

THE PENAL CODE (AMENDMENT) ACT 1967

No. 24 of 1967

Date of Assent: 18th August 1967

Date of Commencement: 25th August 1967

An Act of Parliament to amend the Penal Code

ENACTED by the Parliament of Kenya, as follows:—

Short title.

1. This Act may be cited as the Penal Code (Amendment) Act 1967.

Replacement of
section 40 of
Cap. 63.

2. There shall be substituted for section 40 of the Penal Code (hereinafter referred to as the Code) a new section as follows—

Treason.

40. (1) Any person who, owing allegiance to the Republic, in Kenya or elsewhere—

(a) compasses, imagines, invents, devises or intends—

(i) the death, maiming or wounding, or the imprisonment or restraint, of the President; or

(ii) the deposing by unlawful means of the President from his position as President or from the style, honour and name of Head of State and Commander-in-Chief of the Armed Forces of the Republic of Kenya; or

(iii) the overthrow by unlawful means of the Government; and

(b) expresses, utters or declares any such compassings, imaginations, inventions, devices or intentions by publishing any printing or writing or by any overt act or deed,

is guilty of the offence of treason.

(2) Any person who, owing allegiance to the Republic—

(a) levies war in Kenya against the Republic;
or

(b) is adherent to the enemies of the Republic, or gives them aid or comfort, in Kenya or elsewhere; or

(c) instigates whether in Kenya or elsewhere any person to invade Kenya with an armed force,

is guilty of the offence of treason.

(3) Any person who is guilty of the offence of treason shall be sentenced to death.

3. Section 41 of the Code is repealed.

Repeal of section 41 of Code.

4. There shall be substituted for sections 43 and 44 of the Code three new sections as follows—

Replacement of sections 43 and 44 of Code.

Treasonable felony.

43. Any person who, not owing allegiance to the Republic in Kenya or elsewhere commits any act or combination of acts which, if it were committed by a person who owed such allegiance, would amount to the offence of treason under section 40 of this Act, is guilty of a felony and is liable to imprisonment for life.

Treachery.

43A. Any person who, with intent to help the enemy, does any act which is designed or likely to give assistance to the enemy, or to interfere with the maintenance of public order or the government of Kenya, or to impede the operation of the disciplined forces, or to endanger life, is guilty of a felony and is liable to imprisonment for life.

Promoting warlike undertaking.

44. Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by or against any person or body or group of persons in Kenya, is guilty of a felony and is liable to imprisonment for life.

5. There shall be substituted for section 56 of the Code a new section as follows—

Replacement of section 56 of Code.

Seditious intention and seditious publication.

56. (1) A seditious intention is an intention—

(a) to overthrow by unlawful means the Government of Kenya as by law established; or

- (b) to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of Kenya as by law established; or
- (c) to excite the inhabitants of Kenya to attempt to procure the alteration, otherwise than by lawful means, of any matter or thing in Kenya as by law established; or
- (d) to bring into hatred or contempt or to excite disaffection against the administration of justice in Kenya; or
- (e) to raise discontent or disaffection amongst the inhabitants of Kenya; or
- (f) to promote feelings of ill-will or hostility between different sections or classes of the population of Kenya :

Provided that an intention shall not be taken to be seditious by reason only that it intends—

- (i) to show that the Government have been misled or mistaken in any of their measures; or
- (ii) to point out errors or defects in the government of Kenya as by law established or in any written law or in the administration of justice, with a view to the remedying of such errors or defects; or
- (iii) to persuade the inhabitants of Kenya to attempt to procure by lawful means the alteration of any matter in Kenya as by law established; or
- (iv) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will or hostility between different sections or classes of the population of Kenya,

so long as the intention is not manifested in such a manner as to effect or be likely to effect any of the purposes specified in paragraphs (a) to (f) inclusive of this subsection.

(2) In determining whether the intention with which any act was done, any words were spoken or any document was published was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

(3) A seditious publication is a publication containing any word, sign or visible presentation expressive of a seditious intention.

