakings
Act. No. 2 of
1970

43. Any person who, without lawful authority, carries on or makes preparation for carrying on, or aids in or devises the carrying on of, or preparation for, any war or warlike undertaking with, for, by or against any person or body or group of persons in the United Republic, commits an offence and shall be liable on conviction to imprisonment for life.

Replaced

44. [Replaced by C.A. 2 of 1962 s. 36.]

Inciting to
mutiny R.L. Cap.
500 s. 8; Act No.
24 of 1966 2nd
Sch.

45. Any person who advisedly attempts to effect any of the following purposes, that is to say—
(a) to seduce any member of the Police Force, the Prisons Service or the National Service from his duty and allegiance to the United Republic;
(b) to incite any such person to commit an act of mutiny or any traitorous or mutinous act; or
(c) to incite any such person to make or endeavour to make a mutinous assembly,
commits an offence and is liable to imprisonment for life.

Aiding soldiers
or police officers
in acts of mutiny
Act No. 24 of
1966 2nd Sch.

46. Any person who—
(a) aids, abets, or is accessory to, any act of mutiny by any member of the Police Force, Prisons Service or National Service; or
(b) incites any member of the Police Force, Prisons Service or National Service to sedition or to disobedience to any lawful order given by a superior officer commits an offence.

Inducing soldiers
or police officers
to desert Act No.
24 of 1966 2nd
Sch.

47. Any person who, by any means whatsoever, directly or indirectly—
(a) procures or persuades or attempts to procure or persuade to desert; or
(b) aids, abets or is accessory to the desertion of; or
(c) having reason to believe he is a deserter, harbours or aids in concealing,
any member of the Police Force, Prisons Service or National Service, commits offence and is liable to imprisonment for six months.

Aiding prisoners
of war to escape
Cap. 500 s. 36

48. Any person who—
(a) knowingly and advisedly aids an enemy of the Republic who is a prisoner of war, whether the prisoner is confined in a prison or elsewhere, or is suffered to be at large on his parole, to escape from his prison or place of confinement, or if he is at large on his parole, to escape from Mainland Tanzania, commits an offence, and is liable to imprisonment for life;

- (b) negligently and unlawfully permits the escape of any person referred to in paragraph (a) commits an offence.

Definition of
overt act

49. In the case of any of the offences set out in this Chapter, when the manifestation by an overt act of the intention to effect any purpose is an element of the offence, every act of conspiring with any person to effect that purpose and every act done in furtherance of the purpose by any of the persons conspiring is deemed to be an overt act manifesting the intention.

Repealed

50.-54. [Repealed by Act No. 3 of 1976 s. 55²]

Seditious
intention Ord.
No 18 of 1950 s.
2; R.L. Cap. 455
s. 19; R.L. Cap.
500 s. 36

55.-(1) A seditious intention is an intention to—

- (a) bring into hatred or contempt or to excite disaffection against the lawful authority of the United Republic or its Government;
- (b) excite any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established;
- (c) bring into hatred or contempt or to excite disaffection against the administration of justice in the United Republic; or
- (d) raise discontent or disaffection amongst any of the inhabitants of the United Republic;
- (e) promote feelings of ill-will and hostility between different classes of the population of the United Republic.

(2) An act, speech or publication is not seditious by reason only that it intends to—

- (a) show that the Government has been misled or mistaken in any of its measures;
- (b) point out errors or defects in the Government or Constitution of the United Republic as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects;
- (c) persuade any inhabitants of the United Republic to attempt to procure by lawful means the alteration of any matter in the United Republic as by law established; or
- (d) point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the United Republic.

Cap.229

². Note: Sections 51, 52, 53, 54, 56, 57, 58, 63 and 63A were re-enacted in the Newspapers Act.

(3) In determining whether or not the intention with which any act was done, any words were spoken or any document was published is seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

Repealed

56.-58. [Repealed by Act No. 3 of 1976 s. 55.]

Unlawful oaths
to commit
offences

59. Any person who—
(a) administers, or is present at and consents to, the administering of any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; or
(b) takes any such oath or engagement, not being compelled to do so,
commits an offence and is liable to imprisonment for life.

Other unlawful
oaths to commit
offences

60. Any person who—
(a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it—
(i) to engage in any mutinous or seditious enterprise;
(ii) to commit any offence not punishable with death;
(iii) to disturb the public peace;
(iv) to be of any association, society or confederacy, formed for the purpose of doing any of the acts referred to in subparagraphs (i) to (iii) of this paragraph;
(v) to obey the orders or commands of any committee or other body of persons not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
(vi) not to inform or give evidence against any associate, confederate or other person; or
(vii) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of the oath or engagement;
(b) takes any such oath or engagement, not being compelled to do so,
commits an offence and is liable to imprisonment for seven years.

Compulsion as a
defence

61. A person who takes any oath or engagement referred to in

section 60 cannot set up as a defence that he was compelled to do so unless, within fourteen days after taking it or, if he is prevented by actual force or sickness, within fourteen days after the termination of such prevention, he declares by information on oath before a magistrate or, if he is on actual service in the military forces of the United Republic in the Police Force, either by such information or by information to his commanding officer, the whole of what he knows concerning the matter including the persons by whom and in whose presence, and the place where and the time when the oath or engagement was administered or taken.

Unlawful
drilling R.L.
Cap. 455 s. 20

62.-(1) Any person who—

- (a) without the permission of the Minister for the time being responsible for home affairs trains or drills any other person to the use of arms or the practice of military exercises, movements or evolutions; or
- (b) is present at any meeting or assembly of persons, held without the permission of the Minister for the time being responsible for home affairs, for the purpose of training or drilling any other person to the use of arms or the practice of military exercise, movements or evolutions,

commits an offence and is liable to imprisonment for seven years.

(2) Any person who, at any meeting or assembly held without the permission of the Minister for the time being responsible for home affairs, is trained or drilled to the use of arms or the practice of military exercises, movements or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, commits an offence.

Repealed

63.-63A. [Repealed by Act No. 3 of 1976 s. 55.]

Raising
discontent and
ill-will for
unlawful
purposes Ords.
Nos. 49 of 1955
s. 6; 10 of 1955
s. 2; G. No. 236
of 1961; R.L.
Cap. 500 s. 36

63B.-(1) Any person who, to any assembly, makes any statement likely to raise discontent amongst any of the inhabitants of the United Republic or to promote feelings of ill-will between different classes or communities of persons of the United Republic, commits an offence and is liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment:

Provided that no person shall commit an offence under the provisions of this section if the statement was made solely for any one or more of the following purposes, the proof whereof shall lie upon him, that is to say—

- (a) to show that the Government has been misled or mistaken in any of its measures;
- (b) to point out errors or defects in the Government or its policies or the Constitution of the United Republic as by law

established, or in any legislation or in the administration of justice with a view to the remedying of those errors or defects;

- (c) to persuade any inhabitants of the United Republic to attempt to procure by lawful means the alteration of any matter in the United Republic; or
- (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce discontent amongst any of the inhabitants of the United Republic or feelings of ill-will and enmity between different classes or communities of persons of the United Republic.

(2) For the purposes of this section "an assembly" means a gathering of seven or more persons.

(3) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

CHAPTER VIII OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILITY

Repealed

64. [Repealed by Act No. 3 of 1976 s. 55.]

Foreign
enlistment R.L.
Cap. 455 s. 22

65. Any person commits an offence who does any of the following acts without the licence of the President if he—

- (a) prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, or is engaged in such preparation or fitting-out, or assists therein, or is employed in any capacity in the expedition;
- (b) being a citizen of the United Republic, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state, or whether a citizen of the United Republic or not, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state;
- (c) being a citizen of the United Republic, quits or goes on board any vessel with a view of quitting the United Republic, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or whether a citizen of the United Republic or not, induces any other person to quit or to go on board any vessel with a view of quitting the United Republic with the like intent;
- (d) being the master or owner of any vessel, knowingly either takes on board or engages to take on board, or has on board

the vessel any illegally enlisted persons; or

- (e) with intent or knowledge, or having reasonable cause to believe that same will be employed in the military or naval service of any foreign state at war with any friendly state, builds, agrees to build, causes to be built, equips, dispatches, or causes or allows to be dispatched, any vessel or issues or delivers any commission for any vessel:

Provided that a person building, causing to be built, or equipping a vessel in pursuance of a contract made before the commencement of the war is not liable to any of the penalties specified in this section in respect of the building or equipping if—

- (i) upon proclamation of neutrality being issued by the President he forthwith gives notice to the Minister for the time being responsible for home affairs that he is so building, causing to be built, or equipping such vessel, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Minister;
- (ii) gives such security, and takes and permits to be taken such other measures, if any, as the Minister for the time being responsible for home affairs may prescribe for ensuring that the vessel shall not be dispatched, delivered, or removed without the licence of the President until the termination of the war.

Piracy Act No.
14 of 1980 s. 8

66.-(1) Any person who—

- (a) does any unlawful act of violence against a ship or vessels registered in the United Republic or against persons or property on board that vessel; or
- (b) being a citizen of Tanzania does any unlawful act of violence against any vessel; or
- (c) voluntarily participates in the operation of a vessel or an aircraft for the purpose of doing any act referred to in paragraph (a) or (b),

commits an offence termed "piracy" and shall be liable on conviction to imprisonment for life.

(2) No prosecution under this section shall be commenced without the consent of the Director of Public Prosecutions.

CHAPTER IX UNLAWFUL ASSEMBLIES AND RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY

Repealed

67.-73. [Repealed by Ord. No. 11 of 1954 s. 33.]

Definition of unlawful assembly and riot

74.-(1) When three or more persons assemble with intent to commit an offence or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace or will, by that assembly needlessly and without any reasonable occasion, provoke other persons to commit a breach of the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in the manner referred to in subsection (1).

(3) When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Punishment for unlawful assembly

75. Any person who takes part in an unlawful assembly commits an offence and is liable to imprisonment for one year.

Punishment for riot

76. Any person who takes part in a riot commits an offence.

Making proclamation for rioters to disperse R.L. Cap. 500 s. 7; R.L. Cap 356 s. 11 (13)

77. A magistrate or, in his absence, a police officer of or above the rank of inspector, or any commissioned officer in the military forces of the United Republic, in whose view twelve or more persons are riotously assembled, or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation in the President's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peacefully.

Dispersion of rioters after proclamation Act No.25 of 2002 Sch.

78.-(1) If upon the expiration of a reasonable time after a proclamation is made, or after the making of the proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorised to make a proclamation, or any police officer, or any other person acting in aid of that person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming the resistance, and shall not be liable in any criminal or civil proceedings for having, by the use of such force, caused harm or death to any person.

(2) Notwithstanding the provisions of subsection (1), no application for review shall lie against or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit.

Rioting after proclamation Act No.25 of 2002 Sch.

79.-(1) If a proclamation is made, commanding the persons engaged in a riot or assembled with the purpose of committing a riot, to disperse, every person who, at or after the expiration of a reasonable time from the making of the proclamation, takes or continues to take part in the riot or assembly commits an offence, and is liable to imprisonment for five years.

(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit.

Preventing or obstructing the making of a proclamation

80. Any person who forcibly prevents or obstructs the making of a proclamation referred to in section 77 commits an offence and is liable to imprisonment for ten years; and if the making of the proclamation is so prevented, every person who, knowing that it has been so prevented, takes or continues to take part in the riot or assembly, is liable to imprisonment for five years.

Rioters demolishing buildings, etc

81. Any person who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy any building, railway, machinery or structures commits an offence, and each of them is liable to imprisonment for life.

Rioters damaging buildings, etc.

82. Any person who, being riotously assembled together, unlawfully damage any of the things in section 81 are guilty of a felony and each of them is liable to imprisonment for seven years.

Riotously interfering with railway, vehicle, etc.

83. All person commit an offence who being riotously assembled unlawfully and with force, prevent, hinder or obstruct the loading or unloading of any railway, vehicle or vessel, or the starting or transit of any railway or vehicle, or the sailing or navigating of any vessel, or unlawfully and with force board railway, vehicle or vessel with intent so to do.

Going armed in public

84. Any person who goes armed in public without lawful occasion in such a manner as to cause terror to any person commits an offence and his arms may be forfeited.

Forcible entry

85. Any person who, in order to take possession thereof, enters on any land or tenements in a violent manner, whether the violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, commits an offence of forcible entry and, for the purposes of this section it is immaterial whether he is entitled to enter on the land or not:

Provided that a person who enters upon lands or tenements, of his own but which are in the custody of his servant or bailiff does not commit the offence of forcible entry.

Forcible detainer

86. Any person who, being in actual possession of land without colour of right, holds possession of it in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land commits forcible detainer.

Affray

87. Any person who takes part in a fight in a public place commits an offence and is liable to imprisonment for six months or to a fine not exceeding five hundred shillings.

Challenge to fight a duel

88. Any person who challenges another to fight a duel or attempts to provoke another to fight a duel or attempts to provoke any person to challenge another to fight a duel commits an offence

Abusive language, brawling and threatening violence Ords. Nos. 48 of 1948 s. 2; 14 of 1950 s. 9; 49 of 1955 s. 7; Act No 12 of 1962 s. 2

89.-(1) Any person who—
(a) uses obscene, abusive or insulting language to any other person in such a manner as is likely to cause a breach of the peace; or
(b) brawls or, in any other manner, creates a disturbance in such a manner as is likely to cause a breach of the peace,
commits an offence and liable to imprisonment for six months.
(2) Any person who—
(a) with intent to intimidate or annoy any person, threatens to injure, assault, shoot at or kill any person or to burn, destroy or damage any property; or
(b) with intent to alarm any person discharges a fire-arm or commits any other breach of the peace, commits an offence and is liable to imprisonment for one year and if the offence is committed at night the offender is liable to imprisonment for two years.

Watching or besetting Ord. No. 49 of 1955 s. 8; G.N. No. 236 of 1961

89A.-(1) Any person who watches or besets any premises or other place, or the approaches to any such premises or other place with a view to—
(a) preventing any other person from doing any act which he may lawfully do; or
(b) compelling any other person to do any act which he may lawfully abstain from doing,

commits an offence and is liable to imprisonment for six months:

Provided that the provisions of this section shall not apply to any watching or besetting which is lawful under the provisions of any law relating to trade unions or trade disputes.

(2) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

Intimidation
Ord. No. 5 of
1961 s. 4; G.N.
No. 236 of 1961

89B.-(1) Any person who wrongfully and without legal authority intimidates any other person with a view to compelling that other person—

(a) to abstain from doing any act which he has a legal right to do;
or

(b) to do any act which he has a legal right to abstain from doing, commits an offence and is liable on conviction to imprisonment for one year.

(2) In this section—

"to intimidate" means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property;

"injury" includes injury to a person in respect of his business, occupation, employment or other source of income and also includes any actionable wrong.

(3) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

Dissuading
persons from
assisting with
self-help
schemes Act.
No. 61 of 1962 s.
2

89C.-(1) Any person who, with intent to impede, obstruct, prevent or defeat any self-help scheme or type of self-help scheme approved by the Regional Commissioner or the District Commissioner, dissuades or attempts to dissuade any person from offering his services, or from assisting, in connection therewith, commits an offence and is liable on conviction to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) In any prosecution for an offence against this section the certificate of the Regional Commissioner or the District Commissioner, as the case may be, that a self-help scheme named or described therein was approved by him on a specified date or that self-help schemes of the type described therein were approved by him on or before a specified date, shall be conclusive evidence of such facts.

Assembling for
the purpose of
smuggling Act.
No. 2 of 1972
Sch.

90. Any two or more persons who assemble together for the purpose of unshipping, carrying, or concealing any goods subject to customs duty and liable to forfeiture under any law relating to the customs commits an offence and each of them is liable to imprisonment for two years.

Division II. – Offences against the Administration of Lawful Authority

CHAPTER X
ABUSE OF OFFICE

Repealed

91.-93. [Repealed by Ord. No. 19 of 1958 s.15]

Officers charged with administration of property of a special character with special duties

94. Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and or having acquired or holding, directly or indirectly, a private interest duties in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade, or business in which he has such interest or with respect to the conduct of any person in relation thereto, commits an offence, and is liable to imprisonment for one year.

False claims by officials

95. Any person who, being employed in the public service in such a capacity as to require him or to enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, commits an offence.

Abuse of office
G.N. No. 236 of
1961

96.-(1) Any person who, being employed in the public service, does or directs to be done in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another commits an offence.

(2) If the act done or directed to be done is for purposes of gain, a person convicted of an offence contrary to subsection (1) is liable to imprisonment for three years.

(3) A prosecution for an offence under this section shall not be instituted except by or with the sanction of the Director of Public Prosecutions.

False certificates by public officers

97. Any person who, being authorised or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular commits an offence.

Unauthorised administration of extra-judicial oath

98. Any person who administers an oath or makes a solemn declaration or affirmation or affidavit, touching any matter with respect to which he has not, by law, any authority to do so commits an offence and is liable to imprisonment for one year:

Provided that this section shall not apply to an oath, declaration, affirmation or affidavit administered by or taken before a magistrate, coroner or justice of the peace in any matter relating to the preservation of the peace or the punishment of offences or relating to inquiries respecting sudden deaths, nor to an oath, declaration, affirmation or affidavit administered or taken for some purpose which is lawful under the laws of

another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

False assumption
of authority Cap.
11 6th Sch.

99. Any person who—

- (a) not being a judicial officer, assumes to act as a judicial officer except in circumstances of a customary arbitration or settlement by the tribal elders in any matter arising out of any common assault or other offence of a personal or private nature or any minor civil dispute at customary law if such arbitration or settlement is conducted in the manner recognised by customary law;
- (b) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so; or
- (c) represents himself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorised, when he is not, and knows that he is not, in fact, so authorised,

commits an offence.

