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CHAPTER 135

PENAL CODE

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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
32. Punishment of accomplices and co-offenders
33. Foreseeable consequences
34. Accessory after the fact
35. Inciting and soliciting commission of offence

PART 1A – SENTENCING
36. Purpose of this Part
37. Court to have regard to keeping offenders in the community
38. Promotion of reconciliation
39. Account to be taken of compensation payment
40. Sentence of compensation
41. Court may order compensation report
42. Compensation reports
43. Taking into account financial capacity of offender
44. Conditions of sentence of compensation
45. Copy of conditions of compensation to be given to person who suffered harm, loss, or damage
46. Payment of sums, or compensation in other form to be made, to a person who suffered harm, loss, or damage
47. Manner in which amounts of compensation are to be applied in cases involving same offence

48. Manner in which amounts or other forms of compensation must be applied in cases involving different offences
49. No state liability for error, etc, in enforcing of sentences of compensation
50. Commencement of sentence
51. Calculation of sentence
52. Concurrent sentences – the rule
53. Consecutive sentences
54. Imprisonment of minors
55. Power of court to discharge offender without conviction or sentence
56. Power of court to order offender to come up for sentence if called upon
57. Provision for suspension of sentences of imprisonment
58. Power of court to suspend sentence in part
58A. Power to impose substituted or alternative penalty of community work to fine
58B. Power to impose substituted or alternative penalty of fine, supervision or community work to imprisonment
58C. Fines
58D. Enforcement provisions where fines or costs remain unpaid
58E. Pre-sentence reports
58F. Sentence of supervision
58G. Power of court to impose a supervision order or a community order in addition to imposing suspended sentences of more than 6 months
58H. Guidance on use of sentence of supervision
58I. Imposition of conditions on sentence of supervision
58J. Standard conditions of sentence of supervision
58K. Special conditions of sentence of supervision
58L. Offences related to breach of conditions of supervision
58M. Variation or cancellation of sentence of supervision
58N. Sentence of community work
58O. Concurrent and cumulative sentences of community work
58P. Length of sentence of community work
58Q. Reporting requirement of offender
58R. Change of residential location of offender
58S. Placement of offender for community work
58T. Community work
58U. Requirements for community work
58V. Supervision of community work
58W. Exceptions for reporting requirement
58X. Variation or cancellation of sentence of community work
58Y. Extension of period of community work
58Z. Offences relating to breach of sentence of community work
58ZA. Jurisdiction and procedure
58ZB. Appeal in respect of substituted sentence
58ZC. Confiscation of property
58ZD. Restitution of property
58ZE. Confinement of alcohol or drug addicted persons or mentally ill persons
58ZF. Review of confinement
58ZG. Rehabilitation
58ZH. 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
73A. Obstructing police officer

Terrorism
73B. Repealed
73C. Repealed
73D. Repealed

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
85A. Harbouring or assisting a prisoner
86. Removal of property under lawful seizure
87. Obstructing court officers

Offences relating to Religion
88. Insult to religion of any class
89. Disturbing religious assemblies
89A. Sexual intercourse

Offences against Morality
90. Sexual intercourse without consent
91. Punishment of sexual intercourse without consent
92. Abduction
92A. Abduction of a person under 18 years of age
93. Indecent matter
94. Indecent act in public place
95. Incest
96. Sexual intercourse with child under care or protection
97. Unlawful sexual intercourse
97A. Aggravated sexual intercourse with a child
98. Act of indecency without consent
98A. Act of indecency with a young person
99. Repealed
100. Homosexual acts
101. Gross indecency
102. Prostitution
101A. Definitions of “act of child prostitution” and “child”
101B. Promoting or engaging in acts of child prostitution

101C. Obtaining benefit from child prostitution
101D. Children not to be used for pornographic purposes
101E. Alternative verdicts for offences against morality

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. When child deemed 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
114A. Threatening language
115. Threats to kill person
116. Aiding suicide
117. Abortion
118. False imprisonment
119. Endangering transport

Offences against Reputation
120. Criminal Libel
121. Criminal Slander

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 promoter
130. False accounting
130A. Valueless cheques
130B. Obtaining money, etc., by deception
130C. Obtaining money, etc., by false or misleading statements
131. Receiving property dishonestly obtained
132. Demanding money etc. with menaces
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 of aircraft
146A. Illicit firearms trafficking
146B. Fraudulent evasion of tax
146C. Offence of certain dealings with counterfeit goods

Offences against Public Interest
147. Obscene publications
147A. Possession of child pornography
147B. Publishing child pornography
148. Idle and disorderly
149. Unlawful carriage of weapons by night
150. Unlawful discrimination
151. Witchcraft

PENAL CODE

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

PART 1 – GENERAL PROVISIONS

Application of the Criminal Law

1. Offences within Republic

(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.

2. Offences partly or wholly abroad

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.

3. Complicity and attempts

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.

4. Offences abroad

(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.

5. International offences

(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

6. Criminal intent, recklessness

(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.

7. Consent as a defence

(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.

8. General rule as to burden of proof

(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.

9. Burden of proof in certain cases

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.

10. Discharge of burden of proof by accused

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.

11. Ignorance of law or fact

(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.

12. Mistake of fact, reasonable belief

A mistake of fact shall be a defence to a criminal charge if it consists of a genuine and reasonable belief in any fact or circumstance which, had it existed, would have rendered the conduct of the accused innocent.

Principles of Criminal Proceedings

13. Unfitness to plead

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.

14. Rights of accused at trial

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.

15. Limitation in criminal prosecutions

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 10 years – 20 years;

(b) in the case of offences punishable by imprisonment for more than 3 months and not more than 10 years – 5 years;

(c) in the case of offences punishable by imprisonment for 3 months or less or by fine only – 1 year.

Criminal Responsibility

16. Punishment and responsibility

(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.

17. Age of responsibility

(1) No child under the age of 10 years shall be capable of committing any criminal offence. A child of 10 years of age or over but under 14 years of age shall be presumed to be incapable of committing a criminal offence unless it is proved by 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.

(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.

18. Liability of corporations

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.

19. No vicarious liability

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.

20. Insanity

(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.

21. Voluntary intoxication

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

22. Superior orders

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.

23. Self-defence necessity, prevention of offences etc.

(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.

24. Effect of diminished responsibility

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

25. Failure of plea of insanity

(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

26. Compulsion and coercion

(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.

27. Provocation

(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

28. Attempts

(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.

29. Conspiracy

(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

30. Complicity

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.

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

32. Punishment of accomplices and co-offenders
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.

33. Foreseeable consequences
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.

34. Accessory after the fact
(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 disposes 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.

35. Inciting and soliciting commission of offence
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.

PART 1A – SENTENCING

36. Purpose of this Part
The purpose of this Part is to provide to a court a range of sentencing options and means of dealing with offenders other than by imprisonment.

37. Court to have regard to keeping offenders in the community
If an offender is convicted of an offence punishable by imprisonment, the court must in addition to other sentencing options it may impose, have regard to the possibility of keeping offenders in the community so far as that is practicable and consistent with the safety of the community.

38. Promotion of reconciliation
(1) Notwithstanding the provisions in this Act or any other Act, a court may in criminal proceedings, promote reconciliation and encourage and facilitate the settlement according to custom or otherwise, for an offence, on terms of payment of compensation or other terms approved by the court.

(2) Nothing in this section limits the court's power to impose a penalty it deems appropriate for the relevant offence.

39. Account to be taken of compensation payment
When sentencing an offender, the court must, in assessing the penalty to be imposed, take account of any compensation or reparation made or due by the offender under custom and if such has not yet been determined, may, if satisfied that it will not cause undue delay, postpone sentence for such purpose.

40. Sentence of compensation

(1) A court must consider and may impose a sentence of compensation in monetary terms or otherwise if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer:

(a) death, or injury; or

(b) loss of or damage to property; or

(c) emotional harm; or

(d) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.

(2) Despite subsection (1), a court must not impose a sentence of compensation in respect of emotional harm, or loss or damage consequential on emotional harm, unless the person who suffered the emotional harm is a person defined in subsection (14).

(3) In determining:

(a) whether a sentence of compensation is appropriate; or

(b) the amount or type of compensation to be made for any consequential loss or damage described in paragraph (1) (c),

the court must take into account whether there is or may be, under the provisions of any enactment or rule of law, a right available to the person who suffered the loss or damage to bring proceedings or to make any application in relation to that loss or damage.

(4) Subsection (3) applies whether or not the right to bring proceedings or make the application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired.

(5) When determining the amount or type of compensation to be made, the court must take into account:

(a) the offender's sources of income; or

(b) any offer, agreement, response, measure, or action made or taken between the offender and the victim.

(6) The court must not impose as part of a sentence of compensation an obligation on the offender to perform any form of work or service for the person who suffered the harm, loss, or damage.

