

**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

G.Ns. Nos.

478 of 1962

222 of 1971

67 of 1972

PART I
GENERAL PROVISIONS (ss 1-38)

CHAPTER I
PRELIMINARY PROVISIONS (ss 1-3)

1. Short title

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

2. Disapplication

[Disapplication of Indian Penal Code.]

3. Saving of certain laws

(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 (ss 4-5)

4. General rule of construction

Subject to the provisions of the Interpretation Act *(2) 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.

5. Interpretation

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 ⁽³⁾ or a corporation established by or under any written law other than the Companies Act ⁽⁴⁾ or a company incorporated under the Companies Act which is wholly owned by the Government or which is a subsidiary of any public corporation.

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

"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;

"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 (ss 6-7)

6. Extent of jurisdiction of local courts

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.

7. Offences committed partly within and partly beyond the jurisdiction

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 (ss 8-21)

8. Ignorance of law

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.

9. *Bona fide* claim of right

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.

10. Relevance of intention or motive

(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.

11. Mistake of fact

(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.

12. Presumption of sanity

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.

13. Insanity

(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.

14. Intoxication

(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 *(5) relating to insanity shall apply.

(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.

15. Immature age

(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.

16. General immunity for officers

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.

17. Compulsion

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.

18. Defence of person or property

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.

18A. The right of defence

(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 *(6).

18B. Use of force in defence

(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, shall be guilty of manslaughter.

18C. When the right of defence extends to causing death

(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.

19. Use of force in effecting arrest

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.

20. Compulsion by husband

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.

21. Person not to be punished twice for same offence

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 (ss 22-24)

22. Principal offenders

(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, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself done the act or the omission.

23. Offences committed by joint offenders in prosecution of common purpose

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.

24. Counselling another to commit an offence

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 (ss 25-38)

25. Kinds of punishments

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.

26. Sentence of death

(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 affair 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.

27. Imprisonment

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

(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 *(7), to community service under a community service order.

28. Corporal punishment

Subject to the provisions of the Minimum Sentences Act *(8), 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 *(9).

29. Fines

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;

- (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. 50/-	14 days
Exceeding Shs. 50/- but not exceeding Shs. 200	2 months
Exceeding Shs. 200/- but not exceeding Shs. 2,000 /	6 months
Exceeding Shs. 2,000/- but not exceeding 10,000/-	12 months

Exceeding shs. 10,000/-

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.

30. Forfeiture

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.

31. Compensation

In accordance with the provisions of section 348 of the Criminal Procedure Act *(10), 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.

32. Costs

Subject to the limitations imposed by section 345 of the Criminal Procedure Act *(11), 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.

33. Security for keeping the peace

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.

34. Repealed

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

35. General punishment for offences where penalty not prescribed

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.

36. Sentences cumulative unless otherwise ordered

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.

37. Escaped convicts to serve unexpired sentences when recaptured

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.

38. Absolute and conditional discharge

(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.

38A. Commission of further offence

(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.

38B. Effect of conviction and discharge

(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 (ss 39-390)

Division I. – Offences against Public Order (ss 39-90)

CHAPTER VII TREASON AND OTHER OFFENCES AGAINST THE REPUBLIC (ss 39-63B)

39. Treason

(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,

shall be guilty 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 shall be guilty 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,

shall be guilty 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, shall be guilty of treason and shall be liable on conviction to suffer death.

40. Treasonable offences

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, shall be guilty of an offence and shall be liable on conviction to be sentenced to death.

41. Misprision of treason

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,

shall be guilty of the offence termed "misprision of treason" and shall be liable on conviction to imprisonment for life.

42. Omitted

[Omitted.]

43 Promoting warlike undertakings

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, shall be guilty of an offence and shall be liable on conviction to imprisonment for life.

44. Replaced

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

45. Inciting to mutiny

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,

is guilty of an offence and is liable to imprisonment for life.

46. Aiding soldiers or police officers in acts of mutiny

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 is guilty of an offence.

47. Inducing soldiers or police officers to desert

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, is guilty of an offence and is liable to imprisonment for six months.

48. Aiding prisoners of war to escape

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, is guilty of an offence, and is liable to imprisonment for life;
- (b) negligently and unlawfully permits the escape of any person referred to in paragraph (a) is guilty of an offence.

49. Definition of overt act

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.

50.-54. Repealed

[Repealed by Act No. 3 of 1976 s. 55 2(12).]

