

CHAPTER 221

THE EMERGENCY POWERS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 221

THE EMERGENCY POWERS ACT

An Act to make better provisions which provide for and confer certain emergency powers upon the President for the purpose of ensuring public safety and maintenance of public order during emergencies and for connected matters.

[1st January 2000]

[G.N. No. 38 of 2000]

Acts Nos.

1 of 1986

12 of 1998

WHEREAS Article 32 of the Constitution of the United Republic of Tanzania provides, inter alia, that the President may, subject to an Act of Parliament, proclaim the existence of a state of emergency in the United Republic or in any part of it:

AND WHEREAS it is recognised that situations may arise from time to time within or outside the United Republic which, by reason of their potential threat to the security, peace and good order of the United Republic, may necessitate the exercise of emergency powers by the President:

AND WHEREAS it is meant that there be provided limits and adequate safeguards in relation to the exercise of emergency powers;

NOW, THEREFORE, BE IT ENACTED by the Parliament of the United Republic as follows—

PART I

PRELIMINARY PROVISIONS (ss 1-3)

[PCh221s1]1. Short title

This Act may be cited as the Emergency Powers Act.

[PCh221s2]2. Application

This Act shall apply to Tanzania Zanzibar as well as to Mainland Tanzania.

[PCh221s3]3. Interpretation

In this Act, unless the context requires otherwise—

"Code" means the Penal Code *;

"Constitution" means the Constitution of the United Republic of Tanzania *;

"emergency" includes war, invasion, insurrection real or apprehended or a breakdown of public order, which in the opinion of the President is a threat to the security of the United Republic, or a riot or other disaster or a natural calamity within the United

Republic whether caused by natural causes or otherwise, which could achieve such a serious nature as to be of national concern;

"emergency area" means any area of the United Republic in which there exists an emergency declared by the President;

"President" includes any person lawfully discharging the functions of the President;

"public meeting" means any assembly of more than five persons wherever it takes place and whether or not open to the public or to any category or portion of the public; and a meeting may be a public meeting notwithstanding that it is held in a private place nor that admission thereto is restricted by ticket or otherwise.

PART II

PROCLAMATION OF EMERGENCY (s 4)

[PCh221s4]4. Procedure relating to declaration of state of emergency

(1) The President shall by directions under his hand, provide for the procedure to be complied with by specified authorities in informing him of events and circumstances in any area or locality within the United Republic, which may necessitate or lead to the declaration of a state of emergency in that area or locality.

(2) Where the President, after receiving information in accordance with subsection (1), is satisfied that there exists in any area or locality of the United Republic a situation which necessitates the declaration of a state of emergency, he may, subject to Article 32 of the Constitution, by proclamation published in the Gazette, declare that there exists a state of emergency in the United Republic or in the area or locality of it concerned.

(3) The proclamation issued by the President under subsection (2) shall be conclusive evidence of the existence of a state of emergency in the United Republic or in the area or locality concerned and that it has existed for such period of time as may be stated in the proclamation.

(4) A proclamation issued under subsection (2) shall remain in operation until it is revoked by the President by a further proclamation declaring its cessation or until there occurs any of the situations referred to in Article 32(5) of the Constitution.

(5) The cessation of a state of emergency in accordance with subsection (4) shall not affect the validity of any act or thing lawfully done or suffered in pursuance of any order or direction, made or issued in furtherance of the proclamation; or affect any right, privilege, obligation, liability, penalty, forfeiture or punishment acquired, accrued or incurred under the proclamation in pursuance of the provisions of this Act.

PART III

EMERGENCY POWERS (ss 5-18)

[PCh221s5]5. Delegation Act No. 12 of 1998 Sch.

(1) The President may, by order published in the Gazette, delegate all or any of the emergency powers conferred upon him by the provisions of this Act to the Vice-President or any person exercising the powers of the President.

(2) The delegation made under subsection (1) shall be in a prescribed form.

[PCh221s6]6. Special powers of the President

The President may do and authorise such acts and things, and make from time to time such orders and regulations as he may, by reason of the existence of a state of

emergency, deem necessary for the security, defence, peace, order and welfare of the United Republic.

