

Chapter 262.  
***Criminal Code Act 1974.***

Certified on: / /20 .





Chapter 262.

*Criminal Code Act 1974.*

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AN ACT

entitled

***Criminal Code Act 1974,***

Being an Act to establish a code of criminal law.

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears—

“**the Code**” means the Code of Criminal Law contained in Schedule 1;

“**the commencement date**” means 1 November 1975 (being the date of commencement of the pre-Independence *Criminal Code Act 1974*).

**2. ESTABLISHMENT OF THE CRIMINAL CODE.**

The provisions contained in Schedule 1 are the law of Papua New Guinea with respect to the matters dealt with in that Schedule.

**3. CIVIL REMEDIES.**

(1) Where any act is declared by the Code to be lawful, no action shall be brought in respect of that act.

(2) Subject to Subsection (1)—

(a) this Act does not affect any right of action that a person would have had against another person if this Act had not been passed; and

(b) no omission from the Code of any penal provision in respect of any act or omission that before the commencement date constituted an actionable wrong affects any right of action in respect of that provision.

**4. LIABILITY TO TRIAL.**

No person is liable to be tried or punished in Papua New Guinea for an indictable offence except under the express provisions of the Code or some other Act of the Parliament.

**5. CONTEMPT OF COURT.**

(1) Subject to Subsection (2), this Act or the Code does not affect the authority of any court of record to punish a person summarily for the offence commonly known as “Contempt of Court”.

(2) A person shall not be punished under Subsection (1) and under the Code for the same act or omission.

**6. SAVING OF POWERS OF COURTS UNDER OTHER ACTS.**

This Act does not limit or affect in any way any provision of any other Act conferring on a court a power to pass a sentence or impose a punishment or make an order in addition to or instead of a sentence or punishment prescribed by the Code, or otherwise to deal with an offender.

**SCHEDULE 1 – THE CRIMINAL CODE..**

**PART I. – INTRODUCTORY.**

*Division 1. – Interpretation.*

**1. INTERPRETATION.**

(1) In this Code, unless the contrary intention appears–

**“aircraft”** includes any machine or apparatus designed to support itself in the atmosphere, whether or not–

- (a) it is incapable of use through mechanical defect; or
- (b) any part or parts of it have been removed for any purpose or by any person;

**“bodily harm ”** means any bodily injury that interferes with health or comfort;

**“circumstances of aggravation”** includes any circumstances by reason of which an offender is liable to a greater punishment than that to which he would be liable if the offence were committed without the existence of that circumstance;

**“clerk”** includes–

- (a) any person employed for any purpose as or in the capacity of a clerk or servant, or as a collector of money, even if temporarily only, or if–
  - (i) employed also by other persons than the person alleged to be his employer; or
  - (ii) employed to pay as well as receive money; and
- (b) any person employed as or in the capacity of a commission agent for the collection or disbursement of money, or in any similar capacity, although he has no authority from his employer to receive money or other property on his account; and
- (c) any person who acts in the capacity of an officer of a Friendly Society or branch of a Friendly Society;

**“company”** means an incorporated company;

<sup>1</sup>**“Complainant”** means a person against whom an offence is alleged to have been committed.

**“criminally responsible”** means liable to punishment as for an offence;

**“dwelling-house”** includes any building or structure, or part of a building or structure, that is for the time being kept by the owner or occupier for the residence of himself, his family, or servants, or any of them, whether or not it is from time to time uninhabited;

**“explosive substance”** includes a gaseous substance in such a state of compression as to be capable of explosion;

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<sup>1</sup> Section 1 Amended by No. 27 of 2002, s. 1.

**“genocide”** means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such—

- (a) killing members of that group; or
- (b) causing serious bodily or mental harm to members of that group; or
- (c) deliberately inflicting on that group conditions of life calculated to bring about its destruction in whole or in part; or
- (d) imposing measures intended to prevent births within that group; or
- (e) forcibly transferring children of that group to another group;

**“gratification”** includes—

- (a) money, loans, rewards or an interest in property; or
- (b) an office or employment; or
- (c) a payment of or release from a loan or liability; or
- (d) valuable consideration of any kind; or
- (e) forbearance to demand money or money’s worth; or
- (f) aid, a vote, consent or influence; or
- (g) a service, favour or advantage of any description whatsoever; or
- (h) an offer or promise of any kind of gratification as described in Paragraphs (a) to (g) inclusive;

**“grievous bodily harm”** means any bodily injury of such a nature as to endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health;

**“have in possession”** includes having under control in any place, whether for the use or benefit of the person of whom the term is used or of another person, whether or not another person has the actual possession or custody of the thing in question;

**“indictment”** means a written charge preferred against an accused person in order to his trial before some court other than a court of summary jurisdiction;

**“knowingly”**, when used in connection with an expression denoting uttering, implies a knowledge of the character of the thing uttered or used;

**“liable”**, used alone, means liable on conviction on indictment;

**“mail”** includes anything sent by post that is in actual course of transmission from one place to another;

**“mail conveyance”** includes—

- (a) any conveyance of any kind by which a mail is carried; and
- (b) any vessel employed by or under the Post PNG Limited or the postal authority of any other country, or the Admiralty, for the conveyance of mails, whether under contract or not; and
- (c) a ship of war or other vessel in the service of Her Majesty in respect of letters conveyed by it;



“**money**” includes bank notes, bank drafts, cheques, and any other orders, warrants, authorities, or requests for the payment of money;

“**motor vehicle**” includes—

- (a) any machine or apparatus designed for propulsion wholly or partly by gas, motor spirit, oil, electricity, steam or other mechanical power; and
- (b) a motor cycle; and
- (c) a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle,

whether or not the machine or apparatus—

- (d) is incapable of use through mechanical defect; or
- (e) has had any part or parts of it removed for any purpose or by any person;

“**night**” means the interval between 9 p.m. and 6 a.m.;

“**night-time**” has the same meaning as “night”;

“**owner**”, and other like terms, when used with reference to property, include—

- (a) a corporation; and
- (b) any other association of persons capable of owning property; and
- (c) the State;

“**person employed in the Public Service**” includes officers and men of the Defence Force, members of the Police Force and persons employed to execute any process of a court of justice;

“**post office**” means any structure, room, place or receptacle established by Post PNG Limited for the provision of postal services (and includes, without limitation, a house, building, room, place, or structure where postal articles are by permission or under the authority of Post PNG Limited received, delivered, sorted or made up from or from which postal articles are despatched);

“**property**” includes every thing, animate or inanimate, capable of being the subject of ownership;

“**public body**” means—

- (a) the State; or
- (b) a province; or
- (c) a provincial government; or
- (d) a State Service established under or by authority of Section 188 (*Establishment of State Services*) of the *Constitution*; or
- (e) a constitutional institution, being any office or institution established or provided for by the Constitution including the Head of State, a Minister or the National Executive Council; or
- (f) a body or corporation established by statute;

**“registered brand”** means a brand that is registered under a law relating to brands;

**“registered mark”** means a mark that is registered under a law relating to brands;

**“servant”** has the same meaning as “clerk”;

**“ship”** includes every kind of vessel used in navigation not propelled by oars;

**“summary conviction”** means conviction by a court of summary jurisdiction;

**“telegram”** means a thing sent by telegraph, and includes any written message delivered at a telegraph office or post office for transmission by telegraph, or delivered or prepared for delivery from a telegraph office or post office as a message transmitted by telegraph for delivery;

**“telegraph”** includes a telephone;

**“telegraph office”** means any structure, room, place or receptacle appointed by authority of the Postmaster-General for the receipt, dispatch or delivery of anything sent by telegraph, or for the transaction of the business of the Department of Posts and Telegraphs relating to telegraphs;

**“thing sent by post”** includes—

- (a) any letter, newspaper, packet, parcel or other thing authorized by law to be transmitted by post, that—
  - (i) has been posted or received at a post office for delivery or transmission by post; and
  - (ii) is in course of transmission by post; and
- (b) any movable receptacle that—
  - (i) contains any such thing; and
  - (ii) is in course of transmission by post;

**“uncorroborated testimony”**, in relation to an accused person, means testimony that is not corroborated in some material particular by other evidence implicating him;

**“utter”** means—

- (a) use or deal with; or
- (b) attempt to use or deal with; or
- (c) attempt to induce any person to use, deal with, or act on, the thing in question;

**“valuable security”** includes any document that—

- (a) is the property of any person; and
- (b) is evidence of the ownership of any property or of the right to recover or receive any property;

**“vessel”** includes a ship or boat, and every other kind of vessel used in navigation.

(2) A flight of an aircraft shall be deemed to commence—

- (a) at the time of the closing of the external door of the aircraft last to be closed before the aircraft first moves for the purpose of taking off from any place; or
- (b) if Paragraph (a) is not applicable—at the time at which the aircraft first moves for the purpose of taking off from any place,

and shall be deemed to end—

- (c) at the time of the opening of the external door of the aircraft first to be opened after the aircraft comes to rest after its next landing after the commencement of the flight; or
- (d) if Paragraph (c) is not applicable—at the time at which the aircraft comes to rest after its next landing after the commencement of the flight,

or, if the aircraft is destroyed, or the flight is abandoned, before either Paragraph (c) or (d) becomes applicable, at the time at which the aircraft is destroyed or the flight is abandoned, as the case may be.

(3) A building or structure adjacent to, and occupied with, a dwelling-house shall be deemed to be part of the dwelling-house if there is a communication between the building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise.

(4) For the purposes of the definition “thing sent by post” in Subsection (1)—

- (a) a thing shall be deemed to be in course of transmission by post or telegraph from the time of its being delivered to a post office or telegraph office to the time of its being delivered to the person to whom it is addressed; and
- (b) a delivery at the house or office of the person to whom anything sent by post or telegraph is addressed, to him or to some person apparently authorized to receive it according to the usual manner of delivering that person’s letters or telegrams, shall be deemed a delivery to the person addressed.

(5) In this Code, unless the contrary intention appears, a reference to the Queen and Head of State includes a reference—

- (a) to the successor, by virtue of Section 83 (*Queen’s successors*) of the Constitution to the Queen and Head of State; and
- (b) as appropriate, to a person or persons referred to in Sec. Sch. 1.21 (*the Head of State: the Governor-General*) of the Constitution.

## 2. DEFINITION OF OFFENCE.

An act or omission that makes the person doing or making it liable to punishment is called an offence.

## 3. DIVISION OF OFFENCES.

<sup>2</sup>(1) Offences are of three kinds—

- (a) crimes; and
- (b) misdemeanours; and
- (c) simple offences.

<sup>2</sup> Section 3 amended by Act No. 28 of 1980, s1.

(2) Crimes and misdemeanours are indictable offences, for which offenders unless otherwise expressly stated, shall be prosecuted or convicted—

- (a) on indictment; or
  - (b) in accordance with Section 420; or
  - (c) in accordance with any other law.
- (3) An offence not otherwise designated is a simple offence.

(4) Subject to any other law, a person guilty of a simple offence may be summarily convicted before a court of summary jurisdiction.

#### 4. ATTEMPTS TO COMMIT OFFENCES.

(1) When a person, intending to commit an offence—

- (a) begins to put his intention into execution by means adapted to its fulfilment; and
- (b) manifests his intention by some overt act,

but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

(2) It is immaterial, except so far as regards punishment whether—

- (a) the offender does all that is necessary on his part for completing the commission of the offence; or
- (b) the complete fulfilment of his intention is prevented by circumstances independent of his will; or
- (c) he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

(4) The same facts may constitute one offence and an attempt to commit another offence.

#### 5<sup>3</sup>. [REPEALED.]

#### 6. SEXUAL PENETRATION.

<sup>4</sup>When the expression “sexual penetration” or “sexually penetrates” are used in the definition of an offence, so far as regards that element of it, is complete where there is —

- (a) the introduction, to any extent, by a person of his penis into the vagina, anus or mouth of another person; or
- (b) the introduction, to any extent, by a person of an object or a part of his or her body (other than the penis) into the vagina or anus of another person, other than in the course of a procedure carried out in good faith for medical or hygienic purposes.

#### 6A. RELATIONSHIP OF TRUST, AUTHORITY OF DEPENDENCY.

<sup>5</sup>(1) When the term “relationship of trust, authority or dependency” is used in the definition of an offence, the offence, so far as regards that element of it, is complete upon proof that there

<sup>3</sup> Section 5 repealed by No. 13 of 1977, s1.

<sup>4</sup> Section 6 Amended by No. 27 of 2002, s. 1.

<sup>5</sup> Section 6A Amended by No. 27 of 2002, s. 1.

was an existing relationship of trust, authority or dependency between the accused and the victim at the time the offence occurred.

(2) A “relationship of trust, authority or dependency” includes, but is not limited to, circumstances where –

- (a) the accused is a parent, step-parent, adoptive parent or guardian of the complainant; or
- (b) the accused has care or custody of the complainant; or
- (c) the accused is the complainant’s grandparent, aunt, uncle, sibling (including step sibling) or first cousin; or
- (d) the accused is a school teacher and the complainant is his pupil; or
- (e) the accused is a religious instructor or the complainant; or
- (f) the accused is a counsellor or youth worker acting in his professional capacity; or
- (g) the accused is a health care professional and the complainant is his patient; or
- (h) the accused is a police or prison officer and the complainant is in his care or control.

### *Division 2. – Parties to Offences.*

#### **7. PRINCIPAL OFFENDERS.**

(1) When an offence is committed, each of the following persons shall be deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it:–

- (a) every person who actually does the act or makes the omission that constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) every person who aids another person in committing the offence;
- (d) any person who counsels or procures any other person to commit the offence.

(2) In Subsection (1)(d), the person may be charged with–

- (a) committing the offence; or
- (b) counselling or procuring its commission.

(3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(4) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, it would have constituted an offence on his part, is–

- (a) guilty of an offence of the same kind; and
- (b) liable to the same punishment,

as if he had done the act or made the omission, and may be charged with himself doing the act or making the omission.

#### **8. OFFENCES COMMITTED IN PROSECUTION OF COMMON PURPOSE.**

Where–

- (a) two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another; and
  - (b) in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of the purpose,
- each of them shall be deemed to have committed the offence.

**9. MODE OF EXECUTION IMMATERIAL.**

(1) Where—

- (a) a person counsels another to commit an offence; and
- (b) an offence is actually committed under that counsel by the person to whom it is given,

it is immaterial whether—

- (c) the offence actually committed is the same as that counselled or a different one; or
- (d) the offence is committed in the way counselled, or in a different way,

if the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

(2) The person who gave the counsel shall be deemed to have counselled the other person to commit the offence actually committed by him.

**10. ACCESSORIES AFTER THE FACT.**

(1) A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is an accessory after the fact to the offence.

(2) A married woman does not become an accessory after the fact to an offence of which her husband is guilty—

- (a) by receiving or assisting him in order to enable him to escape punishment; or
- (b) by receiving or assisting, in her husband's presence and by his authority, another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment.

(3) A married man does not become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

*Division 3. – Application of the Criminal Law.*

**11. EFFECT OF CHANGES IN LAW.**

(1) A person cannot be punished for doing or omitting to do an act unless—

- (a) the act or omission constituted an offence under the law in force when it occurred; and
- (b) doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when he is charged with the offence.

(2) If the law in force when the act or omission occurred differs from that in force at the time of the conviction, the offender cannot be punished to any greater extent than was authorized by the former law, or to any greater extent than is authorized by the latter law.

**12. TERRITORIAL APPLICATION OF THE CODE.**

<sup>6</sup>(1) This Code applies to every person who is in Papua New Guinea at the time of his doing any act or making any omission which constitutes an offence.

(2) Where offences are of such a nature that they comprise several elements, if—

- (a) any acts, omissions or events actually occur which, if they all occurred in Papua New Guinea, would constitute an offence; and
- (b) any of the acts, or omissions or events occur in Papua New Guinea,

then—

- (c) if the act or omission that, in the case of an offence wholly committed in Papua New Guinea, would be the initial element of the offence, occurs in Papua New Guinea, the person who does that act or makes that omission is guilty of an offence of the same kind, and is liable to the same punishment, as if all the subsequent elements of the offence had occurred in Papua New Guinea; and
- (d) if the act or omission occurs outside Papua New Guinea, and the person who does the act or makes the omission afterwards comes into Papua New Guinea, he is by coming into Papua New Guinea guilty of an offence of the same kind, and is liable to the same punishment, as if—
  - (i) the act or omission had occurred in Papua New Guinea; and
  - (ii) he had been in Papua New Guinea when it occurred.

(3) In a case referred to in Subsection (2)(d), it is a defence to the charge to prove that the accused person did not intend that the act or omission should have effect in Papua New Guinea.

(4) Subject to Subsection (5), this section does not extend to a case in which the only material event that occurs in Papua New Guinea is the death of a person whose death is caused by an act done or omitted to be done outside Papua New Guinea, and at a time when he was not in Papua New Guinea.

(5) The Code shall have extra-territorial effect so as to give effect to the *Offences (Overseas) Act 1984*.

**13. OFFENCES PROCURED OR COUNSELLED BY PERSONS OUTSIDE PAPUA NEW GUINEA.**

(1) A person who—

- (a) while outside Papua New Guinea procures another person to do or omit to do an act in Papua New Guinea of such a nature that, if he had himself done the act or made the omission, in Papua New Guinea, he would have been guilty of an offence; and
- (b) afterwards comes into Papua New Guinea,

is by coming into Papua New Guinea guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission in Papua New Guinea.

(2) A person who—

- (a) while outside Papua New Guinea counsels or procures the commission of an offence that is actually committed in Papua New Guinea; and
- (b) afterwards comes into Papua New Guinea,

<sup>6</sup> Section 12 amended by Act No. 29 of 1983, s1.

is guilty of an offence of the same kind, and is liable to the same punishment, as if he had been in Papua New Guinea when the offence was committed.

**14. OFFENCES PROCURED IN PAPUA NEW GUINEA TO BE COMMITTED OUTSIDE PAPUA NEW GUINEA.**

(1) A person who, while in Papua New Guinea, procures another person to do an act or make an omission at a place outside Papua New Guinea of such a nature that—

- (a) if he had himself done the act or made the omission in Papua New Guinea, he would have been guilty of an offence; and
- (b) if he had himself done the act or made the omission, he would have been guilty of an offence under the law in force in the place where the act or omission is done or made,

is guilty of an offence of the same kind, and is liable to the same punishment, as if the act had been done or the omission had been made in Papua New Guinea.

(2) The punishment for an offence by virtue of Subsection (1) shall not exceed the punishment that the offender would have incurred under the law in force in the place where the act was done or the omission was made, if he had himself done the act or made the omission.

(3) A prosecution cannot be instituted under this section except at the request of the Government of the State having jurisdiction in the place where the act or omission occurs.

**15. DEFENCE FORCE.**

Officers and men of the Defence Force are, while on duty or in uniform, subject to the special laws relating to that Force, but are not exempt from the provisions of this Code.

**16. PERSON NOT TO BE PUNISHED TWICE FOR SAME OFFENCE.**

(1) Subject to Subsection (2), a person cannot be punished twice under the provisions of this Code or under the provisions of any other law for the same act or omission.

(2) Subsection (1) does not apply where an act or omission is such that by means of it the offender causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing the death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.

**17. FORMER CONVICTION OR ACQUITTAL.**

It is a defence to a charge of any offence to show that the accused person has already been—

- (a) tried and convicted or acquitted, on an indictment on which he might have been convicted of the offence with which he is charged; or
- (b) acquitted on indictment, or convicted, of an offence of which he might be convicted on the indictment or complaint on which he is charged.



**Division 4. – Punishments.****18. KINDS OF PUNISHMENT.**

The punishments that may be inflicted under this Code are–

- (a) death; or
- (b) imprisonment with hard labour; or
- (c) imprisonment without hard labour; or
- (d) detention in an institution as defined in–
  - (i) the *Child Welfare Act 1961*; or
  - (ii) the *Juvenile Courts Act 1991*;
- (e) fine; or
- (f) finding security to keep the peace and be of good behaviour; or
- (g) restriction of movement.

**19. CONSTRUCTION OF PROVISIONS OF CODE AS TO PUNISHMENTS.**

<sup>7</sup>(1) In the construction of this Code, it is to be taken that, except when it is otherwise expressly provided–

- (aa)<sup>8</sup> a person liable to death may be sentenced to imprisonment for life or for any shorter term; and
- (a) a person liable to imprisonment for life or for any other period, may be sentenced to imprisonment for any shorter term; and
- (b) a person liable to imprisonment may be sentenced to pay a fine not exceeding K2,000.00 in addition to, or instead of, imprisonment; and
- (c) a person sentenced on conviction on indictment to pay a fine may be sentenced–
  - (i) to be imprisoned until the fine is paid, in addition to any other punishment to which he is sentenced; and
  - (ii) instead of being sentenced to be imprisoned until the fine is paid–to be imprisoned for a term (not exceeding the term provided for in Subparagraph (i)) if the fine is not paid within a specified period (which period may be extended as the court thinks fit); and
- (d) a person convicted on indictment of an offence not punishable with death may–
  - (i) instead of, or in addition to, any punishment to which he is liable–be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks proper, to keep the peace and be of good behaviour for a time fixed by the court; and
  - (ii) comply with such other conditions as the court may, in its discretion, impose; and
- (e) a person convicted of any offence on summary conviction may, instead of being sentenced to any punishment to which he is liable, be discharged on his entering into his own recognizances, with or without sureties, in such amount as the court thinks proper, to keep the peace and be of good behaviour for a term not exceeding one year; and
- (f) when a person is convicted of an offence not punishable with death, the court may instead of passing sentence, discharge the offender on his entering into his own

<sup>7</sup> Section 19 amended by Act No. 27 of 1979, s1; amended by Act No. 29 of 1983, s2.

<sup>8</sup> Section 19(1)(aa) inserted by the *Criminal Code (Amendment) Act 1991* (No. 25 of 1991), s1.

recognizance, with or without sureties, in such sum as the court thinks proper, conditioned that—

- (i) he shall appear and receive judgement at some future sittings of the court or when called on within a period specified by the court; and
- (ii) if the court thinks fit, he shall in the meantime keep the peace and be of good behaviour and comply with such other conditions as the court, in its discretion, imposes.

(2) Imprisonment in accordance with Subsection (1)(c)(i), for non-payment of the fine—

- (a) shall not extend for a term longer than two years; and
- (b) shall not together with the fixed term of imprisonment (if any) extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

(3) In a case to which Subsection (1)(c) applies, the court may give such directions as it thinks proper as to the enforcement of the sentence of imprisonment, including a direction that the person sentenced appear at some future sittings of the court or when called on, by notice in the prescribed form, to show cause why the sentence of imprisonment should not be executed because of the non-payment of the fine within the specified period or any extension of that period.

(4) If under Subsection (3) a person directed to appear, or called on by notice in the prescribed form, to show cause why the sentence of imprisonment should not be executed because of the non-payment of the fine within the specified period, or any extension of that period, does not appear at the required time and place, a Judge may issue a warrant to arrest him and to bring him before a Judge.

(5) Imprisonment under Subsection (1)(d) for not entering into a recognizance—

- (a) shall not extend for a term longer than one year; and
- (b) shall not together with the fixed term of imprisonment (if any) extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

(6) When a court sentences any person convicted under Subsection (1)(d) to a term of imprisonment, it may further order that—

- (a) the offender be imprisoned for such portion of that term as it thinks proper; and
- (b) the execution of the sentence for the remaining portion of the sentence be suspended on his entering into a recognizance, with sureties if so directed, in accordance with Subsection (1)(d) but further conditioned that, if called on, he shall appear and receive judgement in respect of his service of the portion of the sentence.

(7) A Judge may, on being satisfied that the offender has committed a breach of any of the conditions of a recognizance under Subsection (6), forfeit the recognizance and commit him to prison to undergo the suspended portion of his sentence or any part of it.

(8)<sup>9</sup> [Repealed.]

(9) Notwithstanding that restriction of movement is not specified as a punishment for an offence, a court may, in addition to any other punishment or punishments imposed, also impose restriction of movement in accordance with Section 600.

<sup>9</sup> Section 19(8) repealed by the Criminal Code (Amendment No. 2) Act 1986 (No. 17 of 1986), s1; Subsection 19(9) added by the *Criminal Code (Restriction of Movement) Act* 1986 (No. 18 of 1986), s2.

(10)<sup>10</sup> <sup>11</sup>When a court is considering the punishment or punishments to be imposed in any case it shall also consider whether, in the circumstances of the case, restriction of movement is an appropriate punishment.

## 20. CALCULATION OF TERM OF SENTENCE: CUMULATIVE SENTENCES: ESCAPED PRISONERS.

(1) Where a person who is convicted of an offence is undergoing, or has been sentenced to undergo, for another offence, a sentence involving deprivation of liberty, the punishment to be inflicted on him for the first-mentioned offence may be directed to take effect from the expiration of the deprivation of liberty for the last-mentioned offence.

(2) Subject to Subsection (1), a sentence of imprisonment—

(a) on a conviction on indictment—takes effect from the first day of the sittings of the court at which the offender is convicted; and

(b) on a summary conviction—takes effect from the commencement of the offender’s custody under the sentence.

(3) A person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty is liable on recapture to undergo the punishment that he was undergoing at the time of his escape, for a term equal to the period during which he was absent from prison after the escape and before the expiration of the term of his original sentence whether or not at the time of his recapture the term of that sentence had or has not expired.

## 21. PREROGATIVE.

Nothing in this Code affects the prerogative of mercy.

## 21A. VICTIM IMPACT STATEMENTS.

<sup>12</sup>(1) For the purposes of determining the sentence to be imposed on an offender, the court shall consider any statement that may have been prepared in accordance with Subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

(2) A statement referred to in Subsection (1) must be —

(a) prepared in writing in the form and in accordance with the procedures established for that purpose; and

(b) filed with the court.

(3) A statement of the victim of an offence prepared and filed in accordance with Subsection (2) does not prevent the court from considering any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender.

(4) For the purposes of this section, “victim”, in relation to any offence —

(a) means the person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and

<sup>10</sup> Subsection 19(10) added by the *Criminal Code (Restriction of Movement) Act* 1986 (No. 18 of 1986), s2.

<sup>11</sup> Subsection 19(10) added by the *Criminal Code (Restriction of Movement) Act* 1986 (No. 18 of 1986), s2.

<sup>12</sup> Section 21A Amended by No. 27 of 2002, s. 1.

- (b) where the person described in Paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in Subsection (1), includes the spouse or any other relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependent of that person.

***Division 5. – Criminal Responsibility.***

**22. APPLICATION OF DIVISION 5.**

This Division applies to all persons charged with offences against any law.

**23. IGNORANCE OF LAW, BONA FIDE CLAIM OF RIGHT.**

(1) Subject to Subsection (2), ignorance of the law does not afford an excuse for an act or omission that would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.

(2) A person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud.

**24. INTENTION: MOTIVE.**

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—

- (a) an act or omission that occurs independently of the exercise of his will; or  
 (b) an event that occurs by accident.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced—

- (a) to do or omit to do an act; or  
 (b) to form an intention,

is immaterial so far as regards criminal responsibility.

**25. MISTAKE OF FACT.**

(1) Subject to Subsection (2), a person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

(2) The operation of Subsection (1) may be excluded by the express or implied provisions of the law relating to the subject.

**26. EXTRAORDINARY EMERGENCIES.**

Subject to the express provisions of this Code relating to acts done on compulsion or provocation, or in self-defence, a person is not criminally responsible for an act or omission done

or made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

## 27. PRESUMPTION OF SANITY.

Until the contrary is proved every person is presumed to be of sound mind and to have been of sound mind at any time that comes in question.

## 28. INSANITY.

(1) A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity—

- (a) to understand what he is doing; or
- (b) to control his actions; or
- (c) to know that he ought not to do the act or make the omission.

(2) A person—

- (a) whose mind, at the time of his doing or omitting to do an act is affected by delusions on some specific matter or matters; and
- (b) who is not otherwise entitled to the benefit of the provisions of Subsection (1),

is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

## 29. INTOXICATION.

(1) Section 28 applies to the case of a person whose mind is disordered by intoxication or stupefaction caused, without intention on his part, by drugs or intoxicating liquor or by any other means.

(2) Section 28 does not apply to the case of a person who has intentionally caused himself to become intoxicated or stupefied.

(3) When an intention to cause a specific result is an element of an offence, intoxication, whether complete or partial, and whether intentional or unintentional, may be regarded for the purpose of ascertaining whether such an intention in fact existed.

## 30. IMMATURE AGE.

(1) A person under the age of seven years is not criminally responsible for any act or omission.

(2) A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3)<sup>13</sup> [*Repealed.*]

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<sup>13</sup> Section 30 Amended by No. 27 of 2002, s. 1.  
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**31. JUDICIAL OFFICERS.**

Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, even if—

- (a) an act done is in excess of his judicial authority; or
- (b) he is bound to do an act omitted to be done.

**32. JUSTIFICATION AND EXCUSE: COMPULSION.**

(1)<sup>14 15</sup> A person is not criminally responsible for an act or omission done or made—

- (a) in execution of the law; or
- (b) in obedience to the order of a competent authority that he is bound by law to obey, unless the order is manifestly unlawful; or
- (c) when the act is reasonably necessary in order to resist actual and unlawful violence threatened to him, or to another person in his presence; or
- (d) when he does or omits to do the act—
  - (i) in order to save himself from immediate death or grievous bodily harm threatened to be inflicted on him by some person actually present and in a position to execute the threats; and
  - (ii) believing himself to be unable otherwise to escape the carrying of the threats into execution,

but this protection does not extend to an act or omission that would constitute an offence, punishable with death or the offence of wilful murder or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has by entering into an unlawful association or conspiracy rendered himself liable to have such threats made to him.

(2) Whether an order is or is not manifestly unlawful is a question of law.

**33. COMPULSION OF HUSBAND.**

<sup>16</sup>(1) Subject to Subsection (2), a married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband.

(2) A married woman is not criminally responsible for doing or omitting to do an act that—

- (a) she is actually compelled by her husband to do or omit to do; and
- (b) is done or omitted to be done in his presence,

except in the case of an act or omission that would constitute—

- (c) an offence that is punishable with death; or
- (d) the offence of wilful murder; or
- (e) an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element.

<sup>14</sup> Section 32(1) amended by Act No. 12 of 1982, s2.

<sup>15</sup> Section 32(1) amended by Act No. 12 of 1982, s2.

<sup>16</sup> Section 33 amended by Act No. 12 of 1982, s2.

**34. CONSPIRACY BETWEEN HUSBAND AND WIFE.**

A husband and wife are not criminally responsible for a conspiracy between themselves alone.

**35. OFFENCES BY PARTNERS AND MEMBERS OF COMPANIES WITH RESPECT TO PARTNERSHIP OR CORPORATE PROPERTY.**

A member of a co-partnership, corporation or joint stock company who does or omits to do any act with respect to the property of the co-partnership, corporation, or company that would, if he were not a member, constitute an offence is criminally responsible to the same extent as if he were not a member.

**36. LIABILITY OF HUSBAND AND WIFE FOR OFFENCES TO THE OTHER'S PROPERTY.**

(1) In this section, “**property**”, in relation to a wife, means her separate property.

(2) When a husband and wife are living together, neither of them incurs any criminal responsibility for doing or omitting to do any act with respect to the property of the other, except—

- (a) an act or omission of which an intention to injure or defraud some other person is an element; or
- (b) an act done by either of them when leaving or deserting, or when about to leave or desert, the other.

(3) Subject to Subsection (2), a husband or wife is criminally responsible for any act done by him or her with respect to the property of the other that would be an offence if they were not husband and wife, to the same extent as if they were not husband and wife.

(4) A husband or wife cannot institute criminal proceedings against the other with respect to the property of the other while they are living together.

(5) On the prosecution—

- (a) of a husband on the complaint of his wife for an offence committed with respect to her property; or
- (b) of a wife on the complaint of her husband for an offence committed with respect to his property,

the complainant is a competent and compellable witness.

**PART II. – OFFENCES AGAINST PUBLIC ORDER.*****Division 1. – Treason and Other Offences against the Queen’s Person and Authority.*****37. TREASON.**

A person who–

- (a) kills the Queen and Head of State, or does Her any bodily harm tending to Her death, maiming, wounding, imprisonment or restraint; or
- (b) kills the eldest son and heir-apparent for the time being of the Sovereign, or, if the successor, by virtue of Section 83 of the Constitution (*Queens successors*), to the Queen and Head of State is a male, the Queen Consort of the reigning King; or
- (c) forms an intention to do an act referred to in Paragraph (a) or (b), and manifests such intention by any overt act; or
- (d) conspires with any other person to kill the Queen and Head of State or to do Her any bodily harm tending to Her death, maiming, wounding, imprisonment or restraint; or
- (e) levies war against the Queen and Head of State–
  - (i) with intent to depose the Queen and Head of State from the style, honour, and royal name of the Crown of the United Kingdom of Great Britain and Northern Ireland, or of any other of Her Majesty’s dominions; or
  - (ii) in order, by force or constraint, to compel the Queen and Head of State to change Her measures or counsels, or in order to put any force or constraint on, or to intimidate or overawe, any House of Parliament of any of Her Majesty’s dominions; or
- (f) conspires with any other person to levy war against the Queen and Head of State, with any intent or purpose referred to in Paragraph (e); or
- (g) instigates a foreigner to make an armed invasion of any part of Her Majesty’s dominions; or
- (h) assists by any means whatever a public enemy at war with the Queen and Head of State; or
- (i) violates, whether with her consent or not, a Queen Consort, or the wife of the eldest son and heir-apparent for the time being of the successor (being a male) of the Queen and Head of State,

is guilty of the crime of treason.

Penalty: Death.

**38. CONCEALMENT OF TREASON.**

A person who–

- (a) becomes an accessory after the fact to treason; or
- (b) knowing that any person intends to commit treason, does not–
  - (i) give information of it with all reasonable despatch to a magistrate; or
  - (ii) use other reasonable endeavours to prevent the commission of the crime,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.



**39. TREASONABLE CRIMES.**

(1) Any person who forms an intention—

- (a) to depose the Queen and Head of State from the style, honour, and royal name of the Crown of the United Kingdom of Great Britain and Northern Ireland, or of any other of Her Majesty's dominions; or
- (b) to levy war against the Queen and Head of State within any part of Her dominions in order, by force or constraint, to compel the Queen and Head of State to change Her measures or counsels, or in order to put any force or constraint on, or to intimidate or overawe, any House of Parliament of any of Her Majesty's dominions; or
- (c) to instigate a foreigner to make an armed invasion of any of Her Majesty's dominions,

and manifests such intention by any overt act, is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

(2) A person charged with an offence against Subsection (1) is not entitled to be acquitted on the ground that any act proved to have been committed by him constitutes the crime of treason, but a person who has been tried and convicted or acquitted, on a charge of any such crime shall not be afterwards prosecuted for treason in respect of the same facts.

**40. CHARGES OF TREASON OR CONCEALMENT OF TREASON.**

(1) A person cannot be tried for treason or for an offence against Section 38 or 39 unless the indictment is presented within two years after the crime is committed.

(2) A person charged with treason or with an offence against Section 38 or 39 shall not be convicted, except—

- (a) on his own plea of guilty; or
- (b) on the evidence in open court of at least two witnesses to one overt act of the kind of treason alleged; or
- (c) on the evidence of one witness to one overt act, and one other witness to another overt act of the same kind of treason.

(3) This section does not apply where the overt act of treason alleged is—

- (a) the killing of the Queen and Head of State; or
- (b) a direct attempt to endanger the life or injure the person of the Queen and Head of State.

**41. INCITING TO MUTINY.**

(1) A person who advisedly attempts—

- (a) to seduce any person serving in the Defence Force by sea, land or air from his duty and allegiance; or
- (b) to incite any such person to commit an act of mutiny or any traitorous or mutinous act; or
- (c) to incite any such persons to make or endeavour to make a mutinous assembly,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

(2) A person who has been tried, and convicted or acquitted, on a charge of an offence against Subsection (1) shall not be afterwards prosecuted for any other offence against this Division in respect of the same facts.

#### 42. ASSISTING ESCAPE OF PRISONERS OF WAR.

A person who—

(a) knowingly and advisedly aids an alien enemy of the Queen and Head of State who is a prisoner of war in Papua New Guinea, whether he—

(i) is confined in a prison or elsewhere; or

(ii) is suffered to be at large on his parole,

to escape from his prison or place of confinement, or, if he is at large on his parole, to escape from Papua New Guinea; or

(b) being a person who owes allegiance to the Queen and Head of State, after any such prisoner has escaped by sea from any part of Her Majesty's dominions, knowingly and advisedly aids him, on the high seas within the territorial waters of Papua New Guinea, in his escape to or towards any place,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

#### 43. OVERT ACT.

In the case of an offence against this Division of which the manifestation by an overt act of an intention to effect any purpose is an element—

(a) every act of conspiring with any person to effect that purpose; and

(b) every act done in furtherance of the purpose by any of the persons conspiring,

shall be deemed to be an overt act manifesting the intention.

### *Division 2. – Sedition.*

#### 44. DEFINITION OF SEDITIOUS INTENTIONS.

Subject to Section 45, an intention—

(a) to bring the Queen and Head of State into hatred or contempt; or

(b) to excite disaffection against—

(i) the Queen and Head of State, the National Government or the Constitution as by law established; or

(ii) the Parliament; or

(iii) the administration of justice; or

(c) to excite the inhabitants of Papua New Guinea to attempt to procure the alteration of any matter in Papua New Guinea as by law established otherwise than by lawful means; or

(d) to raise discontent or disaffection amongst the inhabitants of Papua New Guinea; or

(e) to promote feelings of ill-will and enmity between different classes of the inhabitants of Papua New Guinea,

is a seditious intention.

**45. INNOCENT INTENTIONS.**

It is lawful for any person—

- (a) to endeavour in good faith to show that the Queen and Head of State has been mistaken in any of Her counsels; or
- (b) to point out in good faith errors or defects in—
  - (i) the government or Constitution of Papua New Guinea as by law established; or
  - (ii) legislation; or
  - (iii) the administration of justice,

with a view to the reformation of such errors or defects; or

- (c) to excite in good faith the inhabitants of Papua New Guinea to attempt to procure by lawful means the alteration of any matter in Papua New Guinea established by law; or
- (d) to point out in good faith for the purpose of their removal any matters that are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the inhabitants of Papua New Guinea.

**46. SEDITIOUS ENTERPRISES, ETC.**

(1) A seditious enterprise is an enterprise that is undertaken in order to the carrying out of a seditious intention.

(2) Seditious words are words expressive of a seditious intention.

(3) The expression “seditious writing” includes anything intended to be read, and any sign or visible representation, that is expressive of a seditious intention.

**47. UNLAWFUL OATHS TO COMMIT CAPITAL OFFENCES.**

A person who—

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit a crime punishable with death; or
- (b) takes any such oath or engagement, not being compelled to do so; or
- (c) attempts to induce any person to take any such oath or engagement,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**48. UNLAWFUL OATHS TO COMMIT OFFENCES.**

A person who—

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it—
  - (i) to engage in a mutinous or seditious enterprise; or
  - (ii) to commit an indictable offence not punishable with death; or
  - (iii) to disturb the public peace; or

- (iv) to be of any association, society, or confederacy, formed for the purpose of doing any act referred to in Subparagraph (i), (ii) or (iii); or
- (v) to obey the order or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose; or
- (vi) not to inform or give evidence against any associate, confederate, or other person; or
- (vii) not to reveal or discover—
  - (A) any unlawful association, society, or confederacy; or
  - (B) any illegal act done or to be done; or
  - (C) any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or
- (b) takes any such oath or engagement, not being compelled to do so; or
- (c) attempts to induce any person to take any such oath or engagement,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

#### 49. COMPULSION AS A DEFENCE.

A person who takes any oath or engagement referred to in Section 47 or 48 cannot set up as a defence that he was compelled to do so unless within 14 days after taking it, or if he is prevented by actual force or sickness, within 14 days after the termination of the prevention, he declares—

- (a) by information on oath before some member of the National Executive Council or justice of the peace; or
- (b) if he is on actual service in the Defence Force by sea, land or air—
  - (i) by such information; or
  - (ii) by information to his commanding officer,

the whole of what he knows concerning the matter, including—

- (c) the person or persons by whom; and
- (d) in whose presence; and
- (e) the place where; and
- (f) the time when,

the oath or engagement was administered or taken.

#### 50. EFFECT OF PROSECUTION.

A person who has been tried, and convicted or acquitted, on a charge of an offence against any of the preceding provisions of this Division shall not be afterwards prosecuted on the same facts for the crime—

- (a) of treason; or
- (b) of failing, when he knows that a person intends to commit treason, to give information of it with all reasonable despatch to a magistrate or use other reasonable endeavours to prevent the commission of the crime.

**51. RAISING OF UNAUTHORIZED FORCES.**

(1) A person who—

- (a) establishes or organizes; or
- (b) assists any person to establish or organize; or
- (c) equips or assists any person to equip by any means (including equipping with traditional weapons); or
- (d) takes part in or associates with,

a military force, para-military force, police force, body of persons purporting to exercise military, para-military or police powers or functions or any force similar in nature to a military, para-military or police force, except as provided for by law, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

(2) A person who—

- (a) plans or prepares for; or
- (b) assists in the planning or preparation for,

the raising of a military force, para-military force, police force, body of persons purporting to exercise military, para-military or police powers or functions, or any force similar in nature to a military, para-military or police force, except as provided for by law, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**52. QUASI-MILITARY ORGANIZATIONS.**

(1) Where the members or adherents of an association of persons, whether incorporated or not, are—

- (a) organized, trained or equipped for the purpose of enabling them to be employed in usurping all or any of the functions of the Police Force or of the Defence Force, or of a part of either of those forces; or
- (b) organized and trained, or organized and equipped—
  - (i) for the purpose of enabling them to be employed for the use or display of any physical force in promoting any political object; or
  - (ii) in such a manner as to arouse reasonable apprehension that they are organized and trained or organized and equipped for that purpose,

each member of the association is guilty of a misdemeanour.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding one year.

(2) A person who—

- (a) promotes or conspires with another person to promote; or
- (b) takes part in the organizing, training or equipping of members or adherents of,

an association referred to in Subsection (1) for any of the purposes specified in that subsection is guilty of a misdemeanour.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding three years.

(3) Subject to Subsection (4), a person who takes part in the control or management of an association referred to in Subsection (1) is guilty of a misdemeanour.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding three years.

(4) It is a defence to a charge of an offence against Subsection (3) if the person charged proves that he did not consent to or connive at the organization, training or equipment of the members or adherents of the association in contravention of Subsection (1).

(5) A prosecution for an offence against this section shall not be instituted without the written consent of the Prime Minister.

(6) In a prosecution for an offence against this section, proof of things done or of words written, spoken or published by any person taking part in—

(a) the control or management of an association; or  
 (b) organizing, training or equipping members or adherents of an association,  
 is admissible as evidence of the purposes for which, or the manner in which, members or adherents of the association (whether those persons or others) were organized, or trained or equipped.

(7) This section does not prohibit—

(a) the employment of a reasonable number of persons as stewards to assist in the preservation of order at a lawful public meeting held on private premises; or  
 (b) the making of arrangements for that purpose; or  
 (c) the instruction of the persons to be so employed in their lawful duties as such stewards; or  
 (d) their being furnished with badges or other distinguishing signs.

### 53. UNLAWFUL DRILLING.

(1) Subject to Subsection (4), a person who—

(a) without the prior permission of the Prime Minister trains or drills any other person to—  
 (i) the use of arms, including traditional arms; or  
 (ii) the practice of military, para-military, or police force exercises, movements or evolutions; or  
 (b) at any meeting or assembly of persons, held without the prior permission of the Prime Minister, is present for the purpose of training or drilling any other persons to—  
 (i) the use of arms, including traditional arms; or  
 (ii) the practice of military, para-military or police force exercises, movements or evolutions,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) Subject to Subsection (4), a person who—

(a) at a meeting or assembly held without the prior permission of the Prime Minister trains or drills, or is trained or drilled—  
 (i) to the use of arms, including traditional arms; or  
 (ii) in the practice of military, para-military or police force exercises, movements or evolutions; or

- (b) is present at any such meeting or assembly for the purpose of training or drilling, or of being so trained or drilled,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(3)<sup>17</sup> [*Repealed.*]

(4) This section does not apply to the training or drilling of a member or members of—

- (a) the Defence Force; or  
 (b) the Police Force; or  
 (c) the Correctional Service; or  
 (d) the Fire Service.

(5) A prosecution for an offence against this section must be commenced within six months after the offence is committed.

#### 54. SEDITION.

(1) A person who—

- (a) conspires with any person to carry into execution a seditious enterprise; or  
 (b) advisedly publishes any seditious words or writing,

is, subject to Subsection (2), guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) If a person convicted of an offence against Subsection (1) has been previously convicted of any such offence he is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(3) A prosecution for any of the offences against Subsection (1) must be begun within six months after the offence is committed.

(4) A person shall not be convicted of an offence against Subsection (1) on the uncorroborated testimony of one witness.