(7) Where two or more persons are convicted of an offence, the compensation orders made against them should reflect the means of each individual, so that if one co-defendant is less wealthy than the others a lower compensation order should be imposed by the court.

(8) Generally liability is joint and several. In cases where only one or some of the co-defendant(s) has or have resources, the court must make a compensation order for the whole sum against that one or those some of the offenders.

(9) If the court wishes to impose a fine as well as a compensation order, preference should be given to the compensation order if it appears that the offender has insufficient means to pay both.

(10) A compensation order may be made both for the offence or offences for which the offender is convicted and for any offence or offences taken into consideration.

(11) If a court does not impose a sentence of compensation in a case where it is lawfully entitled to do so, it must give reasons for not doing so.

(12) A sentence of compensation may be imposed, in relation to any particular offence, on its own or in addition to any other sentence.

(13) A court may make a compensation order as the sole order on conviction.

(14) For the purposes of this section, **victim** means:

(a) a person against whom an offence is committed by another person; or

(b) a person who, through, or by means of, an offence committed by another person, suffers physical injury, financial loss or loss or damage to property; or

(c) a parent or legal guardian of a child, or of a young person, who falls within the definitions in paragraph (a) or paragraph (b), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; or

(d) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or becomes incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.

41. Court may order compensation report

(1) If the court considers that a sentence of compensation may be appropriate, the court may order a probation officer, or any other person designated by the court for the purpose, to prepare a compensation report for the court in accordance with section 42 on all or any of the following matters:

(a) in the case of loss of or damage to property, the value of that loss or damage and any consequential loss or damage;

(b) in the case of emotional harm, the nature of that harm and the value of any consequential loss or damage;

(c) in the case of any loss or damage consequential on physical harm:

(i) the nature and value of the loss or damage; and

(ii) the extent to which the person who suffered the loss or damage is likely to be covered by entitlements under any scheme;

(d) the financial capacity of the offender;

(e) the maximum amount or other form of compensation that the offender is likely to be able to pay or make under a sentence of compensation;

(f) the frequency and magnitude of any payments that should be required under a sentence of compensation, if provision for payment by instalments is thought desirable.

(2) The court may decline to seek a report under subsection (1) and impose a sentence of compensation without further inquiry if:

(a) the court is satisfied as to the amount or type of compensation that the offender should pay or make; or

(b) the type of information referred to in a compensation report is available through other means; or

(c) in all the circumstances the court considers that a report is unnecessary.

(3) For the purposes of the preparation of a compensation report, a court may direct the offender to make a declaration as to his or her financial capacity. The

declaration must contain information on all sources of income, assets, liabilities and expenses.

42. Compensation reports

(1) A probation officer or other person who is required by a court to prepare a report under section 41 must attempt to gain an agreement between the offender and the person who suffered the harm, loss, or damage on the amount or other type of compensation that the offender should be required to pay or make by way of compensation.

(2) If an agreement is reached, the probation officer or other person must report the terms of the agreement to the court (in addition to any other matters on which the court has required a report).

(3) If no agreement is reached, the probation officer or other person must:

(a) in respect of emotional harm, state in the report the respective positions of the offender and the person who suffered the harm, and that the matter is unresolved; and

(b) in respect of loss of, or damage to, property, either:

(i) determine the value of the loss or damage and the consequential loss or damage on the evidence available, and include that value in the report; or

(ii) state in the report that the matter is unresolved; and

(c) in respect of loss or damage consequential on emotional or physical harm, either:

(i) determine the value of the loss or damage on the evidence available, and include that value in the report; or

(ii) state in the report the respective positions of the offender and the person who suffered the loss or damage, and that the matter is unresolved.

(4) Despite subsections (1), (2) and (3), the person who suffered the harm, loss, or damage is not obliged to meet with the offender or otherwise participate in the preparation of the report.

(5) The person who prepared a report under this section must give a copy to the person who suffered the harm, loss, or damage unless the court orders otherwise.

(6) Failure to give a copy of any report in accordance with subsection (5) does not affect the validity of the proceedings in a court or of any order made or sentence imposed by a court.

43. Taking into account financial capacity of offender

(1) If the offender has insufficient means to pay the total value of the loss, damage or harm, the court may sentence the offender to make:

(a) compensation for any amount that is less than the value of the loss, damage or harm; or

(b) payment by instalments in respect of the loss, damage, or harm; or

(c) the relevant action referred to in paragraphs (a) and (b).

(2) If the court imposes on an offender a sentence of compensation and a sentence of a fine, any payments received from the offender must be applied first in satisfaction of the amount due under the sentence of compensation.

44. Conditions of sentence of compensation

(1) If a court sentences an offender to make compensation, the court must determine the conditions of the sentence in respect of the following matters:

(a) the total amount or type of compensation to be paid or made by the offender;

(b) whether the amount or type of compensation is to be paid in the form of a lump sum payment or payment in instalments;

(c) if the amount or type of compensation is to be paid in the form of a lump sum payment, whether it is to be paid immediately or at some specified future date;

(d) if the amount or type of compensation is to be paid in instalments, the frequency and amounts of the instalments.

(2) The court may not impose a condition that an amount or type of compensation to be paid or made in one lump sum must be paid immediately unless the court is satisfied that the offender has sufficient means to pay it immediately.

(3) If a court sentences an offender to make compensation in a form, other than money, the court must determine whether it is to be made immediately or at some specified future date.

45. Copy of conditions of compensation to be given to person who suffered harm, loss, or damage

(1) A copy of the conditions of a sentence of compensation must be given to the person who suffered the harm, loss or damage.

(2) Failure to give a copy of the conditions of the sentence in accordance with this section does not affect the validity of the proceedings in the court or of the sentence imposed by the court.

46. Payment of sums, or compensation in other form to be made, to a person who suffered harm, loss, or damage

(1) Every:

(a) sum payable under a sentence of compensation must be paid;

(b) form of compensation, other than in monetary terms, to be made under a sentence of compensation must be made;

to the person who suffered the harm, loss or damage, or, with that person's consent, to that person's insurer.

(2) A sentence of compensation does not affect any right that the person who suffered the harm, loss, or damage has to recover by civil proceedings any damages in excess of the amount recovered under the sentence.

47. Manner in which amounts of compensation are to be applied in cases involving same offence

(1) This section applies if a person (the liable person) is required to pay an amount of or make compensation to two or more persons in relation to the same offence (whether the requirement to pay the amount of or make compensation arose before or after the commencement of this section).

(2) Any payments or compensation received from the liable person must be applied, as between the persons in whose favour the sentence of compensation was made, in the proportion that reflects the relative total or proportionate amounts or value ordered to be paid to each of them under the sentence.

(3) Subsection (2) applies subject to any contrary direction by a court.

48. Manner in which amounts or other forms of compensation must be applied in cases involving different offences

(1) This section applies:

(a) if a person (the liable person) is required to pay an amount of or make compensation to a person or persons in relation to an offence; and

(b) if the liable person is later required to pay an amount of or make compensation to another person or other persons in relation to another offence; and

(c) if both the amounts or other form of compensation referred to in paragraphs (a) and (b) have not been paid or made in full; and

(d) whether the requirements to pay the amounts or other form of compensation referred to in paragraphs (a) and (b) arose before or after the commencement of this section.

(2) For the purpose of subsection (1) it does not matter whether or not the offence referred to in paragraph (1) (b) is of the same kind as the offence referred to in paragraph (1) (a).

(3) Any payments received from the liable person must, in respect of one or more sentences of compensation imposed on the same day in respect of different offences committed by the liable person, be applied:

(a) as between the persons in whose favour the sentences of compensation were made; and

(b) in the proportion that reflects the relative total or proportionate amounts or value ordered to be paid or made to each of them under the sentences.

(4) Any payments or goods received from the liable person must, in respect of sentences of compensation imposed on the liable person on different days, be applied first in satisfaction of the amount or type of compensation that is payable to the person or persons in whose favour the sentence of compensation was made first.

(5) After the amount of compensation or goods referred to in subsection (4) has been paid or made in full, any further payments or goods received from the liable person must next be applied to the person or persons in whose favour the sentence of compensation was next made.

(6) This section applies subject to any contrary direction by a court.

49. No state liability for error, etc, in enforcing of sentences of compensation

The State is not liable to any person for any error, omission or delay in enforcement of any sentence of compensation.

50. Commencement of sentence

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

51. Calculation of sentence

(1) The calculation for a sentence of imprisonment:

(a) expressed in days - each day means 24 hours;

(b) for one month – means 1 calendar month;

(c) expressed in months or years – means by calendar date.

(2) Subject to subsections (3), (4) and (5), the duration of a sentence of imprisonment is to 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 the offender was first taken into custody under any such sentence.