[PCh221s7]7. Power to arrest and detain suspected persons

(1) Any specified authority to whom the President may delegate his powers under section 5, if satisfied with respect to any particular person that with a view of preventing him from acting in any manner prejudicial to the public safety or the maintenance of public tranquility it is necessary so to do, may arrest such person without warrant, or may direct the arrest without warrant of such person and in making such arrest any means that may be necessary may be used.

(2) An arrest made by or on the direction of a specified authority under this section shall be reported forthwith to the President by the specified authority so making or so directing the arrest as the case may be, and the authority making the report may by order in writing commit any person so arrested to such custody as the President may deem fit.

(3) The President may by order in writing commit any person arrested on his direction to such custody as he may deem fit.

(4) No person detained shall, unless the President by a special order otherwise directs, be detained in custody for a period exceeding two months.

(5) No person shall be detained in custody for an aggregate period exceeding six months unless it is shown to the satisfaction of the President that his continued detention is in the public interest and in that case he may be detained for a further period not exceeding three months.

(6) The President may, by general or special order, determine the conditions as to maintenance, discipline and the punishment of offences and breaches of discipline which shall be applicable to persons committed to custody by an order made under subsection (2) or subsection (3).

(7) If a specified authority has reason to believe that a person in respect of whom the order as aforesaid has been made directing that he be detained has absconded or is concealing himself so that the order cannot be executed, he may—

(a) make a report to a Resident or District Magistrate having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of section 115 and 159 of the Criminal Procedure Act * shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the magistrate;

(b) by order notified in the Gazette direct the said person to appear before a specified officer, at such place and within such period as may be specified in the Order; and if the said person fails to comply with the direction, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with a term of imprisonment not exceeding four years or with a fine not exceeding twenty thousand shillings, or both such fine and imprisonment.

[PCh221s8]8. Power to control suspected persons

(1) The specified officer or District or Resident Magistrate, if satisfied with a view to preventing him from acting in any manner prejudicial to the public safety or the maintenance of public order it is necessary so to do, may by order in writing, give anyone or more of the following directions, namely, that such person—

(a) shall not enter, reside or remain in any area that may be specified in the order;

(b) shall reside in any area that may be specified in the order;

(c) shall remove himself from, and not return to, any area that may be specified in the order;

(d) shall conduct himself in such manner as may be specified in the order.

(2) The President may at any time cancel or vary any order made by a specified authority under subsection (1).

[PCh221s9]9. Power to control institutions or organisations

The President or any public servant authorised by him in that behalf if satisfied that any institution or organisation conducts itself in a manner prejudicial to the organisation of public safety or the maintenance of public order, may—

(a) close or ban the institution or organisation for such period as he may consider necessary, or

(b) remove or dismiss any leader, employee or member of that institution or organisation.

[PCh221s10]10. Power to control publication

(1) The President or any person authorised by him in that behalf may, if he is satisfied that any action is necessary for the purpose of preventing or combating any activity prejudicial to the public safety or the maintenance of public order, by order in writing addressed to a printer, publisher or editor—

(a) prohibit the printing or publication in any document or any class of documents of any matter relating to a particular subject or category of subjects either absolutely or for a specified period, or in a particular issue of a newspaper or periodical;

(b) require that any matter be published in any particular issue or issues of a newspaper or periodical, and may in doing so, specify the period during which and the manner in which such publication shall be done;

(c) require that any matter relating to a particular subject or category of subjects shall, before publication, be submitted for scrutiny;

(d) prohibit either absolutely or for a specified period the publication of any newspaper, periodical, leaflet, publication, or the use of any printing press.

(2) In the event of disobedience of an order made under this section, the President or other authority issuing the order may, without prejudice to any other penalty to which the person who is guilty of the disobedience is liable, order the seizure of all copies of any publication concerned and of any printing press or other instrument or apparatus used in the production of the publication.

[PCh221s11]11. Power to restrict newspapers from entering into the United Republic

(1) The President or any person authorised by him in that behalf may, if satisfied that an action is necessary for the purpose of preventing or combating any activity prejudicial to the public safety or the maintenance of public order, by notification, either absolutely or for a specified period, restrict the bringing into the United Republic any newspaper, periodical, leaflet or other publication.