55. Seditious intention

- (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.

(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.

56.-58. Repealed

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

59. Unlawful oaths to commit offences

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,

is guilty of an offence and is liable to imprisonment for life.

60. Other unlawful oaths to commit offences

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,

is guilty of an offence and is liable to imprisonment for seven years.

61. Compulsion as a defence

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.

62. Unlawful drilling

(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,

is guilty of 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, is guilty of an offence.

63.-63A. Repealed

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

63B. Raising discontent and ill-will for unlawful purposes

(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, is guilty of 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 be guilty of 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
(ss 64-66)

64. Repealed

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

65. Foreign enlistment

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 the 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.

66. Piracy

- (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),

shall be guilty of the 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 (ss 67-90)

67.-73. Repealed

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

74. Definition of unlawful assembly and riot

(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.

75. Punishment for unlawful assembly

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

76. Punishment for riot

Any person who takes part in a riot is guilty of an offence.

77. Making proclamation for rioters to disperse

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.

78. Dispersion of rioters after proclamation

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.

79. Rioting after proclamation

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 is guilty of an offence, and is liable to imprisonment for five years.

80. Preventing or obstructing the making of a proclamation

Any person who forcibly prevents or obstructs the making of a proclamation referred to in section 77 is guilty of 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.

81. Rioters demolishing buildings, etc.

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

82. Rioters damaging buildings, etc.

Any persons 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.

83. Riotously interfering with railway, vehicle, etc.

All persons are guilty of 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.

84. Going armed in public

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

85. Forcible entry

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, is guilty 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.

86. Forcible detainer

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 is guilty of forcible detainer.

87. Affray

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

88. Challenge to fight a duel

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 is guilty of an offence

89. Abusive language, brawling and threatening violence

(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,

is guilty of 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, is guilty of 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.

89A. Watching or besetting

(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,

is guilty of 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.

89B. Intimidation

(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,

is guilty of 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.

89C. Dissuading persons from assisting with self-help schemes

(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, shall be guilty of an offence and 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.

90. Assembling for the purpose of smuggling

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 are guilty of an offence and each of them is liable to imprisonment for two years.

Division II. – Offences against the Administration of Lawful Authority (ss 91-124A)

CHAPTER X ABUSE OF OFFICE (ss 91-101)

91.-93. Repealed

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

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

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, is guilty of an offence, and is liable to imprisonment for one year.

95. False claims by officials

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, is guilty of an offence.

96. Abuse of office

(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 is guilty of 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.

97. False certificates by public officers

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 is guilty of an offence.

98. Unauthorised administration of extra-judicial oath

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 is guilty of 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.

99. False assumption of authority

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,

is guilty of an offence.

100. Personating public officers

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,

is guilty of an offence.

101. Threat of injury to persons employed in public service

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 is guilty of an offence.

CHAPTER XI

OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE (ss 102-114A)

102. Perjury and subornation of Perjury

(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, is guilty 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.

Subornation of perjury

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

103. False statements by interpreters

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, is guilty of perjury.

104. Punishment for perjury

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

105. Evidence on charge of perjury

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.

106. Fabricating evidence

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,

is guilty of an offence and is liable to imprisonment for seven years.

107. False swearing

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, is guilty of an offence.

108. Deceiving witnesses

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, is guilty of an offence.

109. Destroying evidence

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, is guilty of an offence.

110. Conspiracy to defeat justice and interference with witnesses

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,

is guilty of an offence and is liable to imprisonment for five years.

111. Unlawful compounding of offences

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, is guilty of an offence.

112. Compounding penal actions

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 is guilty of an offence.

113. Advertisements for stolen property

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),

is guilty of an offence.

114. Contempt of court

(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 or 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,

is guilty of 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.

114A. Preventing or obstructing service or execution of process

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,

is guilty of 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 (ss 115-119)

115. Rescue

(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 is guilty of 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), is guilty of an offence and liable to imprisonment for seven years; or
- (c) in any other case,

is guilty of 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.

116. Escape from lawful custody

A person who escapes from lawful custody is guilty of an offence.

116A. Absence from extramural employment

(1) If any person who has received permission to work outside a prison pursuant to the provisions of the Prisons Act *(13), fails to present himself at the appointed hour or absents himself from work, he is guilty of 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.

117. Aiding prisoners to escape

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,

is guilty of an offence and is liable to imprisonment for seven years.