(3) In the case of the escape of a prisoner, the period in which he or she is unlawfully at liberty is not to be counted in the duration of the sentence.

(4) If the offender has been in custody pending trial or appeal, the duration of such custody is to be wholly deducted from the computation of a sentence of imprisonment.

(5) If the offender, after having been in custody pending trial or appeal, is sentenced to a fine only, the court may relieve him or her wholly or in part of payment of the fine.

52. Concurrent sentences – the rule

(1) If a person is convicted on more than one charge of an offence tried jointly, the respective sentences of imprisonment imposed for such offences are deemed to be concurrent sentences, unless the court otherwise orders.

(2) A court may impose a sentence of supervision and community work for the same offence or number of offences when sentencing an offender and in such case the sentences imposed must be served concurrently.

(3) Except for an order for restitution of property under section 58ZD, a community based sentence must not be imposed in addition to a term of imprisonment unless a sentence of supervision or community work is imposed as provided for under section 58G.

(4) If a 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 otherwise orders.

53. Consecutive sentences

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

54. Imprisonment of minors

(1) A person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate.

(2) If a person under the age of 16 years of age is sentenced to imprisonment the Court must give its reasons for doing so.

55. Power of court to discharge offender without conviction or sentence

(1) If a person is accused of an offence, any court, after inquiry made into the circumstances of the case, may in its discretion discharge that person without convicting him or her, 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 or her, make any Order for:

(a) the payment of costs; or

(b) the payment of damages; or

(c) the payment of compensation; or

(d) the restitution of any property,

that it could have made under any enactment applicable to the offence with which he or she is charged if it had convicted and sentenced him or her, 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.

56. Power of court to order offender to come up for sentence if called upon

(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 3 years from the date of the conviction, or, if no period is so specified, within 1 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 initially heard, may, after inquiry into the circumstances of the case and the conduct of the offender since the order was made, proceed to sentence the person.

57. Provision for suspension of sentences of imprisonment

(1) The execution of any sentence imposed for an offence against any Act, Regulation, Rule or Order may, by decision of the court having jurisdiction in the matter, be suspended subject to the following conditions:

(a) if the court which has convicted a person of an offence considers that:

(i) in view of the circumstances; and

(ii) in particular the nature of the crime; and

(iii) the character of the offender,

it is not appropriate to make him or her suffer an immediate imprisonment, it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her, on the condition that the person sentenced commits no further offence against any Act, Regulation, Rule or Order within a period fixed by the court, which must not exceed 3 years; and

(b) if, at the end of such period, the person the execution of whose sentence has been suspended in accordance with this section has not been convicted

of any further offence against any Act, Regulation, Rule or Order, the sentence is deemed to have expired; and

(c) if, before the end of such period, the person the execution of whose sentence has been suspended in accordance with this section is further convicted of any offence against any Act, Regulation, Rule or Order, the court shall order that the suspended sentence shall take effect for the period specified in the order made under paragraph (1) (a) of this section unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the circumstances of any further offending, in no case concurrently with any subsequent sentence.

(d) Where a court decides under paragraph (1) (c) that a suspended sentence is not to take effect for the period specified in the order, then, subject to this Act, the court must either:

(i) order that the suspended sentence:

(ia) take effect with the substitution of a lesser term of imprisonment; or

(ib) be cancelled and replaced any non-custodial sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed; or

(ic) be cancelled; or

(ii) decline to make any order referred to in subparagraph (i) concerning the suspended sentence.

(2) The court must, when ordering the suspension of the execution of the sentence of imprisonment, explain clearly to the person sentenced the nature of the Order and must ascertain that he or she has understood its meaning.

58. Power of court to suspend sentence in part

(1) If a court has decided that the case is so serious as to warrant imprisonment, and that it is not appropriate to suspend the whole sentence, it should consider whether there are grounds for suspending the sentence in part.

(2) A court may suspend a sentence in part if the sentence is for three years or less.

58A. Power to impose substituted or alternative penalty of community work to fine

(1) If in any Act, Regulation, Rule or Order, a penalty of a fine is provided for any offence without any alternative penalty, the court may in its discretion impose a sentence of community work in lieu of or as an alternative penalty, which sentence must not exceed a term calculated at the rate of 8 hours community work for every VT1000 of the fine. The term of community work must not exceed 400 hours.

(2) Sections 58P to 58Y apply to this section.

58B. Power to impose substituted or alternative penalty of fine, supervision or community work to imprisonment

If in any Act, Regulation, Rule or Order, a penalty of imprisonment is provided for any offence without any alternative penalty the court may in its discretion impose a fine or sentence of community work or supervision in lieu of or as an alternative penalty.

58C. Fines

(1) In sentencing a person to pay a fine, a court may make one or more of the following orders:

(a) that after enquiry as to his or her means, the fine be paid within such period as it may specify or that it be paid by instalments;

(b) that the whole or part of the fine be paid as compensation to the victim;

(c) that the fine to be paid as compensation to the victim be paid in kind or goods provided that in the case of default in making compensation in the kind or goods approved by the court within the time specified by the court, the monetary value of the fine is to become immediately payable and the enforcement provisions of this Act shall apply.

(2) If a person sentenced to pay a fine defaults in the payment of the fine, the Court may Order that:

(a) the offender undertake a term of community work in lieu calculated at the rate of 8 hours community work for every VT1000 of the fine; and

(b) such community work is to be in addition to any other sentence of community work to which he or she may have been sentenced; and

(c) the completion of such term of community work in default of payment of the fine shall abate the whole liability to pay such a fine.

(3) If a person is ordered to undertake community work under subsection (2) the person shall be subject to subsection 58N(2) to section to 58Z**,** of this Act.

(4) If a person ordered to undertake community work under subsection (2) defaults in that community work, then the Court may direct by its sentence that in default of that community work the offender is to serve a term of imprisonment, which must not exceed 6 months.

(5) In the 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:

(a) the sentence of community work in default of payment should not be executed until the date for payment of the fine or instalment has expired; or

(b) if he or she has paid any of the instalments ordered, the term of community work shall be reduced proportionately.

58D. Enforcement provisions where fines or costs remain unpaid

(1) If a person fails to pay a fine or cost resulting from either a court order, a contempt of court order, a child support or maintenance order, by the date set by the court, the Registrar of the Supreme Court or Magistrates Court may:

(a) refer the matter to the relevant Magistrate or Judge of the Supreme Court with a report on the circumstances of the case; or

(b) refer the matter to the relevant court, which if necessary, may issue a warrant for the person's arrest.

(2) The relevant Magistrate or Judge of the Supreme Court may, after considering the report of the Registrar of the Supreme Court or Magistrates Court, and the financial position of the defendant:

(a) direct that more time be given to the defendant to pay the fine or cost resulting from a court order, a contempt of court order, a child support or maintenance order, on such conditions as may be directed by the relevant Magistrate or Judge; or

(b) direct that the person undertake community work as per the provisions of subsection 58C(2) of this Act.

58E. Pre-sentence reports

(1) A probation officer is to provide to the court, whenever required by the court, a written pre-sentence report on the character and personal history of any person convicted of any offence punishable by imprisonment or any other matters raised under subsection 38(1), with a view to assisting the court in determining the most suitable method of dealing with his or her case.

(2) The probation officer may in any such report advise the court whether the offender would be likely to respond satisfactorily to a sentence of supervision or community work and whether any conditions of supervision should be imposed or to recommend another sentence.

(3) If a court requires a pre-sentence report the court may remand the offender for such time as may be necessary to enable the report to be prepared and submitted to the court.

(4) During the period of any remand the court may remand the offender on bail or in custody as the court deems appropriate.

58F. Sentence of supervision

(1) A court may sentence an offender to supervision if:

(a) the offender is convicted of an offence punishable by imprisonment; or

(b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community based sentence may be imposed on conviction.

(2) The sentence may be for a period of not less than six months and not more than two years as the court thinks fit.

58G. Power of court to impose a supervision order or a community order in addition to imposing suspended sentences of more than 6 months

(1) Where a court imposes a suspended sentence of more than 6 months imprisonment, it may also impose either all or any of the following:

(a) a supervision order;

(b) a community work order.

(2) The supervision order must be for a period not exceeding the operational period of the suspended sentence.

(3) A community work order must not be greater than 200 hours in any one year.

58H. Guidance on use of sentence of supervision

(1) A court may impose a sentence of supervision only if the court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender back into the community.

(2) If a court imposes a sentence of supervision in respect of each of 2 or more offences (whether on the same occasion or different occasions), the sentences must be served concurrently.

58I. Imposition of conditions on sentence of supervision

An offender who is sentenced to supervision is subject to:

(a) the standard conditions in section 58J; and

(b) any special conditions imposed by the court under section 58K.

