

TANGANYIKA



No. 29 OF 1963

I ASSENT,

Julius K. Nyerere
President

14TH JUNE, 1963

An Act to provide for the Imposition of Minimum Sentences on persons convicted of certain offences and for matters incidental thereto, to confer jurisdiction on and to increase the jurisdiction of certain courts in relation to certain offences, to modify the Application of the Corporal Punishment Ordinance and to amend the Prisons Ordinance

17TH JUNE, 1963]

ENACTED by the Parliament of Tanganyika.

1. This Act may be cited as the Minimum Sentences Act, 1963.

Short title

2.-(1) Nothing in this Act shall apply to any juvenile.

Application

(2) The provisions of this Act relating to the imposition of corporal Punishment shall not apply-

(a) to any female;

(b) to any person over the age of forty-five years.

3. In this Act, unless the context otherwise requires-

Interpretation

"juvenile" means a person under the age of sixteen years;

"scheduled offence" means an offence specified in the Schedule to this Act.

4.-(1) Any person who, after the date of coming into operation of this Act, is convicted of a scheduled Offence whether committed before or after such date of coming into operation, shall be sentenced to imprisonment for a term not less than the minimum term of imprisonment specified in relation to that offence in subsection (2) and not exceeding the maximum term of imprisonment to which he is liable on conviction for that offence.

Minimum sentences for scheduled offences

(2) The minimum term of imprisonment in relation to the offences contained in Part I of the Schedule hereto shall be a term of two years, the minimum term of imprisonment in relation to the offences

contained in Part II of that Schedule shall be a term of three years and the minimum term of imprisonment in relation to the offences contained in Part III of that schedule shall be the term of imprisonment respectively specified in that Part in relation to each such offence.

Corporal
punishment

5.-(1) Subject to the provisions of this section, where any person is convicted of a scheduled offence and sentenced to imprisonment he shall, unless the court orders him to undergo a greater number of strokes, undergo twenty-four strokes of corporal punishment.

(2) In any case where a person is convicted of an offence contained in Part I of the Schedule hereto and-

- (a) the person so convicted is a first offender; and
- (b) either--

- (i) in cases where property has been obtained by the offender, or he has attempted to obtain property, in committing the offence, the value of the property so obtained or, in the case of an attempt, which would have been so obtained if the offence had been completed, does not or would not, in the opinion of the court, exceed one hundred shillings; or

Cap. 400

- (ii) in cases falling under subsection (2) of section 3 of the Prevention of Corruption Ordinance, the value of the consideration given, provided or offered does not, in the opinion of the court, exceed one hundred shillings; and

- (c) there are special circumstances in the case (which shall be recorded by the court),

the court may order that, in lieu of the imprisonment and corporal punishment otherwise imposed by this Act, such person shall undergo either ten strokes of corporal punishment or such term of imprisonment as may appear to the court to meet the requirements of the case:

Provided that where such person is over the age of forty-five years or is a female the court shall not order the imposition of corporal punishment but shall sentence such person to such term of imprisonment as may appear to the court to meet the requirements of the case.

(3) Subject to the provisions of section 7, the corporal punishment provided for in subsection (1) shall be administered in two instalments, each of twelve strokes, the first such instalment to be administered as soon as practicable after the offender is admitted to, prison to begin serving his sentence, and the second such instalment to be administered on the day immediately prior to the day on which the offender is released from prison upon completion of his sentence or, in the event of this being impracticable, on such earlier day as may be convenient:

Provided that where under subsection (1) the court orders the imposition of more than twenty-four strokes, such additional strokes shall be administered on such occasion between the first and second instalments provided for in this subsection as the officer in charge of the prison may think fit:

And provided that where any offender is, for medical reasons, unable to undergo the instalments provided for in this subsection or any of them, he shall undergo such corporal punishment, administered on

such occasions, as the officer in charge of the prison shall, taking into account the offender's physical condition and such medical advice as may have been received in relation to the offender, direct.

(4) For the avoidance of doubt the expression "special circumstances" in paragraph (c) of subsection (2) shall include circumstances relating to the commission of the offence and to the person who committed it.

(5) In this section "first offender" means a person who has not previously been convicted of--

- (a) a scheduled offence; or
- (b) any offence contained in Chapters XXVI to XXXII (inclusive) of the Penal Code.

Cap. 16

6.-(1) Notwithstanding the provisions of section 176 of the Criminal Procedure Code, where a court convicts any person of a scheduled offence the court shall, if it is of opinion that such person has obtained any property as a result of the commission of that offence and that the owner of the property can be identified, order that the person convicted shall pay to the owner of the property compensation equal to the value of the property as assessed by the court.