118. Removal, etc., of property under lawful seizure

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, is guilty of an offence and is liable to imprisonment for three years.

119. Repealed

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

CHAPTER XIII MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY (ss 120-124A)

120. Frauds and breaches of trust by public officers

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, is guilty of an offence and shall be liable to imprisonment for seven years.

121. Neglect of official duty

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, is guilty of an offence.

122. False information to person employed in the public service

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,

shall be guilty of 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.

123. Disobedience of statutory duty

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, is guilty of 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.

124. Disobedience of lawful orders

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, is guilty of 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.

124A. Repealed

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

Division III. – Offences Injurious to the Public in General (ss 125-194B)

CHAPTER XIV

OFFENCES RELATING TO RELIGION AND BURIALS (ss 125-129)

125 Insult to religion

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 is guilty of an offence.

126. Disturbing religious assemblies

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

127. Trespassing on burial or other places

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, is guilty of an offence.

128. Hindering burial of dead body

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, shall be guilty of an offence.

129. Uttering words with intent to wound religious feelings

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, is guilty of an offence and is liable to imprisonment for one year.

CHAPTER XV OFFENCES AGAINST MORALITY (ss 129A-162)

129A. Definition of woman

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

130. Rape

(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.

131. Punishment for rape

(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).

(3) Notwithstanding the preceding provisions of this section whoever commits an offence of

rape to a girl under the age of ten years shall on conviction be sentenced to life imprisonment.

131A. Punishment for gang rape

(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) 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.

132. Attempted rape

(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.

133. Abduction

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, is guilty of an offence and is liable to imprisonment for seven years.

134. Abduction of Girls under sixteen

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 is guilty of an offence.

135. Sexual assault on persons and indecent assaults on women

(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.

136. Repealed

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

137. Defilement of idiots or imbeciles

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, is guilty of an offence and is liable to imprisonment for fourteen years, with or without corporal punishment.

138. Defilement by husband of wife under fifteen, etc.

(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, is guilty of 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, is guilty of 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, is guilty of 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.

138A. Acts of gross indecency between persons

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, is guilty of an offence and 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.

138B. Sexual exploitation of children

(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.

138C. Grave sexual abuse

(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.

138D. Sexual harassment

(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.

139. Procuration for prostitution

(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 procurement 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.

139A. Trafficking of person

(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.

140. Procuring rape

Any person who—

- (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.

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

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, is guilty of 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.

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

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, is guilty of 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.

143. Detention in any premises with intent, or in brothel

(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,

is guilty of 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.

144. Power of search

(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.

145. Male person living on earnings of prostitution or persistently soliciting

(1) A male person who—

- (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,

is guilty of 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.

146. Woman living on, or aiding, prostitution

A 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, is guilty of an offence.

147. Power of search

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.

148. Brothels

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

149. Conspiracy to induce unlawful sexual intercourse

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 is guilty of an offence and is liable to imprisonment for three years.

150. Attempts to procure abortion

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

151. Procuring own miscarriage

A woman being with child who with intent to procure her 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, is guilty of an offence and is liable to imprisonment for seven years.

152. Supplying drugs or instruments to procure abortion

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, is guilty of an offence, and is liable to imprisonment for three years.

153. Knowledge of age of female immaterial

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.

154. Unnatural offences

(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.

155. Attempt to commit unnatural offences

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.

156. Indecent assault of boys under fourteen

(1) Any person who unlawfully and indecently assaults a boy under the age of fourteen years is guilty of 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.

157. Indecent practices between males

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, is guilty of an offence and is liable to imprisonment for five years.

158. Incest by males

(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 is guilty of an offence.

159. Order for guardianship

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.

160. Incest by females

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.

160A. Punishment for sexual offences

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 *(14), the court shall sentence such person to imprisonment for a term prescribed under the Chapter.

161. Test of relationship

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.

162. Sanction of Director of Public Prosecutions

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 (ss 163-169A)

163. Fraudulent pretence of marriage

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 is guilty of an offence and liable to imprisonment for ten years.

164. Repealed

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

165. Marriage ceremony fraudulently gone through without lawful marriage

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

166. Desertion of children

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, is guilty of an offence.

167. Neglecting to provide food, etc., for children

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, is guilty of an offence.

168. Master not providing for servants or apprentices

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, is guilty of an offence.

169. Child stealing

(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,

is guilty of 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.

