



THE PENAL DECREE (AMENDMENT) ACT, 2004

ARRANGEMENT OF THE SECTIONS

SECTIONS:

TITLES:

- | | |
|-----|---------------------------------------|
| 1. | Short title and commencement. |
| 2. | Amendment of the title |
| 3. | Amendment of section 2. |
| 4. | Amendment of section 3. |
| 5. | Amendment of section 4. |
| 6. | Amendment of section 13. |
| 7. | Repeal and replacement of section 17. |
| 8. | Addition of new sections 17A and 17B. |
| 9. | Amendment of section 24. |
| 10. | Repeal of sections 37, 38, 39 and 40. |
| 11. | Amendment of section 52. |
| 12. | Repeal and replacement of section 54. |
| 13. | Amendment of section 58. |
| 14. | Amendment of section 75. |
| 15. | Amendment of section 77A. |
| 16. | Addition of new section 77B. |
| 17. | Amendment of section 78. |
| 18. | Amendment of section 79. |
| 19. | Amendment of section 94. |
| 20. | Amendment of section 103. |



21. Addition of new section 106A.
22. Repeal and replacement of section 108.
23. Amendment of section 110A.
24. Amendment of section 111.
25. Amendment of the Principal Act.
26. Amendment of section 120.
27. Amendment of section 121.
28. Repeal and replacement of section 125.
29. Repeal and replacement of section 145.
30. Addition of new section 145D.
31. Addition of new section 145E.
32. Repeal and replacement of section 146.
33. Addition of new section 150A.
34. Amendment of section 158.
35. Addition of new section 161.
36. Amendment of section 163.
37. Addition of new section 163A.
38. Repeal and replacement of section 166.
39. Addition of new sections 170A – 170G.
40. Repeal of section 195.
41. Amendment of section 202.
42. Addition of new section 202A.
43. Addition of new section 207A.
44. Addition of new Part XXIA.
45. Amendment of section 216.
46. Addition of new section 216A.




47. Amendment of section 218.
48. Amendment of section 236.
49. Amendment of section 237.
50. Amendment of section 239.
51. Amendment of section 248.
52. Addition of new sections 265A – 265C.
53. Amendment of section 257.
54. Amendment of section 272.
55. Amendment of section 285A.
56. Amendment of section 285B.
57. Amendment of section 303.
58. Amendment of section 304.
59. Amendment of the Decree.
60. Amendment of section 337.
61. Addition of new Part XXXVIII A.
62. Amendment of section 347(3).
63. Amendment of section 348.
64. Amendment of section 360.
65. Repeal of Penal Decree, Cap. 13 and Transitional Provision.



ACT NO. 6 OF 2004

I ASSENT


{AMANI ABEID KARUME}
PRESIDENT OF ZANZIBAR
AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

16th AUGUST, 2004

AN ACT TO AMEND AND REVISE THE
PENAL DECREE, CHAPTER 13 OF THE LAWS OF ZANZIBAR

ENACTED by the House of Representatives of Zanzibar.

Short title and
commencement.

1. This Act may be cited as the Penal Decree (Amendment) Act, 2004, shall be read together with the Penal Decree, Chapter 13 of the Laws of Zanzibar (hereinafter referred to as the Decree) and shall come into operation upon being assented by the President.

Amendment of
the title.

2.(1) The long title of the Decree is repealed and replaced by the following new long title "An Act to make provision for a Code of Criminal Law".

(2) The Decree is amended by deleting the word "Decree" appearing in the title and anywhere else in the Decree and replace it with the word "Act".

(3) The provisions of the Decree which are not amended by this Act are hereby re-enacted as part of this



Act and shall be accordingly incorporated in this Act in such order of numbering as may be appropriate.

Amendment of section 2.

3. Section 2 of the Decree is hereby amended by deleting paragraph (f) and replace it with the new paragraph (f) as follows:

- (f) any of the Decree, Statutes or Regulations for the time being in force for the government of Zanzibar's special departments.

Provided that if a person does an act which is punishable under this Act and is also punishable under another Decree, Act or Statute of any of the kind mentioned in this section, he or she shall not be punished for that act both under that Decree, Act or Statute and also under this Act.

Amendment of section 3.

4. Section 3 of the Decree is amended by deleting the words "obtaining in England" and replace with the words "as propounded by the courts of common law".

Amendment of section 4.