Personating
public officers

100. Any person who—

- (a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or
- (b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

commits an offence.

Threat of injury
to persons
employed in
public service

101. Whoever holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person to be interested, for the purpose of inducing that person to do any act, or to forbear or delay to do any act connected with the exercise of the public functions of that person commits an offence.

CHAPTER XI OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

Perjury and
subornation of
Perjury Act No.
55 of 1963 6th
Sch.

102.-(1) Any person who, in any judicial proceedings, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding or intended to be raised in that proceeding,

commits an offence of perjury and it is immaterial—

- (a) whether or not the testimony is given on oath;
- (b) that the person giving the testimony and bound to speak the truth assents to the forms and ceremonies actually used in administering the oath or in otherwise binding him;
- (c) whether the false testimony is given orally or in writing;
- (d) whether the court or tribunal is properly constituted or is held in the proper place or not if it actually acts as a court or tribunal in the proceeding in which the testimony is given;
- (e) whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceedings or not.

(2) Any person who, aids, abets, counsels, procures or suborns another person to commit perjury commits an offence of subornation of perjury.

False statements
by interpreters

103. Any person who, having been lawfully sworn as an interpreter in a judicial proceeding, wilfully makes a statement material in that proceeding which he knows to be false, or does not believe to be true, commits an offence of perjury.

Punishment for
perjury

104. A person who commits perjury or suborns perjury is liable to imprisonment for seven years.

Evidence on
charge of perjury

105. A court shall not convict a person of perjury or of subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Fabricating
evidence

106. Any persons who, with intent to mislead any tribunal in any judicial proceeding—

- (a) fabricates evidence by any means other than perjury or subornation of perjury; or
- (b) knowingly makes use of the fabricated evidence,
- (c) commits an offence and is liable to imprisonment for seven years.

False swearing

107. Any person who swears falsely or makes a false affirmation or declaration before a person authorised to administer an oath or take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration, if done in a judicial proceeding, would have amounted to perjury, commits an offence.

Deceiving
witnesses

108. Any person who practises any fraud or deceit or knowingly makes or exhibits any false statement representation, token, or writing to any person called or to be called as a witness in any judicial proceeding,

with intent to affect the testimony of that person as a witness, commits an offence.

Destroying evidence

109. A person who, knowing that any book, document, or thing of any kind whatsoever is or may be required in evidence in a judicial proceeding, wilfully removes or destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, commits an offence.

Conspiracy to defeat justice and interference with witnesses
Ord. No. 5 of 1961 s. 5; Act No. 2 1962 Sch.

110. A person who—
(a) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert, or defeat the course of justice; or
(b) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or attempts to do so,
commits an offence and is liable to imprisonment for five years.

Unlawful compounding of offences

111. Any person who asks, receives, or obtains or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal an offence, or will abstain from, discontinue, or delay a prosecution for an offence, or will withhold any evidence thereof, commits an offence.

Compounding penal actions

112. Any person who having brought, or under pretence of bringing, against another person a criminal charge founded on any written law in order to obtain from him a penalty for an offence committed or alleged to have been committed by him, compounds the criminal charge without the order or consent of the court in which the charge is brought or is to be brought commits an offence.

Advertisements for stolen property

113. Any person who—
(a) publicly offers a reward for the return of any property which has been stolen or lost and in the offer makes use of any words purporting that no questions will be asked or that the person producing such property will not be seized or molested; or
(b) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of the property; or
(c) prints or publishes any offer, referred to in paragraph (a) or (b),
commits an offence.

114.-(1) Any person who—

- (a) within the premises or the precincts of premises in which any judicial proceeding is being had or taken, shows disrespect, in speech nor manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken;
 - (b) having been called upon to give evidence in a judicial proceeding, fails to attend or, having attended, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document or other thing, or remains in the room in which the proceeding is being had or taken, after the witnesses have been ordered to leave that room;
 - (c) causes an obstruction or disturbance in the course of a judicial proceeding;
 - (d) while a judicial proceeding is pending, publishes, prints or makes use of any speech or writing, misrepresenting the proceeding, or capable of prejudicing any person in favour of or against any parties to the proceeding, or calculated to lower the authority of any person before whom that proceeding is being had or taken;
 - (e) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private;
 - (f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with the evidence;
 - (g) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding;
 - (h) wrongfully retakes possession of any land or other property from any person who has recently obtained judgment from a court for the recovery of possession of that land or property;
 - (i) wrongfully retakes possession of a child from any person who has obtained the custody of the child under an order of court;
 - (j) having the means to pay compensation or costs or any other sum in civil or criminal proceedings awarded against him by a primary court, wrongfully refuses or neglects after due notice to make the payment in accordance with any order for payment whether or not by instalments; or
 - (k) commits any other act of intentional disrespect to any judicial proceeding or to any person before whom the proceeding is being heard or taken,
 - (l) commits an offence, and is liable to imprisonment for six months or to a fine not exceeding five hundred shillings.
- (2) When any offence against paragraphs (a), (b), (c), (d), or (k) of

subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody and, at any time before the rising of the court on the same day may take cognisance of the offence and sentence the offender to a fine of four hundred shillings or in default of payment to imprisonment for one month.

(3) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the High Court to punish for contempt of court.

(4) Paragraph (b) of subsection (1) shall have effect in relation to proceedings in a primary court in which evidence is not given on oath or affirmation as if the references to a person having been or affirmed included a reference to a person having been required by the court to give evidence in those proceedings.

Preventing or obstructing service or execution of process Ord. No. 5 1961 s. 6

114A. Any person who—

- (a) wilfully obstructs or knowingly prevents or in any way interferes with or resists the service upon himself or any other person of any summons, notice, order, of warrant or other process issued by a court for service on himself or such other person, as the case may be;
- (b) wilfully obstructs or knowingly prevents or in any way interferes with or resists the execution of any summons, notice, order, warrant or other process issued by a court, or any person lawfully charged with its execution; or
- (c) absconds in order to avoid being served with any summons, notice, order, warrant or other process issued by a court, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year.

CHAPTER XII

RESCUES, ESCAPES AND OBSTRUCTING OFFICERS OF COURT OF LAW

Rescue

115.-(1) Any person, who by force rescues or attempts to rescue from lawful custody any other person—

- (a) if that other person is under sentence of death or imprisonment for life, or charged with an offence punishable with death or imprisonment for life commits an offence and liable to imprisonment for life;
- (b) if that other person is imprisoned on a charge or under sentence for any offence other than those referred to in paragraph (a), commits an offence and liable to imprisonment for seven years; or
- (c) in any other case, commits an offence.

(2) If the person rescued is in the custody of a private person, the

offender must have notice of the fact that the person rescued is in such custody.

Escape from lawful custody

116. A person who escapes from lawful custody commits an offence.

Absence from extramural employment Act No. 34 of 1967
Cap.58

116A.-(1) If any person who has received permission to work outside a prison pursuant to the provisions of the Prisons Act, fails to present himself at the appointed hour or absents himself from work, he commits an offence unless he satisfies the court that he had a reasonable and lawful excuse for so doing.

(2) A sentence of imprisonment imposed for an offence against subsection (1) shall be in addition to any imprisonment to which the person sentenced is already liable and which he is ordered to suffer under the Prisons Act.

Aiding prisoners to escape

117. A person who—
(a) aids a prisoner in escaping or attempting to escape from lawful custody; or
(b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner, commits an offence and is liable to imprisonment for seven years.

Removal, etc., of property under lawful seizure

118. Any person who, when any property has been attached or taken under the process of authority of any court, knowingly and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals or disposes of the property, commits an offence and is liable to imprisonment for three years.

Repealed

119. [Repealed by Ord. No. 5 of 1961 s. 7.]

CHAPTER XIII MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

Frauds and breaches of trust by public officers Act No. 2 of 1972 Sch.

120. A person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether the fraud or breach of trust would have been criminal or not if committed against a private person, commits an offence and shall be liable to imprisonment for seven years.

Neglect of official duty

121. A person employed in the public service who wilfully neglects to perform any duty which he is bound either by common law or by any written law to perform, unless the discharge of the duty is not attended with greater danger than a man of ordinary courage and activity might be expected to encounter, commits an offence.

False information to person employed in the public service

122. Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause that person—

(a) to do or omit anything which that person ought not to do or omit, if the true state of facts respecting which the information is given were known to him; or

(b) to use the lawful power of that person to the injury or annoyance of any person,

commits an offence and shall be liable to imprisonment for six months or to a fine of one thousand shillings or to both the fine and imprisonment.

Disobedience of statutory duty

123. A person who wilfully contravenes any written law by doing any act which it forbids or by omitting to do any act which it requires to be done and which concerns the public or any part of the public, commits an offence and is liable, unless a different punishment is provided by that or any other law for the disobedience, to imprisonment for two years.

Disobedience of lawful orders

124. A person who disobeys any order, warrant or command duly made, issued or given by a court, an officer or person acting in any public capacity and duly authorised in that behalf, commits an offence and is liable, unless any other penalty or mode or proceeding is expressly prescribed in respect of that disobedience, to imprisonment for two years.

Repealed

124A. [Repealed by Act No. 15 of 1971 s. 9.]

Division III. – Offences Injurious to the Public in General

CHAPTER XIV
OFFENCES RELATING TO RELIGION AND BURIALS

Insult to religion

125. Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion commits an offence.

Disturbing religious assemblies

126. Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony commits an offence.

Trespassing on burial or other places

127. A person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of sepulture or in any

place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, commits an offence.

Hindering burial
of dead body Act
No. 5 of 1963 s.
2

128. Any person who unlawfully hinders the burial of the dead body of any person or who, without lawful authority in that behalf or otherwise than in accordance with rules made by the Minister responsible for health (which rules the Minister is hereby authorised to make) disinters, dissects or causes damage to the dead body of any person or who, being under a duty to cause the dead body of any person to be buried, wilfully and without lawful authority in that behalf neglects to perform that duty, commits an offence.

Uttering words
with intent to
wound religious
feelings

129. Any person who, with the deliberate intention of wounding the religious feelings of any person, utters any word, or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, commits an offence and is liable to imprisonment for one year.

CHAPTER XV OFFENCES AGAINST MORALITY

Definition of
woman

129A. In this Chapter "woman" means any female person and, unless the context requires otherwise or it is otherwise expressly provided, irrespective of age.

Rape Act No. 4
of 1998 s. 5

130.-(1) It is an offence for a male person to rape a girl or a woman.

(2) A male person commits the offence of rape if he has sexual intercourse with a girl or a woman under circumstances falling under any of the following descriptions:

- (a) not being his wife, or being his wife who is separated from him without her consenting to it at the time of the sexual intercourse;
- (b) with her consent where the consent has been obtained by the use of force, threats or intimidation by putting her in fear of death or of hurt or while she is in unlawful detention;
- (c) with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication induced by any drugs, matter or thing, administered to her by the man or by some other person unless proved that there was prior consent between the two;
- (d) with her consent when the man knows that he is not her husband, and that her consent is given because she has been made to believe that he is another man to whom, she is, or

- believes herself to be, lawfully married;
- (e) with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man.
- (3) Whoever–
 - (a) being a person in a position of authority, takes advantage of his official position, and commits rape on a girl or a woman in his official relationship or wrongfully restrains and commits rape on the girl or woman;
 - (b) being on the management or on the staff of a remand home or other place of custody, established by or under law, or of a women's or children's institution, takes advantage of his position and commits rape on any woman inmate of the remand home, place of custody or institution;
 - (c) being on the management or staff of a hospital, takes advantage of his position and commits rape on a girl or woman;
 - (d) being a traditional healer takes advantage of his position and commits rape on a girl or a woman who is his client for healing purposes;
 - (e) being a religious leader takes advantage of his position and commits rape on a girl or woman.
- (4) For the purposes of proving the offence of rape–
 - (a) penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence; and
 - (b) evidence of resistance such as physical injuries to the body is not necessary to prove that sexual intercourse took place without consent.
- (5) For the purposes of this section spouses shall be deemed lawfully separated even if the separation is arranged by the family or clan members.

Punishment for
rape Act No. 4
of 1998 s. 6

131.-(1) Any person who commits rape is, except in the cases provided for in the renumbered subsection (2), liable to be punished with imprisonment for life, and in any case for imprisonment of not less than thirty years with corporal punishment, and with a fine, and shall in addition be ordered to pay compensation of an amount determined by the court, to the person in respect of whom the offence was committed for the injuries caused to such person.

(2) Notwithstanding the provisions of any law, where the offence is committed by a boy who is of the age of eighteen years or less, he shall–

- (a) if a first offender, be sentenced to corporal punishment only;
- (b) if a second time offender, be sentence to imprisonment for a term of twelve months with corporal punishment;
- (c) if a third time and recidivist offender, he shall be sentenced to

life imprisonment pursuant to subsection (1).

Act No.19 of
2007

(3) Subject to the provisions of subsection (2), a person who commits an offence of rape of a girl under the age of ten years shall on conviction be sentenced to life imprisonment.

Punishment for
gang rape Act
No. 4 of 1998 s.
7
Act No.19
of 2007

131A.-(1) Where the offence of rape is committed by one or more persons in a group of persons, each person in the group committing or abetting the commission of the offence is deemed to have committed gang rape.

(2) Subject to provisions of subsection (3) every person who is convicted of gang rape shall be sentenced to imprisonment for life, regardless of the actual role he played in the rape.

(3) Where the commission or abetting the commission of a gang rape involves a person of or under the age of eighteen years the court shall, in lieu of sentence of imprisonment, impose a sentence of corporal punishment based on the actual role played in the rape.

Attempted rape
Act No. 4 of
1998 s. 8

132.-(1) Any person who attempts to commit rape commits the offence of attempted rape and except for the cases specified in subsection (3) is liable upon conviction to imprisonment for life, and in any case shall be liable to imprisonment for not less than thirty years with or without corporal punishment.

(2) A person attempts to commit rape if, with the intent to procure prohibited sexual intercourse with any girl or woman, he manifests his intention by—

- (a) threatening the girl or woman for sexual purposes;
- (b) being a person of authority or influence in relation to the girl or woman, applying any act of intimidation over her for sexual purposes;
- (c) making any false representations for her for the purposes of obtaining her consent;
- (d) representing himself as the husband of the girl or woman, and the girl or woman is put in a position where, but for the occurrence of anything independent of that person's will, she would be involuntarily carnally known.

(3) Where a person commits the offence of attempted rape by virtue of manifesting his intention in the manner specified in paragraph (c) or (d), he shall be liable to imprisonment for life and in any case for imprisonment of not less than ten years.

Abduction

133. Any person who with intent to marry or have sexual intercourse with a woman of any age, or to cause her to be married or to have sexual intercourse with any other person, takes her away, or detains her, against her will, commits an offence and is liable to imprisonment for seven years.

Abduction of
Girls under
sixteen

134. Any person who unlawfully takes an unmarried woman under the age of sixteen years out of the custody or protection of her parent or other person having lawful care or charge of her and against the will of the parent or of that person commits an offence.

Sexual assault on
persons and
indecent assaults
on women Ord.
No. 47 of 1954 s.
3; Act No. 4 of
1998 s. 9

135.-(1) Any person who, with the intention to cause any sexual annoyance to any person utters any word or sound, makes any gesture or exhibits any word or object intending that such word or object shall be heard, or the gesture or object shall be seen, by that other person commits an offence of sexual assault and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding three hundred thousand shillings or to both the fine and imprisonment.

(2) Where a charge for sexual assault under this section relates to a boy or girl under the age of eighteen years, it shall be no defence to the charge that the boy or girl consented to the act constituting the assault.

Repealed

136. [Repealed by Act No. 4 of 1998 s. 10.]

Defilement of
idiots or
imbeciles

137. Any person who, knowing a woman to be an idiot or imbecile, has or attempts to have unlawful sexual intercourse with her in circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman was an idiot or imbecile, commits an offence and is liable to imprisonment for fourteen years, with or without corporal punishment.

Defilement by
husband of wife
under fifteen,
etc. Ord. No. 4
of 1954; Act No.
4 of 1998 s. 11

138.-(1) Any person who, being married to a woman under the age of fifteen years, has or attempts to have sexual intercourse with her, whether with or without her consent, before she has attained the age of fifteen years, commits an offence and is liable to imprisonment for ten years.

(2) Any person who being a parent of or having custody of a woman under the age of fifteen years parts with the possession, or otherwise disposes of, the girl with the intention that the girl shall, while still under the age of fifteen years and whether with or without her consent, have sexual intercourse with her husband or knowing it to be likely that the woman will, while still under the age of fifteen years, have sexual intercourse, commits an offence and is liable to imprisonment for ten years.

(3) Any person who procures or attempts to procure any married woman under the age of fifteen years with intent that she shall have sexual intercourse with her husband, whether with or without her consent, when she is under the age of fifteen years, commits an offence and is liable to imprisonment for ten years.

(4) It shall not be a defence to a charge under subsection (3) that the person procuring the woman is the husband of the woman.

(5) It shall be a defence to a charge under this section—

- (a) if the woman in relation to whom a person is charged appears to the court to have attained the age of fifteen years; or
 - (b) if the court is of the opinion that the person charged had reasonable cause to believe and did in fact believe that the woman was of or above the age of fifteen years.
- (6) Nothing in this section shall render it an offence for any person of African or Asiatic descent to marry or permit the marriage of a woman under the age fifteen years in accordance with the custom of the tribe or religion where it is not intended that the marriage shall be consummated before the woman attains the age of fifteen years or make it an offence to give or receive money or presents in consideration, or on the occasion, of the marriage.

