

Sexual Offences Special Provisions Act, 1998

An Act to amend several written laws, making special provisions in those laws with regard to sexual and other offences to further safeguard the personal integrity, dignity, liberty and security of women and children.

Enacted by the Parliament of the United Republic of Tanzania.

PART I PRELIMINARY PROVISIONS

1.Short title

This Act may be cited as the Sexual Offences Special Provisions Act, 1998.

2.Commencement

This Act shall come into operation on the first day of July, 1998.

3.Interpretation

In this Act, except where the context requires otherwise-

"boy" means a male person of the age of under eighteen years;

"girl" means a female person of the age of under eighteen years;

"gross indecency" means any sexual act that is more than ordinary but falls short of actual intercourse and may include masturbation and indecent physical contact or indecent behaviour without any physical contact;

"hospital" means the precincts of a hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

"injury" means an actual harm caused to a person and includes physical, mental and psychological suffering;

"man" means any male person above the age of eighteen years;

"prohibited sexual intercourse" means sexual intercourse between persons who are not spouses to each other;

"separated" means and includes separation arranged by the family clan elders without the parties going to court or otherwise;

"sexual abuse" means illegal sexually oriented acts or words done or said in relation to any person for gratification or for any other illegal purposes;

"sexual intercourse" whether natural or unnatural, shall, for the purpose of proof of a sexual offence, be deemed to be complete upon proof of penetration only not the completion of the intercourse by the omission of seed;

"sexual offence" means any of the offences created in Chapter XV of the Penal Code;

"woman" means any female person above the age of eighteen years, whether or not married;

"women's or children's institution" means an institution for the reception and care of women or children, however described;

PART II AMENDMENT OF THE PENAL CODE

4.Replacement of section 15

Section 15 of the Penal Code is hereby repealed and replaced with the following:

"Immature age

15.-

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

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

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

5.Replacement of section 130

Section 130 of the Penal Code is hereby repealed and replaced with the following:

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 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 or 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 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 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,

is liable to imprisonment for a term prescribed under subsection (1) of section 131".

(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."

6.Replacement of section 131

Section 131 of the Penal Code is hereby repealed and replaced with the following:

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 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 provision 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 sentenced 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."

7.Addition of new section 131A

The Penal Code is hereby amended by adding after section 131 the following new section;

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."

8.Replacement of section 132

Section 132 of the Penal Code is hereby repealed and replaced by the following:

132.-"Attempted rape

(1)Any person who attempt 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 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 for sexual purposes;

(c)making any false representations to her for the purposes of obtaining her consent;

(d)representing himself as a 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."

9.Replacement of section 135

Section 135 of the Penal Code is hereby repealed and replaced with the following:

135.-"Sexual assault on persons and indecent assaults on women

(1)Any person who, with intent to cause sexual annoyance to any person utters any word or sound, makes any gesture or exhibits any word or object intending that such word or sound 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 the charge for sexual assault under this section related 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."

10.Repeal of section 136

Section 136 of the Penal Code is hereby repealed.

11.Amendment of section 138

Section 138 of the Penal Code is hereby amended-

- (a)in the section generally by substituting the phrase "fifteen years" for "twelve years;
- (b)in subsection (1) by deleting the words "imprisonment for five years" and substituting for them the words "imprisonment for ten years";
- (c)in subsection (2) by deleting the words "imprisonment for two years" and substituting for them the words "imprisonment for ten years";
- (d)in subsection (3) by deleting the words "imprisonment for two years" and substituting for them the words "imprisonment for ten years".

12.Addition of new section 138A, 138B, 138C, 138D

The Penal Code is hereby amended by adding after section 138 the following new section:

"Acts of gross indecency between persons

138A.And person who, in public or private commits, or is a 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 not less than one year and not exceeding five years or to a fine not less than one hundred thousand 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 primary school or a student of 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 obscence 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 the 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.

(2)In this section "child" means a person of the age of less than eighteen 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 on any orifice or part of the body of any other 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 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 the person in respect of whom the offence was committed for the 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 the 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 action used by a person in authority, in a working place or any other place, shall constitute the offence of sexual harassment.

(4)For the purpose 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."

12.Replacement of section 139

Section 139 of the Penal Code is hereby repealed and replaced with the following:

139."Procuration for prostitution

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 what ever 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;

(c)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 the offence of procuration and is liable on conviction to imprisonment for a term of not less than ten years and not exceeding twenty years or to a fine of not less than one hundred thousand shillings and not exceeding three hundred thousand shillings or to both the fine and imprisonment."

14.Addition of new section 139A

The Penal Code is hereby amended by adding immediately after section 139 the following new section:

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 falsification of any birth record or register; or

(v) engages in procuring children from hospitals, shelters for women, clinics, nurseries day care centres, or 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 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 or less."

15. Replacement of section 140

Section 140 of the Penal Code is hereby repealed and replaced with the following:

140. "Procuring defilement

Any person who-

(a) by 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 any 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 compensation of an amount to be determined by the court."

16.Replacement of section 154

Section 154 of the Penal Code is hereby repealed and replaced with following-

154.Unnatural of 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."

17.Replacement of section 155

Section 155 of the Penal Code is hereby repealed and replaced with the following-

155.Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified under section 154 commits an offences and shall on conviction be sentenced to imprisonment for a term not less than twenty years."

18.Amendment of section 156

Section 156 of the Penal Code is hereby amended-

(a)in subsection (1) by deleting the words "for seven years and substituting for them the words "for life";

(b)in subsection (2) by deleting the words "twelve years" and substituting for them the words "fifteen years."