169A. Cruelty to children

(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 (ss 170-186)

170. Common nuisance

(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.

171. Gaming houses

(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 is guilty of 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 is guilty of 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.

172. Betting houses

(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, is guilty of 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.

173. Repealed

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

173A. Repealed

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

173B. Chain letters

(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 is guilty of 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.

174. Keeper of premises defined

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 is mentioned in sections 171 and 172 is to be taken to be the keeper, whether he is or is not the real keeper.

175. Traffic in obscene publications

- (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,

is guilty of 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. Idle and disorderly persons

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.

176A. Harbours common prostitutes

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, shall be guilty of an offence and 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.

177. Rogues and vagabonds

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 shall be guilty 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.

177A. Failure to account for money collected by public subscription

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, shall be guilty of an offence and liable for the first offence to imprisonment for two years and for every subsequent offence, to imprisonment for three years.

178. offences relating to uniforms

(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 is guilty of an offence and 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, is guilty of 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, is guilty of an offence and is liable to imprisonment for six months or to a fine of two thousand shillings.

Forfeiture of uniform, etc., on conviction

(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.

179. Negligent act likely to spread infection

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 is guilty of an offence.

180. Adulteration of food or drink intended for sale

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, is guilty of an offence.

181. Sale of noxious food or drink

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, is guilty of an offence.

182. Adulteration of drugs

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, is guilty of an offence.

183. Sale of adulterated drugs

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, is guilty of an offence.

184. Fouling water

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, is guilty of an offence.

185. Fouling air

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, is guilty of an offence.

186. Offensive trades

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 (ss 187-194)

187.-194. Repealed

[Repealed by Act No. 3 of 1976 s. 55 3(15).]

CHAPTER XIX HOARDING AND ALLIED OFFENCES (ss 194A-194B)

194A. Hoarding of commodities

(1) Any person, whether or not licensed to carry on the business of selling a commodity of any description shall be guilty of the 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,

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 is himself not guilty of 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.

194B. Repealed

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

Division IV. – Offences against the Person (ss 195-256)

CHAPTER XX

MURDER AND MANSLAUGHTER (ss 195-205)

195. Manslaughter

(1) Any person who by an unlawful act or omission causes the death of another person is guilty 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.

196. Murder

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

197. Punishment for murder

A person convicted of murder shall be sentenced to death.

198. Punishment for manslaughter

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

199. Conviction for infanticide in certain cases

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, be guilty of infanticide, and may, be dealt with and punished for the offence as if she had been guilty of manslaughter of the child.

200. Malice aforethought

Malice aforethought shall be deemed to be established by 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.

201. Killing on provocation

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 is guilty of manslaughter only.

202. Provocation defined

(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.

203. Causing death defined

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.

204. When child deemed to be a person

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.

205. Limitation as to time of death

(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 (ss 206-210)

206. Responsibility of person who has charge of another

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.

207. Duty of head of family

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.

208. Duty of masters

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.

209. Duty of persons doing dangerous acts

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.

210. Duty of persons in charge of dangerous things

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 (ss 211-219)

211. Attempt to murder

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,

is guilty of an offence and is liable to imprisonment for life.

212. Repealed

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

213. Accessory after the fact to murder

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

214. Written threats to murder

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

215. Conspiracy to murder

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

216. Aiding suicide

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,

is guilty of an offence and liable to imprisonment for life.

217. Attempting suicide

Any person who attempts to kill himself is guilty of an offence.

218. Concealing the birth of a child

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, is guilty of an offence.

219. Child destruction

(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, shall be guilty of child destruction and shall be liable on conviction to imprisonment for life.

(2) A person shall be guilty of 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 (ss 220-232)

220. Disabling in order to commit offence

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 is guilty of an offence and liable to imprisonment for life.

221. Stupefying in order to commit offence

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 is guilty of a an offence and liable to imprisonment for life.

222. Acts intended to cause grievous harm or prevent arrest

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,

is guilty of an offence, and liable to imprisonment for life.

222A. Possession of human being parts

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.

223. Preventing escape from wreck

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),

is guilty of an offence and liable to imprisonment for life.

224. Endangering safety of persons travelling by railway

(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,

is guilty of an offence and 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 is guilty of an offence.

225. Grievous harm

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

226. Attempting to injure by explosive substances

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

227. Maliciously administering poison with intent to harm

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, is guilty of an offence and liable to imprisonment for fourteen years.