Acts of gross
 indecency
 between persons
 Act No. 4 of
 1998 s. 12

138A. Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, a pupil of a primary school or a student of a secondary school the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person.

Sexual
 exploitation of
 children Act No.
 4 of 1998 s. 12

- 138B.**-(1) Any person who—
- (a) knowingly permits any child to remain in any premises for the purposes of causing such child to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent exhibition or show;
 - (b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse, or indecent exhibition or show;
 - (c) induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse, or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means;
 - (d) takes advantage of his influence over, or his relationship to, a child, to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;
 - (e) threatens, or uses violence towards, a child to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;

- (f) gives monetary consideration, goods or other benefits to a child or his parents with intent to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show,

commits an offence of sexual exploitation of children and is liable upon conviction to imprisonment for a term of not less than five years and not exceeding twenty years.

Grave sexual
abuse Act No. 4
of 1998 s. 12

138C.-(1) Any person who, for sexual gratification, does any act, by the use of his genital or any other part of the human body or any instrument or any orifice or part of the body of another person, being an act which does not amount to rape under section 130, commits the offence of grave sexual abuse if he does so in circumstances falling under any of the following descriptions, that is to say—

- (a) without the consent of the other person;
- (b) with the consent of the other person where the consent has been obtained by the use of force, threat, or intimidation or putting that other person in fear of death or of hurt or while that other person was in unlawful detention;
- (c) with the consent of the other person where such consent has been obtained at a time the other person was of unsound mind or was in a state of intoxication induced by alcohol or any drugs, matter or thing.

(2) Any person who—

- (a) commits grave sexual abuse is liable, on conviction to imprisonment for a term of not less than fifteen years and not exceeding thirty years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to that person;
- (b) commits grave sexual abuse on any person under fifteen years of age,

is liable on conviction to imprisonment for a term of not less than twenty years and not exceeding thirty years, and shall also be ordered to pay compensation of an amount determined by the court to any person in respect of whom the offence was committed for injuries caused to that person.

Sexual
harassment Act
No. 4 of 1998 s.
12

138D.-(1) Any person who, with intention, assaults or by use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person, commits an offence of sexual harassment and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding two hundred thousand shillings or to both the fine and imprisonment, and may also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was

committed for any injuries caused to that person.

(2) Whoever, intending to insult the modesty of any woman utters any word, makes any sound or gesture, or exhibits any object including any organ whether male or feminine, intending that such word or sound shall be heard, or that the gesture or object shall be seen, by the woman, or intrudes upon the privacy of the woman, commits the offence of sexual harassment.

(3) For the avoidance of doubt, unwelcome sexual advances by words or actions used by a person in authority, in a working place or any other place, shall constitute the offence of sexual harassment.

(4) For the purposes of this section an assault may include any act which does not amount to rape under section 130.

(5) No prosecution for an offence under this section shall be instituted or continued where the complaint is made by the alleged victim at any time more than sixty days after the occurrence of the event constituting the offence.

Procuration for
prostitution
Ords. Nos: 47 of
1954 s. 3; 49 of
1955 s. 9; Act
No. 4 of 1998 s.
13

139.-(1) Any person who—

- (a) procures, or attempts to procure, any person, whether male or female of whatever age, whether with or without the consent of that person, to become, within or outside, the United Republic, a prostitute;
- (b) procures, or attempts to procure, any person under eighteen years of age, to leave the United Republic, whether with or without the consent of that person, with a view to the facilitation of prohibited sexual intercourse with any person outside the United Republic, or removes, or attempts to remove from the United Republic, that person, whether with or without the consent of that person, for that purpose;
- (c) procures, or attempts to procure, any person of whatever age, to leave the United Republic, whether with or without the consent of that person, with intent that that person may become the inmate of, or frequent a brothel elsewhere, or removes or attempts to remove, from the United Republic any such person, whether with or without the consent of that person, for that purpose;
- (d) brings, or attempts to bring, into the United Republic, any person under eighteen years of age with a view to prohibited sexual intercourse with any other person, inside or outside the United Republic;
- (e) procures, or attempts to procure, any person of whatever age, whether with or without the consent of that person, to leave that person's usual place of abode in the United Republic, that place not being a brothel, with intent that that person may for the purposes of prostitution become the inmate of, or frequent, a brothel within or outside the United Republic;

(f) detains any person without the consent of that person in any brothel or other premises with a view to prohibited sexual intercourse or sexual abuse of that person,
commits an offence of procuration and is liable on conviction to imprisonment for a term of not less than ten years and not exceeding twenty years or to a fine of not less than one hundred thousand shillings and not exceeding three hundred thousand shillings or to both the fine and imprisonment.

Trafficking of
person Act No. 4
of 1998 s. 14

139A.-(1) Any person who—

- (a) engages in the act of buying, selling or bartering of any person for money or for any other consideration;
- (b) for the purposes of promoting, facilitating or inducing the buying or selling or bartering or the placement in adoption of any person for money or for any other consideration—
 - (i) arranges for, or assists, a child to travel within or outside the United Republic without the consent of his parent or lawful guardian; or
 - (ii) obtains an affidavit of consent from a pregnant woman for money or for any other consideration, for the adoption of the unborn child of that woman; or
 - (iii) recruits women or couples to bear children; or
 - (iv) being a person concerned with the registration of births, knowingly permits the facilitation of any birth record or register; or
 - (v) engages in procuring children from hospitals, shelters for women, clinics, nurseries, day care centres, or any other child care institutions or welfare centres, for money or other consideration or procures a child for adoption from any such institution or centre, by intimidation of the mother or any other person; or
 - (vi) impersonates the mother or assists in the impersonation,

commits the offence of trafficking and is liable on conviction to imprisonment for a term of not less than twenty years and not exceeding thirty years and a fine of not less than one hundred thousand shillings and not exceeding three hundred thousand shillings or to both the fine and imprisonment and shall in addition be ordered to pay compensation of an amount to be determined by the court, to the person in respect of whom the offence was committed.

(2) In this section "child" means a person of the age of eighteen years and less.

Procuring rape
Ord. No. 49 of

140. Any person who—

1955 s. 7; Acts
Nos. 4 of 1998 s.
15; 9 of 2002
Sch.

- (a) by any threats or intimidation procures or attempts to procure any girl or woman to have any prohibited sexual intercourse inside or outside the United Republic; or
- (b) by false pretences or false representations procures, any girl or woman to have prohibited sexual intercourse anywhere inside or outside the United Republic; or
- (c) applies, administers to, or causes to be taken by any girl or woman any drug, matter or thing with intent to stupefy or overpower her so as thereby to enable any man to have prohibited sexual intercourse with her,

commits an offence and is liable on conviction to a fine of not less than one hundred thousand shillings and not exceeding three hundred thousand shillings or imprisonment for a term of not less than ten years and not exceeding twenty years or to both the fine and imprisonment and shall be ordered to pay for an amount to be determined by the court.

Householder,
etc., permitting
defilement of
girl under twelve
years of age on
his premises

141. Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any woman under the age of fifteen years to resort to or be upon those premises for the purpose of sexual intercourse with any man whether such sexual intercourse is intended to be with any particular man or generally, commits an offence and is liable to imprisonment for five years:

Provided that it shall be a sufficient defence to a charge under this section if it is made to appear to the court before which that person is charged that he had reasonable cause to believe and did in fact believe that the woman was of or above the age of twelve years.

Householder,
etc., permitting
defilement of
girl under
sixteen years of
age on his
premises

142. Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any woman above the age of fifteen years and under the age of sixteen years to resort to or be upon the premises for the purpose of unlawful sexual intercourse with a man, whether such intercourse intended to be with any particular man or generally, commits an offence:

Provided that it shall be a sufficient defence to a charge under this section if it is made to appear to the court before which that person is charged that he had reasonable cause to believe and did in fact believe that the woman was of or above the age of sixteen years.

Detention in any
premises with
intent, or in
brothel

143.-(1) Any person who detains a woman against her will—
(a) in or upon any premises with intent that she may have unlawful sexual intercourse with any man, whether any particular man or generally; or
(b) in any brothel,
commits an offence.

(2) When a woman is in or upon any premises for the purpose of having unlawful sexual intercourse or is in any brothel, a person shall be deemed to detain her there if, with intent to compel or induce her to remain in or upon the premises or in the brothel, that person withholds from her any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to her by or by the directions of that person, that person threatens her with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

(3) No legal proceedings, whether civil or criminal, shall be taken against any woman referred to in this section for taking away or being found in possession of any wearing apparel as was necessary to enable her to leave the premises or brothel.

Power of search
Act. No. 55 of
1963 6th Sch.

144.-(1) If it appears to a magistrate, on information made before him on oath by a parent, relative or guardian of a woman or any other person who, in the opinion of the magistrate, is acting bona fide in the interests of the woman or person that there is reasonable cause to suspect that that woman is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of the magistrate, the magistrate may issue a warrant authorising the person named therein to search for, and, when found, to take to and detain her in a place of safety until she can be brought before a magistrate; and the magistrate before whom she is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

(2) A magistrate issuing the warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining the woman to be apprehended and brought before a magistrate and proceedings to be taken for punishing that person according to law.

(3) A woman shall be deemed to be unlawfully detained for immoral purposes if she is so detained for purposes of unlawful sexual intercourse whether with any particular man or generally; and—

- (a) either she is under the age of sixteen years;
- (b) if she is of or over the age of sixteen years and under the age of eighteen years, is so detained against her will or against the will of any of her parents or of any person having the lawful care or charge of her; or
- (c) if she is of or over the age of eighteen years and is so detained against her will.

(4) Any person authorised by warrant under this section to search for a woman so detained may enter (if need be by force) any house, building or other place mentioned in the warrant, and may remove her therefrom.

Male person
living on

145.-(1) A male person who—

earnings of prostitution or persistently soliciting

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b) in any public place persistently solicits or importunes for immoral purposes,

commits an offence and in the case of a second or subsequent conviction under this section the court may, in addition to any term of imprisonment awarded, sentence the offender to corporal punishment.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, he shall unless he satisfies the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

Woman living on, or aiding, prostitution

146A. woman who knowingly lives wholly or in part on the earnings of prostitution or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, commits an offence.

Power of search

147. If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a female person for purposes of prostitution, or and that any person residing in or frequenting the house is knowingly living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

Brothels

148. Any person who keeps a house, room, set of rooms or place of any kind whatsoever for the purposes of prostitution commits an offence.

Conspiracy to induce unlawful sexual intercourse Ord. No. 47 of 1954 s. 3

149. Any person who conspires with another to induce any woman, by means of any false pretence or other fraudulent means, to permit a man to have unlawful sexual intercourse with her commits an offence and is liable to imprisonment for three years.

Attempts to procure abortion

150. Any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever commits an offence and is liable to imprisonment for fourteen years.

Procuring own

151. A woman being with child who with intent to procure her

miscarriage own miscarriage unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, or permits any such thing or means to be administered or applied to her, commits an offence and is liable to imprisonment for seven years.

Supplying drugs or instruments to procure abortion **152.** Any person who unlawfully supplies to or procures for another anything whatsoever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, commits an offence, and is liable to imprisonment for three years.

Knowledge of age of female immaterial **153.** Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman under a specified age, that the accused person did not know that the woman was under that age, or believed that she was not under that age.

Unnatural offences Ord. No. 47 of 1954 s. 3; Act No. 4 of 1998 s. 16 **154.**-(1) Any person who—
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of an animal; or
(c) permits a male person to have carnal knowledge of him or her against the order of nature,
commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years.
(2) Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment.

Attempt to commit unnatural offences Ord. No. 47 of 1954 s. 3; Act No. 4 of 1998 s. 17 **155.** Any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term of not less than twenty years.

Indecent assault of boys under fourteen Ord. No. 10 of 1959 s. 3; Act No. 4 of 1998 s. 18 **156.**-(1) Any person who unlawfully and indecently assaults a boy under the age of fourteen years commits an offence and is liable to imprisonment for life.
(2) Where a charge for indecent assault under this section relates to a boy under the age of fifteen years, it shall be no defence to the charge that he consented to the act of indecency.

Indecent practices between males Ord. No. 47 of 1954 s. 3 **157.** Any male person who, whether in public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person, with himself or with another male person, whether in public or private, commits an offence and is liable to imprisonment for five years.

Incest by males
Act No. 4 of
1998 s. 19

158.-(1) Any male person who has prohibited sexual intercourse with a female person, who is to his knowledge his granddaughter, daughter, sister or mother, commits the offence of incest, and is liable on conviction—

- (a) if the female is of the age of less than eighteen years, to imprisonment for a term of not less than thirty years;
- (b) if the female is of the age of eighteen years or more, to imprisonment for a term of not less than twenty years.

(2) It is immaterial that the sexual intercourse was had with the consent of the woman.

(3) A male person who attempts to commit an offence under this section commits an offence.

Order for
guardianship

159. On the conviction before any court of any person of an offence under section 158, against any woman under the age of twenty-one years, the court may divest the offender of all authority over the woman and, if the offender is her guardian, remove from offender's guardianship, and in any such case may appoint any person or persons to be the guardian or guardians of the woman during her minority or for any lesser period:

Provided that the High Court may at any time vary or rescind the order by the appointment of any other person as a guardian or in any other respect.

Incest by females
Act No. 4 of 1998
s. 20

160. Any female person of or above the age of eighteen years who with consent permits her grandfather, father, brother or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother or son as the case may be) commits the offence of incest and is liable to imprisonment for life or for imprisonment of not less than thirty years and shall, in addition, be ordered to pay compensation of an amount determined by the court to the victim in respect of whom the offence was committed:

Provided that if the male person is below the age of ten years, to imprisonment of not less than thirty years.

Punishment for
sexual offences
Act No. 9 of
2002 Sch.
Cap.101

160A. Where any person is convicted of any sexual offence specified under Chapter XV of this Code, as amended by the Sexual Offences Special Provisions Act, the court shall sentence such person to imprisonment for a term prescribed under the Chapter.

Punishment of
children
Act No.19
of 2007

160B. For promotion and protection of the right of the child, nothing in Chapter XV of this Code shall prevent the court from exercising -

- (a) reversionary powers to satisfy that, cruel sentences are not imposed to persons of or below the age of eighteen years; or
- (b) discretionary powers in imposing sentences to persons of or below the age of eighteen years.

Test of relationship

161. In sections 158 and 160 the expressions "brother" and "sister", respectively, include half-brother and half-sister and the provisions of those sections shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock

Sanction of Director of Public Prosecutions
G.N. No. 236 of 1961

162. No prosecution for an offence under sections 158 or 160 of this Code shall be commenced without the sanction of the Director of Public Prosecutions.

CHAPTER XVI OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS

Fraudulent pretence of marriage

163. Any person who wilfully and by fraud causes a woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief commits an offence and is liable to imprisonment for ten years.

Repealed

164. [Repealed by Act No. 5 of 1971 s. 166(2).]

Marriage ceremony fraudulently gone through without lawful marriage

165. Any person who dishonestly or with a fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, commits an offence and is liable to imprisonment for five years.

Desertion of children

166. Any person who being the parent, guardian or other person having the lawful care or charge of a child whose apparent age is not more than fourteen years, and being able to maintain the child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support, commits an offence.

Neglecting to provide food, etc., for children

167. Any person who, being the parent or guardian or other person having the lawful care or charge of any child whose apparent age is not more than fourteen years and unable to provide for itself, refuses or neglects to provide (being able to do so) sufficient food, clothes, bedding and other necessaries of life for the child, so as to injure the health of that child, commits an offence.

Master not providing for servants or apprentices

168. Any person who, being legally liable either as a master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully and maliciously does or causes to be done

any bodily harm to the apprentice or servant so that the life of that apprentice or servant is endangered or that his health has been or is likely to be permanently injured, commits an offence.

Child stealing

169.-(1) Any person who, with intent to deprive a parent, guardian or other person who has the lawful care or charge of a child under the age of fourteen years, of the possession of that child—

(a) forcibly or fraudulently takes or entices away, or detains the child; or

(b) receives or harbours the child, knowing it to have been so taken or enticed away or detained,

commits an offence and is liable to imprisonment for seven years.

(2) It is a defence to a charge under this section to prove that the accused person claimed in good faith a right to the possession of the child or, in the case of a child born out of wedlock, is its mother or claimed to be its father.

Cruelty to children Acts Nos. 4 of 1998 s. 21; 10 of 2001 Sch.

169A.-(1) Any person who, having the custody, charge or care of any person under eighteen years of age, ill treats, neglects or abandons that person or causes female genital mutilation or carries or causes to be carried out female genital mutilation or procures that person to be assaulted. ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, including injury to, or loss of, sight or hearing, or limb or organ of the body or any mental derangement, commits the offence of cruelty to children.

(2) Any person who commits the offence of cruelty to children is liable on conviction to imprisonment for a term of not less than five years and not exceeding fifteen years or to a fine not exceeding three hundred thousand shillings or to both the fine and imprisonment, and shall be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to that person.

CHAPTER XVII

NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE

Common nuisance

170.-(1) Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights commits the offence termed a "common nuisance", and is liable to imprisonment for one year.

(2) It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

Gaming houses

171.-(1) Any person being the owner or occupier, or having the

use of, any house, room or place, who opens, keeps, or uses it for the purpose of unlawful gaming being carried on therein, and any person who, being the owner or occupier of any house, room or place, knowingly and wilfully permits it to be opened, kept or used by any other person for any of those, purposes, and any person having the care or management of or in any manner assisting in conducting the business of any house, room or place opened, kept or used for such purposes is said to keep a common gaming house.

(2) In this section "unlawful gaming" means any game the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed or against whom the other players stake, play or bet.

(3) Any person who keeps a common gaming house commits an offence.

