



KENYA GAZETTE SUPPLEMENT

ACTS, 2003

NAIROBI, 25th July, 2003

CONTENT

Act—	PAGE
The Criminal Law (Amendment) Act, 2003.....	139

THE CRIMINAL LAW (AMENDMENT) ACT, 2003

No. 5 of 2003

Date of Assent: 18th July, 2003

Date of Commencement: 25th July, 2003

An Act of Parliament to make amendments to the criminal and penal law and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

- | | |
|---|-------------------------------------|
| 1. This Act may be cited as the Criminal Law Amendment Act, 2003. | Short title. |
| 2. The Penal Code is amended by repealing section 3. | Repeal of section 3 of Cap. 63. |
| 3. Section 24 of the Penal Code is amended by deleting paragraph (d). | Amendment of section 24 of Cap. 63. |
| 4. Section 26 of the Penal Code is amended in subsection (3), by deleting paragraph (ii). | Amendment of section 26 of Cap. 63. |
| 5. The Penal Code is amended by repealing section 27. | Repeal of section 27 of Cap. 63. |
| 6. Section 28 of the Penal Code is amended in subsection (2), by deleting the figures "100", "500", "3000" and "10,000" wherever they occur and substituting therefor the figures "500", "2,500", "15,000" and "50,000" respectively. | Amendment of section 29 of Cap. 63. |
| 7. Section 37 of the Penal Code is amended by deleting the words "or of corporal punishment". | Amendment of section 37 of Cap. 63. |
| 8. Section 38 of the Penal Code is amended in paragraph (a), by deleting the words "fine or corporal punishment" and substituting therefor the words "or fine". | Amendment of section 38 of Cap. 63. |

No. 5

Amendment of
section 77 of Cap.
63.

9. Section 77 of the Penal Code is amended by deleting subsection (2).

Amendment of
section 96 of Cap.
63.

10. Section 96 of the Penal Code is amended by deleting the words "three years" and substituting therefor the words "five years."

Amendment of
section 98 of Cap.
63.

11. Section 98 of the Penal Code is amended by deleting subsection (5).

Amendment of
section 101 of Cap.
63.

12. Section 101 of the Penal Code is amended by deleting subsection (3).

Repeal of section
112A of Cap. 63.

13. The Penal Code is amended by repealing section 112A and replacing it with the following section—

Malicious
information.

112A. (1) Any person who, with intent to cause harm or inconvenience to another person, gives or makes to—

- (a) any magistrate or member of the police force; or
- (b) any officer having power to apprehend or order the apprehension of offenders,

any information or complaint in relation to that other person that he knows to be false is guilty of a misdemeanour or, where subsection (3) or (4) applies, of a felony.

(2) Where, as a result of an offence under this section, any person sustains actual bodily harm, the offender shall on conviction be liable to be punished as for assault occasioning actual bodily harm.

s. 251.

(3) Where, as a result of an offence under this section, any person sustains

s. 234.

grievous harm, the offender shall on conviction be liable to be punished as for doing grievous harm.

s. 205.

(4) Where, as a result of an offence under this section, any person dies, the offender shall on conviction be liable to be punished as for manslaughter.

(5) For the purposes of this section, any harm to or death of a person shall be deemed to have resulted from an offence under this section if the court is satisfied that, as a matter of fact, and without regard to the actions or motivations of any person other than the offender, the harm would not have been done or the death would not have occurred, as the case may be, if the offence had not been committed.

14. The Penal Code is amended by inserting the following heading and new sections immediately after section 122—

Insertion of sections 122A–122D in Cap. 63.

SAMPLING FOR DNA IDENTIFICATION

Senior police officer may order DNA sampling procedure on suspect.

122A. (1) A police officer of or above the rank of inspector may by order in writing require a person suspected of having committed a serious offence to undergo a DNA sampling procedure if there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect committed the alleged offence.