#### 55. DEFAMATION OF FOREIGN PRINCES.

A person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes—

- (a) anything intended to be read; or  
 (b) any sign or visible representation,

tending to expose to hatred or contempt in the estimation of the people of any foreign State any Prince or person exercising sovereign authority over that State is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

<sup>17</sup> Section 53(3) repealed by No. 13 of 1977, s2.

*Division 3. – Division 3.-Offences against the Executive and Legislative Power..***56. INTERFERENCE WITH THE HEAD OF STATE OR MINISTERS.**

(1) Any person who advisedly does any act calculated to interfere with the free exercise–

- (a) by the Head of State of the duties or authority of his office; or
- (b) by a member of the National Executive Council of the duties or authority of his office as–
  - (i) a member of the National Executive Council; or
  - (ii) a Minister of the Parliament,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2)<sup>18</sup> [*Repealed.*]

**57. INTERFERENCE WITH THE LEGISLATURE.**

(1) A person who advisedly, by force or fraud, interferes or attempts to interfere with the free exercise–

- (a) by the Parliament of its authority; or
- (b) by any member of the Parliament of his duties or authority–
  - (i) as a member; or
  - (ii) as a member of a Committee of the Parliament,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**(2)<sup>19</sup> 2058. DISTURBING THE LEGISLATURE.**

(1) Any person who advisedly–

- (a) disturbs the Parliament while in session; or
- (b) commits any disorderly conduct in the immediate view and presence of the Parliament while in session, tending to interrupt its proceedings or to impair the respect due to its authority,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**(2)<sup>21</sup> 2259. FALSE EVIDENCE BEFORE PARLIAMENT.**

(1) A person who in the course of an examination before the Parliament or a Committee of the Parliament, knowingly gives a false answer to any lawful and relevant question put to him in the course of the examination is guilty of a crime.

<sup>18</sup> Section 56(2) repealed by No. 13 of 1977, s3.

<sup>19</sup> Section 57(2) repealed by No. 13 of 1977, s4.

<sup>20</sup> Section 57(2) repealed by No. 13 of 1977, s4.

<sup>21</sup> Section 58(2) repealed by No. 13 of 1977, s5.

<sup>22</sup> Section 58(2) repealed by No. 13 of 1977, s5.



Penalty: Imprisonment for a term not exceeding seven years.

(2) A person shall not be arrested without warrant for an offence against Subsection (1).

(3) A person shall not be convicted of the offence defined in this section on the uncorroborated testimony of one witness.

**60. WITNESSES REFUSING TO ATTEND OR GIVE EVIDENCE BEFORE THE PARLIAMENT OR A COMMITTEE OF THE PARLIAMENT.**

A person who—

- (a) being duly summoned to attend as a witness, or to produce any book, document or other thing in his possession, before the Parliament, or a Committee of the Parliament authorized to summon witnesses or to call for the production of that thing, refuses or neglects without lawful excuse—
  - (i) to attend in accordance with the summons; or
  - (ii) to produce any thing that he is summoned to produce, and that is relevant and proper to be produced; or
- (b) being present before the Parliament, or a Committee of the Parliament authorized to summon witnesses, refuses to answer a lawful and relevant question,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**61. MEMBER OF THE PARLIAMENT RECEIVING BRIBES.**

(1) A member of the Parliament who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on any understanding that his vote, opinion, judgement, or action in the Parliament, or any Committee of the Parliament will—

- (a) be influenced by it; or
- (b) be given in any particular manner or in favour of any particular side of any question or matter,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person who commits an offence against Subsection (1) is disqualified from sitting or voting as a member of the Parliament for seven years.

(3) A person shall not be arrested without warrant for an offence against Subsection (1).

**62. BRIBERY OF MEMBER OF THE PARLIAMENT.**

(1) A person who—

- (a) in order—
  - (i) to influence a member of the Parliament in his vote, opinion, judgement or action on any question or matter arising in the Parliament or in any Committee of the Parliament; or
  - (ii) to induce a member to absent himself from the Parliament or from a Committee of the Parliament,

gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit to, on, or for the member, or to, on, or for, any other person; or

- (b) attempts, directly or indirectly, by fraud, threats or intimidation of any kind, to influence a member of the Parliament in his vote, opinion, judgement or action on any such question or matter, or to induce him to so absent himself,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

- (2) A person shall not be arrested without warrant for an offence against Subsection (1).

(3) Where a person is convicted of an offence against this section, all property that has been tendered or produced in evidence at the trial of the offender, as being the property or part of the property which the offender in the course of the commission of the offence gave, conferred or procured, or promised or offered to give, confer or procure, or to attempt to procure, to, on, or for a member of the Parliament, or to, on, or for any other person, is forfeited to the State, whether the property is the property of the offender or of any other person.

***Division 4. – Unlawful Assemblies: Breaches of the Peace.***

**63. UNLAWFUL ASSEMBLY, “RIOT”.**

(1) Subject to Subsection (3), when three or more persons, with intent to carry out some common purpose—

- (a) assemble in such a manner; or

- (b) being assembled, conduct themselves in such a manner,

as to cause persons in the neighbourhood to fear on reasonable grounds that they will—

- (c) tumultuously disturb the peace; or

- (d) by the assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace,

they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in the manner referred to in Subsection (1).

(3) An assembly of three or more persons who assemble for the purpose of protecting the house of any one of them against persons threatening to break and enter the house in order to commit an indictable offence in it is not an unlawful assembly.

(4) When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

**64. PUNISHMENT OF UNLAWFUL ASSEMBLY.**

<sup>23</sup>(1) A person who takes part in an unlawful assembly is guilty of a misdemeanour.

Penalty: <sup>24</sup>Imprisonment for a term not exceeding one year.

<sup>23</sup> Section 64 amended by Act No. 13 of 1977, s6, No. 10 of 1983, s1.

(2)<sup>25</sup> [Repealed.]

## 65. PUNISHMENT OF RIOT.

(1) A person who takes part in a riot is guilty of a misdemeanour.

Penalty: <sup>26</sup>Imprisonment for a term not exceeding three years.

(2) [Repealed.]

## 66. RIOTERS REMAINING AFTER COMMAND ORDERING THEM TO DISPERSE.

<sup>27</sup>(1) Whenever any persons, to the number of five or more, are riotously assembled together, it is the duty of a commissioned officer of the Police Force to go amongst them, or as near as he can safely come to them, and to give, or cause to be given in his presence, in a loud voice the following command:—

“All persons here assembled are by law commanded to disperse and go peacefully about their lawful business, or they will be liable to be imprisoned with hard labour for a maximum of five years.”

(2) A person who wilfully and knowingly, and by force, opposes, obstructs or hurts any person who goes to give, or begins to give, a command under Subsection (1), and by so doing prevents the command from being given, is guilty of a crime.

Penalty: <sup>28</sup>Imprisonment for a term not exceeding five years.

(3) Any persons who, being so assembled, continue together to the number of five or more, and do not disperse themselves as soon as practicable after the giving of the command referred to in Subsection (1) are guilty of a crime.

Penalty: <sup>29</sup>Imprisonment for a term not exceeding five years.

(4) When the giving of the command referred to in Subsection (1) is prevented, any persons who being so assembled, and to whom the command would or ought to have been given if the giving of the command had not been prevented, and who, knowing of the prevention, continue together to the number of five or more, and do not disperse themselves as soon as practicable after the time of the prevention, are guilty of a crime.

Penalty: <sup>30</sup>Imprisonment for a term not exceeding five years.

(5) A prosecution for an offence against this section shall be begun within one year after it is committed.

<sup>24</sup> Section 64: penalty clause repealed and replaced by the Criminal Code (Amendment No. 2) Act 1986 (No. 17 of 1986), s2.

<sup>25</sup> repealed by No. 13 of 1977, s7. No. 10 of 1988, s2.

<sup>26</sup> Section 65: penalty clause repealed and replaced by the Criminal Code (Amendment No. 2) Act 1986 (No. 17 of 1986), s3.

<sup>27</sup> Section 66 amended by Act No. 10 of 1983, s3.

<sup>28</sup> Section 66(2): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2 Act)* 1986 (No. 17 of 1986), s4(a).

<sup>29</sup> Section 66(3): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2 Act)* 1986 (No. 17 of 1986), s4(b).

<sup>30</sup> Section 66(4): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act* 1986 (No. 17 of 1986), s4(c).

(6) It is a defence to a charge of an offence against Subsection (3) if the defendant proves that he did not know that the command had been given or did not understand what was said.

#### **67. RIOTERS DEMOLISHING BUILDINGS, ETC.**

<sup>31</sup>(1) Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy—

- (a) a building; or
- (b) any machinery, whether fixed or moveable; or
- (c) any structure used in farming land, in carrying on any trade or manufacture, or in conducting the business of a mine; or
- (d) any bridge, wagon-way or trunk for conveying materials from a mine,

are each guilty of a crime.

Penalty: <sup>32</sup>Subject to Section 19, imprisonment for life.

(2) Any persons who, being riotously assembled together, unlawfully damage any of the things referred to in Subsection (1), are each guilty of a crime.

Penalty: <sup>33</sup>Imprisonment for a term not exceeding seven years.

#### **68. SMUGGLING OR RESCUING GOODS UNDER ARMS.**

Any persons who assemble together, to the number of three or more, armed with firearms or other dangerous or offensive weapons, in order to effect or aid in—

- (a) the unlawful shipping, unshipping, loading, moving or carrying away of any goods—
  - (i) the importation of which is prohibited; or
  - (ii) that are liable to duties of customs that have not been paid or secured; or
- (b) the rescuing or taking of any such goods from—
  - (i) any person authorized to seize them; or
  - (ii) any person employed by such a person or assisting him; or
  - (iii) any place where such a person has put them; or
- (c) the rescuing of a person who has been arrested on a charge of any crime relating to the Customs; or
- (d) the prevention of the arrest of a person guilty of any such crime, or of any person aiding in effecting any of the purposes referred to in this section,

are each guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

#### **69. SMUGGLING UNDER ARMS OR IN DISGUISE.**

Any persons who are found assembled together, to the number of six or more—

<sup>31</sup> Section 67 amended by Act No. 10 of 1983, s4.

<sup>32</sup> Section 67(1): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s5(a).

<sup>33</sup> Section 67(2): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s5(b).

- (a) having with them any goods liable to forfeiture under any law relating to the Customs; and
  - (b) carrying firearms or other dangerous or offensive weapons, or disguised,
- are each guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

## 70. GOING ARMED SO AS TO CAUSE FEAR.

<sup>34</sup>(1) A person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a misdemeanour.

Penalty: <sup>35</sup>Imprisonment for a term not exceeding two years.

(2) [*Repealed.*]

## 71. FORCIBLE ENTRY.

<sup>36</sup>(1) A person who, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enters on land that is in the actual and peaceable possession of another person is guilty of a misdemeanour.

Penalty: <sup>37</sup>Imprisonment for a term not exceeding one year.

(2) It is immaterial whether the person entering is entitled to enter on the land or not.

## 72. FORCIBLE DETAINER.

<sup>38</sup>A person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land is guilty of a misdemeanour.

Penalty: <sup>39</sup>Imprisonment for a term not exceeding one year.

## 73. AFFRAY.

<sup>40</sup>A person who takes part in a fight—

- (a) in a public highway; or
- (b) of such a nature as to alarm the public in any other place to which the public have access,

is guilty of a misdemeanour.

<sup>34</sup> Section 70 amended by Act No. 13 of 1977, s8, No. 10 of 1983, s5.

<sup>35</sup> Section 70: penalty clause repealed and replaced by the Criminal Code (Amendment No. 2) Act 1986 (No. 17 of 1986), s6.

<sup>36</sup> Section 71 amended by Act No. 10 of 1983, s6.

<sup>37</sup> Section 71: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s7.

<sup>38</sup> Section 72 amended by Act No. 10 of 1983, s7.

<sup>39</sup> Section 72: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s8.

<sup>40</sup> Section 73 amended by Act No. 10 of 1983, s8.

Penalty: <sup>41</sup>Imprisonment for a term not exceeding one year.

#### 74. CHALLENGE TO FIGHT A DUEL.

<sup>42</sup>A person who—

- (a) challenges another; or
- (b) attempts to provoke another; or
- (c) attempts to provoke any person to challenge another,

to fight a duel, is guilty of a misdemeanour.

Penalty: <sup>43</sup>Imprisonment for a term not exceeding three years.

#### 75. PRIZE FIGHT.

A person who fights in a prize fight, or subscribes to or promotes a prize fight, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

#### 76. THREATENING VIOLENCE.

<sup>44</sup>(1)<sup>45</sup> A person who—

- (a) with intent to intimidate or annoy any person—threatens to break or injure a dwelling-house; or
- (b) with intent to alarm any person in a dwelling-house—discharges loaded firearms or commits any other breach of the peace,

is guilty of a misdemeanour.

<sup>46</sup>(2)<sup>47</sup> <sup>48</sup>If an offence against Subsection (1) is committed in the night, the offence is a crime, and the offender is liable to imprisonment for a term not exceeding one year.

#### 77. ASSEMBLING FOR THE PURPOSE OF SMUGGLING.

Any persons who assemble together, to the number of three or more, for the purpose of unshipping, carrying or concealing any goods subject to duties of Customs and liable to forfeiture under any law relating to the Customs are each guilty of an offence.

Penalty: A fine not exceeding K200.00, or to imprisonment for a term not exceeding six months.

<sup>41</sup> Section 73: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s9.

<sup>42</sup> Section 74 amended by Act No. 10 of 1983, s9.

<sup>43</sup> Section 74: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s10.

<sup>44</sup> Section 76 amended by Act No. 10 of 1983, s10.

<sup>45</sup> Section 76(1): penalty clause repealed by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s11(a).

<sup>46</sup> Section 76(1): penalty clause repealed by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s11(a).

<sup>47</sup> Section 76(2) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s11.

<sup>48</sup> Section 76(2) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s11.

**78. UNLAWFUL PROCESSIONS.**

<sup>49</sup>(1) Any persons who assemble together, to the number of three or more—

- (a) bearing or wearing or having amongst them any firearms or other offensive weapons; or
- (b) publicly exhibiting any banner, emblem, flag, or symbol, the displaying of which is calculated to promote animosity between people of different religious faiths; or
- (c) being accompanied by any music of a like nature or tendency,

and, being so assembled, join in any parade or procession for the purpose of—

- (d) celebrating or commemorating any festival, anniversary or political event relating to or connected with any religious or political distinction or difference between any classes of people; or
- (e) demonstrating any such religious or political distinction or difference,

are each guilty of an offence.

Penalty: <sup>50</sup>Subject to Subsection (2), imprisonment for a term not exceeding one month.

(2) If the offender is himself bearing or wearing firearms or any other offensive weapon, he is guilty of an offence.

Penalty: <sup>51</sup>Imprisonment for a term not exceeding six months.

(3) Where three or more persons are assembled together in a manner referred to in Subsection (1), it is the duty of a commissioned officer of the Police Force to give, or cause to be given in his presence, in a loud voice, to the persons assembled, the following command:—

“All persons here assembled are by law commanded to disperse and go peacefully about their lawful business, or they will be liable to be imprisoned for a maximum of three months.”

(4) Any persons who, being so assembled, continue together to the number of three or more, and do not disperse themselves as soon as practicable after the giving of the command referred to in Subsection (3) are each guilty of an offence.

Penalty: <sup>52</sup>Imprisonment for a term not exceeding three months.

(5) It is a defence to a charge of an offence against Subsection (4) if the defendant proves that he did not know that the command had been given or did not understand what was said.

***Division 5. – Offences Against Political Liberty.***

**79. INTERFERING WITH POLITICAL LIBERTY.**

(1) A person who, by violence, threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person is guilty of a misdemeanour.

<sup>49</sup> Section 78 amended by Act No. 10 of 1983, s11.

<sup>50</sup> Section 78(1): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s12(a).

<sup>51</sup> Section 78(2): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s12(b).

<sup>52</sup> Section 78(4): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s12(c).

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding two years.

(2) If a person who commits an offence against Subsection (1) is a public officer, and commits the offence in abuse of his authority as such an officer, he is liable to imprisonment for a term not exceeding three years.

***Division 6. – Piracy.***

**80. INTERPRETATION OF DIVISION 6.**

(1) In this Division–

“**piracy**” means the act of a pirate;

“**pirate**” includes any person who–

- (a) on the high seas commits, otherwise than as an act of war and under the authority of some foreign Prince or State, any act with respect to a ship, or any goods or merchandise belonging to a ship or laden on a ship, that, if the act were committed on land, would constitute robbery as defined in Section 384; and
- (b) having on the high seas obtained possession of a ship by means of any such act, retains possession of the ship; and
- (c) is declared by any law to be a pirate.

(2) A person who–

(a) at any place within the jurisdiction of the National Court commits–

- (i) under colour of a commission from a foreign State or Prince, whether or not the State or Prince is at war with the Queen and Head of State; or
- (ii) under pretence of authority from any person,

any act of hostility, or any act that if it were committed on land, would be robbery as defined in Section 384, against another person; or

- (b) during a war adheres to or gives aid to the enemies of Papua New Guinea at any place within the jurisdiction of the National Court; or
- (c) forcibly enters a ship at any place within the jurisdiction of the National Court, and throws overboard or destroys any part of the goods or merchandise belonging to the ship or laden on it; or
- (d) being on board a ship at any place within the jurisdiction of the National Court–
  - (i) turns pirate, enemy or rebel, and piratically runs away with the ship, or any boat, ordnance, ammunition, or goods belonging to it or laden on it; or
  - (ii) voluntarily yields up the ship or any thing referred to in Subparagraph (i) to a pirate; or
  - (iii) brings a seducing message from a pirate, enemy or rebel; or
  - (iv) consults or conspires with, or attempts to corrupt, any master or officer of a ship, or any seaman, with intent that he should run way with or yield up any ship, goods or merchandise, turn pirate or go over to pirates; or
  - (v) lays violent hands on the master of the ship, with intent to hinder him from fighting in defence of the ship and goods committed to his trust; or
  - (vi) confines the master of the ship; or
  - (vii) makes, or endeavours to make, a revolt in the ship; or



- (e) being on board a ship, knowingly–
  - (i) trades with a pirate; or
  - (ii) furnishes a pirate with ammunition, provisions or stores; or
  - (iii) fits out a ship or vessel with a design to trade with or supply, or to correspond with, a pirate; or
  - (iv) conspires or corresponds with a pirate,

is a pirate.

### **81. PUNISHMENT OF PIRACY.**

(1) A person who, within the territorial jurisdiction of Papua New Guinea, commits piracy is guilty of a crime.

Penalty: Subject to Subsection (2) and to Section 19, imprisonment for life.

(2) If piracy is committed with respect to a ship, and if at or immediately before or immediately after the time of committing the crime the offender–

- (a) assaults any person on board of or belonging to the ship, with intent to kill him or to kill any other person; or
- (b) wounds any such person; or
- (c) unlawfully does any act by which the life of any such person is endangered,

the offender is liable to the punishment of death.

### **82. ATTEMPTED PIRACY WITH PERSONAL VIOLENCE.**

A person who, within the territorial jurisdiction of Papua New Guinea, with intent to commit the crime of piracy with respect to a ship–

- (a) assaults any person on board, or belonging to, the ship, with intent to kill him or to kill any other person; or
- (b) wounds any such person; or
- (c) unlawfully does any act by which the life of any such person is endangered,

is guilty of a crime,

Penalty: Death.

### **83. AIDING PIRATES.**

A person who–

- (a) brings a seducing message from a pirate; or
- (b) consults or conspires with, or attempts to corrupt, any master or officer of a ship or any seaman, with intent that he should run away with or yield up any ship, goods, or merchandise, or turn pirate, or go over to pirates,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**PART III. – OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE  
AND AGAINST PUBLIC AUTHORITY.**

*Division IA.<sup>53</sup> – Interpretation.*

**83A. INTERPRETATION.**

In this Part, unless the contrary intention appears–

“**person employed in the Public Service**” includes–

- (a) a member of any of the State Services established under or by authority of Section 188 (*Establishment of the State Services*) of the *Constitution*; and
- (b) a constitutional office-holder as defined in Section 221 (*Definitions*) of the *Constitution*; and
- (c) a member of or person employed by a constitutional institution, being any office or institution established or provided for by the *Constitution* including the Head of State, a Minister or the National Executive Council; and
- (d) a member of the National Parliament or of a provincial assembly; and
- (e) a person employed under the *Official Personal Staff Act 1980* or the *Parliamentary Members’ Personal Staff Act 1988*; and
- (f) a person employed by a provincial government; and
- (g) a member, officer or employee of a body or corporation established by statute;

*Division I. – Disclosing Official Secrets.*

**84. DISCLOSURE OF SECRETS RELATING TO DEFENCES BY PUBLIC OFFICERS.**

(1) A person employed in the Public Service who communicates to any person otherwise than in the course of his official duty any plans, documents or other information relating to any battery, field work or fortification in Papua New Guinea, or relating to any other defence of Papua New Guinea, is guilty of a misdemeanour.

(2) If an offence against Subsection (1) is committed advisedly the offender is liable to imprisonment for a term not exceeding three years.

(3) If an offence against Subsection (1) is committed by negligence, the offender is liable to a fine not exceeding K400.00 or imprisonment for one year.

**85. OBTAINING DISCLOSURE OF SECRETS RELATING TO DEFENCES.**

A person who–

- (a) procures a person employed in the Public Service to make a communication referred to in Section 84; or

<sup>53</sup> Division III.1A added by *Criminal Code (Amendment) Act 1989* (No. 2 of 1989), s2.

(b) without lawful authority obtains information as to any matter referred to in that section,  
is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

#### **86. DISCLOSURE OF OTHER OFFICIAL SECRETS.**

A person employed in the Public Service who publishes or communicates, otherwise than to some person to whom he is bound to publish or communicate it—

(a) any fact that comes to his knowledge by virtue of his office; or  
(b) any document which comes to his possession by virtue of his office,  
that it is his duty to keep secret, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

### *Division 2. – Corruption and Abuse of Office.*

#### **87. OFFICIAL CORRUPTION.**

(1) A person who—

(a) being—

- (i) employed in the Public Service, or the holder of any public office; and
- (ii) charged with the performance of any duty by virtue of that employment or office, (not being a duty touching the administration of justice),

corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on account of any thing done or omitted to be done, or to be done or omitted to be done by him in the discharge of the duties of his office; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on or for any person, any property or benefit on account of any such act or omission on the part of a person in the Public Service or holding a public office,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years, and a fine at the discretion of the court.

(2) A person shall not be arrested without warrant for an offence against Subsection (1).

#### **88. EXTORTION BY PUBLIC OFFICERS.**

A person employed in the Public Service who takes or accepts from any person, for the performance of his duty as an officer of the Public Service any reward beyond his proper pay and emoluments, or any promise of such a reward, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

#### **89. PUBLIC OFFICERS INTERESTED IN CONTRACTS.**

A person employed in the Public Service who knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint-stock company consisting of more

than 20 persons, a private interest in any contract or agreement that is made on account of the Public Service with respect to any matter concerning the Department of the Public Service in which he is employed, is guilty of a misdemeanour.

Penalty: Imprisonment for three years, and a fine at the discretion of the court.

**90. OFFICERS CHARGED WITH ADMINISTRATION OF PROPERTY OF A SPECIAL CHARACTER OR WITH SPECIAL DUTIES.**

A person employed in the Public Service, who—

- (a) is charged by virtue of his employment with any judicial or administrative duties respecting—
  - (i) any property of a special character; or
  - (ii) the carrying on of any manufacture, trade or business of a special character; and
- (b) has acquired or holds, directly or indirectly, a private interest in any such property, manufacture, trade, or business; and
- (c) discharges any such duties with respect to—
  - (i) the property, manufacture, trade or business in which he has the interest; or
  - (ii) the conduct of any person in relation to it,

is guilty of a misdemeanour.

Penalty: Imprisonment for one year, and a fine at the discretion of the court.

**91. FALSE CLAIMS BY OFFICIALS.**

A person employed in the Public Service in such a capacity as to require him or to enable him to furnish returns or statements touching—

- (a) any remuneration payable or claimed to be payable to himself or to any other person; or
- (b) any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person,

who makes a return or statement touching any such matter that is, to his knowledge, false in any material particular, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**92. ABUSE OF OFFICE.**

(1) A person employed in the Public Service who, in abuse of the authority of his office does, or directs to be done, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding two years.

(2) If an act prohibited by Subsection (1) is done, or directed to be done, as the case may be, for purposes of gain, the offender is liable to imprisonment for a term not exceeding three years.

**93. CORRUPTION OF VALUATOR.**

A person who, being duly appointed under any law to be a valuator for determining the compensation to be paid to any person for land compulsorily taken from him under any law, or for injury done to any land under any law—

- (a) acts as valuator while he has, to his knowledge, an interest in the land in question; or
- (b) executes unfaithfully, dishonestly, or with partiality, the duty of making a valuation of the land or of the extent of the injury,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**94. FALSE CERTIFICATES BY PUBLIC OFFICERS.**

A person who, being authorized or required by law to give any certificate touching any matter by virtue of which the rights of any person may be prejudicially affected, gives a certificate that is, to his knowledge, false in any material particular is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**95. ADMINISTERING EXTRA-JUDICIAL OATHS.**

(1) A person who administers an oath, or takes a solemn declaration, an affirmation or an affidavit, concerning any matter with respect to which he has not by law authority to do so is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

(2) Subsection (1) does not apply to an oath, declaration, affirmation, or affidavit, administered or taken—

- (a) before a justice in any matter relating to—
  - (i) the preservation of the peace or the punishment of offences; or
  - (ii) inquiries respecting sudden death; or
- (b) in proceedings before the Parliament or a Committee of the Parliament; or
- (c) for some purpose that is lawful under the laws of another country; or
- (d) for the purpose of giving validity to an instrument that is intended to be used in another country.

**96. FALSE ASSUMPTION OF AUTHORITY.**

A person who—

- (a) not being a magistrate or justice assumes to act as a magistrate or justice, as the case may be; or
- (b) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration, an affirmation or an affidavit, or to do any other act of a public nature that can only be done by persons authorized by law to do so; or
- (c) represents himself to be a person authorized by law to sign a document testifying—
  - (i) to the contents of any register or record kept by lawful authority; or

- (ii) testifying to any fact or event, and signs such a document as being so authorized when he is not, and knows that he is not, so authorized,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

#### **97. PERSONATING PUBLIC OFFICERS.**

(1) A person who—

- (a) personates any person employed in the Public Service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or
- (b) falsely represents himself to be a person employed in the Public Service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of that employment,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2)<sup>54</sup> [*Repealed.*]

#### **97A. CORRUPTLY PROCURING WITHDRAWAL OF TENDERS.**

<sup>55</sup>A person who—

- (a) with intent to obtain a contract from, or provide a service to, a public body, offers a gratification to another person, to induce that person to refrain from making a tender or withdraw or alter a tender; or
- (b) solicits or accepts a gratification as an inducement or reward for refraining from making a tender or withdrawing or altering a tender made for such contract,

is guilty of an offence.

Penalty: A fine at the discretion of the Court or imprisonment for a term not exceeding seven years, or both.

#### **97B. BRIBERY OF MEMBER OF PUBLIC SERVICE.**

<sup>56</sup>(1) A person who offers to a person employed in the Public Service, or being a person employed in the Public Service, solicits or accepts a gratification as an inducement or reward for—

- (a) the person employed in the Public Service voting or abstaining from voting at any meeting in favour of or against any measure; or
- (b) the person employed in the Public Service performing or abstaining from performing or aiding in procuring or hindering the performance of an official act; or

<sup>54</sup> Section 97(2) repealed by No. 13 of 1977, s9.

<sup>55</sup> Section 97A added by *Criminal Code (Amendment) Act 1989* (No. 2 of 1989), s3.

<sup>56</sup> Section 97B added by *Criminal Code (Amendment) Act 1989* (No. 2 of 1989), s4.

- (c) the person employed in the Public Service aiding in procuring or preventing the passing of any vote or granting of any contract in favour of any person; or
- (d) the person employed in the Public Service showing or refraining from showing any favour or disfavour in his capacity as a person employed in the Public Service,

is guilty of an offence.

Penalty: A fine at the discretion of the Court or imprisonment for a term not exceeding seven years, or both.

(2) An offence under Subsection (1) is committed notwithstanding that the person employed in the Public Service had no right or opportunity to show or refrain from showing favour or that the inducement was not in relation to the affairs of the public body.

### **97C. DUTY OF PERSON OFFERED GRATIFICATION.**

<sup>57</sup>(1) A person who is corruptly offered or given a gratification shall report the offer or gift at the earliest opportunity to a commissioned police officer.

(2) A person who, without reasonable excuse, fails to comply with the provisions of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding 12 months, or both.

### **97D. EVIDENTIARY PROVISIONS RELATING TO THIS DIVISION.**

<sup>58</sup>(1) In proceedings for an offence under this Division evidence is not admissible to show that a gratification is customary in any trade, vocation or calling.

(2) A gratification received or solicited by—

- (a) a relative of; or
- (b) a partner, clerk or employee of,

an agent from a person having business relations with the principal of such agent, is deemed to have been received or solicited by the agent, unless the agent proves that the gratification was received without his consent or knowledge.

(3) A gratification given or offered to—

- (a) a relative of; or
- (b) a partner, clerk or employee of,

an agent with the consent or knowledge of the agent, or given or offered at the request of the agent to a person having business relations with the principal of the agent, is deemed to have been offered or given to the agent.

(4) In proceedings under this Division, where a person accused—

- (a) is in possession of property or pecuniary resources disproportionate to his known sources of income, for which he cannot satisfactorily account; or
- (b) at or about the time of the alleged offence obtained an accretion to his property or pecuniary resources for which he cannot satisfactorily account,

<sup>57</sup> Section 97C added by *Criminal Code (Amendment) Act 1989* (No. 2 of 1989), s5.

<sup>58</sup> Section 97D added by *Criminal Code (Amendment) Act 1989* (No. 2 of 1989), s6.

that fact may be—

- (c) proved and taken into account by the court; and
- (d) considered as corroboration of the evidence of a witness that the accused person accepted or obtained gratification as an inducement or reward.

(5) Where the resources or property referred to in Subsection (4)(a) or an accretion thereto referred to in Section (4)(b) are held by a person whose relationship to the accused gives reasonable cause for believing that he is holding the resources, property or accretion thereto in trust or as a gift from the accused, then the accused shall be deemed to be in possession of those resources or that property or that accretion thereto.

(6) Where, in any proceedings under this Act, it is proved that a gratification has been paid to or received by a person employed in the Public Service, that gratification is deemed to have been paid and received corruptly, as an inducement or reward, unless the contrary is proved.

*Division 2A.<sup>59</sup> – Secret Commissions.*

**97E. INTERPRETATION.**

In this Division, unless the contrary intention appears—

“**advice given**”, or words to the like effect includes every report, certificate, statement and suggestion intended to influence the person to whom the same is made or given and every influence deliberately or expressly exercised by one person over another;

“**agent**” includes a person (whether natural or corporate) acting or having been acting, or desirous or intending to act, for or on behalf of a person (whether natural or corporate) whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, charterer, master mariner, purser or any crew of a vessel, engineer, lawyer, surveyor, buyer, salesman, foreman, trustee, official assignee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of assignment, receiver, director, manager, or other officer or member of the committee or governing body of a corporation, club, partnership or association, or in any other capacity, either alone or jointly with any other person (whether natural or corporate) and whether in his own name or in the name of his principal or otherwise, a Minister and a person employed in the Public Service;

“**contract**” includes a contract of sale or employment or any other contract whatsoever, including an order for any commodity;

“**in relation to the affairs or business of his principal**” implies the additional words “whether within the scope of his authority or course of his employment as agent or not”;

“**person having business relations with the principal**” includes—

- (a) the State, a Minister, a corporation representing the State, a local authority, public body or any Board or authority established under an Act of Parliament; and
- (b) a person (whether natural or corporate), whether as principal or agent, carrying on or having carried on or desirous of carrying on or intending to

<sup>59</sup> Division III.2A added by *Criminal Code (Amendment) Act 1989* (No. 2 of 1989), s7.



carry on any negotiation or business with a principal, or engaged or interested or having been engaged or interested in the performance of a contract with or in the execution of any work for or business in the supply of any goods or chattels to a principal; and

(c) an agent or employee of any person or body referred to in Paragraph (a);

**“principal”** includes a person (whether natural or corporate) for or on behalf of whom the agent acts, has acted, or is desirous or intending to act, and includes the State, a Minister or corporation representing the State, or any local authority or other public body constituted by or under Act for or on behalf of whom the agent acts, has acted or is desirous or intending to act;

**“solicit a valuable consideration”** and **“valuable consideration solicited”** and words to the like effect shall be construed with the following directions, namely, that an agent who diverts, obstructs, gives untruthful reports or interferes with the proper course of business or manufacture or impedes or obstructs, or fails to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of a valuable consideration from any other person interested in that negotiation or business, or with intent to injure any such person, is deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent;

**“trustee”** includes the public curator, an executor, administrator, liquidator, official assignee, trustee in bankruptcy, receiver, committee of the estate of an insane person, person having power to appoint a trustee, person entitled to obtain probate of the will or letters of administration to the estate of a deceased person, or any other person occupying a fiduciary position;

**“valuable consideration”** includes any real or personal property, money, loan, office, place, employment, agreement to give employment, benefit or advantage whatsoever, commission or rebate, payment in excess of the actual value of the goods or service, deduction or percentage, bonus or discount, forbearance to demand money or money’s worth or valuable thing, detriment, loss or responsibility given, suffered or taken, the refraining from carrying out or doing something which lawfully should be carried out or done and the acceptance of any of the foregoing which shall be deemed the receipt of valuable consideration.

#### **97F. PROHIBITION OF INDIRECT ACTS.**

An act or thing prohibited by this Division is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

#### **97G. RECEIPT OR SOLICITATION OF SECRET COMMISSION BY AN AGENT, ETC.**

(1) An agent who corruptly receives or solicits from any person for himself or for another person a valuable consideration—

(a) as an inducement or reward for or otherwise on account of doing or forbearing to do, or having done or forborne to do, any act in relation to the affairs or business of the principal of the agent; or

- (b) the receipt or any expectation of which would in any way tend to influence him to show, or to forbear to show, favour or disfavour to a person in relation to the affairs or business of the principal of the agent,

is guilty of an offence.

- (2) A person who corruptly gives or offers to an agent a valuable consideration—

- (a) as an inducement or reward for or otherwise on account of the agent doing or forbearing to do, or having done or forborne to do, any act in relation to the affairs or business of the principal of the agent; or

- (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or to forbear to show, favour or disfavour to a person in relation to the affairs or business of the principal of the agent,

is guilty of an offence.

#### **97H. SECRET GIFTS.**

- (1) A valuable consideration received or solicited by—

- (a) a parent, spouse or child; or

- (b) a partner, clerk or employee,

of an agent, from a person having business relations with the principal of such agent, is deemed to have been received or solicited by the agent, unless it is proved that the valuable consideration was so received or solicited without the consent, knowledge or privity of the agent.

- (2) A valuable consideration—

- (a) given or offered to—

- (i) a parent, spouse or child; or

- (ii) a partner, clerk or employee,

of an agent and so given or offered without the consent, knowledge or privity of the agent; or

- (b) given or offered, at the request of the agent, to a person by a person having business relations with the principal of such agent,

is deemed to have been given or offered to the agent.

#### **97I. FALSE OR MISLEADING RECEIPT OR ACCOUNT.**

A person who, with intent to deceive or defraud the principal, gives to an agent, or an agent who receives or uses or gives to the principal, a receipt, invoice, account or document in respect of which, or in relation to a dealing, transaction or matter in which, the principal is interested and which—

- (a) contains a statement which is false or erroneous or defective in any important particular, or contains an overcharge or is in any way likely to mislead the principal; or

- (b) omits to state explicitly and fully the fact of a commission, percentage, bonus, discount, rebate, repayment, gratuity or deduction having been made, given, or allowed, or agreed to be made, given or allowed,

is guilty of an offence.

**97J. SECRET COMMISSION FOR ADVICE GIVEN, ETC.**

(1) Where advice is given by one person to another, and such advice is in any way intended or likely to induce or influence the person advised—

- (a) to enter into a contract with a third person; or
- (b) to—
  - (i) appoint, or join with another in the appointment; or
  - (ii) vote for, or aid in obtaining the election or appointment; or
  - (iii) authorize, or join with another in authorizing the appointment, of a third person as trustee, director, manager or official,

and a valuable consideration is, without the assent of the person advised, given by such third person to the person giving the advice, the gift or receipt of the valuable consideration is an offence.

(2) Subsection (1) does not apply where—

- (a) the person giving the advice was, to the knowledge of the person advised, the agent of such third person; or
- (b) the valuable consideration was not given in respect of such advice.

(3) An offer or solicitation of a valuable consideration in respect of advice given, or to be given, by one person to another with a view to induce or influence the person advised—

- (a) to enter into a contract with the person offering or solicited; or
- (b) to—
  - (i) appoint, or join with another in appointing; or
  - (ii) vote for, or aid in obtaining the election or appointment of; or
  - (iii) authorize, or join with another in authorizing the appointment of, the person offering or solicited as trustee, director, manager of official,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, is an offence.

(4) Subsection (3) does not apply where the person first-mentioned in that subsection is the agent of the person offering or solicited.

**97K. SECRET COMMISSION TO TRUSTEE IN RETURN FOR SUBSTITUTED APPOINTMENT.**

A—

- (a) person who offers or gives a valuable consideration to a trustee; or
- (b) trustee who receives or solicits a valuable consideration for himself or for another person,

without the consent of the persons beneficially entitled to the estate or of a Judge, as an inducement or reward for—

- (c) appointing, or having appointed; or
- (d) joining, or having joined with another in appointing; or
- (e) authorizing, or having authorized or joining with another in authorizing,

a person to be appointed in his stead or instead of him and any other person as trustee, is guilty of an offence.

**97L. LIABILITY OF DIRECTOR, ETC., ACTING WITHOUT AUTHORITY.**

A director, manager or officer of a company, or an officer or member of the crew of a vessel, or a person acting for another, who—

- (a) knowingly takes part in; or
- (b) is in any way privy to doing; or
- (c) attempts to do,

an act or thing without authority, which if authorized, would be in contravention of a provision of this Division, is guilty of an offence.

**97M. PENALTY ON CONVICTION.**

A person guilty of an offence against this Division is—

- (a) liable—
  - (i) if a corporation, to a fine not exceeding K2,000.00; and
  - (ii) if a natural person, to a fine not exceeding K2,000.00 and to imprisonment for a term not exceeding one year or to both such fine and imprisonment; and
- (b) in addition, liable to be ordered to pay to such person and in such manner as the court directs the amount or value, according to the estimation of the court, of any valuable consideration received or given by him, or any part thereof, and such order shall be enforceable as an order of the court.

**97N. COURT MAY ORDER WITHDRAWAL OF TRIFLING OR TECHNICAL OFFENCES.**

Where, in a prosecution under this Division it appears to the court that the offence charged is, in the particular case, of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion and for reasons stated in the application of the accused, dismiss the case, but the court may, if it thinks fit, make an order under Section 97M(b).

**97O. CUSTOM OF ITSELF NO DEFENCE.**

In a prosecution under this Division it does not amount to a defence to show that the receiving, soliciting, giving or offering of a valuable consideration mentioned or referred to in the prosecution is customary in any trade, business or calling.

**97P. BURDEN OF PROOF THAT GIFT IS NOT A SECRET COMMISSION.**

Where, in a prosecution under this Division, it is proved that a valuable consideration has been—

- (a) received or solicited by an agent from; or
- (b) given or offered to an agent by,

a person having business relations with the principal of that agent, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given or offered in contravention of a provision of this Division is on the accused.

*Division 3. – Division 3.-Corrupt and Improper Practices at Elections..***98. INTERPRETATION OF DIVISION 3.**

In this Division–

“**ballot-box**” includes any receptacle in which voting-papers are put before being counted at an election;

“**election**” includes any election held under the authority of any law providing for the choice of persons to fill any office or place of a public character;

“**elector**” includes any person entitled to vote at an election;

“**local election**” includes any election held under any law relating to Local-level Government;

“**polling-booth**” includes any room or place in which voting at an election is conducted or in which the votes are counted.

**99. PERSONATION.**

A person who votes or attempts to vote in the name of another person at an election, whether the name is that of a person living or dead or of a fictitious person, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding two years.

**100. DOUBLE VOTING.**

A person who, being an elector, votes or attempts to vote at an election more often than he is entitled to vote at the election is guilty of a crime.

Penalty: Imprisonment for a term not exceeding two years.

**101. TREATING.**

(1) A person who, before, during or after an election, corruptly provides, or corruptly pays in whole or part the expense of providing, any food, drink or lodging to or for any person on account of anything done or omitted to be done, or to be done or omitted to be done, by an elector at the election in the capacity of an elector, is guilty of a misdemeanour.

(2) An elector, who corruptly receives any food, drink, or lodging, on account of an act or omission referred to in Subsection (1) is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

**102. UNDUE INFLUENCE.**

A person who–

(a) uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or threatens to cause any detriment of any kind to an elector–

(i) in order to induce him to vote or refrain from voting at an election; or

- (ii) on account of his having voted or refrained from voting at an election; or
- (b) by force or fraud prevents or obstructs the free exercise of the franchise by an elector, or by any such means compels or induces an elector to vote or refrain from voting at an election,

is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

### 103. BRIBERY.

A person who—

- (a) gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on, or for, any person any property or benefit of any kind—
  - (i) on account of anything done or omitted to be done, or to be done or omitted to be done, by an elector at an election in the capacity of an elector; or
  - (ii) on account of any person acting or joining in a procession during an election; or
  - (iii) in order to induce any person to endeavour to procure the return of any person at an election, or the vote of any elector at an election; or
- (b) being an elector, asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on account of anything done or omitted to be done, or to be done or omitted to be done, by him at an election in the capacity of an elector; or
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person, on account of a promise made by him or any other person to endeavour to procure the return of any person at an election, or the vote of any person at an election; or
- (d) advances or pays any money to or to the use of any other person with the intent that the money will be applied for any of the purposes referred to in Paragraph (a), (b) or (c) or in discharge or repayment of money wholly or in part applied for any such purpose; or
- (e) corruptly transfers or pays any property or money to any person for the purpose of enabling that person to be registered as an elector, and so influencing the vote of that person at a future election; or
- (f) is privy to the transfer or payment referred to in Paragraph (e) that is made for his benefit; or
- (g) being a candidate at an election, convenes or holds a meeting of electors or of his committee in a house licensed for the sale of fermented or spirituous liquors,

is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

### 104. FURTHER PENALTY FOR CORRUPT PRACTICES.

(1) A person convicted of an offence against Section 99, 100, 101, 102 or 103 committed with respect to a parliamentary election becomes incapable, for three years from the date of the conviction—

- (a) of being registered as an elector or of voting at any parliamentary election or of holding any judicial office, and if he holds any such office the office is vacated; or
- (b) being elected or appointed to or of sitting in the Parliament, and, if at the time of the conviction he is a member of the Parliament his seat is vacated.

(2) Any person convicted of any offence referred to in Subsection (1) committed with respect to a Local-level Government election becomes incapable, for two years from the date of the conviction, of holding any local government office, and, if he holds any such office, the office is vacated.

#### **105. ILLEGAL PRACTICES.**

(1) A person who—

- (a) being prohibited by law from voting at an election, and knowing that he is so prohibited—votes at the election; or
- (b) procures any person who is, and whom he knows to be, prohibited from voting at an election—to vote at the election; or
- (c) before or during an election, and for the purpose of, promoting or procuring the choice of any candidate at the election—knowingly publishes a false statement of the withdrawal of another candidate at the election; or
- (d) before or during an election, and for the purpose of affecting the return of a candidate at the election—knowingly publishes a false statement of fact respecting the personal character or conduct of the candidate; or
- (e) being a candidate at an election—withdraws from being a candidate in consideration of a payment or promise of payment; or
- (f) being a candidate or the agent of a candidate at an election—corruptly procures any other person to withdraw from being a candidate at the election in consideration of any payment or promise of payment,

is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

(2) If an offence under Subsection (1) was committed with respect to a parliamentary election, the offender also becomes incapable, for two years from the date of the conviction—

- (a) of being registered as an elector for the electorate for which the election with reference to which the offence was committed was held; and
- (b) of voting at any election held for that electorate.