(2) In the event of disobedience of an order made under this section, the President or other authority issuing the order may, without prejudice to any other penalty to which the person who is guilty of the disobedience is liable, order the seizure of all copies of any newspaper, periodical, leaflet or other publication concerned.

[PCh221s12]12. Power to control importation, exportation or supply of commodities

(1) If in the opinion of the President it is necessary for the public advantage to control production, exportation, importation or supply of any commodity, water or electricity in any emergency area, he may by order in the Gazette, make declarations to that effect.

(2) Any order made under subsection (1) shall prescribe modalities and forms to be used for purposes of restricting trade and supply of commodities, water or electricity.

[PCh221s13]13. Power to control road transport, airports harbours, territorial waters, etc.

(1) In this section—

"aircraft" means any structure or machine for navigating in the air;

"vehicle" means any vehicle used, or capable of being used, for the purpose of road transport;

"vessel" means a boat, craft or any structure for transport by water.

(2) The President or any specified authority may, if in his opinion it is necessary for the public advantage, by order in writing—

(a) regulate, restrict or prohibit the use upon any road of any vehicle and may require as a condition of its use that a vehicle carry a permit issued by him containing such condition as he may think fit.

(b) regulate, restrict or prohibit the use of Tanzanian air space, airport or any airfield by any aircraft and may require as a condition of use of Tanzanian airspace or airfields that any aircraft carry a permit issued by him containing such condition as he may think fit;

(c) regulate, restrict or prohibit the use of Tanzanian ports or territorial waters by any vessel and may require as a condition of use of Tanzanian ports or territorial waters that any vessel carry a permit issued by him containing such conditions as he may think fit.

[PCh221s14]14. Power to prohibit meetings or processions

The President or any specified authority may, by order in writing, prohibit, either generally or in a specified area for a specified time, the holding of any processions or demonstration in any public meetings, or the carrying in public of anything capable of being used as a weapon of offence.

[PCh221s15]15. Power to issue search warrants

The power to issue search warrants under the provisions of the Criminal Procedure Act *, shall include the power to issue warrants for–

(a) the search of any place in which any specified authority has reason to believe that any offence under this Act, or any act prejudicial to the public safety or maintenance of public order, has been, is being or is about to be committed, or that preparation for the commission of any such offence or act is being made;

(b) the seizure in or on any place searched under subparagraph (a) of anything which the officer executing the warrant has reason to believe is being used or is intended to be used for any purpose mentioned in that subparagraph, and the provisions of that Act shall, so far as may be practicable, apply to searches made under the authority of any warrant issued and to the disposal of any property seized under this section.

[PCh221s16]16. General power of search

Any authority on which any power is conferred by or under this Act may by general or special order authorise any person to enter and search any place, the search of which such authority has reason to believe to be necessary for the purpose of–

- (a) ascertaining whether it is necessary or expedient to exercise such power;
- (b) ascertain whether any order given, direction made, or condition prescribed in the exercise of such power has been duly complied with; or
- (c) generally giving effect to such power or securing compliance with or giving effect to, any order given, direction made or condition prescribed in the exercise of such power.

[PCh221s17]17. Power to give effect to orders

(1) Any authority, officer or person who is empowered by or in pursuance of this Act to make any order, or to exercise any other power action prescribed by or under this Act, may take or cause to be taken, such steps and use, or caused to be used, such force as may, in the opinion of such authority, be reasonably necessary for securing compliance with, or for preventing or rectifying any contravention of such order, or for the effective exercise of such power.

(2) For the avoidance of doubts it is declared that the power to take steps under subsection (1) includes the power to enter upon any land or other property whatsoever.

[PCh221s18]18. Power to amend, suspend or disapply laws

The President may, if in his opinion it is necessary for the purposes of implementing the provisions of this Act, suspend, or disapply any written law for the time being in force and such suspension or disapplication shall lapse with the revocation of the Proclamation issued in terms of the provisions of section 4(4) of this Act.