58J. Standard conditions of sentence of supervision

(1) If an offender is sentenced to supervision the following standard conditions apply:

(a) the offender must report in person to a probation officer as soon as practicable and not later than 72 hours after the sentence is imposed; and

(b) the offender must report to a probation officer as and when required to do so by a probation officer and must notify the officer of his or her residential location; and

(c) the offender must not move to a new residential location without the prior written consent of a probation officer; and

(d) the offender must take part in a rehabilitative and reintegrative needs assessment and/or programme if and when directed to do so by a probation officer.

(2) The conditions of paragraphs (1)(c), and (d) do not apply if, and to the extent that, they are inconsistent with any special conditions imposed by the court.

58K. Special conditions of sentence of supervision

(1) If an offender is sentenced to supervision the court may impose such special condition or conditions related to the rehabilitation or integration of an offender as the court thinks necessary.

(2) A court must not impose a condition under this section that the offender pay any fine, reparation, or any other sum ordered to be paid on conviction, or that the offender perform any service than he or she could have been required to perform if he or she had been sentenced to community work.

(3) For the avoidance of doubt, the court may impose conditions that the offender live and work at a particular place.

58L. Offences related to breach of conditions of supervision

An offender commits an offence if he or she:

(a) fails, without reasonable excuse, to comply with any condition of a sentence of supervision; or

(b) fails, without reasonable excuse, to report when required to do so under paragraph 58J(1)(b),

and is liable on conviction to imprisonment for a period not exceeding 3 months or to a fine not exceeding VT10,000,

58M. Variation or cancellation of sentence of supervision

(1) An offender who is subject to a sentence of supervision, or a probation officer, may apply in accordance with section 58ZA for an Order under subsection (3) on the grounds that:

(a) the offender is unable to comply, or has failed to comply, with any of the conditions of the sentence; or

(b) any programme to which the offender is subject is no longer available or suitable for the offender; or

(c) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence:

(i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of conditions, or the imposition of additional conditions; or

(ii) the continuation of the sentence is no longer necessary in the interest of the community or the offender.

(2) A probation officer may apply for an Order under subsection (3) if an offender who is subject to a sentence of supervision is convicted of an offence punishable by imprisonment.

(3) On application under subsection (1) or subsection (2), the court may, if it is satisfied that the grounds on which the application is based have been established:

(a) remit, suspend, or vary conditions imposed by the court or impose additional conditions; or

(b) cancel the sentence; or

(c) cancel the sentence and substitute any other sentence (including another sentence of supervision) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) In determining a substitute sentence under paragraph (3)(c), the court must take into account the portion of the original sentence that remains unserved at the time of the Order.

(5) If the court cancels a sentence under this section, the sentence expires on the date that the Order is made or on any other date that the court may specify.

(6) If an application is made under this section for the remission, suspension, or variation of any condition imposed by the court, a probation officer may suspend the condition until the application has been heard and disposed of.

(7) If, after an offender is sentenced to supervision, the offender is subsequently sentenced on another charge to a term of imprisonment, the sentence of supervision shall be cancelled from the date that the offender commences his or her sentence of imprisonment.

58N. Sentence of community work

(1) A court may sentence an offender to community work:

(a) if the offender is convicted of an offence punishable by imprisonment; or

(b) if the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for the number of hours, being not less than 40 or more than 400 that the court thinks fit.

58O. Concurrent and cumulative sentences of community work

If a court imposes a sentence of community work on an offender who is already subject to a sentence of community work, the sentences will be served concurrently unless the court directs that they are to be served cumulatively.

58P. Length of sentence of community work

(1) If the court imposes a sentence of community work:

(a) for 200 hours or less – that sentence must be served within 12 months of the date that it commences.

(b) for more than 200 hours – that sentence must be served within 24 months of the date that it commences.

(2) Any work done by an offender under a sentence of community work must be treated as having been done under that sentence and under any and each other concurrent

sentence of community work that the offender was subject to at the time the work was done.

(3) A sentence of community work does not terminate until the hours of community work that the offender has been ordered to undertake have been completed.

58Q. Reporting requirement of offender

An offender who is subject to a sentence of community work must report in person to a probation officer:

(a) as soon as practicable, and not later than 72 hours, after the sentence is imposed; and

(b) as directed at any other time during the sentence for the purpose of monitoring the sentence.

58R. Change of residential location of offender

If an offender who is subject to a sentence of community work moves to a new residential location, the offender must, within 72 hours, notify a probation officer of the offender's new residential location.

58S. Placement of offender for community work

(1) As soon as practicable after a sentence of community work is imposed, and at any other time during the sentence if the probation officer thinks fit, a probation officer must determine what type of work and when the community work will be done by the offender.

(2) For the purposes of subsection (1), the probation officer must take into account:

(a) the circumstances of the offence that was committed by the offender; and

(b) ways in which the offender could benefit from the type of work in terms of learning work habits or skills; and

(c) the offender's character and personal history; and

(d) the offender's physical and mental capabilities; and

(e) whether there is any person or agency within a reasonable distance of the offender's place of residence that has sufficient suitable work available for the offender; and

(f) any other relevant circumstances.

58T. Community work

(1) The type of work that an offender may be required to perform for the purposes of a sentence of community work is:

(a) work at or for any hospital or church or for any charitable, educational, cultural, or recreational institution or organisation; or

(b) at or for any other institution or organisation for old, infirm, or disabled persons, or at the home of any old, infirm, or disabled person; or

(c) on any land which is under the control or direction of the State, a village council or any public body.

(2) An offender is not to be directed for the purposes of a sentence of community work to do any work if, in doing so, the offender would take the place of any person who would otherwise be employed in doing that work in the ordinary course of that person's paid employment.

58U. Requirements for community work

(1) For the purposes of this section, **sponsor** means the person or agency for whom the community work is to be done and who is authorised by the probation officer to supervise the community work.

(2) The days and times at which the offender does the community work must be fixed by an agreement between a probation officer and the sponsor and must be notified in writing to the offender by the probation officer.

(3) It is not necessary for all the periods of work to be of the same duration, but no period may be longer than 10 hours and no offender may be required to do more than 40 hours of community work per week.

(4) The times at which the offender is required to report, and the periods during which he or she is required to do community work, must be such as to avoid interference, so far as practicable, with the offender's attendance at any place of education or employment, or with his or her religious observances.

58V. Supervision of community work

An offender who is directed to do community work on placement with a sponsor is subject to the control, direction, and supervision of a probation officer or under the delegation of a community justice supervisor.

58W. Exceptions for reporting requirement

(1) In special circumstances, a probation officer may excuse an offender from reporting on any day or during any period.

(2) Without limiting subsection (1), if an offender is unable to report on any day or during any period due to good cause, a probation officer may, on being satisfied (whether before or after the failure to report) with the circumstances of the case, excuse the offender from the requirement to report on that day or during that period.

58X. Variation or cancellation of sentence of community work

(1) An offender who is subject to a sentence of community work, or a probation officer, may apply in accordance with section 58ZA for an order under subsection (3) of this section on the grounds that:

(a) there has been a change of circumstances since the sentence was imposed that would justify the variation or cancellation of the sentence; or

(b) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence, the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) A probation officer may apply in accordance with section 58ZA for an order under subsection (3):

(a) if an offender who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or

(b) on the grounds that the offender has behaved in a manner described in any of paragraphs 58Z(1)(a) to (j).

(3) On an application under subsection (1) or subsection (2), the court may, if it is satisfied that the grounds on which the application is based have been established:

(a) vary the sentence by reducing the number of hours of work to be done; or

(b) cancel the sentence; or

(c) cancel the sentence and substitute any other sentence (including another sentence of community work) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) In determining another sentence under paragraph (3)(c), the court must take into account the portion of the original sentence that the offender has not served at the time of the order.

(5) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

(6) If, after an offender is sentenced to community work, the offender is subsequently sentenced on another charge to a term of imprisonment, the sentence of community work must be cancelled from the date that the offender commences his or her sentence of imprisonment.

58Y. Extension of period of community work

(1) An offender who is subject to a sentence of community work, or a probation officer, may apply in accordance with section 58ZA for an extension of the period which the work must be done, on the grounds that the offender had a reasonable excuse for his or her failure to complete the required hours of community work.

(2) On an application under subsection (1), the court may, if it is satisfied that the grounds in subsection (1) have been established, extend the period within which the community work must be done to another date that the court thinks fit.