#### **106. OTHER ILLEGAL PRACTICES.**

(1) A person who—

- (a) knowingly provides money for any payment that is contrary to any law relating to elections, or for replacing any money that has been expended in any such payment, and that is not allowed by law to be an exception; or
- (b) prints, publishes or posts any bill, placard or poster that has reference to an election and does not bear on the face of it the name and address of the printer and publisher; or
- (c) hires or uses for a committee-room at an election—

- (i) any part of a house licensed for the sale of fermented or spirituous liquors; or
- (ii) any part of any premises where any intoxicating liquor is sold or supplied to members of a club, society or association that is not a permanent political club, unless it is a part that—
  - (A) has a separate entrance; and
  - (B) has no direct communication with any part of the premises in which intoxicating liquor is sold; and
  - (C) is ordinarily let for the purpose of chambers or offices or for holding public meetings or arbitrations; or
- (d) knowing that it is intended to be used as a committee-room at an election, lets for such use any part of any such premises, not being a part excepted under Paragraph (c)(ii)(A), (B) or (C),

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) If an offence under Subsection (1) was committed with respect to a parliamentary election, and the offender was a candidate or the agent of a candidate at the election, he also incurs the same incapacity as a person convicted of an offence against Section 105 committed with respect to a parliamentary election.

#### **107. PROSECUTION FOR CORRUPT AND ILLEGAL PRACTICES.**

(1) A prosecution for an offence against any of the preceding provisions of this Division must be begun—

- (a) within one year after the offence is committed; or
- (b) if it is committed with respect to a parliamentary election with respect to which a petition is tried by the National Court, within three months after the report of the National Court is made,

whichever period last expires, but in any event it must be begun within two years after the offence is committed.

(2) For the purposes of Subsection (1), the service or execution of process on or against the alleged offender is the commencement of the prosecution, unless the service or execution is prevented by some act on his part, in which case the issue of the process is the commencement of the proceeding.

#### **108. INTERFERENCE AT ELECTIONS.**

(1) A person who—

- (a) intrudes into a polling-booth, not being lawfully entitled to be in it; or
- (b) wilfully interrupts, obstructs, or disturbs, any proceedings at an election,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) A person found committing an offence against Subsection (1) may be arrested without warrant by direction of the presiding officer.



**109. ELECTORS ATTEMPTING TO VIOLATE SECRECY OF BALLOT, ETC.**

(1) A person who, having received a ballot-paper from the presiding officer at an election—

- (a) wilfully makes on the ballot-paper any mark or writing not expressly authorized by law; or
- (b) wilfully fails to fold up the ballot-paper in such a manner as to conceal the names of the candidates; or
- (c) wilfully fails to deposit the ballot-paper in the ballot-box in the presence of the presiding officer,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) A person who—

- (a) takes or attempts to take a ballot-paper out of a polling booth; or
- (b) whilst an elector is preparing his ballot-paper in a compartment provided for the use of electors actually voting, wilfully intrudes into the compartment,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(3) A person found committing an offence against Subsection (2) may be arrested without warrant by direction of the presiding officer.

**110. STUFFING BALLOT-BOXES.**

(1) A person who places, or is privy to placing, in a ballot-box a ballot-paper that has not been lawfully handed to and marked by an elector is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) Proof that, at the conclusion of a poll, a greater number of ballot-papers—

- (a) is found in a ballot-box in use at a polling-booth; or
- (b) is returned by the person who acted as presiding officer at a polling-booth as having been received at the polling-booth,

than the number of electors who voted at that polling-booth is sufficient evidence, until the contrary is shown, that the person who acted as presiding officer at the polling-booth was guilty of either offence.

**111. OFFENCES BY PRESIDING OFFICERS AT ELECTIONS.**

A presiding officer at an election who—

- (a) on being called on, in the case of an elector who is blind or is unable to read, to mark a ballot-paper against the name of the candidate or candidates for whom the elector says that he desires to vote, wilfully fails to do so in the polling-booth, and in the presence and sight of the persons then lawfully present; or
- (b) whilst an elector is preparing his ballot-paper in a compartment provided for the use of electors actually voting, wilfully allows any other person to be in the compartment,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**112. FALSE ANSWERS TO QUESTIONS AT ELECTIONS.**

(1) A person who at an election—

- (a) wilfully makes a false answer to any question that is lawfully put to him by the presiding officer, and that he is required by law to answer; or
- (b) being lawfully required to make a declaration before voting, wilfully makes a false declaration,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person shall not be arrested without warrant for an offence against Subsection (1) except by direction of the presiding officer.

**113. INTERFERING WITH SECRECY AT ELECTIONS.**

(1) Subject to Subsection (2), a person who—

- (a) at or after an election, knowingly and wilfully, and without the lawful command of a court or tribunal—unfastens the fold on a ballot-paper within which the number of an elector is written, which fold has been made in accordance with a law; or
- (b) being a person required by law to discharge duties at an election at which the voting is by ballot—attempts to ascertain or discover, or aids in ascertaining or discovering, the candidate for whom the vote of any person is given at the election, except in the case of a person voting openly; or
- (c) having in the exercise of his office at an election obtained knowledge, or the means of knowledge, of the candidate for whom any person has voted at the election—discloses or aids in disclosing that knowledge otherwise than in answer to a question put in the course of proceedings before a court or tribunal; or
- (d) being a person required by law to discharge duties at an election—places on a ballot-paper any mark or writing not authorized by law,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2) Subsection (1) does not apply with respect to a member of the Police Force acting with lawful authority in the course of his duty.

**114. BREAKING SEAL OF PACKETS USED AT ELECTIONS.**

(1) Subject to Subsection (2), a person who knowingly and wilfully, and without the lawful command of a court or tribunal, opens or breaks the seal of a sealed parcel that has been sealed up under the provisions of any law relating to elections, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2) Subsection (1) does not apply with respect to a member of the Police Force acting under lawful authority in the course of his duty.

**115. OFFENCES AT ELECTIONS WHEN VOTING IS BY POST.**

A person who, at an election at which the voting is by post—

- (a) knowing that he is not entitled to vote at the election, signs his name as a voter to a voting-paper; or
- (b) signs the name of another person to a voting-paper; or
- (c) attests the signature to a voting-paper of a person who is, to his knowledge, not entitled to vote by means of that voting-paper,

is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00, or imprisonment for a term not exceeding one year.

**116. FALSE ELECTORAL CLAIMS.**

(1) A person who—

- (a) makes in a claim to be inserted in a list of electors any statement that is, to his knowledge, false in any material particular; or
- (b) makes, orally or in writing, to a court or tribunal having jurisdiction to deal with the claims of persons to be registered as electors, or as persons claiming to be electors, a statement relating to the qualification of any person as an elector that is, to his knowledge, false in any material particular,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person who commits an offence against Subsection (1) shall not be arrested without warrant for the offence.

(3) A person shall not be convicted of an offence against Subsection (1) on the uncorroborated testimony of one witness.

***Division 4. – Selling and Trafficking in Offices.*****117. BARGAINING FOR OFFICES IN PUBLIC SERVICE.**

A person who—

- (a) corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on account of anything already done or omitted to be done, or to be done or omitted to be done, by him or by any other person, with regard to—
  - (i) the appointment or contemplated appointment of any person to any office or employment in the Public Service; or
  - (ii) any application by any person for employment in the Public Service; or
- (b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on, or for any person any property or benefit on account of any such act or omission,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years, and a fine at the discretion of the court.

*Division 5. – Offences Relating to the Administration of Justice.***118. INTERPRETATION OF DIVISION 5.**

In this Division, “**judicial proceeding**” includes any proceeding had or taken in or before any court, tribunal or person, in which evidence may be taken on oath.

**119. JUDICIAL CORRUPTION.**

(1) In this section, “**holder of a judicial office**” includes an arbitrator or umpire.

(2) A person who—

(a) being the holder of a judicial office, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on account of any thing done or omitted to be done, or to be done or omitted to be done, by him in his judicial capacity; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on, or for any person holding a judicial office, or to, on, or for any other person, any property or benefit on account of any such act or omission on the part of a person holding the judicial office,

is guilty of a crime.

Penalty: Subject to Subsection (3), imprisonment for a term not exceeding 14 years, and a fine at the discretion of the court.

(3) In the case of an offence committed by or with respect to an arbitrator or umpire the longest term of imprisonment that may be imposed for an offence against Subsection (2) is seven years.

(4) A person who commits an offence against Subsection (2) shall not be arrested without warrant for the offence.

(5) A prosecution for an offence against Subsection (2)(a) cannot be begun except by the direction of the Public Prosecutor.

**120. OFFICIAL CORRUPTION NOT JUDICIAL BUT RELATING TO OFFENCES.**

(1) A person who—

(a) being a justice not acting judicially, or being a person employed in the Public Service in any capacity not judicial for the prosecution or detention or punishment of offenders, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain any property or benefit for himself or any other person, on account of anything done or omitted to be done, or to be done or omitted to be done, by him, with a view to—

(i) corrupt or improper interference with the due administration of justice; or

(ii) the procurement or facilitation of the commission of an offence; or

(iii) the protection of an offender or intending offender from detection or punishment; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on, or for any person, any property or benefit on

account of any such act or omission on the part of the justice or other person so employed,  
is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years, and a fine at the discretion of the court.

(2) A person shall not be arrested without warrant for an offence against Subsection (1).

## **121. PERJURY.**

(1) A person who in any judicial proceeding, or for the purpose of instituting any judicial proceedings, knowingly gives false testimony concerning any matter that is material to any question then depending in the proceedings or intended to be raised in the proceedings, is guilty of the crime of perjury.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding 14 years.

(2) If an offence against Subsection (1) was committed in order to procure the conviction of another person for a crime punishable with death or with imprisonment for life, the offender is, subject to Section 19, liable to imprisonment for life.

(3) It is immaterial whether the testimony is given on oath or under any other sanction authorized by law.

(4) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assents to the forms and ceremonies actually used.

(5) It is immaterial whether the false testimony is given orally or in writing.

(6) It is immaterial whether or not—

- (a) the court or tribunal is properly constituted, or is held in the proper place, if it actually acts as a court or tribunal in the proceedings in which the testimony is given; or
- (b) the person who gives the testimony is a competent witness; or
- (c) the testimony is admissible in the proceeding.

(7) A person shall not be arrested without warrant for an offence against Subsection (1).

(8) A person cannot be convicted of committing perjury or of counselling or procuring the commission of perjury on the uncorroborated testimony of one witness.

## **122. FABRICATING EVIDENCE.**

(1) A person who, with intent to mislead a tribunal in any judicial proceedings—

- (a) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or
- (b) knowingly makes use of such fabricated evidence,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person shall not be arrested without warrant for an offence against Subsection (1).

**123. CORRUPTION OF WITNESSES.**

(1) A person who—

- (a) gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit to, on, or for any person, on an agreement or understanding that any person called or to be called as a witness in any judicial proceedings will give false testimony or withhold true testimony; or
- (b) attempts by any other means to induce a person called or to be called as a witness in any judicial proceedings to give false testimony or to withhold true testimony; or
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on an agreement or understanding that any person will as a witness in any judicial proceeding give false testimony or withhold true testimony,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person shall not be arrested without warrant for an offence against Subsection (1).

**124. DECEIVING WITNESSES.**

A person who—

- (a) practises any fraud or deceit; or
- (b) knowingly makes or exhibits any false statement, representation, token or writing,

to any person called or to be called as a witness in any judicial proceedings with intent to affect the testimony of the person as a witness, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**125. DESTROYING EVIDENCE.**

A person who, knowing that any book, document or other thing is or may be required in evidence in any judicial proceedings, wilfully destroys it or renders it illegible, undecipherable or incapable of identification, with intent to prevent it from being used in evidence, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**126. PREVENTING WITNESSES FROM ATTENDING.**

A person who wilfully prevents, or attempts to prevent, a person who has been duly summoned to attend as a witness before any court or tribunal—

- (a) from attending as a witness; or
- (b) from producing anything in evidence under the subpoena or summons,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

**127. CONSPIRACY TO BRING FALSE ACCUSATION.**

(1) A person who conspires with another person to charge any person, or cause any person to be charged, with an offence, whether alleged to have been committed in Papua New Guinea or elsewhere, knowing that the person is innocent of the alleged offence or not believing him to be guilty of the alleged offence, is guilty of a crime.

Penalty: –

- (a) if the offence is such that a person convicted of it is liable to be sentenced to death or to imprisonment for life—subject to Section 19, imprisonment for life; or
- (b) if the offence is such that a person convicted of it is liable to be sentenced to imprisonment for a term less than life—imprisonment for a term not exceeding 14 years; or
- (c) in any other case—imprisonment for a term not exceeding seven years.

(2) A person shall not be arrested without warrant for an offence against Subsection (1).

**128. CONSPIRING TO DEFEAT JUSTICE.**

(1) A person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person shall not be arrested without warrant for an offence against Subsection (1).

**129. COMPOUNDING CRIMES.**

(1) A person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on any agreement or understanding that he will—

- (a) compound or conceal a crime; or
- (b) abstain from, discontinue or delay a prosecution for a crime; or
- (c) withhold any evidence of a crime,

is guilty of an offence.

(2) If the crime the subject of an offence against Subsection (1) is such that a person convicted of it is liable to be sentenced to death or imprisonment for life—the offender is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(3) In a case, other than that referred to in Subsection (2), the offender is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(4) A person shall not be arrested without warrant for an offence against Subsection (1).

**130. COMPOUNDING PENAL ACTIONS.**

A person who, having brought, or under pretence of bringing, an action against another person on a penal law in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

**131. ADVERTISING REWARD FOR THE RETURN OF STOLEN PROPERTY, ETC.**

A person who—

- (a) publicly offers a reward for the return of any property that has been stolen or lost, and in the offer makes use of any words purporting that—
  - (i) no questions will be asked; or
  - (ii) the person producing the property will not be seized or molested; or
- (b) publicly offers to return to any person who may have brought or advanced money by way of loan on any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of the property; or
- (c) prints or publishes any such offer,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**132. MAGISTRATE ACTING OPPRESSIVELY OR WHEN INTERESTED.**

A magistrate who—

- (a) being required or authorized by law to admit an accused person to bail, without reasonable excuse, and in abuse of his office, requires excessive and unreasonable bail; or
- (b) wilfully and perversely exercises jurisdiction in any matter in which he has a personal interest,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years, and a fine at the discretion of the court.

**133. DELAY TO TAKE PERSON ARRESTED BEFORE MAGISTRATE.**

A person who, having arrested another person on a charge of an offence, wilfully delays taking him before a magistrate to be dealt with according to law is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**134. BRINGING FICTITIOUS ACTION ON PENAL LAW.**

A person who, in the name of a fictitious plaintiff, or in the name of a real person but without his authority, brings an action against another person on a penal law for the recovery of a penalty for an offence committed or alleged to have been committed by him is guilty of a misdemeanour.



Penalty: Imprisonment for a term not exceeding two years.

### 135. INSERTING ADVERTISEMENT WITHOUT AUTHORITY OF COURT.

A person who, without authority, or knowing the advertisement to be false in any material particular, inserts or causes to be inserted in the National Gazette or in a newspaper an advertisement purporting to be published under the authority of a court or tribunal is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

### 136. ATTEMPTING TO PERVERT JUSTICE.

A person who attempts, in any way not specially defined in this Code, to obstruct, prevent, pervert or defeat the course of justice is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

#### *Division 6. – Escapes: Rescues: Obstructing Officers of Courts.*

### 137. FORCIBLY RESCUING CAPITAL OFFENDERS.

A person who, by force, rescues or attempts to rescue from lawful custody an offender under sentence of death, or a person committed to prison on a charge of a crime punishable with death, is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

### 138. AIDING PRISONERS TO ESCAPE.

A person who—

- (a) aids a prisoner in escaping or attempting to escape from lawful custody; or
- (b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

### 139. ESCAPE BY PRISONER.

(1) A person who, being a prisoner in lawful custody, escapes from that custody is guilty of a crime.

Penalty: <sup>60</sup>A term of imprisonment of not less than five years.

(2) An offender under Subsection (1) may be tried, convicted, and punished, notwithstanding that at the time of his apprehension or trial the term of his original sentence (if any) has expired.

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<sup>60</sup> Section 139: penalty clause repealed and replaced by *Criminal Code (Amendment) Act 1993* (No. 12 of 1993), s2.  
No. 262 of  
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**140. PERMITTING ESCAPE.**

A person who, being an officer of a prison or police officer, and being charged with the custody of a prisoner in lawful custody, wilfully permits him to escape from custody is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**141. HARBOURING ESCAPED PRISONERS.**

A person who harbours, maintains or employs a person who is, to his knowledge, a prisoner who has escaped from custody, and is illegally at large, is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00, or imprisonment for a term not exceeding two years.

**142. RESCUING PERSONS OF UNSOUND MIND.**

A person who—

- (a) rescues any person during—
  - (i) his conveyance as a person of unsound mind to—
    - (A) a hospital or reception house for persons of unsound mind; or
    - (B) a house licensed under the laws relating to persons of unsound mind for the reception of patients; or
    - (C) a prison; or
  - (ii) his confinement as a person of unsound mind in any such place; or
- (b) being in charge of a person during his conveyance as a person of unsound mind to any such place, wilfully permits him to escape from custody; or
- (c) being a superintendent of, or person employed in, any such place wilfully permits a person confined in it to escape from it; or
- (d) conceals any such person who has, to his knowledge—
  - (i) been rescued during such conveyance or confinement; or
  - (ii) escaped during such conveyance or from such confinement,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**143. REMOVING, ETC., PROPERTY UNDER LAWFUL SEIZURE.**

A person who, 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, receives, removes, retains, conceals, or disposes of the property is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**144. OBSTRUCTING OFFICERS OF COURTS OF JUSTICE.**

A person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of a court is guilty of a misdemeanour.

Penalty: On conviction on indictment—a fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

On summary conviction—a fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

*Division 7. – Division 7.-Offences Relating to Currency..*

**145. INTERPRETATION OF DIVISION 7.**

In this Division, unless the contrary intention appears—

“**coin**” includes—

- (a) coin made in whole or in part out of material other than metal; and
- (b) the coin of any country or place outside Papua New Guinea;

“**coining instrument**” includes any stamp, mould, press for coinage, tool, instrument, appliance or machine—

- (a) adapted to make the resemblance of both or either of the sides of any coin; or
- (b) adapted or intended to be used for marking coin round the edges with marks or figures apparently resembling those on any genuine coin; or
- (c) adapted for making blanks in the shape of genuine coin;

“**copy of a note**” includes—

- (a) a reproduction or negative of a current note or part of a current note in any size, scale or colour; and
- (b) a copy of a current note or part of a current note in any size, scale or colour;

“**counterfeit**”, in relation to coin, means—

- (a) coin that is not genuine but resembles, or is apparently intended to resemble or pass for, genuine coin; and
- (b) genuine coin that has been prepared or altered so as to resemble, or to be apparently intended to resemble or pass for, coin of a higher denomination; and
- (c) genuine coin that—
  - (i) has been clipped or filed, or the size or weight of which has otherwise been diminished; and
  - (ii) has been prepared or altered so as to conceal the clipping, filing or diminution,

and includes any such coin whether or not it is—

- (d) in a fit state to be uttered; or
- (e) the process or preparation or alteration is complete;

“**current**”, in relation to notes and coins, means any note or coin that is currently legal tender, with or without restriction as to amount, in Papua New Guinea or in any country or place outside Papua New Guinea;

**“forgery”**, in relation to a note, means–

- (a) a note that is not genuine but resembles, or is intended to resemble or pass for, a genuine note; or
- (b) a genuine note that has been altered so as to resemble, or to be apparently intended to resemble or pass for, a note of a higher denomination; or
- (c) a genuine note that has been split or otherwise tampered with in such a manner as to sever from the note any material part,

and in a case referred to in Paragraph (c) includes both the note and the part severed from it;

**“form of a note”** means any form of a note, not being a genuine note, intended or likely to pass for a current note, and includes a part of such a form;

**“note”** includes any bill or note payable to bearer on demand that is used or intended to be used as equivalent to money, whether immediately on issue or at any time after issue;

**“utter”** includes–

- (a) use, deal with or act on; and
  - (b) attempt to use, deal with, or act on; and
  - (c) attempt to induce any person to use, deal with, or act on,
- the thing in question as if it were genuine.

#### **146. GILDING, ETC., METAL OR OTHER MATERIAL WITH INTENT TO MAKE COUNTERFEIT COIN.**

A person who–

- (a) gilds or silvers any piece of metal or other material of a fit size or figure to be coined, or colours any piece of metal or other material of such size so as to make it look like gold or silver, with intent that it shall be coined into counterfeit coin; or
- (b) makes, or begins to make, any piece of metal or other material into a fit size or figure to facilitate the coining from it of any counterfeit coin with intent that any counterfeit coin shall be made from it,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 10 years.

#### **147. MAKING, ETC., COINING INSTRUMENTS.**

A person who, without lawful excuse (proof of which is on him)–

- (a) makes or mends; or
- (b) begins or prepares to make or mend; or
- (c) has in his possession; or
- (d) receives; or
- (e) disposes of,

any coining instrument is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**148. MAKING COUNTERFEIT COIN.**

A person who makes or begins to make any counterfeit current coin is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 10 years.

**149. BUYING OR SELLING OF COUNTERFEIT COIN.**

A person who, without lawful excuse (proof of which is on him)–

- (a) buys, sells, receives, pays or disposes of any counterfeit coin at a lower rate than it imports or is apparently intended to import, or offers to do so; or
- (b) brings or receives into Papua New Guinea any counterfeit coin, knowing it to be counterfeit,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**150. POSSESSION OF COUNTERFEIT COIN, ETC.**

A person who has in his possession–

- (a) any counterfeit coin, knowing it to be counterfeit, with intent to utter it or with intent that it may be uttered by any other person; or
- (b) any bullion, metal, material, substance or article intending to use it, or knowing that it is intended to be used, in or in connection with the making of counterfeit coin,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

**151. UTTERING COUNTERFEIT COIN.**

A person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

**152. UTTERING METAL, ETC., AS COIN.**

A person who, with intent to defraud, utters as and for current coin–

- (a) any coin that is not current coin; or
- (b) any metal or piece of metal or other material, whether a coin or not, that is of less value than the current coin as and for which it is uttered,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding two years.

**153. CLIPPING OR SWEATING COINS.**

A person who deals with any current coin in such a manner as to diminish its weight, with intent that when so dealt with it may pass as current coin, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 10 years.

#### 154. POSSESSION OF CLIPPINGS, ETC.

A person who, without lawful excuse (proof of which is on him), has in his possession or disposes of any metal or other material or substance that, to his knowledge, was obtained by dealing with current coin in such a manner as to diminish its weight, whether that metal, material or substance—

- (a) consists of filings, clippings, dust or bullion; or
- (b) is in solution; or
- (c) is in any other form,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

#### 155. MAKING, POSSESSING OR SELLING TOKENS, ETC., RESEMBLING COINS.

A person who, without lawful excuse (proof of which is on him), makes, or begins to make, sells, offers for sale or has in his possession for sale any medal, metal, cast, token or other like thing, not being a genuine coin, that—

- (a) resembles in size, figure and colour any current coin; or
- (b) bears a device resembling a device on a current coin; or
- (c) is so formed that it can, by gilding, silvering, colouring, washing or other like process, be so dealt with as to resemble a current coin and is capable, or would if so dealt with be capable, of being passed for a genuine coin,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

#### 156. DEFACING COINS.

A person who defaces any current coin by stamping on it any name or word, whether or not the weight of the coin is diminished, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

#### 157. DEFACING OR DESTROYING COINS.

(1) In this section, “**authorized person**” means the Head of State, acting on advice, or a person authorized in writing by the Head of State, acting on advice, to grant consents for the purposes of this section.

(2) A person who, without the consent of an authorized person—

- (a) destroys, by melting or otherwise, a current coin; or
- (b) in the course of carrying on any trade or business, defaces a current coin,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding six months.

**158. POSSESSION OF FORGED NOTES.**

A person who, without lawful excuse (proof of which is on him), purchases or receives from any person, or has in his possession, a forgery of a current note is guilty of a crime.

Penalty: Imprisonment for a term not exceeding four years.

**159. FORGING OR UTTERING OF NOTES.**

A person who, with intent to defraud, forges, or utters knowing it to be forged, a current note is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**160. MAKING, ETC., OF FALSE FORMS.**

A person who, without the authority of the Central Bank, makes or has in his possession—

(a) a form of a note; or

(b) an instrument or thing that may be used in the making of a form of a note,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding four years.

**161. ALTERATION OF NOTES FORBIDDEN.**

A person who, with intent to defraud, alters the amount of a current note is guilty of a crime.

Penalty: Imprisonment for a term not exceeding eight years.

**162. COPYING OF NOTES FORBIDDEN.**

(1) A person who, without the authority of the Central Bank, makes or has in his possession—

(a) a copy of a note; or

(b) a writing, engraving, photograph or print resembling a current note,

is guilty of a misdemeanour.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding one year, or both.

(2) This section does not affect the liability of a person to be proceeded against for a higher offence, but a person shall not be punished twice in respect of the same act.

**163. SEIZURE OF COUNTERFEIT COIN, TOOL FOR COINING, ETC.**

Where any person finds in any place, or in the possession of any person who has it or them without lawful excuse—

(a) any counterfeit coin; or

(b) any coining instrument adapted and intended for making any such counterfeit coin;  
or

- (c) any filings or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, that are or is suspected, on reasonable grounds, to have been obtained by dealing with any current gold or silver coin in such a manner as to diminish its weight; or
- (d) a forged current note; or
- (e) a tool, instrument or machine adapted and intended for making a forged current note,

the person who finds it or them may seize it or them, and take it or them immediately before a magistrate to be dealt with according to law.

#### **164. FORFEITURE OF COINING INSTRUMENTS.**

The following things are forfeit to the State:—

- (a) all coining instruments made by, or in the possession of, a person without lawful authority;
- (b) any metal or other material or substance intended to be made into counterfeit coin;
- (c) all counterfeit coins, whether partly made or finished;
- (d) any material, substance or article used or intended to be used in or in connection with the making of counterfeit coin.

#### **165. FORFEITURE OF FORGED NOTES.**

All forged current notes are forfeit to the State.

#### **166. FORFEITURE OF ILLICIT FORMS.**

(1) A form of a current note, and an instrument or thing that may be used in making a form of a current note, made by, or in the possession of, a person without the authority of the Central Bank is forfeited to the State.

(2) A member of the Police Force may, at any time, seize an article forfeited under this section, or an article that he has reasonable ground to believe is forfeited under this section, and bring it before a District Court.

(3) A District Court may order an article seized under this section to be condemned or returned to the person from whom it was seized.

(4) An article condemned under this section shall be dealt with as the Minister directs, and pending his direction, may be held in such custody as the court directs.

#### **167. COUNTERFEIT NOTES TO BE MARKED.**

A person charged with the receipt or disbursement of public moneys, and an officer of a bank shall stamp or write in plain letters the words “counterfeit”, “altered” or “worthless” on every counterfeit or forged note in the form of a current note that is presented to him at his place of business.



**168. DEALING, ETC., WITH FORFEITED GOODS.**

A person who, without lawful authority (proof of which is on him) deals with, moves, alters or interferes with anything that under this Division is forfeit to the State is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

***Division 8. – Division 8.-Offences Relating to Posts and Telegraphs..*****169. STOPPING MAILS.**

A person who–

(a) stops a mail conveyance; or

(b) stops any person engaged in conveying or delivering a mail,

with intent to search the mail, is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**170. INTERCEPTING THINGS SENT BY POST OR TELEGRAPH.**

A person who unlawfully secretes or destroys any thing that is in course of transmission by post or telegraph, or any part of any such thing, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**171. TAMPERING WITH THINGS SENT BY POST OR TELEGRAPH.**

A person who, being employed by or under Post PNG Limited or Telikom PNG Limited–

(a) does with respect to any thing that is in course of transmission by post or telegraph any act that he is not authorized to do by virtue of his employment; or

(b) knowingly permits any other person to do any such act with respect to any such thing,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**172. WILFUL MISDELIVERY OF THINGS SENT BY POST OR TELEGRAPH.**

A person who, being charged, by virtue of his employment or a contract with the delivery of any thing sent by post or telegraph, wilfully delivers it to a person other than the person to whom it is addressed, or his authorized agent for that purpose, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**173. OBTAINING LETTERS BY FALSE PRETENCES.**

A person who, by means of a false pretence, induces a person employed by or under Post PNG Limited or Telikom PNG Limited to deliver to him any thing sent by post or telegraph that is not addressed to him is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**174. SECRETING LETTERS.**

A person who wilfully secretes or detains any thing sent by post or telegraph that—

- (a) is found by him; or
- (b) is wrongly delivered to him,

and that ought, to his knowledge, to have been delivered to another person, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**175. FRAUDULENT ISSUE OF MONEY ORDERS AND POSTAL NOTES.**

A person who being—

- (a) employed by or under Post PNG Limited or Telikom PNG Limited; and
- (b) charged by virtue of his employment with any duty in connection with the issue of money orders or postal notes,

unlawfully, and with intent to defraud, issues a money order or postal note is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**176. FRAUDULENT MESSAGES RESPECTING MONEY ORDERS.**

A person who being—

- (a) employed by or under Post PNG Limited or Telikom PNG Limited; and
- (b) charged by virtue of his employment with any duty in connection with money orders,

sends to any other person, with intent to defraud, a false or misleading letter, telegram or message concerning—

- (c) a money order; or
- (d) money payable under a money order,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**177. SENDING DANGEROUS OR OBSCENE THINGS BY POST.**

A person who knowingly sends, or attempts to send, by post any thing that—

- (a) encloses any thing, whether living or inanimate, of such a nature as to be likely to injure—
  - (i) any other things in the course of conveyance; or
  - (ii) any person; or
- (b) encloses an indecent or obscene print, painting, photograph, lithograph, engraving, book, card or article; or
- (c) has on it, in it or on its cover any indecent, obscene or grossly offensive words, marks or designs,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

**178. RETARDING DELIVERY OF MAILS, ETC.**

A person who—

- (a) being required by law or by virtue of his employment to do any act with respect to the receipt, despatch or delivery of any thing that is or may be transmitted by post or telegraph—
  - (i) neglects or refuses to do the act; or
  - (ii) wilfully detains or delays, or permits the detention or delay of, any such thing; or
- (b) being employed by or under Post PNG Limited or Telikom PNG Limited, negligently—
  - (i) loses; or
  - (ii) detains or delays, or permits the detention or delay of,

anything sent by post or telegraph, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**179. OBSTRUCTING MAILS.**

A person who wilfully obstructs or delays the conveyance or delivery of any mail is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**180. PENALTY ON MAIL-COACH DRIVER OR GUARDS LOITERING.**

A person who, being a driver of a vehicle used for the conveyance of mails, or being a person in charge of a mail—

- (a) loiters on the road; or
- (b) wilfully misspends or loses time; or
- (c) is under the influence of intoxicating liquor; or
- (d) unless prevented by some cause beyond his control (proof of which is on him)—does not convey the mail at the speed fixed by the Board of Post PNG Limited for its conveyance,

is guilty of an offence.

Penalty: A fine not exceeding K20.00.

**181. FRAUDULENTLY REMOVING STAMPS.**

(1) A person who, with intent to defraud—

- (a) removes from any thing sent by post any stamp affixed on it; or
- (b) removes from a stamp previously used, any mark made on it at a post office; or
- (c) knowingly uses a postage stamp that has been obliterated or defaced by a mark made on it at a post office,

is guilty of an offence.

Penalty: A fine not exceeding K400.00, or imprisonment for a term not exceeding one year.

(2) Until the contrary is shown on the trial of a person charged with an offence against Subsection (1)(c), proof that the person charged is the writer of the address of any thing sent by post on which the stamp is affixed is sufficient evidence that he is the person who used the stamp.

**182. FRAUDULENT EVASION OF POSTAL LAWS.**

A person who—

- (a) knowingly and fraudulently puts into a post office any thing in or on which, or in or on the cover of which, there is a letter, newspaper or other thing, or any writing or mark, not allowed by law to be placed there; or
- (b) wilfully subscribes on the outside of any thing sent by post a false statement of its contents; or
- (c) knowingly and fraudulently puts into a post office anything that falsely purports to be a thing falling within any exemption or privilege declared by the laws relating to posts and telegraphs,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**183. CARRYING LETTERS OTHERWISE THAN BY POST.**

(1) A person who, contrary to the *Postal Services Act 1996*—

- (a) sends or conveys a letter for hire or reward otherwise than by post; or
- (b) takes charge of a letter for conveyance for hire or reward,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) Until the contrary is proved, every letter sent, conveyed or taken charge of to be conveyed otherwise than by post shall be deemed to have been sent, conveyed or taken charge of for hire or reward.

(3) Subsection (1) does not apply to a letter—

- (a) exceeding the weight prescribed by law for letters sent by post; or
- (b) concerning goods sent and to be delivered with it; or
- (c) containing—
  - (i) process of, or proceedings or pleadings in, a court of justice; or
  - (ii) briefs or cases or instructions for counsel and their opinions on such briefs and instructions; or
  - (iii) a deed, affidavit or power of attorney; or
- (d) sent by a special messenger and concerning the private affairs of the sender; or
- (e) sent or carried to or from the nearest post office.

**184. ILLEGALLY CONDUCTING POSTAL BUSINESS OR OBSTRUCTING POST OFFICE.**

A person who—

- (a) without lawful excuse (proof of which is on him)—
  - (i) makes any envelope, wrapper, card, form or paper—

- (A) in imitation of one issued by or under the authority of the Board of Post PNG Limited or of the postal authority of any other country; or
- (B) on which there is any word, letter or mark, that signifies or implies, or may reasonably induce a person receiving it to believe, that a letter, newspaper, packet, or parcel bearing that word, letter, or mark is sent on the service of the National Government, or on the public service of another country; or
- (ii) makes on any envelope, wrapper, card, form, or paper, for the purpose of its being issued or sent by post or otherwise—
  - (A) any stamp or mark in imitation of a stamp or mark of any post office under the control of the Board of Post PNG Limited or of the postal authority of any other country; or
  - (B) any other stamp or mark, or any word or letter, that signifies or implies, or may reasonably induce a person receiving it to believe, that a letter, newspaper, packet or parcel bearing that stamp, mark, word, or letter is sent on the service of the National Government, or on the public service of another country; or
- (iii) issues or sends by post, or otherwise, any envelope, wrapper, card, form, or paper, so marked; or
- (b) without the authority of the Board of Post PNG Limited (proof of which is on the person charged)—
  - (i) places or maintains, or permits to be placed or maintained or to remain in, on, or near any place under his control the words “post office”, or any word, letter, or mark that signifies or implies, or may reasonably induce any person to believe, that the place is a post office; or
  - (ii) places, or permits to be placed or to remain, on a vehicle under his control the words “Royal Mail”, or any word, letter or mark that signifies or implies, or may reasonably induce any person to believe, that the vehicle is used for the conveyance of mails; or
- (c) contrary to the *Postal Services Act 1996* (proof of which is on the person charged)—
  - (i) sells, or offers or exposes for sale, a postage stamp; or
  - (ii) places, or permits to be placed or to remain, on or near his house or premises the words “licensed to sell stamps”, or any word, letter or mark that signifies or implies, or may reasonably induce any person to believe, that he is duly licensed to sell postage stamps,

is guilty of an offence.

Penalty: A fine not exceeding K10.00.

### 185. DESTROYING OR DAMAGING LETTER RECEIVERS.

A person who—

- (a) wilfully destroys or damages—
  - (i) any receptacle provided by the authority of the Board of Post PNG Limited for the reception of any thing intended to be sent by post; or
  - (ii) any card or notice relating to the postal service or telegraph service provided by Post PNG Limited; or
- (b) obliterates any letter or figure on any such thing,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**186. PLACING INJURIOUS SUBSTANCES IN OR AGAINST LETTER BOXES.**

A person who places in or against any receptacle provided by the authority of the Board of Post PNG Limited for the reception of any thing intended to be sent by post or telegraph—

- (a) any fire or match; or
- (b) any explosive, dangerous, noxious, or deleterious substance; or
- (c) any fluid or filth,

is guilty of an offence.

Penalty: A fine not exceeding K40.00.

**187. OBSTRUCTING POST AND TELEGRAPH OFFICES.**

A person who, by stopping or loitering opposite to or on the premises of a post office or telegraph office, obstructs—

- (a) the business of the office; or
- (b) any person lawfully going to the office,

is guilty of an offence.

Penalty: A fine not exceeding K10.00.

**188. OBSTRUCTING POST AND TELEGRAPH OFFICERS IN THE EXECUTION OF DUTY, ETC.**

(1) A person who—

- (a) wilfully obstructs a person employed by or under Post PNG Limited or Telikom PNG Limited in the execution of the duties of his employment; or
- (b) being in a post office or telegraph office, or within any premises appertaining to, or used with, a post office or telegraph office, wilfully obstructs the business of the office,

is guilty of an offence.

Penalty: A fine not exceeding K4.00.

(2) A person employed by or under the Post PNG Limited or Telikom PNG Limited may require any person committing an offence against Subsection (1) to leave the post office, or telegraph office or premises.

(3) A person who refuses or fails to comply with a request made under Subsection (2) is guilty of an offence.

Penalty: A fine not exceeding K10.00.

(4) A person who refuses or fails to comply with a request made under Subsection (2) may be removed by the person authorized to make the request, and all members of the Police Force shall, on demand, remove, or assist in removing, that person.

**189. INTERFERENCE WITH TELEGRAPHS.**

(1) A person who wilfully and unlawfully—

- (a) destroys, damages or removes any part of any apparatus used in the working of, or in connection with, an electric telegraph under the control of Telikom PNG Limited; or
- (b) prevents or obstructs the sending or delivering of a communication by any such telegraph,

is guilty of a misdemeanour.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding three years.

(2) A magistrate before whom a person is charged with an offence under Subsection (1) may, if he thinks fit, direct the charge to be dealt with summarily, in which case the offender is liable to a fine not exceeding K100.00 or imprisonment for a term not exceeding three months.

(3) A person found committing or attempting to commit an offence against Subsection (1) may be arrested without warrant.

(4) A person who attempts to commit an offence against Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100.00, or imprisonment for a term not exceeding three months.

**190. NEGLIGENTLY INJURING TELEGRAPHS.**

A person who negligently destroys or damages any post, wire or material used in connection with an electric telegraph under the control of the Minister responsible for posts and telegraphs is guilty of an offence.

Penalty: A fine not exceeding K4.00.

**191. VIOLATION OF SECRECY.**

A person employed in a telegraph office who publishes or communicates the contents or substance of a telegram, otherwise than to a person to whom he is authorized to deliver the telegram, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

**192. MAKING CHARGES FOR USE OF TELEGRAPH LINE WITHOUT AUTHORITY.**

A person who, having become entitled under an agreement with the Minister responsible for posts and telegraphs to the use of a telegraph line, demands or receives any payment or valuable consideration from any other person for the use of the line is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**193. OBSTRUCTING POSSESSION OF POSTS AND TELEGRAPHS OFFICERS, ETC.**

A person who—

- (a) wilfully obstructs or delays any person who, as duly authorized by the Board of Post PNG Limited, enters into a post office or telegraph office, or takes possession of anything in it that belongs or appertains to Post PNG Limited; or
- (b) wilfully interferes with any such person who has so entered and is in the post office or telegraph office, or on the premises where the post office or telegraph office is situated, for a reasonable time for the purpose of taking such possession,

is guilty of an offence.

Penalty: A fine not exceeding K40.00.

**194. RESISTING OFFICERS.**

A person who resists a person employed by or under Post PNG Limited or Telikom PNG Limited who is engaged in the execution of his duty under the laws relating to posts and telegraphs is guilty of an offence.

Penalty: A fine not exceeding K100.00, or imprisonment for a term not exceeding three months.

*Division 9. – Miscellaneous Offences against Public Authority.***195. FALSE DECLARATION AS TO EXECUTION OF SENTENCE OF DEATH.**

A person who subscribes a certificate or declaration as to the execution of a sentence of death that is to his knowledge false in a material particular is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**196. FALSE STATEMENTS REQUIRED TO BE UNDER OATH OR SOLEMN DECLARATION.**

(1) A person who, on any occasion on which a person making a statement concerning any matter—

- (a) is required by law to make it on oath or under some sanction that may by law be substituted for an oath; or
- (b) is required to verify it by solemn declaration or affirmation,

makes a statement concerning the matter that is to his knowledge false in a material particular, and verifies it on oath or under such other sanction or by solemn declaration or affirmation, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person cannot be convicted of an offence against Subsection (1) on the uncorroborated testimony of one witness.

(3)<sup>61</sup> [*Repealed.*]

<sup>61</sup> Section 196(3) repealed by *Criminal Code (Amendment) Act 1993* (No. 12 of 1993), s1.



**197. FALSE DECLARATIONS AND STATEMENTS.**

(1) A person who, on any occasion on which he is permitted or required by law to make a statement or declaration before a person authorized by law to permit it to be made before him, makes a statement or declaration before that person that is to his knowledge false in a material particular is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) A person cannot be convicted of an offence against Subsection (1) on the uncorroborated testimony of one witness.

**198. SHOOTING AT CUSTOMS BOATS OR OFFICERS.**

A person who—

- (a) shoots at a vessel that is in use by an officer of Customs who is engaged in the execution of his duty as such an officer; or
- (b) shoots at, wounds or causes any grievous bodily harm to an officer of Customs who is engaged in the execution of his duty in the prevention of smuggling, or a person acting in aid of an officer of Customs who is so engaged,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**199. RESISTING OFFICERS ENGAGED IN PREVENTING SMUGGLING.**

A person who, with violence, assaults, obstructs or resists—

- (a) an officer of Customs, or any person duly employed for the prevention of smuggling, who is engaged in the execution of his duty in the prevention of smuggling; or
- (b) any person acting in aid of any such officer or person while he is so engaged,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

**200. RESISTING CUSTOMS OFFICERS GENERALLY.**

A person who—

- (a) assaults or obstructs—
  - (i) an officer of Customs, or any person duly employed for the prevention of smuggling, who is engaged—
    - (A) in the execution of his duty under any law relating to the Customs; or
    - (B) in the seizure of any goods claimed to be liable to forfeiture under any such law; or
  - (ii) a person acting in aid of any such officer or person while he is so engaged; or
- (b) rescues or attempts to rescue any goods that have been seized under any such law; or
- (c) before, at, or after the seizure of any goods under any such law—

(i) staves, breaks or destroys the goods with intent to prevent the seizure or the securing of the goods; or  
 (ii) attempts to do any such act,  
 is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**201. RESISTING PUBLIC OFFICERS, ETC.**

A person who obstructs or resists—

- (a) any public officer who is engaged in the discharge or attempted discharge of the duties of his office under any law; or  
 (b) any person who is engaged in the discharge or attempted discharge of any duty imposed on him by any law,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**202. REFUSAL BY PUBLIC OFFICER TO PERFORM DUTY.**

A person employed in the Public Service, or as an officer of a court or tribunal, who perversely and without lawful excuse omits or refuses to do any act that it is his duty to do by virtue of his employment is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years, and a fine at the discretion of the court.

**203. NEGLECT OF POLICE OFFICERS TO SUPPRESS RIOT.**

A member of the Police Force who, having notice that there is a riot in his neighbourhood, without reasonable excuse omits to do his duty in suppressing the riot is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**204. NEGLECT TO AID IN SUPPRESSING RIOT.**

A person who, having reasonable notice that he is required to assist a member of the Police Force in suppressing a riot, without reasonable excuse omits to do so, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

**205. NEGLECT TO AID IN ARRESTING OFFENDERS.**

A person who, having reasonable notice that he is required to assist a commissioned officer of the Police Force in arresting a person, or in preserving the peace, without reasonable excuse omits to do so is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

**206. DISOBEDIENCE TO LAWFUL ORDER ISSUED BY STATUTORY AUTHORITY.**

(1) Subject to Subsection (2), a person who without lawful excuse (proof of which is on him), disobeys a lawful order issued by any court, or by any person authorized by any law to make the order, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

(2) Subsection (1) does not apply if some other mode of proceeding against the defaulter is expressly provided for by any law, and intended to be exclusive of all other punishment.

**PART IV. – ACTS INJURIOUS TO THE PUBLIC IN GENERAL.*****Division 1. – Offences Relating to Religious Worship.*****207. OFFERING VIOLENCE TO OFFICIATING MINISTERS OF RELIGION.**

A person who–

- (a) by threats or force–
  - (i) prevents or attempts to prevent any minister of religion from–
    - (A) lawfully officiating in any place of religious worship; or
    - (B) performing his duty in the lawful burial of the dead in any cemetery or other burial place; or
  - (ii) obstructs or attempts to obstruct any minister of religion while so officiating or performing that duty; or
- (b) assaults, or, on the pretence of executing any civil process, arrests any minister of religion who–
  - (i) is engaged in; or
  - (ii) is, to the knowledge of the offender, about to engage in, any of the offices or duties referred to in Paragraph (a), or who is, to the knowledge of the offender–
    - (iii) going to perform them; or
    - (iv) returning from performing them,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**208. DISTURBING RELIGIOUS WORSHIP.**

A person who wilfully and without lawful justification or excuse (proof of which is on him)–

- (a) disquiets or disturbs any meeting of persons lawfully assembled for religious worship; or
- (b) assaults–
  - (i) any person lawfully officiating at any such meeting; or
  - (ii) any of the persons assembled, at any such meeting,

is guilty of an offence.