(2) In this section—

“DNA sampling procedure” means a procedure, carried out by a medical practitioner, consisting of—

- (a) the taking of a sample of saliva or a sample by buccal swab;
- (b) the taking of a sample of blood;
- (c) the taking of a sample of hair from the head or underarm; or
- (d) the taking of a sample from a fingernail or toenail or from under the nail,

for the purpose of performing a test or analysis upon the sample in order to confirm or disprove a supposition concerning the identity of the person who committed a particular crime;

“serious offence” means an offence punishable by imprisonment for a term of twelve months or more.

Suspect to comply with order.

122B. Where a suspect in respect of whom an order has been made under section 122A resists compliance with the order, members of the police force, under supervision of an officer of or above the rank of inspector, shall be entitled to use reasonable force in restraining the suspect for the purpose of effecting the procedure.

Suspect may volunteer.

122C. (1) Nothing in section 122A shall be construed as preventing a suspect from undergoing a procedure by consent, without any order having been made:

Provided that every such consent shall be recorded in writing signed by the person giving the consent.

(2) Such consent may, where the suspect is a child or an incapable person, be given by the suspect's parent or guardian.

Order or
consent to be
proven.

122D. The results of any test or analysis carried out on a sample obtained from a DNA sampling procedure within the meaning of section 122A shall not be admissible in evidence at the request of the prosecution in any proceedings against the suspect unless an order under section 122A or a consent under section 122C is first proven to have been made or given.

15. Section 140 of the Penal Code is amended by deleting the words "with or without corporal punishment".

Amendment of
section 140 of Cap.
63.

16. Section 141 of the Penal Code is amended by deleting the words "with or without corporal punishment".

Amendment of
section 141 of
Cap. 63.

17. Section 143 of the Penal Code is amended—

- (a) by inserting the words "boy or" before the word "girl";
- (b) by inserting the words "his or" before the word "her" where firstly occurring;
- (c) by inserting the words "him or" before the word "her" where secondly occurring.

Amendment of
section 143 of
Cap. 63.

18. Section 144 of the Penal Code is amended—

- (a) in subsection (1), by deleting the words "five years, with or without corporal punishment" and substituting therefor the words "twenty-one years";
- (b) in subsection (2), by deleting the words "fourteen years" wherever they occur and substituting therefor the words "sixteen years".

Amendment of
section 144 of Cap.
63.

Repeal and replacement of section 145 of Cap. 63.

19. The Penal Code is amended by repealing section 145 and replacing it with the following section—

Defilement of girls under 16 years.

145. (1) Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony and is liable to imprisonment with hard labour for life.

(2) Any person who attempts to have unlawful carnal knowledge of a girl under the age of sixteen years is guilty of a felony and is liable to imprisonment with hard labour for life:

Provided that it shall be a sufficient defence to any charge under this section if it is made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was above the age of sixteen years or was his wife.

Amendment of section 146 of Cap. 63.

20. Section 146 of the Penal Code is amended—

- (a) by deleting the words “woman or girl” wherever occurring and substituting the word “person”;
- (b) by deleting the words “knowledge of her” and substituting the words “connection with him or her”;
- (c) by deleting the words “with or without corporal punishment”.

Amendment of section 147 of Cap. 63.

21. Section 147 of the Penal Code is amended—

- (a) in paragraph (a) by deleting the words “girl or woman” and substituting the word “person”;
- (b) in paragraph (b), (c) and (d) by deleting the words “woman or girl” wherever occurring and substituting the word “person”;

- (c) in paragraphs (c) and (d) by inserting the words "he or" before the word "she" wherever occurring;
- (d) in paragraph (d) by inserting the words "his or" before the word "her";
- (e) by deleting all words appearing after paragraph (c) and substituting the words "is guilty of a felony and is liable to imprisonment for life".

22. Section 148 of the Penal Code is amended—

- (a) in paragraphs (a) and (b) by deleting the words "woman or girl" wherever occurring and substituting the word "person";
- (b) in paragraph (c) by deleting the words "woman or girl" where firstly occurring and substituting the word "person";
- (c) in paragraph (c) by deleting the words "woman or girl" where secondly occurring and substituting the words "him or her";
- (d) by deleting all words appearing after paragraph (d) and substituting the words "is guilty of a felony and is liable to imprisonment for life".