58Z. Offences relating to breach of sentence of community work

(1) An offender who is sentenced to community work commits an offence if he or she:

(a) fails, without reasonable excuse, to report to a probation officer in accordance with section 58Q; or

(b) fails, without reasonable excuse, to notify a probation officer of any new residential location in accordance with section 58R; or

(c) fails, without reasonable excuse, to do any work satisfactorily in accordance with the sentence; or

(d) fails to comply with the terms of any agreement entered into under subsection 58U(2); or

(e) fails, without reasonable excuse, to complete the required number of hours of work within the period required under section 58P or within any extended period granted under section 58Y; or

(f) accepts remuneration, whether by way of gift or otherwise, for any work that the offender is required to do for the purposes of the sentence; or

(g) fails, without reasonable excuse, to report or to remain at any place as required by or under this Part; or

(h) fails, without reasonable excuse, to obey any directions lawfully given regarding the manner in which his or her time must be spent while under the supervision of a probation officer under section 58V; or

(i) refuses to work, or fails to work in the manner reasonably required of the offender, or neglects or intentionally mismanages his or her work, while under the supervision of a probation officer under section 58V; or

(j) behaves in an offensive, threatening, insolent, insulting disorderly, or indecent manner while under the supervision of a probation officer under section 58V,

and is liable on conviction to imprisonment for a period not exceeding 3 months or to a fine not exceeding VT10,000.

(2) A person commits an offence if without lawful justification or excuse, he or she loiters about any place where persons sentenced to community work are placed and refuses or neglects to depart after being warned by a member of the police or by a probation officer.

Penalty: Imprisonment for a period not exceeding 3 months or a fine not exceeding VT10, 000.

58ZA. Jurisdiction and procedure

(1) Subject to subsection (2) every application made under section 58M or section 58Y must be made to the Court which imposed the sentence on the offender.

(2) If the sentence was handed down by:

(a) the Court of Appeal - the application is to be referred back to the Supreme Court; or

(b) the Supreme Court on appeal from a Magistrates Court - the application is to be referred back to the Magistrates Court.

(3) A copy of the application must, either before or as soon as practicable after the application is lodged in the office of the court, be served:

(a) on the offender, if the offender is not the applicant; or

(b) on the Director of the Department of Correctional Services, if a probation officer is not the applicant.

(4) If an application under section 58M or section 58Y has been lodged in a court, a probation officer or a member of the police may, for the purpose of having the offender brought before the court apply to the relevant court for the issue of a warrant to arrest the offender.

(5) A warrant issued under subsection (4) is to be executed only by a member of the police.

58ZB. Appeal in respect of substituted sentence

An appeal may be lodged with the Supreme Court or the Court of Appeal when the order is made by the Supreme Court, against the imposition of a substituted sentence under section 58M or section 58Y.

58ZC. Confiscation of property

(1) On conviction of any person for a criminal offence, the court may order the confiscation of any property of the offender which was used as a means of committing the offence or which represents the proceeds of the offence.

(2) Subsection (1) applies 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.

58ZD. Restitution of property

(1) When convicting a person for a criminal offence and where the person has unlawfully obtained possession of any property of another person, the court may order:

(a) the restitution of such property; or

(b) the restitution of the value of such property,

by the offender to the person lawfully entitled to possession of the property.

(2) In addition to subsection (1), the court may direct that if the offender defaults in making the restitution within a period specified in an order, the offender is liable to be sentenced

to imprisonment, for a period not exceeding a term calculated at the rate of 1 week imprisonment for every VT1,000 of the value of the property concerned.

(3) The period of imprisonment under subsection (2) must not exceed 6 months.

(4) The offender is to continue to be liable to make restitution of such property notwithstanding the execution of the sentence of imprisonment.

58ZE. Confinement of alcohol or drug addicted persons or mentally ill persons

(1) If a person who is addicted to alcohol or drugs or is suffering from a mental illness is convicted of any criminal offence which arises out of such addiction or mental illness and the court is of the opinion that his or her liberty is a danger to the public or himself, the court may order his or her confinement in a specified health institution.

(2) The confinement must not exceed 2 years in the case of an adult for alcohol or drug addiction or 5 years in the case of a mentally ill person.

(3) The confinement may be earlier terminated in accordance with the provisions of section 58ZF.

58ZF. Review of confinement

(1) In the case of every person confined in any manner other than by imprisonment, supervision or community work under the provisions of this Act, a full report on his or her condition and the necessity to continue to detain him or her, must be sent to the Supreme Court by the authority concerned at intervals not exceeding 12 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) A Supreme Court may make a decision on the necessity to continue to detain any such person upon the report itself or may request further information or evidence, including the personal attendance before it of any person, as it shall consider necessary or desirable. The same 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 has the power, on making a decision in any case that the person detained should be released from confinement, to make such orders or give such directions for his or her release as may be appropriate in the circumstances.

(5) An order or direction made under subsection (4) is binding on the authority concerned, who must report to the court without delay upon the making of the order.

58ZG. Rehabilitation

(1) Rehabilitation by lapse of time omits a conviction for any criminal offence.

(2) A rehabilitation may not apply without discharge of any expense due to the treasury and any order for the payment of money made in criminal proceedings nor affect the right of the treasury to any such sums already collected.

58ZH. Lapse of time

(1) An offender who has not received any further sentence of imprisonment for any criminal offence shall be as of right, rehabilitated by the expiry of the following periods:

(a) a sentence of a fine or a single sentence of imprisonment for up to 6 months – 5 years;

(b) a single sentence of imprisonment for up to 2 years – 7 years;

(c) a single sentence of imprisonment for up to 5 years – 10 years;

(d) more than 1 sentence of imprisonment for an aggregate period of 1 year or less – 10 years;

(e) more than 1 sentence of imprisonment for aggregate period of 1 year but not more than 2 years – 15 years.

(2) The periods subscribed in subsection (1) are in force:

(a) in the case of a sentence of a fine - from the date of payment of the fine; and

(b) in any case of imprisonment - from the date of expiry of the sentence.

PART 2 – OFFENCES

Offences against Public Order

59. Treason

(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: Imprisonment for life.

(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.

60. Inciting to mutiny

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.

61. Communicating secrets

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 14 years.

62. Sabotage

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.

Penalty: Imprisonment for 20 years.

63. Seditious offences defined

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 –

(i) to show that the Government has been mislead or mistaken in any of its measures;

(ii) 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;

(iii) 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

(iv) 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.

64. Seditious conspiracy

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

Penalty: Imprisonment for 2 years.

65. Seditious statements

(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 15 years.

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

66. Seditious publications

(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 15 years.

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

67. Restrictions on prosecution for seditious offences

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 6 months of the date on which the offence is alleged to have been committed.

68. Unlawful assembly and riot defined

(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 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. Unlawful assembly

No person shall take part in an unlawful assembly.

Penalty: Imprisonment for 3 years.

70. Riot

No person shall take part in a riot.

Penalty: Imprisonment for 10 years.

71. Forcible entry

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.

Penalty: Imprisonment for 5 years.

72. Forcible detainer

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.

Penalty: Imprisonment for 5 years.

73. Corruption and bribery of officials

(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 10 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 10 years.

(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.

73A. Obstructing police officer

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 VT 300,000 or to both such fine and imprisonment.

Misleading Justice

74. Perjury defined

(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.

75. Offence of perjury

No person shall commit perjury.

Penalty: Imprisonment for 7 years.

76. False statements etc.
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 3 years.

77. Fabricating evidence
No person shall with intent to mislead any tribunal holding any judicial proceeding within the meaning of section 74 fabricate any evidence therein.

Penalty: Imprisonment for 7 years.

78. Destroying evidence
No person, knowing that any book, document or thing of any kind whatever is or may be required in evidence in any judicial proceeding, shall wilfully remove or destroy it or render it illegible or indecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence.

Penalty: Imprisonment for 5 years.

79. Conspiracy to defeat justice etc.
No person shall –

(a) conspire with any other person to accuse any person falsely of any offence or to do anything to obstruct, prevent, pervert, or defeat the course of justice;

(b) in order to obstruct the due course of justice, dissuade, hinder or prevent any person lawfully bound to appear and give evidence as a witness from so appearing or giving evidence, or endeavour to do so; or

(c) obstruct or in any way interfere with or knowingly prevent the execution of any legal process civil or criminal.

Penalty: Imprisonment for 7 years.

80. False statements by interpreters
No person, lawfully sworn as an interpreter in a judicial proceeding, shall wilfully make any statement material in the proceeding which he knows to be false or does not believe to be true.

Penalty: Imprisonment for 7 years.

81. Deceiving witnesses
No person shall practise any fraud or deceit, or knowingly make or exhibit any false statement, representation, token, or writing to any person called or to be called as a witness in any judicial proceeding with intent to affect the testimony of such person as a witness.

Penalty: Imprisonment for 7 years.

82. Offences relating to judicial proceedings
(1) No person shall –

(a) within the premises in which any judicial proceeding is being conducted or within the precincts thereof show disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being conducted;

(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 connection 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.

Penalty: Imprisonment for 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.

Escapes and Rescues

83. Rescue

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

Penalty: Imprisonment for 5 years.