Penalty: A fine not exceeding K50.00, or imprisonment for a term not exceeding two months.

***Division 2. – Offences Against Sexual Morality.*****209. KNOWLEDGE OF AGE IMMATERIAL.**

<sup>62</sup>Except as otherwise expressly stated, it is immaterial, in the case of any of the offences specified in this Division committed with respect to a person under a specified age, that the

<sup>62</sup> Section 209 Amended by No. 27 of 2002, s. 1.

accused person did not know that the person was under that age, or believed that the person was not under that age.

## 210. UNNATURAL OFFENCES.

(1)<sup>63</sup> <sup>64</sup>A person who—

(a) sexually penetrates any person against the order of nature; or

(b) sexually penetrates an animal; or

(c) permits a male person to sexually penetrates him or her against the order of nature,  
is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

(2) A person who attempts to commit an offence against Subsection (1) is guilty of a crime.

Penalty: imprisonment for a term not exceeding seven years.

(3)<sup>65</sup> [*Repealed.*]

## 211<sup>66</sup>. [*REPEALED.*]

## 212. INDECENT PRACTICES BETWEEN MALES.

(1) A male person who, whether in public or private—

(a) commits an act of gross indecency with another male person; or

(b) procures another male person to commit an act of gross indecency with him; or

(c) attempts to procure the commission of any such act by a male person with himself  
or with another male person,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2)<sup>67</sup> [*Repealed.*]

## 213<sup>68</sup>. [*REPEALED.*]

## 214. HOUSEHOLDER PERMITTING DEFILEMENT OF YOUNG GIRLS ON HIS PREMISES.

(1) A person who—

<sup>63</sup> Section 210 Amended by No. 27 of 2002, s. 1.

<sup>64</sup> Section 210 Amended by No. 27 of 2002, s. 1.

<sup>65</sup> Section 210(3) repealed by Criminal Code (Amendment) Act 1993 (No. 12 of 1993), s3.

<sup>66</sup> Section 211 Amended by No. 27 of 2002, s. 1.

<sup>67</sup> Section 212(2) repealed by No. 13 of 1977, s10.

<sup>68</sup> Section 213 amended by Act No. 11 of 1984, s1; Section 213(1): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s13(a); Section 213(2): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s13(b); Section 213 Amended by No. 27 of 2002, s. 1.

(a) being the owner or occupier of any premises; or  
 (b) having, or acting or assisting in, the management or control of any premises,  
 induces, or knowingly permits, any girl under the age of 16 years to resort to or be in or on the premises for the purpose of being unlawfully carnally known by any man (whether a particular man or not) is guilty of an indictable offence.

(2) Subject to Subsection (3), an offender against Subsection (1) is guilty of a misdemeanour, and is liable to imprisonment for a term not exceeding two years.

(3) If the girl is under the age of 12 years, an offender against Subsection (1) is guilty of a crime, and is liable, subject to Section 19, to imprisonment for life.

(4) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of 16 years.

(5) The husband or wife of the accused person is a competent but not a compellable witness.

**215 - 217<sup>69</sup>. [REPEALED.]**

**218. PROCURING GIRL OR WOMAN.**

(1) A person who procures, entices or leads away any girl or woman, whether with her consent or not, with intent that some other person may have carnal knowledge of her, whether inside or outside Papua New Guinea is guilty of an offence, notwithstanding that some one or more of the acts constituting the offence may have been committed outside Papua New Guinea.

Penalty: Imprisonment for a term not exceeding three years.

(2) A person cannot be convicted of any offence under this section on the uncorroborated testimony of one witness.

**219. PROCURING GIRL OR WOMAN BY DRUGS, ETC.**

(1) A person who—

- (a) by means of any fraud, violence, threat or abuse of authority; or  
 (b) by the use of any drug or intoxicating liquor,

procures, entices or leads away any girl or woman, with intent that some other person may have carnal knowledge of her whether inside or outside Papua New Guinea is guilty of an offence notwithstanding that some one or more of the acts constituting the offence may have been committed outside Papua New Guinea.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person cannot be convicted of any offence under this section on the uncorroborated testimony of one witness.

<sup>69</sup> Section 210 Amended by No. 27 of 2002, s. 1.

**220. ABDUCTION OF GIRL UNDER 18 WITH INTENT TO HAVE CARNAL KNOWLEDGE.**

(1) A person who, with intent that an unmarried girl under the age of 18 years may be unlawfully carnally known by any man (whether a particular man or not), takes her or causes her to be taken out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of that father or mother or person, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of 18 years.

(3) The husband or wife of the accused person is a competent but not a compellable witness.

**221. UNLAWFUL DETENTION WITH INTENT TO DEFILE OR IN A BROTHEL.**

(1) A person who—

(a) detains a woman or girl against her will in or on any premises for the purpose of her being unlawfully carnally known by a man (whether a particular man or not); or

(b) detains a woman or girl against her will in a brothel,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2) The husband or wife of the accused person is a competent but not a compellable witness.

(3) For the purposes of this section, when a woman or girl is in or on any premises for the purpose of her being unlawfully carnally known by a man (whether a particular man or not), or is in a brothel, a person shall be deemed to detain her in or on the premises for the purpose of her being so unlawfully carnally known, or to detain her in the brothel, if—

(a) with intent to compel or induce her to remain in or on the premises or in the brothel, he withholds from her any wearing apparel or other property belonging to her; or

(b) after wearing apparel has been lent or otherwise supplied to her by or by the direction of that person or any other person, he threatens her with legal proceedings if she takes the wearing apparel away with her.

(4) It is lawful for a woman or girl to take any such wearing apparel as is necessary to enable her to leave a brothel or any premises in or on which she is for the purpose of her being unlawfully carnally known by a man.

**222. CONSPIRACY TO DEFILE.**

A person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit a man to have unlawful carnal knowledge of her is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**223. INCEST.**

<sup>70</sup>(1) A person who engages in an act of sexual penetration with a close blood relative is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) For the purposes of this section, a close blood relative means a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent, grandchild, aunt, uncle, niece, nephew or first cousin, being such a family member from birth and not from marriage or adoption.

(3) No person shall be found guilty of an offence under this section if, at the time the act of sexual penetration occurred, he was under restraint, duress or fear of the other person engaged in the act.

**224<sup>71</sup>. [REPEALED.]****225. ATTEMPTS TO PROCURE ABORTION.**

(1) A person who, with intent to procure the miscarriage of a woman, whether or not she is pregnant, unlawfully administers to her or causes her to take any poison or other noxious thing or uses force or any other means, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

(2) A woman who, with intent to procure her own miscarriage, whether or not she is pregnant—

(a) unlawfully administers to herself any poison or other noxious thing, or uses force or any other means; or

(b) permits any such thing or means to be administered or used to her,  
is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**226. SUPPLYING DRUGS OR INSTRUMENTS TO PROCURE ABORTION.**

A person who unlawfully supplies to or procures for any person any thing, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether or not she is pregnant, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**227. INDECENT ACTS.**

(1) A person who—

(a) wilfully and without lawful excuse does an indecent act in a place to which the public are permitted to have access, whether or not on payment of a charge for admission; or

<sup>70</sup> Section 223 Amended by No. 27 of 2002, s. 1.

<sup>71</sup> Section 224 Amended by No. 27 of 2002, s. 1.



(b) wilfully does an indecent act in a place with intent to insult or offend a person, or by which any person is reasonably insulted or offended,  
is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2) For the purposes of Subsection (1), the uttering of indecent words or the making of an indecent suggestion shall be deemed to be an indecent act.

**(3)<sup>72</sup> <sup>73</sup>228. OBSCENE PUBLICATIONS AND EXHIBITIONS.**

(1) A person who knowingly, and without lawful justification or excuse—

- (a) publicly sells or exposes for sale—
  - (i) an obscene book or other obscene printed or written matter; or
  - (ii) an obscene picture, photograph, drawing or model; or
  - (iii) any other object tending to corrupt morals; or
- (b) exposes to view in a place to which the public are permitted to have access, whether or not on payment of a charge for admission—
  - (i) an obscene picture, photograph, drawing or model; or
  - (ii) any other object tending to corrupt morals; or
- (c) publicly exhibits any indecent show or performance, whether or not on payment of a charge for admission to see the show or performance; or
- (d) for the purposes of, or by way of, trade or sale, or for distribution or public exhibition, makes, produces or has in his possession an obscene writing, drawing, print, painting, picture, poster, emblem, photograph or cinematograph film, or any other obscene object; or
- (e) for a purpose referred to in Paragraph (d)—
  - (i) imports, conveys, or exports; or
  - (ii) causes to be imported or exported; or
  - (iii) puts into circulation,

any obscene matter or thing referred to in that paragraph; or

- (f) carries on or takes part in a business (whether public or private) concerned with any obscene matter or thing referred to in this section, or deals in, distributes, exhibits publicly or makes a business of lending any such obscene matter or thing; or
- (g) with a view to assisting in an act made punishable by this section, advertises or makes known by any means that a person is engaged in any such act, or how or from whom any obscene matter or thing referred to in this section can, directly or indirectly, be procured,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that it was for the public benefit that the act complained of should be done.

(3) Whether the doing of an act referred to in Subsection (1) is or is not for the public benefit is a question of fact.

<sup>72</sup> Section 227(3) repealed by No. 13 of 1977, s11.

<sup>73</sup> Section 227(3) repealed by No. 13 of 1977, s11.

**229. SEARCH, SEIZURE AND DESTRUCTION.**

(1) If it appears to a magistrate on a complaint made on oath that there are reasonable grounds for suspecting that there is in a house, vessel or place an obscene matter or thing referred to in Section 228, he may issue his warrant directing a member of the Police Force named in the warrant, or all members of the Police Force—

- (a) to search the house, vessel or place; and
- (b) to seize any such obscene matter or thing if found and take it before a magistrate to be dealt with according to law.

(2) A warrant under Subsection (1) must be executed by day unless, by the warrant, the magistrate specially authorizes it to be executed by night.

(3) Any obscene matter or thing seized under Subsection (1) may be detained by a magistrate, and when it is no longer required as evidence may be destroyed under an order of a magistrate.

***Division 2A. – Sexual offences against children.*****229A. SEXUAL PENETRATION OF A CHILD.**

<sup>74</sup>(1) A person who engages in an act of sexual penetration with a child under the age of 16 years is guilty of a crime.

Penalty: Subject to Subsection (2) and (3), imprisonment for a term not exceeding 25 years.

(2) If the child is under the age of 12 years, an offender against Subsection (1) is guilty of a crime and is liable, subject to Section 19, to imprisonment for life.

(3) If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child, an offender against Subsection (1) is guilty of a crime, and is liable, subject to Section 19, to imprisonment for life.

**229B. SEXUAL TOUCHING.**

<sup>75</sup>(1) A person who, for sexual purposes –

- (a) touches, with any part of his or her body, the sexual parts of a child under the age of 16 years; or
- (b) compels a child under the age of 16 years to touch, with any part of his or her body, the sexual parts of the accused person's own body,

is guilty of a crime.

Penalty: Subject to Subsection (4) and (5), imprisonment for a term not exceeding seven years.

(2) For the purposes of this section, “sexual parts” including the genital are, groin, buttocks or breast of a person.

(3) For the purposes of this section, a person touches another person if he touches the other person with his body or with an object manipulated by the person.

<sup>74</sup> Section 229A of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>75</sup> Section 229B of Part IV Inserted by No. 27 of 2002, s. 1.

(4) If the child is under the age of 12 years, an offender under Subsection (1) is guilty of a crime, and is liable to imprisonment for a term not exceeding 12 years.

(5) If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child, an offender against Subsection (1) is guilty of a crime, and is liable to imprisonment for a term not exceeding 12 years.

### **229C. INDECENT ACT DIRECTED AT A CHILD.**

<sup>76</sup>(1) A person who commits an indecent act directed at a child under the age of 16 years is guilty of a crime.

Penalty: Subject to Subsection (2) and (3), imprisonment for a term not exceeding five years.

(2) If the child is under the age of 12 years, an offender under Subsection (1) is guilty of a crime, and is liable to imprisonment for a term not exceeding seven years.

(3) If, at the time of the offence, there was an existing relationship of trust, authority or dependency between the accused and the child, an offender against Subsection (1) is guilty of a crime, and is liable to imprisonment for a term not exceeding seven years.

### **229D. PERSISTENT SEXUAL ABUSE OF A CHILD.**

<sup>77</sup>(1) A person who, on two or more occasions, engages in conduct in relation to a particular child that constitutes an offence against this Division, is guilty of a crime of persistent abuse of a child.

Penalty: Subject to Subsection (6), imprisonment for a term not exceeding 15 years.

(2) For the purposes of Subsection (1), it is immaterial whether or not the conduct is of the same nature, or constitutes the same offence, on each occasion.

(3) In proceedings related to an offence against this section, it is not necessary to specify or prove the dates or exact circumstances of the alleged occasions on which the conduct constituting the offence occurred.

(4) A charge of an offence against this section –

- (a) must specify with reasonable particularity the period during which the offence against this section occurred; and
- (b) must describe the nature of the separate offences alleged to have been committed by the accused during that period.

(5) For an accused to be committed of an offence against this section –

- (a) the court must be satisfied beyond reasonable doubt that the evidence establishes at least two separate occasions, occurring on separate days during the period concerned, on which the accused engaged in conduct constituting an offence against this Division in relation to a particular child; and
- (b) the court must be so satisfied about the material facts of the two incidents, although the court need not be so satisfied about the dates or the order of those occasions.

<sup>76</sup> Section 229C of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>77</sup> Section 229D of Part IV Inserted by No. 27 of 2002, s. 1.

(6) If one or more of the occasions involved an act of penetration, an offender against Subsection (1) is guilty of a crime and is liable, subject to Section 19, to life imprisonment.

**229E. ABUSE OF TRUST, AUTHORITY OR DEPENDENCY.**

<sup>78</sup>(1) A person who engages in an act of sexual penetration or sexual touching of a child between the ages of 16 and 18 years with whom the person has an existing relationship of trust, authority or dependency is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

(2) It is not a defence of a charge under this section that the child consented unless, at the time of the alleged offence, the accused believed on reasonable grounds that the child was aged 18 years or older.

**229F. CONSENT NO DEFENCE.**

<sup>79</sup>Subject to Section 229E, it is not a defence to a charge under this Division that the child consented unless, at the time of the alleged offence –

- (a) the accused believed on reasonable grounds that the child was aged 16 years or older; or
- (b) the child was aged 12 years or older, and the accused was no more than two years older than the child.

**229G. DEFENCE – MARRIAGE.**

<sup>80</sup>A person is not criminally responsible for an offence against this Division in respect of an act if, at the time of the act, the child was of over the age of 14 years and the person was married to the child.

**229H. CORROBORATION NOT REQUIRED.**

<sup>81</sup>On a charge of an offence against any provision of this Division, a person may be found guilty on the uncorroborated testimony of one witness, and a Judge shall not instruct himself or herself that it is unsafe to find the accused guilty in the absence of corroboration.

**229I. RULE OF EVIDENCE.**

<sup>82</sup>On the charge of an offence against any provision of this Division, the spouse of the accused person is a competent and compellable witness.

*Division 2B. – Commercial sexual exploitation of children.*

**229J. INTERPRETATION.**

<sup>83</sup>For the purposes of this Subsection –

<sup>78</sup> Section 229E of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>79</sup> Section 229F of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>80</sup> Section 229G of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>81</sup> Section 229H of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>82</sup> Section 229I of Part IV Inserted by No. 27 of 2002, s. 1.

“**child or children**” means a person under the age of 18 years;

“**child prostitution**” means the provision of any sexual service by a person under the age of 18 years for financial or other reward, favour or compensation, whether paid to the child or some other person;

“**child pornography**” means –

- (a) any photographic, film, video or other visual representation –
  - (i) that show a person who is or who is depicted as being under the age of 18 years and is engaged in, or is depicted as engaged in, sexual activity; or
  - (ii) whose dominant characteristics is the depiction, for a sexual purpose, of the genital or anal region of a person under the age of 18; or
- (b) any audio representation of a person who is, or is represented as being, a child and who is engaged in, or is being represented as being engaged in, sexual activity; or
- (c) any written material, visual representation or audio representation that advocates, counsels or encourages sexual activity with children,

irrespective of how or through what medium the representation has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing,, includes any representation produced by or from computer graphics or by the other electronic or mechanical means.

#### **229K. OBTAINING THE SERVICES OF A CHILD PROSTITUTE.**

<sup>84</sup>(1) A person who –

- (a) participates as a client or is otherwise involved with a child in an act of child prostitution; or
- (b) invites, persuades or induces a child to engage in child prostitution with him or her or any other person,

is guilty of a crime.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding 15 years.

(2) If the child is under the age of 12 years,, an offender against Subsection (1) is guilty of a crime, and is liable, subject to Section 19, to life imprisonment.

#### **229L. OFFERING OR ENGAGING A CHILD FOR PROSTITUTION.**

<sup>85</sup>(1) Any person who intentionally offers or engages a child for the purposes of child prostitution is guilty of a crime.

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<sup>83</sup> Section 229J of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>84</sup> Section 229K of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>85</sup> Section 229L of Part IV Inserted by No. 27 of 2002, s. 1.

(2) If the child is under the age of 12 years, the offender against Subsection (1) is guilty of a crime, and is liable, subject to Section 19, to life imprisonment.

**229M. FACILITATION OR ALLOWING CHILD PROSTITUTION.**

<sup>86</sup>Any parent, guardian or person with care or custody of a child who knowingly and allows or facilitates, in any way, the engagement of that child in an act of child prostitution is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

**229N. RECEIVING A BENEFIT FROM CHILD PROSTITUTION.**

<sup>87</sup>Any person who knowingly receives any financial or other reward, favour or compensation from child prostitution is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

**229O. PERMITTING PREMISES TO BE USED FOR CHILD PROSTITUTION.**

<sup>88</sup>Any person who is an owner, lessor, manager, tenant or occupier of property who –

- (a) knowingly allows child prostitution to take place on that property; or
- (b) within a reasonable time of gaining information that an act of child prostitution has taken place on that property, fails to report such occurrence to the police,

is guilty of crime.

Penalty: Imprisonment for a term not exceeding 15 years.

**229P. MISTAKE AS TO AGE.**

<sup>89</sup>It is a defence to an offence under Sections 229K and 299M that the person reasonably believed that the child was aged 18 years or older.

**229Q. CHILD NOT TO BE CHARGED.**

<sup>90</sup>No person under the age of 18 years shall be charged with an offence under this subdivision of any sexual service by that child for financial or other reward, favour or compensation.

**229R. CHILDREN NOT TO BE USED FOR PORNOGRAPHIC PURPOSES.**

<sup>91</sup>A person who –

- (a) uses a child for the production of child pornography; or
- (b) causes or procures a child to be used for the production of child pornography; or

<sup>86</sup> Section 229M of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>87</sup> Section 229N of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>88</sup> Section 229O of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>89</sup> Section 229P of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>90</sup> Section 229Q of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>91</sup> Section 229R of Part IV Inserted by No. 27 of 2002, s. 1.

(c) having the care or custody of a child, consents to or allows the child to be used for the production of child pornography,  
is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

### **229S. PRODUCING AND DISTRIBUTING CHILD PORNOGRAPHY.**

<sup>92</sup>A person who –

- (a) knowingly produces, distributes, prints or publishes any child pornography; or
- (b) knowingly imports, exports, sells or shows any child pornography; or
- (c) knowingly possesses any child pornography for the purpose of distributing, publishing, exporting, selling or showing it,

is guilty of a crime.

Penalty: Imprisonment of a term of not exceeding 10 years.

### **229T. POSSESSION OF CHILD PORNOGRAPHY.**

<sup>93</sup>A person who knowingly possesses any child pornography is guilty of crime.

Penalty: Imprisonment for a term not exceeding five years.

### **229U. DEFENCE OF INNOCENT PURPOSE.**

<sup>94</sup>It is a defence to a charge against Section 229R, 229S and 229T that –

- (a) the material alleged to constitute child pornography has a genuine medical, legal, scientific or educational purpose; or
- (b) the material alleged to constitute child pornography has artistic or cultural merit; or
- (c) the accused believed, on reasonable grounds, that the child depicted in the material alleged to constitute child pornography was over the age of 18 years.

### **229V. DEFENCE OF OFFICIAL USE.**

<sup>95</sup>It is a defence to charge against Section 229Q and 229R that the accused was in possession of child pornography –

- (a) for the purpose of prevention, investigation or prosecution of an offence under the Code; or
- (b) in the exercise of a function under *Classification of Publication (Censorship) Act 1989*.

### ***Division 3. – Division 3.-Nuisances: Misconduct Relating to Corpses..***

### **230. COMMON NUISANCES.**

A person who–

<sup>92</sup> Section 229S of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>93</sup> Section 229T of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>94</sup> Section 229U of Part IV Inserted by No. 27 of 2002, s. 1.

<sup>95</sup> Section 229V of Part IV Inserted by No. 27 of 2002, s. 1.

- (a) without lawful justification or excuse (proof of which is on him) does any act, or omits to do any act with respect to any property under his control, by which act or omission danger is caused to the lives, safety, or health, of the public; or
- (b) without lawful justification or excuse, (proof of which is on him) does any act, or omits to do any act with respect to any property under his control, by which act or omission—
  - (i) danger is caused to the property or comfort of the public or the public are obstructed in the exercise or enjoyment of any right common to all inhabitants of Papua New Guinea; and
  - (ii) injury is caused to the person of some person,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

### 231. BAWDY HOUSES.

A person who keeps a house, room, set of rooms or place of any kind for purposes of prostitution is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

### 232. GAMING HOUSES.

(1) A person who—

- (a) keeps for gain a place to which persons resort for the purpose of playing at a game of chance; or
- (b) keeps a place that is kept or used for playing in it a game of chance, or a game of mixed chance and skill, and in which—
  - (i) a bank is kept by one or more of the players exclusively of the others; or
  - (ii) a game is played the chances of which are not alike favourable to all the players, including the banker or other persons by whom the game is managed, or against whom the other players stake, play, or bet,

is said to keep a common gaming house.

(2) A person who keeps a common gaming house is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

### 233. BETTING HOUSES.

(1) A house, room or place that is used—

- (a) for the purpose of bets being made in it between persons resorting to it and—
  - (i) the owner, occupier or keeper of the place; or
  - (ii) any person using the place; or
  - (iii) any person procured or employed by or acting for or on behalf of the owner, occupier or keeper of the place, or a person using the place; or
  - (iv) any person having the care or management, or in any manner conducting the business, of the place; or



- (b) for the purpose of any money or other property being paid or received in it by or on behalf of the owner, occupier or keeper of the place or a person using the place, as or for the consideration—
- (i) for an assurance, undertaking, promise, or agreement, express or implied, to later pay or give any money or other property on any event or contingency of or relating to any horse race, or other race, fight, game, sport or exercise; or
  - (ii) for securing the paying or giving by some other person of any money or other property on the event or contingency,

is called a common betting house.

(2) A person who opens, keeps or uses a common betting house is guilty of a misdemeanour.

Penalty: On conviction on indictment—imprisonment for a term not exceeding three years.

On summary conviction—a fine not exceeding K1,000.00 and imprisonment for a term not exceeding one year.

(3) A person who—

- (a) is the owner or occupier of any house, room or place and knowingly and wilfully permits it to be opened, kept or used, as a common betting house by another person; or
- (b) has the use or management or assists in conducting the business, of a common betting house,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 and imprisonment for a term not exceeding one year.

## 234. LOTTERIES.

(1) In this section, “**lottery**” includes any scheme or device for the sale, gift, disposal, or distribution, of any property depending on or to be determined by lot or chance, whether—

- (a) by the throwing or casting of dice; or
- (b) the drawing of tickets, cards, lots, number or figures; or
- (c) by means of a wheel or trained animal; or
- (d) by any other means.

(2) Subject to Subsection (3), a person who opens, keeps or uses any place for carrying on a lottery of any kind is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(3) The section does not apply to any lottery approved under Section 3 of the *Gaming Act 1959*.

**235. ACTING AS KEEPER OF BAWDY HOUSES, GAMING HOUSES, BETTING HOUSES AND LOTTERIES.**

A person who appears, acts or behaves as master, or as the person having the care or management, of any house, room, set of rooms or place referred to in Section 231, 232, 233 or 234, is to be taken to be the keeper of it, whether or not he is the real keeper.

**236. MISCONDUCT WITH REGARD TO CORPSES.**

A person who, without lawful justification or excuse (proof of which is on him)–

- (a) neglects to perform any duty imposed on him by law or undertaken by him, whether for reward or otherwise, concerning the burial or other disposition of a human body or human remains; or
- (b) improperly or indecently interferes with, or offers any indignity to, any dead human body or human remains, whether buried or not,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

***Division 4. – Offences Against Public Health.*****237. FALSE INFORMATION AS TO HEALTH ON FOREIGN SHIPS.**

A person who, being the master or medical officer of a ship arriving from overseas–

- (a) neglects or refuses to give to any officer employed in the Public Service any information that he is required by law to give to him; or
- (b) gives to any such officer, orally or in writing, any information touching any matter as to which he is required by law to give him information, which information is, to his knowledge, false in a material particular,

is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00 and imprisonment for a term not exceeding one year.

**238. EXPOSING FOR SALE THINGS UNFIT FOR FOOD.**

A person who–

- (a) knowingly exposes for sale for the food of man; or
- (b) has in his possession with intent to sell it for the food of man,

any article that he knows to be unfit for the food of man, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**239. DEALING IN DISEASED MEAT.**

A person who knowingly–

- (a) takes into a slaughter-house used for the slaughter of animals intended for the food of man the whole or any part of the carcass of an animal that has died of a disease; or

- (b) sells or exposes for sale the whole or part of the carcass of an animal that has died of a disease, or that was diseased when slaughtered, unless the dressing of the animal was authorized under the *Slaughtering Act 1964*,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**240. ADULTERATING LIQUOR.**

A person who—

- (a) puts a deleterious or poisonous substance into any spirituous or fermented liquor, or mixes any such substance with any such liquor; or  
 (b) sells or otherwise disposes of, or keeps for sale, any spirituous or fermented liquor into which any such substance has been put, or with which any such substance has been mixed,

is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

*Division 5. – Miscellaneous Offences.*

**241. DEALING WITH LAND FRAUDULENTLY ACQUIRED FROM THE STATE.**

(1) A person who buys or takes on lease any land, or any estate in any land, from any person who has acquired the land or the estate by means of a fraudulent evasion of the laws relating to the sale or leasing of Government land knowing that the seller or lessor has so acquired it, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

(2) Where a person commits an offence against Subsection (1) in relation to any land, his estate in the land is forfeited to the State.

**242. FRAUDULENT DESTRUCTION OR REMOVAL OF GOODS LIABLE TO DUTY.**

A person who fraudulently destroys, or takes from their lawful place of deposit or detention, any goods that—

- (a) are liable to the payment of duty; and  
 (b) are deposited or detained for the purpose of securing payment of the duty,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**PART V. – OFFENCES AGAINST THE PERSON AND RELATING TO MARRIAGE AND PARENTAL RIGHTS AND DUTIES, AND AGAINST THE REPUTATION OF INDIVIDUALS.**

*Division 1. – Assaults and Violence to the Person Generally: Justification and Excuse.*

**243. DEFINITION OF ASSAULT.**

(1) A person who–

- (a) directly or indirectly strikes, touches or moves, or otherwise applies force to, the person of another, without his consent, or with his consent if the consent is obtained by fraud; or
- (b) by any bodily act or gesture attempts or threatens to apply force to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose,

is said to assault that other person, and the act is called an assault.

(2) A reference in Subsection (1) to the application of force includes a reference to the application of heat, light, electrical force, gas, odour, or any other substance or thing in such a degree as to cause injury or personal discomfort.

(3) A male person under the age of 17 years shall be deemed not to be capable of consenting to any act by any other male person that but for such consent would be an indecent assault.

**244. ASSAULTS UNLAWFUL.**

(1) An assault is unlawful and constitutes an offence unless it is authorized, justified or excused by law.

(2) The application of force by one person to the person of another may be unlawful, even if it is done with the consent of that other person.

**245. EXECUTION OF SENTENCE.**

It is lawful for a person who is charged by law with the duty of executing or giving effect to the lawful sentence of a court to execute or give effect to the sentence.

**246. EXECUTION OF PROCESS.**

It is lawful for a person who is–

- (a) charged by law with the duty of executing the lawful process of a court; and
- (b) required to arrest or detain another person under such process,

and for every person lawfully assisting a person so charged, to arrest or detain the other person according to the terms of the process.

**247<sup>96</sup>. [REPEALED.]****248. ERRONEOUS SENTENCE OR PROCESS OR WARRANT.**

Where—

- (a) a sentence was passed, or the process was issued, by a court having jurisdiction under any circumstances to pass the sentence or to issue the process; or
- (b) a warrant was issued by a court, or person having authority under any circumstances to issue the warrant,

it is immaterial whether or not the court or person had authority to pass the sentence or issue the process or warrant in the particular case, unless the person executing it knows that the sentence, process or warrant was in fact passed or issued without authority.

**249. SENTENCE OR PROCESS OR WARRANT WITHOUT JURISDICTION.**

A person who—

- (a) executes, or assists in executing, any sentence, process or warrant that purports to be passed or issued by a court or person; and
- (b) would be justified, under Section 245, 246, 247 or 248 in executing it if it had been passed or issued by a court or person having authority to pass or issue it,

is not criminally responsible for any act done in such execution, notwithstanding that the court or person had no authority to pass the sentence or issue the process or warrant, if in the execution he acted in good faith and in the belief that the sentence, process or warrant was that of a court or person having such authority.

**250<sup>97</sup>. [REPEALED.]****251. IRREGULAR PROCESS OR WARRANT.**

When any process or warrant is bad in law by reason of some defect in substance or in form apparent on the face of it, a person who, in good faith and believing that it is good in law, acts in the execution of the process or warrant is not criminally responsible for anything done in the execution to any greater extent than if the process or warrant were good in law.

**252. FORCE USED IN EXECUTING PROCESS.**

<sup>98</sup>It is lawful for a person who is engaged in the lawful execution of any sentence, process or warrant, and for any person lawfully assisting him, to use such force as is reasonably necessary to overcome any force used in resisting the execution.

<sup>96</sup> Section 247 Repealed by No. 13 of 1977, s12.

<sup>97</sup> Section 250 repealed by No. 13 of 1977, s13.

<sup>98</sup> Section 252 amended by Act No. 13 of 1977, s14.

**253 - 257<sup>99</sup>. [REPEALED.]**

**258. PREVENTING A BREACH OF THE PEACE.**

It is lawful for a person who witnesses a breach of the peace to interfere to prevent the continuance or renewal of it, and to use such force as is—

- (a) reasonably necessary for its prevention; and
- (b) reasonably proportioned to the danger to be apprehended from its continuance or renewal.

**259. SUPPRESSION OF RIOT.**

It is lawful for any person to use such force as is—

- (a) necessary to suppress a riot; and
- (b) reasonably proportioned to the danger to be apprehended from its continuance.

**260. SUPPRESSION OF RIOT BY MAGISTRATES AND POLICE OFFICERS.**

It is lawful for a magistrate to use, or order to be used, and for a member of the Police Force to use, such force as—

- (a) he believes, on reasonable grounds, to be necessary in order to suppress a riot; and
- (b) is reasonably proportioned to the danger that he believes, on reasonable grounds, is to be apprehended from its continuance.

**261. SUPPRESSION OF RIOT BY PERSON ACTING UNDER LAWFUL ORDERS.**

(1) It is lawful for a person, acting in good faith in obedience to orders, not manifestly unlawful, given by a magistrate for the suppression of a riot, to use such force as he believes, on reasonable grounds, to be necessary for carrying the orders into effect.

(2) The question, whether or not any particular order referred to in Subsection (1) is manifestly unlawful is a question of law.

**262. SUPPRESSION OF RIOT BY PERSON ACTING WITHOUT ORDER IN CASE OF EMERGENCY.**

When any person believes, on reasonable grounds, that serious mischief will arise from a riot before there is time to procure the intervention of a magistrate, it is lawful for him to use such force as—

- (a) he believes, on reasonable grounds to be necessary for the suppression of the riot; and
- (b) is reasonably proportioned to the danger that he believes, on reasonable grounds, is to be apprehended from its continuance.

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<sup>99</sup> Section 252 amended by Act No. 13 of 1977, s14.

**263. RIOT: PERSONS SUBJECT TO MILITARY LAW.**

(1) It is lawful for a person who is bound by military law to obey the lawful commands of his superior officer and to obey any command given to him by his superior officer for the purposes of the suppression of a riot, unless the command is manifestly unlawful.

(2) The question, whether or not any particular command referred to in Subsection (1) is manifestly unlawful is a question of law.

**264. PREVENTION OF CRIMES AND OFFENCES FOR WHICH AN OFFENDER MAY BE ARRESTED WITHOUT WARRANT: PREVENTION OF VIOLENCE BY PERSONS OF UNSOUND MIND.**

<sup>100</sup>It is lawful for any person to use such force as is reasonably necessary in order to prevent—

- (a) the commission of an offence other than an offence specified by law (including this Code) to be an offence for which a person may only be arrested by virtue of a warrant; or
- (b) any act from being done that he believes, on reasonable grounds, would amount to such an offence; or
- (c) a person whom he believes, on reasonable grounds, to be of unsound mind from doing violence to any person or property.

**265. DEFENCE OF DWELLING-HOUSE.**

It is lawful for a person who is in peaceable possession of a dwelling-house, and for any person lawfully assisting him or acting by his authority, to use such force as he believes, on reasonable grounds, to be necessary in order to prevent the forcible breaking and entering of the dwelling-house by any person whom he believes, on reasonable grounds, to be attempting to break and enter it with intent to commit an indictable offence in it.

**266. PROVOCATION.**

(1) Subject to this section, “provocation” used with reference to an offence of which an assault is an element, means a wrongful act or insult of such a nature as to be likely, when done—

- (a) to an ordinary person; or
- (b) in the presence of an ordinary person to another person—
  - (i) who is under his immediate care; or
  - (ii) to whom he stands—
    - (A) in a conjugal, parental, filial or fraternal relationship; or
    - (B) in the relation of master or servant,

to deprive him of the power of self-control, and to induce him to assault the person by whom the act or insult is done or offered.

(2) When an act or insult referred to in Subsection (1) is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other or to whom the latter stands in a relation referred to in Subsection (1) the former is said to give to the latter provocation for an assault.

<sup>100</sup> Section 264 amended by Act No. 13 of 1977, s21.

(3) A lawful act is not provocation to any person for an assault.

(4) An act that a person does in consequence of incitement given by another person in order to induce him to do the act, and thus to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

(5) An arrest that is unlawful is not necessarily provocation for an assault, but may be evidence of provocation to a person who knows of the illegality.

#### **267. DEFENCE OF PROVOCATION.**

(1) A person is not criminally responsible for an assault committed on a person who gives him provocation for the assault, if he—

(a) is deprived by the provocation of the power of self-control; and

(b) acts on it on the sudden and before there is time for his passion to cool,

if the force used is not disproportionate to the provocation, and is not intended to cause, and is not likely to cause, death or grievous bodily harm.

(2) Any question, whether or not—

(a) any particular act or insult is likely to deprive an ordinary person of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered; or

(b) in any particular case, the person provoked was actually deprived by the provocation of the power of self-control; or

(c) any force used is disproportionate to the provocation,

is a question of fact.

#### **268. PREVENTION OF REPETITION OF INSULT.**

It is lawful for a person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to him for an assault, if the force used is not intended to cause, and is not likely to cause, death or grievous bodily harm.

#### **269. SELF-DEFENCE AGAINST UNPROVOKED ASSAULT.**

(1) When a person is unlawfully assaulted and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make an effectual defence against the assault, if the force used is not intended to cause, and is not likely to cause, death or grievous bodily harm.

(2) If—

(a) the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm; and

(b) the person using force by way of defence believes, on reasonable grounds, that he cannot otherwise preserve the person defended from death or grievous bodily harm,

it is lawful for him to use such force to the assailant as is necessary for defence, even if it causes death or grievous bodily harm.



**270. SELF-DEFENCE AGAINST PROVOKED ASSAULT.**

(1) Subject to Subsection (2), when—

- (a) a person has unlawfully assaulted another person, or has provoked an assault from another person; and
- (b) the other person assaults him with such violence as—
  - (i) to cause reasonable apprehension of death or grievous bodily harm; and
  - (ii) to induce him to believe, on reasonable grounds that it is necessary for his preservation from death or grievous bodily harm to use force in self-defence,

the first-mentioned person is not criminally responsible for using any such force as is reasonably necessary for such preservation, even if it causes death or grievous bodily harm.

(2) The protection provided by Subsection (1) does not apply—

- (a) where the person using force that causes death or grievous bodily harm—
  - (i) first began the assault with intent to kill or to do grievous bodily harm to some person; or
  - (ii) endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself arose; or
- (b) unless, before the necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

**271. AIDING IN SELF-DEFENCE.**

Where it is lawful for a person to use force of any degree for the purpose of defending himself against an assault, it is lawful for any other person acting in good faith in his aid to use force of a like degree for the purpose of defending him.

**272. DEFENCE OF MOVABLE PROPERTY AGAINST TRESPASSERS.**

It is lawful for a person who is in peaceable possession of any movable property, and for any person acting by the authority of any such person, to use such force as is reasonably necessary in order—

- (a) to resist the taking of that property by a trespasser; or
- (b) to retake it from a trespasser,

if he does not do him bodily harm.

**273. DEFENCE OF MOVABLE PROPERTY WITH CLAIM OF RIGHT.**

When a person is in peaceable possession of any movable property under a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession of the property, even against a person who is entitled by law to possession of the property, if he does not do him bodily harm.

**274. DEFENCE OF MOVABLE PROPERTY WITHOUT CLAIM OF RIGHT.**

When a person who is entitled by law to the possession of movable property attempts to take it from a person who—

- (a) is in possession of the property; and

- (b) neither–
  - (i) claims right to it; nor
  - (ii) acts by the authority of a person who claims right,

and the person in possession resists him, it is lawful for the person entitled to possession to use force in order to obtain possession of the property, if he does not do bodily harm to the person in possession.

**275. DEFENCE OF PREMISES AGAINST TRESPASSERS: REMOVAL OF DISORDERLY PERSONS.**

(1) In this section, “**place**” includes any part of an enclosure or structure, whether or not it is separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means.

(2) It is lawful for a person who is–

- (a) in peaceable possession of any land, structure, vessel or place; or
- (b) entitled to the control or management of any land, structure, vessel or place,

and for any person acting by the authority of such a person, to use such force as is reasonably necessary in order–

- (c) to prevent any person from wrongfully entering on the land, structure, vessel or place; or

(d) to remove from it a person who wrongfully remains on it, if he does not do bodily harm to that person.

(3) It is lawful for a person who is–

- (a) in peaceable possession of any land, structure, vessel or place; or
- (b) entitled to the control or management of any land, structure, vessel or place,

and for any person acting by the authority of such a person, to use force in order to remove from it any person who conducts himself in a disorderly manner in it, if he does not do him bodily harm.

**276. DEFENCE OF POSSESSION OF REAL PROPERTY OR VESSEL WITH CLAIM OF RIGHT.**

When a person is in peaceable possession of any land, structure or vessel, with a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession, even against a person who is entitled by law to the possession of the property, if he does not do him bodily harm.

**277. EXERCISE OF RIGHT OF WAY OR EASEMENT.**

When a person who is lawfully entitled to enter on land for the exercise of a right of way or other easement, or a profit–

- (a) enters on the land for the purpose of exercising the right of way, easement or profit, after notice that his right to use the way or easement or to take the profit is disputed by the person in possession of the land; or
- (b) having entered persists in his entry after the notice,

it is lawful for the person in possession, and for any person acting by his authority, to use such force as is reasonably necessary for the purpose of making the person entering desist from the entry, if he does not do him bodily harm.

**278. DOMESTIC DISCIPLINE.**

It is lawful for a parent or a person in the place of a parent, or for a schoolmaster, or master, to use, by way of correction, towards a child, pupil or apprentice under his care such force as is reasonable under the circumstances.

**279. DISCIPLINE OF SHIP OR AIRCRAFT.**

It is lawful for the master or other person in command of—

- (a) a vessel on a voyage; or
- (b) an aircraft on a flight,

and any person acting by his authority, to use, for the purpose of maintaining good order and discipline on board the vessel or aircraft, such force as—

- (c) he believes, on reasonable grounds, to be necessary; and
- (d) is reasonable under the circumstances.

**280. SURGICAL OPERATIONS.**

A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation on—

- (a) any person for his benefit; or
- (b) an unborn child for the preservation of the mother's life,

if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

**281. EXCESSIVE FORCE.**

Even where the use of force by one person to another is lawful, the use of more force than is justified by law under the circumstances is unlawful.

**282. CONSENT TO DEATH IMMATERIAL.**

Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom the death is caused.

*Division 2. – Duties Relating to the Preservation of Human Life.*

**283. DUTY TO PROVIDE NECESSARIES.**

(1) It is the duty of every person having charge of another who—

- (a) is unable by reason of age, sickness, unsoundness of mind, detention, or any other cause, to withdraw himself from that charge; and
- (b) is unable to provide himself with the necessaries of life,

whether the charge—

- (c) is undertaken under a contract; or
- (d) is imposed by law; or
- (e) arises by reason of any act, whether lawful or unlawful, of the person who has the charge,

to provide for the other person the necessaries of life.

(2) A person on whom a duty is imposed by Subsection (1) shall be deemed to have caused any consequences that result to the life or health of the other person by reason of any omission to perform that duty.

#### **284. DUTY OF HEAD OF FAMILY.**

It is the duty of every person who, as head of a family, has the charge of a child under the age of 14 years who is a member of his household to provide the necessaries of life for the child, and he shall be deemed to have caused any consequences that result to the life or health of the child by reason of any omission to perform that duty, whether or not the child is helpless.

#### **285. DUTY OF MASTERS.**

It is the duty of every person who as a master has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of 16 years to provide it, and he shall be deemed to have caused any consequences that result to the life or health of the servant or apprentice by reason of any omission to perform that duty.

#### **286. DUTY OF PERSONS DOING DANGEROUS ACTS.**

It is the duty of every person who, except in a case of necessity, undertakes—

- (a) to administer surgical or medical treatment to any other person; or
- (b) to do any other lawful act that is or may be dangerous to human life or health,

to have reasonable skill and to use reasonable care in doing the act, and he shall be deemed to have caused any consequences that result to the life or health of any person by reason of any omission to observe or perform that duty.

#### **287. DUTY OF PERSONS IN CHARGE OF DANGEROUS THINGS.**

(1) It is the duty of every person who has in his charge or under his control any thing, whether living or inanimate, and whether moving or stationary, of such a nature that in the absence of care or precaution in its use or management the life, safety or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid that danger.

(2) A person on whom a duty is imposed by Subsection (1) shall be deemed to have caused any consequences that result to the life or health of any person by reason of any omission to perform that duty.

#### **288. DUTY TO DO CERTAIN ACTS.**

When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is his duty to do that act, and he shall be deemed to have caused any consequences that result to the life or health of any person by reason of any omission to perform that duty.

*Division 3. – Homicide: Suicide: Concealment of Birth.***289. HOMICIDE.**

It is unlawful to kill a person unless the killing is authorized or justified or excused by law.

**290. WHEN A CHILD BECOMES A HUMAN BEING.**

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 or not—

- (a) it has breathed; or
- (b) it has an independent circulation; or
- (c) the navel-string is severed.

**291. DEFINITION OF KILLING.**

Subject to the succeeding provisions of this Code, any person who causes the death of another, directly or indirectly, by any means, shall be deemed to have killed the other person.

**292. DEATH BY ACTS DONE AT CHILDBIRTH.**

When a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do the act shall be deemed to have killed the child.

**293. CAUSING DEATH BY THREATS.**

A person who, by threats, intimidation or deceit, causes another person to do an act or make an omission that results in the death of that other person shall be deemed to have killed him.

**294. ACCELERATION OF DEATH.**

A person who does any act or makes any omission that hastens the death of another person who, when the act is done or the omission is made, is suffering from some disorder or disease arising from another cause, shall be deemed to have killed that other person.

**295. WHEN INJURY OR DEATH MIGHT BE PREVENTED BY PROPER PRECAUTION.**

When a person causes a bodily injury to another from which death results, it is immaterial that—

- (a) the injury might have been avoided by proper precaution on the part of the person injured; or
- (b) his death from the injury might have been prevented by proper care or treatment.

**296. INJURIES CAUSING DEATH IN CONSEQUENCE OF SUBSEQUENT TREATMENT.**

When—

- (a) a person does grievous bodily harm to another; and

- (b) the other person has recourse to surgical or medical treatment; and
- (c) death results either from the injury or the treatment,

the first-mentioned person shall be deemed to have killed the other person, even if the immediate cause of death was the surgical or medical treatment, if the treatment was—

- (d) reasonably proper under the circumstances; and
- (e) applied in good faith.

