

REPUBLIC OF VANUATU

THE PENAL CODE ACT No. 17 OF 1981

Addendum

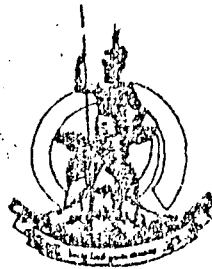
1. Section 17 (1)
  - (a) Substitute the word "convicted" for "capable" in the 1st line;
  - (b) Substitute the words "shall not be convicted" for "shall be presumed to be incapable" in the 4th line.
2. Change the penalty at the end of Section 70 from one year to five years.
3. Section 137
  - (a) Add the words "or threats of violence" after the word violence in line two;
  - (b) Change the penalty from ten to twenty years at the end of the section.
4. Substitute the following for Section 143 (1) :-
  - (1) No person shall enter or be in any house, building, tent, vessel or other place with intent to commit an offence therein.  
Penalty : Imprisonment for twenty years where place is used for human habitation.  
Imprisonment for ten years where place is not used for human habitation.
5. Substitute the following for Section 144 :-

No person shall -

  - (a) enter into or upon any property in the possession of another with intent to intimidate, insult or annoy any person lawfully in possession of such property; or
  - (b) having lawfully entered into or upon such property, unlawfully remain there with intent thereby to intimidate, insult or annoy any such person.

Penalty : Imprisonment for one year.

REPUBLIQUE  
DE  
VANUATU



REPUBLIC  
OF  
VANUATU

*JOURNAL OFFICIEL*

*OFFICIAL GAZETTE*

100t 1981

Numero Special  
Extraordinary Gazette

7 August 1981

ONT PUBLIES LES TEXTES SUIVANTS

MS

Artant Institution Du Code Penal  
No. 17 De 1981.

NOTIFICATION OF PUBLICATION

ACTS

The Penal Code Act No. 17 Of 1981.

REPUBLIC OF VANUATU

The Penal Code (Commencement)

Order No. 112 of 1981

To bring into operation the Penal Code Act No.17 of 1981.

IN EXERCISE of the power contained in section 154 of the Penal Code Act No.17 of 1981, I hereby make the following Order :-

1. The Penal Code Act No.17 of 1981 shall come into operation on the 7th day of August, 1981.
2. This Order shall come into force on the day of publication in the Gazette.

MADE at Port Vila the 7th day of August, 1981.

W.H. LYNI

Prime Minister and  
Minister of Justice

REPUBLIC OF VANUATU

THE PENAL CODE ACT No. 17 OF 1981

Arrangement of Sections

PART 1 - GENERAL PROVISIONS

Application Of The Criminal Law

1. Offences within Republic.
2. Offences partly or wholly abroad.
3. Complicity and attempts.
4. Offences abroad.
5. International Offences.

Principles Of Criminal Law

6. Criminal intent, recklessness.
7. Consent as a defence.
8. General rule as to burden of proof.
9. Burden of proof in certain cases.
10. Discharge of burden of proof by accused.
11. Ignorance of law or fact.
12. Mistake of fact, reasonable belief.

Principles Of Criminal Proceedings

13. Unfitness to plead.
14. Rights of accused at trial.
15. Limitation in criminal prosecutions.

Criminal Responsibility

16. Punishment and responsibility.
17. Age of responsibility.
18. Liability of corporations.
19. No vicarious liability.
20. Insanity.
21. Voluntary intoxication.
22. Superior orders.
23. Self-defence necessity, prevention of offences etc.
24. Effect of diminished responsibility.
25. Failure of plea of insanity.

Diminution Of Responsibility

26. Compulsion and coercion.
27. Provocation.

Attempts And Conspiracy

28. Attempts.
29. Conspiracy.

Participation In Criminal Offences

30. Complicity.
31. Co-offenders.

35. Inciting and soliciting commission of offence.
36. Commencement of sentence.
37. Calculation of sentence.
38. Imprisonment of minors.
39. Concurrent sentences the rule.
40. Consecutive sentences.
41. Custody pending trial or appeal.
42. Power of court to order offender to come up for sentence if called upon.
43. Power of court to discharge offender without conviction or sentence.
44. Nature of periodic detention.
45. Probation.
46. Nature of probation.
47. General conditions of probation.
48. Special conditions of probation.
49. Duties of probation officer.
50. Breach of conditions.
51. Fine.
52. Imprisonment in default of payment of fine.
53. Confiscation of property.
54. Restitution of property.
55. Addict or partially insane persons.
56. Review of confinement.
57. Rehabilitation.
58. Lapse of time.

#### PART 2 - OFFENCES

##### Offences Against Public Order

59. Treason.
60. Inciting to mutiny.
61. Communicating secrets.
62. Sabotage.
63. Seditious offences defined.
64. Seditious conspiracy.
65. Seditious statements.
66. Seditious publications.
67. Restrictions on prosecution for seditious offences.
68. Unlawful assembly and riot defined.
69. Unlawful assembly.
70. Riot.
71. Forcible entry.
72. Forcible detainer.
73. Corruption and bribery of officials.

##### Misleading Justice

74. Perjury defined.
75. Offence of perjury.
76. False statements etc.
77. Fabricating evidence.
78. Destroying evidence.
79. Conspiracy to defeat justice etc.
80. False statements by interpreters.
81. Deceiving witnesses.
82. Offences relating to judicial proceedings.

##### Escapes And Rescues

83. Rescue.
84. Escape.
85. Aiding prisoners to escape.
86. Removal of property under lawful seizure.

Offences Relating To Religion

- 88. Insult to religion of any class.
- 89. Disturbing religious assemblies.

Offences Against Morality

- 90. Rape defined.
- 91. Punishment of rape.
- 92. Abduction.
- 93. Indecent matter.
- 94. Indecent act in public place.
- 95. Incest.
- 96. Sexual intercourse with girl under care or protection.
- 97. Unlawful sexual intercourse.
- 98. Indecent assault.
- 99. Homosexual acts.
- 100. Gross indecency.
- 101. Prostitution.

Offences Against The Person

- 102. Slavery.
- 103. Abandonment of incapable persons.
- 104. Duty to provide the necessaries of life.
- 105. Kidnapping.
- 106. Intentional homicide.
- 107. Intentional assault.
- 108. Unintentional harm.
- 109. Causing death defined.
- 110. Whom child doomed to be a person.
- 111. Limitation as to time of death.
- 112. Killing by influence on the mind.
- 113. Killing unborn child.
- 114. Criminal nuisance.
- 115. Written threats to kill person.
- 116. Aiding suicide.
- 117. Abortion.
- 118. False imprisonment.
- 119. Endangering transport.

Offences Against Reputation

- 120. Criminal defamation.
- 121. Abusive or threatening language.

Offences Against Property

- 122. Theft defined.
- 123. Misappropriation defined.
- 124. Obtaining property by false pretences defined.
- 125. Prohibition of theft, misappropriation and false pretences.
- 126. Offences resembling theft.
- 127. Obtaining credit fraudulently.
- 128. Fraud by trustee.
- 129. False statement by promotor.
- 130. False accounting.
- 131. Receiving property dishonestly obtained.
- 132. Demanding money etc with menace.
- 133. Malicious damage to property.
- 134. Arson.
- 135. Wrecking.
- 136. Maltreatment of animals, birds or fish.
- 137. Robbery.
- 138. Extortion.
- 139. Forgery defined.

- 140. Prohibition of forgery.
- 141. Uttering forged documents.
- 142. Counterfeit currency.
- 143. Unlawfully entering dwelling house.
- 144. Criminal trespass.
- 145. Piracy.
- 146. Hijacking.

Offences Against Public Interest

- 147. Obscene publications.
- 148. Idle and disorderly.
- 149. Unlawful carriage of weapons by night.
- 150. Unlawful discrimination.
- 151. Witchcraft.
- 152. Repeals.
- 153. Transitional.
- 154. Commencement.

REPUBLIC OF VANUATU

Assented: 23rd July, 1981  
Commencement: Section 154

THE PENAL CODE ACT No. 17 OF 1981

To provide for criminal offences and the punishments therefore, principles of criminal law, criminal responsibility and matters connected therewith.

Be it enacted by the President and Parliament as follows :-

PART 1 - GENERAL PROVISIONS

Application of the Criminal Law

Offences.