228. Wounding and similar acts

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,

is guilty of an offence and liable to imprisonment for three years.

229. Failure to supply necessaries

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, is guilty of an offence and liable to imprisonment for three years.

230. Responsibility as to surgical operation

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.

231. Criminal responsibility for excess force

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.

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

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 (ss 233-239)

233. Reckless and negligent acts

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,

is guilty of an offence.

234. Other negligent acts causing harm

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, is guilty of an offence and liable to imprisonment for six months.

235. Handling of poisonous substances in negligent manner

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, is guilty of an offence, and is liable to imprisonment for six months or to a fine of two thousand shillings.

236. Omitted

[Omitted.]

237. Exhibition of false light, mark or buoy

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

238. Conveying person by water for hire in unsafe or overloaded vessel

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, is guilty of an offence.

239. Danger or obstruction in public way or line of navigation

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 is guilty of an offence and liable to a fine.

CHAPTER XXV ASSAULTS (ss 240-243)

240. Common assault

Any person who unlawfully assaults another is guilty of 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.

241. Assaults causing actual bodily harm

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

242. Assaults on persons protecting wreck

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, is guilty of an offence and is liable to imprisonment for seven years.

243. Other types of assault

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,

is guilty of an offence and liable to imprisonment for five years.

CHAPTER XXVI OFFENCES AGAINST LIBERTY (ss 244-256)

244. Definition of kidnapping from Mainland Tanzania

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.

245. Definition of kidnapping from lawful guardianship

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.

246. Definition of abduction

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

247. Punishment for kidnapping

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

248. Kidnapping or abducting in order to murder

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, is guilty of an offence and is liable to imprisonment for ten years.

249. Kidnapping or abducting with intent to confine

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

250. Kidnapping or abducting with intent to do harm

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, is guilty of an offence and is liable to imprisonment for ten years.

251. Wrongfully concealing kidnapped or abducted person

Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines that person, is guilty of 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.

252. Kidnapping or abducting child with intent to steal

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 is guilty of an offence and is liable to imprisonment for seven years.

253. Punishment for wrongful confinement

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

254. Buying or disposing of any person as a slave

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, is guilty of an offence, and is liable to imprisonment for seven years.

255. Habitual dealing in slaves

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

256. Unlawful compulsory labour

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

Division V. – Offences Relating to Property (ss 257-318A)

CHAPTER XXVII THEFT (ss 257-275)

257. Things capable of being stolen

(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.

258. Definition of theft

(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.

259. Special cases

(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.

260. Funds, etc., held under direction

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.

261. Funds, etc., received by agents from sales

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.

262. Money received for another

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.

263. Theft by persons having an interest in the thing stolen

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.

264. Husband and wife

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.

265. General punishment for theft

Any person who steals anything capable of being stolen is guilty 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.

266. Stealing wills

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

267. Repealed

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

268. Stealing certain animals

(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.

269. Stealing from the person, etc.

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.

270. Stealing by persons in public service

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.

271. Stealing by clerks and servants

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.

272. Stealing by directors or officers of companies

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.

273. Stealing by agents, etc.

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;
- (e) 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.

274. Stealing by tenants or lodgers

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.

275. Stealing after previous conviction

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 (ss 276-284A)

276. Concealing registers

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, is guilty of an offence and is liable to imprisonment for ten years.

277. Concealing wills

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

278. Concealing deeds

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 is guilty of an offence and is liable to

imprisonment for three years.

279. Killing animals with intent to steal

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, shall be guilty of an offence and shall be liable on conviction to the same punishment as if he had stolen the animal.

280. Severing with intent to steal

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

281. Fraudulent disposition of mortgaged goods

(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, is guilty of 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.

282. Fraudulently dealing with minerals in mines

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, is guilty of an offence and is liable to imprisonment for five years.

283. Fraudulent appropriation of power

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, is guilty of an offence and is liable to imprisonment for five years.

284. Conversion not amounting to theft

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 shall be guilty of an offence and is liable to imprisonment for six months or to a fine not exceeding one thousand shillings or to both.

284A. Causing pecuniary loss or damage to property of specified authority

(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, be guilty of an offence and be liable on conviction to a fine of not less than five million shillings or imprisonment for a term of not less than three years or to both.

(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 *(16);
- (d) the East African Community;
- (e) a parastatal organization;
- (f) any company registered under the Companies Act *(17) 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 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 *(18), 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 (ss 285-292)

285. Definition of robbery

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 is guilty of robbery.