### **297. LIMITATION AS TO TIME OF DEATH.**

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

(2) Subject to Subsections (3) and (4), the period referred to in Subsection (1) shall be calculated inclusive of the day on which the last unlawful act contributing to the cause of death was done.

(3) If the cause of death is an omission to perform a duty, the period referred to in Subsection (1) shall be calculated inclusive of the date on which the omission ceased.

(4) If the cause of death is—

- (a) in part an unlawful act; and
- (b) in part an omission to perform a duty,

the period referred to in Subsection (1) shall be calculated inclusive of the day on which—

- (c) the last unlawful act was done; or
- (d) the omission ceased, whichever last occurred.

### **298. UNLAWFUL HOMICIDE.**

A person who unlawfully kills another is guilty of the crime of wilful murder, murder, infanticide or manslaughter, according to the circumstances of the case.

### **299. WILFUL MURDER.**

(1) Subject to the succeeding provisions of this Code, a person who unlawfully kills another person, intending to cause his death or that of some other person, is guilty of wilful murder.

(2)<sup>101 102</sup>A person who commits wilful murder shall be liable to be sentenced to death.

### **300. MURDER.**

(1)<sup>103 104</sup>Subject to the succeeding provisions of this Code, a person who kills another person under any of the following circumstances is guilty of murder:—

- (a) if the offender intended to do grievous bodily harm to the person killed or to some other person;
- (b) if death was caused by means of an act—

<sup>101</sup> Section 299(2) amended by Act No. 2 of 1976; repealed and replaced by Act No. 25 of 1991, s2.

<sup>102</sup> Section 299(2) amended by Act No. 2 of 1976; repealed and replaced by Act No. 25 of 1991, s2.

<sup>103</sup> Section 300(1) amended by Act No. 13 of 1977, s22; amended by Act No. 12 of 1982, s3.

<sup>104</sup> Section 300(1) amended by Act No. 13 of 1977, s22; amended by Act No. 12 of 1982, s3.

- (i) done in the prosecution of an unlawful purpose; and
- (ii) of such a nature as to be likely to endanger human life;
- (c) if the offender intended to do grievous bodily harm to some person for the purpose of facilitating—
  - (i) the commission of a crime other than a crime specified by a law (including this Code) to be a crime for which a person may only be arrested by virtue of a warrant; or
  - (ii) the flight of an offender who has committed or attempted to commit an offence referred to in Subparagraph (i);
- (d) if death was caused by administering any stupefying or overpowering thing for a purpose specified in Paragraph (c);
- (e) if death was caused by wilfully stopping the breath of a person for a purpose specified in Paragraph (c).

Penalty: Subject to Section 19, imprisonment for life.

(2) In a case to which Subsection (1)(a) applies, it is immaterial that the offender did not intend to hurt the particular person who was killed.

(3) In a case to which Subsection (1)(b) applies, it is immaterial that the offender did not intend to hurt any person.

(4) In a case to which Subsection (1)(c), (d) or (e) applies, it is immaterial that the offender—

- (a) did not intend to cause death; or
- (b) did not know that death was likely to result.

### **301. INFANTICIDE.**

(1) Where—

- (a) by a wilful act or omission a woman causes the death of her child under the age of 12 months; and
- (b) at the time of the act or omission the balance of her mind was disturbed by reason of—
  - (i) her not having fully recovered from the effect of giving birth to the child; or
  - (ii) the effect of lactation consequent on the birth of the child,

she is guilty of infanticide, and may be dealt with and punished as if she had been guilty of the manslaughter of the child.

(2) On an indictment for the offence of infanticide, the accused may be convicted of an offence under Section 313.

(3) On an indictment for wilful murder, murder or manslaughter, a woman may be convicted of infanticide.

### **302. MANSLAUGHTER.**

A person who unlawfully kills another under such circumstances as not to constitute wilful murder, murder or infanticide is guilty of manslaughter.

Penalty: Subject to Section 19, imprisonment for life.

**303. KILLING ON PROVOCATION.**

Where a person who unlawfully kills another under circumstances that, but for this section, would constitute wilful murder or murder, does the act that causes death in the heat of passion caused by sudden provocation within the meaning of Section 266 and before there is time for his passion to cool, he is guilty of manslaughter only.

**304. ATTEMPTED MURDER, ETC.**

A person who—

- (a) attempts unlawfully to kill another person; or
- (b) with intent unlawfully to kill another person does any act, or omits to do any act that it is his duty to do, the act or omission being of such a nature as to be likely to endanger human life,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**305. ACCESSORY AFTER THE FACT TO MURDER, ETC.**

A person who becomes an accessory after the fact to wilful murder or murder is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**306. WRITTEN THREATS TO KILL.**

A person who, knowing its contents directly or indirectly causes any person to receive a writing threatening to kill any person is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**307. CONSPIRING TO KILL.**

A person who conspires with any other person to kill any person, whether that other person is in Papua New Guinea or elsewhere, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**308. URGING, ETC., UNLAWFUL KILLING.**

(1) A person who—

- (a) incites, encourages, urges, counsels or commands the unlawful killing of another person; or
- (b) does or omits to do any act for the purpose of facilitating, enabling or assisting the unlawful killing of another person,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) For the purposes of Subsection (1), it is immaterial that—



- (a) no specific person was incited, encouraged, urged, counselled, commanded, enabled or assisted to kill; or
- (b) the killing of no specific person was incited, encouraged, urged, counselled, commanded, facilitated, enabled or assisted; or
- (c) no person was in fact killed.

**309. FAILURE TO REPORT KILLING OR INTENDED KILLING.**

(1) Subject to Subsections (3) and (4), a person who—

- (a) knowing that a person intends to kill, or has expressed the intention of killing, another person and has taken active steps to put his intention into effect; or
- (b) knowing that a person has done an act or omission of a kind referred to in Section 308; or
- (c) knowing that a person has killed another person,

fails to take reasonable steps to report the matter as soon as practicable to a magistrate, a member of the Police Force or some other person in authority, is guilty of an offence.

Penalty: On summary conviction—imprisonment for a term not exceeding six months.

On conviction on indictment—imprisonment for a term not exceeding two years.

(2) For the purposes of Subsection (1), it is immaterial that—

- (a) the person killed or intended to be killed was unknown, or that no specific person was intended to be killed; or
- (b) any steps taken to put an intention of unlawfully killing into effect did not, as a matter of law, amount to an attempt to kill or a preparation to kill.

(3) It is a defence to a charge of an offence against Subsection (1) if the accused person proves that he believed, on reasonable grounds, that the matter—

- (a) had already been reported, or was being reported, to a magistrate, a member of the Police Force or some other person in authority; or
- (b) had come to the knowledge of a magistrate, a member of the Police Force or some other person in authority.

(4) An offence against Subsection (1) is not committed when the person failing to take reasonable steps to report—

- (a) is under the age of 14 years; or
- (b) would not, at the time when the failure occurred, have been a compellable witness against the person referred to in Subsection (1)(a), (b) or (c) in a prosecution of the latter for murder under this Code.

**310. AIDING SUICIDE.**

A person who—

- (a) procures another to kill himself; or
- (b) counsels another to kill himself and so induces him to do so; or
- (c) aids another in killing himself,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**311. ATTEMPTING TO COMMIT SUICIDE.**

A person who attempts to kill himself is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

**312. KILLING UNBORN CHILD.**

A person who, when a woman is about to be delivered of a child, prevents 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 the child, is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**313. CONCEALING THE BIRTH OF CHILDREN.**

A person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, is guilty of a misdemeanour whether the child died before, at or after its birth.

Penalty: Imprisonment for a term not exceeding two years.

**313A. GENOCIDE.**

<sup>105</sup>A person who—

- (a) commits genocide; or
- (b) conspires to commit genocide; or
- (c) incites a person to commit genocide; or
- (d) attempts to commit genocide; or
- (e) takes part in the commission of genocide,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

***Division 4. – Offences Endangering Life or Health.*****314. DISABLING OR STUPEFYING IN ORDER TO COMMIT INDICTABLE OFFENCE.**

(1) A person who, by any means calculated to choke, suffocate, or strangle, and with intent—

- (a) to commit or to facilitate the commission of an indictable offence; or
- (b) to facilitate the flight of an offender after the commission or attempted commission of an indictable offence,

makes, or attempts to make, any person incapable of resistance is guilty of a crime.

(2) A person who, with intent—

- (a) to commit or to facilitate the commission of an indictable offence; or
- (b) to facilitate the flight of an offender after the commission or attempted commission of an indictable offence,

<sup>105</sup> Section 313A added by No. 12 of 1982, s4.

administers, or attempts to administer, a stupefying or overpowering drug or thing to any person, is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**315. ACTS INTENDED TO CAUSE GRIEVOUS BODILY HARM OR PREVENT APPREHENSION.**

A person who, with intent—

- (a) to maim, disfigure, or disable any person; or
- (b) to do some grievous bodily harm to any person; or
- (c) to resist or prevent the lawful arrest or detention of any person,

does any of the following things is guilty of a crime:—

- (d) unlawfully wounding or doing a grievous bodily harm to a person;
- (e) unlawfully attempting to strike a person with a projectile;
- (f) unlawfully causing an explosive substance to explode;
- (g) sending or delivering an explosive substance or other dangerous or noxious thing to a person;
- (h) causing any substance or thing referred to in Paragraph (g) to be taken or received by a person;
- (i) puts a corrosive fluid or destructive or explosive substance in any place;
- (j) unlawfully casts or throws a fluid or substance referred to in Paragraph (i) at or on a person, or otherwise applies any such fluid or substance to the person of a person.

Penalty: Subject to Section 19, imprisonment for life.

**316. TAKING OR SENDING DANGEROUS GOODS ON AIRCRAFT.**

(1) In this section, “**dangerous goods**” means—

- (a) firearms, ammunition, weapons and explosive substances; and
- (b) substances and things that by reason of their nature or condition may endanger the safety of an aircraft or of a person on board an aircraft.

(2) A person who—

- (a) carries or places dangerous goods on board an aircraft; or
- (b) delivers dangerous goods to another person for the purpose of their being placed on board an aircraft; or
- (c) has dangerous goods in his possession on board an aircraft,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(3) It is a defence to a charge of an offence against Subsection (2) to prove that the act constituting the offence—

- (a) was lawfully consented to by the owner or operator of the aircraft with knowledge by him of the nature of the goods concerned; or
- (b) was done by authority or permission of or under a law.

**317. ENDANGERING SAFETY OF PERSONS TRAVELLING BY AIRCRAFT.**

A person who, with intent to injure or to endanger the safety of any person (whether or not a particular person) whilst he is on board an aircraft—

- (a) deals with—
  - (i) the aircraft; or
  - (ii) anything on or near the aircraft; or
  - (iii) anything directly or indirectly connected with the guidance, control or operation of the aircraft,

in such a manner as to affect or endanger, or be likely to affect or endanger, the free and safe use of the aircraft or the safety of any such person; or

- (b) by any omission to do any act that it is his duty to do causes the safety of any such person to be endangered,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**318. PREVENTING ESCAPE FROM WRECK.**

A person who unlawfully—

- (a) prevents or obstructs a person who is on board of, or is escaping from, a vessel that is in distress, or wrecked or cast ashore, in his endeavours to save his life; or
- (b) obstructs a person in his endeavours to save the life of any person so situated,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**319. GRIEVOUS BODILY HARM.**

A person who unlawfully does grievous bodily harm to another person is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**320. ATTEMPTING TO INJURE BY EXPLOSIVE SUBSTANCES.**

A person who unlawfully, and with intent to do bodily harm to another, puts any explosive substance in any place is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**321. MALICIOUSLY ADMINISTERING POISON WITH INTENT TO HARM.**

A person who unlawfully, and with intent to injure or annoy another person, causes any poison or other noxious thing to be administered to, or to be taken by, any person, and by doing so—

- (a) endangers his life; or
- (b) does him some grievous bodily harm,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**322. WOUNDING AND SIMILAR ACTS.**

(1) A person who—

(a) unlawfully wounds another person; or

(b) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or to be taken by, any person,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2)<sup>106</sup> [*Repealed.*]

**323. FAILURE TO SUPPLY NECESSARIES.**

A person who is charged with the duty of providing for another person the necessaries of life and, without lawful excuse, fails to do so, so that the life of that other person is, or is likely to be, endangered, or his health is, or is likely to be, permanently injured, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**324. ENDANGERING LIFE OR HEALTH OF APPRENTICES OR SERVANTS.**

A person who, being charged as a master with the duty of providing necessary food, clothing or lodging for a servant or apprentice under the age of 16 years—

(a) unlawfully fails to perform that duty; or

(b) does any bodily harm or causes any bodily harm to be done to the servant or apprentice,

so that—

(c) the life of the servant or apprentice is, or is likely to be, endangered; or

(d) his health is, or is likely to be, permanently injured,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**325. ENDANGERING LIFE OF CHILDREN BY EXPOSURE.**

A person who unlawfully abandons or exposes a child under the age of two years so that—

(a) the life of the child is, or is likely to be, endangered; or

(b) his health is, or is likely to be, permanently injured,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**326. SETTING MAN-TRAPS.**

(1) A person who—

<sup>106</sup> Section 322(2) repealed by No. 13 of 1977, s23.

- (a) sets or places any spring-gun, man-trap or other contrivance calculated to destroy human life or to inflict grievous bodily harm, in any place with the intent that it may kill or inflict grievous bodily harm on a trespasser or other person coming in contact with it; or
- (b) causes any such thing to be so set or placed; or
- (c) places any such thing in such a place and in such a manner that it is likely to cause any such result,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) A person who knowingly permits any spring-gun, man-trap or other contrivance that has been set or placed by another person in such a place and in such a manner that it is likely to cause any result referred to in Subsection (1), to continue so set or placed in any place that is then in, or afterwards comes into, his possession or occupation, shall be deemed to have set and placed the gun, trap or contrivance with the intent referred to in Subsection (1).

(3) Subsection (1) does not make it unlawful—

- (a) to set any gun or trap such as is usually set for the purpose of destroying vermin; or
- (b) to set any spring-gun, man-trap or engine at night in a dwelling-house for the protection of the dwelling-house.

### 327. NEGLIGENT ACTS CAUSING HARM.

(1) A person who unlawfully does any act, or omits to do any act that it is his duty to do, by which act or omission bodily harm is actually caused to a person is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2)<sup>107</sup> [*Repealed.*]

### 328. DANGEROUS DRIVING OF A MOTOR VEHICLE.

(1) For the purposes of this section—

**“driving a motor vehicle on a road or in a public place dangerously”** includes the driving of a motor vehicle at a speed or in a manner dangerous to the public, having regard to all the circumstances of the case, including—

- (a) the nature, condition, and use of the road or public place; and
- (b) the amount of traffic that—
  - (i) is on the road or in the public place at the time; or
  - (ii) might reasonably be expected to be on the road or in the public place;

**“public place”**—

- (a) includes every place of public resort open to or used by the public as of right and any field, ground, park, reserve, garden, wharf, pier, jetty, market, passage or any other place for the time being used for a public purpose or

<sup>107</sup> Section 327(2) repealed by No. 13 of 1977, s24.

open to access by the public by the express or tacit consent or sufferance of the owner, whether or not it is at all times so open; but

- (b) does not include a track that is used for the time being as a course for the racing or testing of motor vehicles, and from which other traffic is excluded at the time.

(2) A person who drives a motor vehicle on a road or in a public place dangerously is guilty of a misdemeanour.

Penalty: Subject to the succeeding provisions of this section—

On summary conviction—a fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

On conviction on indictment—a fine not exceeding K1,000.00 or imprisonment for a term not exceeding two years, or both.

(3) If the offender has been previously convicted, on indictment or summarily, of an offence against Subsection (2) he is liable on summary conviction to a fine not exceeding K400.00 or to imprisonment for a term not exceeding 12 months, or both.

(4) If the offender has been twice previously convicted, on indictment or summarily (or once on indictment and once summarily) of an offence against Subsection (2), the court shall, on conviction, impose, as the whole or part of the punishment, imprisonment.

(5) If the offender causes the death of or grievous bodily harm to another person he is liable on conviction on indictment to imprisonment for a term not exceeding five years.

(6)<sup>108</sup> [*Repealed.*]

### **329. ADDITIONAL POWER TO CONVICT FOR DANGEROUS DRIVING.**

(1) On an indictment charging a person with an offence in connection with or arising out of the driving of a motor vehicle by him (other than an offence against Section 328), he may be convicted of an offence against that section (with or without a circumstance of aggravation specified in Section 328(5)) if such offence is established by evidence.

(2) Subsection (1) applies notwithstanding the provisions of Section 539.

### **330. CANCELLATION OF DRIVER'S LICENCE TO OPERATE MOTOR VEHICLE.**

(1) In this section, “**driver’s licence**” includes any driving licence or driving permit deemed to be equivalent in Papua New Guinea to, and accepted in place of, a driver’s licence for the purpose of authorizing the holder to drive in Papua New Guinea any vehicle of the type or class to the driving of which the driving licence or driving permit is applicable.

(2) Where a person is convicted on indictment of an offence in connection with or arising out of the driving of a motor vehicle by him, the court may, in addition to any sentence that it may pass, order that the offender be, from the date of conviction, disqualified—

- (a) absolutely; or  
(b) for such period as the court shall specify in its order,

<sup>108</sup> Section 328(6) repealed by No. 13 of 1977, s25.

from holding or obtaining a driver's licence to operate a motor vehicle.

(3) A copy of an order under Subsection (2) shall be transmitted by the proper officer of the court to the Commissioner of Police.

### **331. SENDING OR TAKING UNSEAWORTHY SHIPS TO SEA.**

(1) Subject to Subsections (2) and (3), a person who—

- (a) sends or attempts to send a ship to sea in such an unseaworthy state that the life of any person is likely to be endangered; or
- (b) being a master of a ship, knowingly takes or attempts to take the ship to sea in such an unseaworthy state that the life of any person is likely to be endangered,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the going of the ship to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable.

(3) It is a defence to a charge of an offence against Subsection (1)(a) to show that the accused person used all reasonable means to ensure the ship being sent to sea in a seaworthy state.

### **332. ENDANGERING STEAMSHIPS BY TAMPERING WITH MACHINERY.**

(1) A person who—

- (a) has actual control over—
  - (i) a steam vessel; or
  - (ii) any part of the machinery of a steam vessel; and
- (b) does any act or makes any omission or is privy to any act or omission with respect to the machinery of the vessel by which, to his knowledge, the safety of any person on board the vessel is, or is likely to be, endangered,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) A person who is the engineer, or one of the engineers, in charge of the machinery of a steam vessel when any act is done or omitted to be done by any other person with respect to the machinery of the vessel by which the safety of any person on board the vessel is, or is likely to be, endangered is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) It is a defence to a charge of an offence against Subsection (2) to prove that the act or omission was done or made without the knowledge of the accused person, and without any neglect or default on his part.

### **333. EVADING LAWS AS TO EQUIPMENT OF SHIPS AND SHIPPING DANGEROUS GOODS.**

A person who—



- (a) has actual control over a vessel on which any article has been placed with his knowledge or consent, for the purpose of obtaining permission or authority to leave a port, and removes, or allows the removal of, the article from the vessel after the permission or authority has been obtained; or
- (b) knowingly sends by a vessel, or carries in a vessel—
  - (i) any explosive substance; or
  - (ii) any acid or other thing of a dangerous or destructive nature, under a false description of the substance or thing, or with a false description of the sender,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

### **334. LANDING EXPLOSIVES.**

A person who—

- (a) being charged by law with any duty respecting the landing or delivery of any explosive substance, or of an acid or other thing of a dangerous or destructive nature, from a vessel fails to perform that duty; or
- (b) being concerned in the landing of any such substance or thing from a vessel, violates the provisions of the laws relating to such landing,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

### *Division 5. – Assaults.*

### **335. COMMON ASSAULT.**

A person who unlawfully assaults another person is guilty of a misdemeanour.

Penalty: If no greater punishment is provided, imprisonment for a term not exceeding one year.

### **336. ASSAULT WITH INTENT TO COMMIT UNNATURAL OFFENCE.**

A person who assaults another person with intent to have carnal knowledge of him against the order of nature is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

### **337. INDECENT ASSAULT ON MALES.**

A person who unlawfully and indecently assaults a male person is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

### **338. ASSAULTS ON PERSONS PROTECTING WRECKS.**

A person who unlawfully assaults and uses actual violence to any person acting in the execution of his duty in or concerning the preservation of—

- (a) a vessel in distress; or
- (b) any vessel or goods—
  - (i) wrecked; or
  - (ii) stranded; or
  - (iii) cast on shore; or
  - (iv) lying under water,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

### 339. ASSAULTS OF MEMBER OF CREW ON AIRCRAFT.

A person who while on board an aircraft—

- (a) unlawfully assaults a member of the crew of the aircraft; or
- (b) threatens a member with any violence, injury or detriment to be caused to him or any other person on the aircraft by the offender or by any other person,

with the intention of—

- (c) affecting the performance by the member of his functions or duties in connection with the operation of the aircraft; or
- (d) lessening the member's ability to perform those functions or duties,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

### 340. ASSAULTS OCCASIONING BODILY HARM.

(1) A person who unlawfully assaults another and by doing so does him bodily harm is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2)<sup>109</sup> [*Repealed.*]

### 341. SERIOUS ASSAULTS.

A person who—

- (a) assaults another with intent—
  - (i) to commit a crime; or
  - (ii) to resist or prevent the lawful arrest or detention of himself or of any other person; or
- (b) assaults, resists or wilfully obstructs—
  - (i) a member of the Police Force while acting in the execution of his duty; or
  - (ii) any person acting in aid of a member of the Police Force while so acting; or
- (c) unlawfully assaults, resists or obstructs a person who is engaged in the lawful execution of any process against any property, or in making a lawful distress; or
- (d) assaults, resists or obstructs a person engaged in such a lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under the process or distress; or

<sup>109</sup> Section 340(2) repealed by No. 13 of 1977, s26.

- (e) assaults a person on account of an act done by him in the execution of a duty imposed on him by law; or
- (f) assaults a person in pursuance of an unlawful conspiracy respecting—
  - (i) a manufacture, trade, business or occupation; or
  - (ii) any person or persons concerned or employed in a manufacture, trade, business or occupation; or
  - (iii) the wages of any such person or persons,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

***Division 6. – Assaults Punishable on Summary Conviction.***

**342. SUMMARY JURISDICTION.**

(1) Subject to this Division, a person who unlawfully assaults another may be summarily convicted before a court of summary jurisdiction.

(2) Where the court—

- (a) finds that the assault complained of was accompanied by an attempt to commit a crime; or
- (b) is of opinion that the charge is a fit subject for prosecution by indictment, it shall abstain from dealing with the case summarily.

(3) This section does not authorize a court to deal summarily with a charge of assault on which a question arises as to—

- (a) the title to land, an estate in land or an interest in or accruing from land; or
- (b) an insolvency; or
- (c) the execution of the process of a court.

**343. COMMON ASSAULTS.**

Any person who unlawfully assaults another is liable on summary conviction to a fine not exceeding K200.00, inclusive of costs, and in default of payment to imprisonment for a term not exceeding six months unless the fine and costs are sooner paid, or to imprisonment for a term not exceeding six months in the first instance.

**344. AGGRAVATED ASSAULTS.**

(1) If the person assaulted is a male child whose age does not, in the opinion of the court exceed 14 years, or is a female, and the court is of opinion that the assault is of such an aggravated nature that the offender cannot be sufficiently punished under Section 343, the offender is liable to a penalty of a fine not exceeding K400.00, inclusive of costs, and in default of payment to imprisonment for a term not exceeding 12 months unless the fine and costs are sooner paid, or to imprisonment for a term not exceeding 12 months, in the first instance.

(2) The court may also, if it thinks fit, require the offender to enter into a recognizance to keep the peace and be of good behaviour for any term not exceeding six months from the expiration of the sentence.

**345. EFFECT OF SUMMARY CONVICTION OR DISMISSAL.**

(1) If on complaint by or on behalf of the party aggrieved—

- (a) a complaint of an assault has been heard on the merits before a court, under Section 343 or 344; and
- (b) the court dismisses the complaint,

the court shall immediately make out a certificate of the fact of the dismissal and give it to the accused person.

(2) A person who has obtained a certificate of dismissal under Subsection (1), or who has been convicted on a complaint to which Subsection (1) applies and has paid the fine and costs or has endured the punishment adjudged (if any) is released from all further proceedings, civil or criminal, for the same cause.

**346. ASSAULTS IN INTERFERENCE WITH FREEDOM OF TRADE OR WORK.**

A person who assaults another with intent to hinder or prevent him from—

- (a) working at or exercising his lawful trade, business or occupation; or
- (b) buying, selling or otherwise dealing with any property intended for sale,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three months.

***Division 7. – Sexual offences and abduction.*****347. DEFINITION OF RAPE.**

<sup>110</sup>(1) A person who sexually penetrates a person without his consent is guilty of a crime of rape.

Penalty: Subject to Subsection (2), imprisonment for 15 years.

(2) Where an offence under Subsection (1) is committed in circumstances of aggravation, the accused is liable, subject to Section 19, to imprisonment for life.

**347A. MEANING OF CONSENT.**

<sup>111</sup>(1) For the purposes of this Part, “consent” means free and voluntary agreement.

(2) Circumstances in which a person does not consent to an act include, but not limited to, the following: –

- (a) the person submits to the act because of the use of violence or force on that person or someone else; or
- (b) the person submits because of the threats or intimidation against that person or someone else; or
- (c) the person submits because of fear of harm to that person or to someone else; or
- (d) the person submits because he is unlawfully detained; or

<sup>110</sup> Section 347 amended by Act No. 29 of 1983, s3 and No. 11 of 1984, s5; Section 347: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act* 1986 (No. 17 of 1986), s17; Section 347 Amended by No. 27 of 2002, s. 1.

<sup>111</sup> Section 347A Amended by No. 27 of 2002, s. 1.

- (e) the person is asleep, unconscious or so affected by alcohol or another drug so as to be incapable of freely consenting; or
- (f) the person is incapable of understanding the essential nature of the act or of communicating his unwillingness to participate in the act due to mental or physical disability; or
- (g) the person is mistaken about the sexual nature of the act or the identity of the person; or
- (h) the person mistakenly believes that the act is for medical or hygienic purposes; or
- (i) the accused induces the person to engage in the activity by abusing a position of trust, power or authority; or
- (j) the person, having consented to engage in the sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity; or
- (k) the agreement is expressed by the words or conduct of a person other than the complainant.

(3) In determining whether or not a person consented to that act that forms the subject matter of the charge, a judge or magistrate shall have regard to the following: –

- (a) the fact that the person did not say or do anything to indicate consent to a sexual act is normally enough to show that the act took place without the person's consent; and
- (b) a person is not to be regarded as having consented to a sexual act just because –
  - (i) he did not physically resist; or
  - (ii) he did not sustain physical injury; or
  - (iii) on that or on an earlier occasion, he freely agreed to engage in another sexual act with that person or some other person.

### **347B. WHERE BELIEF IN CONSENT IS NOT A DEFENCE.**

<sup>112</sup>It is not a defence to a charge under this Part that the accused person believed that the person consented to the activity that forms the subject matter of the charge where –

- (a) the accused's belief arose from his –
  - (i) self-induced intoxication; or
  - (ii) reckless or wilful blindness; or
- (b) the accused did not take reasonable steps, in the circumstances known to him at that time, to ascertain whether the person was consenting.

### **348. ATTEMPT TO COMMIT RAPE.**

<sup>113</sup>A person who attempts to commit the crime of rape is guilty of a crime.

Penalty: <sup>114</sup>Imprisonment for a term not exceeding 14 years.

### **349. SEXUAL ASSAULT.**

<sup>115</sup>(1) A person who, without a person's consent –

<sup>112</sup> Section 347B Amended by No. 27 of 2002, s. 1.

<sup>113</sup> Section 348 amended by Act No. 29 of 1983, s4.

<sup>114</sup> Section 348: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s18.

- (a) touches, with any part of his body, the sexual parts of that other person; or
- (b) compels another person to touch, with any part of this body, the sexual parts of the accused person's own body,

is guilty of a crime of sexual assault.

Penalty: Subject to Subsection (4), imprisonment for a term not exceeding five years.

(2) For the purposes of this section, "sexual parts" include the genital area, groin, buttocks or breasts of a person.

(3) For the purposes of this section, a person touches another person if he touches the other person with any part of his body or with any object manipulated by the person.

(4) Where an offence under Subsection (1) is committed in circumstances of aggravation, the accused is liable to a term of imprisonment not exceeding 10 years.

### 349A. INTERPRETATION.

<sup>116</sup>For the purposes of this Division, circumstances of aggravation include, but not limited to, circumstances where –

- (a) the accused person is in the company of another person or persons; or
- (b) at the time of, or immediately before or after the commission of the offence, the accused person uses or threatens to use a weapon; or
- (c) at the time of, immediately before or after the commission of the offence, the accused person tortures or causes grievous bodily harm to the complainant; or
- (d) the accused person confines or restrains the complainant before or after the commission of the offence; or
- (e) the accused person, in committing the offence, abuses a position of trust, authority or dependency; or
- (f) the accused is a member of the same family or clan as the complainant; or
- (g) the complainant has a serious physical or mental disability; or
- (h) the complainant was pregnant at the time of the offence; or
- (i) the accused was knowingly infected by Human Immunodeficiency Virus (HIV) or knowingly had Acquired Immune Deficiency Syndrome (AIDS).

### 349B. PROCURING A SEXUAL OFFENCE.

<sup>117</sup>A person who hires, induces or conspires with another person to commit an offence under this Division is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 20 years.

### 350. ABDUCTION.

(1) A person who–

- (a) with intent–

<sup>115</sup> Section 349 amended by Act No. 11 of 1984, s7; Section 349: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s19; Section 349 Amended by No. 27 of 2002, s. 1.

<sup>116</sup> Section 349A Amended by No. 27 of 2002, s. 1.

<sup>117</sup> Section 349B Amended by No. 27 of 2002, s. 1.

- (i) to marry or carnally know a woman; or
  - (ii) to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will; or
- (b) from motives of gain, and with an intent referred to in Paragraph (a), takes or entices away, or detains, a woman who is under the age of 21 years, and who—
- (i) has any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any property; or
  - (ii) is a presumptive heiress or co-heiress, or the presumptive next of kin, or one of the presumptive next of kin, to any person who has such an interest, out of the custody or protection of her father or mother, or other person having the lawful care or charge of her, and against the will of the father or mother or other person,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) A person who is convicted of an offence against Subsection (1) that was committed with respect to a woman referred to in Subsection (1)(b), is incapable of taking any estate or interest, legal or equitable, in any property of the woman, or in which she has any interest, or that comes to her as an heiress, co-heiress, or next of kin, and if he has married the woman, all such property shall, on his conviction, be settled in such manner as the National Court, on application by the Attorney-General, orders.

### **351. ABDUCTION OF GIRLS UNDER 16.**

(1) A person who unlawfully takes an unmarried girl under the age of 16 years out of the custody or protection of her father or mother, or other person having the lawful care or charge of her, and against the will of the father, mother or other person, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2) It is immaterial in the case of a charge of an offence against Subsection (1) that—

- (a) the offender believed the girl to be of or above the age of 16 years; or
- (b) the girl was taken with her own consent or at her own suggestion.

### **352. RULE OF EVIDENCE.**

<sup>118</sup>On a charge of an offence against any provision of this Division, the spouse of the accused person is a competent and a compellable witness.

### **352A. CORROBORATION NOT REQUIRED.**

<sup>119</sup>On a charge of an offence against any provision of this Division, a person may be found guilty on the uncorroborated testimony of one witness, and a Judge shall not instruct himself that it is unsafe to find the accused guilty in the absence of corroboration.

<sup>118</sup> Section 352 Amended by No. 27 of 2002, s. 1.

<sup>119</sup> Section 352A Amended by No. 27 of 2002, s. 1.

*Division 8. – Offences against Liberty.***353. KIDNAPPING.**

A person who forcibly takes or detains another with intent to compel that other person to work for him against his will is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**354. KIDNAPPING FOR RANSOM.**

(1) A person who—

(a) takes or entices away, or detains, a person with intent to—

(i) extort or gain anything from; or

(ii) to procure anything to be done or omitted to be done by,

any person by a demand containing threats of injury or detriment, to be caused to the person taken, enticed or detained either by the offender or any other person, if the demand is not complied with; or

(b) receives or harbours the person in respect of whom threats referred to in Paragraph (a) are made, knowing that person to have been so taken or enticed away, or detained,

is guilty of the crime of kidnapping for ransom.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding 14 years.

(2) If the person kidnapped has been set at liberty without having suffered grievous bodily harm the offender is liable to imprisonment for a term not exceeding 10 years.

(3) A person who attempts to commit the crime of kidnapping for ransom is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(4) The wife of the accused person is a competent but not a compellable witness.

**355. DEPRIVATION OF LIBERTY.**

A person who unlawfully—

(a) confines or detains another in any place against his will; or

(b) deprives another of his personal liberty,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**356. FALSE CERTIFICATES BY OFFICERS CHARGED WITH DUTIES RELATING TO LIBERTY.**

A person who—

(a) being required by law to give a certificate concerning any matter by virtue of which the liberty of any person may be affected, gives a certificate that is, to his knowledge, false in a material particular; or



(b) not being a person authorized by law to give such a certificate, gives such a certificate, and represents himself to be a person authorized to give it, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

### **357. CONCEALMENT OF MATTERS AFFECTING LIBERTY.**

A person who—

- (a) being required by law to keep any record concerning any matter relating to a person in confinement—
  - (i) refuses or neglects to keep the record; or
  - (ii) makes in the record an entry that is, to his knowledge, false in a material particular; or
- (b) being required by law to give any information to any person touching any person in confinement, or to show to any person any person in confinement, or any place in which a person is confined—
  - (i) refuses or neglects to give the information, or to show the person or place, to any person to whom he is required to give the information or show the person or place; or
  - (ii) gives to any person to whom he is required to give it information concerning any such matter that is, to his knowledge, false in a material particular,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

### **358. UNLAWFUL CUSTODY OF PERSON OF UNSOUND MIND.**

A person who detains or assumes the custody of a person of unsound mind contrary to the provisions of the laws relating to such persons is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

### **359. THREATS.**

A person who threatens to do any injury or cause any detriment, to another person with intent—

- (a) to prevent or hinder the other person from doing an act that he is lawfully entitled to do; or
- (b) to compel him to do an act that he is lawfully entitled to abstain from doing,

is guilty of a misdemeanour.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

*Division 9. – Bigamy and Offences Relating to Parental Rights and Duties.***360. BIGAMY.**

(1) Subject to this section, a person who is married who goes through a form or ceremony of marriage with another person is guilty of an indictable offence.

Penalty: Imprisonment for a term not exceeding five years.

(2) It is a defence to a prosecution for an offence against Subsection (1) if the defendant proves that—

- (a) at the time of the alleged offence, he believed that his spouse was dead; and
- (b) his spouse had been absent from him for such time and in such circumstances as to provide, at the time of the alleged offence, reasonable grounds for presuming that his spouse was dead.

(3) For the purposes of Subsection (2), proof by a defendant that—

- (a) his spouse had been continually absent from him for the period of seven years immediately preceding the date of the alleged offence; and
- (b) he had no reason to believe that his spouse had been alive at any time within that period,

is sufficient proof of the matters referred to in Subsection (2)(b).

(4) Subject to Subsections (5) and (8), a person who goes through a form or ceremony of marriage with a person who is married, knowing, or having reasonable grounds to believe, that the latter person is married, is guilty of an indictable offence.

Penalty: Imprisonment for a term not exceeding five years.

(5) It is not an offence against this section for a person to go through a form or ceremony of marriage with that person's own spouse.

(6) In a prosecution for an offence against this section, the spouse of the accused person is a competent and compellable witness for the prosecution or the defence.

(7) In a prosecution for an offence against this section, the fact that, at the time of the alleged offence, a person was married shall not be taken to have been proved if the only evidence of the fact is the evidence of the other party to the alleged marriage.

(8) This section does not apply to or in relation to a customary marriage entered into by a person who is a party to a subsisting customary marriage, where the custom applying to each of those marriages recognizes the other marriage as being, or continuing to be, valid.

**361. CHILD-STEALING.**

(1) A person who, with intent to deprive a parent or guardian of a child under the age of 14 years, or any other person who has the lawful care or charge of such a child, of the possession of the child, or with intent to steal any article on or about the person of any such child—

- (a) forcibly or fraudulently takes or entices away, or detains, the child; or
- (b) receives or harbours the child, knowing it to have been so taken or enticed away or detained,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person—

- (a) claimed in good faith a right to the possession of the child; or
- (b) in the case of an illegitimate child (not being a child who has been adopted) is its mother or claimed (in good faith) to be its father.

(3) The husband or wife of the accused person is a competent but not a compellable witness.

**362. DESERTION OF CHILDREN.**

A parent of a child under the age of 14 years who is able to maintain the child and who wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

**PART VI. – OFFENCES RELATING TO PROPERTY AND CONTRACTS.*****Division 1. – Stealing and Similar Offences.******Subdivision A. – Introductory.*****363. INTERPRETATION OF DIVISION 1.**

(1) In this Division, unless the contrary intention appears–

“**animals**” includes all living creatures other than man;

“**stealing**” has the meaning attributed to it by the succeeding provisions of this Division;

“**thing capable of being stolen**” has the meaning attributed to it by Section 364.

(2) For the purposes of this Division, an animal wild by nature shall be deemed to be in a state of confinement only as long as it is in a den, cage, sty, tank or other small enclosure, or is otherwise so placed that it cannot escape and its owner can take possession of it at pleasure.

**364. THINGS CAPABLE OF BEING STOLEN.**

(1) The following things are capable of being stolen–

(a) all inanimate things that–

(i) are the property of any person; and

(ii) are movable; and

(b) subject to Subsection (4), all tame animals (whether tame by nature or tamed) that are the property of any person; and

(c) animals wild by nature, of a kind that is not ordinarily found in Papua New Guinea in a condition of natural liberty, that–

(i) are the property of any person; and

(ii) are usually kept in a state of confinement (whether they are actually in confinement or have escaped from confinement); and

(d) animals wild by nature, of a kind that is ordinarily found in Papua New Guinea in a condition of natural liberty, that–

(i) are the property of any person; and

(ii) are–

(A) in confinement; or

(B) actually being pursued after escaping from confinement; and

(e) the dead bodies of wild animals; and

(f) all things that are produced by or form part of an animal that is capable of being stolen; and

(g) oysters and oyster brood while in oyster beds, layings or fisheries that–

(i) are the property of any person; and

(ii) are sufficiently marked out, or are known by general repute to be his property.

(2) An animal in the enjoyment of its natural liberty is not capable of being stolen.

(3) An inanimate thing that–

(a) is the property of any person; and

(b) being capable of being made movable, becomes movable (even if it is made movable in order for it to be stolen),  
becomes capable of being stolen as soon as it becomes movable.

(4) A tame pigeon is not capable of being stolen unless it is in a pigeon-house or on its owner's land.

### 365. DEFINITION OF STEALING.

(1) In this section—

“**owner**”, in relation to a thing, means—

- (a) the owner or a part-owner of the thing; or
- (b) any person having possession or control of, or a special property in, the thing;

“**special property**” includes—

- (a) any charge or lien on the thing in question; and
- (b) any right arising from or dependent on holding possession of the thing in question, whether by the person entitled to the right or by some other person for his benefit.

(2) Subject to the succeeding provisions of this Code, a person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing.

(3) The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act.

(4) A person who takes or converts anything capable of being stolen shall be deemed to do so fraudulently if he does so with intent—

- (a) to permanently deprive the owner of the thing of it; or
- (b) to permanently deprive any person who has any special property in the thing of that property; or
- (c) to use the thing as a pledge or security; or
- (d) to part with it on a condition as to its return that the person taking or converting it may be unable to perform; or
- (e) to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion; or
- (f) in the case of money, to use it at the will of the person who takes or converts it, even if he intends to afterwards repay the amount to the owner.

(5) In the case of a conversion, it is immaterial—

- (a) whether the thing converted is taken for the purpose of conversion, or is at the time of the conversion in the possession of the person who converts it; and
- (b) that the person who converts the property—
  - (i) is the holder of a power of attorney for the disposition of it; or
  - (ii) is otherwise authorized to dispose of it.

(6) A taking or conversion may be fraudulent, even if it is effected without secrecy or attempt at concealment.

(7) When a thing converted has been lost by the owner and found by the person who converts it, the conversion shall not be deemed to be fraudulent if at the time of the conversion the person converting the thing—

- (a) does not know who is the owner; and
- (b) believes, on reasonable grounds, that the owner cannot be discovered.

### **366. SPECIAL CASES RELATING TO STEALING.**

(1) When a wild animal in the enjoyment of its natural liberty has been killed by any person, the taking of the dead body of the animal by that person, or by any person acting under his orders, before it has been reduced into actual possession by the owner of the land on which the animal was killed or on which it died, is not stealing.

(2) When a factor or agent pledges or gives a lien on any goods or documents of title to goods entrusted to him for any sum of money not greater than the sum of the—

- (a) amount due to him from his principal at the time of pledging or giving the lien; and
- (b) the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal,

that dealing with the goods or document of title is not stealing.

(3) When a servant, contrary to his master's orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, that taking is not stealing.

### **367. FUNDS, ETC., HELD UNDER DIRECTION.**

(1) Subject to Subsection (2), where a person receives, alone or jointly with another person, any money or valuable security, or a power of attorney for the sale, mortgage, pledge or other disposition of any property, whether capable of being stolen or not, with a direction that—

- (a) the money or any part of it; or
- (b) any other money received in exchange for it, or any part of it; or
- (c) the proceeds or any part of the proceeds of the security, or of the mortgage, pledge, or other disposition,

shall be applied to any purpose or paid to any person specified in the direction, the money and proceeds shall be deemed to be the property of the person from whom the money, security, or power of attorney was received until the direction has been complied with.

(2) Where in a case to which Subsection (1) applies the person receiving the money, security or power of attorney, and the person from whom he receives it, ordinarily deal with each other on the term that in the absence of any special direction all money paid to the former on account of the latter would be properly treated as an item in a debtor and creditor account between them, the former cannot be charged with stealing the money or any such proceeds unless the direction is written.

### **368. FUNDS, ETC., RECEIVED BY AGENTS FOR SALE.**

(1) Subject to Subsection (2), where a person receives, alone or jointly with another person, any property from another person on terms—

- (a) authorizing or requiring him to sell it or otherwise dispose of it; and

- (b) requiring him—
  - (i) to pay or account for the proceeds of the property, or any part of the proceeds; or
  - (ii) to deliver any thing received in exchange for the property, to the person from whom it is received or to some other person,

then the proceeds of the property, and any thing received in exchange for it, shall be deemed to be the property of the person from whom the property was received until they have been disposed of in accordance with the terms on which the property was received.

(2) Subsection (1) does not apply where it is a part of the terms on which the property was received that—

- (a) the proceeds (if any) will form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them; and
- (b) the relation of debtor and creditor only will exist between them in respect of the proceeds.

### **369. MONEY RECEIVED FOR ANOTHER.**

Where a person receives, alone or jointly with another person, any money on behalf of another, the money shall be deemed to be the property of the person on whose behalf it is received, unless it is received on the terms that—

- (a) it will form an item in a debtor and creditor account; and
- (b) the relation of debtor and creditor only will exist between the parties in respect of it.

### **370. STEALING BY PERSONS HAVING AN INTEREST IN THE THING STOLEN.**

Where a person takes or converts any thing capable of being stolen under such circumstances as would otherwise amount to stealing, it is immaterial that he—

- (a) has a special property or interest in the thing; or
- (b) is the owner of the thing taken or converted subject to some special property or interest of some other person in the thing; or
- (c) is lessee of the thing; or
- (d) is one of two or more joint owners of the thing; or
- (e) is a director or officer of a corporation or society that is the owner of the thing.

### **371. HUSBAND AND WIFE.**

A person who, while a man and his wife are living together, procures either of them to deal with any thing that is to his knowledge, the property of the other in a manner that would be stealing if they were not married shall be deemed to have stolen the thing, and may be charged with stealing it.

#### *Subdivision B. – The Offence of Stealing.*

### **372. STEALING.**

(1) Any person who steals anything capable of being stolen is guilty of a crime.

Penalty: Subject to this section, imprisonment for a term not exceeding three years.

(2) If the thing stolen is a testamentary instrument, (whether the testator is living or dead), the offender is liable, subject to Section 19, to imprisonment for life.

(3) If the thing stolen is anything in course of transmission by post, the offender is liable, subject to Section 19 to imprisonment for life.

(4) If the thing stolen is an aircraft, the offender is liable to imprisonment for a term not exceeding 14 years.

(5) If—

(a) the thing is stolen from the person of another person; or

(b) the thing is stolen in a dwelling-house, and—

(i) its value exceeds K10.00; or

(ii) the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house; or

(c) the thing is stolen from a vessel, vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another; or

(d) the thing is stolen from a vessel that is in distress or wrecked or stranded; or

(e) the thing is stolen from a public office in which it is deposited or kept; or

(f) the offender, in order to commit the offence, opens a locked room, box or other receptacle by means of a key or other instrument,

the offender is liable to imprisonment for a term not exceeding seven years.