Compensation

(2) Notwithstanding the provisions of section 177 of the Criminal Procedure Code, compensation ordered under subsection (1) shall be recoverable by the person to whom the same is payable as if it were a civil debt.

7.-(1) Where any person is convicted of a scheduled offence and he is not released on bail, or the execution of his sentence is not suspended, pending appeal, he may, if he intends to appeal against his conviction or against any part of his sentence which exceeds the minimum sentence provided by this Act in relation to the offence of which he has been convicted, elect whether-

Sentence pending appeal

- (a) to undergo imprisonment and corporal punishment in accordance with the provisions of this Act pending the determination of his appeal; or
- (b) to undergo imprisonment in accordance with the provisions of this Act but not to undergo corporal punishment pending the determination of his appeal.

(2) Where under paragraph (b) of subsection (1) any person elects not to undergo, corporal punishment pending the determination of his appeal, the corporal punishment which he would otherwise have undergone prior to the determination of his appeal shall, unless, his appeal is allowed, be administered as soon as practicable after the determination of his appeal:

Provided that the administration of corporal punishment in accordance with this subsection shall be so arranged that every such person undergoes twelve strokes on the day immediately prior to the day on which he is released from prison upon completion of his sentence or, in the event of this being impracticable, on such earlier day as may be convenient.

(3) Notwithstanding the provisions of section 11 of the Criminal Procedure Code, where any person is convicted of a scheduled offence and any part of the sentence imposed requires to be confirmed by the High Court, such person shall not have any right to elect to remain on remand pending such confirmation.

Increase
of juris-
diction of
subordinate
Cap.20

8.-(1) Section 7 of the Criminal Procedure Code shall, in any case in which a person is convicted by a court of a scheduled offence, be read and construed as if for the references in paragraph (a) thereof to a term of imprisonment not exceeding two years and to a term of imprisonment not exceeding three years there were substituted in each case a reference to a term of imprisonment not exceeding five years, and the provisions of that section relating to the confirmation of sentences by the High Court shall not, subject to the provisions of subsection (3), apply to any sentence passed upon the conviction of any person for a scheduled offence.

(2) Section 8 of the Criminal Procedure Code shall, in any case in which a person is convicted by a court of a scheduled offence, be read and construed as if for the reference in paragraph (a) thereof to a term of imprisonment not exceeding twelve months there were substituted a reference to a term of imprisonment not exceeding five years, and the provisions of that section relating to the confirmation of sentences by the High Court shall not, subject to the provisions of subsection (3), apply to any sentence passed upon the conviction of any person for a scheduled offence.

(3) Where any person is convicted of a scheduled offence and sentenced to a term of imprisonment in respect thereof which exceeds the minimum term of imprisonment specified in relation to that offence in subsection (2) of section 4 or to a greater number of strokes of corporal punishment than twenty-four, then-

- (a) if the court by which he is sentenced is presided over by a first class magistrate, other than a senior resident magistrate, and the term of imprisonment to which he is sentenced exceeds such minimum term of imprisonment by twelve months or more, or the number of strokes which he is to undergo exceeds thirty-six, that part of the sentence which so exceeds such minimum term or thirty-six strokes, as the case may be, shall require to be confirmed by the High Court;
- (b) if the court by which he is sentenced is presided over by a second class magistrate and the term of imprisonment to which he is sentenced exceeds such minimum term of imprisonment by six months or more or the number of strokes which he is to undergo exceeds thirty-two, that part of the sentence which so exceeds such minimum term or thirty-two strokes, as the case may be, shall require to be confirmed by the High Court.

Jurisdiction
conferred
on local
courts
Cap. 299

9.-(1) Every local court established or deemed to be established under the Local Courts Ordinance shall have jurisdiction to try any person who is otherwise subject to the jurisdiction of that court for a scheduled offence and, notwithstanding the provisions of any other written law or any limitations imposed upon such court by its warrant, to sentence any such person to the minimum term of imprisonment specified in relation to that offence in subsection (2) of section 4 and to make any order under subsection (2) of section 5

(2) Notwithstanding the provisions of any other written law, where any person is sentenced by a local court to the minimum term of imprisonment for a scheduled offence such person shall undergo corporal punishment of the amount and in the manner provided by this Act.

