



THE SEXUAL OFFENCES (SPECIAL PROVISIONS) ACT, 1998

ARRANGEMENT OF SECTIONS

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ACT NO. 7 OF 1998

I ASSENT

*Salim Amour*

DR. SALMIN AMOUR  
PRESIDENT OF ZANZIBAR  
AND  
CHAIRMAN OF THE REVOLUTIONARY COUNCIL

..... *23<sup>rd</sup> May* ....., 1998 .....

AN ACT TO AMEND SEVERAL WRITTEN LAWS, MAKING  
SPECIAL PROVISIONS IN THOSE LAWS REGARDING  
SEXUAL AND OTHER OFFENCES TO FURTHER SAFEGUARD  
THE PERSONAL INTEGRITY, DIGNITY LIBERTY AND  
SECURITY OF WOMEN AND CHILDREN

PART I  
PRELIMINARY PROVISIONS

- Short title.            1. This Act may be cited as the Sexual Offences (Special Provisions) Act, 1998.
- Interpretation.       2. In this Act, except where the context requires otherwise:-
- "boy" means a male person of the age of up to eighteen years, or who is not married;
- "girl" means a female person of the age of up to eighteen years; or who is not married or not given to a child; .
- "illicit sexual intercourse" means sexual intercourse between persons who are not spouses to each other;
- "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.



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

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

"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 by the completion of the intercourse by the emission of seeds;

"sexual offence" means any of the offences created in Parts XV and XVI of the Penal Decree;

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

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

**PART II**  
**THE PENAL DECREE**

Replacement of section 120. 3. Section 120 of the Penal Decree is hereby repealed and replaced with the following;

"Rape 120.(1) It is an offence for a man to rape a girl or a woman.

(2) A man 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 lawfully 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 alcohol or any drugs, matter or thing, administered to her by the man or by some other person;
- (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, lawful married;
- (e) with or without her consent when she is under eighteen years of age, unless the woman is his wife who is not lawfully separated from the man.

(3) For the purposes of proving the offence of rape -

- (a) penetration 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 his or her consent."

Replace section 121. 4. Section 121 of the Penal Decree is hereby repealed and replaced with the following:-

"Punishment 121. (1) Any person who commits rape is, for rape except in the cases provided for in subsection (2) liable to be punished with imprisonment for life 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 physical or psychological caused to such person.

(2) Where the offence is committed by a boy who is of the age of eighteen years or less, he shall -

- (a) if a first time 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 may be sentenced to life imprisonment pursuant to subsection (1).

Addition of new section 121A. 5. The Penal Decree is hereby amended by adding immediately after section 121 the following new sections:

"Punishment for gang rape 121A.(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 on conviction be liable to imprisonment for life, regardless of the actual role he played in the rape, and whether or not he is a man or woman."

"Attempted rape 121B.(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, with corporal punishment.



(2) A person attempts to commit rape if, with intent to procure illicit 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 to her for the purposes of obtaining her consent;
- (d) where the girl or woman is married, 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 a term not less than twenty years with corporal punishment.

Replace  
ment of  
section  
123.

6. Section 123 of the Penal Decree is hereby repealed and replaced with the following:-

"Abduction  
of girls  
and boys.

123 Any person who, unlawfully takes -

- (a) an unmarried girl out of custody or protection of her father or mother or other person having the lawful care, custody or charge of her, and





against the will of such father or mother or other person;

- (b) a boy out of custody or protection of his father or mother or other person having the lawful care, custody or charge of him and against the will of such father or mother or other person;

is guilty of an offence and shall on conviction be liable to imprisonment for a term of three years.

Provided that it shall not be a defence to any charge under this section if it shall be made to appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the victim was of or above the age of 18 years.

Replace  
ment of  
section  
124

7. Section 124 of the Penal Decree is hereby repealed and replaced with the following:-

"Indecent Assault 124. (1) Any person who unlawfully and indecently assault any person is guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding fourteen years, with corporal punishment.

(2) It shall be no defence under this Act to a charge of an indecent assault on a girl or boy, to prove that he or she consented to the act of indecency.

(3) Any person who with intent to insult the modesty of any woman, boy, or girl, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard or such gesture or object shall be seen by such woman or girl or intrudes upon the privacy of such woman or girl, is guilty of an offence and shall on conviction be liable to imprisonment for a





term not exceeding three years or to a fine of not less three hundred thousand shillings or to both such fine and imprisonment."

