

GOVERNMENT OF ZAMBIA

ACT

No. 15 of 2005

Date of Assent: 28th September, 2005

An Act to amend the Penal Code

[7th October, 2005

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Penal Code (Amendment) Act, 2005, and shall be read as one with the Penal Code, in this Act referred to as the principal Act.

Short Title
Cap. 87

2. The principal Act is amended in Part XV by the insertion immediately under the heading "Offences Against Morality" of the following new section:

Insertion of
new section
131A.

131A. In this Part " child " means a person below the age of sixteen years.

Definition of
child

3. The principal Act is amended by the repeal of sections *one hundred and thirty-six* and *one hundred and thirty-seven* and the substitution therefor of the following:

Repeal and
replacement
of sections
136 and 137

136. Any person who unlawfully takes a child out of the custody or protection of the child's father, mother or other person having lawful care or charge of the child, and against the will of such father, mother or other person, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding ten years.

Abduction
of children

137. (1) Any person who unlawfully and indecently assaults any child or other person commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty years.

Indecent
assault

(2) It shall not be a defence to a charge of an indecent assault on a child to prove that the child consented to the act of indecency.

(3) Any person who is found in any building or dwelling-house or in any verandah or passage attached thereto or in any yard, garden or other land adjacent to or within the cartilage of such building or dwelling-house not being a public place—

(a) for the purpose of and from motives of indecent curiosity gazing at or observing any other person or child who may be therein while in a state of undress or semi-undress; or

(b) with intent to annoy or indecently to assault any child or other person who may be therein;

commits an offence and is liable, upon conviction, to imprisonment for a term of not less than two years and not exceeding five years.

Insertion of
new section
137A

4. The principal Act is amended by the insertion immediately after section *one hundred and thirty-seven* of the following new section:

Sexual
harassment

137A. (1) Any person who practices sexual harassment in a work place, institution of learning or elsewhere on a child commits a felony and is liable, upon conviction, to imprisonment for a term of not less than three years and not exceeding fifteen years.

(2) A child who commits an offence under subsection (1) is liable to such community service or counselling as the court may determine in the best interests of the child.

(3) In this section, sexual harassment means—

(a) a seductive sexual advance being an unsolicited sexual comment, physical contact or other gesture of a sexual nature which one finds objectionable or offensive or which causes discomfort in one's studies or job and interferes with academic performance or work performance or a conducive working or study environment;

(b) sexual bribery in the form of soliciting or attempting to solicit sexual activity by promise of reward;

(c) sexual threat or coercion which includes procuring or attempting to procure sexual activity by threat of violence or victimisation; or

(d) sexual imposition using forceful behaviour or assault in an attempt to gain physical sexual contact.

5. The principal Act is amended by the repeal of sections *one hundred and thirty-eight to one hundred and forty-seven* and the substitution therefore of the following:

Repeal and replacement of sections 138 to 147

138. (1) Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.

Defilement of child

(2) Any person who attempts to have unlawful carnal knowledge of any child commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fourteen years and not exceeding twenty years.

(3) Any person who prescribes the defilement of a child as a cure for an ailment commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.

(4) A child above the age of twelve years who commits an offence under subsection (1) or (2) is liable, to such community service or counselling as the court may determine, in the best interests of both children.

139. Any person who, knowing a child or other person to be an imbecile or person with a mental illness, has or attempts to have unlawful carnal knowledge of that child or other person in circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the child or other person was an idiot or imbecile commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fourteen years and may be liable to imprisonment for life.

Defilement of imbecile or person with mental illness

140. Any person who—

(a) procures or attempts to procure any child or other person to have unlawful carnal knowledge either in Zambia or elsewhere, with any person or other persons for pornography, bestiality or any other purpose;

Procuring child or other person for prostitution, etc.

(b) procures or attempts to procure any child or other person to become, either in Zambia or elsewhere, a common prostitute;

(c) procures or attempts to procure any child or person to leave Zambia, with the intent that the child or person may become an inmate of or frequent a brothel elsewhere; or

(d) procures or attempts to procure any child or person to leave that child's or other person's usual place of abode in Zambia with intent that the child or other person may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Zambia or elsewhere;

commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Procuring
defilement
by threat or
fraud or
administering
drugs

141. Any person who—

(a) by threat or intimidation procures or attempts to procure any child or other person to have any unlawful carnal knowledge, either in Zambia or elsewhere;

(b) by false pretence or false representation procures any child or other person to have any unlawful carnal knowledge, either in Zambia or elsewhere;
or

(c) applies, administers to, or causes to be taken by any child or other person any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any third person to have unlawful carnal knowledge with such child or other person;

commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

142. Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly permits any child to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any other person, whether such carnal knowledge is intended to be with any particular person or generally, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life.