1. (1) The Criminal law of the Republic shall apply to any act done or omitted within its territory.
- (2) For the purposes of this Code, the territory of the Republic shall include its territorial waters and the airspace above the territory and waters, and all civil vessels and aircraft registered in the Republic -

Provided that no person aboard a foreign civil vessel or aircraft may be tried for an offence committed on board such vessel or aircraft within the territory of the Republic if the Public Prosecutor is satisfied that the offence may be dealt with fairly and in a manner not contrary to public policy in the Republic under the foreign law or regulations governing such vessel or aircraft.

Offences partly or wholly abroad.

2. The criminal law of the Republic shall apply -
  - (a) to any offence of which an element has taken place within the territory of the Republic;
  - (b) to any offence against the external security of the Republic or of counterfeiting the current money of the Republic, wherever committed;

Provided that no alien may be tried for an offence against the criminal law of the Republic solely by virtue of this section unless he has been arrested within the territory of the Republic or has been extradited to it.

Complicity and attempts.

3. The criminal law of the Republic shall apply -
  - (a) to any act or omission within the territory of the Republic constituting complicity or attempt in relation to an offence against the criminal law of the Republic beyond such territory which is also an offence punishable by the law of the place in which it is or is intended to be committed;



(b) to any such act or omission beyond its territory in relation to an offence or intended offence within its territory.

Offences  
abroad.

4. (1) Any citizen may be prosecuted within the Republic for an offence against the criminal law of the Republic in respect of any act or omission committed by him beyond the Republic which had it been committed within the Republic would have constituted an offence against such law, if such act or omission constituted a corresponding offence under the law of the place where it was committed.
- (2) The penalty imposed upon conviction of a person under subsection (1) shall not be more severe than the corresponding penalty prescribed by the law of the place in which the act or omission was committed.
- (3) Subsection (1) shall not apply if such person has been prosecuted in respect of such act or omission in the place in which it was committed, whatever the result of such prosecution.
- (4) No criminal proceedings shall be brought against any person under the provisions of subsection (1) without the consent in writing of the Public Prosecutor.

International  
offences.

5. (1) The criminal law of the Republic shall apply to piracy, hijacking of aircraft, traffic in persons, slave trading and traffic in narcotics committed within or beyond the territory of the Republic.
- (2) No alien may be tried in the Republic for such an offence committed abroad unless he has been arrested in the Republic and his extradition has not been applied for, and the Public Prosecutor has consented in writing to his prosecution.

#### Principles of Criminal Law

Criminal  
intent  
recklessness.

6. (1) No person shall be guilty of a criminal offence unless he intentionally does an act which is prohibited by the criminal law and for which a specific penalty is prescribed. The act may consist of an omission, or a situation which has been created intentionally.
- (2) No person shall be guilty of a criminal offence unless it is shown that he intended to do the very act which the law prohibits; recklessness in doing that act shall be equivalent to intention.
- (3) A person shall be considered to be reckless if -
- (a) knowing that there is a risk that an event may result from his conduct or that a circumstance may exist, he takes that risk; and
- (b) it is unreasonable for him to take it having regard to the degree and nature of the risk which he knows to be present.

- (4) A person shall not be guilty of a criminal offence if he is merely negligent, unless the crime consists of an omission. A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man in his situation should exercise.
- (5) No provision of law constituting a criminal offence shall be construed as dispensing with the necessity to prove the criminal intention of the accused, unless such construction is expressly stated or arises by necessary and distinct implication.

Consent as a defence.

- 7. (1) It shall be no defence to any charge that the victim prior to the criminal act has expressed his consent to it, if the purpose of the act was to inflict serious physical or mental injury incompatible with the well-being of the victim.
- (2) In other cases, the victim shall not be taken to have consented to a criminal act if by reason of his age or infirmity, or of fraud, he was incapable of or was prevented from forming the necessary consent.

General rule as to burden of proof.

- 8. (1) No person shall be convicted of any criminal offence unless the prosecution shall prove his guilt according to the law beyond reasonable doubt by means of evidence properly admitted; the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous.
- (2) In determining whether a person has committed a criminal offence, the court shall consider the particular circumstances of the case and shall not be legally bound to infer that he intended or foresaw the natural or probable consequences of his actions.
- (3) If the prosecution has not so proved the guilt of the accused, he shall be deemed to be innocent of the charge and shall be acquitted forthwith.

Burden of proof in certain cases.

- 9. Unless otherwise expressly provided by law, the burden shall rest upon the prosecution to disprove beyond reasonable doubt any plea of provocation, compulsion, coercion, self-defence, necessity, consent, accident or mistake of fact which has been sufficiently raised by the defence as an issue.

Discharge of burden of proof by accused.

- 10. If a person charged with the commission of a crime pleads any defence by which he may exculpate himself if he proves certain facts, it shall be sufficient for such person to prove the same on the balance of probabilities.

Ignorance of law or fact.

- 11. (1) Ignorance of the law shall be no defence to any criminal charge.

- (2) In all cases in which it is necessary for the accused to have knowledge of certain facts in order to form a criminal intention, the burden shall rest upon the prosecution to prove that the accused was aware of such facts.
- (3) In the absence of direct evidence thereof, such knowledge may be proved by inference from other facts or circumstances.
- (4) Nothing in this section shall be construed so as to validate any defect or omission in the publication of any law or enactment.

Mistake of fact, reasonable belief.

- 12. A mistake of fact shall be a defence to a criminal charge if it consists of a genuine, ~~even though not reasonable~~, belief in any fact or circumstance which, had it existed, would have rendered the conduct of the accused innocent.

Am  
27/89

Principles of Criminal Proceedings

Infitness to plead.

- 13. If any person charged with a criminal offence is by reason of insanity or other mental disorder unfit to plead or to stand trial, the court shall make an order placing him under guardianship in a manner to be prescribed in the order. The condition of the accused shall be established by a medical report ordered by the court.

Rights of accused at trial.

- 14. Every accused person may, after the closure of evidence for the prosecution, elect to give evidence on oath on his own behalf or to remain silent. His election to remain silent shall not of itself give rise to an inference of guilt.

Limitation on criminal prosecutions.

- 15. No prosecution may be commenced against any person for any criminal offence upon the expiry of the following periods after the commission of such offence -
  - (a) in the case of offences punishable by imprisonment for more than ten years - twenty years;
  - (b) in the case of offences punishable by imprisonment for more than three months and not more than ten years - five years;
  - (c) in the case of offences punishable by imprisonment for three months or less or by fine only - one year.

Criminal Responsibility

Punishment and responsibility.

- 16. (1) No penalty may be imposed except upon a person who is criminally responsible.

(2) Subject to any special provision of law, criminal responsibility shall attach to any person who intentionally commits each of the acts or omissions which are the elements of a criminal offence with the intention of causing the result which completes it.

Age of responsibility.

17. (1) CAPABLE

No child under the age of ten years shall be ~~convicted~~ of committing any criminal offence. A child of ten years of age or over but under fourteen years of age shall ~~not be convicted of~~ <sup>BE PRESUMED TO BE INCAPABLE OF</sup> committing a criminal offence unless it is proved be evidence that he was able to distinguish between right and wrong and that he did so with respect to the offence with which he is charged.

Am  
27/89

(2) The age of a person prescribed by this section shall be his age at the time of the act or omission in question.

(3) For the purposes of this section and any other provision of criminal law, the age of a person shall be determined, in the absence of official civil status records, by the court upon the balance of probabilities, after hearing the evidence of a medical expert.

Liability of corporations.

18.

A corporation may be criminally liable to the same extent as a natural person, provided that the acts and intentions of its principals or responsible servants may be attributed to the corporation.

No Vicarious liability.

19.

In all cases in which it is necessary to prove criminal intention, a person shall not be liable for the criminal act of another person, whether that person is his child, servant, employee, agent or merely a stranger.

Incapacity.

20. (1)

Every person accused of a criminal offence shall be presumed sane until the contrary is proved; the burden of such proof shall lie upon the accused on the balance of probabilities.

(2)

It shall be a defence to a criminal charge that the accused was at the time in question suffering from a defect of reason, due to a disease of the mind which rendered him incapable of appreciating the probable effects of his conduct. Such disease may consist of a mental disorder or deficiency which leads in relation to the criminal act to a complete deprivation of the reasoning power of the accused beyond a momentary confusion, absence of self-control or irresistible impulse. Any mental disorder which has manifested itself in violence and is prone to recur is sufficient. The disease need not be permanent or prolonged; a temporary loss of mental awareness shall constitute a sufficient defence.