Amendment of
section 148 of
Cap. 63.

23. Section 149 of the Penal Code is amended—

- (a) by inserting the words "boy or" before the word "girl" wherever occurring;
- (b) by deleting the words "thirteen years" wherever they occur and substituting therefor the words "sixteen years";
- (c) by deleting the words "being unlawfully and carnally known by any man, whether the carnal knowledge is intended to be with any particular man" and substituting the words "having unlawful sexual connection with any person, whether the sexual connection is intended to be with any particular person";
- (d) by deleting the words "five years" and substituting therefor the word "life".

Amendment of
section 149 of Cap.
63.

Repeal of section
150 of Cap. 63.

24. The Penal Code is amended by repealing
section 150.

Amendment of
section 151 of
Cap. 63.

25. Section 151 of the Penal Code is amended—

(a) by deleting subsections (1) and (2) and
substituting the following subsections—

(1) Any person who detains any other person
against his or her will—

(a) in or upon any premises with intent that he or
she may have unlawful sexual connection
with any person, whether any particular
person or generally; or

(b) in any brothel,
is guilty of a felony.

(2) A person in or upon any premises for the
purpose of having any unlawful sexual connection, or
in any brothel, shall be deemed to be detained therein
by any other person who, with intent to compel or
induce that person to remain in or upon the premises
or in the brothel—

(a) withholds from that person any wearing
apparel or other property belonging to that
person; or

(b) where wearing apparel has been lent or
otherwise supplied to that person by or at his
direction, threatens that person with legal
proceedings in the event that that person
should take away the wearing apparel so lent
or supplied.

(b) in subsection (3) by deleting the words “woman
or girl” and substituting the word “person”.

26. Section 152 of the Penal Code is repealed and replaced by the following section—

Repeal and replacement of section 152 of Cap. 63.

Power of search for persons detained.

152. (1) If it appears to any magistrate, on information laid before him on oath by—

- (a) any parent, relative or guardian of a person named in the information; or
- (b) any other informant who, in the opinion of the magistrate, is acting bona fide in the interests of the person so named,

that there is reasonable cause to suspect that the person named in the information is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of the magistrate, the magistrate may issue a warrant authorising the person charged with its execution to search for and, when found, to take to and detain in a place of safety the person named in the information until he or she can be brought before a magistrate.

(2) The magistrate before whom the person concerned is brought may cause the person to be delivered up to his or her parents or guardians or to be otherwise dealt with as circumstances may require.

(3) A magistrate issuing a warrant under subsection (1) may by the same or another warrant cause any person accused of unlawfully detaining the person concerned to be apprehended and brought before a magistrate, where he shall be dealt with according to law.

(4) A person shall be deemed to be unlawfully detained for immoral purposes if—

- (a) the person is detained for the purpose of having unlawful sexual connection with any person, whether any particular person or generally; and
- (b) the person—
 - (i) is under the age of sixteen years; or
 - (ii) being of or over the age of sixteen years and under the age of eighteen years, is so detained against his or her will or against the will of his or her father or mother or any person having the lawful care or charge of him or her; or
 - (iii) being of or over the age of eighteen years, is so detained against his or her own will.

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

Amendment of
section 151 of Cap.
63.

27. Section 151 of the Penal Code is amended by deleting the word "misdemeanour" and substituting therefor the word "felony".

Amendment of
section 153 of Cap.
63.

28. Section 153 of the Penal Code is amended in subsection (1) by deleting all the words appearing immediately after paragraph (b) and substituting therefor the words "is guilty of a felony".

29. Section 154 of the Penal Code is amended by deleting the word “misdemeanour” and substituting therefor the word “felony”.

Amendment of
section 154 of Cap.
63.

30. Section 156 of the Penal Code is amended by deleting the word “misdemeanour” and substituting therefor the word “felony”.

Amendment of
section 156 of Cap.
63.

31. Section 157 of the Penal Code is amended—

- (a) by deleting the words “with or without corporal punishment”;
- (b) by renumbering the section as subsection (1) and inserting thereafter the following subsection—

Amendment of
section 157 of
Cap. 63.