84. Escape

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

Penalty: Imprisonment for 5 years.

85. Aiding prisoners to escape

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 7 years.

85A. Harbouring or assisting a prisoner

Any person who 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 VT 150,000 or to both such fine and imprisonment.

86. Removal of property under lawful seizure
No person shall, when any property has been attached or taken under the process or authority of any court, knowingly and with intent to hinder or defeat the attachment or process, receive, remove, retain, conceal or dispose of such property.

87. Obstructing court officers
No person shall wilfully obstruct or resist any person lawfully charged with the execution of an order or warrant of any court.

Penalty: Imprisonment for 7 years.

Offences relating to Religion

88. Insult to religion of any class
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 2 years.

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

Penalty: Imprisonment for 2 years.

Offences against Morality

89A. Sexual intercourse
For the purposes of this Act, **sexual intercourse** means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

(a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or

(b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or

(c) the introduction of any part of the penis of a person into the mouth of another person; or

(d) the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or

(e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or

(f) the causing, or permitting of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who caused or permitted the activity.

90. Sexual intercourse without consent
Any person who has sexual intercourse with another person –

(a) without that person's consent; or

(b) with that person's consent if the consent is obtained –

(i) by force; or

(ii) by means of threats of intimidation of any kind; or

(iii) by fear of bodily harm; or

(iv) by means of false representation as to the nature of the act; or

(v) in the case of a married person, by impersonating that person's husband or wife; or

(vi) by the effects of alcohol or drugs; or

(vii) because of the physical or mental incapacity of that person;

commits the offence of sexual intercourse without consent.

91. Punishment of sexual intercourse without consent

No person shall commit sexual intercourse without consent.

Penalty: Imprisonment for life.

92. Abduction

(1) A person must not, with intent to marry, have sexual intercourse with a male or female of any age, or to cause him or her to be married or to have sexual intercourse with any other person, take him or her away or detain him or her against his or her will.

(2) A person who contravenes subsection (1), commits an offence punishable on conviction to a term of imprisonment not exceeding 10 years.

92A. Abduction of a person under 18 years of age

(1) A person must not take or cause to be taken an unmarried person under the age of 18 years out of the possession and against the will of his or her father or mother or guardian or any other person having the lawful care or charge of him or her with the intention:

(a) of having sexual intercourse with the person; or

(b) to cause the person to have sexual intercourse with any other person.

(2) A person who contravenes subsection (1) commits an offence punishable on conviction to a term of imprisonment not exceeding 7 years.

93. Indecent matter

(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 2 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.

94. Indecent act in public place

(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 2 years.

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

95. Incest

(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 16 years shall commit incest.

Penalty: Imprisonment for 15 years.

(3) Upon the conviction of any male of an offence or attempted offence under subsection (2) against any female under the age of 18 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.

(4) A person must not commit incest consensually with a person over the age of 16 years.

(5) A person who contravenes subsection (4) commits an offence punishable on conviction to a term of imprisonment not exceeding 15 years.

(6) A person must not commit incest without consent with a person over the age of 16 years.

(7) A person who contravenes subsection (6) commits an offence punishable on conviction to a term of imprisonment not exceeding 20 years.

(8) A person must not commit incest with a person under the age of 16 years.

(9) A person who contravenes subsection (8) commits an offence punishable on conviction to life imprisonment.

96. Sexual intercourse with child under care or protection

(1) A person must not have or attempt to have sexual intercourse with any child, not being the person's spouse, who is under the age of 18 years and who –

(a) being the person's stepchild or foster child, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family; or

(b) not being the person's stepchild or foster child, and not being a person living with him as the person's spouse, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family and is under the person's care or protection.

Penalty: Imprisonment for 10 years.

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

97. Unlawful sexual intercourse

(1) No person shall have sexual intercourse with any child under the age of 13 years.

Penalty: Imprisonment for life.

(2) No person shall have sexual intercourse with any child under the age of 15 years but of or over the age of 13 years.

Penalty: Imprisonment for 15 years.

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

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

97A. Aggravated sexual intercourse with a child

(1) A person must not have sexual intercourse with a child under the age of 15 years in circumstances of aggravation.

Penalty: Imprisonment for life.

(2) In this section, "circumstances of aggravation" means circumstances in which –

(a) at the time of, or immediately before or after, the commission of the offence, the alleged offender maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby; or

(b) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument; or

(c) the alleged offender is in the company of another person or persons; or

(d) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender; or

(e) the alleged victim has a serious physical disability; or

(f) the alleged victim has a serious intellectual disability.

98 Act of indecency without consent

A person must not commit an act of indecency on, or in the presence of another person:

(a) without that person's consent; or

(b) with that person's consent if the consent is obtained:

(i) by force; or

(ii) by means of threats of intimidation of any kind; or

(iii) by fear of bodily harm; or

(iv) by means of false representations as to the nature of the act; or

(v) in the case of a married person, by impersonating that person's husband or wife; or

(vi) by the effects of alcohol or drugs; or

(vii) because of the physical or mental incapacity of that person.

Penalty: Imprisonment for 7 years.

98A Act of indecency with a young person

A person must not commit an act of indecency upon, or in the presence of another person under the age of 15.

Penalty: Imprisonment for 10 years.

99. (*Repealed*)

100. Gross indecency

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

Penalty: Imprisonment for 1 year.

101. Prostitution

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 5 years.

101A. Definitions of "act of child prostitution" and "child"

For the purposes of sections 101B to 101D –

"act of child prostitution" means any sexual service, whether or not involving an indecent act –

(a) that is provided by a child for the payment of money or the provision of any other material thing (whether or not it is in fact paid or provided to the child or to any other person); and

(b) that can reasonably be considered to be aimed at the sexual arousal or sexual gratification of a person or persons other than the child,

and includes (but is not limited to) sexual activity between persons of different sexes or the same sex, comprising sexual intercourse for payment or masturbation committed by one person on another for payment, engaged in by a child.

"child" means a person who is under the age of 18 years.

101B. Promoting or engaging in acts of child prostitution

(1) A person must not –

(a) by any means, cause or induce a child to participate in an act of child prostitution; or

(b) participate as a client with a child in an act of child prostitution.

Penalty: Imprisonment for 10 years or, if the child is under the age of 14 years, to imprisonment for 14 years.

(2) The consent of a child is not a defence to a charge relating to an offence under this section.

101C. Obtaining benefit from child prostitution

(1) A person must not receive money or any other material benefit knowing that it is derived directly or indirectly from an act of child prostitution.

Penalty: Imprisonment for 10 years.

(2) A person is not guilty of an offence under this section if the person satisfies the court that the money or other material benefit concerned –

(a) was received by the person for the lawful provision of goods or services; or

(b) was paid or provided in accordance with a judgment or an order of a court or a legislative requirement.

101D. Children not to be used for pornographic purposes

(1) A person must not –

(a) use a child for pornographic purposes; or

(b) cause or procure a child to be so used; or

(c) having the care (but not necessarily entitled by law to have the custody) of a child, consent to the child being so used or allow the child to be so used.

Penalty: Imprisonment for 5 years or, if the child is under the age of 14 years, to imprisonment for 7 years.

(2) For the purposes of this section, a child is used by a person for pornographic purposes if:

(a) the child is engaged in activity of a sexual nature (for example, actual or simulated sexual intercourse or a striptease) for the purpose of the production of pornography by that person; or

(b) the child is in the presence of another person engaged in such an activity for that purpose.

101E. Alternative verdicts for offences against morality

If, on a trial of a person charged with any offence which has as an element of the charge of sexual intercourse as defined in Section 89A, the court is not satisfied beyond reasonable doubt that actual sexual intercourse occurred, but is satisfied beyond reasonable doubt that the person charged committed an indecent act, that person can be:

(a) convicted of the offence of committing an act of indecency without consent under section 98; or

(b) convicted of the offence of committing an act of indecency with a young person under section 98A.

Offences against the Person

102. Slavery

No person shall –

(a) take or keep another in slavery; or

(b) engage in any traffic in persons.

Penalty: Imprisonment for 20 years.

103. Abandonment of incapable persons

No person shall abandon any person who is physically or mentally incapable of protecting himself.

Penalty: Imprisonment for 5 years.

104. Duty to provide the necessaries of life

(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 permanently injured by such neglect.

Penalty: Imprisonment for 7 years.

105. Kidnapping

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 10 years.

106. Intentional homicide

(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 20 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.

107. Intentional assault

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

Penalty: (a) if no physical damage is caused, imprisonment for 1 year;

(b) if damage of a temporary nature is caused, imprisonment for 5 years;

(c) if damage of a permanent nature is caused, imprisonment for 10 years;

(d) if the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 14 years.

108. Unintentional harm

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 the damage so caused is purely temporary, imprisonment for 3 months;

(b) if the damage so caused is permanent, imprisonment for 2 years;

(c) if the damage so caused results in death, imprisonment for 5 years.