(3) If the accused is found insane he shall be entitled to be acquitted. Notwithstanding such acquittal, the court may make an order for his confinement in a manner to be prescribed in its order.

(4) Involuntary intoxication shall for the purposes of the criminal law be deemed to be a mental disease.

Voluntary  
Intoxication.

21. (1) Voluntary intoxication shall not constitute a defence to any charge unless the offence charged is one in which criminal intention is an element and the intoxication was of so gross a degree as to deprive the accused of the capacity to form the necessary criminal intention; the onus of proof thereof on the balance of probabilities shall lie on the accused.

(2) For the purposes of this section, intoxication means the impairment of the mental or physical faculties of a person arising from the taking of any foreign substance.

Superior  
orders.

22. No criminal responsibility shall attach to an act performed on the orders of a superior to whom obedience is lawfully due, unless such order was manifestly unlawful or the accused knew that the superior had no authority to issue such order.

Self-defence  
necessity,  
prevention  
of offences  
etc.

23. (1) No criminal responsibility shall attach to an act dictated by the immediate necessity of defence of the person acting or of another, or of any right of himself or another, against an unlawful action, provided that the means of defence be not disproportionate to the seriousness of the unlawful action threatened.

(2) Without prejudice to the generality thereof, subsection (1) shall apply to the intentional killing of another in defence of an attack causing a reasonable apprehension of death, grievous harm, rape or sodomy.

(3) No criminal responsibility shall attach to an act, not being an act to which subsection (1) applies, done in necessary protection of any right of property, in order to protect the person acting or another, or any property from a grave and imminent danger, provided that the means of protection used be not disproportionate to the severity of the harm threatened.

(4) No criminal responsibility shall attach to the use of such force as is reasonable in the circumstances for the purpose of -

(a) preventing the commission of an offence (not being an offence against the person acting); or

(b) effecting or assisting the lawful arrest of any offender or suspected offender or any person unlawfully at large.

Effect of diminished responsibility.

24. Wherever criminal responsibility is diminished by law, the punishment shall be mitigated at the discretion of the Court.

Failure of plea of insanity.

25. (1) If a plea of insanity fails, it shall be open to the court to find the accused guilty of the charge. The court may decide that the accused, although not insane within the meaning of section 20, was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind or any inherent cause or induced by disease or injury, as diminished his responsibility for his acts.
- (2) If an accused is found guilty but with such diminished responsibility, the court may make such order with respect to his custody and treatment as is necessary for the safety of others and his own well-being.

#### Diminution of Responsibility

Compulsion and coercion.

26. (1) Criminal responsibility shall be diminished in the case of an offence committed by a person acting -
- (a) under actual compulsion or threats, not otherwise avoidable, of death or grievous harm;
  - (b) under the coercion of a parent, spouse, employer or other person having actual or moral authority over such person.
- (2) Criminal responsibility shall not be diminished under subsection (1) if the person acting has voluntarily exposed himself to the risk of such compulsion, threats or coercion.

Provocation.

27. (1) Criminal responsibility shall be diminished in the case of an offence immediately provoked by the unlawful act of another against the offender or, in his presence, his spouse, descendant, ascendant, brother, sister, master or servant, or any minor or incapable person in his charge, provided that the reaction constituting the offence be not disproportionate to the degree of provocation.
- (2) Without prejudice to the generality of subsection (1), the intentional killing or wounding of another shall be deemed to be not disproportionate to provocation caused by violent blows or injuries.
- (3) In order that criminal responsibility be diminished, provocation must be of such degree as to deprive a normal person of his self-control.

#### Attempts And Conspiracy

Attempts.

28. (1) An attempt to commit a criminal offence is committed if any act is done or omitted with intent to commit that crime and such act or omission is a step towards the commission of that crime which is immediately

connected with it, or would have been had the facts been as the offender supposed them to be.

- (2) An attempt shall be committed notwithstanding that complete commission of the offence was impossible by reason of a circumstance unknown to the offender.
- (3) Acts committed in mere preparation of an offence shall not constitute an offence.
- (4) The commission of an attempted offence shall constitute an offence punishable in the same manner as the offence concerned.
- (5) The criminal responsibility of a person committing an attempted offence who voluntarily withdraws from the attempt before the offence has been committed shall be diminished.

Conspiracy.

- 29.
- (1) Conspiracy is an agreement, express or implied, between two or more persons to do an act which, if done, even by one person, would constitute a criminal offence.
  - (2) There can be no conspiracy between husband and wife.
  - (3) The criminal responsibility of a conspirator who voluntarily withdraws from the conspiracy before the commission of the offence shall be diminished.
  - (4) A conspiracy to commit a criminal offence shall be punishable only where expressly provided by any provision of law.
  - (5) No person shall be prosecuted as a conspirator without the consent in writing of the Public Prosecutor.

#### Participation In Criminal Offences

Complicity.

30. Any person who aids, counsels or procures the commission of a criminal offence shall be guilty as an accomplice and may be charged and convicted as a principal offender.

Co-offenders.

31. A co-offender shall mean a person who, in agreement with another, takes part with him in the commission of a criminal offence.

Punishment of accomplices and co-offenders.

32. Subject to any express provision of law, an accomplice and a co-offender shall be punishable in like manner as a principal or sole offender.

Foreseeable consequences.

33. Any accomplice or co-offender in the commission or attempted commission of an offence shall be equally responsible for any other offence committed or attempted as a foreseeable consequence of the complicity or agreement.

Accessory  
after the  
fact.

34. (1) An accessory after the fact shall mean a person who, knowing or having reasonable cause to suspect that another person has committed a criminal offence, shelters such person or his accomplice from arrest or investigation, or has possession of or disposed of anything taken, misappropriated or otherwise obtained by means of the offence or used for the purpose of committing the offence.
- (2) Subsection (1) shall have no application to any ascendant, descendant, sibling or the spouse of the person sheltered.
- (3) An accessory after the fact shall be punished as a principal offender.

Inciting and  
soliciting  
commission  
of offence.

35. It shall be unlawful to incite or solicit another person to commit any offence, whether or not that offence is committed. A person guilty of inciting or soliciting an offence may be charged and convicted as a principal offender.

Commencement  
of sentence.

36. Where the offender has not been in custody pending trial and where no warrant of arrest or remand is issued against him at the time of judgment in the circumstances authorised by the rules of criminal procedure, no sentence of imprisonment may be enforced until the time for appeal against such sentence has expired or the offender earlier elects to begin serving his sentence.

Calculation  
of sentence.

37. (1) In a sentence of imprisonment expressed in days, each day shall mean twenty-four hours.
- (2) A sentence of imprisonment for one month shall mean imprisonment for one calendar month.
- (3) Sentences expressed in months or years shall be reckoned by calendar date.
- (4) Subject to section 41, the duration of a sentence of imprisonment shall include and run from -
- (a) the day on which the offender was taken into custody under that sentence; or
- (b) in the case of concurrent sentences passed on different dates, the day on which he was first taken into custody under any such sentence.
- (5) In the case of the escape of a prisoner, the period in which he is unlawfully at liberty shall not be counted in the duration of the sentence.

Imprisonment  
of minors.

38. (1) No person under sixteen years of age shall be sentenced to imprisonment unless no other method of punishment is appropriate. Where any such person is sentenced to imprisonment, the court shall give its reason for so sentencing.



- (2) An offender under the age of sixteen years shall serve a sentence of imprisonment in a special establishment or, if no such establishment exists, shall be separated from offenders of sixteen years of age and over.

Concurrent sentences the rule.

39. (1) Where any person is convicted on more than one charge of an offence tried jointly, the respective sentences of imprisonment imposed for such offences shall be deemed to be concurrent sentences, unless the court shall otherwise order.
- (2) Where any person is convicted on more than one such charge tried separately, any sentence later passed for an offence committed prior to the earlier trial, shall be deemed to run concurrently with any earlier sentence, unless the court shall otherwise order.
- (3) No sentence may be ordered to run concurrently with a sentence which had already become final before the commission of the criminal offence in respect of which the second sentence is passed.

Consecutive sentences.

40. Sentences of imprisonment shall be enforced in the order in which the warrants of imprisonment are notified to the offender.

Custody pending trial or appeal.

41. (1) Where the offender has been in custody pending trial or appeal, the duration of such custody shall be wholly deducted from the computation of a sentence of imprisonment.
- (2) Where the offender, after having been in custody pending trial or appeal, is sentenced to a fine only, the court may relieve him wholly or in part of payment of the said fine.