(2) Any person who conspires with another to induce any man or boy, by means of any false pretence or other fraudulent means, to permit any person to have unlawful sexual connexion with him is guilty of a felony and is liable to imprisonment for three years.

32. Section 162 of the Penal Code is amended by deleting all words appearing after paragraph (c) and substituting therefor the following words and proviso—
is guilty of a felony and is liable to imprisonment for fourteen years:

Amendment of
section 162 of Cap.
63.

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

- (i) the offence was committed without the consent of the person who was carnally known;
or
- (ii) the offence was committed with that person’s consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.

Amendment of
section 163 of
Cap. 63.

33. Section 163 of the Penal Code is amended by deleting the words “with or without corporal punishment”.

Amendment of
section 164 of Cap.
63.

34. Section 164 of the Penal Code is amended—

(a) by deleting the words “fourteen years” and substituting therefor the words “eighteen years”;

(b) by deleting the words “seven years, with or without corporal punishment” and substituting therefor the words “twenty-one years”.

Amendment of
section 165 of Cap.
63.

35. Section 165 of the Penal Code is amended by deleting the words “with or without corporal punishment”.

Repeal of section
169 of Cap. 63.

36. The Penal Code is amended by repealing section 169.

Repeal of section
183 of Cap. 63.

37. The Penal Code is amended by repealing section 183.

Amendment of
section 195 of Cap.
63.

38. Section 195 of the Penal Code is amended by deleting the proviso.

Amendment of
section 221 of Cap.
63.

39. Section 221 of the Penal Code is amended by deleting the words “with or without corporal punishment”.

Amendment of
section 223 of Cap.
63.

40. Section 223 of the Penal Code is amended by deleting subsection (2).

Amendment of
section 229 of Cap.
63.

41. Section 229 of the Penal Code is amended by deleting the words “with or without corporal punishment”.

42. Section 231 of the Penal Code is amended by deleting the words "with or without corporal punishment".

Amendment of section 231 of Cap. 63.

43. Section 233 of the Penal Code is amended by deleting the words "with or without corporal punishment".

Amendment of section 233 of Cap. 63.

44. Section 234 of the Penal Code is amended by deleting the words "with or without corporal punishment".

Amendment of section 234 of Cap. 63.

45. Section 237 of the Penal Code is amended by deleting the words "with or without corporal punishment".

Amendment of section 237 of Cap. 63.

46. The Penal Code is amended by inserting the following new section immediately after section 242—

Insertion of section 242A in Cap. 63.

Supply of harmful substances to children.

242A. (1) Any person who supplies or offers to a child—

- (a) any petroleum distillate, glue or other substance consisting of or containing matter having stupefying or hallucinogenic properties; or
- (b) any substance which the Minister responsible for health has declared, by notice published in the Gazette, to be a substance to which this section applies,

with intent that the child should inhale, consume or otherwise abuse the substance, or knowing or having reasonable cause to suspect that the child is likely to do so, is guilty of a misdemeanour and liable to imprisonment for three years.

(2) The provisions of this section are in addition to, and do not limit the operation of—

- No. 8 of 2001.
- No. 4 of 1994.
- (a) any provision of Chapter XX or XXII or any other provision of this Code;
 - (b) the provisions of sections 16 and 22 of the Children Act; or
 - (c) the provisions of the Narcotic Drugs and Psychotropic Substances (Control) Act or any other written law.

(3) In this section, “child” means a person under the age of eighteen years.

Amendment of section 251 of Cap. 63.

47. Section 251 of the Penal Code is amended by deleting the words “with or without corporal punishment”.

Amendment of section 278 of Cap. 63.

48. Section 278 of the Penal Code is amended by deleting the words “together with corporal punishment”.

Amendment of section 278A of Cap. 63.

49. Section 278A of the Penal Code is amended by deleting the words “together with corporal punishment”.

Amendment of section 278B of Cap. 63.

50. Section 278B of the Penal Code is amended deleting the words “together with corporal punishment”.

Amendment of section 279 of Cap. 63.