5. Section 4 of the Decree is amended as follows:

- (a) by deleting the words "military forces of Zanzibar appearing in paragraph (iii) of the definition of "person employed in the public service" and anywhere else in the act and replace with the words" military forces of the United Republic of Tanzania and Special Departments of Zanzibar;
- (b) by inserting a definition of "gross indecency" immediately after the definition of "grievous harm" as follows:

"gross indecency" means any sexual act that falls short of actual intercourse and may include



masturbation and physical contact or indecent behaviour without any physical contact.

- (c) by inserting a definition of "special departments" immediately after the definition of "sexual offence" as follows:

"Special Department" means special Department established under the Zanzibar Constitution, 1984;

- (d) by inserting a definition of "spouse" immediately after the definition of "special departments" as follows:

"Spouse" means one's husband or wife.

Amendment of section 13.

6. Section 13 of the Decree is amended in subsection (5) by adding a word or "psychotropic substance" at the end of the line.

Repeal and replacement of section 17.

7. Section 17 of the Decree is repealed and replaced by the following new section.

"Right of self defence.

17.(1) Subject to the provision of this Act every person has the right:

- (a) *to defend himself or herself or any other person against any unlawful act or assault or violence to the body; or*
- (b) *to defend his or her own property or any property in his or her 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 cooperative society or village."

Addition of
new sections
17A and 17B.

8. The Decree is hereby amended by adding new sections 17A and 17B immediately after section 17 as follows:

*"Use of force
in defence.*

17A.(1) *In exercising the right of self defence or in defence of another or defence of property, a person shall be entitled only to use reasonable force as may be necessary for that defence.*

(2) *Every 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.*

*When right of
defence
extends to
causing
death.*

17B.(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 or her acts is necessary for the preservation of his or her 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 or her own death or the death of another person could be the consequence of that act; or*
- (b) *the lawful act is of such a nature as may be reasonably cause the apprehension that grievous harm to his or her own body or the body of another could be the consequence of the unlawful act; or*



- (c) *the unlawful act is with the intention of committing rape or defilement or an unnatural offence; or*
- (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 Act, the person exercising that right is in such a situation that he or she cannot effectively exercise that right without risk or harm to an innocent person or property, his or her right of defence extends to the running of that risk."*

Amendment of section 24.

9. Section 24 of the Decree is amended as follows:

- (a) by abolishing corporal punishment by repealing paragraph (c) and wherever the word corporal punishment appears in the Act;
- (b) by adding new paragraph (c) as follows:
"(c) working in the community."
- (c) by deleting words "Road Traffic Decree" in paragraph (k) and replace with "Road Transport Act".

Repeal of sections.

10. Sections 37, 38, 39 and 40 of the Decree are hereby repealed.

Amendment of section 52.

11. Section 52 of the Decree is hereby amended by deleting the words "foreign Prince" in line 4 and "prince" in line 5.



Repeal and replacement of section 54.

"Piracy

12. Section 54 of the Decree is repealed and replaced by the following new section:

"54.(1) Any person who:

- (a) does any unlawful act of violence against a ship or vessel registered in Zanzibar or anywhere else or against any person or property on board that ship or vessel; or*
- (b) does any unlawful act of violence against any ship or vessel or against any person or property on board that ship or vessel; or*
- (c) voluntarily participates in the operation of a ship, vessel or 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."

Amendment of section 58.

13. Section 58 of the Decree is hereby amended by deleting the number "57".

Amendment of section 75.

14. Section 75 of the Decree is hereby amended by deleting the words "five hundred" and replace with "five hundred thousand".

Amendment of section 77A.

15. Section 77A of the Decree is hereby amended by deleting the words "two thousand" and replace with "five hundred thousand".

Addition of new section 77B.

16. The Decree is hereby amended by adding a new section 77B immediately after section 77A as follows:



"Intimidation.

77B.(1) Any person who wrongfully and without legal authority intimidates any other person with a view to compelling such other person:

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

is guilty of misdemeanour and is liable on conviction to imprisonment for one year or fine not exceeding one hundred thousand shillings.

(2) In this section:

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

"injury" includes injury to a person in respect of his or her 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 consent of the Director of Public Prosecutions."

Amendment of
section 78

17. Section 78 of the Decree is hereby amended by deleting the words "one thousand" and replace with "five hundred thousand".

Amendment of
section 79.

18. Section 79 of the Decree is hereby amended by deleting the words "one thousand" and replace with "two hundred and fifty thousand".



Amendment of
section 94.

19. Section 94 of the Decree is hereby amended by adding the words "unless supported by a document" at the end of the section.