Power of court to order

offender to come up for sentence if called upon.

42. (1) Any court by or before which any person is convicted of any offence, or before which any person appears for sentence, may, having regard to the circumstances, including the nature of the offence and the character of the offender, instead of passing sentence, order the offender to appear for sentence if called upon to do so, on such conditions as the court thinks fit.
- (2) The making of an order under this section shall not limit or affect the power of the court, under any enactment applicable to the offence, to make any order for the payment of costs, damages, or compensation, or for the restitution of any property, notwithstanding that the offender is not sentenced on conviction, and the provisions of every such enactment shall apply accordingly.
- (3) Any person in respect of whom an order is made under this section may be called upon to appear for sentence within any period specified by the court in the order, being a period not exceeding three years from the

date of the conviction, or, if no period is so specified, within one year from the date of the conviction.

- (4) Where any person is brought up for sentence under this section, any judicial officer having jurisdiction to deal with offences of the same kind, whether or not he is the judicial officer before whom the case was heard, may, after inquiry into the circumstances of the case and the conduct of the offender since the order was made, sentence or otherwise deal with the offender for the offence in respect of which the order was made.

Power of court to discharge offender without conviction or sentence.

- 43. (1) Where any person is accused of any offence, any court, after inquiry into the circumstances of the case, may in its discretion discharge that person without convicting him, unless by any enactment applicable to the offence a minimum penalty is expressly provided for.

- (2) A discharge under this section shall be considered to be an acquittal.

- (3) The court discharging any person under this section may, if it is satisfied that the charge is proved against him, make any order for the payment of costs, damages, or compensation, or for the restitution of any property, that it could have made under any enactment applicable to the offence with which he is charged if it had convicted and sentenced him, and the provisions of every such enactment shall apply accordingly.

- (4) Nothing in this section shall affect the power of any court to convict and discharge any person.

Nature of periodic detention.

- 44. (1) In any case in which a person convicted of a criminal offence may be sentenced to imprisonment for a limited term in accordance with any provision of law, the court may in its discretion sentence such person in place thereof to undergo periodic detention for a term of not less than one month and not more than six months.

- (2) Periodic detention shall mean the loss of liberty of the offender for not more than thirty-six hours between Friday evening and Sunday evening in each consecutive week throughout the term for which such periodic detention has been imposed. During such sentence the offender shall be obliged to perform community work without remuneration for periods not exceeding eight hours in each day.

While in detention for such periods, the offender shall be treated as far as local circumstances allow as though he were undergoing a sentence of imprisonment.

- (3) In exercising its discretion under subsection (1) the court shall have regard to the nature of the offence, the age and circumstances of the offender including his occupation or employment, family circumstances, the prospects of his reformation and any other circumstances which it may consider relevant.
- (4) If an offender sentenced to periodic detention shall fail on any occasion to surrender himself into custody, properly to perform the work he is directed to perform or to comply in any way with the terms of such sentence or the rules governing periodic detention, such sentence shall thereupon lapse and he shall be taken in custody before the same court to be sentenced afresh and he shall not thereafter be eligible for periodic detention.

Probation.

45. (1) In any case where a sentence of imprisonment may be imposed, probation may be ordered in addition to or in place of any other sentence.
- (2) The period of probation may be imposed for from one to three years.

Nature of probation.

46. (1) Probation shall be granted upon general and, where appropriate, special conditions.
- (2) The compliance of the offender with such conditions shall be supervised by a magistrate nominated in that behalf, with the assistance of honorary probation officers.
- (3) The probation officer shall be chosen and may be replaced by the magistrate in charge of the case.
- (4) The magistrate in charge of the case at the home district of the offender may at any time for reasons to be recorded in writing suspend all or any of the special conditions or may vary them so as to make them less onerous.

General conditions of probation.

47. An offender on probation shall always be subject to the following general conditions -
  - (a) to establish his residence in a given place;
  - (b) to appear when called upon by the probation officer;
  - (c) to receive visits from the probation officer and furnish all information and documents necessary for verifying his means of support;
  - (d) to advise the probation officer in advance of any change of employment or residence and the reasons therefor;
  - (e) to inform the probation officer of any intended absence of over fifteen days and of his return;
  - (f) to obtain the prior permission of the probation officer before any departure abroad.

Special conditions of probation.

48. In addition to such general conditions imposed by section 47, the court may by its judgment subject the offender to any one or more of the following special conditions -
- (a) to take up residence in any specified place or places;
  - (b) not to be present without special permission in any specified place or places;
  - (c) to remain in employment or follow a course of instruction or vocational training;
  - (d) to submit to measures of control or treatment including treatment in hospital, in particular for curing an addiction to alcohol or drugs;
  - (e) to contribute to his family expenses or pay regularly any maintenance due by him;
  - (f) to compensate any person for damage caused by his offence;
  - (g) not to drive any motor vehicle or class of motor vehicle;
  - (h) to avoid specified places or premises;
  - (i) to abstain from wagering or excessive or any consumption of alcohol;
  - (j) to avoid the company of specified offenders, in particular his co-offenders or accessories to the offence;
  - (k) not to receive or lodge any specified persons or class of persons at his residence.

Duties of probation officer.

49. (1) The probation officer shall be bound to satisfy himself that the offender observes the general and special conditions of his probation and to encourage his reform and in particular his re-adjustment to his family and occupation.
- (2) The probation officer shall report regularly to the magistrate on the progress of the probation and shall refer to him in case of difficulty.

Breach of conditions.

50. Where the offender shall have broken any general or special conditions or probation the court shall order the termination of such probation and shall sentence the offender afresh. He shall not thereafter be eligible for probation.

Fine.

51. (1) In sentencing any persons to pay a fine a court may, after enquiry as to his means, direct that the fine be paid within such period as it may specify or that it be paid by instalments.
- (2) In addition to the power to sentence any person convicted of a criminal offence to pay a fine prescribed by any provision of criminal law as penalty for such offence, a court may, where the

penalty provided is a limited term of imprisonment, in place thereof or as an alternative penalty, fine the offender.

- (3) No fine imposed as an alternative penalty shall exceed a sum calculated at the rate of VT 200 for every day of the prescribed maximum penalty of imprisonment to which the offender is liable.

*Am 2-7/89*

Imprisonment in default of payment of fine.

- 52. (1) Where any person is sentenced to pay a fine, the court may direct by its sentence that in default of payment of the fine either immediately or within such period as the court may prescribe, the offender shall suffer imprisonment for a term calculated at the rate of one day's imprisonment for every VT ~~500~~ 50 of the fine, not exceeding in any case imprisonment for six ~~months~~ <sup>YEARS</sup>; such imprisonment to be in addition to any other imprisonment to which he may have been sentenced. The completion of such term of imprisonment in default of payment of a fine shall abate the whole liability to pay such fine.

*Am 14/89*

- (2) In any case where a person has been ordered to pay a fine by instalments and has made default in payment of any one or more of such instalments, the sentence of imprisonment in default of payment shall not be executed until the date for payment of the final instalment. If he has paid any of the instalments ordered, the term of imprisonment shall be reduced proportionately.

Confiscation of property.

- 53. (1) On the conviction of any person for a criminal offence, the court may order the confiscation of any property of the offender seized and which was used as a means of committing the offence or is or represents the proceeds of the offence.
- (2) Subsection (1) shall apply to any ship, boat, aircraft or motor-vehicle used by the offender to travel to or away from the place where the offence was committed.

Restitution of property.

- 54. Upon the conviction of any person for a criminal offence whereby such person has unlawfully obtained possession of any property of another, the court may order him to make restitution of such property to the person lawfully entitled to possession thereof and may direct by its order that in default of making restitution within a period specified in such order, the offender shall suffer imprisonment, which shall not exceed a term calculated at the rate of one week's imprisonment for every VT 1,000 of the value of the property concerned. The offender shall continue to be liable to make restitution of such property notwithstanding the execution of the sentence of imprisonment.

Addict or partially insane person.

- 55. (1) Where a person who is addicted to alcohol or drugs suffering from mental illness is convicted of any criminal offence which arises out of such addiction or mental condition and the court is of the opinion that his liberty is a danger to the public or himself, the court may order his confinement in a specified health institution.
- (2) Such confinement shall not exceed two years in the case of an addict to alcohol or drugs nor five years in the case of a mentally ill person.
- (3) Such confinement may be earlier terminated in accordance with the provisions of section 56.