(4) Any person other than a person mentioned in subsection (1) who is found in a common gaming house shall be deemed, unless the contrary is proved, to be there for the purpose of unlawful gaming and commits an offence and liable to a fine of one hundred shillings for the first offence, and for each subsequent offence to a fine of four hundred shillings or imprisonment for three months or to both that fine and imprisonment.

Prohibition of
pyramid and
other similar
schemes
Act No.8
of 2006 Sch.

171A-(1) A person who conducts or manages the pyramid scheme commits an offence.

(2) A "pyramid scheme" means an operation or contrivance whereby a person:

- (a) holds out a promise to another person or persons that upon -
 - (i) the payment of a specific sum of money;
 - (ii) giving a certain amount of valuable security; or
 - (iii) obliging another person or persons to pay the specific amount of money or to give a certain amount of valuable security,

that person shall become entitled to receive a sum of money or an amount of valuable security which, given all commercial considerations, is greater than the money or valuable security given or a return on the investment of the money or valuable security so given;

- (b) makes any payment to or for the benefit of the promoter or to any of the promoters, or for the benefit of a participant in the scheme.

(3) A person who contravenes subsection (1), shall upon conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years.

(4) This section shall apply to any of such scheme whereby -

- (a) the prospect is held out to participants in the scheme receiving payments or other benefit in respect of any of the

following -

- (i) the introduction by any person or other person who becomes participants in the scheme.
 - (ii) the continued participation by participants in the scheme;
 - (iii) the promotion, transfer or other change of status of participants in the scheme;
 - (iv) the supply of goods or services by any person to or for other persons;
 - (v) the acquisition of goods or services by any person;
- (b) goods or services or both, are to be -
- (i) provided by the person promoting the scheme or, in the case of a scheme promoted by two or more persons acting in concert, by one or more of those persons;
 - (ii) provided to or for other persons under a transaction effected by the participant, whether in the capacity as an agent of the promoter or one of the promoters or in any other capacity;
 - (iii) used for the purpose of any supply of goods or services to or for other persons under the scheme;
 - (iv) supplied by the promoter or any of the promoters to or for persons introduced to him or any of the other promoters (or an employee or agent of his or theirs) by participants.

(5) For the purpose of subsection (2), a prospect shall be deemed to have been held out to a participant whether it is held out so as to confer on that participant a legally enforceable right or not.

(6) This section shall not apply to any scheme -

- (a) under which the promoter or any of the promoters or participants is to carry on or is purported to carry on investment business in the United Republic in accordance with any written law; or
- (b) which otherwise falls within a description of exempted scheme.

(7) The Minister may, by Order published in the Gazette, exempt any scheme of a kind specified in the Order, from the operation of this section.

prohibition
against
inducement
Act No.8
of 2006
Sch.

171B.-(1) Any person who induces or attempts to induce any person to -

- (a) make any payment to or for the benefit of the promoter or any of the promoters or, to or for the benefit of any participant in a scheme; or
- (b) become a participant and to make any payment to or for the benefit of the promoter or, to or for the benefit of any

participant in a scheme,
commits an offence and shall upon conviction be liable to a fine of not exceeding five million shillings or to imprisonment for a term not exceeding five years.

(2) In determining whether an inducement or attempt to induce is made by holding out a prospect, it shall be sufficient if the prospect constitutes or would constitute a substantial part of the inducement.

(3) Where an offence has been committed by any participant, every promoter of the scheme shall strictly be held liable for such commission of the offence.

(4) Where a person is charged with an offence in respect of an advertisement, it shall be a defence for that person to prove that, he is a person whose business is to publish or arrange for the publication in the advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know, and had no reason to suspect that the publication would amount to an offence.

(5) Where a promoter is charged by reason of commission of an offence by another person pursuant to subsection (4), it shall be a defence for that promoter to prove that the act constituting an offence was committed without his consent.

Interpretation
Act No.8
of 2006 Sch.

171C.-(1) For the purposes of sections 171A and 171B, unless the context requires otherwise -

“goods” includes property of an description and a right to or interest in any property;

“participants” in relation to a scheme, means a person other than a promoter or any of the promoters who participated in the scheme;

“scheme” means any arrangement made in connection with the carrying on of a business whether such arrangement is made or recorded wholly or partly in writing or not.

(2) Any reference to the provision or supply of goods shall be construed as including a reference to the grant or transfer of a right or interest.

Betting houses

172.-(1) Any house, room or place is called a common betting house if it is used for any of the following purposes, that is to say-

(a) for the purpose of bets being made therein between person resorting to the place and-

(i) the owner, occupier or keeper of the place, or any person using the place;

(ii) any person procured or employed by or acting for or on behalf of any such owner, occupier or keeper, or person using the place; or

(iii) any person having the care or management, or in any manner conducting the business, of the place;

(b) for the purpose of any money or other property being paid or

received therein by or on behalf of the owner, occupier or keeper, or person using the place, as or for consideration—

- (i) for an assurance, undertaking, promise or agreement express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse race or other race, fight, game, sport or exercise; or
- (ii) for securing the paying or giving by some other person of any money or other property on any such event or contingency.

(2) Any person who, being the owner or occupier of any house, room or place, knowingly and wilfully permits it to be opened, kept or used as a common betting house by another person, or who has the use or management, or assists in conducting the business, of a common betting house, commits an offence, and is liable to imprisonment for one year:

Provided that it shall not be an offence to use a totalisator by a race club, gymkhana club or sports club recognised by the Government at any public meeting, with the approval in each case of the Inspector-General of Police and; in this proviso, "totalisator" means the instrument, machine or contrivance, commonly known as the totalisator and any other instrument, machine or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles.

Repealed

173. [Repealed by Act No. 23 of 1967 s. 25.]

Repealed

173A. [Repealed by R.L. Cap. 440 s. 16.]

Chain letters
Ord. No. 32 of
1951

173B.-(1) Any person who sends or causes to be sent any chain letter or who sends or receives any money or money's worth in connection with any chain letter commits an offence and is liable to a fine of four thousand shillings or to imprisonment for a term not exceeding six months or to both the fine and imprisonment.

(2) For the purposes of this section "chain letter" means a document addressed by one person to another suggesting to him—

- (a) that he should send a document having the same purport to a number of other persons; and
- (b) that he should remit to a person or to an address specified in the first-mentioned document money or money's worth.

Keeper of
premises defined

174. Any person who appears, acts or behaves as master or mistress, or as the person having the care or management of the house, room, set of rooms or place as mentioned in sections 171 and 172 is to be taken to be the keeper, whether he is or is not the real keeper.

Traffic in
obscene
publications Act

175.-(1) Any person who—
(a) for the purpose of or by way of trade or for the purpose of

distribution or public exhibition, makes, produces or has in his possession any obscene writing, drawing, print, painting, printed matter, picture, poster, emblem, photograph, cinematograph film or any other obscene object or other object tending to corrupt morals;

- (b) for any of the purposes referred to in paragraph (a) imports, conveys or exports, or causes to be imported, conveyed or exported any such matters or things, or in any manner whatsoever puts any of them in circulation;
- (c) carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them;
- (d) advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or
- (e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals,

commits an offence, and is liable to imprisonment for two years or to a fine of two hundred thousand shillings.

(2) If in respect of any offence specified in paragraphs (a), (b), (c) or (d) of subsection (1), any constitutive element of the offence is committed in Mainland Tanzania the commission shall be sufficient to render the person accused of that offence triable in Mainland Tanzania.

(3) A court, on convicting a person of an offence against this section, may order to be destroyed any matter or thing made, possessed or used for the purpose of that offence.

(4) A court may, on the application of a public prosecutor, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of the obscene matter or thing.

176. Any of the following persons—

- (a) a common prostitute behaving in a disorderly or indecent manner in a public place or loitering or soliciting in a public place for the purposes of prostitution;
- (b) a person wandering or placing himself in a public place to beg or gather alms, or causing or procuring or encouraging a child so to do;
- (c) a person playing at any game of chance for money or money's worth in a public place;
- (d) a person wandering abroad and endeavouring by the exposure

- of wounds or deformation to obtain or gather alms;
- (e) a person who publicly conducts himself in a manner likely to cause a breach of the peace;
- (f) a person who without lawful excuse publicly does any indecent act;
- (g) a person who in any public place solicits for immoral purposes;
- (h) an able-bodied person who is not engaged in any productive work and has no visible means of subsistence; or
- (i) a person employed under lawful employment of any description who is, without any lawful excuse, found engaged on a frolic of his own at a time he is supposed to be engaged in activities connected or relating to the business of his employment,

shall be deemed to be an idle and disorderly person and shall be liable to a fine not exceeding five hundred shillings or to imprisonment for a period not exceeding three months or to both the fine and imprisonment

Harbouring
common
prostitutes Act
No. 49 of 1962 s.
3

176A. Any person who, being the keeper of any bar, hotel, house, shop, room or other place of public resort for the sale or consumption of refreshments of any kind, knowingly permits or suffers common prostitutes to assemble at and remain on his premises for the purpose of prostitution, commits an offence and is liable on conviction to a fine not exceeding five hundred shillings or, in the case of a second or subsequent offence, to a fine not exceeding one thousand shillings.

Rogues and
vagabonds Ords.
Nos. 3 of 1950 s.
2; 10 of 1959 s.
4; Act No. 49 of
1962 s. 4; G.N.
No. 73 of 1965

- 177.** Any of the following persons—
- (a) a person convicted of an offence under section 176 after having been previously convicted as an idle and disorderly person;
 - (b) a person going about as gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;
 - (c) a suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;
 - (d) a person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose; or
 - (e) a person who, without the prior consent in writing in that behalf of the District Commissioner, or, in the case of an urban authority, the police officer in charge of the police in that authority, collects, or makes any appeal for subscriptions of money in any public place for any purpose,

shall be deemed to be a rogue and vagabond, and commits an offence of

an offence and liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year:

Provided that paragraph (e) of this section shall not apply to—

- (a) any person who, or the duly authorised representative of any organisation which, has received the written consent of the Inspector-General of Police to collect, or make any appeal for, subscription of money for religious or charitable purposes; or
- (b) any person authorised to collect or make any appeal for subscriptions of money under the provisions of any law, including any by-law, in force in Mainland Tanzania:

Provided further that for the purposes of paragraph (e) of this section, the definition "public place" in section 5 of this Code shall not be deemed to include any recognised place of religious worship.

Failure to account for money collected by public subscription Ord No. 3 of 1950 s. 3; Act No. 2 of 1972 Sch.

177A. Subject to the provisions of any other law, including any by-law, any person, whether or not he has received any written consent referred to in the first proviso to section 177, or has been authorised as in paragraph (a) or (b) of that proviso who, having collected or procured to be collected money by subscription in Mainland Tanzania fails, if and when required so to do by District Commissioner, or in the case of an urban authority by the police officer in-charge of the Police in that authority, either to produce to the District Commissioner or the police officer, or to publish in a newspaper designated by the District Commissioner or the police officer, as he may be required, full and correct accounts of any money received by subscription and of its disposal, commits an offence and liable for the first offence to imprisonment for two years and for every subsequent offence, to imprisonment for three years.

offences relating to uniforms R.L. Cap. 455 s. 23; G.Ns. Nos. 478 of 1962; 73 of 1965

178.-(1) Any person who, not being a person serving in the Defence Forces of the United Republic or in any police force established by law, wears without the permission of the President the uniform of any of those forces or any attire having the appearance or bearing any of the regimental or other distinctive marks of such uniform or attire commits an offence and is liable to imprisonment for one month or to a fine of two hundred shillings:

Provided that nothing in this section shall prevent any person from wearing any uniform or attire in the course of a stage play performed in any place in which stage plays may lawfully be publicly performed, or in the course of a music hall or circus performance, or in the course of any bona fide military representation.

(2) Any person who unlawfully wears the uniform or attire of any of the forces referred to in subsection (1), or any dress having the appearance or bearing any of the regimental or other distinctive marks of

the uniform, in such a manner or in such circumstances as to be likely to bring contempt on that uniform, or employs any other person so to wear the uniform or dress, commits an offence and is liable to imprisonment for three months or to a fine of four hundred shillings:

(3) Any person who, not being in the service of the United Republic or not having previously received the written permission of the Inspector-General or Police so to do, imports or sells or has in his possession for sale any uniform or the buttons or badges appropriate to it, commits an offence and is liable to imprisonment for six months or to a fine of two thousand shillings.

(4) Where a person is convicted of an offence under this section, the uniform, attire, button, badge or other thing in respect of which the offence was committed shall be forfeited unless the court orders otherwise.

Negligent act likely to spread infection

179. A person who unlawfully or negligently does any act which is and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life commits an offence.

Adulteration of food or drink intended for sale

180. Any person who adulterates any article of food or drink, so as to make the article noxious as food or drink, intending to sell the article as food or drink, knowing it to be likely that it will be sold as food or drink, commits an offence.

Sale of noxious food or drink

181. Any person who sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that it is noxious as food or drink, commits an offence

Adulteration of drugs

182. Any person who adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of the drug or medical preparation, or to make it noxious, intending that it shall be sold or used for any medicinal purpose, as if it had not undergone adulteration, commits an offence.

Sale of adulterated drugs

183. Any person who, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells it or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, commits an offence.

Fouling water

184. Any person who voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, commits an offence.

Fouling air

185. Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, commits an offence.

Offensive trades

186. Any person who, for the purposes of trade or otherwise, makes loud noises or offensive unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits an offence and is liable to the same penalty prescribed under subsection (1) of section 170.

CHAPTER XVIII DEFAMATION

Repealed

187.-194. [Repealed by Act No. 3 of 1976 s. 55³.]

CHAPTER XIX HOARDING AND ALLIED OFFENCES

Hoarding of
commodities
Act No. 11 of
1983 Sch. Act
No. 12 of 1987 s.
23

194A.-(1) Any person, whether or not licensed to carry on the business of selling a commodity of any description commits an offence of hoarding against this section if, not being a manufacturer or producer of the commodity—

- (a) he is found in possession of a commodity of the value of one million shillings or less which is in demand by the public in the locality concerned, in circumstances in which it can be inferred that it is not displayed or stocked for lawful sale or use or available for purchase by any person offering the lawful price;
- (b) he sells or offers any commodity for sale at a price or subject to a term or condition which is unlawful or which, having regard to all relevant circumstances, is unreasonable; or
- (c) in the course of carrying on the business of selling any commodity, he engages in any trade practice which is intended or likely—
 - (i) to create an artificial shortage in the supply of any commodity; or
 - (ii) to aggravate an actually existing shortage in the supply of any commodity; or
 - (iii) to cause an unlawful increase or decrease in the official or commercially accepted price of any commodity; or
 - (iv) to adversely affect the fair distribution of any commodity amongst the purchasing population of the area concerned,

Cap.229

³For offences relating to defamation formerly under Section 187 to 194 see the Newspapers Act.

and on conviction shall be liable to imprisonment for a term not exceeding fourteen years or to a fine not exceeding one hundred thousand shillings or to both the fine and imprisonment; and the court may, in addition order that the commodity be forfeited to the Government, unless any other person satisfies the court that any of that commodity belonged to him and not to the accused, and that other person has himself not committed an offence under this section.

(2) For the purposes of this section—

- (a) a person shall be deemed to have in stock any commodity of any description in any place if he is the owner of any amount or quantity of such commodity;
- (b) "person" includes any employee or agent of the accused person (whether or not the employment or agency would be such at law) and where the employee or agent is charged with an offence under this paragraph the provisions of subsection (3) shall apply mutatis mutandis to the employee or agent as they apply where the person charged, is the employer or, as the case may be, the agent;
- (c) whether or not licensed to carry on business, a person shall be deemed to be carrying on the business of selling a commodity of any description if, at the time when the offence is alleged to have been committed or at any reasonable period preceding or succeeding the date when the offence is alleged to have been committed, he had possession of an amount or quantity of such commodity in circumstances in which it may reasonably be inferred that the commodity was intended by him for sale or he had held himself out as being a seller of that commodity.

(3) Where a person is charged with an offence under this section, it shall be a good defence for him to prove that—

- (a) there was no shortage in the supply of the commodity in the locality concerned;
- (b) the stocking of the amount or quantity of the commodity concerned was not intended or likely to create any shortage in the supply of the commodity or to have any other adverse effect on the distribution of the commodity in the locality;
- (c) the commodity found in any premises under his control or management did not belong to him and that he had no right to dispose of any of the commodity in any way and that he did, at the earliest possible opportunity, advise the authorities investigating the matter of the identity of the owner;
- (d) the commodity owned by him or which he had the right to dispose of had at the time when it was found in his possession, been lawfully sold or otherwise lawfully disposed of to another person ;

- (e) the commodity in stock was for his own lawful use or was being used in connection with his lawful business; or
- (f) he had kept the commodity in store as a reasonable precaution, taken in the interests of his own household, against probable imminent future shortage or famine, or in order to meet a requirement of any future event reasonably important to him.

(4) The standard of proof by the accused of any of the facts or circumstances set out in subsection (3), shall be on a balance of probabilities.

Repealed

194B. [Repealed by Act No. 13 of 1984 s. 63.]

Division IV. – Offences against the Person

CHAPTER XX

MURDER AND MANSLAUGHTER

Manslaughter

195.-(1) Any person who by an unlawful act or omission causes the death of another person commits an offence of manslaughter.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether the omission is or is not accompanied by an intention to cause death or bodily harm.

Murder

196. Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission commits an offence of murder.

Punishment for murder

197. A person convicted of murder shall be sentenced to death.

Punishment for manslaughter

198. Any person who commits manslaughter is liable to imprisonment for life.

Conviction for infanticide in certain cases

199. Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission she had not fully recovered from the effect of giving birth to the child, and for that reason or by reason of the effect of lactation consequent upon the birth of the child the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, commits an offence of infanticide, and may, be dealt with and punished for the offence as if she had committed an offence of manslaughter of the child.