(6) If the offender is a person employed in the Public Service, and the thing stolen—

(a) is the property of the State; or

(b) came into the possession of the offender by virtue of his employment,

he is liable to imprisonment for a term not exceeding seven years.

(7) If the offender is a clerk or servant, and the thing stolen—

(a) is the property of his employer; or

(b) came into the possession of the offender on account of his employer,

he is liable to imprisonment for a term not exceeding seven years.

(8) If the offender is a director or officer of a corporation, and the thing stolen is the property of the corporation, he is liable to imprisonment for a term not exceeding seven years.

(9)<sup>120</sup> <sup>121</sup>If the thing stolen is—

(a) property that has been received by the offender with a power of attorney for its disposition; or

(b) money received by the offender with a direction that it should be applied to any purpose or paid to any person specified in the direction; or

(c) the whole or part of the proceeds of a valuable security that was received by the offender with a direction that the proceeds of it should be applied to a purpose or paid to a person specified in the direction; or

(d) the whole or part of the proceeds arising from a disposition of any property that have been received by the offender by virtue of a power of attorney for such

<sup>120</sup> Section 372(9) amended by Act No. 13 of 1977, s26A.

<sup>121</sup> Section 372(9) amended by Act No. 13 of 1977, s26A.



disposition, the power of attorney having been received by the offender with a direction that the proceeds be applied to a purpose or paid to a person specified in the direction,

the offender is liable to imprisonment for a term not exceeding seven years.

(10) If the thing stolen is of the value of K1,000.00 or upwards, the offender is liable to imprisonment for a term not exceeding seven years.

(11) If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging, and its value exceeds K100.00, he is liable to imprisonment for a term not exceeding seven years.

(12) If the offender, before committing the offence—

- (a) had been convicted on indictment of an indictable offence against any provision of this Division; or
- (b) had been twice previously summarily convicted of an offence against any such provision punishable on summary conviction whether or not each of the convictions was in respect of an offence of the same character,

he is liable to imprisonment for a term not exceeding seven years.

#### *Subdivision C. – Offences Analogous to Stealing.*

### **373. CONCEALING REGISTERS.**

A person who with intent to defraud, conceals or takes from its place of deposit—

- (a) a register that is authorized or required by law to be kept for—
  - (i) authenticating or recording the title to any property; or
  - (ii) recording births, baptisms, marriages, deaths or burials; or
- (b) a copy of any part of any such register that is required by law to be sent to any public officer,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

### **374. CONCEALING WILLS.**

A person who, with intent to defraud, conceals a testamentary instrument (whether the testator is living or dead) is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

### **375. CONCEALING DEEDS, ETC.**

A person who, with intent to defraud, conceals the whole or part of a document that is evidence of title to any land is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

**376. KILLING ANIMALS WITH INTENT TO STEAL.**

A person who kills an animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of a crime, and is liable to the same punishment as if he had stolen the animal.

**377. SEVERING WITH INTENT TO STEAL.**

A person who makes anything movable with intent to steal it is guilty of a crime, and is liable to the same punishment as if he had stolen the thing after it became movable.

**378. USING REGISTERED BRANDS WITH CRIMINAL INTENTION.**

A person who, with intent to facilitate the commission of a crime, brands or marks an animal with a registered brand or registered mark without the permission of the owner of the brand or mark is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**379. FRAUDULENTLY DEALING WITH MINERALS IN MINES.**

A person who takes, conceals or otherwise disposes of any ore of any metal or mineral in or about a mine, with intent to defraud any person, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**380. BRINGING STOLEN GOODS INTO PAPUA NEW GUINEA.**

(1) A person who, having at any place outside Papua New Guinea obtained any property by any act that—

- (a) if it had been done in Papua New Guinea, would have constituted the crime of stealing; and
- (b) is an offence under the laws in force in the place where it was done,

brings the property into Papua New Guinea, or has it in his possession in Papua New Guinea, is guilty of a crime, and, subject to Subsection (2), is liable to the same punishment as if he had stolen it in Papua New Guinea.

(2) The punishment imposed for an offence against Subsection (1) shall not exceed the punishment that would be incurred for the same act under the laws in force in the place where the act by which the offender obtained the property was done.

**381. FRAUDULENT DISPOSITION OF MORTGAGED GOODS.**

(1) In this section, “mortgaged goods” includes—

- (a) any goods and chattels; and
- (b) any live animals; and
- (c) any progeny of any animals; and
- (d) any crops or produce of the earth, whether growing or severed,

that are subject to the provisions of any instrument by which a valid charge or lien is created on them by way of security for any debt or obligation.

(2) A mortgagor of mortgaged goods who removes or disposes of the goods—

- (a) without the consent of the mortgagee; and
- (b) with intent to defraud,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(3) The consent of the mortgagee may be implied from the nature of the property mortgaged.

### **382. FRAUDULENT APPROPRIATION OF POWER.**

A person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating or electrical power derived from any machine, apparatus or substance that is the property of another person is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

### **383. UNLAWFULLY USING MOTOR VEHICLES, ETC.**

(1) In this section, “**unlawfully uses**” includes the unlawful possession by any person of any motor vehicle or aircraft—

- (a) without the consent of the owner or of the person in lawful possession of it; and
- (b) with intent to deprive the owner or person in lawful possession of it of the use and possession of it temporarily or permanently.

(2) A person who unlawfully uses a motor vehicle or aircraft without the consent of the owner or of the person in lawful possession of the vehicle or aircraft is guilty of a crime.

Penalty: Imprisonment for a term not exceeding five years.

(3) This section applies without prejudice to any provision relating to the unlawful use of motor vehicles or aircraft of any other law, but an offender is not liable to be convicted under both this section and such a provision in respect of any one and the same unlawful use.

### **383A. MISAPPROPRIATION OF PROPERTY.**

<sup>122</sup>(1) A person who dishonestly applies to his own use or to the use of another person—

- (a) property belonging to another; or
- (b) property belonging to him which is in his possession or control (either solely or conjointly with another person) subject to a trust, direction or condition or on account of any other person,

is guilty of the crime of misappropriation of property.

(2) An offender guilty of the crime of misappropriation of property is liable to imprisonment for a term not exceeding five years except in any of the following cases when he is liable to imprisonment for a term not exceeding 10 years:—

- (a) where the offender is a director of a company and the property dishonestly applied is company property;

<sup>122</sup> Section 383A added by No. 10 of 1981, s1.

- (b) where the offender is an employee and the property dishonestly applied is the property of his employer;
  - (c) where the property dishonestly applied was subject to a trust, direction or condition;
  - (d) where the property dishonestly applied is of a value of K2,000.00 or upwards.
- (3) For the purposes of this section—
- (a) property includes money and all other property real or personal, legal or equitable, including things in action and other intangible property; and
  - (b) a person's application of property may be dishonest even although he is willing to pay for the property or he intends to restore the property afterwards or to make restitution to the person to whom it belongs or to fulfil his obligations afterwards in respect of the property; and
  - (c) a person's application of property shall be taken not to be dishonest, except where the property came into his possession or control as trustee or personal representative, if when he applies the property he does not know to whom the property belongs and believes on reasonable grounds that such person cannot be discovered by taking reasonable steps; and
  - (d) persons to whom property belongs include the owner, any part owner, any person having a legal or equitable interest in or claim to the property and any person who, immediately before the offender's application of the property, had control of it.

***Subdivision D. – Stealing with Violence: Extortion by Threats.***

**384. DEFINITION OF ROBBERY.**

A person who steals any thing, and, at, immediately before or immediately after, the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen is said to be guilty of robbery.

**385. LOADED ARMS.**

For the purposes of this Subdivision, any arms that are loaded in the barrel or chamber with—

- (a) an explosive substance; and
- (b) a solid substance capable of being projected,

shall be deemed to be loaded arms, even if an attempt to discharge the same may fail from want of proper appliances or from any other cause.

**386. THE OFFENCE OF ROBBERY.**

<sup>123</sup>(1) A person who commits robbery is guilty of a crime.

Penalty: <sup>124</sup>Subject to Subsection (2), imprisonment for a term not exceeding 14 years.

(2)<sup>125</sup> <sup>126</sup>If a person charged with an offence against Subsection (1)—

<sup>123</sup> Section 386 amended by Act No. 29 of 1983, s5.

<sup>124</sup> Section 386(1): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s20(a).

- (a) is armed with a dangerous or offensive weapon or instrument; or
- (b) is in company with one or more other persons; or
- (c) at, immediately before or immediately after, the time of the robbery, wounds or uses any other personal violence to any person,

he is liable subject to Section 19, to imprisonment for life.

### **387. ATTEMPTED ROBBERY ACCOMPANIED BY WOUNDING, OR IN COMPANY.**

<sup>127</sup>(1) A person who assaults a person with intent to steal any thing, and, at, immediately before or immediately after, the time of the assault, uses or threatens to use actual violence to any person or property in order—

- (a) to obtain the thing intended to be stolen; or
- (b) to prevent or overcome resistance to its being stolen,

is guilty of a crime.

Penalty: <sup>128</sup>Imprisonment for a term not exceeding seven years.

(2)<sup>129 130</sup>If the offender—

- (a) is armed with a dangerous or offensive weapon or instrument; or
- (b) is in company with one or more other persons,

he is liable to imprisonment for a term not exceeding 14 years.

(3)<sup>131 132</sup>If the offender—

- (a) is armed with any loaded arms; and
- (b) at, immediately before or immediately after, the time of the assault wounds any person by discharging the loaded arms,

he is liable subject to Section 19, to imprisonment for life.

### **388. ASSAULT WITH INTENT TO STEAL.**

A person who assaults any person with intent to steal any thing is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

### **389. DEMANDING PROPERTY WITH MENACES WITH INTENT TO STEAL.**

A person who, with intent to steal any thing, demands it from any person with threats of injury or detriment to be caused to him, by the offender or by any other person, if the demand is not complied with is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 10 years.

<sup>125</sup> Section 386(2) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s20(b). .

<sup>126</sup> Section 386(2) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s20(b). .

<sup>127</sup> Section 387 amended by Act No. 29 of 1983, s6.

<sup>128</sup> Section 387(1): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s21(a).

<sup>129</sup> Section 387(2) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s21(b).

<sup>130</sup> Section 387(2) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s21(b).

<sup>131</sup> Section 387(3) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s21(c). .

<sup>132</sup> Section 387(3) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s21(c). .

**390. DEMANDING PROPERTY BY WRITTEN OR ORAL THREATS.**

(1) In this section, “**writing**” includes any gramophone record, wire, tape, or other thing by which words or sounds are recorded and from which they are capable of being reproduced.

(2) A person who, with intent to extort or gain any thing from any person—

- (a) knowing the contents of the writing, causes any person to receive a writing—
  - (i) demanding, without reasonable or probable cause, any thing from, or that any thing be procured to be done or omitted to be done by, any person; and
  - (ii) containing threats of injury or detriment to be caused to any person, by the offender or any other person, if the demand is not complied with; or
- (b) orally demands, without reasonable or probable cause, any thing from, or that any thing be procured to be done or omitted to be done by, any person, with threats to be caused to any person, by the offender or any other person, if the demand is not complied with,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**390A. DEMANDS FOR COMPENSATION OR OTHER PAYMENT.**

<sup>133</sup>A person who, with intent to extort or gain any thing, payment, or compensation from any person—

- (a) demands the thing, payment or compensation; and
- (b) in order to obtain compliance with the demand—
  - (i) causes or threatens to cause injury to any person or damage to any property; or
  - (ii) does or threatens to do any act which renders, or is likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property; or
  - (iii) otherwise unlawfully threatens or intimidates any person,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**391. ATTEMPTS AT EXTORTION BY THREATS.**

(1) A person who, with intent to extort or gain any thing from any person—

- (a) accuses, or threatens to accuse, any person of—
  - (i) committing an indictable offence; or
  - (ii) offering or making a solicitation or threat to a person as an inducement to commit or permit the commission of an indictable offence; or
- (b) threatens that any person will be accused by any other person of an indictable offence or of any such act; or
- (c) knowing the contents of the writing, causes any person to receive any writing, containing any such accusation or threat,

is guilty of a crime.

<sup>133</sup> Section 390A inserted by *Criminal Code (Amendment No. 2) Act 1991* (No. 18 of 1991), s1.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding three years.

(2) If the accusation or threat of accusation is of—

- (a) an offence for which the punishment of death or imprisonment for life may be inflicted; or
- (b) an offence against any provision of Division IV.2, or an attempt to commit any such offence; or
- (c) an assault with intent to have carnal knowledge of a person against the order of nature; or
- (d) an unlawful and indecent assault on a male person; or
- (e) an attempt to commit the crime of rape, or an assault with intent to commit the crime of rape; or
- (f) an unlawful and indecent assault on a woman or girl; or
- (g) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences referred to in the preceding provisions of this subsection,

the offender is liable to imprisonment for a term not exceeding 14 years.

(3) It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

### **392. PROCURING EXECUTION OF DEEDS, ETC., BY THREATS.**

A person who, with intent to defraud, and by means of—

- (a) any unlawful violence to, or restraint of, the person of another; or
- (b) a threat of violence or restraint to be used to the person of another; or
- (c) accusing, or threatening to accuse, a person of—
  - (i) committing an indictable offence; or
  - (ii) offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any indictable offence,

compels or induces any person—

- (d) to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security; or
- (e) to write, impress or affix any name or seal on or to any paper or parchment, so that it may be afterwards made or converted into, or used or dealt with as, a valuable security,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

### **393. TAKING UNLAWFUL CONTROL OF AIRCRAFT.**

(1) A person who, directly or indirectly, unlawfully takes or exercises control of an aircraft is guilty of a crime.

Penalty: Subject to Subsections (2) and (3), imprisonment for a term not exceeding seven years.

(2) If, at, immediately before or immediately after, the time of taking or exercising such control, the offender—

- (a) uses or threatens to use actual violence to any person or property in order–
  - (i) to take or exercise control of the aircraft; or
  - (ii) to prevent or overcome resistance to such control being taken or exercised;
 or
- (b) is armed with a dangerous or offensive weapon or instrument; or
- (c) is in company with one or more other persons; or
- (d) takes or exercises such control by any fraudulent representation, trick, device or other means,

he is liable, subject to Section 19, to imprisonment for life.

(3) If another person who is not an accomplice of the offender is on board the aircraft, the offender is liable to imprisonment for a term not exceeding 14 years.

***Subdivision E. – Burglary: Housebreaking and Like Offences.***

**394. BREAKING: BREAKING AND ENTERING.**

(1) A person who–

- (a) breaks any part, external or internal, of a building; or
- (b) opens, by unlocking, pulling, pushing, lifting or any other means, any door, window, shutter, cellar, flap, or other thing, intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another,

shall be deemed to break the building.

(2) A person is said to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

(3) A person who–

- (a) obtains entrance into a building by means of–
  - (i) any threat or artifice used for that purpose; or
  - (ii) collusion with any person in the building; or
- (b) enters any chimney or other aperture of the building permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance,

shall be deemed to have broken and entered the building.

**395. HOUSEBREAKING: BURGLARY.**

<sup>134</sup>(1) A person who–

- (a) breaks and enters the dwelling-house of another with intent to commit a crime in it; or
- or
- (b) having–
  - (i) entered the dwelling-house of another with intent to commit a crime in it; or
  - (ii) committed a crime in the dwelling-house of another,
 breaks out of the dwelling-house; or

(c) breaks and enters the dwelling-house of another and commits a crime in it, is guilty of a crime.

<sup>134</sup> Section 395 amended by Act No. 10 of 1983, s12.



Penalty: <sup>135</sup>Subject to Subsection (2), imprisonment for a term not exceeding 14 years.

(2)<sup>136 137</sup>If the offence is committed in the night, the offender is liable, subject to Section 19, to imprisonment for life.

### 396. UNLAWFUL BREAKING AND ENTERING.

<sup>138</sup>A person who, without lawful excuse (proof of which is on him) breaks and enters the dwelling-house of another is guilty of a crime.

Penalty: <sup>139</sup>Imprisonment for a term not exceeding three years.

### 397. ENTERING DWELLING-HOUSE WITH INTENT TO COMMIT CRIME.

<sup>140</sup>(1) A person who enters or is in the dwelling-house of another with intent to commit a crime in it is guilty of a crime.

Penalty: <sup>141</sup>Subject to Subsection (2), imprisonment for a term not exceeding seven years.

(2)<sup>142 143</sup>If the offence is committed in the night, the offender is liable to imprisonment for a term not exceeding 14 years.

### 398. BREAKING INTO BUILDINGS AND COMMITTING CRIME.

<sup>144</sup>A person who—

(a) breaks and enters—

(i) a schoolhouse, shop, warehouse, counting-house, office, store, vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft, vessel or club; or

(ii) a building that is adjacent to a dwelling-house and occupied with it, but is not part of it,

and commits a crime in it; or

(b) having committed a crime in—

(i) a schoolhouse, shop, warehouse, counting-house, office, store, vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft, vessel or club; or

(ii) a building that is adjacent to a dwelling-house and occupied with it, but is not part of it,

<sup>135</sup> Section 395(1): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s22(a).

<sup>136</sup> Section 395(2) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s22(b).

<sup>137</sup> Section 395(2) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s22(b).

<sup>138</sup> Section 396 amended by Act No. 10 of 1983, s13.

<sup>139</sup> Section 396: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s23.

<sup>140</sup> Section 397 amended by Act No. 10 of 1983, s14.

<sup>141</sup> Section 397(1) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s24(a).

<sup>142</sup> Section 397(2) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s24(b).

<sup>143</sup> Section 397(2) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s24(b).

<sup>144</sup> Section 398 amended by Act No. 10 of 1983, s15.

breaks out of it,

is guilty of a crime.

Penalty: <sup>145</sup>Imprisonment for a term not exceeding 14 years.

### **399. BREAKING INTO BUILDING WITH INTENT TO COMMIT CRIME.**

<sup>146</sup>A person who breaks and enters—

- (a) a schoolhouse, shop, warehouse, counting-house, office, store, vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft, vessel or club; or
- (b) a building that is adjacent to a dwelling-house and occupied with it, but is not part of it,

with intent to commit a crime in it, is guilty of a crime.

Penalty: <sup>147</sup>Imprisonment for a term not exceeding seven years.

### **400. BREAKING INTO PLACE OF WORSHIP AND COMMITTING CRIME.**

<sup>148</sup>A person who—

- (a) breaks and enters a building ordinarily used for religious worship and commits a crime in it; or
- (b) having committed a crime in any such building breaks out of it,

is guilty of a crime.

Penalty: <sup>149</sup>Imprisonment for a term not exceeding 14 years.

### **401. BREAKING INTO PLACE OF WORSHIP WITH INTENT TO COMMIT A CRIME.**

<sup>150</sup>A person who breaks and enters a building ordinarily used for religious worship, with intent to commit a crime in it, is guilty of a crime.

Penalty: <sup>151</sup>Imprisonment for a term not exceeding seven years.

### **402. PERSONS FOUND ARMED, ETC., WITH INTENT TO COMMIT CRIME.**

<sup>152</sup>(1) A person who is found—

<sup>145</sup> Section 398 repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s25.

<sup>146</sup> Section 399 amended by Act No. 10 of 1983, s16.

<sup>147</sup> Section 399: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s26.

<sup>148</sup> Section 400 amended by Act No. 10 of 1983, s17.

<sup>149</sup> Section 400: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s27.

<sup>150</sup> Section 401 amended by Act No. 10 of 1983, s18.

<sup>151</sup> Section 401: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s28.

<sup>152</sup> Section 402 amended by Act No. 10 of 1983, s19.

- (a) being armed with a dangerous or offensive weapon or instrument, with intent to break or enter a dwelling-house, and to commit a crime in it; or
- (b) being armed by night with a dangerous or offensive weapon or instrument, with intent to break or enter any building, and to commit a crime in it; or
- (c) having in his possession by night without lawful excuse (proof of which is on him) an instrument of house-breaking; or
- (d) having in his possession by day an instrument of house-breaking with intent to commit a crime; or
- (e) having his face masked or blackened or being otherwise disguised, with intent to commit a crime; or
- (f) being in a building by night with intent to commit a crime in it,

is guilty of a crime.

Penalty: <sup>153</sup>Subject to Subsection (2), imprisonment for a term not exceeding three years.

(2)<sup>154</sup> <sup>155</sup>If the offender has been previously convicted of a crime relating to property, he is liable to imprisonment for a term not exceeding seven years.

***Subdivision F. – Obtaining Property by False Pretences: Cheating.***

**403. FALSE PRETENCE: WILFULLY FALSE PROMISE.**

(1) A representation made by words or otherwise of a matter of fact, past or present that—

- (a) is false in fact; and
- (b) the person making it knows to be false or does not believe to be true,

is a false pretence.

(2) A promise made by words or otherwise to do or omit to do any thing by a person who at the time of making the promise—

- (a) does not intend to perform it; or
- (b) does not believe he will be able to perform it,

is a wilfully false promise.

**404. OBTAINING GOODS OR CREDIT BY FALSE PRETENCE OR WILFULLY FALSE PROMISE.**

(1) A person who by a false pretence or wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, and with intent to defraud—

- (a) obtains from any other person any chattel, money or valuable security; or
- (b) induces any other person to deliver to any person any chattel, money or valuable security,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding five years.

<sup>153</sup> Section 402(1): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s29(a).

<sup>154</sup> Section 402(2) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s29(b).

<sup>155</sup> Section 402(2) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s29(b).

(2) It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence or the wilfully false promise, or partly by the false pretence and partly by the wilfully false promise, as the case may be.

(3) A person incurring a debt or liability who obtains credit by a false pretence or wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, or by any other fraud, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

(4)<sup>156</sup> [*Repealed.*]

#### **405. OBTAINING EXECUTION OF VALUABLE SECURITY BY FALSE PRETENCE OR WILFULLY FALSE PROMISE.**

(1) A person who, by false pretence or wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, and with intent to defraud, induces any person—

- (a) to execute, make, accept, endorse, alter or destroy the whole or part of a valuable security; or
- (b) to write, impress or affix a name or seal on or to a paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

(2)<sup>157</sup> [*Repealed.*]

#### **406. CHEATING.**

(1) A person who, by means of any fraudulent trick or device—

- (a) obtains from any other person any thing capable of being stolen; or
- (b) induces any other person—
  - (i) to deliver to any person any thing capable of being stolen; or
  - (ii) to pay or deliver to any person any money or goods, or any greater sum of money or greater quantity of goods than he would have paid or delivered but for the trick or device,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2)<sup>158</sup> [*Repealed.*]

#### **407. CONSPIRACY TO DEFRAUD.**

(1) A person who conspires with another person—

- (a) by deceit or any fraudulent means to affect the market price of any thing publicly sold; or

<sup>156</sup> Section 404(4) repealed by *Criminal Code (Amendment) Act 1993* (No. 12 of 1993), s5.

<sup>157</sup> Section 405(2) repealed by *Criminal Code (Amendment) Act 1993* (No. 12 of 1993), s6.

<sup>158</sup> Section 406(2) repealed by No. 13 of 1977, s27.

- (b) to defraud the public, or any person (whether or not a particular person); or
- (c) to extort property from any person,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2)<sup>159</sup> [*Repealed.*]

#### **408. FRAUDS ON SALE OR MORTGAGE OF PROPERTY.**

A seller or mortgagor of any property, or the lawyer or agent of a seller or mortgagor of any property who, with intent to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud—

- (a) conceals from the purchaser or mortgagee an instrument material to the title, or an incumbrance; or
- (b) falsifies a pedigree on which the title depends or may depend,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

#### **409. PRETENDING TO EXERCISE WITCHCRAFT OR TELL FORTUNES.**

A person who—

- (a) pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration; or
- (b) undertakes to tell fortunes; or
- (c) pretends from his skill or knowledge in any occult science to discover where or in what manner any thing supposed to have been stolen or lost may be found,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

#### *Subdivision G. – Receiving Property Stolen or Fraudulently Obtained and Like Offences.*

#### **410. RECEIVING STOLEN PROPERTY, ETC.**

<sup>160</sup>(1) A person who receives any thing that has been obtained by means of—

- (a) any act constituting an indictable offence; or
- (b) any act done at a place outside Papua New Guinea that—
  - (i) if it had been done in Papua New Guinea would have constituted an indictable offence; and
  - (ii) is an offence under the laws in force in the place where it was done,

knowing it to have been so obtained, is guilty of a crime.

Penalty: <sup>161</sup>Subject to Subsection (2), imprisonment for a term not exceeding seven years.

<sup>159</sup> Section 407(2) repealed by *Criminal Code (Amendment) Act 1993* (No. 12 of 1993), s7.

<sup>160</sup> Section 410 amended by Act No. 10 of 1983, s20.

(2)<sup>162</sup> <sup>163</sup>If the offence by means of which the thing was obtained is a crime, the offender is liable to imprisonment for a term not exceeding 14 years.

(3) Where a thing referred to in Subsection (1) has been—

- (a) converted into other property; or
- (b) mortgaged, pledged or exchanged for any other property,

a person knowing that—

- (c) the property is wholly or in part the property into which the thing so obtained has been converted or for which it has been mortgaged or pledged or exchanged; and
- (d) the thing so obtained was obtained under such circumstances as to constitute an offence against Subsection (1),

who receives the whole or any part of the property into which the thing so obtained has been converted, or for which it has been mortgaged or pledged or exchanged, is guilty of an offence against Subsection (1).

(4) For the purpose of proving the receiving of any thing for the purposes of this section, it is sufficient to show that the accused person—

- (a) has, alone or jointly with some other person, had the thing in his possession; or
- (b) has aided in concealing it or disposing of it.

#### **411. RECEIVING AFTER CHANGE OF OWNERSHIP.**

Where a thing has been obtained by means of—

- (a) any act constituting an indictable offence; or
- (b) an act done at a place outside Papua New Guinea that—
  - (i) if it had been done in Papua New Guinea would have constituted an indictable offence; and
  - (ii) is an offence under the laws in force in the place where it was done;

and—

- (c) another person has acquired a lawful title to the thing; or
- (d) if the thing has been converted into other property, mortgaged, pledged or exchanged for other property in the circumstances referred to in Section 410(3) another person has acquired a lawful title to the other property or to the proceeds or part proceeds of the conversion, mortgage, pledge or exchange,

a subsequent receiving of the thing, or of that other property or proceeds or part-proceeds, as the case may be, is not an offence even if the receiver knows that the thing has previously been so obtained.

#### **412. TAKING REWARD FOR RECOVERY OF PROPERTY OBTAINED BY MEANS OF INDICTABLE OFFENCES.**

<sup>164</sup>A person who corruptly—

<sup>161</sup> Section 410(1): penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s30(a).

<sup>162</sup> Section 410(2) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s30(b).

<sup>163</sup> Section 410(2) repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s30(b).

<sup>164</sup> Section 412 amended by Act No. 10 of 1983, s21.

(a) receives or obtains; or  
 (b) agrees to receive or obtain,  
 any property or benefit on an agreement or understanding that he will help any person to recover any thing that has been obtained by means of—

(c) any act constituting an indictable offence; or  
 (d) any act done at a place outside Papua New Guinea that—  
 (i) if it had been done in Papua New Guinea would have constituted an indictable offence; and  
 (ii) is an offence under the laws in force in the place where it was done,  
 is, unless he has used all due diligence to cause the offender to be brought to trial for the offence, guilty of a crime.

Penalty: <sup>165</sup>Imprisonment for a term not exceeding seven years.

*Subdivision H. – Frauds by Trustees and Officers of Corporations: False Accounting.*

**413. TRUSTEES FRAUDULENTLY DISPOSING OF TRUST PROPERTY.**

(1) In this section the term “trustee” means—

- (a) a trustee on an express trust created by a deed, will or instrument, whether for a public or private or charitable purpose; or
- (b) a trustee appointed by or under the authority of a law of Papua New Guinea for any such purpose; or
- (c) a person on whom the duties of a trust referred to in Paragraph (a) or (b) devolve; or
- (d) an executor or administrator; or
- (e) a liquidator, trustee or other like officer, acting under any law relating to joint-stock companies or to insolvent debtors.

(2) Subject to Section 416, a trustee of any property who, with intent to defraud—

- (a) destroys the property; or
- (b) converts the property,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(3) A person cannot be arrested without warrant for an offence against Subsection (2).

(4) If civil proceedings have been taken against a trustee in respect of an act done by him that is an offence against Subsection (2), he shall not be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken, without the sanction of the court or Judge before whom the civil proceedings were had or are pending.

<sup>165</sup> Section 412: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s31.

**414. DIRECTORS AND OFFICERS OF CORPORATIONS FRAUDULENTLY APPROPRIATING PROPERTY, KEEPING FRAUDULENT ACCOUNTS OR FALSIFYING BOOKS OR ACCOUNTS.**

(1) Subject to Section 416, a person who—

- (a) being a director or officer of a corporation—
  - (i) receives or possesses himself as such of any of the property of the corporation otherwise than in payment of a just debt or demand; and
  - (ii) with intent to defraud, omits to—
    - (A) make a full and true entry of the property in the books and accounts of the corporation; or
    - (B) cause or direct such an entry to be made; or
- (b) being a director, officer or member of a corporation, with intent to defraud—
  - (i) destroys, alters, mutilates or falsifies—
    - (A) any book, document, valuable security or account that belongs to the corporation; or
    - (B) any entry in any such book, document, or account,
 or is privy to any such act; or
  - (ii) makes, or is privy to making, any false entry in any such book, document, or account; or
  - (iii) omits, or is privy to omitting, any material particular from any such book, document, or account,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2)<sup>166</sup> [*Repealed.*]

**415. FALSE STATEMENTS BY OFFICIALS OF COMPANIES.**

(1) Subject to Section 416, a promoter, director, officer or auditor of a corporation, existing or intended to be formed, who makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account that is, to his knowledge, false in a material particular, with intent by doing so—

- (a) to deceive or defraud any member, shareholder or creditor of the corporation, whether or not a particular person; or
- (b) to induce any person, whether or not a particular person—
  - (i) to become a member of, or to entrust or advance any property to, the corporation; or
  - (ii) to enter into any security for the benefit of the corporation,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2)<sup>167</sup> [*Repealed.*]

<sup>166</sup> Section 414(2) repealed by *Criminal Code (Amendment) Act 1993* (No. 12 of 1993), s8.

<sup>167</sup> Section 415(2) repealed by *Criminal Code (Amendment) Act 1993* (No. 12 of 1993), s9.



**416. PRIOR DISCLOSURE.**

(1) It is a defence to a charge of an offence against any of the preceding provisions of this Subdivision to prove that the accused person, before being charged with the offence and—

- (a) in consequence of the compulsory process of a court in an action or proceeding instituted in good faith by a party aggrieved; or
  - (b) in a compulsory examination or deposition before a court,
- disclosed on oath the act alleged to constitute the offence.

(2) A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any court on the ground that his doing so might tend to show that he had committed an offence against any of the preceding provisions of this Subdivision.

**417. MISAPPROPRIATION BY MEMBERS OF LOCAL AUTHORITIES.**

(1) In this section “**Local Authority**” includes any corporation or board constituted or appointed under the authority of a law, and charged with the administration of moneys for any purposes of local concern.

- (2) A person who, being a member of a Local Authority—
- (a) advisedly applies any money forming part of any fund under the control of the Local Authority to any purpose to which, to his knowledge, it cannot lawfully be applied; or
  - (b) advisedly concurs in any such application of any such money,
- is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(3) A prosecution for an offence against Subsection (2) cannot be begun except by the direction of the Public Prosecutor.

**418. FRAUDULENT FALSE ACCOUNTING.**

A person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant—

- (a) destroys, alters, mutilates or falsifies—
    - (i) any book, document, valuable security or account that belongs to or is in the possession of his employer, or has been received by him on account of his employer; or
    - (ii) any entry in any such book, document or account, or is privy to any such act; or
  - (b) makes or is privy to making any false entry in any such book, document or account; or
  - (c) omits or is privy to omitting any material particular from any such book, document or account,
- with intent to defraud, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**419. FALSE ACCOUNTING BY PUBLIC OFFICER.**

An officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or return of—

- (a) any money or property received by him or entrusted to his care; or
- (b) any balance of money or property in his possession or under his control,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

*Subdivision I.<sup>168</sup> – Summary Trial for Certain Indictable Offences.*

**420. INDICTABLE OFFENCES THAT MAY BE DEALT WITH SUMMARILY.**

<sup>169</sup>(1) Where a person is charged before a District Court constituted by a Principal Magistrate with an offence specified in Schedule 2, the Court may deal with the charge summarily according to the procedure set out in Section 421.

(2) Subject to Section 421(4), where—

- (a) a charge for an offence is dealt with under Subsection (1); and
- (b) the maximum penalty provided in this Code for that offence is imprisonment for a term exceeding 10 years,

the maximum penalty which may be imposed by a Principal Magistrate is imprisonment for a term not exceeding 10 years, notwithstanding anything to the contrary in this Code.

**421. PROCEDURE.**

<sup>170</sup>(1) Proceedings under this Subdivision shall be in accordance with the procedure laid down in Part VII of the *District Courts Act 1963*.

(2) If the Court finds that the charge is proved, it may, whether it imposes a penalty or not, order the defendant to make restitution of the property (if any) in respect of which the offence is committed, to its owner, and if the property is not at once restored, the Court may order the defendant to pay the amount of its value assessed by the Court, to the owner either in one sum or by such instalments and at such times as the Court thinks fit.

(3) Where, under Subsection (2), the Court has made an order in respect of property, with or without costs, and the defendant has neglected or defaulted in carrying out the order, the defendant is liable to imprisonment for such period as the Court, in its discretion, thinks fit, but not exceeding the maximum fixed by the following scale:—

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<b>Where the sum adjudged to be paid including costs</b>	<b>The period shall not exceed</b>
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<sup>168</sup> Subdivision VI.1.I replaced by No. 28 of 1980, s2, 3 and 4; repealed and replaced by *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s32.

<sup>169</sup> Section 420 replaced by No. 28 of 1980, s2, 3 and 4; Section 420(2) amended by No. 12 of 1982, s5; No. 10 of 1983, s22; No. 29 of 1983, s7; Section 420 repealed and replaced by *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s32.

<sup>170</sup> Section 421 replaced by No. 28 of 1980, s2, 3 and 4; amended by No. 12 of 1982, s6; No. 29 of 1983, s8; repealed and replaced by *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s32.

Where the sum adjudged to be paid including costs	The period shall not exceed
Does not exceed K2.00	7 days
Exceeds K2.00 but does not exceed K4.00	14 days
Exceeds K4.00 but does not exceed K10.00	1 month
Exceeds K10.00 but does not exceed K40.00	2 months
Exceeds K40.00 but does not exceed K100.00	4 months
Exceeds K100.00 but does not exceed K200.00	8 months
Exceeds K200.00	12 months

(4) Where the Court considers that the seriousness of the offence warrants a penalty greater than that prescribed as the maximum penalty for indictable offences triable summarily under this Subdivision, the Court shall commit the offender to the National Court for sentence.

(5) A committal under Subsection (4) does not constitute a conviction, order or adjudication for the purposes of instituting an appeal under Section 219(1) of the *District Courts Act 1963*.

(6) Where an offender is committed to the National Court under Subsection (4), and it appears that a period of time will elapse before the sentence is passed by the National Court, the Court before which the accused is brought shall—

- (a) by its warrant commit the offender to a correctional institution, police lock-up or other place of security to be there kept until the time appointed for the hearing by the National Court; or
- (b) admit the offender to bail in accordance with Division VI.2 of the *District Courts Act 1963*.

(7) Where an offender is committed to the National Court under Subsection (4), the Court shall inquire into the circumstances of the case and shall deal with the offender in any manner in which the Court may deal with an offender convicted of an offence on indictment by it.

(8) Where an offender committed under Subsection (4) is sentenced by the National Court, the offender shall—

- (a) in respect of the offence for which he has been committed for sentence and for the purposes of appeal be deemed to have been convicted by the National Court; and
- (b) have the same rights of appeal in respect of conviction and sentence as if he had been convicted and sentenced on indictment by the National Court.

(9) Nothing in this section shall be construed to prevent a person who has been committed for sentence in the National Court under Subsection (4), from applying to the National Court either prior to or at the time of hearing, for an order to quash the order for committal for sentence on the grounds that such order for committal for sentence was invalidly or improperly made and such application shall specify the precise grounds upon which it is made.

**421A. PROCEDURE ON COMMITTAL TO NATIONAL COURT.**

<sup>171</sup>(1) Where an offender is committed under Section 421(4), the committing Magistrate shall, as soon as practicable, arrange for transmission to—

- (a) the Registrar of the National Court; and
- (b) the Public Prosecutor; and
- (c) if requested, the offender or his legal representative,

a copy of—

- (d) the information; and
- (e) a transcript of the evidence given before him; and
- (f) the warrant committing the offender to custody, or the certificate that the offender has been admitted to bail; and
- (g) the notice of committal for sentence.

(2) For the purposes of Subsection (1)(g), the notice of committal for sentence shall contain the following particulars:—

- (a) the name of the offender;
- (b) the particulars of the offence for which the offender has been committed for sentence;
- (c) a statement, signed by the committing Magistrate, stating that he considers the circumstances of the offence warrant a penalty greater than that prescribed as the maximum penalty for indictable offences triable summarily under this Division.

***Subdivision J. – Offences Analogous to Stealing Punishable on Summary Conviction.*****422. UNLAWFULLY USING MOTOR VEHICLE, BICYCLE, BOAT OR CANOE.**

<sup>172</sup>A person who unlawfully uses a motor vehicle, bicycle, boat or canoe without the consent of the owner or of the person in lawful possession of it is guilty of an offence.

Penalty: <sup>173</sup>A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

**423. UNLAWFULLY USING CATTLE.**

(1) For the purposes of this section, “**unlawfully uses**” includes the unlawful possession by any person without the consent of the owner or of the person in lawful possession, with intent to deprive the owner or person in lawful possession of use or possession, temporarily or permanently.

(2) A person who unlawfully uses a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat or pig, or the young of any such animal, without the consent of the owner, or the person in lawful possession of it, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, for every animal so used.

<sup>171</sup> Section 421A repealed by No. 29 of 1983, s9; inserted by *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s32.

<sup>172</sup> Section 422 amended by Act No. 10 of 1983, s23.

<sup>173</sup> Section 422: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s33.

**424. SUSPICION OF STEALING CATTLE.**

Where a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat or pig, or the young of any such animal, is suspected, on reasonable grounds, to have been stolen, any person in whose possession or custody the skin or carcass, or any part of the skin or carcass, of the animal is found is guilty of an offence, unless he proves that he came lawfully by the thing in question.

Penalty: A fine not exceeding K100.00.

**425. COMMITTAL FOR TRIAL.**

If the court before whom any person is brought, charged with an offence against any of the preceding provisions of this subdivision, is of opinion that there ought to be a prosecution for an indictable offence, it may—

- (a) abstain from dealing with the case summarily; and
- (b) commit the defendant to take his trial for the indictable offence.

**426. UNLAWFUL POSSESSION OF SHIPWRECKED GOODS.**

(1) A person in whose possession or on whose premises there is found any thing that—

- (a) belongs to a vessel in distress, wrecked or stranded; and
  - (b) is suspected, on reasonable grounds, to have been unlawfully taken from the vessel,
- is guilty of an offence unless he proves that he came lawfully by the thing in question.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

(2) The court shall order the thing, referred to in Subsection (1), to be delivered up to the rightful owner.

**427. OFFERING SHIPWRECKED GOODS FOR SALE.**

(1) A person who offers or exposes for sale any thing that is suspected, on reasonable grounds, to have been unlawfully taken from a vessel in distress, wrecked or stranded is guilty of an offence unless he proves that he came lawfully by the thing in question.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

(2) Any person employed in the Public Service may seize any thing, referred to in Subsection (1), so offered for sale.

(3) If the accused person is convicted, the court that convicts him shall order the thing referred to in Subsection (1) to be delivered up to its rightful owner on payment of a reasonable reward, to be ascertained by the court, to the person who seized it.

**428. UNLAWFULLY DREDGING FOR OYSTERS.**

A person who unlawfully, and otherwise than in the course of catching or fishing for swimming fish with a net or other instrument adapted for taking only swimming fish—

- (a) uses, for the purpose of taking oysters or oyster brood, any net or other instrument within the limits of an oyster bed, laying or fishery, that—
- (i) is the property of any other person; and
  - (ii) is sufficiently marked out, or is known by general repute as his property, whether any oysters or oyster brood are actually taken or not; or

(b) drags on the ground or soil of any such fishery with any net or instrument, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three months.

#### **429. UNLAWFULLY TAKING FISH.**

A person who unlawfully takes or destroys, or attempts to take or destroy, any fish in any water that is private property, or in which there is a private right of fishery is guilty of an offence.

Penalty: A fine not exceeding K50.00.

#### **430 - 431<sup>174</sup>. [REPEALED.]**

#### **432. EFFECT OF SUMMARY CONVICTION AND OF CIVIL PROCEEDINGS.**

(1) A person who has been summarily convicted of an offence against Section 422, 426, 427, 428 or 429, and—

- (a) who has paid the fine or sum adjudged to be paid under the conviction, together with the costs (if any); or
- (b) who has suffered the imprisonment adjudged for non-payment; or
- (c) who has suffered the imprisonment adjudged in the first instance; or
- (d) who has been pardoned; or
- (e) who has been discharged without punishment on making satisfaction to the person aggrieved; or
- (f) whose sentence has been conditionally suspended,

is not liable to any civil proceedings for the same cause at the suit of the person on whose complaint he was convicted.

(2) If civil proceedings have been taken against any person in respect of any act done by him that is an offence against any provision of this subdivision, he cannot be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken.

#### ***Division 2. – Injuries to Property.***

#### ***Subdivision A. – Interpretation.***

#### **433. UNLAWFUL ACTS.**

(1) An act that causes injury to the property of another, and that is done without his consent, is unlawful unless it is authorized or justified or excused by law.

<sup>174</sup> Section 422: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s33.

(2) It is immaterial that the person who does the injury is in possession of the property injured or has a partial interest in it.

(3) A person is not criminally responsible for an injury caused to property by the use of such force as is reasonably necessary for the purpose of defending or protecting himself, any other person or any property from injury that he believes, on reasonable grounds, to be imminent.

**434. ACTS DONE WITH INTENT TO DEFRAUD.**

(1) When an act that causes injury to property, and that would otherwise be lawful, is done with intent to defraud any person, it is unlawful.

(2) When an act that causes injury to property is done with intent to defraud any person, it is immaterial that the property in question is the property of the offender himself.

**435. DAMAGE.**

In relation to a document, or to a writing or inscription, “damage” includes obliterating and rendering illegible, in whole or in part.

*Subdivision B. – Offences.*

**436. ARSON.**

A person who wilfully and unlawfully sets fire to—

- (a) a building or structure, whether completed or not; or
- (b) a vessel, whether completed or not; or
- (c) a stack of cultivated vegetable produce; or
- (d) a stack of mineral or vegetable fuel; or
- (e) a mine, or the workings, fittings or appliances of a mine; or
- (f) an aircraft or motor vehicle,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

**437. ATTEMPTS TO COMMIT ARSON.**

A person who—

- (a) attempts unlawfully to set fire to any thing referred to in Section 436; or
- (b) wilfully and unlawfully sets fire to any thing that is so situated that any thing referred to in Section 436 is likely to catch fire from it,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**438. SETTING FIRE TO CROPS AND GROWING PLANTS.**

A person who wilfully and unlawfully sets fire to—

- (a) a crop of cultivated vegetable produce, whether standing or cut; or
- (b) a crop of hay or grass, whether—

- (i) the natural or indigenous product of the soil or not; or
- (ii) under cultivation or not; or
- (iii) standing or cut; or
- (c) any standing trees, saplings or shrubs, whether indigenous or cultivated; or
- (d) any heath, gorse, furze, or fern,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

#### **439. ATTEMPTING TO SET FIRE TO CROPS, ETC.**

A person who attempts unlawfully to set fire to any thing referred to in Section 438 is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

#### **440. CASTING AWAY SHIPS.**

A person who—

- (a) wilfully and unlawfully casts away or destroys a vessel, whether complete or not; or
- (b) wilfully and unlawfully does any act that tends to the immediate loss or destruction of a vessel in distress; or
- (c) with intent to bring a vessel into danger—
  - (i) interferes with any light, beacon, mark or signal used for—
    - (A) purposes of navigation; or
    - (B) the guidance of seamen; or
  - (ii) exhibits any false light or signal,

is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

#### **441. ATTEMPTS TO CAST AWAY SHIPS.**

A person who attempts unlawfully—

- (a) to cast away or destroy a vessel, whether or not it is complete; or
- (b) to do any act tending to the immediate loss or destruction of a vessel in distress,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

#### **442. ENDANGERING THE SAFE USE OF AN AIRCRAFT.**

(1) A person who, with intent to prejudice the safe use of an aircraft or to injure any property on an aircraft—

- (a) deals with the aircraft or with any thing—
  - (i) on or near the aircraft; or
  - (ii) directly or indirectly connected with the guidance, control or operation of the aircraft,

in such a manner as to affect or endanger the free and safe use of the aircraft; or



(b) by any omission to do any act that it is his duty to do causes the free and safe use of the aircraft to be endangered,  
is guilty of a crime.