Review of confinement.

- 56. (1) In the case of every person confined in any manner other than by imprisonment or periodic detention under the provisions of this Code, a full report on his condition and the necessity to continue to detain him, shall be sent to the Supreme Court by the authority concerned at intervals not exceeding twelve months.
- (2) Notwithstanding the provisions of subsection (1), the Supreme Court may, upon receiving any representation or complaint from any person, call for such a report at any time.
- (3) The Supreme Court may reach a decision upon the necessity to continue to detain any such person upon the report itself or may call for such further information or evidence, including the personal attendance before it of any person, as it shall consider necessary or desirable. The Court may, if it thinks fit, visit the place of confinement for the purpose of inspecting the same or interviewing any person.
- (4) The Supreme Court shall have power, upon reaching a decision in any case that the person detained should be released from confinement, to make such order or give such directions for his release as may be appropriate in the circumstances. Such order or directions shall be binding upon the authority concerned, who shall report to the Court without delay upon the execution thereof.

Rehabilitation.

- 57. (1) Rehabilitation by lapse of time shall expunge a conviction for any criminal offence.
- (2) No rehabilitation may apply without discharge of any expenses due to the Treasury and any order for the payment of money made in the criminal proceedings nor affect the right of the Treasury to any such sums already collected.

Lapse of time.

- 58. (1) An offender who has not suffered any further sentence of imprisonment for any criminal offence shall be as of right rehabilitated by the expiry of the following periods -

- (a) sentence of a fine or a single sentence of imprisonment for up to six months - five years;
  - (b) a single sentence of imprisonment for up to two years - seven years;
  - (c) a single sentence of imprisonment for up to five years - ten years;
  - (d) more than one sentence of imprisonment for an aggregate period of one year or less - ten years;
  - (e) more than one sentence of imprisonment for an aggregate period of more than one year but not more than two years - fifteen years.
- (2) The periods proscribed in subsection (1) shall run, in the case of a sentence of a fine, from the date of payment and in the case of imprisonment, from the date of expiry of the sentence, as reduced by any remission.

PART 2 - OFFENCES

Offences Against Public Order

Treason.

59. (1) No person owing allegiance to the Republic shall, within or outside the Republic -
- (a) levy war against the Republic;
  - (b) assist an enemy at war with the Republic or any armed forces against which forces of the Republic are engaged in hostilities, whether or not a state of war exists between the Republic and any other country;
  - (c) incite or assist any person to invade the Republic;
  - (d) use force for the purpose of overthrowing the Government of the Republic; or
  - (e) conspire with any person to do anything mentioned in this section.

Penalty : Life Imprisonment.

- (2) No person shall be convicted of treason on the evidence of one witness only unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused.

Inciting to mutiny.

60. No person owing allegiance to the Republic shall, within or outside the Republic, for any traitorous or mutinous purpose -
- (a) endeavour at any time to seduce any person serving in the forces of the Republic or any member of the police force from his duty and allegiance to the Republic;
  - (b) incite any such person to commit an act of mutiny or an act of treason.

Penalty : Imprisonment for life.

Communicating  
secrets.

61. No person owing allegiance to the Republic shall, ...  
within or outside the Republic -

(a) with intent to prejudice the safety, security or defence of the Republic, communicate or make available to any person any military or scientific information, or any sketch, photograph, map, plan, model, design, pattern, specimen, article, note or document of a military or scientific character, the communication or making available of which is likely to prejudice the safety, security or defence of the Republic;

(b) Conspire with any person to do anything mentioned in paragraph (a).

Penalty : Imprisonment for fourteen years.

Sabotage.

62. No person shall, with intent to prejudice the safety security or defence of the Republic or the safety or security of the armed forces of any other country lawfully present in the Republic -

(a) impair the efficiency or impede the working of any ship, vehicle, aircraft, arms, munitions equipment, machinery, apparatus or atomic or nuclear plant; or

(b) damage or destroy any property which it is necessary to keep intact for the safety or health of the Republic.

Seditious  
offences  
defined.

63. (1) A seditious intention is an intention -

(a) to bring into hatred or contempt, or to excite disaffection against, the Government of the Republic or the administration of justice;

(b) to incite the public or any persons or any class of persons to attempt to procure otherwise than by lawful means the alteration of any matter affecting the Constitution, laws, or government of the Republic;

(c) to incite, procure or encourage violence, lawlessness or disorder;

(d) to incite, procure or encourage the commission of any offence which is prejudicial to the public safety or to the maintenance of public order;

(e) to incite such hostility or ill will between different classes of persons as may endanger the public safety; or

(f) to show disrespect towards the Government, or the flag, or the person of the President or the Prime Minister, of the Republic in such manner or circumstances as causes or is likely to cause a breach of the peace;

But the act, speech or publication is not seditious by reason only that it intends -



- (a) to show that the Government has been misled or mistaken in any of its measures;
- (b) to point out errors or defects in the government or Constitution of the Republic as by law established or any legislation or in the administration of justice with a view to the remedying of such errors or defects;
- (c) to persuade the public or any persons or any class of persons to attempt to procure by lawful means the alteration of any matter affecting the Constitution, laws or government of the Republic; or
- (d) to point out, with a view to their removal, matters producing or having a tendency to produce feelings of hostility or ill will between different classes of persons.

Seditious conspiracy.

64. No person shall enter into any agreement between, two or more persons to carry into execution any seditious intention.

Seditious statements.

65. (1) No person shall make or publish, or cause or permit to be made or published any statement expressing any seditious intention.

Penalty : Imprisonment for <sup>15</sup>~~two~~ years.

*Am  
14/89*

(2) For the purposes of subsection (1), the expression "statement" includes words, writing, pictures, or any expression, representation or reproduction by any means whatever.

Seditious publications.

66. (1) No person shall -

- (a) print, publish, sell, offer for sale, distribute or reproduce any seditious publication;
- (b) knowingly import any seditious publication;
- (c) knowingly have in his possession any seditious publication.

Penalty: Imprisonment for <sup>15</sup>~~two~~ years.

*Am 14/89.*

(2) Every seditious publication shall be forfeited to the Republic.

Restrictions or prosecution for seditious offences.

67. No prosecution shall lie for an offence under section 64, 65 or 66 unless the consent in writing thereto of the Public Prosecutor shall have been given and the prosecution is commenced within six months of the date on which the offence is alleged to have been committed.

Unlawful assembly and riot defined.

68. (1) When three or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause nearby .../19.

persons reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

- (2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with common purpose in such a manner as aforesaid.
- (3) When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot.

69.

No person shall take part in an unlawful assembly.

Am 14/89

Penalty : Imprisonment for ~~two~~<sup>3</sup> years

70.

No person shall take part in a riot.

Am 14/89

Penalty : Imprisonment for ~~five~~<sup>10</sup> years.

71.

No person shall by force or in a manner which causes or is likely to cause a breach of the peace or reasonable apprehension of the breach of the peace, enter on land which is in the actual and peaceable possession of another for the purpose of taking possession, whether or not he is entitled to enter.

Am 14/89

Penalty : Imprisonment for ~~two~~<sup>5</sup> years

72.

No person, being in actual possession of land without a claim of right, shall detain it in a manner which causes or is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace against another who is entitled by law to possession of the land.

Am 14/89

Penalty : Imprisonment for ~~two~~<sup>5</sup> years

73. (1)

No public officer shall, whether within the Republic or elsewhere, corruptly accept or obtain or agree or offer to accept or attempt to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

Penalty : Imprisonment for ten years.

(2)

No person shall corruptly give or offer or agree to give any bribe to any person with intent to influence any public officer in respect of any act or omission by him in his official capacity.

Penalty : Imprisonment for ten years.

"Obstructing Police Officer

73A.

Any person who obstructs, molests or assaults any police officer in the performance of his public duties shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding six years or to a fine not exceeding VT100,000 or to both such fine and imprisonment."

Am

27/89

Assembly.

pt.

Article

Article

Corruption  
(Liberty  
Officials.

- (3) For the purposes of this section, "bribe" means any money, valuable consideration, office or employment, or any benefit, whether direct or indirect, and the expression "public officer" means any person in the official service of the Republic (whether that service is honorary or not and whether it is within or outside the Republic) any member or employee of any local authority or public body and includes every police officer and judicial officer.

Misleading Justice

Perjury defined.