Replace  
ment of  
section  
125.

8. Section 125 of the Penal Decree is hereby repealed and replaced by the following:-

"Defilement of girls and boys 125. (1) Any person who carnally knows any girl or boy is guilty of an offence and shall on conviction be liable to imprisonment for life, with or without corporal punishment.

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

Provided that it shall not be an offence for a man carnally to know or to attempt the carnal knowledge of his wife, if she has attained puberty."

Provided further that it shall be a sufficient defence to any charge under this section of a husband charged under this section with an offence against his wife, if it shall be made to appear to the court before whom the charge shall be brought the person so charged has reasonable cause to believe and did in fact believe that his wife had attained puberty.

Replace  
ment of  
section  
126.

9. Section 126 of the Penal Decree is hereby repealed and replaced with the following:-

"Defilement of idiots or imbeciles 126. Any person who knowing a woman, man, girl or boy to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her or him in circumstances not amounting to rape, but which prove that the



offender knew or has reason to believe at the time of commission of the offence that the woman, man, girl or boy was an idiot or imbecile, is guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than fourteen years, with corporal punishment."

Replace  
ment of  
section  
127.

10. Section 127 of the Penal Decree is repealed and replaced with the following:

"Procuration  
for  
prostitution

127. 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 Zanzibar, a prostitute; or
- (b) procures, or attempts to procure, any person under eighteen years of age, to leave Zanzibar, whether with or without the consent of that person, with a view to the facilitation of illicit sexual intercourse with any person outside Zanzibar, or removes, or attempts to remove from Zanzibar that person, whether with or without the consent of that person, for that purpose; or
- (c) procures, or attempts to procure, any person of whatever age, to leave Zanzibar, 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 Zanzibar any such person, whether with or without the consent of that person, for that purpose; or



- (d) brings, or attempts to bring, into Zanzibar, any person under eighteen years of age with a view to have illicit sexual intercourse with any other person, inside or outside Zanzibar; or
- (e) procures, or attempts to procure, any person of whatever age, whether with or without the consent of that person, to leave that that person's usual place of abode in Zanzibar, that place not being a brothel, with intent that person may for the purposes of prostitution become the inmate of, or frequent, a brothel within or outside Zanzibar; or
- (f) detains any person without the consent of that person in any brothel with a view to have illicit sexual intercourse or sexual abuse of the person,

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

Replace  
ment of  
section  
128.

11. Section 128 of the Penal Decree is hereby repealed and replaced with he following:

"Procuring  
defilement

128. Any person who -

- (a) by threats or intimidation procures or attempts to procure any girl, boy or woman to have any illicit sexual intercourse inside or outside Zanzibar; or
- (b) by false pretences or false representations procures any girl, boy or woman to have any illicit sexual intercourse anywhere inside or outside Zanzibar; 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 to thereby enable any man to have illicit sexual intercourse with such woman, girl or boy, commits an offence and is liable on conviction to a fine not less than three hundred thousand shillings or imprisonment for a term not exceeding ten years or to both the fine and imprisonment".

Amendment of section 129. 12. Section 129 of the Penal Decree is hereby amended by:-

- (a) deleting the words "under the age of fourteen years or any girl who, having attained the age of fourteen years, has not attained puberty;
- (b) adding the words "or boy" immediately after the word girl;
- (c) deleting the whole provision there of;
- (d) by deleting the words "for a term not exceeding".

Amendment of section 130. 13. Section 130 of the Penal Decree is hereby amended by :-

- (a) deleting the words "above the age of fourteen years and under the age of sixteen years who has attained puberty";
- (b) deleting the words "a misdemeanor" and substituting for them the words "an offence and shall be liable to imprisonment for three years."
- (c) deleting the provision.

Amendment of section 131. 14. Section 131 of the Penal Decree is hereby amended in sub-section (1) by:-



- (a) adding the words "or boy" after the word "girl" and by adding the words "or his" immediately after the word "her";
- (b) deleting the words "a misdemeanor" and substituting the following words "an offence and shall on conviction be liable to imprisonment for three years."

Amendment  
of  
section  
132.

15. Section 132 of the Penal Decree is hereby amended:-

- (a) in subsections (1), (2), (3) and (4) by putting comma immediately after the word "woman" and add the word "boy";
- (b) in paragraph (a) by deleting the words "under the age of sixteen years", and substituting for them the words "of eighteen years of age or below;"
- (c) in paragraph (b) deleting the words "if she is of or over the age of sixteen;"
- (d) in paragraph (b) by adding the words "or him" immediately after the word "her" wherever it occurred in that paragraph;
- (e) in subsection (4) by adding the words "or boy" immediately after the words "such woman".