286. Punishment for robbery

Any person who commits robbery is liable to imprisonment for twenty years and if the offender is armed with any dangerous or offensive weapon or instrument, or is in company with any other person or if, at or immediately before or immediately after the time of robbery, he wounds, beats, strikes or uses personal violence to any person, he is liable to imprisonment for life, with or without corporal punishment.

287. Attempted robbery

(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, is guilty of an offence and is liable to imprisonment for a term of not less than seven years and not exceeding twenty years, with corporal punishment.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with any other person or if, at or immediately before or immediately after the time of the assault, he uses personal violence to any person, he is liable to imprisonment for life but, in any case, to a term of imprisonment for not less than fifteen years with corporal punishment.

288. Assault with intent to steal

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

289. Demanding property by written threats

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, is guilty of an offence and is liable to imprisonment for fourteen years.

290. Attempts at extortion by threats

(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,

is guilty of 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.

291. Procuring execution of deeds, etc., by threats

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,

is guilty of an offence is liable to imprisonment for fourteen years.

292. Demanding property with menaces with intent to steal

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

CHAPTER XXX BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES (ss 293-300)

293. Definition of breaking and entering

(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.

294. Housebreaking and burglary

(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,

is guilty 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.

295. Entering dwelling house with intent to commit offence

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

296. Breaking into building and committing an offence

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,

is guilty of an offence and is liable to imprisonment for ten years.

297. Breaking into building with intent to commit an offence

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, is guilty of an offence, and is liable to imprisonment for fourteen years.

298. Being armed, etc., with intent to commit an offence

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,

is guilty of 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.

299. Criminal trespass

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,

is guilty of criminal trespass and 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.

300. Forfeiture

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 (ss 301-310)

301. Definition of false pretence

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.

302. Obtaining goods by false pretences

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, is guilty of an offence and is liable to imprisonment for seven years.

303. Obtaining execution of a security by false pretences

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, is guilty of an offence and is liable to imprisonment for seven years.

304. Cheating

Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen or any other person to or 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, is guilty of an offence and is liable to imprisonment for three years.

305. Obtaining credit, etc., by false pretences

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,

is guilty of an offence and is liable to imprisonment for five years.

305A. Where goods or credit obtained for someone else

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.

306. Conspiracy to defraud

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, is guilty of an offence and is liable to imprisonment for five years.

307. Frauds on sale or mortgage of property

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,

is guilty of an offence and is liable to imprisonment for five years.

308. Pretending to tell fortunes

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 is guilty of an offence.

309. Obtaining registration, etc., by false pretence

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 is guilty of an offence, and is liable to imprisonment for two years.

310. False declaration for passport

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, is guilty of an offence.

[s. 310]

RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES (ss 311-313)

311. Receiving property stolen or unlawfully obtained, etc.

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, is guilty of an offence and is liable to imprisonment for ten years.

312. Persons conveying or having possession of goods suspected of having been stolen or unlawfully acquired

(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 *(19) 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, be guilty of 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

*(20), 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.

(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.

312A. Unlawful possession or conveying of public stores

(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 is guilty of 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 shall be guilty of 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.

313. Receiving goods stolen from outside Mainland Tanzania

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, is guilty of 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 (ss 314-318)

314. Trustees fraudulently disposing of trust property

(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 is guilty of a 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.

315. Misappropriation and fraud by directors and officers of corporations, etc.

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,

is guilty of an offence, and is liable to imprisonment for fourteen years.

316. False statements by official of companies

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,

is guilty of an offence and is liable to imprisonment for seven years.

317. Fraudulent accounting by clerk

Any person who, being a clerk or servant or being employed or acting in the capacity or 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,

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

318. False accounting by public officer

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, is guilty of an offence and liable to imprisonment for seven years.

CHAPTER XXXIV OFFENCES AGAINST THE SAFETY OF AVIATION (ss 318A)

318A. Endangering safety of aviation

- (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,

shall be guilty of an offence and shall be 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 (ss 319-332B)

CHAPTER XXXV OFFENCES CAUSING INJURY TO PROPERTY (ss 319-332B)

319. Arson

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,

is guilty of an offence and is liable to imprisonment for life.

320. Attempts to commit arson

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,

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

321. Setting fire to crops and growing plants

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,

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

322. Attempting to set fire to crops, etc.

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,

is guilty of an offence and liable to imprisonment for seven years.