- 74. (1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his evidence on oath, whether the evidence is given in open court or by affidavit or otherwise, such assertion being known to the witness to be false and being intended by him to mislead the tribunal holding the proceeding.
- (2) Every person is a witness within the meaning of this section who actually gives evidence, whether he is competent to be a witness or not, and whether his evidence is admissible or not.
- (3) Every proceeding is judicial within the meaning of this section if it is held before any of the following tribunals namely -
  - (a) any court of justice;
  - (b) Parliament or any Committee thereof;
  - (c) any arbitrator or any person authorised by law to make an inquiry and to take evidence therein on oath;
  - (d) any legal tribunal by which any legal right or liability can be established;
  - (e) any person acting as a court or tribunal having power to hold a judicial proceeding.
- (4) Every such proceeding is judicial within the meaning of this section whether the tribunal was duly instituted or not and whether the proceeding was invalid or not.

Offence of perjury.

- 75. No person shall commit perjury.  
Penalty : Imprisonment for seven years.

False statements etc.

- 76. No person shall for any purpose required or authorised by law make any statement or declaration whether on oath or affirmation or not which would amount to perjury if made within a judicial proceeding.  
Penalty : Imprisonment for three years.

- (b) having been called upon to give evidence in a judicial proceeding, fail to attend, or having attended, refuse to be sworn or make an affirmation, or having been sworn or affirmed, refuse without lawful excuse to answer a question or to produce a document, or remain in the room in which such proceeding is being conducted after having been ordered to leave such room;
- (c) cause an obstruction or disturbance in the course of a judicial proceeding;
- (d) while a judicial proceeding is pending, make use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being conducted;
- (e) publish a report of the evidence taken in any judicial proceeding which has been directed to be held in private;
- (f) attempt wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence;
- (g) dismiss a servant or employee because he has given evidence on behalf of any party to a judicial proceeding; or
- (h) commit any other act of intentional disrespect to any judicial proceeding or to any person before whom such proceeding is being conducted.

Am 14/89

Penalty : Imprisonment for ~~three months.~~  
5 YEARS.

- (2) Where any offence against subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody and any time before the rising of the court on the same day may take cognizance of the offence and may sentence the offender to a fine not exceeding VT 5,000.
- (3) The provisions of this section, shall be in addition to and shall not derogate from the power of the Supreme Court to punish for contempt of court.

Escape And Rescue

Rescue.

83. No person shall by force rescue or attempt to rescue any other person from lawful custody.

Am 27/89

Penalty : Imprisonment for ~~two years.~~  
5

Escape

84. No person being in lawful custody shall escape from such custody.

Penalty : Imprisonment for two years.

Aiding prisoners to escape.

85. No Person shall -

(a) aid any prisoner in escaping or attempting to escape from lawful custody;

(b) convey anything or cause anything to be conveyed into a prison with intent to facilitate the escape of a prisoner.

Penalty : Imprisonment for seven years.

Removal of property under lawful seizure;

*Am 27/89*

"Harbouring or Assisting a Prisoner

85A. Any person knowingly harbours a person who has escaped from prison or who having been sentenced to imprisonment, is otherwise unlawfully at large, or who gives to any such person any assistance with intent to prevent hinder or interfere with his being taken into custody, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding VT150,000 or to both such fine and imprisonment."

Obstructing court officers.

the execution of an order or warrant of any court.

*Am 14/89*

Penalty : Imprisonment for <sup>7</sup>~~two~~ years.

Offences Relating To Religion

Insult to religion of any class.

88. No person shall destroy, damage or defile any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion.

Penalty : Imprisonment for two years.

Disturbing religious assemblies.

89. No person shall voluntarily cause disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony.

Penalty : Imprisonment for two years.

Offences Against Morality

Rape  
defined.

90. Any person who has sexual intercourse with a woman or a girl without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representation as to the nature of the act, or, in the case of a married woman by impersonating her husband, commits the offence of rape. The offence is complete upon penetration.

Punish-  
ment of  
rape.

91. No person shall commit rape.

Penalty : Imprisonment for life.

Abduction.

92. No person shall, with intent to marry, have sexual intercourse with, a female of any age, or to cause her to be married by or to have sexual intercourse with any other person, take her away or detain her against her will.

Penalty : Imprisonment for ten years.

Indecent  
matter.

93.(1) No person shall without lawful justification or excuse -

(a) sell, expose for sale or otherwise distribute to the public any indecent model or object;

(b) exhibit or present in or within view of any place to which the public have or are permitted to have access any indecent object or indecent show or performance;

(c) exhibit or present in the presence of any person in consideration or expectation of any payment or otherwise for gain, any indecent show or performance.

Penalty : Imprisonment for two years.

(2) It is a defence to a charge under this section to prove that the public good was served by the acts alleged to have been done.

(3) It is a question of law whether the sale, exposure for sale, distribution, exhibition or presentation may in the circumstances serve the public good, and whether there is evidence of excess beyond what the public good requires but it is a question of fact whether or not the acts complained of did so serve the public good and whether or not there was such excess.

- (4) It is no defence that the person charged did not know that the model, object, show or performance to which the charge relates was indecent, unless that person also satisfies the court that he had no reasonable opportunity of knowing it and that in the circumstances his ignorance was excusable.

Indecent  
act in  
public  
place.

- 94.(1) No person shall wilfully do any indecent act in any place to which the public have or are permitted to have access, or within view of any such place.

Penalty : Imprisonment for two years.

- (2) It is a defence to a charge under this section if the person charged proves that he had reasonable grounds for believing he would not be observed.

Incest.

- 95.(1) Incest is sexual intercourse between -

- (a) parent and child (including an adopted child);
- (b) brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or
- (c) grandparent and grandchild,

where the person charged knows of the relationship between the parties.

- (2) No person of or over the age of sixteen years shall commit incest.

Penalty : Imprisonment for ten years.

- (3) Upon the conviction of any male of an offence or attempted offence under subsection (2) against any female under the age of eighteen years, the court may divest the offender of all authority over such female and if the offender is the guardian of such female, remove him from such guardianship and in such case appoint another guardian in his place.

Sexual  
intercourse  
with girl  
under care  
or protection.

- 96.(1) No male person shall have or attempt to have sexual intercourse with any girl, not being his wife, who is under the age of twenty years and who -

- (a) being his stepdaughter, foster daughter, or ward, is at the time of the intercourse or attempted intercourse living with him as a member of his family;

(b) not being his stepdaughter, foster daughter, or ward, and not being a person living with him as his wife, is at the time of the intercourse or attempted intercourse living with him as a member of his family and is under his care or protection.

Penalty : Imprisonment for ten years.

(2) It is no defence to a charge under this section that the girl consented.

97.(1) No person shall have sexual intercourse with any girl under the age of thirteen years.

Penalty : Imprisonment for fourteen years.

(2) No person shall have sexual intercourse with any girl under the age of fifteen years but of or over the age of thirteen years.

Penalty : Imprisonment for five years.

(3) It is no defence to a charge under this section that the girl consented or that the person charged believed that she was of or over the age in question.

(4) The girl shall not be charged as a party to an offence under this section.

98.(1) No person shall commit any act of indecency with any other person under the age of thirteen years.

Penalty: Imprisonment for ten years.

(2) No person shall indecently and forcibly assault any other person not under the age of thirteen years.

Penalty : Imprisonment for seven years.

99. No person shall commit any homosexual act with a person of the same sex under eighteen years of age, whether or not that person consents.

Penalty : Imprisonment for two years.

Unlawful  
sexual  
intercourse.

Indecent  
assault.

Homosexual  
acts.



Gross  
Indecency.

100. No person shall behave in a public place  
in such a manner as to outrage decency.

Penalty : Imprisonment for one year.

Prostitution.

101. No person shall procure, aid or facilitate  
the prostitution of another person or share  
in the proceeds of such prostitution whether  
habitual or otherwise, or be subsidised by  
any person engaging in prostitution.

Penalty : Imprisonment for five years.

Offences Against The Person

Slavery.

102. No person shall -

- (a) take or keep another in slavery; or
- (b) engage in any traffic in persons.

Penalty : Imprisonment for twenty years.

Abandon-  
ment of  
incapable  
persons.

103. No person shall abandon any person who is  
physically or mentally incapable of pro-  
tecting himself.

Penalty : Imprisonment for five years.

Duty to  
provide  
the  
necessaries  
of  
life.