109. Causing death defined

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 –

(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. When child deemed to be a person

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. Limitation as to time of death

(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.

(3) Where the cause of death is an omission to fulfil 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.

112. Killing by influence on the mind

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 14 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.

113. Killing unborn child

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.

114. Criminal nuisance

No person shall do any unlawful act or omit to fulfil 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 5 years.

114A. Threatening language

(1) A person must not use threatening:

(a) written, spoken or automated words; or

(b) gestures,

towards another person.

(2) A person who fails to comply with subsection (1), commits an offence punishable on conviction to imprisonment for a term not exceeding 3 years.

115. Threats to kill person

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

Penalty: Imprisonment for 15 years.

116. Aiding suicide

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.

117. Abortion

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

Penalty: Imprisonment for 2 years.

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

Penalty: Imprisonment for 2 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 subsection (1) or (2) without the consent in writing of the Public Prosecutor.

118. False imprisonment

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

Penalty: Imprisonment for 10 years.

119. Endangering transport

No person shall with intent to injure or endanger the safety of any person –

(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 connection with the carriage of persons or goods by land, water or air;

(b) do anything to any property which is used for or in connection 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 14 years.

Offences against Reputation

120. Criminal Libel

(1) A person must not make a false written representation on any public platform that is likely to:

(a) expose another person to public hatred, contempt, or ridicule; or

(b) injure that person's profession, reputation, office, business, trade or occupation.

(2) In addition to subsection (1), the person must not make a false written representation on any public platform:

(a) knowing that the matter is false; or

(b) being reckless as to whether or not the matter is false.

(3) A person who contravenes subsections (1) and (2) commits an offence, punishable on conviction, by imprisonment for a term not exceeding 3 years.

(4) For the purposes of this section:

"false written representation" means any representation that is untrue or misleading made in writing or by use of pictures;

"public platform" includes newspapers, magazines, internet websites, social networking sites, blog sites and any other similar platforms available for public viewing.

121. Criminal Slander

(1) A person must not use any false representation on any public platform that is likely to:

(a) expose another person to public hatred, contempt, or ridicule; or

(b) injure that person's profession, reputation, office, business, trade or occupation.

(2) In addition to subsection (1), the person must not use any false representation on any public platform:

(a) knowing that the matter is false; or

(b) being reckless as to whether or not the matter is false.

(3) A person who contravenes subsections (1) and (2) commits an offence, punishable on conviction, by imprisonment for a term not exceeding 3 years.

(4) For the purposes of this section:

"false representation" means any representation that is untrue or misleading made in an oral statement or by reproduced audio or video recordings;

"public platform" includes television, radio, internet websites, social networking sites and blog sites and any other similar platforms available for public viewing.

Offences against Property

122. Theft defined

(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" include 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.

123. Misappropriation defined

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).

124. Obtaining property by false pretences defined

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.

125. Prohibition of theft, misappropriation and false pretences

No person shall cause loss to another –

(a) by theft;

(b) by misappropriation; or

(c) by false pretences.

Penalty: Imprisonment for 12 years.

126. Offences resembling theft

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 8 years.

127. Obtaining credit fraudulently

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 1 year.

128. Fraud by trustee

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 7 years.

129. False statement by promoter

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 10 years.

130. False accounting

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 10 years.

130A. Valueless cheques

A person must not obtain any chattel, money or valuable security by passing any cheque that is not paid on presentation, unless he or she proves (despite that there may have been some funds to the credit of the account on which the cheque was drawn at the time it was passed)–

(a) that he or she had reasonable grounds for believing that that cheque would be paid in full on presentation; and

(b) that he or she had no intent to defraud.

Penalty: Imprisonment for 2 years.

130B. Obtaining money, etc., by deception

(1) A person must not by any deception dishonestly obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever.

Penalty: Imprisonment for 12 years.

(2) In subsection (1) –

"deception" means deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including:

(a) a deception as to the present intentions of the person using the deception or of any other person; and

(b) an act or thing done or omitted to be done with the intention of causing –

(i) a computer system; or

(ii) a machine that is designed to operate by means of payment or identification,

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

130C. Obtaining money, etc., by false or misleading statements

A person must not, with intent to obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever, make or publish, or concur in making or publishing, any statement (whether or not in writing) –

(a) which he or she knows to be false or misleading in a material particular; or

(b) which is false or misleading in a material particular and is made with reckless disregard as to whether it is true or is false or misleading in a material particular.

Penalty: Imprisonment for 12 years.

131. Receiving property dishonestly obtained

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.

132. Demanding money, etc., with menaces

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: Imprisonment for 15 years.

133. Malicious damage to property

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

134. Arson

(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 10 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 5 years.

135. Wrecking

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 14 years.

136. Maltreatment of animals, birds or fish

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

Penalty: Imprisonment for 1 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 2 years.

137. Robbery

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

Penalty: Imprisonment for 25 years.

138. Extortion

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 14 years.

139. Forgery defined

(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, 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.

140. Prohibition of forgery

No person shall commit forgery.

Penalty: Imprisonment for 10 years.

141. Uttering forged documents

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.

142. Counterfeit currency

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 15 years.

143. Unlawfully entering dwelling house

(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 20 years where the place is used for human habitation.

Imprisonment for 10 years where the 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.

144. Criminal trespass

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 1 year.

145. Piracy

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

Penalty: Imprisonment for life.

146. Hijacking of aircraft

(1) No person shall unlawfully and intentionally –

(a) perform an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(b) destroy an aircraft in service or cause damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(c) place or cause to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) destroy or damage air navigation facilities or interfere with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(e) communicate information which he knows to be false, thereby endangering the safety of an aircraft in flight.

Penalty: Imprisonment for life.

(2) No person on board an aircraft in flight shall unlawfully, by force or threat thereof, or by any other form of intimidation, seize, or exercise control of, that aircraft, or attempt to perform any such act.

Penalty: Imprisonment for life.

(3) For the purposes of this section:

(a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for the persons and property on board;

(b) an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by crew for a specific flight until twenty-four hours after landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this subsection.

Illicit Firearms Trafficking

146A. Illicit firearms trafficking

(1) If:

(a) a person imports a firearm or ammunition with the intention of trafficking in the firearm or ammunition; and

(b) importing the firearm or ammunition:

(i) was prohibited under a law of Vanuatu; or

(ii) breached a condition imposed under a law of Vanuatu; or

(iii) breached a requirement of a licence imposed under a law of Vanuatu;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

(2) If:

(a) a person exports a firearm or ammunition with the intention of trafficking in the firearm or ammunition; and

(b) exporting the firearm or ammunition:

(i) was prohibited under a law of Vanuatu; or

(ii) breached a condition imposed under a law of Vanuatu; or

(iii) breached a requirement of a licence imposed under a law of Vanuatu;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

(3) If:

(a) a person imports or exports a firearm with the intention of trafficking in the firearm; and

(b) the firearm is not marked in accordance with the requirements of a law of Vanuatu;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

(4) In this section, “firearm” and “ammunition” have the same meaning as in the Firearms Act [CAP 198].

(5) In this section, “trafficking” in a firearm or ammunition means to:

(a) transfer the firearm or ammunition; or

(b) offer the firearm or ammunition for sale; or

(c) invite the making of offers to buy the firearm or ammunition; or

(d) prepare the firearm or ammunition for transfer with the intention of transferring any of it or believing that another person intends to transfer any of it; or

(e) transport or deliver the firearm or ammunition with the intention of transferring any of it or believing that another person intends to transfer any of it; or

(f) guard or conceal the firearm or ammunition with the intention of transferring any of it or the intention of assisting another person to transfer any of it; or

(g) possess the firearm or ammunition with the intention of transferring any of it; and, for the purposes of paragraph (d), preparing a firearm or ammunition for transfer includes packaging the firearm or ammunition or separating the firearm into discrete units.

Tax evasion

146B. Fraudulent evasion of tax

(1) If any person:

(a) by act or omission:

(i) fraudulently evades the assessment or payment of any tax; or

(ii) attempts such fraudulent evasion; or

(b) is otherwise knowingly concerned in:

(i) the fraudulent evasion of any assessment or payment of any tax; or

(ii) an attempt at such fraudulent evasion;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

(2) In this section, "tax" means any tax, duty, levy, excise, rate or charge imposed or payable by or under any Act, unless it is a fee for a service.

