

TANGANYIKA



No. 48 OF 1963

I ASSENT,

Julius K. Nyerere
President

19TH SEPTEMBER, 1963

An Act to amend the Criminal Procedure Code

[20TH SEPTEMBER, 1963]

ENACTED by the Parliament of Tanganyika.

1. This Act may be cited as the Criminal Procedure Code (Amendment) Act, 1963, and shall be read as one with the Criminal Procedure Code (hereinafter referred to as "the Code").

Short title and
construction
Cap. 20

2. Section 11 of the Code is hereby amended—

Section 11
of the Code
amended

(a) in subsection (3) thereof—

(i) by inserting immediately after the words "he may" in the first line the words and symbols ", subject to the provisions of subsection (3A)."; and

(ii) by deleting from the last two lines of paragraph (b) the words "person begins to serve his sentence" and substituting therefor the words "sentence is confirmed or such other order is made"; and

(b) by adding immediately below subsection (3) thereof the following new subsection:—

"(3A) If the person sentenced is at the time sentence is passed serving a sentence of imprisonment for another offence the term of imprisonment to which he is sentenced shall, unless the court otherwise orders, run from the date of the expiry of the sentence for such other offence:

Provided that if the term of imprisonment in respect of such other offence expires between the date on which such sentence is passed and the date on which it is confirmed or such other order is made, the person sentenced may elect whether to begin serving his sentence from the date of expiry of the term of imprisonment in respect of such other offence, in which case the term of imprisonment shall run from that date, or to postpone serving his sentence until the confirming court confirms such

sentence or makes such other order, in which case he shall remain in prison on remand pending such confirmation or other order by the confirming court and the term of imprisonment shall run from the date upon which such sentence is confirmed or such other order is made."

Section 154B
of the Code
amended

3. Section 154B of the Code is hereby amended by adding immediately below subsection (3) thereof the following new subsection: -

"(4) In this section 'fingerprint' includes a palmar print, a toe print, and the impression of a foot and 'fingerprints' shall be construed accordingly."

Section 168
of the Code
amended

4. Section 168 of the Code is hereby amended by deleting the eighth and ninth lines of subsection (1) thereof and substituting therefor the words and symbols "to the effect that the accused committed the act or made the omission charged but, by reason of his insanity as aforesaid, is not guilty of the offence."

Section 181
of the Code
amended

5. Section 181 of the Code is hereby amended by adding immediately below subsection (2) thereof the following new subsection:-

"(3) For the purpose of this section the offences specified in section 222 of the Penal Code shall, where a person is charged with the offence of attempted murder under section 211 thereof, be deemed to be minor offences."

Section 184
of the Code
amended

6. Section 184 of the Code is hereby amended by deleting therefrom the words and symbols "but that he is guilty of an offence under section 45 of the Traffic Ordinance (relating to driving to the common danger) he may be convicted of that offence although he was not charged with it." and substituting therefor the words and symbols "but that he is guilty of an offence under section 45 of the Traffic Ordinance (relating to reckless or dangerous driving) or section 47 of that Ordinance (relating to careless driving) he may be convicted of an offence under either of those sections although he was not charged with such offence."

Section 187
of the Code
amended

7. Section 187 of the Code is hereby amended by inserting immediately below subsection (2) thereof the following new subsection:-

"(2A) Where a person is charged with an offence under section 302 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 304 of the Penal Code, he may be convicted of that offence although he was not charged with it; and where a person is charged with an offence under section 304 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 302 of the Penal Code, he may be convicted of that offence although he was not charged with it."

Section 205
of the Code
amended

8. Section 205 of the Code is hereby amended by deleting the comma appearing immediately after the word "defence" in the third line thereof and substituting therefor the words and symbols "either in relation to the offence with which he is charged or in relation to any other offence of which, under the provisions of sections 181 to 189 (inclusive) of this Code, he is liable to be convicted,"

9. Section 206 of the Code is hereby amended by deleting the comma appearing immediately after the word "defence" in the third line thereof and substituting therefor the words and symbols "either in relation to the offence with which he is charged or in relation to any other offence of which, under the provisions of sections 181 to 189 (inclusive) of this Code, he is liable to be convicted,"

Section 206
of the Code
amended

10. The Code is hereby amended by adding immediately below section 210A thereof the following new section:--

New section
210B added
to the Code

"Taking
other
offences into
consideration

210B,(1) Without prejudice to the generality of section 210A, a subordinate court presided over by a first class magistrate may, subject to the provisions of this section, for the purpose of assessing the proper sentence to be passed, take into consideration any other offence committed by the accused person but of which he has not been convicted:

Provided that no such offence shall be so taken into consideration unless it is an offence which the court has jurisdiction to try.