Amendment of
section 103.

20. Section 103 of the Decree is hereby amended as follows:

(a) by adding new paragraphs (i) and (j) in subsection (1) as follows:

"(i) wrongfully retakes possession of any child from any person who has obtained the custody of such child under an order of the court; or

(j) having the means to pay any sums by way of compensation or costs or otherwise in civil or criminal proceedings awarded against him or her by any court, wrongfully refuses or neglects after due notice to make such payment in accordance with any order for payment whether by installments or otherwise."

(b) by renumbering paragraph (i) as (k);

(c) by deleting the words "four hundred" appearing in subsection (2) and replace with "one hundred thousand";

(d) by adding new subsection (4) as follows:
"(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 sworn or affirmed included a reference to a person having been required by the court to give evidence in those proceedings."



Addition of section 106A.

21. The Decree is hereby amended by adding a new section 106A immediately after section 106 as follows:

"Escape from confinement or custody negligently suffered by public servant.

106A. *Any person who, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently or wilfully suffers such person to escape from confinement, shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine of not less than five hundred thousand shillings or to both such imprisonment and fine."*

Repeal and Replacement of section 108.

22. Section 108 of the Decree is repealed and replaced by the following new section:

"108. Any person who:

- (a) wilfully obstructs, or knowingly prevents or in any way interferes with or resists the service upon himself or herself or any other person of any summons, notice, order, warrant or other process issued by a court for service on himself or herself or such other person, as the case may be ; or*
- (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 the execution thereof; or*
- (c) wilfully delays the execution of any summons, notice, order, warrant or other process issued by a court;*
- (d) absconds in order to avoid being served with any summons, notice, order, warrant or other process issued by a court;*



is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding one year."

Amendment of section 110A.

23. Section 110A of the Decree is hereby amended as follows:

- (a) by deleting the words "fifty thousand" and replace with "three million" and deleting the words "one hundred and fifty thousand" and replace with "ten million" in subsection (1);
- (b) by adding the words "public corporation established by any other law" at the end of subsection 2(b);
- (c) by deleting paragraph (e).

Amendment of section 111.

24. Section 111 of the Decree is hereby amended by deleting the words "one thousand" and replace with "two hundred and fifty thousand".

Addition of new section 118B.

25. The Decree is hereby amended by adding a new section 118B immediately after section 118A as follows:

"Promoting enmity between different groups.

118B.(1) Any person who:

- (a) *by words, either spoken or written, or by signs or by visible representation or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or communities; or*
- (b) *commits any act which is prejudicial to the maintenance of harmony between different*



religious, racial, language or regional groups or communities and which disturbs or is likely to disturb the public tranquility; or

- (c) *organizes any exercise, movement, drill or other similar activity intending that the participation in such activity shall use or be trained to use criminal force or violence or knowing it to be that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or community and such activity, for any reason whatsoever caused or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or community;*

is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

(2) Any person who commits an offence specified in subsection (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be liable on conviction to imprisonment for a term not exceeding five years."

Amendment of section 120.

26. Section 120 of the Decree is hereby amended as follows:

- (a) by adding new subsection (3) immediately after subsection (2) as follows:



"(3) Who ever:

- (a) being a person in 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 a 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 on the 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 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."

Amendment of section 121.

27. Section 121 of the Decree is hereby amended as follows:

- (a) by adding the words "and in any case for imprisonment of not exceeding thirty years" between the words "life" and "and" in subsection (1);
- (b) by deleting the words "to corporal punishment only" and replace with "one year in a juvenile home or working in the community" in subsection (2(a).



Repeal and replacement of section 125.

28. Section 125 of the Decree is repealed and replaced by the following new section:

"125.(1) Any person who carnally knows any boy is guilty of an offence and shall on conviction be liable to imprisonment for life.

(2) Any person who attempts to have carnal knowledge of any boy is guilty of an offence and shall on conviction be liable to imprisonment for a term not less than twenty-five years."

Repeal and replacement of section 145.

29. Section 145 of the Decree is repealed and replaced by the following new section:

"145. Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand shillings."

Addition of new section 145D.

30. The Decree is hereby amended by adding a new section 145D immediately after section 145C as follows:

"Union of the person of the same sex.

145D. Any person who:

- (a) enters or arranges a union whether amounting to marriage or not of the person of the same sex;*
- (b) celebrates a union with another person of the same sex whether amounting to marriage or not;*
- (c) lives as husband and wife with another person of the same sex;*

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding seven years."