51. Section 279 of the Penal Code is amended by deleting the words “together with corporal punishment”.

Amendment of section 296 of Cap. 63.

52. Section 296 of the Penal Code is amended by deleting the words “together with corporal punishment not exceeding twenty-eight strokes”.

53. Section 297 of the Penal Code is amended by deleting the words "together with corporal punishment not exceeding fourteen strokes".

Amendment of section 297 of Cap. 63.

54. Section 304 of the Penal Code is amended in subsection (2) by deleting the words "together with corporal punishment".

Amendment of section 297 of Cap. 63.

55. Section 306 of the Penal Code is amended by deleting the words "together with corporal punishment".

Amendment of section 297 of Cap. 63.

56. Section 308 of the Penal Code is amended in subsection (2) by deleting the words "together with corporal punishment".

Amendment of section 308 of Cap. 63.

57. Section 339 of the Penal Code is amended in subsection (2) by deleting the words "with or without corporal punishment."

Amendment of section 339 of Cap. 63.

58. Section 389 of the Penal Code is amended by deleting all the words appearing after the words "exceeding seven years".

Amendment of section 389 of Cap. 63.

59. Section 2 of the Criminal Procedure Code is amended—

Amendment of section 2 of Cap. 75.

(a) by inserting the following definition in appropriate alphabetical sequence—

"complainant" means a person who lodges a complaint with the police or any other lawful authority;

(b) by deleting the definition of "committal proceedings."

No. 5

Amendment of
section 7 of Cap.
75.

60. Section 7 of the Criminal Procedure Code is amended—

- (a) in subsection (2), by deleting paragraph (c);
- (b) in subsection (3), by deleting paragraph (c);
- (c) by deleting subsection (4).

Amendment of
section 30 of Cap.
75.

61. Section 30 of the Criminal Procedure Code is amended—

- (a) by deleting paragraph (b);
- (b) by deleting paragraph (c).

Amendment of
section 44 of Cap.
75.

62. Section 44 of the Criminal Procedure Code is amended by deleting paragraph (a).

Amendment of
section 69 of Cap.
75.

63. Section 69 of the Criminal Procedure Code is amended by deleting the proviso thereto.

Amendment of
section 69 of Cap.
75.

64. The Criminal Procedure Code is amended by repealing section 77 and replacing it with the following new section—

Court to be open.

77. (1) Subject to subsection (2), the place in which a criminal court is held for the purpose of trying an offence shall be deemed an open court to which the public generally may have access, so far as it can conveniently contain them:

Provided that the presiding judge or magistrate may order at any stage of the trial of any particular case that the public generally or any particular person shall not have access to or remain in the room or building used by the court.

(2) Notwithstanding the provisions of subsection (1), the proceedings in the trial

Cap. 63.

of any case under sections 140, 141, 145, 166 and 167 of the Penal Code shall be held in private and no person shall, in relation to such trial, publish or cause to be published by any means—

- (a) any particulars calculated to lead to the identification of the victim; or
- (b) any picture of the victim.

(3) A person who contravenes the provisions of subsection (2) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding one hundred thousand shillings; and
- (b) in the case of a body corporate, to a fine not exceeding five hundred thousand shillings.

65. The Criminal Procedure Code is amended by repealing section 77A.

Repeal of section 77A of Cap. 75.

66. The Criminal Procedure Code is amended by repealing section 79 and replacing it with the following new section—

Repeal and replacement of section 79 of Cap. 75.

Transfer of cases between magistrates.

79. A magistrate holding a subordinate court of the first class—

- (a) may transfer a case of which he has taken cognizance to any magistrate holding a subordinate court empowered to try that case within the local limits of the first class subordinate courts' jurisdiction; and
- (b) may direct or empower a magistrate holding a subordinate court of the second class who has

taken cognizance of a case and whether evidence has been taken in that case or not, to transfer it for trial to himself or to any other specified magistrate within the local limits of his jurisdiction who is competent to try the accused and that magistrate shall dispose of the case accordingly.

Repeal and replacement of section 80 of Cap. 75.