(2) The court shall not take any offence into consideration unless-

- (a) it has been explained by the court to the accused person in ordinary language that the sentence to be passed upon him for the offence of which he has been convicted in those proceedings may be greater if the other offence is taken into consideration; and
- (b) after such explanation as aforesaid, the accused person-
 - (i) admits the commission of the other offence; and
 - (ii) asks the court to take the other offence into consideration.

(3) Nothing in this section shall entitle a court which has taken an offence into consideration to pass upon an accused person any sentence in excess of the maximum sentence which could be awarded by that court for the offence of which that person was convicted in those proceedings."

11. Section 213 of the Code is hereby repealed and replaced by the following new section:-

Section 213
of the Code
repealed and
replaced

"Statements
by medical
witness

213.-(1) In any trial before a subordinate court, any document purporting to be a report signed by a medical witness upon any purely medical or surgical matter shall be receivable in evidence.

(2) The court may presume that the signature to any such document is genuine and that the person signing the same held the office or had the qualifications which he professed to hold or to have when he so signed the same.

(3) When any such report is received in evidence, the court may, if it thinks fit, and shall if so requested by the accused or his advocate, summon and examine or make available for cross-examination, the person who made the report. The court shall inform the accused of his right to require the person who made the report to be summoned in accordance with the provisions of this subsection."

Section 278
of the Code
amended

12. Section 278 of the Code is hereby amended-

- (a) in subsection (1) thereof, by deleting the comma appearing immediately after the word "offence" in the penultimate line and substituting therefor the words and symbols "or any other offence of which, under the provisions of sections 181 to 189 (inclusive) of this Code, he is liable to be convicted,"; and
- (b) in subsection (2) thereof, by deleting the comma appearing immediately after the word "offence" in the fifth line and substituting therefor the words and symbols "or any other offence of which, under the provisions of sections 181 to 189 (inclusive) of this Code, he is liable to be convicted,"

New section
290A added
to the Code

13. The Code is hereby amended by adding immediately below section 290 thereof the following new section:-

"Taking
other
offences into
consideration

290A.-(1) Without prejudice to the generality of section 290, the High Court may, subject to the provisions of this section, for the purpose of assessing the proper sentence to be passed, take into consideration any other offence committed by the accused person but of which he has not been convicted.

(2) The High Court shall not take any offence into consideration unless-

- (a) it has been explained by the Court to the accused person in ordinary language that the sentence to be passed upon him for the offence of which he has been convicted in those proceedings may be greater if the other offence is taken into consideration; and
- (b) after such explanation as aforesaid, the accused person-
- (i) admits the commission of the other offence; and
- (ii) asks the Court to take the other offence into consideration.

(3) Nothing in this section shall entitle the Court, after taking an offence into consideration, to pass upon an accused person any sentence in excess of the maximum sentence which could be awarded for the offence of which that person was convicted in those proceedings."

Section 219
of the code
repealed and
replaced

14. Section 291 of the Code is hereby repealed and replaced by the following new section:-

"Sentence
of death

291.-(1) When, any person is sentenced to death, he shall suffer death by hanging.

(2) When any person is sentenced to death the sentence shall direct that he suffer death by hanging."

15. The Code is hereby amended by adding immediately before section 295 thereof the following new section:-

New section
294A added
to the Code

"Suspension
of sentences
in case of
first offenders
Act 1963
No. 29

294A-(1) In any case in which a person is convicted before any court of any offence other than an offence specified in the Sixth Schedule to this Code or in the Schedule to the Minimum Sentences Act, 1963, and no previous conviction is proved against him, the court may pass a sentence of imprisonment but order the operation of the whole or any, part of the sentence to be suspended for a period not exceeding three years on such conditions (whether as to costs or compensation be paid by the offender, good conduct or otherwise) as the court may specify in the order.