323. Casting away vessels

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,

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

324. Attempts to cast away vessels

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 is guilty of an offence, and is liable to imprisonment for seven years.

325. Injuring animals

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

326. Punishment for malicious injuries to property

(1) Any person who wilfully and unlawfully destroys or damages any property is guilty of 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—

- (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 *(21) and the damage is done with intent to prevent or obstruct the use of the pipeline,

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 is guilty of 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.

327. Attempts to destroy property by explosives

Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatever is guilty of an offence and is liable to imprisonment for fourteen years.

328. Communicating infectious diseases to animals

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 is guilty of an offence and is liable to imprisonment for seven years.

329. Removing boundary marks with intent to defraud

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 is guilty of an offence and is liable to imprisonment for three years.

330. Repealed

[Repealed by R.L. Cap. 390 s. 33.]

331. Causing damage, etc., to railway works

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,

is guilty of an offence and is liable to imprisonment for three months or to a fine of four hundred shillings.

332. Threats to burn or destroy

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, is guilty of an offence and is liable to imprisonment for seven years.

332A. Defacing bank notes

Any person who, without authority, wilfully defaces, tears, cuts or otherwise mutilates any bank note or currency note which is legal tender, is guilty of an 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.

332B. Kite-flying

(1) Subject to subsection (3), any person who fraudulently obtains credit or money of any amount from a banker by means of kite-flying is guilty of an offence and 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 is guilty of 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 guilty of 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 (ss 333-379)

**CHAPTER XXXVI
DEFINITIONS (ss 333-336)**

333. Definition of forgery

Forgery is the making of a false document with intent to defraud or to deceive.

334. Interpretation of "document"

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.

335. Making a false document

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.

336. Intent to defraud

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 (ss 337-352A)

337. Offence of, and general punishment for, forgery

Any person who forges any document is guilty of an offence, and 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.

338. Forgeries punishable by imprisonment for life

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.

339. Forgery of judicial or official document

Any person who forges any judicial or official document is liable to imprisonment for seven years.

340. Forgeries punishable by imprisonment for seven years

(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.

341. Making or having in possession paper or implements for forgery

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,

is guilty of an offence and is liable to imprisonment for seven years.

342. Uttering false documents

Any person who knowingly and fraudulently utters a false document is guilty of an offence and is liable to the punishment, provided for in respect of the offence of forgery in relation to that document.

343. Uttering cancelled or exhausted documents

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 effluxion of time, or by death, or by the happening of any other event, is guilty of an offence and is liable to the same punishment, as if he had forged the document.

344. Procuring execution of documents by false pretences

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, is guilty of an offence and is liable to the same punishment, as if he had forged the document.

345. Obliterating crossing on cheques

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,

is guilty of an offence, and is liable to imprisonment for seven years.

346. Making documents without authority

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,

is guilty of an offence and is liable to imprisonment for seven years.

347. Demanding property upon forged testamentary instruments

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, is guilty of 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.

348. Purchasing forged notes

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, is guilty of an offence, and is liable to imprisonment for seven years.

349. Falsifying warrants for money payable under public authority

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, is guilty of an offence and is liable to imprisonment for seven years.

350. Falsification of register

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, is guilty of an offence and is liable to imprisonment for seven years.

351. Sending false certificate of marriage to registrar

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, is guilty of an offence and is liable to imprisonment for seven years.

352. False statements for registers of births, deaths and marriages

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, is guilty of an offence and is liable to imprisonment for three years.

352A. Wrongful issue of notes

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 *(22), shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

CHAPTER XXXVIII
OFFENCES RELATING TO COIN (ss 353-364)

353. Definitions

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.

354. Counterfeiting coins

Any person who makes or attempts to make any counterfeit coin is guilty of an offence and is liable to imprisonment for life.

355. Preparations for coining

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,

is guilty of an offence and is liable to imprisonment for life.

356. Clipping

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, is guilty of an offence and is liable to imprisonment for seven years.

357. Melting down of coin

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 is guilty of an offence, and is liable to imprisonment for two years or to a fine of fifty thousand shillings or to both.

358. Impounding and destruction of counterfeit coin

(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.

359. Possession of clippings

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, is guilty of an offence and is liable to imprisonment for seven years.

360. Uttering counterfeit coin

Any person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of an

offence.

361. Repeated uttering

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,

is guilty of an offence and liable to imprisonment for three years.