Penalty: Subject to Section 19, imprisonment for life.

(2) A person who, while on board an aircraft, wilfully does an act or makes an omission, or is privy to an act or omission, by which to his knowledge the safety of the aircraft is or is likely to be endangered is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

#### **443. INJURING ANIMALS.**

(1) A person who wilfully and unlawfully kills, maims or wounds an animal capable of being stolen is guilty of a misdemeanour.

Penalty: Subject to Subsection (2), imprisonment for a term not exceeding two years.

(2) If an offence against Subsection (1) is committed by night, the offender is liable to imprisonment for a term not exceeding three years.

#### **444. MALICIOUS INJURIES IN GENERAL: PUNISHMENT IN SPECIAL CASES.**

(1) A person who wilfully and unlawfully destroys or damages any property is guilty of an offence that, unless otherwise stated, is a misdemeanour.

Penalty: If no other punishment is provided by this section—imprisonment for a term not exceeding two years.

(2) If an offence against Subsection (1) is committed by night, the offender is liable to imprisonment for a term not exceeding three years.

(3) If the property destroyed or damaged was a dwelling-house or a vessel, or an aircraft, and the injury is caused by the explosion of any explosive substance, and—

(a) any person is in the dwelling-house or vessel or aircraft; or

(b) the destruction or damage actually endangers the life of any person,

the offence is a crime and the offender is liable, subject to Section 19, to imprisonment for life.

(4) If the property destroyed or damaged was a bank or wall of the sea, or of a river, canal, aqueduct, reservoir, or inland water, or a work that appertains to a port, harbour, dock, reservoir or inland water, and the injury causes actual danger or inundation or damage to any land or building the offence is a crime, and the offender is liable, subject to Section 19, to imprisonment for life.

(5) If the property was a bridge, viaduct or aqueduct that was over a highway or canal, or over which a highway or canal passed, and—

(a) was destroyed; or

(b) was damaged and—

(i) the damage was done with intent to make the bridge, viaduct or aqueduct, or the highway or canal, or any part of any of those things, dangerous or impassable; and

(ii) the bridge, viaduct or aqueduct, or the highway or canal, as the case may be, was made dangerous or impassable by the damage,

the offence is a crime, and the offender is liable, subject to Section 19, to imprisonment for life.

(6) If the property destroyed or damaged was—

- (a) a testamentary instrument, whether the testator is living or dead; or
- (b) a register that is authorized or required by law to be kept for—
  - (i) authenticating or recording the title to any property; or
  - (ii) recording births, baptisms, marriages, deaths or burials; or
- (c) a copy of any part of any such register that is required by law to be sent to any public officer,

the offence is a crime, and the offender is liable to imprisonment for a term not exceeding 14 years.

(7) If the property destroyed or damaged was a vessel in distress, wrecked or stranded, or any thing that belongs to such a vessel, the offence is a crime, and the offender is liable to imprisonment for a term not exceeding seven years.

(8) If the property destroyed or damaged was an aircraft or any thing directly or indirectly connected with the guidance, control or operation of an aircraft, the offence is a crime, and the offender is liable to imprisonment for a term not exceeding 14 years.

(9) If the property was—

- (a) a vessel, whether complete or not, and it is destroyed; or
- (b) a vessel, whether complete or not, and it is damaged, and the damage is done with intent to destroy it or make it useless; or
- (c) a light, beacon, buoy, mark or signal used for purposes of navigation, or for the guidance of seamen; or
- (d) a bank or wall of the sea, or of a river, canal, aqueduct, reservoir or inland water, or a work that—
  - (i) appertains to a port, harbour, dock, canal, aqueduct, reservoir or inland water; or
  - (ii) is used for the purpose of loading or unloading goods; or
- (e) a bridge, viaduct or aqueduct, that is constructed over a highway or canal, or over which a highway or canal passes, and—
  - (i) it is damaged; and
  - (ii) the damage is done with intent to make the bridge, viaduct or aqueduct, or the highway or canal or any part of it, dangerous or impassable; or
- (f) any thing in process of manufacture, an agricultural or manufacturing machine, a manufacturing implement or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, and it is destroyed; or
- (g) any thing, machine, implement or appliance specified in Paragraph (f) and the damage is done with intent to destroy it or to make it useless; or
- (h) a shaft or passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or
- (i) a machine, appliance, apparatus, building, erection, bridge or road appertaining to or used with a mine, whether or not it was completed; or
- (j) a rope, chain or tackle that is used in a mine, or on any way or work appertaining to or used with a mine, and it is destroyed; or
- (k) a rope, chain or tackle specified in Paragraph (j), and—

(i) it is damaged; and  
(ii) damage is done with intent to destroy it or to make it useless; or  
(l) a well or bore for water, or the dam, bank, wall, or floodgate of a millpond or pool,  
the offence is a crime, and the offender is liable to imprisonment for a term not exceeding seven years.

(10) If the property destroyed or damaged was a document that—  
(a) was deposited or kept in a public office; or  
(b) was evidence of title to any land or estate in land,  
the offence is a crime, and the offender is liable to imprisonment for a term not exceeding seven years.

#### **445. ATTEMPTS TO DESTROY PROPERTY BY EXPLOSIVES.**

A person who, unlawfully, and with intent to destroy or damage any property, puts an explosive substance in any place, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

#### **446. UNLAWFUL DEPOSITION OF EXPLOSIVES.**

(1) A person who wilfully and without reasonable cause or excuse throws, leaves down or otherwise deposits any explosive substance in any place under such circumstances that it may cause—

(a) injury to any person; or  
(b) damage to the property of any person,  
is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

(2)<sup>175</sup> [*Repealed.*]

#### **447. ATTEMPT TO INJURE MINES.**

A person who, with intent to injure a mine or to obstruct the working of a mine—

(a) unlawfully, and otherwise than by an act done underground in the course of working an adjoining mine—  
(i) causes water to run into the mine or into a subterranean passage communicating with the mine; or  
(ii) obstructs any shaft or passage of the mine; or  
(b) unlawfully obstructs the working of any machine, appliance or apparatus appertaining to or used with the mine, whether or not it is completed; or  
(c) unlawfully, and with intent to make it useless, injures or unfastens a rope, chain or tackle that is used in the mine or on any way or work appertaining to or used with the mine,  
is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

<sup>175</sup> Section 446 repealed by No. 13 of 1977, s30.

**448. INTERFERING WITH MARINE SIGNALS.**

A person who—

- (a) wilfully and unlawfully removes, defaces or makes invisible any light, beacon, buoy, mark or signal used for—
  - (i) purposes of navigation; or
  - (ii) the guidance of seamen; or
- (b) unlawfully attempts to remove, deface or make invisible any such thing,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**449. INTERFERING WITH NAVIGATION WORKS.**

A person who—

- (a) wilfully and unlawfully removes or disturbs any fixed object or materials used for—
  - (i) securing a bank or wall of the sea, or of a river, canal, aqueduct, reservoir or inland water; or
  - (ii) securing any work that—
    - (A) appertains to a port, harbour, dock, canal, aqueduct, reservoir or inland water; or
    - (B) is used for purposes of navigation or loading or unloading goods; or
- (b) unlawfully does any act with intent to obstruct the carrying on, completion or maintenance of the navigation of a navigable river or canal, and by doing so obstructs the carrying on, completion or maintenance,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**450. COMMUNICATING INFECTIOUS DISEASE TO ANIMALS.**

A person who wilfully and unlawfully causes, is concerned in causing or attempts to cause an infectious disease to be communicated to or among any animals capable of being stolen is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**451. TRAVELLING WITH INFECTED ANIMALS.**

A person who—

- (a) causes any four-footed animal that is infected with an infectious disease to travel; or
- (b) being the owner, or one of the joint owners, of any four-footed animal that is infected with an infectious disease, permits or connives at the travelling of any such animal,

contrary to any law relating to infected animals of that kind, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**452. REMOVING BOUNDARY MARKS.**

A person who wilfully and unlawfully, and with intent to defraud, removes or defaces an object or mark that has been lawfully erected or made as an indication of the boundary of any land is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**453. SENDING LETTERS THREATENING TO BURN OR DESTROY.**

A person who, knowing the contents of the writing, causes a person to receive a writing threatening that—

- (a) a building or vessel, whether or not it is complete; or
- (b) any stack of cultivated vegetable produce; or
- (c) any such produce that is in or under a building,

will be burnt or destroyed is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**454<sup>176</sup>. [REPEALED.]**

*Subdivision C. – Summary Conviction for certain offences.*

**455 - 456<sup>177</sup>. [REPEALED.]****457. TRIVIAL CHARGES.**

If on the trial of any person under this subdivision the court is of opinion that the injury is of so trivial a nature as not to deserve any punishment, it may convict the defendant and discharge him without inflicting any punishment.

**458. EFFECT OF SUMMARY CONVICTION AND OF CIVIL PROCEEDINGS.**

(1) A person who has been summarily convicted of an offence against this subdivision and who—

- (a) has—
  - (i) paid the fine or sum (if any) adjudged to be paid under the conviction together with the costs (if any); or
  - (ii) suffered the imprisonment adjudged for non-payment of it; or
  - (iii) suffered the imprisonment adjudged in the first instance; or
  - (iv) been pardoned; or
  - (v) been discharged without punishment; or
- (b) has had his sentence conditionally suspended,

is not liable to any civil proceedings for the same cause at the suit of the person on whose complaint he was convicted.

<sup>176</sup> Section 454 repealed by No. 13 of 1977, s31.

<sup>177</sup> Section 422: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s33.

(2) If civil proceedings have been taken against any person in respect of an act done by him that is an offence of which he might have been convicted under this subdivision, he cannot be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken.

***Division 3. – Forgery and Like Offences: Personation.***

***Subdivision A. – Forgery in General.***

**459. INTERPRETATION OF DIVISION 3.**

(1) In this Division–

“**bank note**” includes–

(a) any negotiable instrument issued–

(i) by or on behalf of any person or corporation in any part of the world; or

(ii) by the authority of any State, Prince or Government,

and intended to be used as equivalent to money, immediately on issue or at any time afterwards; and

(b) a bank bill or bank post bill;

“**document**” includes–

(a) a register or register-book, or a part of a register or register-book; and

(b) any–

(i) book; and

(ii) paper, parchment or other material, used for writing or printing,

that is marked with any letters or marks denoting words, or with any other signs capable of conveying a definite meaning to persons conversant with them, but does not include trade marks on articles of commerce;

“**resemble**” applied to any thing, includes the case where the thing is made to resemble, or is apparently intended to resemble, the object spoken of;

“**seal**” includes any stamp, die or other thing, from which an impression can be taken by means of pressure or of ink, or by any other means;

“**writing**” includes a mere signature and a mark of any kind.

(2) A document or writing is said to be false–

(a) in the case of a document that–

(i) is a register or record kept by lawful authority; or

(ii) is an entry in any such register; or

(iii) purports to be issued by lawful authority as testifying–

(A) to the contents of any register or record kept by lawful authority; or

(B) to any fact or event,

if any material particular stated in the document is untrue; or

- (b) if the whole or some material part of the document or writing—
  - (i) purports to be made by or on behalf of some person who did not make it or authorize it to be made; or
  - (ii) where the time or place of making is material—is, with a fraudulent intent, falsely dated as to the time or place of making even though it is made by or by the authority of the person by whom it purports to be made; or
- (c) if the whole or some material part of the document or writing purports to be made by or on behalf of a person who does not, in fact, exist; or
- (d) if it is made in the name of an existing person, either by that person himself or by his authority, with the fraudulent intention that it should pass as being made by a person, real or fictitious, other than the person who made it or authorized it to be made.

(3) A seal or mark is said to be counterfeit if it is made without lawful authority, and is in such a form as to resemble a genuine seal or mark, or, in the case of a seal, in such a form as to be capable of producing impressions resembling those produced by a genuine seal.

(4) A representation of the impression of a seal is said to be counterfeit if it is not in fact made by the seal.

#### 460. DEFINITION OF FORGERY.

(1) In this section, “**make a false document or writing**” includes—

- (a) altering a genuine document or writing in a material part, whether by erasure, obliteration, removal or otherwise; and
- (b) making a material addition to the body of a genuine document or writing; and
- (c) adding to a genuine document or writing a false date, attestation, seal or other material matter.

(2) A person who makes a false document or writing, knowing it to be false, and with intent that it may in any way be used or acted on as genuine, whether in Papua New Guinea or elsewhere—

- (a) to the prejudice of a person; or
- (b) with intent that a person may, in the belief that it is genuine, be induced to do or refrain from doing any act, whether in Papua New Guinea or elsewhere,

is said to forge the document or writing.

(3) A person who makes—

- (a) a counterfeit seal or mark; or
- (b) an impression of a counterfeit seal knowing the seal to be counterfeit; or
- (c) a counterfeit representation of the impression of a genuine seal; or
- (d) without lawful authority, an impression of a genuine seal,

with intent that the thing so made may in any way be used or acted on as genuine, whether in Papua New Guinea or elsewhere—

- (e) to the prejudice of any person; or
- (f) with intent that a person may, in the belief that it is genuine, be induced to do or refrain from doing any act, whether in Papua New Guinea or elsewhere,

is said to forge the seal or mark.

(4) It is immaterial in what language a forged document or writing is expressed.

(5) It is immaterial that the forger of any thing forged did not intend that a particular person—

- (a) should use or act on it; or
- (b) should be prejudiced by it; or
- (c) be induced to do or refrain from doing any act.

(6) It is immaterial that the thing forged is incomplete, or does not purport to be a document, writing or seal that would be binding in law for any particular purpose, if it is so made, and is of such a kind, as to indicate that it was intended to be used or acted on.

#### **461. OTHER IMMATERIAL MATTERS.**

(1) In the case of an offence that involves the forging or uttering of a document or writing relating to—

- (a) the payment of money; or
- (b) the delivery or transfer of any property; or
- (c) the creation or performance of an obligation,

it is immaterial in what country—

- (d) the money or property is, or purports to be, payable, deliverable or transferable; or
- (e) the obligation is, or purports to be, performed.

(2) If, under Subsection (1)—

- (a) the money or the property purports to be payable, deliverable, or transferable; or
- (b) the obligation purports to be an obligation to be performed,

in a country other than Papua New Guinea, it is immaterial whether or not the document or writing is under seal.

#### *Subdivision B. – Offences.*

#### **462. FORGERY IN GENERAL: PUNISHMENT IN SPECIAL CASES.**

(1) A person who forges any document, writing or seal is guilty of an offence that, unless otherwise stated, is a crime.

Penalty: If no other punishment is provided—imprisonment for a term not exceeding three years.

(2) If the thing forged—

- (a) purports to be, or is intended by the offender to be understood to be or to be used as—
  - (i) the National Seal; or
  - (ii) the great seal of the United Kingdom, or of Australia; or
  - (iii) the privy seal, or any privy signet of the Queen and Head of State; or
  - (iv) the royal sign manual of the Queen and Head of State; or
  - (v) the seal of the Head of State or the Governor-General; or
  - (vi) any public seal lawfully appointed to be used for authenticating an act of State in any part of Her Majesty's Dominions; or



- (b) is a document having on it or affixed to it any such seal, signet or sign manual, or any thing that purports to be, or is intended by the offender to be understood to be, any such seal, signet or sign manual,

the offender is liable, subject to Section 19, to imprisonment for life.

(3) If the thing forged purports to be, or is intended by the offender to be understood to be or to be used as—

- (a) a document that is—
- (i) evidence of title to—
    - (A) any portion of the public debt of any of Her Majesty's Dominions or of any foreign State; or
    - (B) any dividend or interest payable in respect of a debt referred to in Clause (A); or
  - (ii) a transfer or assignment of any document referred to in Subparagraph (i); or
  - (iii) a receipt or certificate for any interest or money payable or accruing on or in respect of a debt referred to in Subparagraph (i); or
- (b) a transfer or assignment of—
- (i) a share in any corporation, company or society, whether domestic or foreign; or
  - (ii) any share or interest in—
    - (A) the capital stock of any such corporation, company or society; or
    - (B) the debt of any such corporation, company or society; or
- (c) a receipt or certificate for any interest or money payable or accruing on or in respect of any share, interest or debt referred to in Paragraph (b); or
- (d) a document acknowledging or being evidence of the indebtedness of the Government or of the Government of any of Her Majesty's Dominions, or of any foreign Prince or State, to any person; or
- (e) a document that by the law of Papua New Guinea or of any other country, is evidence of the title to any land or estate in land in Papua New Guinea or that other country, or an entry in any register or book that is such evidence; or
- (f) a document that by law is required for procuring the registration of any title to any land or estate in land; or
- (g) a testamentary instrument, whether the testator is living or dead, or a probate or letters of administration; or
- (h) a bank note, bill of exchange or promissory note, or an acceptance, endorsement, or assignment of a bank note, bill of exchange or promissory note; or
- (i) a deed bond or other written obligation, or a warrant, order or other security for—
- (i) the payment of money; or
  - (ii) the delivery or transfer of a valuable security; or
  - (iii) procuring or giving credit, whether negotiable or not, or an endorsement or assignment of any such document; or
- (j) an accountable receipt, or an acknowledgment of the deposit, receipt, payment or delivery of money or goods, or of any valuable security, or an endorsement or assignment of any such document; or
- (k) a bill of lading, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery of goods, or any other document used in the ordinary course of business—
- (i) as proof of the possession or control of goods; or

- (ii) as authorizing, or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive the goods represented by the document, or an endorsement or assignment of any such document; or
- (l) a charter party, or a shipping document accompanying a bill of lading, or an endorsement or assignment of a charter party or such a document; or
- (m) a policy of insurance of any kind; or
- (n) a power of attorney or other authority to execute any document referred to in the preceding provisions of this section; or
- (o) the signature of a witness to any of the documents referred to in the preceding provisions of this section to which attestation is by law required; or
- (p) a register of births, baptisms, marriages, deaths or burials authorized or required by law to be kept, or any entry in any such register; or
- (q) a copy of any register or entry referred to in Paragraph (p), that is authorized or required by law to be given or sent to or by any person; or
- (r) a seal used by a registrar appointed to keep any register referred to in this subsection, or the impression of any such seal, or the signature of any such registrar,

the offender is liable to imprisonment for a term not exceeding 14 years.

(4) If the thing forged purports to be, or is intended by the offender to be understood to be or to be used as—

- (a) the signature of the Head of State, a member of the National Executive Council, the Governor-General of Australia, a member of the Federal Executive Council of Australia, or any of Her Majesty's Principal Secretaries of State or Under Secretaries of State, on any grant, commission, warrant, or order; or
- (b) a seal or stamp, used for the purposes of the public revenue in Papua New Guinea or of any part of Her Majesty's Dominions or in any foreign State; or
- (c) a document relating to the obtaining or receiving of any money payable on account of the Public Service of Papua New Guinea or any part of Her Majesty's Dominions, or any other property of Her Majesty in any part of Her Dominions, or a power of attorney or other authority to execute any such document,

the offender is liable to imprisonment for a term not exceeding 14 years.

(5) If the thing forged purports to be, or is intended by the offender to be understood to be or to be used as—

- (a) the seal of a court of record of Papua New Guinea or in any part of Her Majesty's Dominions, or a seal used at the Chambers of a Judge for stamping or sealing summonses or orders; or
- (b) a seal or signature by virtue of which any document can by law be used as evidence; or
- (c) any process of any court of justice of Papua New Guinea or in any part of Her Majesty's Dominions; or
- (d) a document issued or made by or out of or by the authority of a court referred to in Paragraph (c); or
- (e) a document or copy of a document of any kind, which document or copy is intended by the offender to be used as evidence in a court referred to in Paragraph (c); or

- (f) a record or other document of or belonging to a court of record of Papua New Guinea or in any part of Her Majesty's Dominions; or
  - (g) a copy or certificate of any record of a court referred to in Paragraph (f); or
  - (h) an instrument, that is made evidence by any law; or
  - (i) a document that a justice is required or authorized by law to make, attest or issue, and purporting to be made, attested or issued by a justice; or
  - (j) a stamp used for denoting the payment of fees or percentages in any court; or
  - (k) a licence or certificate required or authorized by law to be given for the celebration of a marriage; or
  - (l) a consent to the marriage of a minor given by a person authorized by law to give it; or
  - (m) a certificate of marriage given under the laws relating to the solemnization of marriage; or
  - (n) a copy of the registry of a marriage; or
  - (o) a stamp issued or made under the laws relating to the Post Office; or
  - (p) a power of attorney or letter of attorney; or
  - (q) the signature of a witness to a power of attorney or letter of attorney; or
  - (r) a contract, or a writing that constitutes, with other writings, a contract, or that is evidence of a contract; or
  - (s) an authority or request for the payment of money or for the delivery of property; or
  - (t) an acquittance or discharge, a voucher of having received any property, or any document that is evidence of the receipt of any property; or
  - (u) any mark that under the authority of a law is impressed on or otherwise attached to or connected with any article for the purpose of denoting—
    - (i) the quality of the article; or
    - (ii) the fact that it has been examined or approved by or under the authority of some public body or public officer; or
  - (v) a certificate given under the laws relating to quarantine,
- the offender is liable to imprisonment for a term not exceeding seven years.

(6) If the thing forged purports to be, or is intended by the offender to be understood to be or to be used as, a message to be sent by telegraph, or a message received by telegraph, the offender is liable to the same punishment as if he had forged a document to the same effect as the message.

#### **463. UTTERING FALSE DOCUMENTS AND COUNTERFEIT SEALS.**

- (1) In this section, “**fraudulently**” means with an intention—
- (a) that the thing in question shall be used or acted on as genuine, whether in Papua New Guinea or elsewhere, to the prejudice of some person, whether a particular person or not; or
  - (b) that some person, whether a particular person or not, will, in the belief that the thing in question is genuine, be induced to do or refrain from doing some act, whether in Papua New Guinea or elsewhere.
- (2) A person who knowingly and fraudulently utters a false document or writing, or a counterfeit seal, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.

(3) It is immaterial whether the false document or writing, or counterfeit seal, was made in Papua New Guinea or elsewhere.

**464. UTTERING CANCELLED OR EXHAUSTED DOCUMENTS.**

A person who knowingly utters as and for a subsisting and effectual document any document—

- (a) that has by any lawful authority been ordered to be revoked, cancelled or suspended; or
- (b) the operation of which has ceased—
  - (i) by effluxion of time; or
  - (ii) by death; or
  - (iii) by the happening of any other event,

is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

**465. UTTERING CANCELLED STAMPS.**

A person who knowingly utters as and for a valid and uncanceled stamp—

- (a) a stamp; or
- (b) an impression of a seal,

used for any purpose connected with the public revenue of Papua New Guinea or of any part of Her Majesty's Dominions, that has been already used, or has been cancelled, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the stamp or seal.

**466. PROCURING EXECUTION OF DOCUMENTS BY FALSE PRETENCES.**

A person who, by means of any false and fraudulent representation as to the nature, contents or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

**467 - 468<sup>178</sup>. [REPEALED.]**

**469. DEMANDING PROPERTY ON FORGED TESTAMENTARY INSTRUMENTS.**

A person who procures the delivery or payment to himself or any other person of any property or money—

- (a) by virtue of any probate or letters of administration granted on a forged testamentary instrument, knowing the testamentary instrument to have been forged; or
- (b) on or by virtue of any probate or letters of administration obtained by false evidence, knowing the grant to have been so obtained,

<sup>178</sup> Section 422: penalty clause repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s33.

is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document or thing by virtue of which he procured the delivery or payment.

**470. PURCHASING FORGED BANK NOTES.**

A person who, without lawful authority or excuse (proof of which is on him)–

- (a) purchases or receives from any person; or
- (b) has in his possession,

a forged bank note, whether filled up or in blank, knowing it to be forged, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**471. FALSE CERTIFICATE OF MESSAGE RECEIVED BY TELEGRAPH.**

A person who knowingly signs on a document that purports to be a copy of a document the contents of which have been received by telegraph under the laws authorizing the transmission by telegraph of the contents of documents requiring signature or seal, a false certificate that it has been duly received under the provisions of those laws is guilty of an offence of the same kind, and is liable to the same punishment as if he had forged the document of which it purports to be a copy.

**472. FALSIFYING WARRANTS FOR MONEY PAYABLE UNDER PUBLIC AUTHORITY.**

A person employed in the Public Service who knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**473. FALSIFICATION OF REGISTERS.**

(1) A person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry that is to his knowledge false in a material particular to be made in the register or record is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

(2)<sup>179</sup> [*Repealed.*]

**474. SENDING FALSE CERTIFICATE OF MARRIAGE TO REGISTRAR.**

A person who signs or transmits to a person authorized by law to register marriages–

- (a) a certificate of marriage; or
- (b) a document purporting to be a certificate of marriage, that is to his knowledge false in a material particular,

is guilty of a crime.

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<sup>179</sup> Section 473(2) repealed by *Criminal Code (Amendment) Act 1993* (No. 12 of 1993), s10.  
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Penalty: Imprisonment for a term not exceeding seven years.

**475. FALSE STATEMENTS FOR THE PURPOSE OF REGISTERS OF BIRTHS, DEATHS AND MARRIAGES.**

A person who knowingly, and with intent to procure it to be inserted in a register of births, deaths or marriages, makes a false statement concerning a matter required by law to be registered in any such register is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**476. ATTEMPTS TO PROCURE UNAUTHORIZED STATUS.**

A person who—

- (a) by a false representation procures any authority authorized by any law to issue certificates testifying that the holders of them are entitled to any right or privilege, or to enjoy any rank or status, to issue to himself or any other person any such certificate; or
- (b) falsely represents to any person that he has obtained a certificate issued by any such authority; or
- (c) by a false representation procures himself or any other person to be registered on a register kept by lawful authority as a person entitled—
  - (i) to such a certificate; or
  - (ii) to any right or privilege; or
  - (iii) to enjoy any rank or status,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**477. COUNTERFEITING TRADE MARKS.**

(1) In this section—

“**counterfeit**” includes any imitation of a genuine mark that is not genuine and that resembles the genuine mark;

“**trade mark**” includes any word or mark of any kind that is lawfully used by any person to denote that any article is—

- (a) of his manufacture, workmanship, production or merchandise; or
- (b) a thing of a peculiar or particular description made or sold by him.

(2) A person who, with intent to defraud or to enable another person to defraud—

- (a) makes a counterfeit trade mark; or
- (b) knowingly uses a trade mark, whether genuine or counterfeit, on an article, or on any thing containing or connected with any article, in such a manner that the trade mark signifies or implies, or may reasonably induce any person to believe, contrary to the fact, that the article is such as is designated by the trade mark,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years and a fine at the discretion of the court.

(3) When a person is convicted under this section—

- (a) every thing that he has in his possession to which the trade mark or counterfeit trade mark has been applied; and
- (b) every instrument that he has in his possession—
  - (i) by means of which any such mark has been so applied; or
  - (ii) which is intended for applying any such mark,

is forfeited to the State.

#### **478. CIRCULATING FALSE COPIES OF RULES OR LISTS OF MEMBERS OF SOCIETIES OR COMPANIES.**

A person who knowingly, and with intent to deceive or defraud, or to enable another person to deceive or defraud, utters to any person a document that—

- (a) purports to be a copy of the memorandum or articles of association or other constitution of a corporation or joint-stock company, or of the rules or by-laws of any corporation or society, constituted under the authority of any law, but is not a true copy of it; or
- (b) purports to be a list of the members of any such corporation, company, or society, but is not a true list of those members,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

#### ***Subdivision C. – Forgery and Like Offences Punishable on Summary Conviction.***

#### **479. APPLICATION OF SUBDIVISION C.**

The provisions of this subdivision are in addition to and not in derogation of any other provisions of this Code relating to the same matters, but so that an offender cannot be twice convicted for the same act.

#### **480. SENDING FALSE TELEGRAMS.**

A person who—

- (a) knowingly and without the authority of the pretended sender, sends or delivers, or causes to be sent or delivered, to any person employed by or under Post PNG Limited or Telikom PNG Limited, for the purpose of being transmitted as a telegram, a message or writing purporting to be sent by another person; or
- (b) signs a telegram in the name of another person without that person's authority, or in the name of a fictitious person; or
- (c) wilfully alters a telegram without the authority of the sender; or
- (d) writes, issues or delivers, as and for a telegram received through a telegraph office, a writing purporting to be a telegram so received, that is not a telegram so received,

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

**481. FORGERY OF SEAMEN'S TICKETS OR DOCUMENTS UNDER ACTS CONTROLLING FACTORIES AND SHOPS.**

A person who—

- (a) forges any document purporting to be, or intended by the offender to be understood to be or to be used as, a document required to be obtained or used under the provisions of the laws relating to—
  - (i) the engagement or discharge of seamen; or
  - (ii) the regulation of factories and shops; or
- (b) utters any document that is required to be obtained or used under the provisions of those laws, and that has been issued to another person, and falsely represents himself to be the person named in the document,

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

**482. FRAUDULENT USE OF ADHESIVE STAMPS.**

A person who with intent that it may be used again—

- (a) fraudulently removes an adhesive stamp, or causes an adhesive stamp to be removed, from any document; or
- (b) fraudulently affixes an adhesive stamp that has been removed from any document to another document; or
- (c) knowingly utters an adhesive stamp that has been fraudulently removed from any document; or
- (d) knowingly utters any document that has on it an adhesive stamp that has been fraudulently removed from another document,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**483. FALSE WARRANTIES OR LABELS RELATING TO THE SALE OF FOOD.**

A person who—

- (a) knowingly gives to a purchaser a false warranty in writing with respect to an article of food or a drug sold by him, whether as principal or agent; or
- (b) knowingly gives with any article of food or drug sold by him a label that falsely describes the article or drug sold; or
- (c) in any proceedings under the law relating to the sale of food and drugs knowingly applies to an article of food or a drug a certificate or warranty given with respect to another article or drug,

is guilty of an offence.

Penalty: A fine not exceeding K40.00.



*Subdivision D. – Preparation for Forgery.***484. INSTRUMENTS AND MATERIALS FOR FORGERY.**

A person who, without lawful authority or excuse, (proof of which is on him)–

- (a) makes, begins or prepares to make, uses, or knowingly has in his possession or disposes of, any paper resembling any paper that is specially provided by the proper authority for the purpose of being used for making–
  - (i) any document acknowledging or being evidence of the indebtedness to any person of–
    - (A) the Government; or
    - (B) the Government of any of Her Majesty’s Dominions; or
    - (C) any foreign Prince or State; or
    - (D) any person carrying on the business of banking; or
  - (ii) a stamp, licence, permit or other document used for the purposes of the public revenue of Papua New Guinea, or of any part of Her Majesty’s Dominions; or
  - (iii) a bank note,  
or any machinery, instrument or material–
    - (iv) for making any such paper; or
    - (v) capable of producing in or on paper any words, figures, letters, marks or lines resembling any words, figures, letters, marks or lines used in or on any paper specially provided for any such purpose; or
- (b) impresses or makes on any plate or material any words, figures, letters, marks or lines the print of which resembles, in whole or part, the words, figures, letters, marks or lines used in any document referred to in Paragraph (a); or
- (c) uses, or knowingly has in his possession, or disposes of–
  - (i) any plate or material on which any words, figures, letters, marks or lines referred to in Paragraph (b) or (c) are impressed or made; or
  - (ii) any paper on which is written or printed the whole or any part of the usual contents of any document referred to in Paragraph (a),

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

**485. COUNTERFEIT STAMPS.**

A person who, without lawful authority or excuse (proof of which is on him)–

- (a) makes or mends, begins or prepares to make or mend, uses or knowingly has in his possession, or disposes of any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument, used for the purpose of making any stamp, whether impressed or adhesive, that–
  - (i) is used for the purposes of the public revenue or of the Post Office in–
    - (A) Papua New Guinea; or
    - (B) any part of Her Majesty’s Dominions; or
    - (C) any foreign State; or

- (ii) is capable of producing in or on paper any words, figures, letters, marks or lines resembling any words, figures, letters, marks or lines used in or on any paper specially provided by the proper authority for any such purpose; or
- (b) knowingly has in his possession or disposes of—
  - (i) any paper or other material that has on it the impression of any die, plate or instrument referred to in Paragraph (a); or
  - (ii) any paper that has on it or in it any words, figures, letters, marks or lines referred to in Paragraph (a); or
- (c) fraudulently, and with intent that use may be made of any stamp referred to in Paragraph (a) or of any part of it, removes the stamp from any material in any way; or
- (d) fraudulently, and with intent that use may be made of any part of any stamp referred to in Paragraph (a), mutilates the stamp; or
- (e) fraudulently fixes or places on any material or on any stamp referred to in Paragraph (a) any stamp or part of a stamp that has been removed from any other material, or out of or from any other stamp; or
- (f) fraudulently, and with intent that use may be made of any stamp referred to in Paragraph (a) that has been already impressed on or attached to any material, erases or otherwise removes, either really or apparently from such material anything written on it; or
- (g) knowingly has in his possession or disposes of anything obtained or prepared by any unlawful act, referred to in this section,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

#### **486. PAPER FOR POSTAL PURPOSES.**

A person who, without lawful authority or excuse, (proof of which is on him), knowingly has in his possession or disposes of any paper that has been specially provided by the proper authority for the purpose of being used for postage stamps, money orders or postal notes, before the paper has been lawfully issued for public use, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

#### **487. PAPER AND DIES FOR POSTAGE STAMPS.**

(1) For the purposes of this section unless the contrary is shown a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country.

- (2) A person who, without lawful authority or excuse (proof of which is on him)—
  - (a) makes, begins or prepares to make, uses for any postal purpose, has in his possession or disposes of any imitation or representation on paper or any other material, of any stamp used for denoting any rate of postage of Papua New Guinea or of any part of Her Majesty's Dominions, or of any foreign country; or
  - (b) makes or mends, begins or prepares to make or mend, uses, has in his possession or disposes of any die, plate, instrument or material for making an imitation or representation referred to in Paragraph (a),

is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding one year.

(3) Any stamps, and any other such things that are found in the possession of a person convicted of an offence against this section are forfeited to the State.

***Subdivision E. – Personation.***

**488. PERSONATION IN GENERAL.**

(1) A person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of an offence that, unless otherwise stated, is a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) If the representation referred to in Subsection (1) is that the offender is a person entitled by will or operation of law to any specific property, and he commits the offence with intent to obtain that property or possession of it, the offence is a crime, and the offender is liable to imprisonment for a term not exceeding 14 years.

**489. FALSELY ACKNOWLEDGING DEEDS, RECOGNIZANCES, ETC.**

A person who, without lawful authority or excuse (proof of which is on him), makes, in the name of any other person, before any court or person lawfully authorized to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years.

**490. PERSONATION OF A PERSON NAMED IN A CERTIFICATE.**

A person who utters any document that has been issued by lawful authority to another person, and by which that other person is certified—

- (a) to be a person possessed of any qualifications recognized by law for any purpose; or
- (b) to be the holder of any office; or
- (c) to be entitled to exercise any profession, trade or business; or
- (d) to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document,

is guilty of an offence of the same kind, and is liable to the same punishment as if he had forged the document.

**491. LENDING CERTIFICATES FOR PERSONATION.**

A person who, being a person to whom any document has been issued by lawful authority, by which he is certified—

- (a) to be a person possessed of any qualification recognized by law for any purpose; or
- (b) to be the holder of any office; or

- (c) to be entitled to exercise any profession, trade or business; or
- (d) to be entitled to any right or privilege, or to enjoy any rank or status,

lends the document to another person with intent that that other person may represent himself to be the person named in it, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

***Division 4. – Offences Connected with Trade and Breach of Contract.***

***Subdivision A. – Fraudulent Debtors.***

**492. INTERPRETATION OF SUBDIVISION A.**

(1) In this subdivision, “**an insolvent**” means a person with respect to whom any proceedings have been taken under the provisions of the laws relating to insolvent debtors that result in his affairs being administered under the provisions of those laws for the benefit of his creditors.

(2) For the purposes of this subdivision, a person is deemed to have been an insolvent from the time when the proceedings were taken, whether or not the result had happened when the unlawful act in question was done.

**493. ABSCONDING WITH PROPERTY IN CONTEMPLATION OF OR IMMEDIATELY AFTER INSOLVENCY.**

(1) Subject to Subsection (2), a person who–

- (a) being an insolvent–
  - (i) departs from the country and takes with him; or
  - (ii) attempts or prepares to depart from the country and to take with him,

any part of his property, to the amount of K40.00 that ought by law to be divided amongst his creditors; or

- (b) departs from the country and takes with him, or attempts or prepares to depart from the country and to take with him, any part of his property to the amount of K40.00 that ought by law, in the event of his becoming insolvent, to be divided among his creditors, and within four months afterwards becomes an insolvent,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person had no intent to defraud.

**494. FRAUDS BY INSOLVENTS.**

A person who–

- (a) being an insolvent–
  - (i) fraudulently removes any part of his property to the value of K20.00; or
  - (ii) fraudulently parts with, alters or makes any omission in or is privy to fraudulently parting with, altering or making an omission in any document affecting or relating to his property or affairs; or

- (b) does any act referred to in Paragraph (a), and within four months afterwards becomes an insolvent; or
- (c) being an insolvent, attempts to account for any part of his property by alleging fictitious losses or expenses; or
- (d) attempts at a meeting of his creditors to account for any part of his property by fictitious losses or expenses, and within four months afterwards becomes an insolvent; or
- (e) by any false representation or other fraud obtains any property on credit and does not pay for it, and within four months afterwards becomes an insolvent,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

#### **495. OTHER FRAUDS BY INSOLVENTS.**

(1) Subject to Subsection (2), a person who—

- (a) being an insolvent—
  - (i) conceals any part of his property to the amount of K20.00; or
  - (ii) conceals any debt due to or from him; or
- (b) does any of the following acts—
  - (i) conceals any part of his property to the amount of K20.00; or
  - (ii) conceals any debt due to or from him; or
  - (iii) obtains any property on credit under the false pretence of carrying on business and dealing in the ordinary way of trade, and does not pay for the same; or
  - (iv) pawns, pledges or disposes of otherwise than in the ordinary way of trade, any property that he has obtained on credit and has not paid for, and within four months afterwards becomes an insolvent,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person had no intent to defraud.

#### **496. FALSIFICATION OF BOOKS BY INSOLVENTS.**

(1) Subject to Subsection (2), a person who—

- (a) being an insolvent—
  - (i) conceals, destroys, alters, mutilates or falsifies any book, document, valuable security, or account relating to his property or affairs, or any entry in any such book, document or account, or is privy to any such act; or
  - (ii) makes or is privy to the making of any false entry in any such book, document or account; or
- (b) does or is privy to any act referred to in Paragraph (a), and within four months afterwards becomes an insolvent,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person had no intent to conceal the state of his affairs or to defraud.

**497. FRAUDS BY INSOLVENTS IN COURSE OF INSOLVENCY PROCEEDINGS.**

A person whose affairs are in course of administration under the provisions of the laws relating to insolvent debtors who—

- (a) knowing or believing that a false debt has been proved by any person in the course of the administration, fails for the period of one month to give information of it to the trustee of his property; or
- (b) makes any false representation or commits any other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or to any proceedings taken under or by the virtue of the administration,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**498. FAILURE BY INSOLVENTS TO DISCOVER PROPERTY.**

(1) Subject to Subsection (2), a person whose affairs are in course of administration under the provisions of the laws relating to insolvent debtors who—

- (a) fails to fully and truly discover to the trustee of his property, to the best of his knowledge and belief, all his property, and how, and to whom, and for what consideration, and when, he disposed of every part of it, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family; or
- (b) fails to deliver to the trustee, or as he directs, any part of his property that—
  - (i) is in his custody or under his control; and
  - (ii) he is required by law to deliver; or
- (c) fails to deliver to the trustee, or as he directs, any book, document, paper or writing that—
  - (i) is in his custody or under his control; and
  - (ii) relates to his property or affairs; or
- (d) omits or is privy to omitting a material particular from a statement relating to his affairs,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person had no intent to conceal the state of his affairs or to defraud.

**499. FAILURE TO KEEP PROPER BOOKS.**

(1) Subject to Subsection (2), a person who—

- (a) omits to keep proper books of account showing the true state of his affairs; and
- (b) within three years afterwards becomes an insolvent,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person had no intention to conceal the state of his affairs or to defraud.

#### **500. CONCEALING DOCUMENTS.**

(1) Subject to Subsection (2), an insolvent who prevents the production of a book, document, paper or writing affecting or relating to his property or affairs is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

(2) It is a defence to a charge of an offence against Subsection (1) to prove that the accused person had no intent to conceal the state of his affairs or to defraud.

#### **501. RECEIVING INSOLVENT'S PROPERTY WITH INTENT TO DEFRAUD.**

A person who, with intent to defraud the creditors of an insolvent—

- (a) receives any property from the insolvent; or
- (b) fails to deliver to the trustee of the property of the insolvent any property that forms part of the estate of the insolvent,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

#### **502. MAKING FALSE CLAIM IN INSOLVENCY.**

A person who—

- (a) being a creditor of an insolvent, or being a creditor of a debtor who has taken proceedings for a composition with his creditors under the provisions of the laws relating to insolvent debtors, makes in the insolvency, or in the proceedings for a composition, with intent to defraud, a proof of declaration of debt or statement of account that is to his knowledge false in a material particular; or
- (b) not being a creditor of an insolvent or of a debtor who has taken proceedings referred to in Paragraph (a) makes in the insolvency, or in the proceedings for a composition, with intent to defraud, a proof or declaration of debt,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

#### **503. CONCEALING PROPERTY OF INSOLVENTS.**

A person who conceals any part of the property of an insolvent, and does not, within 42 days after the appointment of a trustee of the property of the insolvent, discover such property to—

- (a) the trustee; or
- (b) the Registrar of the National Court,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding six months.

**504. FRAUDULENT DEALING WITH PROPERTY BY DEBTORS.**

A person who, with intent to defraud his creditors or any of them—

- (a) makes a gift, delivery or transfer of his property, or a charge on his property; or
- (b) conceals or removes any part of his property after or within two months before the date of any unsatisfied judgement or order for payment of money obtained against him,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding one year.

*Subdivision B. – Other Offences.***505. CONCEALMENT BY OFFICERS OF COMPANIES ON REDUCTION OF CAPITAL.**

A person who, being a director or officer of a joint stock company, the capital of which is proposed to be reduced—

- (a) conceals the name of a creditor of the company who is entitled to object to the proposed reduction; or
- (b) knowingly misrepresents the nature or amount of the debt or claim of a creditor of the company; or
- (c) is privy to any such concealment or misrepresentation,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**506. FALSIFICATION OF BOOKS OF COMPANIES.**

A director, officer or contributory of a company that is in course of being wound up under the provisions of the laws relating to joint-stock companies who, with intent to deceive or defraud, or to make another person deceive or defraud—

- (a) conceals, destroys, alters, mutilates or falsifies—
  - (i) a book, document, valuable security or account relating to the affairs of the company; or
  - (ii) an entry in any such book, document or account, or is privy to any such act; or

- (b) makes or is privy to making any false entry in any book, document or account, belonging to the company,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

**507. MIXING UNCERTIFIED WITH CERTIFIED ARTICLES.**

Where under a law—

- (a) a mark has been attached to an article; or
- (b) a certificate has been given with respect to an article,



for the purpose of denoting—

- (c) the quality of the article; or
- (d) the fact that it has been examined or approved by or under the authority of some public body or public officer,

a person who mixes with the article any other article that has not been so examined or approved is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

### 508. INTIMIDATION OF WORKMEN AND EMPLOYERS.

(1) In this section, “**industrial dispute**” means an industrial dispute within the meaning of the *Industrial Organizations Act 1962*.

(2) Subject to Section 518, where by—

- (a) violence to the person or property of another, or by threats or intimidation of any kind; or
- (b) besetting the house or place of work of another; or
- (c) following another in a disorderly manner in a public highway; or
- (d) molesting, or in any way obstructing, another by any physical act in the pursuit of his lawful vocation,

a person—

- (e) compels or attempts to compel any person employed in any manufacture, trade, business, or occupation—
  - (i) to depart from his employment; or
  - (ii) to return his work before it is finished; or
- (f) prevents any person who is not employed from accepting employment from any other person,

he is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three months.