67. The Criminal Procedure Code is amended by repealing section 80 and replacing it with the following new section—

Transfer of part-heard cases.

80. If in the course of any trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class empowered to direct the transfer of the case under section 79.

Amendment of section 82 of Cap. 75.

68. Section 82 of the Criminal Procedure Code is amended in subsection (2) by deleting all the words appearing after the words “the accused may be detained”.

Repeal of section 84 of Cap. 75.

69. The Criminal Procedure Code is amended by repealing section 84.

Amendment of section 86 of Cap. 75.

70. Section 86 of the Criminal Procedure Code is amended by deleting the words “committal proceedings” immediately after the word “he has charge is under”.

Amendment of section 123 of Cap. 75.

71. Section 123 of the Criminal Procedure Code is amended by deleting subsection (3) and substituting therefor the following new subsection—

(3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.

72. Section 149 of the Criminal Procedure Code is amended in subsection (1) by deleting the words "four hundred" and substituting therefor the words "five thousand".

Amendment of section 149 of Cap. 75.

73. The Criminal Procedure Code is amended by repealing section 164 and replacing it with the following new section—

Repeal and replacement of section 164 of Cap. 75.

Resumption of proceedings or trial.

164. Wherever a trial is postponed under section 162 or section 280, the court may at any time, subject to the provisions of section 163, resume trial and require the accused to appear or be brought before the court, whereupon, if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

74. The Criminal Procedure Code is amended by repealing section 165.

Repeal of section 165 of Cap. 75.

75. Section 167 of the Criminal Procedure Code is amended in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 167 of Cap. 75.

(b) in cases tried by the High Court, the Court shall try the case and at the close thereof shall either acquit the accused person or, if satisfied that the evidence would justify a conviction, shall order that the accused person be detained during the President's pleasure.

No. 5

Amendment of
section 167 of Cap.
75.

76. Section 170 of the Criminal Procedure Code is amended by deleting the words “ and the copy shall be given free of charge”.

Repeal and
replacement of
section 171 of Cap.
75.

77. The Criminal Procedure Code is amended by repealing section 171 and replacing it with the following new section—

Power to order
costs against
accused or
private
prosecutor.

171. (1) A judge of the High Court or a magistrate of a subordinate court of the first or second class may order a person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as the judge or magistrate may deem fit, in addition to any other penalty imposed.

(2) A judge of the High Court or a magistrate of a subordinate court of the first or second class who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:

Provided that—

- (i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a subordinate court; and
- (ii) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint.

78. The Criminal Procedure Code is amended by deleting section 175 and substituting therefor the following section—

Repeal and replacement of section 175 of Cap. 75.

Orders for compensation and expenses.

175. (1) A court which—

- (a) on convicting a person of an offence, imposes a fine, or a sentence of which a fine forms part; or
- (b) on appeal, revision or otherwise, confirms such a sentence,

may, when passing judgment, order the whole or any part of the fine recovered to be applied in defraying expenses properly incurred in the prosecution of the offence.

(2) A court which—

- (a) convicts a person of an offence or, on appeal, revision or otherwise, confirms the conviction; and
- (b) finds, on the facts proven in the case, that the convicted person has, by virtue of the act constituting the offence, a civil liability to the complainant or another person (in either case referred to in this section as the “injured party”),

may order the convicted person to pay to the injured party such sum as it considers could justly be recovered as damages in civil proceedings brought by the injured party against the convicted person in respect of the civil liability concerned:

(3) No order shall be made under subsection (2)—

- (a) so as to require payment of an amount that exceeds the amount that the court making the order is

authorised by law to award or confirm as damages in civil proceedings; or

- (b) in any case where, by reason of—
- (i) the complexity of evidentiary matters affecting the quantum of damages;
 - (ii) the insufficiency of evidence before it in relation to such damages or their quantum;
 - (iii) the provisions of the Limitation of Actions Act; or
 - (iv) any other circumstances,

Cap. 22.

the court considers that such an order would unduly prejudice the rights of the convicted person in respect of the civil liability.