104. (1) Every person who has charge of any other  
person unable, by reason of detention, age,  
sickness, insanity or other cause whatever  
to provide himself with the necessaries of  
life, is (howsoever such charge arises)  
under a legal duty to supply that person with  
the necessaries of life and is criminally  
responsible for omitting without lawful  
excuse to perform such duty if the death of  
that person is caused, or if his life is  
endangered or his health permanently injured,  
by such omission.

(2) No person shall without lawful excuse  
neglect the duty specified in subsection  
(1) so that the life of the person under his  
charge is endangered, or his health per-  
manently injured by such neglect.

Penalty : Imprisonment for seven years.

Kidnapping.

105. No person shall -

- (a) convey any person beyond the limits of  
the Republic without the consent of that  
person, or of some person legally  
authorised to consent on behalf of that  
person; or
- (b) by force compel, or by any fraudulent  
means induce, any person to go from any  
place to another place.

Penalty : Imprisonment for ten years.

Intentional  
homicide.

106.(1) No person shall by any unlawful act or omission intentionally cause the death of another person.

Penalty : (a) if the homicide is not premeditated, imprisonment for twenty years;

(b) if the homicide is premeditated, imprisonment for life.

(2) For the purpose of subsection (1), premeditation consists of a decision made before the act to make a homicidal attack on a particular person or on any person who may be found or encountered.

Intentional  
assault.

107. No person shall commit intentional assault on the body of another person.

Penalty : (a) if no physical damage is caused, imprisonment for three months;

(b) if damage of a temporary nature is caused, imprisonment for one year;

(c) if damage of a permanent nature is caused, imprisonment for five years;

(d) if the damage caused results in death, although the offender did not intend to cause such death, imprisonment for ten years.

Unintentional  
harm.

108.(1) No person shall unintentionally cause damage to the body of another person, through recklessness or negligence, or failure to observe any law.

Penalty : (a) if damage so caused is purely temporary, imprisonment for three months;

(b) if the damage so caused is permanent, imprisonment for two years;

(c) if the damage so caused results in death, imprisonment for five years.

A person shall be deemed to have caused the death of another person although his act is not the immediate or sole cause of death in any of the following cases -

Causing  
death  
defined.

- (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
- (b) if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;
- (c) if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;
- (e) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

110. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother whether it has breathed or not, and whether it has an independent circulation or not, and whether the umbilical cord is severed or not.

111.(1) A person shall not be deemed to have killed another if the death of that other does not take place within a year and a day of the cause of death.

(2) Such period shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place.

Limitation  
as to time  
of death.

When child  
deemed to be  
person.

- (3) Where the cause of death is an omission to fulfill a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased.
- (4) Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever was the later.

Killing by influence on the mind.

112. Subject to the provisions of this Code, no one is criminally responsible for the killing of another by any influence on the mind alone, except by wilfully frightening a child under the age of fourteen years or a sick person, nor for the killing of another by any disorder or disease arising from such influence, except by wilfully frightening any such child as aforesaid or any sick person.

Killing unborn child.

113. No person shall, when a woman is about to be delivered of a child, prevent the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed a child.

Penalty : Imprisonment for life.

Criminal nuisance.

114. No person shall do any unlawful act or omit to fulfill any legal duty; such act or omission being one which he knows may endanger the lives, safety or health of the public or of any individual.

Penalty : Imprisonment for <sup>5</sup> ~~one~~ year

Am 14/89

Threats to kill person.

115. No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threat to kill any person.

Penalty : Imprisonment for <sup>15</sup> ~~seven~~ years

Aiding suicide.

116. No person shall --

- (a) procure another to kill himself;
- (b) counsel another to kill himself and thereby induce him to do so;
- (c) aid another in killing himself.

Penalty : Imprisonment for life. .. / 31

Abortion.

117.(1) No woman shall intentionally procure her own miscarriage.

Penalty : Imprisonment for two years.

(2) No person shall intentionally procure the miscarriage of a woman.

Penalty : Imprisonment for two years.

(3) It shall be a defence to any charge under subsections (1) and (2) if the person charged shall show that the miscarriage procured constituted a termination of pregnancy for good medical reasons.

(4) No prosecution shall be commenced under subsections (1) or (2) without the consent in writing of the Public Prosecutor.

False imprisonment.

118. No person shall without lawful authority arrest, detain or confine any other person against his will.

*Am 14/89*

Penalty: Imprisonment for <sup>10</sup>~~three~~ years.

119. No person shall with intent to injure or endanger the safety of any person -

Endangering transport.

(a) remove anything from or place anything on, in, over, or under any place, or any area of water, which is used for or in connexion with the carriage of persons or goods by land, water or air;

(b) do anything to any property which is used for or in connexion with the carriage of persons or goods by land, water or air;

(c) shoot or throw anything at, into or upon any vehicle, ship or aircraft;

(d) cause anything to come in contact with any vehicle, ship or aircraft;

(e) do any other unlawful act, or wilfully omit to do any act which it is his duty to do, in respect of any such place, area of water, property as aforesaid, or in respect of any vehicle, ship or aircraft.

Penalty : Imprisonment for fourteen years.

Offences Against Reputation

Criminal  
defamation.

120. No person shall by spoken or written words, gestures or any other method maliciously expose any other person alive or dead to public hatred, contempt or ridicule, or otherwise harm the reputation of that other person.

14/89. Penalty : Imprisonment for ~~six~~ <sup>3 YEARS</sup> months.

Abusive or  
threatening  
language.

121. No person shall in a public place use threatening or abusive words, or threatening gestures, towards any other person or persons.

14/89. Penalty : Imprisonment for ~~three~~ <sup>3 YEARS</sup> months.

Offences Against Property

Theft  
defined.

122.(1) A person commits theft who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof;

(2) A person shall also be guilty of theft of any such thing notwithstanding that he has lawful physical control thereof, if, being a bailee or part owner thereof he fraudulently converts the same to his own use or the use of any person other than the owner.

(3) For the purpose of subsection (1) -  
(a) the word "takes" includes obtaining physical control -

(i) by any trick or by intimidation;

(ii) under a mistake on the part of the owner with knowledge on the part of the taker that physical control has been so obtained;

(iii) by finding, whether or not at the time of finding the finder believes that the owner can be discovered by taking reasonable steps;

(b) the words " carried away" includes the removal of any thing from the place which it occupies but in the case of a thing attached, only if it has been completely detached;

(c) the word "owner" includes any part-owner or person having physical control of, or a special property or interest in, anything capable of being stolen.

Misappropriation defined.

123. A person commits misappropriation of property who destroys, wastes, or converts any property capable of being taken which has been entrusted to him for custody, return, accounting or any particular manner of dealing (not being a loan of money or of monies for consumption).

Obtaining property by false pretences defined.

124. Every person obtains property by false pretences who, by a false pretence, that is to say, any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false, or does not believe to be true with intent to defraud, either directly or indirectly, obtains possession of or title to anything capable of being stolen or procures anything capable of being to be delivered to any person other than himself.

Prohibition of theft, misappropriation and false pretences.

125. No person shall cause loss to another -

- (a) by theft;
- (b) by misappropriation; or
- (c) by false pretences.

Penalty : Imprisonment for twelve years.

126. No person shall -

- (a) without lawful authority appropriate any generated energy;
- (b) without lawful authority use any property of another notwithstanding that he does not have the intention permanently to deprive the owner of it;
- (c) take or misappropriate his own property which is charged by any debt due by him.

Penalty : Imprisonment for eight years.

Obtaining credit fraudulently.

127. No person shall, in incurring any debt or liability, obtain credit by means of any false pretence or by means of any other fraud.

Penalty : Imprisonment for one year.

Fraud by trustee.

128. No person, being a trustee of any property, shall destroy the property with intent to defraud, or, with intent to defraud, convert the property to any use not authorised by the trust.

Penalty : Imprisonment for seven years.

False statement by promoter.

129. No person, being a promoter, director, manager, or officer of any company or body corporate, either existing or intended to be formed, shall make, circulate or publish, or concur in making, circulating or publishing, any prospectus, statement or account which he knows to be false in any material particular -

- (a) with intent to induce persons, ascertained or not, to become shareholders, members or investors;
- (b) with intent to deceive or defraud the members, shareholders, or creditors of the company or body corporate, or any of them, whether ascertained or not; or
- (c) with intent to induce any person or persons, whether ascertained or not, to entrust or advance any property to the company or body corporate or to enter into any security for its benefit.