Malice

200. Malice aforethought shall be deemed to be established by

aforethought

evidence proving any one nor more of the following circumstances

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit an offence punishable with a penalty which is graver than imprisonment for three years;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit an offence.

Killing on provocation

201. When a person who unlawfully kills another under circumstances which, but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as defined in section 202, and before there is time for his passion to cool, he commits an offence of manslaughter only.

Provocation defined Ord. No. 16 of 1946 s. 2

202.-(1) The term "provocation" means, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.

(2) When the unlawful act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any relationship referred to in subsection (1), the former is said to give the latter provocation for an assault.

(3) A lawful act is not provocation to any person for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocative for an assault, but it may be evidence of provocation to a person who knows of the illegality.

(6) For the purposes of this section, the expression "an ordinary person" means an ordinary person of the community to which the accused

belongs.

Causing death
defined

203. A person is deemed to have caused the death of another person, although his act is not the immediate or sole cause of death, in any of the following cases—

- (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death; in which case it is immaterial whether the treatment was proper or mistaken if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
- (b) if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;
- (c) if by actual or threatened violence he causes that other person to perform an act which causes the death of that person, the act being a means of avoiding the violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he hastens the death of a person suffering under any disease or injury which, apart from that act or omission, would have caused death;
- (e) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of another person.

When child
deemed to be a
person

204. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navelstring is severed or not.

Limitation as to
time of death

205.-(1) A person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death.

(2) For the purpose of reckoning the period referred to in subsection (1)—

- (a) the period shall include the day on which the last unlawful act contributing to the cause of death was done;
- (b) when the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased; and
- (c) when the cause of death is in part an unlawful act and in part

an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later

CHAPTER XXI DUTIES RELATING TO THE PRESERVATION OF LIFE AND HEALTH

Responsibility of person who has charge of another

206. It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from that charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he shall be deemed to have caused any consequences which adversely affect the life or health of the other person by reason of any omission to perform that duty.

Duty of head of family

207. It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessaries of life for such child; and he shall be deemed to have caused any consequences which adversely affect the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

Duty of masters

208. It is the duty of every person who as master or mistress has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of sixteen years to provide them; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of the servant or apprentice by reason of any omission to perform that duty.

Duty of persons doing dangerous acts

209. It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing so; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to observe or perform that duty.

Duty of persons in charge of dangerous things

210. It is the duty of every person to use reasonable care and take reasonable precautions to avoid danger if he has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be

endangered; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to perform that duty.

CHAPTER XXII
OFFENCES CONNECTED WITH MURDER AND SUICIDE

Attempt to murder

211. Any person who—

- (a) attempts unlawfully to cause the death of another; or
- (b) with intent unlawfully to cause the death of another, does any act or omits to do any act which it is his duty to do, the act or omission being of such a nature as to be likely to endanger human life,

commits an offence and is liable to imprisonment for life.

Repealed

212. [Repealed by Ord. No. 47 of 1954 s. 3.]

Accessory after the fact to murder

213. Any person who becomes an accessory after the fact to murder commits an offence and is liable to imprisonment for seven years.

Written threats to murder

214. Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person commits an offence and is liable to imprisonment for seven years.

Conspiracy to murder

215. Any person who conspires with any other person to kill any person, whether that person is in Mainland Tanzania or elsewhere, commits an offence and is liable to imprisonment for fourteen years.

Aiding suicide

216. Any person who—

- (a) procures another to kill himself;
- (b) counsels another to kill himself and thereby induces him to do so; or
- (c) aids another in killing himself,

commits an offence and is liable to imprisonment for life.

Attempting suicide

217. Any person who attempts to kill himself commits an offence.

Concealing the birth of a child

218. Any person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at or after its birth, commits an offence

Child destruction

219.-(1) Subject to subsection (2) any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes the child to die before it has an existence independent of its

mother, commits an offence of child destruction and shall be liable on conviction to imprisonment for life.

(2) A person commits an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(3) For the purpose of this section, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at the time pregnant of a child capable of being born alive.

CHAPTER XXIII OFFENCES ENDANGERING LIFE OR HEALTH

Disabling in
order to commit
offence Ord. No.
47 of 1954 s. 3

220. Any person who, by any means calculated to choke, suffocate or strangle, and with intent to commit or to facilitate the commission of an offence or to facilitate the flight of an offender after the commission or attempted commission of an offence, renders or attempts to render any person incapable of resistance commits an offence and is liable to imprisonment for life.

Stupefying in
order to commit
offence

221. Any person who, with intent to commit or to facilitate the commission of an offence or to facilitate the flight of an offender after the commission or attempted commission of an offence, administers or attempts to administer any stupefying or overpowering drug or thing to any person commits an offence and is liable to imprisonment for life.

Acts intended to
cause grievous
harm or prevent
arrest

222. Any person who, with intent to maim, disfigure or disable any person or to do some grievous harm to any person or to resist or prevent the lawful arrest or detention of any person—

- (a) unlawfully wounds or does any grievous harm to any person by any means whatever;
 - (b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife or other dangerous or offensive weapon;
 - (c) unlawfully causes any explosive substance to explode;
 - (d) sends or delivers any explosive substance or other dangerous or noxious thing to any person;
 - (e) causes any substance or thing referred to in paragraph (d) to be taken or received by any person;
 - (f) puts any corrosive fluid or any destructive or explosive substance in any place; or
 - (g) unlawfully casts or throws any fluid or substance referred to in paragraph (f) at or upon any person, or otherwise applies any such fluid or substance to that person of any person,
- commits an offence, and is liable to imprisonment for life.

Possession of human being parts Act No. 9 of 2002 Sch.

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

Preventing escape from wreck

223. Any person who unlawfully–

- (a) prevents or obstructs any other person who is on board of, or is escaping from, a vessel which is in distress or wrecked, in his endeavours to save his life; or
- (b) obstructs any other person in his endeavours to save the life of any person in the circumstances referred to in paragraph (a),

commits an offence and is liable to imprisonment for life.

Endangering safety of persons travelling by railway Ord. No. 47 of 1954 s. 3

224.-(1) Any person who, with intent to injure or to endanger the safety of any person travelling by any railway, whether a particular person or not–

- (a) places anything on the railway;
- (b) deals with the railway, or with anything whatever upon or near the railway, in such a manner as to affect or endanger the free and safe use of the railway or the safety of that person;
- (c) shoots or throws anything at, into or upon or causes anything to come into contact with any person or thing on the railway;
- (d) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or
- (e) by any omission to do any act which it is his duty to do causes the safety of any such person to be endangered,

commits an offence and is liable to imprisonment for life.

(2) A person who unlawfully but without the intent specified in subsection (1), causes the safety of any person travelling by railway to be endangered commits an offence.

Grievous harm

225. Any person who unlawfully does grievous harm to another commits an offence and is liable to imprisonment for seven years.

Attempting to injure by explosive substances

226. A person who unlawfully, and with intent to do any harm of another, puts any explosive substance in any place whatever, commits an offence and is liable to imprisonment for fourteen years.

Maliciously administering poison with intent to harm

227. A person who, unlawfully and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life or does him some grievous harm, commits an offence and is liable to imprisonment for fourteen years.

Wounding and similar acts Ord. No. 5 of 1961 s. 8

228. Any person who—
(a) unlawfully wounds another; or
(b) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by any person,
commits an offence and is liable to imprisonment for three years.

Failure to supply necessaries

229. Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered or his health is or is likely to be permanently injured, commits an offence and is liable to imprisonment for three years.

Responsibility as to surgical operation

230. A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Criminal responsibility for excess force

231. Any person authorised by law or by the consent of the person injured by him to use force is criminally responsible for any excess according to the nature and quality of the act which constitutes the excess.

Effect of victim's consent on criminal responsibility for death or maim

232. Notwithstanding anything contained in section 231 consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom the death or maim is caused.

CHAPTER XXIV CRIMINAL RECKLESSNESS AND NEGLIGENCE

Reckless and negligent acts

233. Any person who in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person—
(a) drives any vehicle or rides on any public way;
(b) navigates, or takes part in the navigation or working of any vessel;
(c) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession;
(d) omits to take precautions against any probable danger from any animal in his possession;
(e) gives medical or surgical treatment to any person whom he has undertaken to treat;
(f) dispenses, supplies, sells, administers or gives away any medicine or poisonous or dangerous matter;

- (g) does any act with respect to, or omits to take proper precautions against, any probable danger from any machinery of which he is solely or partly in charge; or
 - (h) does any act with respect to, or omits to take proper precautions against, any probable danger from any explosive in his possession,
- commits an offence.

Other negligent acts causing harm

234. Any person who unlawfully does any act or omits to do any act which it is his duty to do, not being an act or omission specified in section 233, by which act or omission harm is caused to any person, commits an offence and is liable to imprisonment for six months.

Handling of poisonous substances in negligent manner

235. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession as is necessary to guard against probable danger to human life from the poisonous substance, commits an offence, and is liable to imprisonment for six months or to a fine of two thousand shillings.

Omitted

236. [Reproduced as s.224(2).]

Exhibition of false light, mark or buoy

237. Any person who exhibits any false light, mark or buoy, intending or knowing it to be likely that its exhibition will mislead a navigator, commits an offence and is liable to imprisonment for seven years.

Conveying person by water for hire in unsafe or overloaded vessel

238. Any person who knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in a vessel, when that vessel is in such a state or so loaded as to be unsafe, commits an offence.

Danger or obstruction in public way or line of navigation

239. Any person who, by doing any act or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation commits an offence and is liable to a fine.

CHAPTER XXV ASSAULTS

Common assault

240. Any person who unlawfully assaults another commits an offence and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year.

Assaults causing actual bodily harm

241. Any person who commits an assault occasioning actual bodily harm commits an offence and is liable to imprisonment for five years.

Assaults on persons protecting wreck

242. Any person who assaults and strikes or wounds any magistrate, officer or other person lawfully authorised in or on account of the execution of his duty in or concerning the preservation of any vessel in distress, or of any vessel or goods or effects wrecked, stranded or cast on shore or lying under water, commits an offence and is liable to imprisonment for seven years.

Other types of assault

243. Any person who—

- (a) assaults another with intent to commit an offence or to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence;
- (b) assaults, resists or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of the police officer;
- (c) assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or respecting any trade, business or manufacture or respecting any person concerned or employed therein;
- (d) assaults, resists or obstructs any person engaged in the lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under that process of distress; or
- (e) assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

commits an offence and is liable to imprisonment for five years.

CHAPTER XXVI OFFENCES AGAINST LIBERTY

Definition of kidnapping from Mainland Tanzania

244. Any person who conveys another person beyond the limits of Mainland Tanzania without the consent of that person or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from Mainland Tanzania.

Definition of kidnapping from lawful guardianship

245. Any person who takes or entices another person under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of the minor or person of unsound mind, without the consent of the guardian, is said to kidnap that person from lawful guardianship.

Definition of abduction

246. A person who by force compels, or by deceitful means induces, any person to go from any place is said to abduct that person.

Punishment for kidnapping

247. A person who kidnaps any other person from Mainland Tanzania or from lawful guardianship commits an offence and is liable to imprisonment for seven years.

Kidnapping or abducting in order to murder

248. Any person who kidnaps or abducts a person in order that that person may be murdered, or may be so disposed of as to be put in danger of being murdered, commits an offence and is liable to imprisonment for ten years.

Kidnapping or abducting with intent to confine

249. Any person who kidnaps or abducts a person with intent to cause that person to be secretly and wrongfully confined commits an offence and is liable to imprisonment for seven years.

Kidnapping or abducting with intent to do harm

250. Any person who kidnaps or abducts another in order that that other person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that the person will be so subjected or disposed of, commits an offence and is liable to imprisonment for ten years

Wrongfully concealing kidnapped or abducted person

251. Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines that person, commits an offence, and shall be punished in the same manner as if he had kidnapped or abducted that person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains the person in confinement.

Kidnapping or abducting child with intent to steal

252. A person who kidnaps or abducts any child under the age of fourteen years with the intention of taking dishonestly any movable property from the person of the child commits an offence and is liable to imprisonment for seven years.

Punishment for wrongful confinement

253. A person who wrongfully confines another person commits an offence and is liable to imprisonment for one year or to a fine of three thousand shillings.

Buying or disposing of any person as a slave

254. A person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, commits an offence, and is liable to imprisonment for seven years.

Habitual dealing in slaves

255. A person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves commits an offence and is liable to imprisonment for ten years.

Unlawful compulsory labour

256. Any person who unlawfully compels any other person to labour against the will of that person commits an offence.

Division V. – Offences Relating to Property

CHAPTER XXVII
THEFT

Things capable of being stolen

257.-(1) Every inanimate thing which is the property of any person and which is movable, is capable of being stolen.

(2) Every inanimate thing which is the property of any person and which is capable of being made movable is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

(3) Every tame animal, whether tame by nature or wild by nature that tamed, which is the property of any person, is capable of being stolen.

(4) Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Mainland Tanzania, which are the property of any person and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

(5) Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Mainland Tanzania which are the property of any person, are capable of being stolen while they are in confinement and while they are being actually pursued after escaping from confinement, but not at any other time.

(6) An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank or other small enclosure, or is otherwise so placed that it cannot escape, and that its owner can take possession of it at pleasure.

(7) Wild animals in the enjoyment of their natural liberty are not capable of being stolen but their dead bodies are capable of being stolen.

(8) Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

Definition of theft Act No. 14 of 1988 s. 10

258.-(1) A person who fraudulently and without claim of right takes any thing capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, steals that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say–

- (a) an intent permanently to deprive the general or special owner of the thing of it;
- (b) an intent to use the thing as a pledge or security;
- (c) an intent to part with it on a condition as to its return which

the person taking or converting it may be unable to perform;

- (d) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion; or
- (e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner,

and "special owner" means any person who has lawful possession or custody of, or any proprietary interest in, the thing in question.

(3) When a thing stolen is converted, it is immaterial whether it is taken for the purposes of conversion or whether it is at the time of the conversion in the possession of the person who converts it or whether the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of it.

(4) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner and believes on reasonable grounds that the owner cannot be discovered.

(5) A person shall not be deemed to take a thing unless he moves the thing or causes it to move

Special cases

259.-(1) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be theft.

(2) When a servant, contrary to his master's orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be theft.

Funds, etc., held under direction

260. When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the sale, mortgage, pledge or other disposition of any property, whether capable of being stolen or not, with a direction in either case that the money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of the security, or of the mortgage, pledge or other disposition, shall be applied to any purpose or paid to any person specified in the direction, the money and proceeds are deemed to be the property of the person from whom the money, security, or power of attorney was received until the direction has been complied with.

Funds, etc.,
received by
agents from sales

261. When a person receives either alone or jointly with another person, any property from another on terms authorising or requiring him to sell it or otherwise dispose of it and requiring him to pay or account for the proceeds of the property or any part of the proceeds or to deliver anything received in exchange for the property to the person from whom it is received or some other person, then the proceeds of the property and anything so received in exchange for it are deemed to be the property of the person from whom the property was so received until they have been disposed of in accordance with the terms on which the property was received unless it is a part of those terms that the proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them and that the relationship of debtor and creditor only shall exist between them.

Money received
for another

262. When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received unless the money is received on the terms that it shall form an item in a debtor and creditor account and that the relationship of debtor and creditor only shall exist between the parties.

Theft by persons
having an
interest in the
thing stolen

263. When a person takes or converts anything capable of being stolen under such circumstances as would otherwise amount to theft, it is immaterial that he himself has a special property or interest therein or that he himself is the owner of the thing, taken or converted subject to some special property or interest of some other person therein, or that he is lessee of the thing, that he himself is one of two or more joint owners of the thing, or that he is a director or officer of a corporation or company or society owning it.

Husband and
wife Act No. 5
of 1971 2nd Sch.

264. For the avoidance of doubt, it is hereby declared that a husband may be guilty of stealing from his wife or a wife from her husband.

General
punishment for
theft Ord. No. 49
of 1955 s. 10;
Act No. 2 of
1972 Sch.

265. Any person who steals anything capable of being stolen commits an offence of theft, and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen, some other punishment is provided, to imprisonment for seven years.

Stealing wills

266. If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for ten years.

Repealed

267. [Repealed by Act No. 13 of 1994 s. 63.]

Stealing certain animals Act No. 12 of 1987 s. 23

268.-(1) If the thing stolen is any of the animals to which this section applies the offender shall be liable to imprisonment for fifteen years.

(2) Where any person kills any animal to which this section applies with intent to steal its skin or carcass or any part of its skin or carcass he shall, for the purposes of section 265 and this section, be deemed to have stolen the animal and shall be liable to be proceeded against and punished accordingly.

(3) This section applies to a horse, mare, gelding, ass mule, camel, ostrich, bull, cow, ox, ram, ewe, whether, goat or pig.

Stealing from the person, etc. Ord. No. 49 of 1955 s. 11; Act No. 2 of 1972 Sch.

269. If a theft is committed under any of the following circumstances, that is to say, if –

- (a) the thing is stolen from the person of another;
- (b) the thing is stolen in a dwelling house and its value exceeds one hundred shillings or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling house;
- (c) the thing is stolen from any kind of vessel or vehicle or place of deposit;
- (d) the thing stolen is attached to or forms part of a railway;
- (e) [Repealed by Ord. No. 49 of 1955 s. 11.];
- (f) the offender, in order to commit the offence, opens any locked room, box or other receptacle by means of a key or other instrument,

the offender is liable to imprisonment for ten years.

Stealing by persons in public service R.L. Cap. 500 s. 12; Act No. 2 of 1972 Sch.