(4) No order under this section shall take effect—

- (a) before the expiry of the time limited for appeal against the conviction or sentence in respect of which the order was made; or
- (b) while any such conviction or sentence is the subject of appeal, unless and until the conviction or sentence, and the order, are confirmed by the court determining the appeal.

(5) A court determining an appeal referred to in subsection (4) shall affirm, quash or vary an order under this section, as justice requires.

(6) An order under this section that has taken effect is enforceable in the same manner as a judgment in civil proceedings for the amount awarded by the order.

(7) An award by order under this section in respect of a civil liability is, to the extent of the amount awarded, a defence in any subsequent proceedings instituted in respect of that liability.

79. The Criminal Procedure Code is amended by inserting the following new section immediately after section 193—

Insertion of section 193A in Cap. 75.

Concurrent criminal and civil proceedings.

193A. Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.

80. The Criminal Procedure Code is amended by repealing section 220.

Repeal of section 220 of Cap. 75.

81. Section 221 of the Criminal Procedure Code is amended in subsection (1) by deleting the words "or third" appearing immediately after the words "a subordinate court of the second".

Amendment of section 221 of Cap. 75.

82. The Criminal Procedure Code is amended by repealing Part VIII.

Repeal of Part VIII of Cap. 75.

83. The Criminal Procedure Code is amended by repealing section 261.

Repeal of section 261 of Cap. 75.

84. The Criminal Procedure Code is amended by repealing section 301.

Repeal of section 301 of Cap. 75.

Repeal of section
305 of Cap. 75.

85. The Criminal Procedure Code is amended by repealing section 305.

Amendment of
section 306 of Cap.
75.

86. Section 306 of the Criminal Procedure Code is amended by deleting the words "and the statement or evidence (if any) of the accused person before the committing court has been given in evidence" wherever they occur.

Amendment of
section 307 of Cap.
75.

87. Section 307 of the Criminal Procedure Code is amended by deleting subsection (2).

Insertion of Part
IXA in Cap. 75.

88. The Criminal Procedure Code is amended by inserting the following new Part immediately after Part IX—

PART IXA—VICTIM IMPACT STATEMENTS

Interpretation.

329A. In this Part—

"family victim", in relation to an offence as a direct result of which a primary victim has died, means a person who was, at the time the offence was committed, a member of the primary victim's immediate family, and includes such a person whether or not the person has suffered personal harm as a result of the offence;

"member of the primary victim's immediate family" means—

- (a) the victim's spouse;
- (b) the victim's de facto spouse, being a person who has cohabited with the victim for at least 2 years;
- (c) a parent, guardian or step-parent of the victim;
- (d) a child or step-child of the victim or

some other child for whom the victim is the guardian; or

- (e) a brother, sister, step-brother or step-sister of the victim;

“personal harm” means actual physical bodily harm, mental illness or nervous shock

“primary victim”, in relation to an offence, means—

- (a) a person against whom the offence was committed;
- (b) a person who was a witness to the act of actual or threatened violence, the death or the infliction of the physical bodily harm concerned, being a person who has suffered personal harm as a direct result of the offence;

“victim” means a primary victim or a family victim;

“victim impact statement” means a statement containing particulars of—

- (a) in the case of a primary victim, any personal harm suffered by the victim as a direct result of the offence; or
- (b) in the case of a family victim, the impact of the primary victim’s death on the members of the primary victim’s immediate family.

329B. This Part applies in relation to an offence that is being dealt with by any court, where the offence results in the death of, or actual physical bodily harm to, any person.

Application of
Part.

When victim impact statements may be received and considered.

329C. (1) If it considers it appropriate to do so, a court may receive and consider a victim impact statement at any time after it convicts, but before it sentences, an offender.

(2) If the primary victim has died as a direct result of the offence, the court shall receive a victim impact statement given by a family victim and acknowledge its receipt, and may make any comment on it that the court considers appropriate.

(3) Notwithstanding subsections (1) and (2), the court—

(a) shall not consider a victim impact statement unless it has been filed by or on behalf of the victim to whom it relates or by or on behalf of the prosecutor; and

(b) shall not consider a victim impact statement given by a family victim in connection with the determination of the punishment for the offence unless it considers that it is appropriate to do so.