Addition of new
section 145E.

*“Sexual
harassment.*

31. The Decree is hereby amended by adding a new section 145E immediately after section 145D as follows:

245E.(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, cause 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 five 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 person utters any word, makes any sound of gesture, or exhibits any object including any organ whether male or female, intending that such word or sound shall be heard, or that the gesture or object shall be seen, by the person, or intrudes upon the privacy of the person, 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 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 120.

(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 one hundred and eighty days after the occurrence of the event constituting the offence.”



Repeal and replacement of section 146.

32. Section 146 of the Decree is repealed and replaced by the following new section:

"146.(1) Any male person who has carnal knowledge of a woman who is and whom he knows or has reason to believe to be the wife of another person, without the consent or connivance of that person, such carnal knowledge not amounting to the offence of rape, is guilty of a misdemeanour.

(2) Any female person who permits a male person, who is and whom she knows or has reason to believe to be the husband of another person, to have carnal knowledge of her without the consent or connivance of that other person is guilty of misdemeanour."

Addition of new section 150A.

33. The Decree is hereby amended by adding a new section 150A immediately after section 150 as follows:

"Disclosure of identity of the victim of certain offences, etc.

150A.(1) Any person, who prints or publishes the name or any matter which may make known the identity of any person against whom an offence against morality as defined under Part XV of this Act is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be liable on conviction to imprisonment for a term not exceeding two years to a fine not exceeding three hundred thousand shillings.

(2) Nothing in subsection (1) extends to any printing or publication of the name or any matter, which may make known the identity of the victim if such printing or publication is:

- (a) by or under the order in writing of the officer in charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or*



- (b) *by, or with the authorization in writing of, the victim; or*
- (c) *where the victim is dead or minor or of unsound mind, by or with the authorization in writing of, the next of kin of the victim.*

Provided that no such authorisation shall be given by the next of kin to anybody without the permission of the officer in charge of the police station.

(3) *Any person who prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in subsection (1) without the previous permission of such court shall be liable on conviction to imprisonment for a term not exceeding two years or to fine not exceeding three hundred thousand shillings."*

Amendment of section 158.

34. Section 158 of the Decree is hereby amended by deleting the word "common" and replace with the word "public".

Amendment of section 161.

35. Section 161 of the Decree is hereby amended in subsection (2) by deleting the words "one thousand" and replace with "one hundred thousand".

Amendment of section 163.

36. Section 163 of the Decree is hereby amended in subsection (1) as follows:

- (a) by adding a new paragraph (f) as follows:
 - "(f) in any internet center opened to the public, being the owner allows any person to display any obscene materials from the internet, or being the user displays obscene materials from the internet.
- (b) by deleting the words "two thousand" and replace with "five hundred thousand".



Addition of new
Section 163A.

37. The Decree is hereby amended by adding a new section 163A immediately after section 163 as follows:

"Obscene acts.

163A. Any person who, to the annoyance of others, does any obscene act in any public place shall be liable on conviction to imprisonment for a term not exceeding three months or with fine not exceeding two hundred and fifty thousand shillings, or with both."

Repeal and
replacement of
section 166.

38. Section 166 of the Decree is repealed and replaced with the following new section:

"Offences against military uniforms.

166.(1) Any person who, not being a person serving in the military forces of the United Republic of Tanzania or the Special Departments wears without the permission of the lawful authority the uniform of any of those forces or departments or any dress having the appearance or bearing any of the regimental or other distinctive marks of such uniform, is guilty of a misdemeanour, and is liable to imprisonment for a term not exceeding one month or to a fine not exceeding one hundred thousand shillings:

(2) Nothing in this section shall prevent any person from wearing any uniform or dress 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.

(3) Any person who unlawfully wears the uniform of any of the forces and special departments aforesaid, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform, in such a manner or in such circumstances as to be likely to bring contempt on that uniform, or employs any other person to wear such uniform or dress is guilty of a misdemeanour, and is liable to imprisonment



for a term not exceeding three months or to a fine not exceeding two hundred and fifty thousand shillings.

(4) Any person who, not being in the service of the United Republic of Tanzania or Government of Zanzibar or having previously received the written permission of the lawful authority so to do, imports or sells or has in his possession for sale any such uniform or dress as is mentioned in this section, or the buttons or badges appropriate thereto, is guilty of a misdemeanour, and is liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred thousand shillings:

(5) Nothing in this subsection shall be deemed to prohibit the possession of any such uniform or dress by any person who, having served in the forces of the United Republic of Tanzania or Government of Zanzibar's special departments, is lawfully in possession thereof.