270. If the offender is a person employed in the public service and the thing stolen is the property of the Republic or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for fourteen years.

Stealing by clerks and servants Act No. 2 of 1972 Sch.

271. If the offender is a clerk or servant and the thing stolen is the property of his employer or came into the possession of the offender on the account of his employer, he is liable to imprisonment for ten years.

Stealing by directors or officers of companies Act No. 2 of 1972 Sch.

272. If the offender is a director or officer of a corporation or company and the thing stolen is the property of the corporation or company, he is liable to imprisonment for fourteen years.

Stealing by agents, etc. Act No. 2 of 1972 Sch

273. If the thing stolen is any of the following things, that is to say–

- (a) property which has been received by the offender with a

- power of attorney for its disposal;
- (b) property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay or deliver it or any part of it or any of its proceeds for any purpose or to any person;
- (c) property which has been received by the offender either alone or jointly with any other person for or on account of any other person;
- (d) the whole or part of the proceeds of any valuable security which has been received by the offender with a direction that its proceeds should be applied to any purpose or paid to any person specified in the direction;

the whole or part of the proceeds arising from any disposal of any property which has been received by the offender by virtue of a power of attorney for the disposal, such power of attorney having been received by the offender with a direction that the proceeds should be applied to any purpose or paid to any person specified in the direction, the offender is liable to imprisonment for ten years.

Stealing by tenants or lodgers

274. If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging, and its value exceeds one hundred shillings, he is liable to imprisonment for seven years.

Stealing after previous conviction Act No. 2 of 1972 Sch.

275. If the offender, before committing the theft, had been convicted of theft punishable under section 265, he is liable to imprisonment for fourteen years.

CHAPTER XXVIII OFFENCES ALLIED TO STEALING

Concealing registers

276. Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of a register which is required by law to be sent to any public office, commits an offence and is liable to imprisonment for ten years.

Concealing wills

277. Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, commits an offence and is liable to imprisonment for ten years.

Concealing deeds

278. Any persons who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land commits an offence and is liable to imprisonment for three years.

Killing animals with intent to steal Act No. 31 of 1972 Sch.

279. Any person who kills an animal capable of being stolen, other than an animal to which section 268 applies, with intent to steal its skin or carcass, or any part of its skin or carcass, commits an offence and is liable on conviction to the same punishment as if he had stolen the animal.

Severing with intent to steal

280. Any person who makes anything movable with intent to steal it commits an offence and is liable to the same punishment as if he had stolen the thing after it had become movable.

Fraudulent disposition of mortgaged goods

281.-(1) Any person who being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, commits an offence.

(2) In this section "mortgaged goods" includes any goods and chattels of any kind, an animal, the progeny of an animal, and crops or produce of the soil, whether growing or severed, which are subject for the time being, by virtue of the provisions of any law or of any written instrument, to a valid charge or lien by way of security for any debt or obligation.

Fraudulently dealing with minerals in mines

282. Any person who takes, conceals, or otherwise disposes of any ore or any metal or mineral in or about a mine, with intent to defraud any person, commits an offence and is liable to imprisonment for five years.

Fraudulent appropriation of power

283. Any person who fraudulently abstracts or diverts to his own use or to the use of another person any mechanical, illuminating or electrical power derived from a machine, apparatus or substance, which is the property of another person, commits an offence and is liable to imprisonment for five years.

Conversion not amounting to theft Act No. 14 of 1980 s. 11

284. Any person who unlawfully and without colour of right, but not so as to be guilty of theft, takes or converts to his use or to the use of any other person any draught or riding animal or any mechanically propelled cycle of any description or any vessel commits an offence and is liable to imprisonment for six months or to a fine not exceeding one thousand shillings or to both.

Causing pecuniary loss or damage to property of specified authority Acts Nos. 1 of 1993 Sch.; 9 of 2002 Sch.

284A.-(1) Any person who, whether or not being an employee of a specified authority, by any wilful act or omission to or by his negligence or misconduct or by reason of his failure to take reasonable care or to discharge his duties in a reasonable manner, causes any specified authority to suffer pecuniary loss or causes any damage to any property owned or in the possession of a specified authority and which pecuniary loss or damage has a monetary value of not less than ten million shillings, shall notwithstanding any written law to the contrary, commits 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.

(2) For the purposes of subsection (1)–

"employee of a specified authority" includes an officer or a member of a specified authority whether or not he is an employee of such authority and the term "employer" shall be construed accordingly;

"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;

(d) the East African Community;

(e) a parastatal organization;

(f) any company registered under the Companies Act 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 co-operative society registered under any written law for the time being relating to co-operatives.

(3) A specified authority shall, for the purposes of subsection (1), be deemed to have incurred a pecuniary loss notwithstanding–

(a) that it has received or is entitled to receive any payment in respect of the loss under a policy of insurance; or

(b) that it has been compensated or is entitled to be compensated, for that loss.

(4) No prosecution under this section shall be commenced without the consent of the Director of Public Prosecutions.

(5) For the avoidance of doubt it is hereby declared that where any person charged with stealing anything or with any other offence under any other section of this Code is acquitted, he may be subsequently charged and tried for an offence under this section only if the subsequent charge under this section is based on acts or omissions related to those upon which the previous charge was based.

(6) Where the court convicts a person of an offence under this section, the court shall order that person to pay the specified authority compensation of an amount not exceeding the amount of the actual loss incurred by the specified authority and in assessing the compensation the court shall have regard to any extenuating circumstance it may consider relevant.

(7) Where an order is made under subsection (6) the specified authority in whose favour the order is made may file an authenticated copy of the order in the district court having jurisdiction over the area over which the court which made the order has jurisdiction, and upon being so filed the order shall be deemed to be a decree passed by that

Cap.245

Cap.212

Cap.33

district court and may be executed in the same manner as if it were a decree passed under the provisions of the Civil Procedure Code, and the district court shall have jurisdiction to execute the decree notwithstanding that the amount of the compensation awarded exceeds its pecuniary jurisdiction.

CHAPTER XXIX ROBBERY AND EXTORTION

Definition of robbery

285. Any person who steals anything and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained commits an offence of robbery.

Punishment for robbery Act No. 2 of 1972 Sch. Act No.4 of 2004 Sch.

286. Any person who commits robbery is liable to imprisonment for fifteen years.

Attempted robbery Act No. 2 of 1972 Sch. 10 of 1989 Sch. Act No.4 of 2004

287.-(1) Any person who assaults another with intent to steal anything, and, at or immediately before or immediately after the time of assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, commits an offence and is liable to imprisonment for a term of not less than seven years and not exceeding twenty years, with corporal punishment.

definition of armed robbery Act No.4 of 2004 Sch.

287A. Any person who steals anything, and at or immediately after the time of stealing is armed with any dangerous or offensive weapon or instrument, or is in company of one or more persons, and at or immediately before or immediately after the time of the stealing uses or threatens to use violence to any person, commits an offence termed “armed robbery” and on conviction is liable to imprisonment for a minimum term of thirty years with or without corporal punishment.

Attempted armed robbery Act No.4 of 2004

287B. Any person who with intent to steal anything from another person, is armed with any dangerous or offensive weapon or instrument, or is in company of one or more persons, and in the course thereof threatens, or attempts to threaten to use actual violence to any person, commits an offence termed “attempted armed robbery” and on conviction is liable to imprisonment for a minimum period of fifteen years with or without corporal punishment.

Assault with intent to steal Act No. 2 of 1972 Sch. 10 of

288. Any person who assaults any other person with intent to steal anything commits an offence and is liable to imprisonment for a term of not less than five years nor more than fourteen years, with corporal

1989 Sch.

punishment.

Demanding
property by
written threats

289. Any person who, with intent to extort or gain anything from any person and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of injury or detriment of any kind to be caused to any person, either by the offender or by any other person if the demand is not complied with, commits an offence and is liable to imprisonment for fourteen years.

Attempts at
extortion by
threats

290.-(1) Any person who, with intent to extort or gain anything from any person—

- (a) accuses or threatens to accuse any person of committing an offence or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of an offence;
- (b) threatens that any person shall be accused by any other person of an offence, or of any such similar act; or
- (c) knowing the contents of the writing, causes any person to receive any writing containing any accusation or threat referred to in this subsection,

commits an offence and if the accusation or threat of accusation is of—

- (i) an offence for which the punishment of death or imprisonment for life may be inflicted;
- (ii) any of the offences defined in Chapter XV, or an attempt to commit any of those offences;
- (iii) an assault with intent to have sexual intercourse with any person against the order of nature, or an unlawful and indecent assault upon a male person; or
- (iv) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences referred to in subparagraph (i) to (iv) of this subsection,

is liable to imprisonment for fourteen years or, in any other case not involving any matter referred to in those subparagraphs, he is liable to imprisonment for three years.

(2) It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

Procuring
execution of
deeds, etc., by
threats

291. Any person who, with intent to defraud and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing an offence, or by offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of an

offence, compels or induces any person—

- (a) to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security; or
 - (b) to write any name or impress or affix any seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security,
- commits an offence and is liable to imprisonment for fourteen years.

Demanding property with menaces with intent to steal

292. Any person who, with intent to steal any valuable thing demands it from another person with menaces or force, commits an offence and is liable to imprisonment for five years.

CHAPTER XXX

BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES

Definition of breaking and entering

293.-(1) A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting, or by any other means whatever, any door, window, shutter, cellar flap or other thing, intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

(2) A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building

(3) A person who obtains entry into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of a building permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entry, is deemed to have broken and entered the building.

Housebreaking and burglary Act No. 2 of 1972 Sch.

294.-(1) Any person who—

- (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit an offence therein; or
- (b) having entered any building, tent or vessel used as a human dwelling with intent to commit an offence therein or having committed an offence in the building, tent or vessel, breaks out of it,

commits an offence of housebreaking and is liable to imprisonment for fourteen years.

(2) If an offence under this section is committed in the night, it is burglary and the offender is liable to imprisonment for twenty years.

Entering dwelling house with intent to commit offence Act No. 2 of 1972 Sch.

295. Any person who enters or is in any building, tent or vessel used as a human dwelling with intent to commit an offence therein, commits an offence, and is liable to imprisonment for ten years and if the offence is committed in the night, he is liable to imprisonment for

fourteen years.

Breaking into building and committing an offence Acts Nos. 50 of 1968 1st Sch.; 2 of 1972 Sch.

- 296.** Any person who—
- (a) breaks and enters a school house, shop, warehouse, store, workshop, garage, office or counting house, or a building which is adjacent to a dwelling house and occupied with it but is not part of it, or any building used as a place of worship and commits an offence therein;
 - (b) having committed an offence in any building referred to in paragraph (a) breaks out of the building,
- commits an offence and is liable to imprisonment for ten years.

Breaking into building with intent to commit an offence Acts Nos. 50 of 1968 Sch.; 2 of 1972 Sch.

- 297.** Any person who breaks and enters a school house, shop, warehouse, store, workshop, garage, office or counting house, or a building which is adjacent to a dwelling house and occupied with it but is not part of it, or any building used as a place of worship, with intent to commit an offence therein, commits an offence, and is liable to imprisonment for fourteen years.

Being armed, etc., with intent to commit an offence Act No. 2 of 1972 sch.

- 298.** Any person who is found under any of the following circumstances, namely—
- (a) being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to break or enter a dwelling house, and to commit an offence therein;
 - (b) being armed at night in the manner referred to in paragraph (a) with intent to break or enter any building whatever and to commit a an offence therein;
 - (c) having in his possession by night without lawful excuse, the proof of which lies on him, any instrument of housebreaking;
 - (d) having in his possession by day any instrument of house breaking with intent to commit an offence;
 - (e) having his face masked or blackened or being otherwise disguised, with intent to commit an offence; or
 - (f) being in any building whatever by day or night with intent to commit an offence therein,
- commits an offence and is liable to imprisonment for five years or, if he has been previously convicted of an offence relating to property, he is liable to imprisonment for fourteen years.

Criminal trespass R.L. Cap. 455 s. 25

- 299.** Any person who—
- (a) unlawfully enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of the property; or
 - (b) having lawfully entered into or upon the property unlawfully remains there with intent thereby to intimidate, insult or annoy the person in possession of the property or with intent

to commit an offence,
commits an offence of criminal trespass and is liable to imprisonment for three months; if the property upon which the offence is committed is any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property, the offender is liable to imprisonment for one year.

Forfeiture R.L.
Cap. 500 s. 12

300. When any person is convicted of an offence under this Chapter the court may order that any dangerous or offensive weapon or instrument of housebreaking carried or used in connection with the offence shall be forfeited to the United Republic.

CHAPTER XXXI FALSE PRETENCES

Definition of
false pretence
Act No. 14 of
1980 s. 13.

301. Any representation made by words, writing or conduct of a matter of fact or of intention, which representation is false act and the person making it knows it to be false or does not believe it to be true, is false pretence.

Obtaining goods
by false
pretences Act
No. 2 of 1980
Sch

302. Any person who by any false pretence and with intent to defraud, obtains from any other person anything capable of being stolen or induces any other person to deliver to any person any thing capable of being stolen, commits an offence and is liable to imprisonment for seven years.

Obtaining
execution of a
security by false
pretences Act
No. 2 of 1972
Sch.

303. A person who by any false pretence, and with intent to defraud, induces any person to execute, make, accept, endorse alter or destroy the whole or part of any valuable security, or to write any name or impress or affix any seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, commits an offence and is liable to imprisonment for seven years.

Cheating

304. Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, commits an offence and is liable to imprisonment for three years.

Obtaining credit,
etc., by false
pretences Act
No. 2 of 1972

305. Any person who—
(a) in incurring, any debt or liability, obtains credit by any false pretence or by means of any other fraud;

- (b) with intent to defraud any of his creditors, makes or causes to be made any gift, delivery or transfer of or any charge in his property; or
 - (c) with intent to defraud any of his creditors, conceals, sells or removes any part of his property after or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,
- commits an offence and is liable to imprisonment for five years.

Where goods or credit obtained for someone else Act No. 26 of 1971 s. 4

305A. In any proceeding for an offence under section 302 or section 305 of this Code, the accused shall not be entitled to acquittal by reason only of the fact that the evidence adduced discloses that the person for whose benefit the accused obtained or attempted to obtain, the goods or, as the case may be, the credit, was a person other than the accused or the person mentioned in the charge.

Conspiracy to defraud Act No. 2 of 1972 Sch.

306. Any person who conspires with another by deceit or by any fraudulent means affect the market price of anything publicly sold or to defraud the public or any person, whether a particular person or not, or to extort any property from any person, commits an offence and is liable to imprisonment for five years.

Frauds on sale or mortgage of property Act No. 2 of 1972 Sch.

307. Any person who, being a seller or mortgagor of any property or being the advocate or agent of a seller or mortgagor, with intent to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud—

- (a) conceals from the purchaser or mortgagee any instrument material to the title, or any encumbrances;
- (b) falsifies any pedigree on which the title depends or may depend; or
- (c) makes any false statement as to the title offered or conceals any fact material thereto,

commits an offence and is liable to imprisonment for five years.

Pretending to tell fortunes

308. Any person who, for gain or reward, undertakes to tell fortunes or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found commits an offence.

Obtaining registration, etc., by false pretence Act No. 2 of 1972 Sch.

309. Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence commits an offence, and is liable to imprisonment for two years.

False declaration for passport

310. Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport, whether for

himself or for any other person, commits an offence.

CHAPTER XXXII
RECEIVING PROPERTY STOLEN OR UNLAWFULLY
OBTAINED AND LIKE OFFENCES

Receiving
property stolen
or unlawfully
obtained, etc.
Act No. 2
of 1972

311. Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing or having reason to believe it to have been stolen, extorted, wrongfully or unlawfully taken, obtained, converted or disposed of, commits an offence and is liable to imprisonment for ten years.

Persons
conveying or
having
possession of
goods suspected
of having been
stolen or
unlawfully
acquired Acts
Nos. 26 of 1971
s. 5; 14 of 1980
s. 14
Cap.20

312.-(1) Any person who—

- (a) has been detained as a result of the exercise of the powers conferred by section 25 of the Criminal Procedure Act and is found in possession of, or conveying in any manner, anything which may be reasonably suspected of having been stolen or otherwise unlawfully acquired; or
- (b) is found by a police officer in possession of or having control over any property which may, having regard to all the circumstances, be reasonably suspected of having been stolen or otherwise unlawfully acquired,

may be charged with being in possession of, or conveying, or having control over, as the case may be, the property which is suspected of having been stolen or otherwise unlawfully acquired and shall, if he fails to satisfy the Court that he did not steal or otherwise unlawfully acquire the property, commits the offence with which he is charged and be liable, on conviction, to imprisonment for a term not exceeding three years.

(2) For the purposes of this section, "unlawfully acquired" means acquired in circumstances which constitute a criminal offence under any written law and also means acquired—

- (a) as consideration of any sale, barter or other disposition of any property so unlawfully acquired; or
- (b) by way of purchase with funds, the whole or any part of which were so unlawfully acquired.

(3) In proceedings for an offence under this section—

- (a) the accused shall not be entitled to acquittal by reason only of the fact that, on the evidence before the court, he could have been charged with, or convicted of, theft or other like offence in respect of the property;
- (b) where the court is satisfied that the accused was detained by a police officer in the exercise of the powers conferred upon him by section 25 of the Criminal Procedure Act, it may presume that the property found in his possession or being conveyed by him may reasonably be suspected of having been stolen or otherwise unlawfully acquired by him.

Cap.20

(4) Where an accused person is convicted of an offence under this section in respect of any property, he shall not be charged with or be convicted of an offence of stealing or other like offence in respect of the same property.