Householder, etc., permitting defilement of child on premises

143. Any person who sells or trafficks in a child or other person for any purpose or in any form commits an offence and is liable, upon conviction, to imprisonment for a term of not less than twenty years:

Selling or trafficking in children, etc.

Provided that where it is proved during the trial of the accused person that the sale or trafficking in a child or other person was for the purpose of causing that child or person to be unlawfully and carnally known by any other person, whether such carnal knowledge was intended to be with any particular person or generally, the person is liable, upon conviction, to imprisonment for life.

144. (1) Any person who detains any child or other person against that child or other person's will—

Detention with intent in premises or brothel

(a) in or upon any premises with intent that the child or other person may be unlawfully and carnally known by any third person, whether particularly or generally or for rituals or any other purpose; or

(b) in any brothel;

commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life.

(2) When a child or person is in or upon any premises for the purposes of having any unlawful carnal knowledge or is in any brothel, another person shall be deemed to detain such a child or person in or upon such premises or in such

brothel, if, with intent to compel or induce the child or person to remain in or upon such premises or in such brothel, such other person withholds from the child or person any wearing apparel or other property belonging to the child or person, or where wearing apparel has been lent or otherwise supplied to such child or person or by the directions of such person, such other person threatens such person with legal proceedings for taking away the wearing apparel so lent or supplied.

(3) No legal proceedings, whether civil or criminal, shall be taken against any child or person for taking away or being found in possession of any such wearing apparel as was necessary to enable the child or person to leave such premises or brothel.

Power of
search

145. (1) If it appears to any magistrate, on information made before the magistrate, on oath, by any parent, relative or guardian of any child or other person who, in the opinion of the magistrate, is acting *bona fide* in the interests of any child or other person, that there is reasonable cause to suspect that such child or other person is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorising the person named therein to search for, and when found to take to and detain in a place of safety such child or person until the child or person can be brought before a magistrate.

(2) The magistrate before whom the child or person is brought in accordance with subsection (1) may cause the child or person to be delivered up to the child's parents or guardians, or be otherwise dealt with as circumstances may permit and require.

(3) A magistrate issuing a warrant under this section may, by the same or any other warrant, cause any person accused of so unlawfully detaining such child or person to be apprehended and brought before a magistrate and proceedings to be taken for punishing such person according to law.

(4) A child or person shall be deemed to be unlawfully detained for immoral purposes if the child or person is so detained for the purpose of being unlawfully and carnally known by any other person, whether any particular third person or generally; and

(a) in the case of the child whether the child consented to the detention or not; or

(b) if the person is of, or above the age of, sixteen years and is so detained against the person's will or against the will of the person's father or mother or of any person having the lawful care or charge of that person.

(5) Any person authorised by warrant under this section to search for any child or person so detained as aforesaid may enter if need be by force, any house, building or other place mentioned in the warrant, and may remove such child or person from there.

146. (1) A person who—

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in any public place, persistently solicits or importunes for immoral purposes;

commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fifteen years:

Provided that a child who commits an offence under subsection is liable to such community service or counselling as the court may determine in the best interests of the child.

(2) Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that the person is aiding, abetting or compelling the prostitution with any other person, or generally, that person shall, unless the person shall satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

147. (1) Every person who knowingly lives wholly or in part on the earnings of the prostitution of another or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting

Person living on earnings of prostitution or persistently soliciting

Person living on aiding, etc., prostitution of another for gain

or compelling that person's prostitution with any other person, or generally, commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fifteen years.

(2) Where a person compels a child to become a prostitute that person commits an offence and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.

Repeal and replacement of sections 149 to 153

6. The principal Act is amended by the repeal of sections *one hundred and forty-nine to one hundred and fifty-three* and the substitution therefor of the following:

Brothels

149. Any person who keeps a house, room, set of rooms, or place of any kind whatsoever for purposes of prostitution commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty five years.

Conspiracy to defile

150. Any person who conspires with another person to induce any person or child, by means of any false pretence or other fraudulent means, to permit any other person to have unlawful carnal knowledge of such person or child, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.

Attempts to procure abortion

151. Any person who, with intent to procure the miscarriage of a woman or female child, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, commits a felony and is liable, upon conviction, to imprisonment for a term no exceeding seven years.