(6) When any person shall have been convicted of any offence under this section, the uniform, dress, button, badge or other thing in respect of which the offence has been committed shall be forfeited unless the Court shall otherwise order."

Addition of
new sections
170A – 170G.

39. The Decree is hereby amended by adding new sections 170A, 170B, 170C, 170D, 170E, 170F and 170 G immediately after section 170 as follows:

"Disobedience
to quarantine
rule.

170A. Any person who knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places shall be liable on conviction to imprisonment for a term not exceeding six months or with fine not exceeding three hundred thousand shillings or both.



Punishment for public nuisance.

170B. Any person who commits a public nuisance in any case not otherwise punishable under this Act, shall be liable on conviction to fine not exceeding three hundred thousand shillings.

Continuance of nuisance.

170C. Any person who repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be liable on conviction to imprisonment for a term not exceeding six months, or with fine not exceeding three hundred thousand or with both.

Adulteration of food.

170D. Any person who adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, knowing it to be likely that the same will be sold as food or drink, is guilty of misdemeanour.

Sale of noxious food.

170E. 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 has reason to believe that the same is noxious as food or drink, is guilty of misdemeanour.

Adulteration of drugs.

170F. Any person who adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such 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 such adulteration, is guilty of misdemeanour.

Sale of adulterated drugs.

170G. Any person who adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change its operation, or renders it noxious, sells the same, 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 misdemeanour."



Repeal of section 195.

40. Section 195 of the Decree is hereby repealed.

Amendment of section 202.

41. Section 202 of the Decree is hereby amended by adding the words "or hospital registered under Private Hospital Regulations Act" as the end of proviso.

Addition of new Section 202A.

42. The Decree is hereby amended by adding new section 202A immediately after section 202 as follows:

"Concealing design to commit an offence.

202A.(1) Any person intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design shall, if that offence be committed be liable for imprisonment for a term not exceeding seven years, or, if the offence be not committed be liable for imprisonment for a term not exceeding three years.

(2) Any person intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable by imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design shall, if that offence be committed be liable for imprisonment for one-fourth of a term provided for the offence, or, if the offence be not committed be liable for imprisonment for one-eighth of a term."

Addition of new section 207A.

43. The Decree is hereby amended by adding new section 207A immediately after section 207 as follows:



*"Endangering
safety of
vessel.*

207A.(1) Any person who:

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

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

(2) In 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; 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; 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 shall include any threat to use violence.

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

(4) Where the offence was committed on or in relation to an aircraft registered in Zanzibar or owned by a citizen of Tanzania resident in Tanzania or by a body corporate established under any written law, including a company incorporated under the Companies Decree, no person shall be tried and punished for an offence under this section if he or she has been prosecuted for and convicted or, as the case may be, acquitted, for the same offence or for an offence involving the same facts, by any court or other judicial authority outside Zanzibar.

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

Addition of new
Part XXIA..

44. The Decree is hereby amended by adding new Part XX1A as follows:



PART XXIA

Offences relating to criminal gang activities

"Gang related offences.

215.(1) Any person who actively participates in or is a member of a criminal gang and who:

- (a) wilfully aids and abets any criminal activity committed for the benefit of, at the direction of, or in association with any criminal gang;
- (b) threatens to commit, bring about or perform any act of violence or any criminal activity by a criminal gang or with the assistance of a criminal gang; or
- (c) threatens any specific persons in general, with retaliation in any manner or by any means whatsoever, in response to any act or alleged act of violence;

shall be guilty of an offence.

(2) Any person who:

- (a) performs any act which is aimed at causing, bringing about, promoting or contributing towards a pattern of criminal gang activity;
- (b) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about, perform or participate in a pattern of criminal gang activity; or
- (c) intentionally causes, encourages, recruits, incites, instigates, commands, aids or advises another person to join a criminal gang;

shall be guilty an offence."



Penalties.

215B.(1) Any person convicted of an offence provided in:

- (a) section 215A(1) or (2)(a) shall be liable to a fine not exceeding six hundred thousand shillings or to imprisonment for a period not exceeding six years;
- (b) section 215(2)(b) or (c), shall be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a period not exceeding three years.

(2) If the offence contemplated in section 215A is committed on the premises or grounds of, or within 500 metres of a public or private school, or any other educational institution, during hours in which facility is open for classes or school related programmes or when minors are using the facility, such fact shall be regarded as an aggravating circumstance.