(2) Where part only of a sentence of imprisonment is suspended under subsection (1) the period of suspension shall commence on the date on which the offender is released from custody after serving that part of his sentence which was not suspended.

(3) Where the operation of a sentence or part thereof is suspended under subsection (1) and the offender has during the period of the suspension observed all the conditions specified in the order, the sentence or that part thereof which was suspended shall not be enforced.

(4) Where the operation of a sentence or part thereof is suspended under subsection (1) and it appears to any judge or magistrate that the offender has failed to observe any of the conditions specified in the order such judge or magistrate may issue a warrant for the arrest of the offender which shall direct that he be brought before the court by which the operation of the sentence or part thereof was suspended; and such court shall, on the offender being brought before it, commit him to undergo his sentence or that part thereof the operation of which was suspended:

Provided that if the offender proves to the satisfaction of the court that his failure to observe a condition of the suspension results from circumstances beyond his **control**, the court may make an order further suspending the operation of the sentence (or part thereof) subject to such conditions as might have been imposed at the time when the sentence was passed.

(5) The Chief Justice may, by regulations, add to, delete from and otherwise vary the list of offences contained in the Sixth Schedule to this Code."

Section 295 of the Code amended

16. Section 295 of the Code is hereby amended by adding immediately after the word "Code" at the end thereof the words "of in the Penal Code"

Section 298 of the code amended

17. Section 298 of the Code is hereby amended by deleting subsection (3) thereof and substituting therefor the following new subsections: —

"(3) Without prejudice to the provisions of subsections (1) and (2), in any case in which an order for the payment of money has been made, and whether or not any order has been made for imprisonment in default of payment, the court may, in its discretion, either at the time such order is made or subsequently direct that the money may be paid by instalments at such times and in such amounts as the court may think fit.

(4) Where, under subsection (3), the court directs that money may be paid by instalments and default is made in the payment of any such instalment the whole of the amount outstanding shall, unless the court extends the period within which such instalment is to be paid, become due and payable and all the provisions of this Code and of the Penal Code applicable in the case of non-payment of a fine shall apply to and in respect of the said amount outstanding."

Section 329 of the Code amended

18. Section 329 of the Code is hereby amended by deleting the fullstop at the end of paragraph (b) of subsection (1) thereof, substituting therefor a colon and adding immediately thereafter the following proviso:-

"Provided that for the purposes of this paragraph a special finding under subsection (1) of section 168 of this Code shall be deemed not to be an order of acquittal."

Fifth Schedule to the Code amended

19. The Fifth Schedule to the Code is hereby amended by deleting the form contained therein and substituting therefor the following form:-

CERTIFICATE

The Criminal Procedure Code (Cap. 20)
(Section 154A)

I, of being an officer appointed under section 154A of the Criminal Procedure Code, hereby certify as follows: -

(1) On the day of 19..... at I received a sealed packet by hand of, numbered purporting to be sent which contained exposed/and processed photographic film under cover of a letter No. dated purporting to be signed by requesting that I should process the said film(s) and /prepare therefrom photographic print(s) and enlargement(s).

(2) The said letter and packet were each signed and dated by me and are attached hereto as annexures 1 and 2 respectively.

(3) In pursuance of the said request I processed the said film(s) and/prepared therefrom photographic print(s) and /enlargement (s) each of which I have signed and attached hereto as annexure (s)

(4) The photographic print(s) and/enlargement(s) attached hereto as annexure (s) is/are as nearly as may be exact reproduction(s) from the exposed and processed film(s) submitted to me as aforesaid and have in no way been retouched, altered or otherwise interfered with in the process of their preparation.

Given at under my hand this day of 19.

Signed.

20. The Code is hereby amended by adding immediately below the Fifth Schedule thereto the following new Schedule:-

New Schedule
added to
the Code

"SIXTH SCHEDULE

Offences to which section 294A does not apply-

Murder.

Rape.

Any offence contained in Chapter XXVIII or Chapter XXIX of the Penal Code.

Any conspiracy, incitement, solicitation or attempt to commit any of the above-mentioned offences.

Passed in the National Assembly on the twelfth day of September, 1963.

Pius Msekwa
Clerk of the National Assembly