(3) The provisions of section 16A of the Local Courts Ordinance relating to the confirmation of certain sentences passed by a local court shall not apply in any case where a person is, under the jurisdiction conferred by subsection (1), sentenced by such court to the minimum sentence provided by this Act for a scheduled offence or where such court makes any order under subsection (2) of section 5.

10. Where any person is convicted by any court of a scheduled offence the warrant issued by such court to the officer in charge of to be the prison where such person is to be detained shall be endorsed with a statement under the hand of the magistrate issuing the same that such person has been convicted of a scheduled offence.

Warrant of committal to be endorsed

11. In its application to any person convicted of a scheduled offence the Corporal Punishment Ordinance shall have effect subject provisions of this Act and, in particular but without prejudice to the generality of the foregoing-

Application of Cap. 17 modified

(a) the twenty-four strokes of punishment imposed by subsection (1) of section 5 of this Act, and any additional strokes ordered under that subsection, shall be undergone in accordance with the provisions of this Act notwithstanding the provisions of section 3 of that Ordinance;

(b) the provisions of subsections (2) and (3) of section 8, section 11, section 12 and section 13 of that Ordinance shall not apply to the twenty-four strokes of corporal punishment imposed by subsection (1) of section 5 but shall apply to any additional strokes ordered under that subsection and to any corporal punishment ordered under subsection (2) of that section.

12. The Prisons Ordinance is hereby amended in section 99 thereof by deleting the fullstop at the end of subsection (2), substituting therefor a colon and adding immediately thereafter the following proviso:-

Amendment of Cap 58

Act 1963 No. - - "Provided that any prisoner who is serving a sentence for a scheduled offence under the Minimum Punishments Act, 1963, and who escapes or attempts to escape from prison shall lose the whole of the remission to which he would otherwise be entitled under this section in respect of that sentence."

SCHEDULE,

(Section 4 (2))

PART I

1. Stealing by a person in the public service contrary to sections 265 and 270 of the Penal Code (Cap. 16)

2. Stealing by a servant contrary to sections 265 and 271 of the Penal Code where the offender is a person employed by a city council, municipal council, town council or district council or by a trade union registered under the Trade Unions Ordinance (Cap. 381), a co-operative society registered under the Co-operative Societies Ordinance (Cap. 211), a political party, a missionary society or a charity.

3 Theft contrary to section 265 of the Penal Code where the offender knew or ought to have known that the thing stolen is the property of the Government, a city council, municipal council, town council or district council or of a trade union registered under the Trade Unions Ordinance (Cap 381), a co-operation society registered under the C-o-operative Societies Ordinance (Cap, 211), a political party, a missionary society or a charity,

4 Robbery contrary to section 286 of the Penal Code.

5. Housebreaking or burglary contrary to section 294 of the Penal Code.

6. Breaking into a building and committing a felony therein or breaking out of a building having committed a felony therein contrary to section 296 of the Penal Code.

6A. Receiving or retaining stolen property contrary to section 311 (1) of the Penal Code where the property was stolen in the course of the commission of one of the offences mentioned in Items 1 to 6 (inclusive) of this Part, or Item I of Part II of this Schedule.

7. Taking part in a corrupt transaction with an agent contrary to section 3 of the Prevention of Corruption Ordinance (Cap. 400) or obtaining an advantage without consideration contrary to section 6 of that Ordinance.

8. Attempting to commit any of the above offences.

For the purposes of items 2 and 3 of this Part, "charity" means any fund or organization for the relief of poverty, the advancement of education, the alleviation or prevention of sickness or the mitigation of the consequences of any disaster.

PART II

1. Stealing cattle contrary to sections 265 and 268 of the Penal Code.

2 Attempting to commit the above offence.

PART III

Offence

Minimum Sentence

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| 1. Being in possession of stock suspected of having been stolen contrary to section 3 of the Stock Theft Ordinance (Cap. 422). | 3 years' imprisonment. |
| 2. Trespassing with intent to steal stock contrary to section 4 of the Stock Theft Ordinance. | 1 year's imprisonment. |
| 3. Being found near stock in suspicious circumstances contrary to section 5 of the Stock Theft Ordinance. | 6 months' imprisonment. |
| 4. Passing through, over or under, or tampering with fences around a stock enclosure or cattle boma contrary to section 6 of the Stock Theft Ordinance. | 6 months' imprisonment. |
| 5. Any offence relating to brands contrary to section 7 of the Stock Theft Ordinance. | 1 year's imprisonment. |

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

Pius Msekwa

Clerk of the National Assembly