

FACTSHEET

Summary of Tanzania's 2002 Penal Code

DOCUMENT SCOPE:

This document applies ONLY in (1) Mainland Tanzania, and (2) in any place outside of Mainland Tanzania where offences are committed by citizens of Mainland Tanzania [CAP 16 R.E. 2006 (Part I, Ch. III, Paragraph 6)].

SAME-SEX SEXUAL OFFENCES:

■ Sexual Assault, Part I, Ch. XV, 135(1)

Any person who: (1) with the intention to cause any sexual annoyance to any person (2) makes any gesture or exhibits any word or object (3) intending that such word or object shall be heard, or the gesture or object shall be seen, by that other person (4) if the sexual assault is directed towards a boy or girl under the age of 18, the fact that they consented is not a defence.

Punishment: Imprisonment 5 years or 300,000 Tanzania Shillings (Tsh) fine, or both.

■ Gross Indecency Between Persons, Part I, Ch. XV, 138(A)

Occurs when a man or boy performs or encourages a sexual act with another man or boy. It covers a range of activities, from oral sex to masturbating together. Any person who: (1) in public or private, (2) commits or is party to the commission of, or (3) procures or attempts to procure (4) any act of gross indecency with another person.

Punishment: Imprisonment 1 - 5 years, or fines of 100,000 - 300,000 Tsh.

■ Gross Indecency Between Persons, Level II, Part I, Ch. XV, 138(B)

As above, but (1) offence is committed by someone over 18 years of age against (2) someone under 18 years of age, or (3) against a pupil at a primary school, or (4) against a student of a secondary school.

Punishment: Imprisonment for more than 10 years, with corporal punishment, and compensation to the victim for damages in any amount determined by the court.

■ Grave Sexual Abuse, Part I, Ch. XV, 138C(1)

Any person who for sexual gratification does any act, (1) using his genitals or other parts of the body or any instrument (2) on any orifice of another person, (3) and this act does not amount to rape (i.e. not man on woman), commits grave sexual abuse, provided one of the following circumstances is met: (a) without the consent of the other person; (b) with consent that has been obtained through threats, or unlawful detention; (c) with consent that been obtained when the other party was intoxicated (alcohol or drugs).

Punishment: 15 - 30 years imprisonment, with corporal punishment, and must pay the victim damages as determined by the court.

■ Grave Sexual Abuse, Level II, Part I, Ch. XV, 138C(2)

Meets the above conditions, and the victim is under 15 years of age.

Punishment: 20 - 30 years imprisonment, and must pay the victim damages as determined by the court.

SODOMY OFFENCES:

■ Unnatural Offences, Part I, Ch. XV, 154

Any person who: (a) has carnal knowledge of another person "against the order of nature" (b) permits a male person to have carnal knowledge of him, against the order of nature.

Punishment: Imprisonment 20 years - life.

■ Attempt to Commit an Unnatural Offence, Part I, Ch. XV, 155

Any person who attempts to commit an unnatural offence.

Punishment: Imprisonment 20 years or more.

■ Indecent Assault of Boys Under Fourteen, Part I, Ch. XV, 156

Any person who: (1) indecently assaults a boy under the age of 14 years; (2) it is no defense that a boy under the age of 15 years consented to the act of indecency.

Punishment: Up to imprisonment for life.

NEGLIGENT SPREAD OF INFECTION OFFENCE:

■ Negligent Act Likely to Spread Infection

A person who (1) unlawfully or negligently (2) does any act which is likely to spread the infection of any disease dangerous to life; whereby (2) the perpetrator is aware or has reason to believe he may spread the disease.

Punishment: None specified.

JUDICIAL DISCRETION:

A judge CAN NOT make a sentence outside of the guidelines in the criminal code for sexual offences. A court must sentence any person convicted of a sexual offence to imprisonment for the prescribed period under the statute.

PROVISIONS FOR PROSECUTING THOSE WHO SEXUALLY EXPLOIT CHILDREN:

■ Sexual Exploitation of Children Part I, Ch. XV, 138B

Any person who: (a) permits any child to remain in a premises for the purposes of causing the child to be sexually abused or participate in any sexual activity or obscene show; (b) procures a child for sexual intercourse, abuse, or for a show; (c) makes print or oral advertisements that cause a person to be a client of a child; (d) takes advantage of his influence or relationship to procure a child; (e) threatens, or uses violence towards, a child to procure them; (f) give money or goods to a child or his parents to procure a child.

Punishment: 10 - 20 years imprisonment, and must pay the victim damages as determined by the court.

■ Indecent Practices Between Males Part I, Ch. XV, 157

Any male person who, in public or private, (a) commits any act of gross indecency with another male, or (b) procures another male person to commit any act of gross indecency with him, or (c) attempts to procure a male to commit an indecent act to him.

Punishment: Imprisonment up to 5 years.

PROVISIONS FOR PROTECTING THOSE WHO ARE THREATENED BY PERPETRATORS:

■ Unlawful Assembly: CAP 16 R.E. 2002, Part I, Ch. IX, 74 - 83

(1) Three or more people (2) assemble with the intent to carry out an offence or conduct themselves (3) in a manner that they cause a person in the neighbourhood to reasonably fear that the people assembled will commit a breach of peace (4) which applies to all the people who take place in the riot.

Punishment: Imprisonment up to one year; 7 years if there is damage done to buildings or machinery.

■ Armed in Public, Part I, Ch. IX, 84

Any person who: (1) goes armed in public without lawful occasion and causes terror to any person.

Punishment: Forfeiture of arms.

■ Abusive Language and Threatening Violence, Level I, Part I, Ch. IX, 89

Any person who: (1) uses obscene or insulting language that is likely to cause a breach of peace.

Punishment: Imprisonment for 6 months or a fine less than 500 Tsh.

■ Abusive Language and Threatening Violence, Level II, Part I, Ch. IX, 89

Any person who: (1) with the intent to intimidate, (2) threatens to injure, or assault any person, or to (3) damage any property.

Punishment: Imprisonment for one year; 2 years if offence is committed at night.

■ Intimidation, Part I, Ch. IX, 89B

Any person who: (1) intimidates another person to abstain from doing a legal act; (2) requires the written consent of the Director of Public Prosecutions to prosecute.

Punishment: Imprisonment for one year.

PROVISIONS FOR ENSURING PEACE OFFICERS AND PROSECUTORS FULFILL THEIR DUTIES:

■ Public Official, Neglect of Official Duty, Part I, Ch. XIII, 121

(1) A person employed in the public service (2) who willfully neglects to perform any duty.

Punishment: None specified.