(4) The court may make a victim impact statement available to the prosecutor, to the offender or to any other person on such conditions (which shall include conditions preventing the offender from retaining copies of the statement) as it considers appropriate.

Victim impact statements discretionary.

329D. (1) The giving of a victim impact statement is not mandatory.

(2) A victim impact statement shall not be received or considered by a court if the victim or any of the victims to whom the statement relates objects to the statement being given to the court.

(3) The absence of a victim impact statement shall not give rise to any inference that an offence had little or no impact on a victim.

Formal requirements for victim impact statements.

329E. (1) A victim impact statement shall be in writing and shall comply with such other requirements as are prescribed by rules of court.

(2) If a primary victim is incapable of providing information for or objecting to a victim impact statement about the personal harm suffered by the victim, a member of the primary victim's immediate family or other representative of the victim may, subject to rules of court, act on behalf of the victim for that purpose.

(3) A court may receive and consider a victim impact statement only if it is given in accordance with and complies with the requirements prescribed by or under this Part.

Rules of court.

329F. The Chief Justice may make any rules of court necessary or expedient to be made for carrying this Part into effect.

89. The Criminal Procedure Code is amended by repealing section 343.

Repeal of section 343 of Cap. 75.

90. The Criminal Procedure Code is amended by repealing section 344.

Repeal of section 344 of Cap. 75.

91. The Criminal Procedure Code is amended by repealing section 344A.

Repeal of section 344A of Cap. 75.

Repeat of section
345 of Cap. 75.

92. The Criminal Procedure Code is amended by repealing section 345.

Amendment of
section 347 of Cap.
75.

93. Section 347 of the Criminal Procedure Code is amended in subsection (1) by deleting paragraph (b).

Amendment of
section 352 of Cap.
75.

94. Section 352 of the Criminal Procedure Code is amended in subsection (1) by deleting paragraph (ii).

Amendment of
section 354 of Cap.
75.

95. Section 354 of the Criminal Procedure Code is amended in subsection (3) by deleting the words "or commit him for trial" appearing in paragraph (a).

Repeal and
replacement of
section 384 of Cap.
75.

96. The Criminal Procedure Code is amended by repealing section 384 and replacing it with the following new section—

Statements
irregularly taken
under section 246.

384. (1) If a court before whom a statement of a person recorded or purporting to be recorded under section 246 of this Code is tendered or has been received in evidence finds that any provision of that section has not been complied with by the magistrate recording the statement—

- (a) it may take evidence that the person duly made the statement recorded; and
- (b) notwithstanding anything contained in section 97 of the Evidence Act, the statement shall be admitted, if the error has not injured the accused as to his defence on the merits.

Cap. 80.

97. Section 385 of the Criminal Procedure Code is amended by deleting the words "second or third class" and substituting therefor the words "or second class"

Amendment of section 385 of Cap. 75.

98. The First Schedule to the Criminal Procedure Code is amended in the fifth column, by deleting the words "Subordinate court of the first or second class" wherever they occur and substituting therefor the words "Any subordinate court".

Amendment of First Schedule to Cap. 75.

99. The Evidence Act is amended by inserting the following new section immediately after section 25—

Insertion of section 25A in Cap. 80.

Confessions generally inadmissible.

25A. A confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in court.

100. The Evidence Act is amended by repealing section 28.

Repeal of section 28 of Cap. 80.

101. The Evidence Act is amended by repealing section 30.

Repeal of section 30 of Cap. 80.

102. The Evidence Act is amended by repealing section 31.

Repeal of section 31 of Cap. 80.

103. Section 124 of the Evidence Act is amended by inserting the following proviso—

Amendment of section 124 of Cap. 80.

Provided that where in a criminal case involving a sexual offence the only evidence is that of a child of tender years who is the alleged victim of the offence, the court shall receive the evidence of the child and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the child is telling the truth.

Repeal of section
12 of Cap. 65.

104. The Prevention of Corruption Act is amended by
repealing section 12.