6. There shall be substituted for section 69 of the Code a new section as follows—

Replacement of section 69 of Code.

Piracy.

69. (1) Any person who, in territorial waters or upon the high seas, commits any act of piracy *jure gentium* is guilty of the offence of piracy.

(2) Any person who, being the master, an officer or a member of the crew of any ship and a citizen of Kenya—

(a) unlawfully runs away with the ship; or

(b) unlawfully yields it voluntarily to any other person; or

(c) hinders the master, an officer or any member of the crew in defending the ship or its complement, passengers or cargo; or

(d) incites a mutiny or disobedience with a view to depriving the master of his command, is guilty of the offence of piracy.

(3) Any person who is guilty of the offence of piracy is liable to imprisonment for life.

7. Section 201 of the Code is repealed.

Repeal of section 201 of Code.

8. There shall be inserted in the Code, immediately after section 278 thereof, a new section as follows—

Insertion of new section 278A in Code.

Stealing motor vehicle. Cap. 403.

278A. If the thing stolen is a motor vehicle within the meaning of the Traffic Act, the offender is liable to imprisonment for seven years together with corporal punishment.

Other
amendments
to Code.

9. The provisions of the Penal Code specified in the first column of the Schedule to this Act are amended in the manner specified in relation thereto in the second column of that Schedule.

SCHEDULE

(s. 9)

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- Section 2 (e). Delete "Her Majesty, or of the Governor-General as the representative of Her Majesty," and substitute "the President".
- Section 2 (f). Delete, and substitute—
(f) any written law, Articles or Standing Orders for the time being in force for the government of the disciplined forces or the police force:.
- Section 2 (f) proviso. Delete "Act or Statute", wherever it appears, and substitute "written law".
- Section 4. Delete the definitions of "Government of Kenya", "Government", "Act", "local authority", "person employed in the public service", and "Statute", and insert in their proper alphabetical places the new definitions following—
"Act" includes any order, rules or regulations made under any Act;
"disciplined forces" means the armed forces or the National Youth Service;
"person employed in the public service" means any person holding, or performing with authority the duties of, any of the following offices (whether as principal or as deputy, and whether such service is permanent or temporary, paid or unpaid)—
(a) any office the holder of which is appointed or removed by the President or by any public commission;
(b) any office the holder of which is appointed, elected or otherwise selected in pursuance of some written law;
(c) any office the holder of which is appointed by any person or persons holding, or performing with authority the duties of, an office of one of the kinds specified in paragraph (a) or paragraph (b) of this definition,
and, without prejudice to the generality of the foregoing, includes—
(i) an arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court or in pursuance of some written law;
(ii) every member of a Commission of Inquiry or of a tribunal appointed or selected in pursuance of some written law;
(iii) any person in the service of the disciplined forces;
(iv) any person in the employment of the Government, the Organization or any local authority;
(v) any person employed to execute any process of a court;

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(vi) any person acting as a minister of religion, in respect of the exercise by him of any functions relating to the notification of intending marriage, or the solemnization of marriage, or the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;

“written law” means the Constitution, any Act of Parliament of Kenya, any Act of the Organization, any applied Act or any Enactment of a Provincial Council, and includes any orders, rules, regulations, by-laws or other subsidiary legislation made under any written law.

Section 5. Delete all the words after “within Kenya”, and substitute “, including territorial waters”.

Section 26 (2). Add at the end a proviso as follows—

Provided that a person liable to imprisonment together with corporal punishment shall in every case be sentenced to imprisonment and corporal punishment.

Section 26A. Insert the following new section after section 26—

26A. Where a person who is not a citizen of Kenya is convicted of an offence punishable with imprisonment, the court by which he is convicted, or any court to which he is committed for sentence, or any court to which his case is brought by way of appeal against conviction or sentence, may recommend to the Minister for the time being responsible for immigration that he make an order that that person be removed from and remain out of Kenya either immediately or on completion of any sentence of imprisonment imposed.

