

GOVERNMENT OF ZAMBIA

ACT

No. 3 of 1990

Date of Assent: 6th May, 1990

An Act to amend the Penal Code

[11th May, 1990]

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Penal Code (Amendment) Act, 1990, and shall be read as one with the Penal Code in this Act referred to as the Code.

Short title
Cap. 146

2. Section *four* of the Code is amended in the definition of "dwelling house" by the insertion of "or any tent, or caravan or vessel" immediately after "or a part of a building or structure".

Amendment
of section 4

3. The Code is amended by the insertion after section *twelve* of the following new section—

Insertion of
section 12A

12A. (1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or is induced by disease or injury) which has substantially impaired his mental responsibility for his acts or omissions in doing or being party to the killing.

Defence of
diminished
responsibility

(2) The provisions of subsection (2) of section *thirteen* shall apply with necessary modifications to the defence of diminished responsibility under this section:

Provided that the transient effect of intoxication as described in that subsection shall be deemed not to amount to disease or injury for purposes of this section.

(3) On a charge of murder, it shall be for the defence to prove the defence of diminished responsibility and the burden of proof shall be on a balance of probabilities.

(4) Where the defence of diminished responsibility is proved in accordance with this section, a person charged with murder shall be liable to be convicted of manslaughter or any other offence which is less than murder.

Repeal and replacement of section 16

4. The Code is amended by the repeal of section *sixteen* and the substitution therefor of the following section:

Defence of duress or coercion

16. (1) Except as provided in this section, a person shall not be guilty of an offence if he does or omits to do any act under duress or coercion.

(2) For the purpose of this section a person shall be regarded as having done or omitted to do any act under duress if he was induced to do or omit to do the act by any threat of death or grievous harm to himself or another and if at the time when he did or omitted to do the act he believed (whether or not on reasonable grounds)—

(a) that the harm threatened was death or grievous injury;

(b) that the threat would be carried out—

(i) immediately; or

(ii) before he could have any real opportunity to seek official protection, if he did not do or omit to do the act in question; and

(c) that there was no way of avoiding or preventing the harm threatened.

(3) In this section "official protection" means the protection of the police or any authority managing any prison or other custodial institution, or any other authority concerned with the maintenance of law and order.

Repeal and replacement of section 17

5. The Code is amended by the repeal of section *seventeen* and the substitution therefor of the following section:

Defence of person or property

17. Subject to any other provisions of this Code or any other law for the time being in force, a person shall not be criminally responsible for the use of force in repelling an unlawful attack upon his person or property, or person or property of any other person, if the means he uses and the degree of force he employs in doing so are no more than is necessary in the circumstances to repel the unlawful attack.

Repeal of section 19
Amendment of section 37

6. The Code is amended by the repeal of section *nineteen*.

7. Section *thirty-seven* of the Code is amended by—

(a) the substitution of a colon for the full stop at the end of the section; and

(i) the insertion of the following proviso:

Provided that such prior day shall not be earlier than the day on which the arrested person was taken into custody for the offence for which sentence is pronounced.

8. The Code is amended by insertion immediately after section *one hundred and four* of the following new section— Insertion of section 104A

104A. (1) Where a witness in any judicial proceeding, other than a person accused of an offence in a criminal proceeding, makes a statement on oath or affirmation on some fact relevant in the proceeding contradicting a material detail in a previous statement made on oath or affirmation by the same witness before any court or tribunal, and, the court or tribunal is satisfied that either of the statements whether false or not was made with intent to deceive, shall be guilty of an offence and liable to imprisonment for two years. Conflicting statements on oath

(2) At the trial of any person for an offence under this section, the record of a court or tribunal containing any statement made on oath or affirmation by the person charged shall be *prima facie* evidence of such statement.

(3) A person shall be liable to be convicted of an offence under this section notwithstanding that any statement made by him before a court or tribunal was made in reply to a question which he was bound by law to answer, any such statement shall be admissible in any proceeding under this section.

9. Section *one hundred and seventeen* of the Code is amended in subsection (1)— Amendment of section 117

(a) by the substitution of a colon for the full stop at the end of the subsection;

(b) by the insertion after subsection (1) of the following proviso:

Provided that this section shall not apply to photographs being taken on any occasion with the consent of the Chief Justice, or where the occasion is the opening of any session of the High Court, with the consent of the judge holding that session.

10. Section *one hundred and twenty-four* of the Code is amended by the deletion of "is guilty of a misdemeanour" and the substitution therefor of "is guilty of an offence and liable upon conviction to a fine not exceeding ten thousand kwacha". Amendment of section 124

11. The Code is amended by the repeal of section *two hundred and one* and the substitution therefor of the following section: Amendment of section 201

Punishment
for murder

201. (1) Any person convicted of murder shall be sentenced—

- (a) to death; or
- (b) where there are extenuating circumstances, to any sentence other than death:

Provided that paragraph (b) of this subsection shall not apply to murder committed in the course of aggravated robbery with a firearm under section two hundred and ninety-four.

(2) For the purpose of this section—

- (a) an extenuating circumstance is any fact associated with the offence which would diminish morally the degree of the convicted person's guilt;
- (b) in deciding whether or not there are extenuating circumstances, the court shall consider the standard of behaviour of an ordinary person of a class of the community to which the convicted person belongs.

Amendment
of section
301

12. Section three hundred and one of the Code is amended by the deletion of the words "building, tent or vessel used as a human dwelling" wherever they appear in the section and the substitution therefor of "dwelling house".

Repeal and
replacement
of section
302

13. The Code is amended by the repeal of section three hundred and two and the substitution therefor of the following section:

Entering
dwelling
house or
other
building
with intent
to commit
felony

302. (1) Any person who enters or is in any dwelling house with intent to commit a felony in it is guilty of a felony and liable upon conviction to imprisonment for a period not exceeding five years or if the offence is committed at night to imprisonment for a period not exceeding seven years.

(2) Any person who enters or is in any building other than a dwelling house, with intent to commit a felony in it is guilty of a felony and liable upon conviction to imprisonment for a period not exceeding five years or if the offence is committed at night to imprisonment for a period not exceeding seven years.

Repeal and
replacement
of section
303

14. The Code is amended by the repeal of section three hundred and three and the substitution therefor of the following section:

Breaking
into
building and
committing
felony

303. Any person who—

- (a) breaks and enters into any building other than a dwelling house and commits a felony in it, or
- (b) having committed a felony in any building other than a dwelling house, breaks out of it, is guilty of a felony and is liable to imprisonment for seven years.