Penalty : Imprisonment for ten years.

False accounting.

130. No person being -

- (a) a public officer with responsibility for public accounts;
- (b) a director or officer or member of any company or body corporate;
- (c) an officer or clerk or servant of any employer whatever

shall, with intent to defraud, -

- (i) destroy, mutilate, alter or falsify, any book, account, valuable security, or document belonging to the company or body corporate, or concur in so doing;
- (ii) make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, account, valuable security, or document;



- (iii) make any transfer of any interest in any stock, debenture, or debt in the name of any person other than the owner of that interest; or
- (iv) in any manner falsify wilfully any such accounts as aforesaid.

Penalty : Imprisonment for ten years.

Receiving property dishonestly obtained.

131.

No person shall receive anything obtained by any offence, or by any act wherever committed which, if committed within the Republic, would constitute an offence, knowing that thing to have been dishonestly obtained.

*Penalty 10 yrs.*

Demanding money etc. with menaces.

132.

No person shall by menaces or threats of violence, injury, accusation or other detriment whatever, whether by the person uttering the menace or threat or by another person, and whether to the person to whom the menace or threat is uttered or to another person obtain or attempt to obtain payment of any money or delivery of any property or other benefit from any person.

*Penalty 15 YRS.*

Malicious damage to property.

133.

No person shall wilfully and unlawfully destroy or damage any property which to his knowledge belongs to another.

*Penalty 5 years*

Arson.

134. (1) No person shall wilfully and unlawfully set fire to, or damage by means of any explosive any building or other property whatsoever which to his knowledge belongs to another.

Penalty : Imprisonment for ten years.

- (2) No person shall wilfully or recklessly set fire to or damage with any explosive any building or other property whatsoever belonging to him in circumstances where any property belonging to another person is or is likely to be injured by fire.

Penalty : Imprisonment for five years.

Wrecking.

135.

No person shall -

- (a) cast away or destroy any ship or aircraft, whether complete or unfinished;
- (b) do any act tending to the immediate loss or destruction of any ship or aircraft in distress, whether or not he has an interest in the ship or aircraft; or
- (c) interfere with any marine or aeronautical mark, light, signal, or equipment used for the guidance or control of ships or aircraft, or exhibit or transmit any false mark, light, or signal, with intent to bring any ship or aircraft into danger, whether or not he has an interest in the ship or aircraft.

Penalty : Imprisonment for fourteen years.

Maltreatment  
of animals,  
birds or fish.

136.

- (1) No person shall cause unnecessary suffering to any animal, bird or fish.

Penalty : Imprisonment for one year.

- (2) It shall be a defence to any charge under subsection (1) that the suffering was caused in the performance of a ceremony according to local custom.

- (3) No person shall wilfully and unlawfully kill, maim, or wound any animal, bird or fish capable of being stolen.

Penalty : Imprisonment for two years.

Robbery.

137.

No person shall commit theft accompanied by violence or threats of violence to any person or property, used to extort the property stolen to prevent or overcome resistance to its being stolen.

*Am 14/89.*

Penalty : Imprisonment for twenty <sup>five</sup> years.

(Tortion.

138.

No person shall, with intent to extort or gain anything from any person -

- (a) threaten expressly or impliedly to make about any person, living or dead, any accusation or disclosure of any offence, or moral misconduct, whether the accusation or disclosure is true or not;
- (b) threaten expressly or impliedly that any person shall make any such accusation or disclosure about any person living or dead;

- (c) threaten to publish, or offer to abstain from publishing, any defamatory words within the meaning of section 120;
- (d) send or cause to be sent to any person any document containing any such threat;
- (e) by any such means compel or attempt to compel any person to sign, execute, make, accept, endorse, alter, or destroy the whole or part of any valuable security, or to write, impress, or affix any name or seal upon any document in order that it may afterwards be used as a valuable security;
- (f) by any such means induce or compel or attempt to induce or compel any person to do any act against his will, other than an act which it is his legal duty to do, or not to do any lawful act.

Penalty : Imprisonment for fourteen years.

139. (1) Forgery is making a false document, knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine, whether within the Republic or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within the Republic or not.
- (2) For the purposes of this section, the expression "making a false document" includes making any material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal or otherwise.
- (3) For the purposes of this section the expression "false document" means a document -
- (a) of which the whole or any material part purports to be made by any person who did not make it or authorise its making;
  - (b) of which the whole or any material part purports to be made on behalf of any person who did not authorise its making;
  - (c) in which, though it purports to be made by the person who did in fact make it or authorise its making, or purports to be made on behalf of the person who did in fact authorise its making, the time or place of its making,

ery  
ined.

whether either is material, or any number or distinguishing mark identifying the document, whether either is material, is falsely stated;

(d) of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person; or which is made in the name of an existing person, either by him or by his authority, with the intention that it should pass as being made by some person, real or fictitious, other than the person who makes or authorises it.

(4) It is immaterial in what language a document is expressed or in what country or place and whether within or beyond the Republic it is expressed to take effect.

(5) The crossing of any cheque, banker's draft, post office money order, postal order or other document the crossing of which is authorised or recognized by law, is a material part of such document.

Prohibition of forgery.

140.

No person shall commit forgery.

Penalty : Imprisonment for ten years.

Uttering forged documents.

141.

No person, knowing a document to be forged, shall -

- (a) use, deal with, or act upon it as if it were genuine;
- (b) cause any person to use, deal with, act upon it as if it were genuine.

Counterfeit currency.

142.

No person shall -

- (a) counterfeit or debase any current coin or bank note;
- (b) import any such counterfeit or debased current coin or bank note;
- (c) knowingly utter any such counterfeit or debased coin or bank note;
- (d) without lawful authority manufacture or knowingly possess any instrument, apparatus or other material whatsoever designed or intended for counterfeiting any note or coin.

Penalty : Imprisonment for fifteen years.

unlawfully  
entering  
dwelling  
house.

143.

(1) No person shall enter or be in any house, building, tent, vessel or other place with intent to commit an offence therein.

Penalty : Imprisonment for twenty years where place is used for human habitation.

Imprisonment for ten years where place is not used for human habitation.

(2) Subsection (1) shall apply whether or not the offender entered the premises with lawful authority or whether or not he broke any part of the premises in order to enter them and whether or not he obtained entrance by means of any threat or artifice, or by collusion with any person in the premises.

Criminal  
trespass.

144.

No person shall -

(a) enter into or upon any property in the possession of another with intent to intimidate, insult or annoy any person lawfully in possession of such property;

(b) having lawfully entered into or upon such property, unlawfully remain there with intent thereby to intimidate, insult or annoy any such person.

Penalty : Imprisonment for one year.

Piracy.

145.

No person shall commit the offence known as piracy by the law of nations.

Penalty : Imprisonment for life.

Hi-jacking.

146.

(1) No person aboard any aircraft in flight shall by violence or threat of violence seize or assume control of such aircraft.

Penalty : Imprisonment for life.

(2) For the purposes of this section, an aircraft shall be deemed to be in flight from the moment when all exterior doors have been closed after embarkation until any such door is opened for disembarkation. In the case of a forced landing in any place, the flight shall be deemed to continue until the competent authority of that place takes charge of the aircraft.

(3) No person shall communicate any information which he knows to be false with intent to endanger the safety of any aircraft in flight.

Penalty : Imprisonment for five years.

*Repealed by  
29 of 88*

Unlawful  
carriage  
of weapons  
by night.

149.

No person shall without lawful excuse be found by night in any public place carrying any offensive weapon or any housebreaking implement.

Penalty : Imprisonment for six months.

Unlawful  
discrimination.

150.

No person shall discriminate against another person with respect to his right to the supply of goods or services, or to gain or continue in any employment, or to be admitted to any public place, by reason of the sex, ethnic or racial origin, or the religion of such other person.

Penalty : Imprisonment for two years.

Witchcraft.

151.

No person shall practise witchcraft or sorcery with intent to cause harm or detriment to any other person.

Penalty : Imprisonment for two years.

Repeals.

152.

The Native Criminal Code Joint Regulation No 12 of 1962 is repealed.

Transitional.

153.

Notwithstanding Section 152 persons may be tried for offences under the Native Criminal Code Joint Regulation No 12 of 1962, committed before the coming into force of this Act provided that their trial commences before the elapse 18 months from the date of such coming into force.

Commencement.

154.

This Act shall come into force on such day as the Minister responsible for Justice shall declare by order published in the Gazette.