Recommendation for removal from Kenya.

Section 27 (1). Delete “once only”.

Section 27 (6). Delete, and substitute—

(6) Every sentence of corporal punishment shall be carried out by such instalments, inflicted at such times, as the Commissioner of Prisons shall in each case direct.

Section 28 (2). Delete “any Act” in both places, and substitute “any written law”.

Section 29 (1). Delete “Minister”, and substitute “Attorney-General”.

Section 39 (1) (a). Delete “Inspector-General of Police”, and substitute “Commissioner of Police”.

Section 42 (b). Delete “President”, and substitute “Attorney-General”.

Section 45 marginal note. Delete “Limitations”, and substitute “Provisions”.

Section 45 (1). Insert “43A” immediately after “43”.

Section 45. Insert immediately after subsection (2)—

(2A). If the facts or matters alleged in a charge for any of such felonies amount in law to treason, and if the facts or matters

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	proved at the trial of the person charged amount in law to treason, such person shall not, by reason thereof, be entitled to be acquitted of the felony; but the person tried for the felony shall not afterwards be prosecuted for treason upon the same facts.
	(2B) A person charged with treason or with any of such felonies who is in Kenya may, whether or not the offence was committed in Kenya, be taken in custody to any place in Kenya, and may be proceeded against, charged, tried and punished in any place in Kenya, as if the offence had been committed in Kenya, and for all purposes incidental to or consequential on the trial or punishment of the offence the offence shall be deemed to have been committed in Kenya.
Section 45 (3).	Delete "Her Majesty" in both places, and substitute "the President".
Section 46.	Delete "naval, military, air or police service of Her Majesty in Kenya or the National Youth Service", and substitute "disciplined forces or the police force".
Section 46 proviso (i).	Delete "Her Majesty or other Government in relation to any such service", and substitute "the Government in relation to such forces".
Section 47 (a).	Delete, and substitute— (a) to seduce any member of the disciplined forces or any police officer from his duty or allegiance; or.
Section 48.	Delete "any non-commissioned officer or private of the military forces of Kenya or any police officer or any member of the National Youth Service", and substitute "any member of the disciplined forces or any police officer".
Section 49.	Delete "any non-commissioned officer or private" and substitute "any member".
Section 50.	Delete "of Her Majesty".
Section 54 (2) (a) (iv).	Delete "for the time being responsible for legal affairs".
Section 54 (3).	Delete "Inspector-General of Police or a Regional Commissioner of Police", and substitute "Commissioner of Police".
Section 57 (1).	Delete "three years", and substitute "ten years".
Section 57 (2).	Delete "three years", and substitute "seven years".
Section 57 (8) and (9).	In each case, delete "Inspector-General of Police or a Regional Commissioner of Police", and substitute "Commissioner of Police".
Section 57 (10) and (11).	Delete "three years", and substitute "ten years".
Sections 63 and 64.	Delete "military forces in Kenya or in the police force", and substitute "disciplined forces or the police force".
Section 67.	Delete "the United Kingdom or". Delete "jurisdiction", and substitute "justification".
Section 68.	Delete "Her Majesty under Her sign manual, or signified by Order in Council, or by proclamation," and substitute "the President in writing".