PART IV

OFFENCES AND PENALTIES (ss 19-24)

[PCh221s19]19. General penalties

Any person who contravenes any provision of this Act or disobeys or neglects to comply with any order made or direction given in accordance with the provisions of this Act shall, where no express provision is made by this Act for the punishment of such contravention, disobedience, or negligence, commits an offence and is liable, upon

conviction, to a fine not exceeding twenty thousand shillings or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

[PCh221s20]20. Evasion of provision for taking possession of property

Where any person authorised in that behalf by or under this Act, has in pursuance of powers conferred by or under this Act given notice that he or some other person duly authorised by him has taken or intends to take possession of any property, and any person who, having control of such property, sells, removes or hides the same or any part thereof, or disposes of the property otherwise than in accordance with any directions issued to him for its disposal commits an offence and is liable upon conviction or to a fine not exceeding thirty thousand shillings or to a term of imprisonment not exceeding three years to both such fine and imprisonment.

[PCh221s21]21. Dissemination of rumours

Any person who—

- (a) makes any speech; or
- (b) by words whether spoken or written or by signs or by visible or audible representations or otherwise publishes any statement, rumour or report; and which speech, statement or report—
 - (i) causes or is likely to cause fear or alarm in such a way as to disturb peace and order among the public or any section of the public;
 - (ii) defames or is likely to defame the Government or any servant of the government;

(iii) furthers or is likely to further any activity prejudicial to the public safety or maintenance of public order,
commits an offence and is liable upon conviction to a fine not exceeding thirty thousand shillings or to a term of imprisonment not exceeding three years or to both such fine and imprisonment.

[PCh221s22]22. Possession or conveyance of prohibited documents

(1) Any person who, without lawful authority—

(a) has in his possession, or on premises in his occupation or under his control;

or

(b) carries for delivery to another person otherwise than through the post,

any document in respect of which a notification under section 12 is in force, shall, unless he proves that he was unaware of the nature of the document, be guilty of an offence and is liable upon conviction to a fine not exceeding fifteen thousand shillings or to a term of imprisonment not exceeding eighteen months or to both such fine and imprisonment.

(2) Any person who allows his name or address to be used to facilitate transmission through the post or otherwise to a person other than the person for whom it purports to be intending, of any document of the nature referred to in subsection (1) commits an offence and is liable upon conviction to a fine not exceeding fifteen thousand shillings or to a term of imprisonment not exceeding eighteen months or to both such fine and imprisonment.

[PCh221s23]23. Abetment of offences

Any person who abets the commission of any offence under this Act shall, whether the act abetted is or is not committed in consequence of the abetment commits an offence and is liable upon conviction to punishment provided for the offence under the code.

[PCh221s24]24. Molestation

Any person who, with intent to cause any person to abstain from doing or to do any act which such person has right to do or to abstain from doing, obstructs or uses violence to, or intimidates such person or any member of his family or person in his employment or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of the property or hinders him in the use thereof commits an offence and is liable, upon conviction to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding eighteen months or to both such fine and imprisonment.

PART V

MISCELLANEOUS PROVISIONS (ss 25-28)

[PCh221s25]25. Procedure for trial of offences

(1) Acts and offences under this Act, shall be tried by appropriate courts in accordance with the procedure prescribed by the Criminal Procedure Act *.

(2) Notwithstanding the provisions of subsection (1) and the Criminal Procedure Act, any offence punishable under this Act shall be non-bailable except where—

(a) the prosecution has been given an opportunity to oppose the application for such release; and

(b) where the prosecution opposes the application, but the court is satisfied that there are reasonable grounds for believing that the suspect is not guilty of such offence.

(3) Notwithstanding the provisions of subsection (1), the President may, by order under his hand, direct that any offence committed under this Act, by any person or category of persons, be tried before such court as the President may direct.

(4) For the purposes of this section "court" includes a court martial.

[PCh221s26]26. Restriction of jurisdiction

Except as provided in this Act, no proceeding or order, taken or made under this Act shall be called in question by any court, and no civil or criminal proceeding shall be instituted against any person for anything done or intended to be enactments done under this Act or against any person for any loss or damage caused to or in respect of any property whose possession can be proved to have been taken under this Act.

[PCh221s27]27. Effect of emergency orders inconsistent with other enactments

Any order made, and any other action taken, under this Act shall have effect notwithstanding anything inconsistent with any enactment other than this Act or with any instrument having effect by virtue of any enactment other than this Act.

[PCh221s28]28. Repealed under R.E. 1993

[Repeals the Emergency Powers Orders in Council.]

[PCh222]CHAPTER 222