Certain dealings with counterfeit goods

146C. Offence of certain dealings with counterfeit goods

(1) If:

(a) a person does any of the following:

(i) supplies or offers to supply goods in Vanuatu; or

(ii) imports goods into Vanuatu; or

(iii) exports goods from Vanuatu; or

(iv) manufactures goods in Vanuatu; and

(b) the goods are counterfeit; and

(c) the person knows that the goods are counterfeit or is reckless as to whether that fact exists;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

(2) Goods are counterfeit if the presentation of the goods, any label for the goods or any advertisement for the goods contain a false or misleading representation about any or all of the following:

(a) the identity or name of the goods;

(b) the sponsor, source, manufacturer or place of manufacture of the goods;

(c) the brand or trade mark of the goods;

(d) the style or model of the goods;

(e) the standard, quality or grade of the goods;

(f) the use, performance, characteristics or benefits of the goods;

(g) the composition or design specification of the goods or of any component of the goods;

(h) the presence or absence of any component of the goods.

(3) In this section:

"false or misleading representation" includes a representation that is likely to cause confusion, to cause mistake or to deceive;

"supply", in relation to goods, includes sale, exchange, lease, hire or hire-purchase.

Offences against Public Interest

147. Obscene publications

(1) No person shall –

(a) manufacture, hold for sale, distribution, lease or display, import, export or transport;

(b) display or expose to public view;

(c) sell or hire;

(d) offer to any person for reward or otherwise;

(e) distribute or deliver for distribution

any printed matter, writing, drawing, sign, engraving, printing, photograph, film, sound recording, emblem or other object or representation whatsoever of obscene nature.

Penalty: Imprisonment for 2 years.

(2) For the purpose of this section, a publication or other article is obscene if it tends to deprave and corrupt those whose minds are open to such influences and into whose hands it may fall. Gross violence, cruelty or brutality may constitute obscenity as well as sexual content. In determining whether any work or matter is obscene, the court shall take account of its literary, scientific or artistic merit as a whole.

147A. Possession of child pornography

(1) In this section –

"child pornography" means a film, publication or computer game that would on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult,

a person (whether or not engaged in sexual activity) who is a child under 16 or who looks like a child under 16.

(2) A person must not have in his or her possession any child pornography.

Penalty: Imprisonment for 2 years.

(3) Nothing in this section makes it an offence for any member or officer of a law enforcement agency to have any child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law.

(4) It is a defence to a prosecution under this section to prove:

(a) that the defendant did not know, or could not reasonably be expected to have known, that the film, publication or computer game concerned is or contains pornographic material involving a child under 16; or

(b) that the person depicted in the material was of or above the age of 16 at the time when the film, computer game or publication was made, taken, produced or published.

(5) A court that convicts a person of an offence under this section may order that any child pornography in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit.

147B. Publishing child pornography

(1) In this section –

"article**"** includes any thing:

(a) that contains or embodies matter to be read or looked at, or

(b) that is to be looked at, or

(c) that is a record, or

(d) that can be used, either alone or as one of a set, for the production or manufacture of any thing referred to in paragraphs (a), (b) or (c).

"child pornography" has the same meaning as it has in section 147A.

"publish" includes:

(a) distribute, disseminate, circulate, deliver, exhibit (including on an internet website), lend for gain, exchange, barter, sell, offer for sale, let on hire or offer to let on hire, or

(b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a), or

(c) print, photograph or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing such an act.

"record" means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of a suitable apparatus, the sound or picture can be produced (whether or not it is in a distorted or altered form).

(2) A person must not publish an indecent article that is child pornography.

Penalty: In the case of an individual – imprisonment for 5 years or, in the case of a corporation – VT 20,000,000.

(3) A court that convicts a person of an offence under subsection (2) may order forfeiture to the Government of any computer used to publish the child pornography.

(4) On the making of an order under subsection (3) the computer becomes the property of the Government.

(5) Nothing in this section makes it an offence for any member or officer of a law enforcement agency to publish an indecent article in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law.

(6) For the purposes of this section, an article may be indecent even though part of it is not indecent.

(7) If a corporation contravenes, whether by act or omission, another provision of this section, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the provision if the person knowingly authorised or permitted the contravention.

(8) A person may be proceeded against and convicted under a provision pursuant to subsection (7) whether or not the corporation has been proceeded against or been convicted under that provision.

(9) Nothing in subsection (7) or (8) affects any liability imposed on a corporation for an offence committed by the corporation under a provision of this section.

148. Idle and disorderly

No person shall –

(a) behave in a disorderly or indecent manner in any public place for the purpose of prostitution;

(b) be found drunk and disorderly, or behave in a riotous or disorderly manner, in any public place (including the premises of any police station);

(c) commit any indecent act in a public place;

(d) solicit for immoral purposes in any public place;

(e) obscenely expose his person in any public place or within view thereof;

(f) be found drunk in a public place so as to be incapable of taking care of himself.

Penalty: Imprisonment for 3 months.

149. Unlawful carriage of weapons by night

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 6 months.

150. Unlawful discrimination

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 2 years.

151. Witchcraft

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

Penalty: Imprisonment for 2 years.

Table of Amendments (since the Revised Edition 1988)

12	*Amended by Act 27 of 1989*
36 to 58	*Repealed by Act 25 of 2006*
Part 1A (s36 to s58ZH)	*Inserted by Act 25 of 2006*
51(3)	*Substituted by Act 27 of 1989*
52(1)	*Amended by Acts 14 of 1989, 27 of 1989*
52(3)	*Amended by Act 14 of 2007*
58A(1)	*Amended by Act 14 of 2007*
58C(3)	*Amended by Act 14 of 2007*
58D(1)	*Substituted by Act 14 of 2007*
58D(2)(a)	*Substituted by Act 14 of 2007*
58G	*Substituted by Act 14 of 2007*
65(1)	*Amended by Act 14 of 1989*
66(1)	*Amended by Act 14 of 1989*
69	*Amended by Act 14 of 1989*
70	*Amended by Act 14 of 1989*
71	*Amended by Act 14 of 1989*
72	*Amended by Act 14 of 1989*
73A	*Inserted by Act 27 of 1989*
73B - 73D	*Inserted by Act 17 of 2003 [was 73A-C]*
73B	*Repealed by Act 43 of 2005 (was 73A inserted by Act 17 of 2003)*
73C	*Repealed by Act 43 of 2005(was 73B inserted by Act 17 of 2003)*
73D	*Repealed by Act 43 of 2005 (was 73A inserted by Act 17 of 2003)*
81	*Amended by Act 14 of 1989*
82(1)	*Amended by Act 14 of 1989*
83	*Amended by Act 27 of 1989*
84	*Amended by Act 27 of 1989*
85A	*Inserted by Act 27 of 1989*
87	*Amended by Act 14 of 1989*
89A.	*Inserted by Act 25 of 2006*
90	*Substituted by Act 17 of 2003*
	Amended by Act 25 of 2006
90 (heading)	*Amended by Act 25 of 2006*
90(b)(vi) and (vii)	*Inserted by Act 25 of 2006*
91 (heading)	*Amended by Act 25 of 2006*
91	*Amended by Act 25 of 2006*
92	*Substituted by Act 25 of 2006*
	Amended by Act 15 of 2016
	Substituted by Act 35 of 2017
92A	*Inserted by by Act 15 of 2016*
94(2)	*Amended by Act 25 of 2006*
95(2)	*Amended by Act 15 of 2016*
95(4) to (9)	*Inserted by Act 15 of 2016*
96	*Substituted by Act 17 of 2003*
97	*Amended by Act 17 of 2003*
97(1)	*Amended by Act 15 of 2016*
97(2)	*Amended by Act 15 of 2016*
97(3)	*Amended by Act 17 of 2003*
97A	*Inserted by Act 17 of 2003*
97A(heading)	*Amended by Act 25 of 2006*
97A(4)	*Amended by Act 25 of 2006*
98	*Substituted by Act 25 of 2006*
98A.	*Inserted by Act 25 of 2006*
99	*Repealed by Act 25 of 2006*
101A -101D	*Inserted by Act 17 of 2003*
101E.	*Inserted by Act 25 of 2006*
107(a)	*Amended by Act 15 of 2016*
107(b)	*Amended by Act 15 of 2016*
107(c)	*Amended by Act 15 of 2016*
107(d)	*Amended by Act 15 of 2016*
114	*Amended by Act 14 of 1989*
114A	*Inserted by Act 2 of 2021*
115	*Amended by Act 14 of 1989*
118	*Amended by Act 14 of 1989*
120	*Amended by Act 14 of 1989*
120	*Substituted by Act 2 of 2021*
121	*Amended by Act 14 of 1989*
121	*Substituted by Act 2 of 2021*
130A - 130C	*Inserted by Act 17 of 2003*
132	*Amended by Act 14 of 1989*
137	*Amended by Act 14 of 1989*
146	*Substituted by Act 29 of 1988*
146A	*Inserted by Act 10 of 2017*
146B	*Inserted by Act 10 of 2017*
146C	*Inserted by Act 10 of 2017*
147A,147B	*Inserted by Act 17 of 2003*