Unlawful possession or conveying of public stores
Ords: Nos. 32 of 1951 s. 2; 10 of 1959 s. 5; R.L. Cap. 455 s. 26; G.Ns. Nos: 433 of 1961; 349 of 1967 Sch.

312A.-(1) The Minister for the time being responsible for legal affairs may, by notice published in the Gazette, give directions as to the marks which may be applied in or on any stores under the control of any branch or department of, and being the property of, the Government of the United Republic.

(2) Any person who is charged with conveying or having in his possession, or keeping in any building or place, whether open or enclosed, any stores marked in accordance with subsection (1) which may be reasonably suspected of having been stolen or unlawfully obtained and who fails to give an account to the satisfaction of the court of how he obtained it commits an offence.

(3) Any person conveying or having in his or keeping in any building or place, of whether open or enclosed, any stores being the property of the Defence forces of the United Republic, which may reasonably be suspected of having been stolen or unlawfully obtained, and who fails to give an account to the satisfaction of the court of how he obtained it commits an offence.

(4) For the purposes of this section the term "stores" includes all goods and chattels and any single store or article or part thereof, and the word "mark" includes any part of a mark.

Receiving goods stolen from outside Mainland Tanzania

313. Every person who, without lawful excuse, knowing anything to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in Mainland Tanzania the person committing it would have been guilty of an offence, receives or has in his possession anything so stolen or obtained outside Mainland Tanzania, commits an offence and is liable to imprisonment for seven years.

CHAPTER XXXIII FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING

Trustees fraudulently disposing of trust property

314.-(1) Any person who, being a trustee of any property, and with intent to defraud destroys the property or converts it to any use not authorised by the trust commits an offence, and is liable to imprisonment for seven years.

(2) For the purposes of this section the term "trustee" means any of the following persons—

(a) a trustee upon an express trust created by a deed, will or instrument in writing, whether for a public, private or

- charitable purpose;
- (b) a trustee appointed as such by or under the authority of any written law;
- (c) a person upon whom the duties of any trust in terms of this subsection devolve; or
- (d) an executor or an administrator of an estate.

Misappropriation and fraud by directors and officers of corporations, etc. Act No. 2 of 1972 Sch.

315. Any person who—

- (a) being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct entry to be made therein; or
- (b) being a director, officer or member of a corporation or company, does any of the following acts with intent to defraud, that is to say—
 - (i) destroys, alters, mutilates or falsifies any book, document, valuable security or account which belongs to the corporation or company, or any entry in any such book, document or account, or is privy to that act;
 - (ii) makes, or is privy to making, any false entry in any such book, document or account; or
 - (iii) omits, or is privy to omitting, any material particular from any such book, document or account,

commits an offence, and is liable to imprisonment for fourteen years

False statements by officials of companies

316. Any person who, being a promoter, director, officer or auditor of a corporation or company, either existing or intended to be formed, makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the following, purposes—

- (a) to deceive or to defraud any member, shareholder or creditor of the corporation or company, whether a particular person or not;
- (b) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for its benefit,

commits an offence and is liable to imprisonment for seven years.

Fraudulent
accounting by
clerk Act No. 2
of 1972 Sch.

317. Any person who, being a clerk or servant or being employed or acting in the capacity of a clerk or servant, does any of the following acts with intent to defraud—

- (a) destroys, alters, mutilates or falsifies any book, document, valuable security or account which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or any entry in any such book, document or account or is privy to that act;
- (b) makes or is privy to making any false entry in a book, document or account; or
- (c) omits or is privy to omitting any material particular from any such book, document or account,

commits an offence and is liable to imprisonment for fourteen years.

False accounting
by public officer
Act No. 2 of
1972 Sch

318. Any person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, commits an offence and is liable to imprisonment for seven years.

CHAPTER XXXIV OFFENCES AGAINST THE SAFETY OF AVIATION

Endangering
safety of aviation
Acts Nos. 31 of
1972 Sch.; 17 of
1989 2nd
Schedule.

318A.-(1) Any person who—

- (a) performs an act of violence against a person on board and aircraft in flight if that act is likely to endanger the safety of the aircraft;
- (b) destroys an aircraft in service or causes damage to it which renders it incapable of flight or which is likely to endanger its safety in flight;
- (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which would render it incapable of flight or to cause damage to it which is likely to endanger its safety in flight;
- (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
- (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight,

commits an offence and is liable on conviction to imprisonment for a term not exceeding thirty years with corporal punishment.

(2) For the purposes of this section—

- (a) an aircraft shall be deemed to be in flight at any time from

the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; and in the case of forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(b) an aircraft shall be deemed to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty four hours after any landing and the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this section;

(c) an act of violence includes any threat to use violence.

(3) A person may be prosecuted for an offence under this section notwithstanding that the offence was committed outside Mainland Tanzania:

Provided that save where the offence was committed on or in relation to an aircraft registered in Mainland Tanzania or owned by a citizen of the United Republic ordinarily resident in the United Republic or by a body corporate established by or under any written law, including a company incorporated under the Companies Act, no person shall be tried and punished for an offence under this section if he has been prosecuted for and convicted or, as the case may be, acquitted of the same offence or for an offence involving the same facts, by any court or other judicial authority outside Mainland Tanzania.

(4) No person shall be prosecuted for an offence under this section save with the consent of Director of Public Prosecutions.

Division VI. – Malicious Injuries to Property

CHAPTER XXXV
OFFENCES CAUSING INJURY TO PROPERTY

Arson Act No. 2
of 1972 Sch.

- 319.** Any person who wilfully and unlawfully sets fire to—
- (a) any building or structure whatever, whether completed or not;
 - (b) any vessel, whether completed or not;
 - (c) any stack of cultivated vegetable produce or of mineral or vegetable fuel; or
 - (d) a mine or the workings, fittings or appliances of a mine,
 - (e) commits an offence and is liable to imprisonment for life.

Attempts to
commit arson
Act No. 2 of
1972 Sch.

- 320.** Any person who—
- (a) attempts unlawfully to set fire to any thing referred to in section 319; or

(b) wilfully and unlawfully sets fire to anything which is so situated that any thing referred to in section 319 is likely to catch fire from it,
commits an offence and is liable to imprisonment for fourteen years.

Setting fire to crops and growing plants

321. Any person who wilfully and unlawfully sets fire to—
(a) a crop of cultivated produce, whether standing, picked or cut;
(b) crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut; or
(c) any standing trees, saplings or shrubs, whether indigenous or not, under cultivation,
commits an offence and is liable to imprisonment for fourteen years.

Attempting to set fire to crops, etc.

322. Any person who—
(a) attempts unlawfully to set fire to any such thing as is mentioned in section 321; or
(b) wilfully and unlawfully sets fire to any thing which is so situated that any such thing as is mentioned in section 321 is likely to catch fire from it,
commits an offence and is liable to imprisonment for seven years

Casting away vessels Ord. No. 47 of 1954 s. 3

323. Any person who—
(a) wilfully and unlawfully casts away or destroys any vessel whether completed or not;
(b) wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or
(c) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark or signal used for purposes of navigation, or exhibits any false light or signal,
commits an offence and is liable to imprisonment for fourteen years.

Attempts to cast away vessels Ord. No. 47 of 1954 s. 3

324. Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress commits an offence, and is liable to imprisonment for seven years.

Injuring animals

325. Any person who wilfully and unlawfully kills, maims or wounds any animal capable of being stolen commits an offence.

Punishment for malicious injuries to property Ords. Nos. 47 of 1954 s. 3; 5 of 1961;

326.-(1) Any person who wilfully and unlawfully destroys or damages any property commits an offence, and except as otherwise provided in this section, is liable to imprisonment for seven years.
(2) If the property in question is a dwelling house or a vessel, and the injury is caused by the explosion of any explosive substance, and if—

Acts Nos. 65 of
1966 s. 8; 2 of
1972 Sch.; 12 of
1998 Sch.

- (a) any person is in the dwelling house or vessel; or
- (b) the destruction or damage actually endangers the life of any person,

the offender is liable to imprisonment for life.

(3) If the property in question—

- (a) is a bank or wall of a river, canal, aqueduct, reservoir or inland water or work which appertains to a dock, reservoir or inland water, and the injury causes actual danger of inundation or damage to any land or building;
- (b) is a railway, a bridge, viaduct or aqueduct which is constructed over a highway, railway or canal, or over which a railway, highway or canal passes, and the property is destroyed;
- (c) being a railway or being any such bridge, viaduct or aqueduct, is damaged, and the damage is done with intent to render the railway, bridge, viaduct or aqueduct, or the highway or canal passing over or under it or any part thereof, dangerous or impassable, and is thereby rendered wholly or partly dangerous or impassable; or
- (d) is the pipeline referred to in the Tanzania – Zambia Pipeline Act and the damage is done with intent to prevent or obstruct the use of the pipeline,

Cap.40

the offender is liable to imprisonment for life.

(4) If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender is liable to imprisonment for fourteen years.

(5) If the property in question is a vessel in distress or wrecked or stranded, or anything which belongs to the vessel, the offender is liable to imprisonment for seven years.

(6) If the property in question is any part of a railway, or any work connected with a railway, the offender is liable to imprisonment for fourteen years.

(6A) If the property in question is used or intended to be used for the purpose of providing necessary service, the offender commits an offence and—

- (a) if the offence is likely to result in danger to human life or to disrupt, damage, hinder or interfere with any necessary service or the carrying on of such service, shall be liable to imprisonment for a term of not less than twenty years but shall not exceed thirty years;
- (b) if the offence is committed in circumstances which do not result in danger to human life, shall be liable to imprisonment

for a term of not less than fifteen years but shall not exceed twenty years.

(6B) In this section, "necessary service" includes—

- (a) any service relating to installation, transmission, supply or distribution of electricity or telecommunication;
- (b) any fire service;
- (c) any sewerage, rubbish disposal or other sanitation service;
- (d) any health, hospital or ambulance service;
- (e) any service relating to the supply or distribution of water, gas or petroleum;
- (f) any road, railway, bridge, underground tunnel, car park, ferry, pantoon, pipeline for the supply of water or fuel, airfield, harbour or dock.

(7) If the property in question is used for the purpose of generating, transmitting or distributing electricity, the offender is liable and—

- (a) if the offence is likely to result in danger to human life, to imprisonment for fourteen years; or
- (b) in any other case, to imprisonment for seven years.

(8) A person is liable to imprisonment for seven years if the property in question—

- (a) being a vessel, whether completed or not, is destroyed;
- (b) being a vessel whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless;
- (c) is a light, beacon, buoy, mark or signal, used for the purposes of navigation or for the guidance of persons engaged in navigation;
- (d) is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir, or inland water, or which is used for the purposes of landing or unlanding goods;
- (e) being a railway, or being a bridge, viaduct or aqueduct which is constructed over a highway, railway or canal, or over which a highway, railway or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same or any part thereof, dangerous or impassable;
- (f) being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed;
- (g) being any thing referred to in paragraph (f), is damaged and the damage is done with intent to destroy the thing in question or to render it useless;

- (h) is a shaft or a passage of a mine and the injury is done with intent to damage the mine or obstruct its working;
 - (i) is a machine, appliance, apparatus, building, erection, bridge or road, appertaining to or used with a mine, whether the thing in question is completed or not;
 - (j) being a rope, chain or tackle, of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed;
 - (k) being any thing referred to in paragraph (f) is damaged and the damage is done with intent to destroy the thing in question or to render it useless; or
 - (l) is a well, or bore for water, or the dam, bank, wall or floodgate of a millpond or pool.
- (9) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is liable to imprisonment for seven years.

Attempts to
destroy property
by explosives

327. Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatever commits an offence and is liable to imprisonment for fourteen years.

Communicating
infectious
diseases to
animals

328. Any person who wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen commits an offence and is liable to imprisonment for seven years.

Removing
boundary marks
with intent to
defraud

329. Any person who, wilfully and unlawfully and with intent to defraud, removes or defaces any object or mark which has lawfully erected or made as an indication of the boundary of any land commits an offence and is liable to imprisonment for three years.

Repealed

330. [Repealed by R.L. Cap. 390 s. 33.]

Causing damage,
etc., to railway
works

331. Any person who—

- (a) wilfully damages, injures or obstructs any work, way, road, to building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, wagon, truck, material or plant acquired for or belonging to any railway works;
- (b) pulls up, removes, defaces or destroys, or in any way interferes with, any poles, stake flags, pegs, line, marks or anything driven or placed in or upon the grounds trees, stones or buildings, or any other material belonging to any railway works;
- (c) commits any nuisance or trespass in or upon any land buildings or premises acquired for or belonging to any railway works; or

(d) wilfully molests, hinders or obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of the railway,
commits an offence and is liable to imprisonment for three months or to a fine of four hundred shillings.

Threats to burn
or destroy

332. Any person who, knowing the contents thereof, sends, delivers, utters or directly or indirectly causes to be received any letter or writing threatening to burn or destroy any house, barn or other building or any rick or stack of grain, hay or straw, or other agricultural produce, whether in or under any building or not, or any vessel, or to kill, maim or wound any cattle, commits an offence and is liable to imprisonment for seven years.

Defacing bank
notes

332A. Any person who, without authority, wilfully defaces, tears, cuts or otherwise mutilates any bank note or currency note which is legal tender, commits a schedule offence and is liable on conviction to a fine of five thousand shillings for each note defaced or, in default, to imprisonment for a term of one year.

Kite-flying Act
No. 17 of 1990
3rd Sch.

332B.-(1) Subject to subsection (3), any person who fraudulently obtains credit or money of any amount from a banker by means of kite-flying commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) Any person employed by a bank who, by virtue of his office, fraudulently assists another person to obtain credit or money of any amount from a bank by means of kite-flying commits an offence and shall be liable on conviction to imprisonment for a term not exceeding ten years.

(3) A person shall be presumed fraudulent and commits an offence under this section if the cheque drawn by him is not honoured for reason of lack or insufficiency of funds in the account and within eight days after he is informed of the dishonoured cheque he fails or refuses to make good on the account.

(4) Where any person is convicted of an offence under this section the court shall order the forfeiture to the United Republic of any money, goods or property obtained in the course of or after the commission of the offence, as well as full compensation to the bank in respect of the money involved in the kite-flying.

(5) For the purposes of this section the expression "kite-flying" means obtaining money or credit by cheque on an account which has insufficient or no funds at all, thereby causing an unauthorised overdraft to a banker

Division VII. – Forgery, Coining, Counterfeiting and Similar Offences

CHAPTER XXXVI
DEFINITIONS

Definition of
forgery Act No.
5 of 1990 Sch.

333. Forgery is the making of a false document with intent to defraud or to deceive.

“Interpretation
of "document

334. The term "document" in this Division of this Code does not include a trade mark or any other sign used in connection with articles of commerce though they may be written or printed.

Making a false
document Act
No. 14 of 1980 s.
15

335. Any person makes a false document who—

- (a) makes a document which is false or which he has reason to believe is untrue;
- (b) alters a document without authority in such a manner that if the alteration had been authorised it would have altered the effect of the document;
- (c) introduces into a document without authority, whilst it is being drawn up, matter which if it had been authorised would have altered the effect of the document;
- (d) signs a document—
 - (i) in the name of any person without his authority, whether such name is or is not the same as that of the person signing;
 - (ii) in the name of any fictitious person alleged to exist whether the fictitious person is or is not alleged to be of the same name as the person signing;
 - (iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person;
 - (iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

Intent to defraud

336. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent that person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

CHAPTER XXXVII
PUNISHMENTS FOR FORGERY

Offence of, and
general
punishment for,
forgery Act No.
2 of 1972 Sch.

337. Any person who forges any document commits an offence, and is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for seven years.

Forgeries
punishable by
imprisonment
for life R.L. Cap.
500 s. 12

338. Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, is liable to imprisonment for life and the court may in addition order that any such document be forfeited to the United Republic.

Forgery of
judicial or
official
document

339. Any person who forges any judicial or official document is liable to imprisonment for seven years.

Forgeries
punishable by
imprisonment
for seven years

340.-(1) In this section, the term "stamp" means any stamp used for the purposes of revenue or by any Government department.

- (2) Any person who—
- (a) forges any stamp whether impressed or adhesive;
 - (b) without lawful excuse, the proof whereof shall lie upon him, makes or has knowingly in his possession any die or instrument capable of making the impression of any stamp;
 - (c) fraudulently cuts, tears in any way, or removes from any material any stamp with intent that another use shall be made of the stamp or any part of it;
 - (d) fraudulently mutilates any stamp with intent that another use shall be made of the stamp;
 - (e) fraudulently fixes or places upon any material or upon any such stamp a stamp or part of a stamp which whether fraudulently or not has been cut, torn or in any way removed from any other material or out of or from any other stamp;
 - (f) fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date or other matter or thing whatsoever written thereon with intent that another use shall be made of the stamp upon that material; or
 - (g) knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any stamp or part of a stamp which has been fraudulently cut, torn or otherwise removed from any material, or any stamp which has been

fraudulently mutilated, or any stamped material out of which any name, sum, date or other matter or thing has been fraudulently erased or otherwise really or apparently removed,

is liable to imprisonment for seven years.

Making or having in possession paper or implements for forgery Cap. 500 s. 36; Act No. 12 of 1966 Sch.