Addition  
of new  
section  
132A.

16. The Penal Decree is hereby amended by adding after section 132 the following new section:-

"offence of  
prostitution

132A. Any person who for consideration offers her or his body for sexual intercourse commits an offence and shall on conviction be liable to imprisonment for a term of three years with corporal punishment."

Amendment  
of  
section  
144.

17. Section 144 of the Penal Decree is hereby amended:-



- (a) by deleting the words "under the age of fourteen years".
- (b) by deleting the words "exceeding seven years with or without" and substituting for them the words "less than twenty five years with corporal punishment".

Addition on new sections 145A, 145B 145C.

18. The Penal Decree is hereby amended by adding after section 145 the following new sections:

"Acts of gross indecency between persons

145A. Any 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 exceeding five years or to a fine not exceeding two 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, 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 physical or psychological caused to that person".

"Sexual exploitation of children

145B. (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; or
- (b) acts as a procurer of a child for the purposes of sexual intercourse or for





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any form of sexual abuse or indecent exhibition or show; or

- (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; or
- (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; or
- (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; or
- (f) gives or promises to give 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.

"Grave sexual abuse

145C.(1) Any person who, for sexual gratification, does any act, by the use of his or her private parts 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 120, commits the offence of grave sexual abuse if he does so in circumstances falling under any of the following situations, that is to say -

- (a) without the consent of the other person; or



- (b) with the consent of the other person where the consent has by use of force, threat, or intimidation or putting that other person in fear of death or inflicting of hurt or while that other person was in unlawful detention; or
  - (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 of eighteen years of age or below;

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".

Amendment  
section  
147.

19. Section 147 of the Penal Decree is hereby amended in subsection (1):-

- (a) by deleting the words "exceeding five years" and substituting for them the words "less than twenty five years with corporal punishment";
- (b) by deleting the words "under the age of thirteen years" and substituting for them the words "eighteen years of age or below".



- Amendment of section 148.            20. Section 148 of the Penal Decree is hereby amended by deleting the words "sixteen years" and substituting for them the words "eighteen years".
- Addition of section 153A.            21. The Penal Decree is hereby amended by inserting immediately after section 153 the following:-
- "Cruelty to children            153A. (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 circumcision 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".
- Addition of new section 156A.            22. The Penal Decree is hereby amended by inserting immediately after section 156 the following:
- "Trafficking of person            156A (1) Any person who -
- (a) engages in the act of buying, selling or bartering of any person for money or for any other consideration; or
- (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 to a foreign country 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 centers, or other child care institutions or welfare centers, 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 child for adoption from any such institutions or centres; 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 five years and not exceeding twenty years and a fine of not more than three hundred thousand shillings or to both the fine and imprisonment.

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



PART III  
THE CRIMINAL PROCEDURE DECREE CAP.14

Addition of                    23. The Criminal Procedure  
new                    Decree, is hereby amended by adding immediately  
section                    after section 298 the following new section:-  
298A.

"Compensation                    298A. When a court convicts an  
in cases                    accused person of sexual offence, it  
of sexual                    shall in addition to any penalty which  
Offences                    it imposes make an order requiring  
                                  convict to pay such effective compensation as  
                                  the court may determine to be commensurated  
                                  to possible damages obtainable by a civil  
                                  suit by the victim of the sexual offence for  
                                  injuries whether physical or psychological  
                                  sustained by the victim in the course of the  
                                  offence being perpetrated against him or her.

Amendment                    24. Section 340 of the Criminal Decree  
of                    is hereby amended -  
section                    340.

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

"except if the matter involved a  
sexual offence;"

(b) by adding immediately after subsection  
(5) the following:-

"(6) 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."



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PART IV  
THE CHILDREN AND YOUNG PERSONS DECREE, CAP 58

Amendment of section 3      25. The Children and Young Persons Decree is hereby amended in section 3 by adding immediately after subsection (5) the following:

"(6) Where a child of less than eighteen years of age is a witness, a victim 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 proceeding conducted in camera.

Passed in the House of Representatives on the .8th.  
day of . . . October . . . . ., 1999.

KHAMIS JUMA CHANDE  
CLERK TO THE HOUSE OF REPRESENTATIVES