(3) If a court, after having convicted an accused of any offence, other than an offence contemplated in this Part, finds that the accused was a member of a criminal gang at the time of the commission of the offence, such finding shall be regarded as an aggravating circumstance for sentencing purposes.

Interpretation of member of criminal gang.

215C. In considering whether a person is a member of a criminal gang for purposes of this Part the court may have regard to the following factors, namely that such person:

- (a) admits to criminal gang membership;
- (b) is identified as a member of a criminal gang by a parent or guardian;



- (c) *resides in or frequents a particular criminal gang's area and adopts their style of dress, their use of hand signs, language or their tattoos, and associates with known members of a criminal gang;*
- (d) *has been arrested more than once in the company of identified members of a criminal gang for offences which are consistent with usual criminal gang activities;*
- (e) *is identified as a member of a criminal gang by physical evidence such as photographs or other documentation."*

Amendment of section 216.

45. Section 216 of the Decree is hereby amended by deleting the words "one hundred thousand" and replace with "ten million".

Addition of new section 216C..

46. The Decree is hereby amended by adding a new section 216C immediately after section 216B as follows:

"Removal of human organs.

"216C.(1) Any person, whether a qualified medical practitioner or not, who removes any human organ in the body of a person whether living or dead, without a consent of that person or a consent of the next of kin of the deceased person or of a child below the age of fourteen years shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of twenty years.

(2) Where such removal of a person's human organ directly causes his death, the person removing the organ shall be guilty of murder."

Amendment of section 218.

47. Section 218 of the Decree is hereby amended by deleting words the "two thousand" and replace with "five hundred thousand".



Amendment of section 236.

48. Section 236 of the Decree is hereby amended as follows:

- (a) by renumbering section 236 as 236C;
- (b) by adding new sections 236, 236A and 236B as follows:

"Wrongful restraint.

236. Any person who voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful confinement.

236A. Any person who wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

Punishment for wrongful restraint.

236B. Any person who wrongfully restrains any person is guilty of a misdemeanour, and is liable to imprisonment for a term not exceeding one month or to a fine not exceeding one hundred thousand shillings.

- (c) by deleting the words "four thousand" in section 236C and replace with "five hundred thousand."

Amendment of section 237.

49. Section 237 of the Decree is hereby amended by deleting words "against his will".

Amendment of section 239.

50. Section 239 of the Decree is hereby amended by deleting the words "unlawful compulsory labour" appearing in the marginal note and replace with the word "forced labour".

Amendment of section 248.

51. Section 248 of the Decree is hereby amended as follows:

- (a) by deleting the words "one hundred" and replace with "one thousand" in subsection (3)(b);



- (b) by deleting the words "one hundred" and replace with "one thousand" and deleting the words "five hundred" and replace with "fifty thousand" in subsection (4);
- (c) by deleting the words "Public Enterprise" and replace with "Parastatals" and deleting the words "party or its mass organization" in subsection (11).

Addition of
new sections
265 A – 265C.

52. The Decree is hereby amended by adding new sections 265A, 265B and 265C immediately after section 265 as follows:

"Dishonest misappropriation of property.

265A. Any person who dishonestly misappropriates or converts to his own use any movable property, shall be liable on conviction to imprisonment for a term not exceeding two years, or with fine not exceeding two hundred thousand shillings, or with both.

Dishonest misappropriation of property possessed by deceased person.

265B. Any person who dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at that time of that person's death, and has not since been in the possession of any person legally entitled to such possession, shall be liable on conviction to imprisonment for a term not exceeding three years, or with fine not exceeding three hundred thousand shillings; and if the offender at the time of such person's death was employed by him as clerk or servant the imprisonment may extend to seven years.

Criminal breach of trust.

265C. Any person who, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust,



or wilfully suffers any other person so to do, commits "criminal breach of trust shall be liable on conviction to imprisonment for a term not exceeding three years, or with fine not exceeding three hundred thousand shillings, or with both."

Amendment of section 257.

53. Section 257 of the Decree is hereby amended by deleting the words "one thousand" and replace with "five hundred thousand".

Amendment of section 272.

54. Section 272 of the Decree is hereby amended by deleting the words "five hundred" and replace with "two hundred and fifty thousand".

Amendment of section 285A.

55. Section 285A of the Decree is hereby amended by deleting the words "fifty thousand" and replace with "three million" and to delete the words "one hundred thousand" and replace with "ten million".