341. Any person who without lawful authority or excuse, proof whereof lies upon him—

- (a) makes, uses or knowingly has in his custody or possession any paper intended to resemble and pass as special paper such as is provided and used for making any currency note or bank note;
 - (b) makes, uses or knowingly has in his custody or possession, any frame, mould or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines or devices peculiar to and used in or on any such paper;
 - (c) engraves or anywise makes upon any plate, wood, stone or other material, any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part any words figures, letters, marks, lines or devices peculiar to and used in or on any currency note or bank note or in or on any document entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund or debt of any part of the Commonwealth or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company or society, whether within or without the Commonwealth;
 - (d) uses or knowingly has in his custody or possession any plate, wood, stone or other material, upon which any such words, figures, letters marks, lines or devices have been engraved or in anywise made as aforesaid; or
 - (e) uses or knowingly has in his custody or possession, any paper upon which any such words, figures, letters, marks, lines or devices have been printed or in anywise made as aforesaid,
- commits an offence and is liable to imprisonment for seven years.

Uttering false documents

342. Any person who knowingly and fraudulently utters a false document commits an offence and is liable to the punishment, provided for in respect of the offence of forgery in relation to that document.

Uttering cancelled or exhausted documents

343. Any person who knowingly utters for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by affluxion of time, or by death, or by the happening of any other event, commits an offence and is liable to the same punishment, as if

he had forged the document.

Procuring
execution of
documents by
false pretences

344. Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document, procures another person to sign or execute the document, commits an offence and is liable to the same punishment, as if he had forged the document.

Obliterating
crossing on
cheques

345. Any person who, with intent to defraud—
(a) obliterates, adds to or alters the crossing on a cheque; or
(b) knowingly utters a crossed cheque, the crossing on which has been obliterated, added to or altered,
commits an offence, and is liable to imprisonment for seven years

Making
documents
without authority

346. Any person who, with intent to defraud or to deceive—
(a) without lawful authority or excuse, makes, signs or executes for or in the name or account of another person, whether by procuration or otherwise, any document or writing; or
(b) knowingly utters any document or writing so made, signed or executed by another person,
commits an offence and is liable to imprisonment for seven years.

Demanding
property upon
forged
testamentary
instruments

347. Any person who procures the delivery or payment to himself or any other person of any property or money by virtue of any probate or letters of administration granted upon a forged testamentary instrument, knowing the testamentary instrument to have been forged, or upon or by virtue of any probate or letters of administration obtained by false evidence, knowing the grant to have been so obtained, commits an offence and is liable to the same punishment as if he had forged the document by virtue whereof he procures the delivery or payment.

Purchasing
forged notes

348. Any person who, without lawful authority or excuse, the proof of which lies on him, purchases or receives from any person, or has in his possession, a forged bank note or currency note, whether filled up or in blank, knowing it to be forged, commits an offence, and is liable to imprisonment for seven years.

Falsifying
warrants for
money payable
under public
authority

349. Any person who, being employed in the public service, knowingly and with intent to defraud, makes out or delivers to any person a warrant for the payment of any money payable by a public authority for a greater or lesser amount than that to which the person on whose behalf the warrant is made out is entitled, commits an offence and is liable to imprisonment for seven years.

Falsification of
register

350. Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which in any

material particular is to his knowledge false, to be made in the register or record, commits an offence and is liable to imprisonment for seven years.

Sending false certificate of marriage to registrar

351. Any person who signs or transmits to a person authorised by law to register marriages, a certificate of marriage, or any document purporting to be certificate of marriage, which in any material particular is to his knowledge false, commits an offence and is liable to imprisonment for seven years.

False statements for registers of births, deaths and marriages

352. Any person who knowingly and with intent to procure the same to be inserted in a register of births, deaths or marriages, makes any false statement touching any matter required by law to be registered in any such register, commits an offence and is liable to imprisonment for three years.

Wrongful issue of notes Act No. 12 of 1966 Sch.

352A. Any person who issues or is a party to issuing—
(a) any note purporting to be a currency note of Tanzania; or
(b) any bank note purporting to be currency in Tanzania, otherwise than in accordance with the provisions of the Bank of Tanzania Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

R.E.Cap.341

CHAPTER XXXVIII OFFENCES RELATING TO COIN

Definitions R.L. Cap. 500 s. 36; Act No. 12 of 1966 Sch.

353. In this Chapter—
"coin" includes any coin coined in a mint for use in Tanzania, or lawfully current in Tanzania or in any part of the Commonwealth; and any coin of a foreign sovereign or state, and coin which was at any time legal tender in Tanzania or in any other country and which is convertible into coin of legal tender therein;
"counterfeit coin" means coin not genuine but resembling or apparently intended to resemble or pass for genuine coin; and includes genuine coin prepared or altered so as to pass for coin of a higher denomination.

Counterfeiting coins

354. Any person who makes or attempts to make any counterfeit coin commits an offence and is liable to imprisonment for life.

Preparations for coining

355. Any person who—
(a) gilds or silvers any piece of metal of a fit size or figure to be coined, with intent that it shall be coined into counterfeit coin;
(b) makes any piece of metal into a fit size or figure to be coined, with intent that it shall be coined into counterfeit coin; or
(c) without lawful authority or excuse, the proof of which lies on

him—

- (i) buys, sells, receives, pays or disposes of any counterfeit coin at a lower rate than it imports or is apparently intended to import, or offers to do any such thing;
- (ii) brings or receives into Tanzania any counterfeit coin, knowing it to be counterfeit;
- (iii) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any stamp or mould which is adapted to make the resemblance of both or either of the sides of any coin, or any part of either side thereof, knowing the same to be a stamp or mould or to be so adapted;
- (iv) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any tool, instrument or machine which is adapted and intended to be used for making coin round the edges with marks or figures apparently resembling those on the edges of any coin, knowing the same to be so adapted and intended; or
- (v) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any press for coinage, or any tool, instrument or machine which is adapted for cutting round blanks out of gold, silver or other metal, knowing the press, tool, instrument or machine to have been used or to be intended to be used for making any counterfeit coin,

commits an offence and is liable to imprisonment for life.

Clipping

356. Any person who deals with any coin in such a manner as to diminish its weight, with intent that when so dealt with it may pass as coin, commits an offence and is liable to imprisonment for seven years.

Melting down of coin Act No. 5 of 1990 Sch.

357. Any person who melts down, breaks up or defaces by stamping thereon any name, word or mark any coin current for the time being in Tanzania commits an offence, and is liable to imprisonment for two years or to a fine of fifty thousand shillings or to both.

Impounding and destruction of counterfeit coin Act No. 12 of 1966 Sch.

358.-(1) Any officer of the Government or the manager of any bank who receives, during the performance of his duties, any coin which he has reasonable ground for believing to be counterfeit coin shall impound such coin and transmit it to an officer of the Bank of Tanzania appointed by the Bank for the purpose who may cut, deface or destroy it with or without compensation, as he thinks fit, if in his opinion it is counterfeit.

(2) The decision of an officer of the Bank of Tanzania appointed by the Bank for the purpose that a coin is counterfeit and that compensation should be granted or withheld shall be final, and no person shall be entitled to claim, and no proceedings or action shall be brought, against the Bank of Tanzania or the Government in respect of any loss or damage suffered by reason of such impounding and cutting, defacing or destruction.

Possession of
clippings

359. Any person who unlawfully has in his possession, or disposes of any filings, or clippings of gold or silver, or any gold or silver in bullion, dust, solution or any other state, obtained by dealing with gold or silver coin in such a manner as to diminish its weight, knowing the same to have been so obtained, commits an offence and is liable to imprisonment for seven years.

Uttering
counterfeit coin

360. Any person who utters any counterfeit coin, knowing it to be counterfeit, commits an offence.

Repeated
uttering

361. Any person who—

- (a) utters any counterfeit coin, knowing it to be counterfeit, and at the time of such uttering has in his possession any other counterfeit coin;
- (b) utters any counterfeit coin, knowing it to be counterfeit, and either on the same day or on any of the ten days next ensuing, utters any other counterfeit coin, knowing it to be counterfeit; or
- (c) has in his possession three or more pieces of counterfeit coin, knowing them to be counterfeit and with intent to utter any of them,

commits an offence and is liable to imprisonment for three years.

Uttering medal
or metal as coin

362. Any person who, with intent to defraud, utters as and for coin any medal or piece of metal, whether a coin or not, which is of less value than the coin as and for which it is uttered, commits an offence and is liable to imprisonment for one year.

Exporting
counterfeit coin

363. Any person who, without lawful authority or excuse, the proof of which lies on him, exports or puts on board a vessel or vehicle of any kind for the purposes of being exported from Tanzania, any counterfeit coin whatever, knowing it to be counterfeit, commits an offence.

Forfeiture R.L.
Cap. 500 s. 12

364. When any person is convicted of an offence under this Chapter, or Chapter XXXVII, the court shall order the forfeiture to the Republic of any forged bank note, currency note, counterfeit coin, stamp, mould, tool, instrument, machine, press or any coin, bullion or metal used

or employed in the commission of the offence.

CHAPTER XXXIX COUNTERFEIT STAMPS

Possession of die
used for
purposes of
making stamps
R.L. 500 ss. 12
and 36

365. Any person who, without lawful authority or excuse, the proof of which lies on him—

- (a) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession, or disposes of any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, which is used for the purposes of the public revenue or of the Tanzania Posts Corporation or of any foreign country, or capable of producing in or on paper any words, figures, letters, marks or lines resembling any words, figures, letters, marks or lines used in or on any paper specially provided by the proper authority for any such purpose;
- (b) knowingly has in his possession or disposes of any paper or other material which has on it the impression of any die, plate or instrument, or any paper which has on it or in it any words, figures, letters, marks or lines referred to in paragraph (a);
- (c) fraudulently, and with intent that use may be made of any stamp or of any part of it, removes the stamp from any material in any way whatever;
- (d) fraudulently, and with intent that use may be made of any part of a stamp, mutilates the stamp;
- (e) fraudulently fixes or places upon any material or upon any such stamp, any stamp or part of a stamp which has been in any way removed from any other material, or cut off or from any other stamp;
- (f) fraudulently, and with intent that use may be made of any stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from the material anything whatever written on it;
- (g) knowingly has in his possession or disposes of anything obtained or prepared by any unlawful act prohibited under paragraphs (a) to (f); or as aforesaid; or
- (h) fraudulently or with intent to cause loss to the public revenue, uses for any purpose any stamp which he knows to have been previously used,

commits an offence and is liable to imprisonment for seven years and any die, plate, instrument, paper or other thing referred to in this section which is found in his possession shall be forfeited to the United Republic.

Paper and dies
for postage

366.-(1) Any person who, without lawful authority or excuse, the proof of which lies on him.

- (a) makes or begins or prepares to make, or uses for any postal purposes, or has in his possession, or disposes of any imitation or representation on paper or any other material, of any stamp used for denoting any rate of postage of Tanzania or of any foreign country; or
- (b) makes or mends, or begins or prepares to make or mend, or uses, or has in his possession or disposes of any die, plate, instrument or material for making any such imitation or representation,

commits an offence, and is liable to imprisonment for one year, or to a fine of one thousand shillings and any stamps or other things referred to in this section which are found in his possession, shall be forfeited to the United Republic.

(2) For the purposes of this section a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown.

CHAPTER XL COUNTERFEITING TRADE MARKS⁴

Trade marks
defined

367. A trade mark is—

- (a) a mark lawfully used by any person to denote any chattel to be an article or thing of the manufacture, workmanship, production or merchandise of that person or to be an article or thing of any peculiar or particular description made or sold by him;
- (b) any mark or sign which in pursuance of any law for the time being in force relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under that law.

Counterfeiting
trade marks
Act No.19
of 2004 Sch.

368.-(1) Any person who, with intent to defraud or to enable another to defraud any person, that is to say -

- (a) forges or counterfeits any trade mark;
- (b) applies any trade mark, or any forged or counterfeited trade mark to any chattel or article not being the merchandise of any person whose trade mark is so forged or counterfeited;
- (c) applies any trade mark or any forged or counterfeited trade mark to any chattel or article not being the particular or peculiar description of merchandise denoted or intended to be denoted by the trade mark or by such forged or counterfeited trade mark;

- (d) applies any trade mark or any forged or counterfeited trade mark to anything intended for any purpose of trade or manufacture, or in, on or with which any chattel or article is intended to be sold, or is sold or offered or exposed for sale;
- (e) encloses or places any chattel or article in, upon, under or with anything to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied;
- (f) applies or attaches any chattel or article to any case, cover, reel, ticket, label or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied; or
- (g) encloses, places or attaches any chattel or article in, upon, under, with or to anything having thereon any trade mark of any other person,

commits an offence and is liable upon conviction to a fine of not less than ten million shillings but not exceeding fifty million shillings or, to imprisonment for not less than four years but not more than fifteen years or to both such fine.

(2) Every person committing an offence referred to in subsection (1) shall forfeit to the United Republic—

- (a) all chattels and articles to which the trade mark or counterfeit trade mark is applied or caused or procured to be applied;
- (b) every instrument for applying the trade mark or counterfeit trade mark in his possession or power;
- (c) the chattels, articles and things mentioned in paragraphs (d), (e) and (g) of subsection (1) and all similar things made to be used in like manner in his profession or power.

CHAPTER XLI PERSONATION

Personation in
general

369.-(1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, commits an offence.

(2) If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain that property or possession thereof, he is liable to imprisonment for seven years.

Falsely
acknowledging
deeds,
recognisances,
etc.

370. Any person who, without lawful authority or excuse, the proof of which lies on him, makes, in the name of any other person before any court or person lawfully authorised to take such an acknowledgement, an acknowledgement of liability of any kind, or an acknowledgement of a deed or other instrument, commits an offence.

Personation of a person named in a certificate

371. Any person who utters any document which has been issued by lawful authority to another person and whereby that other person is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right of privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, commits an offence of the same kind and is liable to the same punishment as if he had forged the document.

Lending, etc., certificate for personation

372. Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives or lends the document to another person with intent that that other person may represent himself to be the person named therein, commits an offence.

Personation of a person named in testimonial of character

373. Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial character given to another person, commits an offence, and is liable to imprisonment for one year.

Lending, etc., testimonial for personation

374. Any person who, being a person to whom any such document as is mentioned in section 373 has been given, gives, sells or lends such document to another person with intent that that other person may utter the document for the purpose of obtaining any employment, commits an offence.

CHAPTER XLII SECRET COMMISSIONS

Repealed

375.-379. [Repealed by R.L. Cap 400 s. 15].

Division VIII. – Attempts, Conspiracies to Commit Crimes, Accessories after the Fact, and Solicitation and Incitement

CHAPTER XLIII ATTEMPTS

Attempt defined

380.-(1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention

to such extent as to commit the offence, he is deemed to attempt to commit the offence.

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

Attempt to
commit offences

381. Any person who attempts to commit an offence commits an offence for which, unless a different punishment is provided, he is liable to imprisonment for two years or a fine or both.

Punishment of
attempts to
commit offences

382. Any person who attempts to commit an offence of such a kind that a person convicted of it is liable to the punishment of death or imprisonment for a term of fourteen years or more, with or without other punishment, commits an offence and is liable, if no other punishment is provided, to imprisonment for seven years.

Neglect to
prevent offence

383. Every person who knowing that a person designs to commit or is committing an offence, fails to use all reasonable means to prevent the commission or completion thereof, commits an offence.

CHAPTER XLIV CONSPIRACIES

Conspiracy to
commit offence
punishable with
imprisonment
for three or more
years of
imprisonment

384. Any person who conspires with another to commit any offence, punishable with imprisonment for a term of three years or more, or to do any act in any part of world which if done in Tanzania would be an offence so punishable, and which is an offence under the laws in force in the place where it is proposed to be done, commits an offence, and is liable if no other punishment is provided, to imprisonment for seven years or, if the greatest punishment to which a person convicted of the offence in question is liable is less than imprisonment for seven years, then to such lesser punishment.

Conspiracy to
commit an
offence
punishable with
imprisonment
for less than
three years

385. Any person who conspires with another to commit an offence punishable with imprisonment for a term of less than three years, or to do any act in any part of the world which if done in Tanzania would be, an offence so punishable, and which is an offence under the laws in force in the place where it is proposed to be done, commits an offence.

Other
conspiracies Act

386.-(1) Any person who conspires with another to effect any of

the following purposes, that is to say—

- (a) to prevent or defeat the execution or enforcement of any written law;
 - (b) to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person;
 - (c) to prevent or obstruct the free and lawful disposition of any property by the owner for its fair value;
 - (d) to injure any person in his trade or profession; or
 - (e) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession or occupation;
 - (f) to effect any unlawful purpose; or
 - (g) to effect any lawful purpose by any unlawful means,
- commits an offence.

(2) For the avoidance of doubt, it is hereby declared that a husband and wife may be guilty of conspiring together, whether their marriage is a monogamous marriage or a polygamous marriage.

CHAPTER XLV ACCESSORIES AFTER THE FACT

Definition of
accessories after
the fact

387.-(1) A person who receives or assists another who is, to his knowledge, commits an offence, in order to enable him to escape punishment, an accessory after the fact of the offence.

(2) A wife does not become an accessory after the fact to an offence of which her husband has committed by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting, in her husband's presence and by his authority, another person who commits an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a husband become accessory after the fact to an offence of which his wife has committed by receiving or assisting her in order to enable her to escape punishment.

Punishment of
accessories after
the fact to
offences
punishable with
three or more
years
imprisonment
Act No. 2 of
1972 Sch.

388. Any person who becomes an accessory after the fact to an offence punishable with imprisonment for three years or more, commits an offence, and is liable, if no other punishment is provided, to imprisonment for seven years.

Punishment of accessories after the fact to offences punishable with less than three years imprisonment

389. Any person who becomes an accessory after the fact to an offence punishable with imprisonment for less than three years commits an offence.

CHAPTER XLVI SOLICITATION AND INCITEMENT

Soliciting or inciting the commission of an offence Ord. No. 47 of 1954 s. 2

390. Any person who solicits or incites another to commit an offence, commits an offence notwithstanding that the solicitation or incitement has no effect.