362. Uttering medal or metal as coin

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, is guilty of an offence and is liable to imprisonment for one year.

363. Exporting counterfeit coin

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, is guilty of an offence.

364. Forfeiture

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 (ss 365-366)

365. Possession of die used for purposes of making stamps

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,

is guilty of 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.

366. Paper and dies for postage stamps

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,

is guilty of 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 MARKS (ss 367-368) 4(23)**

367. Trade marks defined

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.

368. Counterfeiting trade marks

(1) A person is guilty of an offence if he does any of the following things 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.

(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 (ss 369-374)

369. Personation in general

(1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of 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.

370. Falsely acknowledging deeds, recognisances, etc.

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, is guilty of an offence.

371. Personation of a person named in a certificate

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, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

372. Lending, etc., certificate for personation

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, is guilty of an offence.

373. Personation of a person named in testimonial of character

Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial character given to another person, is guilty of an offence, and is liable to imprisonment for one year.

374. Lending, etc., testimonial for personation

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, is guilty of an offence.

CHAPTER XLII SECRET COMMISSIONS (ss 375-379)

375.-379. Repealed

[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 (ss 380-383)

380. Attempt defined

(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.

381. Attempt to commit offences

Any person who attempts to commit an offence is guilty of an offence for which, unless a different punishment is provided, he is liable to imprisonment for two years or a fine or both.

382. Punishment of attempts to commit offences

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, is guilty of an offence and is liable, if no other punishment is provided, to imprisonment for seven years.

383. Neglect to prevent offence

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, is guilty of an offence.

CHAPTER XLIV CONSPIRACIES (ss 384-386)

384. Conspiracy to commit offence punishable with imprisonment for three or more years of imprisonment

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, is guilty of 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.

385. Conspiracy to commit an offence punishable with imprisonment for less than three years

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, is guilty of an offence.

386. Other conspiracies

(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,

is guilty of 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 (ss 387-389)

387. Definition of accessories after the fact

(1) A person who receives or assists another who is, to his knowledge, guilty of 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 is guilty 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 is guilty of 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 is guilty by receiving or assisting her in order to enable her to escape punishment.

388. Punishment of accessories after the fact to offences punishable with three or more years imprisonment

Any person who becomes an accessory after the fact to an offence punishable with imprisonment for three years or more, is guilty of an offence, and is liable, if no other

punishment is provided, to imprisonment for seven years.

389. Punishment of accessories after the fact to offences punishable with less than three years imprisonment

Any person who becomes an accessory after the fact to an offence punishable with imprisonment for less than three years is guilty of an offence.

**CHAPTER XLVI
SOLICITATION AND INCITEMENT (ss 390)**

390. Soliciting or inciting the commission of an offence

Any person who solicits or incites another to commit an offence is guilty of an offence notwithstanding that the solicitation or incitement has no effect.

Endnotes

1 (Popup - Popup)

Chapter XL repealed by the Merchandise Marks Act, 1963 * (Act No. 20 of 1963 s. 19) which had not come into force at the cut-off date of this Law Revision (31st July, 2002).

2 (Popup - Popup)

Cap. 1

3 (Popup - Popup)

Cap. 257

4 (Popup - Popup)

Cap. 212

5 (Popup - Popup)

Cap. 20

6 (Popup - Popup)

Cap. 287

7 (Popup - Popup)

Cap. 291

8 (Popup - Popup)

Cap. 90

9 (Popup - Popup)

Cap. 17

Cap. 11 6th Schedule

10 (Popup - Popup)

Cap. 20

11 (Popup - Popup)

Cap. 20

12 (Popup - Popup)

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

13 (Popup - Popup)

Cap. 58

14 (Popup - Popup)

Cap. 101

15 (Popup - Popup)

For offences relating to defamation formerly under sections 187 to 194 see the Newspapers Act *.

16 (Popup - Popup)

Cap. 245

17 (Popup - Popup)

Cap. 212

18 (Popup - Popup)

Cap. 33

19 (Popup - Popup)

Cap. 20

20 (Popup - Popup)

Cap. 20

21 (Popup - Popup)

Cap. 40

22 (Popup - Popup)

R.E. Cap. 341

23 (Popup - Popup)

Chapter XL repealed by the Merchandise Marks Act, 1963 * (Act No. 20 of 1963 s. 19) which

had not come into force at the cut-off date of this Law Revision (31st July, 2002).