Abortion by pregnant woman or female child

152. (1) Every woman being pregnant who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used, commits a felony and is liable, upon conviction, to imprisonment for a term of fourteen years.

(2) Any female child being pregnant who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing or uses any force of any kind commits an offence and is liable to such community service or counselling as the court may determine, in the best interests of the child:

Provided that where a female child is raped or defiled and becomes pregnant the pregnancy may be terminated in accordance with the Termination of Pregnancy Act.

Cap. 304

153. Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman or female child, whether she is or is not with child, commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fourteen years.

Supplying drugs or instruments to procure abortion

7. Section *one hundred and fifty-five* of the principal Act is amended by the deletion of the words "is guilty of a felony and is liable to imprisonment for fourteen years" and the substitution therefor of the words "commits a felony and is liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life:

Amendment of section 155

Provided that where a person—

- (i) has carnal knowledge of a child against the order of nature;
- (ii) causes a child to have carnal knowledge of an animal; or
- (iii) permits a male person to have carnal knowledge of a male or female child against the order of nature;

that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life."

8. The principal Act is amended by the repeal of sections *one hundred and fifty-six* to *one hundred and sixty-one* and the substitution therefor of the following:

Repeal and replacement of sections 156 to 161

156. Any person who attempts to commit any of the offences specified in section *one hundred and fifty-five* commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years but not exceeding fourteen years.

Attempt to commit unnatural offences

knowledge of him knowing her to be his grandmother, mother, sister, auntie, daughter, niece or grand-daughter, as the case may be, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life:

Provided that a male child who commits an offence under this subsection is liable to such community service or counselling as the court may determine in the best interests of the child.

Amendment
of section
162

9. Section *one hundred and sixty-two* of the principal Act is amended by—

(a) the deletion of the word “ and ” between “ half-brother ” and “ half-sister ” and the substitution therefor of a comma; and

(b) the addition after “ half-sister ” of a comma and the words: “ step-brother, step-sister, adoptive brother and adoptive sister. ”

Insertion of
new section
164A

10. The principal Act is amended by the insertion immediately after section *one hundred and sixty-four* of the following new section:

Prohibition
of disclosure
of
information

164A. (1) A person shall not without the consent, in writing, given by or on behalf of a child or person publish or disclose to any person otherwise than in the course of duty, the contents of any documents, communication or information which relates to and which has come to that person's knowledge in the course of duty performed in relation to offences under this Part, including the handling, medical treatment or counselling of victims.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine of not less than fifty thousand penalty units or to imprisonment for six months, or to both.

Repeal and
replacement
of section
168

11. The principal Act is amended by the repeal of section *one hundred and sixty-eight* and the substitution therefor of the following:

Desertion of
child

168. Any person who being the parent, guardian or other person having the lawful care or charge of a child being able to maintain such child, wilfully, and without lawful or reasonable cause deserts the child and leaves it without means

of support commits an offence and is liable, upon conviction, for a first offence to imprisonment for a term not exceeding three years, or for a subsequent offence to imprisonment for a term not exceeding seven years.

12. The principal Act is amended by the repeal of section *one hundred and sixty-nine* and the substitution therefor of the following:

Repeal and replacement of section 169

169. Any person who being the—

- (a) parent;
- (b) guardian; or
- (c) person in charge;

Neglecting to provide food etc. for children

of a child that is unable to provide for itself, refuses or wilfully neglects to provide, being able to do so, sufficient food, clothes, bedding or other necessities for such child, and thereby injures the health of such child, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding three years or to both.

13. The principal Act is amended by the insertion immediately after section *one hundred and seventy-seven* of the new section:

Insertion of new section 177A

177A. (1) Any person who engages a child or other person—

Child pornography

- (a) in a pornographic performance;
- (b) in the production of a pornographic film or other material; or
- (c) in a pornographic activity of any nature;

commits an offence and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.

(2) Any person who—

- (a) sells to a child pornographic material;
- (b) compels a child to watch a pornographic film or view pornography on the internet or elsewhere or in any form intended to corrupt a child's morals;

commits an offence and is liable, upon conviction, to a term of imprisonment of not less than fifteen years.

(3) A child who commits an offence under subsection (2) is liable, to such community service or counselling as the court may determine in the best interests of the child.

Insertion of
new section
248A

14. The principal Act is amended by the insertion immediately after section *two hundred and forty-eight* of the following new section:

Assault or
battering of
child

248A. Any person who commits an assault or battery on a child occasioning actual bodily harm commits an offence and is liable, upon conviction, to a term of imprisonment of not less than five years and not exceeding ten years.