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- In paragraphs (b) and (c), delete "Commonwealth citizen", and substitute "citizen of Kenya".
- In the proviso, in paragraphs (i) and (ii), delete "Her Majesty", and substitute "the President"; delete "the Governor or the Secretary of State", and substitute "the Minister".
- Section 81 (1). Delete "in the Queen's name".
- Section 98 (1). Delete "Her Majesty's Government," and "Her Majesty's subjects or".
- Section 119. Delete "Act or Statute", and substitute "law".
- Section 128. Delete "Statute or Act", and substitute "any written law".
- Section 130. Delete "Statute or Act" in both places, and substitute "written law".
- Section 144 (1). Delete "fourteen", and substitute "five".
- Section 144 (3). Insert "or girl" after "woman" in each place.
- Section 145 marginal note. Delete "sixteen", and substitute "fourteen".
- Section 145 (1). Delete "life, with or without", and substitute "fourteen years, together with".
- Section 145 (1) and (2). Delete "sixteen" throughout, and substitute "fourteen" in each case.
- Section 145 (2). Delete "fourteen", and substitute "five".
- Section 177 (2). Delete "Inspector-General of Police in the case of the Nairobi Area, or the Regional Commissioner of Police in the case of a province", and substitute "Commissioner of Police".
- Section 182. Delete "shall be liable", and substitute "are guilty of a misdemeanour and are liable for the first offence".
- Add at the end " , and for every subsequent offence to imprisonment for one year."
- Section 183. Delete paragraph (a).
- Section 184 (1). Delete "Her Majesty's naval, military or air forces, or in any constabulary or police force in the United Kingdom, or in any British possession, or in any country under the protection of Her Majesty, or in any territory administered on behalf of Her Majesty's Government under any mandate or trust," and substitute "the disciplined forces or the police force, or any other armed force for the time being lawfully present in Kenya,".
- Section 184 (3). Delete " , having served in Her Majesty's naval, military or air forces,".
- Section 198 (1). Delete paragraphs (a), (b) and (c), and substitute—
- (a) if the matter is published by the President, or by the Cabinet of Ministers, or in Parliament, or in a Provincial Council, in any case in an official document or proceeding; or
- (b) if the matter is published in the Cabinet of Ministers, or in Parliament, or in a Provincial Council, in any case by the President, or by a Minister, or by a Member of Parliament,

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	or by a member of that Provincial Council, as the case may be; or
	(c) if the matter is published by order of the President or by order of the Cabinet of Ministers; or.
	Delete paragraph (f), and substitute—
	(f) if the matter published is in fact a fair report of anything said, done or published in the Cabinet of Ministers or in Parliament, or in a Provincial Council; or.
Section 198 (2).	Delete "Act", and substitute "written law".
Section 200.	Delete "shall not be deemed to have been made in good faith", and substitute "shall be deemed not to have been made in good faith".
Section 212 (2).	Delete "Crown", and substitute "Republic".
Section 278.	Insert "together" immediately before "with".
Section 279.	Insert "together with corporal punishment" immediately after "fourteen years".
Section 279 (g).	Insert ", vehicle" immediately after "box".
Section 291 (2).	Delete "the provisions of any Act or of any written instrument", and substitute "any instrument or any written law".
Section 296 (2).	Delete "with or without", and substitute "together with".
Section 304 (2).	Delete "with or without", and substitute "together with".
Section 306.	Insert ", together with corporal punishment" immediately after "seven years".
Section 306 and 307.	In each case, delete "the Government, or to any Government department, or to any municipal or other public authority", and substitute "a public body, or any building or part of a building licensed for the sale of intoxicating liquor,".
Section 311 (2) and (3).	Delete these subsections, and substitute a new subsection as follows— (2) An aircraft, vessel or vehicle which is liable to forfeiture under subsection (1) of this section shall be dealt with in accordance with section 389A of the Criminal Procedure Code.
Section 324 (3).	Delete "Her Majesty's Army, Navy or Air Force", and substitute "the disciplined forces".
Section 327 (2) (b).	Delete "an Act", and substitute "any written law".
Section 327 (2) (f).	Delete "any Act", and substitute "any written law".
Section 343.	Delete "Her Majesty,".
Section 352 (a).	Delete the words "or any province".
Section 369.	Delete "silver".
Section 378 (a).	Delete "or in any part of Her Majesty's dominions, or in any country under the protection of Her Majesty, or in any territory administered on behalf of Her Majesty's Government under any mandate or trust".
Section 379 (1) (a).	Delete "or of any part of Her Majesty's dominions, or of any territory administered on behalf of Her Majesty's Government under any mandate or trust".