Amendment of section 285B.

56. Section 285B of the Decree is hereby amended by deleting the words "fifty thousand" and replace with "seven million".

Amendment of section 303.

57. Section 303 of the Decree is hereby amended by deleting the words "four hundred" and replace with "two hundred and fifty thousand".

Amendment of section 304.

58. Section 304 of the Decree is hereby amended by deleting the words "four hundred" and replace with "two hundred and fifty thousand".

Amendment of the Decree.

59. The Decree is hereby amended as follows:

- (a) by adding the word "Notes" on the heading of Part XXXVI;
- (b) by adding new section 335A and 335B immediately after section 335 as follows:



*"Defacing
bank notes.*

335A. 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 misdemeanour and is liable on conviction to imprisonment not exceeding two years, or to a fine of one hundred thousand shillings in respect of each note.

*Wrongful
issue of notes.*

335B. 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, shall be guilty of felony and liable on conviction to imprisonment for a term not exceeding five years."

*Amendment of
section 337.*

60. Section 337 of the Decree is hereby amended by deleting the words "one thousand" and replace with "one million".

*Addition of new
Part XXXVIII A.*

61. The Decree is hereby amended by adding a new Part XXXVIII A as follows:

PART XXXVIII A

Offence connected with computers

Application.

339A. The provision of this Part and other provisions related to this Part shall apply to act done or an omission made:

- (a) in the jurisdiction of the court of Zanzibar;
- (b) on a ship or aircraft registered in Zanzibar;



- (c) *by citizen of Tanzania who is a resident of Zanzibar outside the jurisdiction of any country;*
- (d) *by a Tanzanian who is a resident of Zanzibar outside the jurisdiction of the courts of Zanzibar, if his or conduct would also constitute an offence under a law of the country where the offence was committed.*

*Offences
against
intellectual
property.*

339B.(1) Any person who wilfully, knowingly, and without authorization modifies data, programmes, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offence.

(2) Any person who wilfully, knowingly and without authorization destroys data, programmes, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offence.

(3) Any person who wilfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network commits an offence.

(4) Except as otherwise provided in this section, an offence against intellectual property is a felony and the person is liable on conviction to imprisonment for a term of not exceeding five years. If the offence is committed for the purpose of devising executing any scheme or artifice to defraud or to obtain any property, then the offender is guilty of a felony and is liable on conviction to imprisonment for a term of not exceeding ten years.



Offences against computer equipment or supplies.

339C.(1) Any person who wilfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, or computer network commits an offence against computer equipment or supplies, and is liable on conviction to imprisonment for a term of not exceeding five years.

(2) If the offence is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, then the offender is guilty of a felony and is liable on conviction to imprisonment for a term not exceeding ten years.

Destruction of computer equipment.

339D.(1) Any person who wilfully, knowingly, and without authorization destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, or computer network; or whoever wilfully, knowingly, and without authorization destroys, injures, or damages any computer, computer system, or computer network commits an offence against computer equipment or supplies, and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) If the damage to such computer equipment or supplies or to the computer, computer system, or computer network is Tsh. 1,000,000 or greater, or if there is an interruption or impairment of governmental operation or public communication, transportation, or supply of water, gas, or other public service, then the offender is guilty of a felony and is liable on conviction to imprisonment for a term not exceeding fifteen years.

Interfering with data.

339E.(1) A person who, intentionally or recklessly, without lawful excuse or justification, does any of the following acts:

(a) destroys or alters data; or



- (b) *renders data meaningless, useless or effective; or*
- (c) *obstructs, interrupts or interferes with the lawful use of data; or*
- (d) *obstructs, interrupts or interferes with any person in the lawful use of data; or*
- (e) *denies access to data to any person entitled to it;*

commits an offence punishable, on conviction, by imprisonment for a period not exceeding five years, or a fine not exceeding five hundred thousand shillings, or both.

(2) *Subsection (1) applies whether the person's act is of temporary or permanent effect.*

Interfering with computer system.

339F.(1) *A person who intentionally or recklessly, without lawful excuse or justification:*

- (a) *hinders or interferes with the functioning of a computer system; or*
- (b) *hinders or interferes with a person who is lawfully using or operating a computer system;*

commits an offence punishable, on conviction, by imprisonment for a period not exceeding five years or a fine not exceeding five hundred thousand shillings or both.