19.Amendment of section 158

Section 158 of the Penal Code is hereby amended by deleting subsection (1) and substituting for it the following:-

"(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 upon 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 if of the age of eighteen years or more, to imprisonment for a term of not less than twenty years."

20.Replacement of section 160

Section 160 of the Penal code is hereby repealed and replaced with the following-

160."Insert 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."

21.Addition of new section 169A

The Penal Code is hereby amended by inserting immediately after section 169 the following:

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 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."

PART III

AMENDMENT OF THE CRIMINAL PROCEDURE ACT. 1985

22.Amendment of section 168

Section 168 of the Criminal Procedure Act, 1985 is hereby amended by adding subsection (6) immediately after subsection (5) as follows:-

"6 without prejudice to the provisions of section 168, where a court convicts a person in a case which involves sexual offence under the Sexual Offences Special Provisions Act, the court shall pass a sentence as prescribed in that Act and in accordance with the Minimum Sentences Act.

23."Amendment of section 170 of the Criminal Procedure Act No" of 1985

Section 170 of the Criminal Procedure Act is hereby amended by deleting paragraph (a) of subsection (1) and substituting for it the following-

"(a)imprisonment for a term not exceeding five years; save that where a court convicts a person of an offence specified in any of the Schedules to the Minimum Sentences Act, 1972 which has jurisdiction to hear, it shall have the jurisdiction to pass the minimum sentence of imprisonment;"

24.Amendment of section 186

Section 186 of the Criminal Procedure Act, is hereby amended by adding after subsection (2) the following:

"(3)Notwithstanding the provisions of any other law, the evidence of all persons in all trials involving sexual offences shall be received by the court in camera and the evidence and witnesses involved in these proceedings shall not be published by or in any newspaper or other media but this subsection shall not prohibit the printing or publishing of any such matter in a bona fide series of law reports or in a newspaper or periodical of a technical character bona fide intended for circulation among members of the legal or medical professions."

25.Addition of new Section 348A

The Criminal Procedure Act, 1985, is hereby amended by adding immediately after section 348 the following new section:

348A."Compensation in cases of sexual offences

(1)Notwithstanding the provisions of section 348 of this Act, when a court convicts, an accused person of a sexual offence, it shall in addition to any penalty which it imposes make an order requiring the convict to pay such effective compensation as the court may determine to be commensurate to possible damages obtainable by a civil suit by the victim of the sexual offence for injuries sustained by the victim in the course of the offence being perpetrated against him or her.

(2)For the purposes of this section "sexual offence" means any of the offences created in Chapter XV of the Penal Code."

26.Amendment of section 373

Section 373 of the Criminal Procedure Act, 1985, is hereby amended-

in subsection (3) by inserting after the words "by a subordinate court," the following passage;

"except if the matter involved a sexual offence;" by adding after subsection (4) the following;

"(5)Where the High Court revises the record of proceedings in a subordinate court involving a sexual offence, it may if it considers that the justice of the case so requires inflict a punishment greater than that which the convicting court might have imposed but which the High Court could impose if the matter were to come to it on appeal as if the matter were in fact on appeal.

"(6)In this section the term "sexual offence" means any of the offences created in Chapter XV of the Penal Code."

PART IV

AMENDMENT OF THE EVIDENCE ACT, 1967

27.Amendment of section 127

Section 127 of the Evidence Act, 1967, is hereby amended-

in subsection (3), by inserting after the words "Notwithstanding any rule of law or practice to the contrary," the words "but subject to the provisions of subsection (7),";

in subsection (4), by inserting after the words "Notwithstanding any rule of law or practice to the contrary," the words "but subject to the provisions of subsection (7),";

by adding after subsection (6) the following:

"(7)Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of a child of tender years or of a victim of the sexual offence, the court shall receive the evidence, and may after assessing the

credibility of the evidence of the child of tender years of as the case may be the victim of sexual offence on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceedings, the court is satisfied that the child of tender years or the victim of the sexual offence is telling nothing but the truth;

(8)For the purposes of this section the term "sexual offence" means any of the offences created in Chapter XV of the Penal Code."

PART V

AMENDMENT OF THE CHILDREN AND YOUNG PERSONS ORDINANCE

28.Amendment of section 3 of Cap. 13

The Children and Young Persons Ordinance is hereby amended in section 3 by adding immediately after subsection (4) the following:

"(5)Where a child of less than eighteen years of age is a witness, a victims an accused or a co-accused in a case involving a sexual offence, the child shall be tried in camera and separately from the adult co-accused, or the evidence of the child shall be adduced in proceedings conducted in camera.

(6)In this section "sexual offence" means any of the offences created in Chapter XV of the Penal Code."

PART VI

AMENDMENT OF THE MINIMUM SENTENCES ACT, 1972

29.Amendment of section 5

Section 5 of the Minimum Sentences Act, is hereby amended by adding paragraph "h" immediately after paragraph (g) as follows-

"(h)Where any person is convicted of any sexual offence specified under Chapter XV of the Penal Code (Cap. 16), as amended by the Sexual Offences Special Provisions Act, the court shall sentence such person to imprisonment for a term prescribed under that Chapter;"

30.Amendment of the First Schedule

The Minimum Sentences Act is hereby amended in the First Schedule by-

(a)inserting between paragraphs "11" and "12" the following new paragraph-

"12.Any offence provided for under Chapter XV of the Penal Code (Cap. 16);"

(b)renumbering paragraph "12" as "13"

Passed in the National Assembly on the 21st April. 1998.

G. G. MLAWA.

Clerk of the National Assembly