(2) *In subsection (1) "hinder", in relation to a computer system, includes but is not limited to:*

- (a) *cutting the electricity supply to a computer system; and*



- (b) *causing electromagnetic interference to a computer system; and*
- (c) *corrupting a computer system by any means; and*
- (d) *inputting, deleting or altering computer data.*

Illegal interception of data etc.

339G. A person who, intentionally without lawful excuse or justification, intercepts by technical means:

- (a) *any non-public transmission to, or within a computer system; or*
- (b) *electromagnetic emission from a computer system that are carrying computer data;*

commits an offence punishable, on conviction, by imprisonment for a period not exceeding [period], or a fine not exceeding [amount], or both.

Illegal devices.

339H. A person commits an offence if the person:

- (a) *intentionally or recklessly, without lawful excuse or justification, produces, sell, procures for use, imports, exports, distributes or otherwise makes available:*
 - (i) *a device, including a computer program, that is designed or adapted for the purpose of committing an offence;*
 - (ii) *a computer password, access code or similar data by which the whole or any part of a computer system is capable of being accessed;*

with the intent that it be used by any person for the purpose of committing an offence against any law.



- (b) *has an item mentioned in subparagraph (i) or (ii) in his or her possession with the intent that it be used by any person for the purpose of committing an offence against any law.*

Offence against computer users.

339I.(1) Any person who wilfully, knowingly, and without authorization accesses or causes to be accessed any computer, computer system, or computer network; or whoever wilfully, knowingly, and without authorization denies or causes the denial of computer system services to an authorized user of such computer system services, which, in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another commits an offence against computer users, and is liable on conviction to imprisonment for a term not exceeding five years.

(2) If the offence is committed for the purposes of devising or executing any scheme or artifice to defraud or to obtain any property, then the offender is guilty of a felony and is liable on conviction to imprisonment for a term not exceeding ten years.

Fraud and related activity on government computers.

339J. Any person who:

- (a) *having knowingly accessed a computer without authorization or exceeding authorized access, and by means of such conduct having obtained information that has been determined by the Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, with reason to believe that such information so obtained could be used to the injury of Zanzibar, or to the advantage of any foreign nation wilfully communicates, delivers, transmits, or causes to be communicated,*



delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or wilfully retains the same and fails to deliver it to the officer or employee of the Government entitled to receive it;

- (b) *intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains:*
- (i) *information contained in a financial record of a financial institution;*
 - (ii) *information from any department or agency of the Government; or*
 - (iii) *information from any protected computer if the conduct involved an interstate or foreign communication;*
 - (iv) *intentionally, without authorization to access any non public computer of a department or agency of the Government, accesses such a computer of that department or agency that is exclusively for the use of the Government;*
 - (v) *knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value;*

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding fifteen years.



Interpretation.

339K. *In this part:*

"computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device;

"computer network" "computer data" "computer system"

"Government" means the Government of Zanzibar or the Government of the United Republic of Tanzania as the case may be;

"protected computer" means a computer:

- (a) exclusively for the use of a financial institution or the Government;*
- (b) which is used in interstate or foreign commerce or communication, including a computer located outside Zanzibar that is used in a manner that affects interstate or foreign commerce or communication of Government;*

"financial institution" means a financial institution as defined under the law regulating financial institutions;

"financial record" means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;



"exceeds authorized access" means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter;

"damage" means any impairment to the integrity or availability of data, a program, a system, or information;

"loss" means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service; and

"person" means any individual, firm, corporation, educational institution, financial institution, governmental entity, or legal or other entity.

Amendment of section 347.

62. Section 347(3) of the Decree is hereby amended by deleting the words "six thousand" and replace with words "two million".

Addition of new section 360A.

63. Section 348 of the Decree is hereby amended by deleting the words "ten thousand" and replace with words "five million".

Amendment of section 360.

64. The Decree is hereby amended by adding a new section 360A immediately after section 360 as follows:

Incitement.

360A. Any person who solicits or incites another to commit an offence is guilty of misdemeanour notwithstanding that the solicitation or incitement has no effect."



Repeal of Cap. 13
and transitional
provision.

65.(1) Penal Decree, Chapter 13 of the Laws of
Zanzibar is hereby repealed.

- (2) Notwithstanding the repeal of the Decree:
- (a) any offence committed before the repeal shall be tried and disposed under the repealed Decree;
 - (b) any case or matter pending before the repeal of the Decree shall be handled under the repealed Decree.

PASSED in the House of Representatives on the 13th day of April, 2004.

KHAMIS JUMA CHANDE
CLERK OF THE HOUSE OF REPRESENTATIVES