(3) Subject to Section 518, a person who uses violence to the person or property of another, or uses threats or intimidation of any kind to another, or by any physical act molests or in any way obstructs another—

- (a) for the purpose of inducing a person—
  - (i) to belong to a club or association; or
  - (ii) to contribute to a common fund; or
  - (iii) to pay a fine or penalty; or
- (b) on account of a person—
  - (i) not belonging to any particular club or association; or
  - (ii) not having contributed or having refused to contribute to a common fund; or
  - (iii) having refused to pay a fine or penalty; or
- (c) on account of a person not having complied, or refusing to comply, with any rules, orders, resolutions or regulations made or pretended to be made by any person, club or association, in order to obtain—
  - (i) an advance of wages or to reduce the rate of wages in; or
  - (ii) to lessen or alter the hours of working in; or

- (iii) to decrease or alter the quantity of work done in; or
- (iv) to regulate the mode of carrying on,  
any manufacture, trade or business or the management of any manufacture, trade or  
business,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three months.

(4) Subject to Section 518, a person who by—

- (a) violence to the person or property of another; or
- (b) threats or intimidation of any kind; or
- (c) molesting or in any way obstructing another,

compels, or endeavours to compel, any person carrying on any manufacture, trade or business—

- (d) to make an alteration in his mode of carrying it on; or
- (e) to limit—
  - (i) the number of his apprentices; or
  - (ii) the number or description of his journeymen, workmen or servants,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three months.

(5) It is lawful for any person or persons acting in contemplation of, or during the continuance of, an industrial dispute to attend peaceably and in a reasonable manner at or near a place (other than a private residence, unless the consent of the owner is first obtained) where a person resides, works, carries on business or happens to be, if he or they so attend merely for the purpose—

- (a) of obtaining or communicating information; or
- (b) of peacefully persuading a person to work or refrain from working,

and such an attending shall not be deemed to be a besetting within the meaning of this section.

(6) Notification or warning of an intention—

- (a) to lock-out or strike; or
- (b) on the part of any workman or workmen to refuse to enter into or continue in the employment of any employer,

shall not be deemed a threat or intimidation or molestation or obstruction within the meaning of this section.

(7) A person cannot refuse to give evidence on a charge of an offence against this section on the ground that he is liable to punishment under this section, but every person who gives evidence on any such charge is indemnified against any prosecution against himself for having offended in the matter with respect to which he gives evidence.

(8) The action of persons who—

- (a) merely agree together to fix—
  - (i) the rate of wages or prices that they will pay or accept for any work or article; or
  - (ii) the hours during which they will work in, or carry on, any manufacture, trade or business, in which they are engaged; or
- (b) merely meet together and consult for the purpose of making any such agreement,

shall not be deemed to be a physical act for the purposes of this section.

**PART VII. – PREPARATION TO COMMIT OFFENCES: CONSPIRACY:  
ACCESSORIES AFTER THE FACT.**

*Division 1. – Attempts and Preparation to Commit Offences.*

**509. ATTEMPTS TO COMMIT OFFENCES.**

(1) A person who attempts to commit an indictable offence is guilty of an indictable offence, that, unless otherwise stated, is a misdemeanour.

(2) When a person who commits an indictable offence is punishable on summary conviction, a person who attempts to commit such an offence may also be summarily convicted.

**510. PUNISHMENT OF ATTEMPTS TO COMMIT CRIMES.**

<sup>180</sup>(1) A person who attempts to commit a crime of such a kind that a person convicted of it is liable to the punishment of death or for imprisonment for life or for a term of 14 years or more, with or without any other punishment, is liable, if no other punishment is provided, to imprisonment for seven years.

(2) A person who attempts to commit a crime of any other kind, is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender convicted of the crime that he attempted to commit is liable.

**511. PUNISHMENT OF ATTEMPTS TO COMMIT MISDEMEANOURS.**

<sup>181</sup>A person who attempts to commit a misdemeanour is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender convicted of the offence that he attempted to commit is liable.

**512. REDUCTION OF PUNISHMENT.**

<sup>182</sup>(1) Where a person is convicted of attempting to commit an offence, and it is proved that he desisted of his own motion from the further prosecution of his intention, without its fulfillment being prevented by circumstances independent of his will, he is liable to one-half of the punishment to which he would otherwise be liable.

(2) If the punishment referred to in Subsection (1) is imprisonment for life, the greatest punishment to which he is liable is imprisonment for seven years.

**513. ATTEMPTS TO PROCURE COMMISSION OF CRIMINAL ACTS.**

(1) Subject to Subsection (2), a person who attempts to procure another to do any act or make any omission, whether in Papua New Guinea or elsewhere, of such a nature that, if the act were done or the omission were made in Papua New Guinea an offence would be committed

<sup>180</sup> Section 510 replaced by No. 10 of 1983, s24; repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s34.

<sup>181</sup> Section 511 replaced by No. 10 of 1983, s25; repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s35.

<sup>182</sup> Section 512 replaced by No. 10 of 1983, s26; repealed and replaced by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s36.

under the laws of Papua New Guinea, or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in Papua New Guinea.

(2) Subject to Subsection (3), if the act or omission referred to in Subsection (1) is proposed to be done or made at a place not in Papua New Guinea, the punishment cannot exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission.

(3) In a case referred to in Subsection (2), a prosecution shall not be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

#### **514. PREPARATION TO COMMIT CRIMES WITH EXPLOSIVES, ETC.**

A person who makes or knowingly has in his possession any explosive substance, or any dangerous or noxious engine, instrument or thing—

- (a) with intent; or
  - (b) for the purpose of enabling any other person,
- to commit a crime by means of it, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding three years.

#### *Division 2. – Conspiracy.*

#### **515. CONSPIRACY TO COMMIT CRIMES.**

A person who conspires with another to commit a crime or to do any act in any part of the world that—

- (a) if done in Papua New Guinea would be a crime; and
  - (b) is an offence under the laws in force in the place where it is proposed to be done,
- is guilty of a crime.

Penalty: If no other penalty is provided—

- (a) imprisonment for a term not exceeding seven years; or
- (b) if the maximum penalty for the crime in question does not exceed imprisonment for a term of seven years—not exceeding that penalty.

#### **516. CONSPIRACY TO COMMIT OTHER OFFENCES.**

A person who conspires with another—

- (a) to commit an offence that is not a crime; or
  - (b) to do an act in any part of the world that if done in Papua New Guinea would be an offence that is not a crime, and that is an offence under the laws in force in the place where it is proposed to be done,
- is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**517. OTHER CONSPIRACIES.**

Subject to Section 518, a person who conspires with another—

- (a) to prevent or defeat the execution or enforcement of any law; or
- (b) to cause any injury to the person or reputation of a person; or
- (c) to depreciate the value of any property of a person; or
- (d) to prevent or obstruct the free and lawful disposition of any property by its owner for its fair value; or
- (e) to injure a person in his trade or profession; or
- (f) to prevent or obstruct, by means of any act or acts that if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession or occupation; or
- (g) to effect any unlawful purpose; or
- (h) to effect any lawful purpose by any unlawful means,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding three years.

**518. INDUSTRIAL DISPUTES.**

(1) In this section, “**industrial dispute**” means an industrial dispute within the meaning of the *Industrial Organizations Act 1962*.

(2) Notwithstanding Section 508 or 517—

- (a) an act done or omission made by any two or more persons in contemplation or furtherance of any industrial dispute; and
- (b) an agreement or combination by any two or more persons—
  - (i) to do any act or make any omission; or
  - (ii) to procure any act to be done or omission to be made, in contemplation or furtherance of any industrial dispute,

does not make them guilty of any offence if the act or omission if done or made by an individual person would not have made him guilty of an offence.

***Division 3. – Accessories After the Fact.*****519. ACCESSORIES AFTER THE FACT TO CRIMES.**

A person who becomes an accessory after the fact to a crime is guilty of a crime.

Penalty: If no other punishment is provided, imprisonment for a term not exceeding two years.

**520. ACCESSORIES AFTER THE FACT TO CERTAIN OFFENCES.**

(1) A person who becomes an accessory after the fact—

- (a) to a misdemeanour; or
- (b) to an offence of such a nature that the offender may be sentenced on summary conviction to imprisonment for one year,

is guilty of a misdemeanour.

Penalty: One-half of the greatest punishment to which the principal offender is liable on conviction.

(2) If the principal offence is such that an offender is punishable on summary conviction, the accessory may also be summarily convicted.

**PART VIII. – PROCEDURE.*****Division 1. – Place of Trial.*****521. INTERPRETATION OF DIVISION 1.**

In this Division, “**place of trial**” means the place appointed under the *National Court Act 1975* for sittings of the National Court at which the hearing of a charge of an indictable offence is to take place.

**522. PLACE OF TRIAL.**

(1) Subject to this section, the place of trial shall be–

- (a) when the person awaiting trial has been committed for trial or sentence–
  - (i) the place to which he has been committed for trial or sentence; or
  - (ii) if no place has been specified–the place appointed under the *National Court Act 1975* for sittings of the National Court nearest to the place at which the person charged was committed for trial or sentence; or
- (b) when the person awaiting trial has not been committed for trial or sentence–the place at which the indictment against him was presented.

(2) In relation to any pending matter in which the trial has not yet commenced, the National Court or a Judge may–

- (a) on the application of a State Prosecutor or a person awaiting trial or his counsel; and
- (b) on good cause being shown,

order that the place of trial be changed to some other place appointed under the *National Court Act 1975* for sittings of the National Court.

(3) This section does not affect the power of the court before which a trial has commenced to adjourn the trial to a different place.

**523. RECOGNIZANCE WHEN PLACE OF TRIAL CHANGED.**

(1) When an order is made changing the place of trial–

- (a) the recognizance of bail of any person awaiting trial; and
- (b) the recognizance of any person bound to attend as a witness or otherwise,

applies in respect of the sittings of the court at the new time and place of trial.

(2) A person bound by a recognizance enlarged by virtue of Subsection (1) is not liable to have his recognizance forfeited or be otherwise dealt with for failure to appear unless he has been given notice of the new time and place of trial.

***Division 2. – Indictments.*****524. PROCEDURE: PRELIMINARY.**

(1) No indictment may be presented in the National Court except in accordance with Sections 525 and 526.

(2) The Head of State, acting on advice, may appoint lawyers to be State Prosecutors.



(3) The Public Prosecutor is, *ex officio*, a State Prosecutor.

## 525. PROCEDURE FOR INDICTMENT.

<sup>183</sup>(1) Where a person is committed for trial or sentence for an indictable offence, the Public Prosecutor or a State Prosecutor shall consider the evidence in the matter and may—

- (a) reduce into writing in an indictment a charge of any offence that the evidence appears to him to warrant; or
- (b) decline to lay a charge.

(2) An indictment may be presented to the National Court by the Public Prosecutor or any State Prosecutor.

(3) Where the Public Prosecutor or a State Prosecutor declines to lay a charge, he shall, as soon as practicable—

- (a) sign a declaration in duplicate to that effect; and
- (b) cause the original of the declaration to be filed in the National Court; and
- (c) deliver the duplicate of the declaration to the person committed—
  - (i) if the person is in custody—by sending it by post or messenger to the person having custody of him; or
  - (ii) if the person is not in custody—by delivering it to him personally or by sending it to him by post to his last-known address.

(4) On receipt of a copy of a declaration under Subsection (3), any person having custody of the person named in it shall immediately release him from custody in relation to the charge to which the declaration relates.

(5)<sup>184</sup> <sup>185</sup>This section does not apply to a committal for sentence under Section 421(4).

## 526. INDICTMENT WITHOUT COMMITTAL.

(1) Where a court of summary jurisdiction has refused to commit a person for trial for an indictable offence, the Public Prosecutor may—

- (a) consider the evidence contained in the depositions taken before the court (and any other relevant evidence); and
- (b) reduce into writing in an indictment a charge of any offence that the evidence appears to warrant.

(2) The indictment may be presented to the National Court by the Public Prosecutor or a State Prosecutor.

(3) Where the Public Prosecutor reduces a charge to writing in an indictment under Subsection (1), he shall cause to be served on the accused person or his lawyer—

- (a) copies of the depositions taken at the committal proceedings; and
- (b) copies of statements taken from witnesses whom the prosecution intends to call at the trial,

within such time before the commencement of the trial as is reasonable in order to allow the accused person to prepare his defence.

<sup>183</sup> Section 525 amended by Act No. 12 of 1982, s8, No. 29 of 1983, s10.

<sup>184</sup> Section 525(5) added by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986) s37.

<sup>185</sup> Section 525(5) added by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986) s37.

**527. NOLLE PROSEQUI.**

(1) The Public Prosecutor or a State Prosecutor may at any time inform the National Court that an indictment then pending in the Court will not be further proceeded with, by filing with or presenting to the Court a document under his hand to that effect.

(2) When a document referred to in Subsection (1) is filed or presented the person named in it is to be immediately discharged from any further proceedings on the indictment to which it relates.

**528. FORM OF INDICTMENT.**

(1) An indictment shall be intituled with the name of the court in which it is presented, and must, subject to the succeeding provisions of this Division set forth the offence with which the accused person is charged—

- (a) in such a manner; and
- (b) with such particulars as to—
  - (i) the alleged time and place of committing the offence; and
  - (ii) the person (if any) alleged to be aggrieved; and
  - (iii) the property (if any) in question,

as is necessary to inform the accused person of the nature of the charge.

(2) Subject to Subsections (3) and (4), if any circumstance of aggravation is intended to be relied on it must be charged in the indictment.

(3) Where the circumstance of aggravation intended to be relied on is a previous conviction, the conviction shall not be charged in the indictment, but written notice of an intention to rely on it as circumstance of aggravation shall be served on the accused person or his lawyer, before the commencement of the trial.

(4) Where a written notice has been served in accordance with Subsection (3) and the accused person has been convicted—

- (a) of the offence charged in the indictment; or
- (b) of any other offence of which he might be convicted under the indictment,

the prosecution may, after the conviction of the accused person but before sentence is imposed, allege and prove the previous conviction.

(5) On proof of the previous conviction the court may—

- (a) convict the accused person of the aggravated offence as if the previous conviction had been charged in the indictment; and
- (b) substitute a conviction for the aggravated offence for the conviction already recorded in the trial,

and the accused person is liable to punishment accordingly.

(6) It is sufficient to describe an offence in the words of this Code or the other written law defining it.

(7) The place of trial shall be named in the margin of the indictment.

**529. GENERAL RULES APPLICABLE TO INDICTMENTS.**

The following rules are applicable to all indictments:—

- (a) any document or other thing may be described by any name or designation by which it is usually known, and any document may be described by its purport without setting out a copy or facsimile of the whole or any part of it;
- (b) a trade-mark may be described by that name, and any other mark may be described in any way that will indicate its nature, without setting out a copy or facsimile of it;
- (c) it is not necessary to set out the value of any thing mentioned in an indictment unless the value is an essential element of the offence;
- (d) it is not necessary to set out the means or instrument by which any act is done, unless the means or instrument are an essential element of the offence;
- (e) it is not necessary to set out any particulars—
  - (i) as to any person or thing that need not be proved; or
  - (ii) any other matter that need not be proved.

**530. PARTICULAR INDICTMENTS.**

(1) An indictment for treason must state overt acts of the treason alleged.

(2) In an indictment for an offence that relates to—

- (a) taking or administering an oath or engagement; or
- (b) giving false testimony; or
- (c) making a false statement on solemn declaration or otherwise; or
- (d) procuring the giving of false testimony or the making of a false statement,

it is not necessary to set out the words of the oath, or engagement, testimony or statement, but it is sufficient to set out the purport of it, or so much as is material.

(3) In an indictment for an offence that relates to—

- (a) giving false testimony; or
- (b) procuring or attempting to procure the giving of false testimony,

it is not necessary to allege the jurisdiction of the court or tribunal before which the false testimony was given, or was intended or proposed to be given.

(4) In an indictment for an offence committed with respect to—

- (a) Post PNG Limited or Telikom PNG Limited; or
- (b) the revenue of Post PNG Limited or Telikom PNG Limited; or
- (c) anything sent by post or telegraph; or
- (d) anything under the control of the Minister responsible for communications,

any property of which the ownership must be alleged may be alleged to be the property of the Minister responsible for communications.

(5) In an indictment under Subsection (4) the Minister responsible for communications may be described by that term alone, without mentioning his name or using any other addition or description.

(6) In an indictment in which it is necessary to mention money, it may be described simply as money, without specifying any particular form of money.

(7) An averment referred to in Subsection (6) will be sustained, so far as regards the description of the property, by proof that the offender obtained or dealt with any coin or anything

that is included in the term “money”, or any portion of the value of it, in such a manner as to constitute the offence, even if the coin or thing was delivered to him in order that some part of the value of it should be returned to the person who delivered it or to some other person, and has been returned accordingly.

(8) In an indictment in which it is necessary to mention any co-owners of property, it is sufficient—

- (a) to name one of such persons, adding the words “and another” or “and others”, as the case may be; and
- (b) to state that the property belonged to the person so named and another or others, as the case may be.

(9) In an indictment for an offence relating to any property of a company that is authorized to sue and be sued in the name of a public officer, the property may be alleged to be the property of the public officer.

(10) In an indictment for an offence relating to any property that is by law deemed to be the property of an officer of an institution, the property in question may be alleged to be the property of the officer for the time being by his name of office.

(11) In an indictment for an offence relating to a testamentary instrument, it is not necessary to allege that the instrument is the property of any person.

(12) In an indictment for an offence relating to anything—

- (a) fixed in a square or street, or in a place dedicated to public use or ornament; or
- (b) in or taken from a public office,

it is not necessary to allege that the thing in respect of which the offence is committed is the property of any person.

(13) In an indictment for an offence relating to a document that is evidence of title to land or an estate in land, the document may be described as being evidence of the title of the person or some one of the persons having an estate in the land to which the document relates, the land or some part of it being described in some manner sufficient to identify it.

(14) In an indictment for stealing a chattel or fixture let to the offender, the chattel or fixture may be described as the property of the person who actually let it to hire.

(15) In an indictment against a person employed in the Public Service for an offence committed with respect to any thing that came into his possession by virtue of his employment, the thing in question may be described as the property of the State.

(16)<sup>186</sup> <sup>187</sup>In an indictment for an offence respecting any property (whether within the meaning of Section 1 or Section 383A), if it is uncertain to which of two or more persons the property belonged at the time when the offence was committed—

- (a) the property may be described as being the property of one or other of such persons, naming each of them, but without specifying which of them; and
- (b) the indictment will be sustained, so far as regards the allegation of ownership, on proof that at the time when the offence was committed the property belonged to one or other of such persons without ascertaining which of them.

<sup>186</sup> Section 530(16) amended by Act No. 10 of 1981, s2.

<sup>187</sup> Section 530(16) amended by Act No. 10 of 1981, s2.

(17) In an indictment for the offence—

- (a) of obtaining or procuring the delivery of any thing capable of being stolen by a false pretence and with intent to defraud; or
- (b) of obtaining any property by means of a fraudulent trick or device; or
- (c) of inducing by means of any such trick or device the payment or delivery of any money or goods; or
- (d) of attempting to commit, or to procure the commission of, any such offence,

it is not necessary to mention the owner of the property in question.

(18) In an indictment for an offence that involves any fraud, fraudulent pretence, trick or device, it is not necessary to set out the details of the fraud, pretence, trick or device.

(19) In an indictment for an offence relating to an insolvent, it is not necessary to set out—

- (a) any debt, act of insolvency, adjudication or other proceeding in any court; or
- (b) any order, warrant or document made or issued by or out of, or by the authority of, any court.

### **531. JOINDER OF CHARGES: GENERAL RULES.**

(1) Subject to this Code, an indictment must charge one offence only, and not two or more offences.

(2) Subject to Subsection (3), when several distinct indictable offences are alleged to be constituted—

- (a) by the same acts or omissions; or
- (b) by a series of acts done or omitted to be done in the prosecution of a single purpose,

charges of such distinct offences may be joined in the same indictment against the same person, and the several statements of the offences may be made in the same form as in other cases, without any allegation of connection between the offences.

(3) If in a case to which Subsection (2) applies, it appears to the court that the accused person is likely to be prejudiced by the joinder, the court may—

- (a) require the prosecutor to elect on which of the several charges he will proceed; or
- (b) direct that the trial of the accused person on each or any of the charges be had separately.

(4) This section does not authorize the joinder of a charge of wilful murder, murder or manslaughter with a charge of any other offence.

### **532. JOINDER OF CHARGES: SPECIAL CASES.**

(1) In an indictment against a person for stealing money, the accused person may be charged and proceeded against for the amount of a general deficiency, notwithstanding that the general deficiency is made up of any number of specific sums of money the taking of which extended over any space of time.

(1A)<sup>188 189</sup>In an indictment against a person for misappropriation of property he may be charged and proceeded against for the amount of a general deficiency even though—

- (a) any number of specific applications of property have resulted in the general deficiency; and
- (b) such applications of property have extended over any space of time; and
- (c) the property applied belongs to different persons and has come into the possession or control of the accused person at different times and subject to different trust, directions, conditions or duties to account.

(2) In an indictment against a person for stealing, he may be charged with two or three distinct acts of stealing the property of the same person, committed by him within the space of six months from the first to the last of such acts.

(3) If on the trial of a person charged with stealing it appears that property alleged to have been stolen at one time was stolen at different times, the prosecutor is not for that reason required to elect on which act of stealing he will proceed, unless it appears that—

- (a) there were more than three acts of stealing; or
- (b) more than six months elapsed between the first and the last of such acts.

(4) In a case referred to in Subsection (3), the prosecutor must elect to proceed in respect of two or three acts of stealing that appear to have taken place within the period of six months from the first to the last of the acts.

(5) Charges of stealing any property and of receiving the same property, or any part of it, knowing it to have been stolen, may be joined in the same indictment, and the accused person may, according to the evidence, be convicted—

- (a) of stealing the property; or
- (b) of receiving, the property or any part of it, knowing it to have been stolen.

(6) Subject to Subsection (7), when an indictment referred to in Subsection (5) is preferred against two or more persons—

- (a) all or any of the accused persons may be convicted of stealing the property or of receiving it, or any part of it, knowing it to have been stolen; or
- (b) according to the evidence, one or more of them may be convicted of stealing the property, and the other or others of them of receiving it, or any part of it, knowing it to have been stolen.

(7) If on an indictment referred to in Subsection (6) the court finds specially that—

- (a) the accused person, or all or any of the accused persons, when the indictment is preferred against two or more persons, either stole the property, or received it, or any part of it, knowing it to have been stolen; and
- (b) it is unable to say which of those offences was committed by such person or persons as the case may be,

such person or persons are not for that reason entitled to be acquitted, but the court shall enter a conviction for the offence for which the lesser punishment is provided.

(8) Any number of persons charged with—

<sup>188</sup> Section 532(1A) added by No. 10 of 1981, s3.

<sup>189</sup> Section 532(1A) added by No. 10 of 1981, s3.

- (a) committing or procuring the commission of the same offence, although at different times; or
- (b) being accessories after the fact to the same offence, although at different times; or
- (c) receiving, although at different times—
  - (i) any property that has been obtained by means of—
    - (A) a crime or misdemeanour; or
    - (B) an act that if it had been done in Papua New Guinea would be a crime or misdemeanour and that is an offence under the laws in force in the place where it was done; or
  - (ii) any part of any property so obtained,

may—

- (d) be charged with substantive offences in the same indictment; and
- (e) be tried together,

notwithstanding that the principal offender or the person who so obtained the property—

- (f) is not included in the same indictment; or
- (g) is not amenable to justice.

(9) Any number of persons charged with committing different or separate offences arising substantially out of the same facts or out of closely related facts so that a substantial part of the facts is relevant to all the charges may be charged in the same indictment and tried together.

### 533. ACCESSORIES.

A person who—

- (a) counsels or procures another person to commit an offence; or
- (b) aids another person in committing an offence; or
- (c) becomes an accessory after the fact to an offence,

may be—

- (d) charged in the same indictment with the principal offender, and may be tried with him or separately; or
- (e) indicted and tried separately,

whether or not the principal offender—

- (f) has been convicted; or
- (g) is amenable to justice.

### 534. FORMAL DEFECTS.

(1) An indictment is not open to objection—

- (a) by reason of the designation of any person by a name of office or other descriptive title instead of by his proper name; or
- (b) for omitting to state the time at which the offence was committed, unless the time is an essential element of the offence; or
- (c) for stating imperfectly the time at which the offence was committed; or
- (d) for stating the offence to have been committed on an impossible day, or on a day that never happened or has not yet happened.

(2) An objection to an indictment for a formal defect apparent on its face must be taken by motion to quash the indictment before the accused person pleads to the indictment.

**535. AMENDMENT OF INDICTMENTS.**

(1) If on the trial of a person charged with an indictable offence—

- (a) there appears to be a variance between the indictment and the evidence; or
- (b) it appears that—
  - (i) any words that ought to have been inserted in the indictment have been omitted; or
  - (ii) any words that ought to have been omitted have been inserted,

the court may, if it thinks that—

- (c) the variance, omission or insertion is not material to the merits of the case; and
- (d) the accused person will not be prejudiced in his defence on the merits,

order the indictment to be amended, so far as it is necessary, on such terms (if any) as to postponing the trial as the court thinks reasonable.

(2) When an indictment has been amended, the trial shall proceed at the appointed time, on the amended indictment, and the same consequences ensue in all respects and as to all persons as if the indictment had been originally in its amended form.

(3) If it becomes necessary to draw up a formal record in any case in which an amendment to an indictment has been made, the record shall be drawn up setting out the indictment as amended, and without taking any notice of the fact of the amendment having been made.

**536. PARTICULARS.**

The court may—

- (a) if it thinks fit, direct particulars to be delivered to the accused person of any matter alleged in the indictment; and
- (b) adjourn the trial for the purpose of the delivery.

**537. SUMMARY CONVICTIONS.**

The provisions of this Division relating to indictments apply to complaints or informations preferred against offenders on their trial before courts of summary jurisdiction on charges of indictable offences that may be dealt with summarily.

*Division 3. – Effect of Indictments.***538. OFFENCES INVOLVING CIRCUMSTANCES OF AGGRAVATION.**

Subject to this Division, on an indictment charging a person with an offence committed with circumstances of aggravation, he may be convicted of any offence that is—

- (a) established by the evidence; and
- (b) constituted by any act or omission that is an element of the offence charged,

with or without any of the circumstances of aggravation charged in the indictment.

**539. CHARGE OF MURDER OR MANSLAUGHTER.**

(1) On an indictment charging a person with the crime of wilful murder, he may be convicted of the crime of murder or of the crime of manslaughter but not, except as is expressly provided in this Code, of any other offence other than that with which he is charged.



(2) On an indictment charging a person with the crime of murder, he may be convicted of the crime of manslaughter but not, except as is expressly provided in this Code of any other offence other than that with which he is charged.

(3) On an indictment charging a person with the crime of manslaughter he shall not, except as is expressly provided in this Code, be convicted of any other offence.

(4) On an indictment charging a person with wilful murder, murder or manslaughter, the accused person may be convicted of—

- (a) unlawfully doing grievous bodily harm to such other person; or
- (b) unlawfully assaulting such other person and thereby doing him bodily harm; or
- (c) unlawfully wounding such other person; or
- (d) unlawfully assaulting such other person.

#### **540. HOMICIDE OF CHILD, ALTERNATIVE VERDICTS.**

On an indictment charging the wilful murder, murder or manslaughter of any person, if on the evidence it appears that the person alleged to have been killed was a child of which a woman had recently been delivered, the accused person may be convicted of—

- (a) the offence of infanticide; or
- (b) the offence of preventing the child from being born alive by an 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 the child; or
- (c) the offence of endeavouring by a secret disposition of the dead body of the child to conceal the birth.

#### **541. CHARGE OF RAPE AND LIKE OFFENCES.**

<sup>190</sup>On an indictment charging a person with the crime of rape or having unlawful carnal knowledge of a girl under the age of 12 years, he may be convicted of any offence—

- (a) of which the unlawful carnal knowledge of a woman or girl, whether of a particular age or description or not, is an element and blood relationship is not an element; or
- (b) of which procuring the woman or girl to have unlawful carnal connection with any man is an element; or
- (c) of administering to the woman or girl, or causing her to take any drug or other thing, with intent to stupefy or overpower her in order to enable any man to have unlawful carnal knowledge of her; or
- (d) of unlawfully and indecently assaulting the woman or girl; or
- (e) of unlawfully and indecently dealing with a girl under the age of 12 years or a girl under the age of 16 years.

#### **542. CHARGE INVOLVING SPECIFIC RESULT.**

(1) On an indictment charging a person with an offence of which the causing of some specific result is an element, he may be convicted of any offence of which an intent to cause that result, or a result of a similar but less injurious nature, is an element.

<sup>190</sup> Section 541 amended by Act No. 27 of 1979, s2.

(2) On an indictment charging a person with an offence of which an intent to cause some specific result is an element, he may be convicted of any offence that is established by the evidence and of which the unlawful causing of that result is an element.

**543. CHARGE OF INJURY TO PROPERTY.**

On an indictment charging a person with an offence of which—

- (a) destruction of property; or
- (b) wilfully and unlawfully doing any specific damage to property,

is an element, he may be convicted of—

- (c) wilfully and unlawfully damaging the property; or
- (d) wilfully and unlawfully damaging the property in any lesser degree.

**544. STEALING, FALSE PRETENCES, CHEATING AND MISAPPROPRIATION OF PROPERTY.**

<sup>191</sup>On an indictment charging a person with—

- (a) stealing, with or without a circumstance of aggravation; or
- (b) obtaining goods by false pretences; or
- (c) obtaining goods by a wilfully false promise; or
- (d) obtaining goods partly by a false pretence and partly by a wilfully false promise; or
- (e) cheating; or
- (f) misappropriation of property; or
- (g) procuring any other person to commit any such offence,

he may be convicted of any other of those offences committed with respect to the same property, if that other offence is established by the evidence.

**545. CHARGE OF PROCURING COMMISSION OF OFFENCE OR WRONGFUL ACT.**

(1) On an indictment charging a person with procuring the commission of any offence, he may be convicted of procuring the commission of any other offence of such a nature that a person may be convicted of it on an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.

(2) On an indictment charging a person with procuring another person to do an act or make an omission of such a nature that if the accused person had himself done the act or made the omission he would have been guilty of an offence, he may be convicted of procuring that other person to do any other act or make any other omission that is of such a nature that if the accused person had himself done the act or made the omission he would have been guilty of an offence, if the last-named offence is itself of such a nature that a person may be convicted of it on an indictment charging him with committing the offence of which the accused person would have been guilty if he had himself done the act or made the omission that he is alleged to have procured to be done or made.

<sup>191</sup> Section 544 repealed and replaced by No. 10 of 1981, s4.

**546. CONVICTION FOR ATTEMPT TO COMMIT OFFENCE.**

- (1) On an indictment charging a person with committing an offence, he may be convicted—
- (a) of attempting to commit the offence; or
  - (b) of attempting to commit any other offence of which he might be convicted on the indictment.
- (2) On an indictment charging a person with procuring the commission of an offence, he may be convicted—
- (a) of attempting to procure the commission of the offence; or
  - (b) of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it on an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.
- (3) On an indictment charging a person with attempting to commit any offence, he may be convicted of attempting to commit any other offence of such a nature that a person may be convicted of it on an indictment charging him with committing the offence that the accused person is alleged to have attempted to commit.
- (4) On an indictment charging a person with attempting to procure the commission of any offence, he may be convicted of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it on an indictment charging him with committing the offence of which the accused person is alleged to have attempted to procure the commission.
- (5) On an indictment charging a person with attempting to procure another person to do an act or make an omission of such a nature that if the act had been done or the omission had been made, an offence would have been committed, he may be convicted of attempting to procure that other person to do any other act or make any other omission of such a nature that if the act had been done or the omission had been made an offence would have been committed, if the last-mentioned offence is itself of such a nature that a person may be convicted of it on an indictment charging him with doing the act or making the omission that the accused person is alleged in the indictment to have attempted to procure that other person to do or make.

**547. WHEN EVIDENCE SHOWS OFFENCE OF SIMILAR NATURE.**

- (1) If on the trial of a person charged with an indictable offence the evidence establishes that he is guilty of another indictable offence of such a nature that on an indictment charging him with it he might have been convicted of the offence with which he is actually charged, he may be convicted of the offence with which he is so charged.
- (2) In a case to which Subsection (1) applies, the person is not liable to be afterwards prosecuted for the offence established by the evidence, unless the court before which the trial is heard directs the accused person to be indicted for that offence, in which case he may be dealt with in all respects as if he had not been put upon his trial for the offence with which he is actually charged.

**548. EFFECT OF CONVICTION.**

A person convicted under any of the preceding provisions of this Division is liable to the same punishment as if he had been convicted on an indictment charging him with the offence of which he is actually convicted.

**549. CORRUPT PRACTICES.**

If, on the trial of a person charged with an indictable offence relating to elections the evidence establishes that he—

- (a) is not guilty of the offence charged; and
  - (b) is guilty of an offence relating to elections and punishable on summary conviction,
- he may be convicted of the last-mentioned offence, and is liable to the same punishment as if he had been summarily convicted of that offence.

**550. ILLEGAL PRACTICES.**

If, on the trial of a person charged with an offence relating to elections and punishable on summary conviction, the evidence establishes that he is guilty of an indictable offence relating to elections, he is not entitled to have the charge dismissed if the evidence also establishes that he did any act or acts such as to constitute the offence with which he is actually charged.

**551. INDICTMENT FOR JOINT RECEIVING.**

On an indictment charging two or more persons jointly with an offence of which the receiving of any property is an element, if the evidence establishes that one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, he or they may be convicted of the offence or offences so established by the evidence.

*Division 4. – Trial: Adjournment: Pleas: Practice.***552. RIGHT TO BE TRIED.**

(1) In this section, “**place of trial**” means the place appointed under the *National Court Act 1975* for sittings of the National Court at which the hearing of a charge of an indictable offence is to take place.

(2) A person who has been committed for trial or sentence or against whom the Public Prosecutor has laid a charge under Section 526 may make application at any sittings of the National Court to be brought to his trial.

(3) If no indictment has been presented against the applicant—

- (a) where the application is made at a sittings of the National Court at the place of trial—before the end of the sittings at which the application is made; or
- (b) where the application is made at a sittings of the National Court at some other place—before the end of the next sittings of the court at the place of trial,

the court shall, on application by him, admit him to bail on such terms as the court thinks proper, unless the court is satisfied that there are special reasons why the application should be refused.

(4) If—

- (a) a person has made an application under Subsection (2); and
- (b) at the end of the sittings of the National Court at his place of trial next following the application—
  - (i) no indictment has been presented against him; or
  - (ii) the court is satisfied that the prosecution has not in the circumstances of the case made a genuine attempt to complete its case,

he is entitled to be discharged.

**553<sup>192</sup>. [REPEALED.]**

**554. DELIVERY OF COPY OF INDICTMENT.**

(1) When a charge is laid against a person under Section 525 or 526, a copy of the indictment shall be served on the accused person or his lawyer at a reasonable time before the commencement of his trial.

(2) When the prosecution serves a notice of intention to rely on a previous conviction as a circumstance of aggravation, it shall serve a copy of the notice on the accused person or his lawyer a reasonable time before the commencement of the trial.

(3) If a copy of the indictment or the notice of intention to rely on a previous conviction as a circumstance of aggravation is not so served within such time before the commencement of the trial as is reasonable in order to allow the accused to prepare his defence, the court shall, on application, grant to the accused person an adjournment for such time as it thinks reasonable in the interest of justice.

**555. ADJOURNMENT OF TRIAL.**

(1) A court before which a trial has commenced may at any time, in its discretion, adjourn the trial.

(2) A court before which a trial has commenced may at any time, on application by the State Prosecutor or the accused or his lawyer, direct that the trial be continued at a different place, whether or not the place is a place appointed under the *National Court Act 1975* for sittings of the National Court.

(3) If a court directs that the trial in which no evidence has been taken be continued at a different place, the trial may be continued before a Judge other than the Judge before whom it commenced.

**556. EFFECT OF ADJOURNMENT.**

(1) When an order is made under Section 555 adjourning a trial to a different time or place—

- (a) the accused person is bound to attend the trial; and
- (b) the recognizance of any person bound to attend as a witness or otherwise applies in respect of the new time and place of trial.

(2) A person bound to appear at a trial by virtue of Subsection (1) is not liable to have his recognizance forfeited or be otherwise dealt with for failure to appear unless he has received notice within a reasonable time of the time and place to which the trial has been adjourned.

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<sup>192</sup> Section 553 repealed by No. 13 of 1977, s32.

**557. ACCUSED PERSON TO BE CALLED ON TO PLEAD TO INDICTMENT.**

(1) At the time appointed for the trial of an accused person, he shall be informed in open court of the offence with which he is charged, as set out in the indictment, and shall be called on to plead to the indictment, and to say whether he is guilty or not guilty of the charge.

(2) The trial begins when the accused person is called on in accordance with Subsection (1).

**558. MOTION TO QUASH INDICTMENT.**

(1) The accused person may, before pleading, apply to the court to quash the indictment on the ground that—

- (a) it is calculated to prejudice or embarrass him in his defence to the charge; or
- (b) it is formally defective.

(2) On a motion under Subsection (1), the court may—

- (a) quash the indictment; or
- (b) order it to be amended in such manner as the court thinks just; or
- (c) refuse the motion.

**559. MISNOMER.**

If the accused person says that he is wrongly named in the indictment, the court may, on being satisfied by affidavit or otherwise of the error, order the indictment to be amended.

**560. PLEAS.**

(1) If the accused person does not apply to quash the indictment, he must either plead to it, or demur to it on the ground that it does not disclose any offence cognizable by the court.

(2) If the accused person pleads, he may plead—

- (a) that he is guilty of the offence charged in the indictment, or, with the consent of a State Prosecutor, of any other offence of which he might be convicted on the indictment; or
- (b) that he is not guilty; or
- (c) that he has already been convicted—
  - (i) on an indictment on which he might have been convicted of the offence with which he is charged; or
  - (ii) of an offence of which he might be convicted on the indictment; or
- (d) that he has already been acquitted on an indictment—
  - (i) on which he might have been convicted of the offence with which he is charged; or
  - (ii) of an offence of which he might be convicted on the indictment; or
- (e) that he has already been tried and convicted or acquitted of an offence committed or alleged to be committed under such circumstances that he cannot under this Code be tried for the offence charged in the indictment; or
- (f) that he has been pardoned for the offence charged in the indictment; or
- (g) that the court has no jurisdiction to try him for the offence.

(3) Two or more pleas may be pleaded together, except that the plea of guilty cannot be pleaded with any other plea to the same charge.

(4) An accused person may plead and demur together.

#### **561. PERSONS COMMITTED FOR SENTENCE.**

<sup>193</sup>(1) When a person has been committed for sentence for an offence, he shall be called on to plead to the indictment in the same manner as other persons, and may plead that he is guilty—

(a) of the offence charged in the indictment; or

(b) with the consent of a State Prosecutor, of any other offence of which he might be convicted on the indictment.

(2) If, notwithstanding that the accused person pleads that he is guilty, it appears to the court on examination of the depositions of the witnesses that he has not in fact committed—

(a) the offence charged in the indictment; or

(b) any other offence of which he might be convicted on the indictment,

the plea of not guilty shall be entered, and the trial shall proceed as in other cases when that plea is pleaded.

(3) A person who has been committed for sentence may plead any of the other pleas referred to in Section 560.

(4)<sup>194</sup> <sup>195</sup>This section does not apply to a committal for sentence under Section 421(4).

#### **562. STANDING MUTE.**

(1) If an accused person, on being called on to plead to an indictment, will not plead or answer directly to the indictment, the court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused person.

(2) A plea entered under Subsection (1) has the same effect as if it had been actually pleaded.

#### **563. ENTRY OF PLEA OF NOT GUILTY.**

Notwithstanding anything in this Code, counsel for an accused person may, with leave of the court and after the accused person has been—

(a) informed of the offence with which he is charged; and

(b) asked to plead to the indictment,

enter a plea of not guilty on behalf of the accused person.

#### **564. PLEA OF AUTREFOIS CONVICT OR AUTREFOIS ACQUIT.**

In a plea that the accused person has already been convicted or acquitted, it is sufficient to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged

<sup>193</sup> Section 561 amended by No. 12 of 1982, s9; amended by No. 29 of 1983, s11.

<sup>194</sup> Section 561(4) added by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986) s38.

<sup>195</sup> Section 561(4) added by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986) s38.

in the indictment, or of the other offence of which he alleges that he has been convicted or acquitted, and in the latter case to describe the offence in any way in which it is commonly known.

**565. TRIAL ON PLEA TO THE JURISDICTION.**

On a plea to the jurisdiction of the court, the court shall proceed to satisfy itself in such manner and on such evidence as it thinks proper, whether it has jurisdiction or not.

**566. TRIAL ACCORDING TO LAW.**

If the accused person pleads any plea or pleas other than the plea of guilty or a plea to the jurisdiction of the court, he is entitled to have the issues raised by the pleas tried.

**567. DEMURRER.**

(1) When an accused person demurs only and does not plead any plea, the court shall hear and determine the matter immediately.

(2) If the demurrer is overruled, the accused person shall be called on to plead to the indictment.

(3) When an accused person pleads and demurs together, it is in the discretion of the court whether the plea or demurrer is first disposed of.

(4) No joinder in demurrer is necessary.

**568. SEPARATE TRIALS.**

When two or more persons are charged in the same indictment, whether with the same offence or with different offences, the court may, at any time during the trial, on the application of any of the accused persons, direct that the trial of any of the accused persons be held separately from the trial of the other or others of them.

**569. WANT OF UNDERSTANDING OF ACCUSED PERSON.**

(1) If, where the accused person is called on to plead to the indictment it appears to be uncertain whether he is capable of understanding the proceedings at the trial so as to be able to make a proper defence, then before a plea is entered to the indictment the court shall enquire into the matter in order to discover whether or not he is capable.

(2) If the court finds that the accused person is capable of understanding the proceedings, he shall then be called on to plead and the trial shall proceed as in other cases.

(3) If the court finds that the accused person is not capable of understanding the proceedings—

- (a) the court shall say whether he is so found by it for the reason that he is of unsound mind or for some other specified reason; and
- (b) the finding shall be recorded; and
- (c) the court may order the accused person—
  - (i) to be discharged; or



(ii) be kept in custody in such place and in such manner as the court thinks proper until he can be dealt with according to law.

(4) A person found under this section to be incapable of understanding the proceedings at the trial may be again indicted and tried for the offence.

#### **570. DEFENCE OF ACCUSED.**

(1) A person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined and cross-examined by his lawyer.

(2) A person charged with an offence may, by leave of the court, have his defence conducted by another person who is not a lawyer.

#### **571. PRESENCE OF ACCUSED.**

(1) Subject to Subsection (2), a trial must take place in the presence of the accused person, unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which case the court—

- (a) may order him to be removed; and
- (b) may direct the trial to proceed in his absence.

(2) The court may, in any case, if it thinks fit, permit a person charged with a misdemeanour to be absent during the whole or any part of the trial on such conditions as it thinks proper.

(3) If the accused person absents himself during the trial without leave, the court may direct a warrant to be issued to arrest him and bring him before the court.

#### **572. EVIDENCE IN DEFENCE.**

(1) At the close of the evidence for the prosecution, the proper officer of the court shall ask the accused person or his counsel whether the accused intends to adduce evidence in his defence or whether he desires to make a statement to the court before he or his counsel addresses the court.

(2) Whether or not the accused intends to adduce evidence in his defence he is entitled to make a statement to the court.

(3) When the accused makes a statement to the court he shall make the statement at the close of the evidence for the prosecution and before adducing any evidence in his defence.

#### **573. SPEECHES.**

(1) Before any evidence is given at the trial of an accused person the State Prosecutor is entitled to address the court for the purpose of opening the evidence intended to be adduced for the prosecution.

(2) If an accused person is defended by counsel who says that he does not intend to adduce evidence, the State Prosecutor is entitled to address the court a second time for the purpose of summing up the evidence already given against the accused person.

(3) Subject to Section 572, at the close of the evidence for the prosecution the accused person, and each of the accused persons, if more than one, may by himself or his counsel address

the court for the purpose of opening the evidence (if any) intended to be adduced for the defence, and after the whole of the evidence is given may again address the court on the whole case.

(4) If evidence is adduced for an accused person, the State Prosecutor is entitled to reply.

(5) If evidence is adduced for one or more of several accused persons, but not for all of them, the State Prosecutor is entitled to reply with respect to the person or persons by whom evidence is adduced, but not with respect to the other or others of them.

(6) When an accused person who is defended by counsel is allowed by the court to make a statement to the court, the State Prosecutor is entitled to the same right of reply as if evidence had been adduced for the accused person.

#### **574. VIEW.**

The court may in any case view any place or thing that it thinks desirable that it should see.

#### **575. SPECIAL VERDICT.**

In any case in which it appears to the court that—

(a) the question whether an accused person ought or ought not to be convicted of an offence; or

(b) the proper punishment to be awarded on conviction,

may depend on some specific fact, the court shall state whether or not it finds that specific fact to be established by the evidence.

#### **576. INCAPACITY OF JUDGE.**

(1) If in the course of the trial the presiding Judge becomes incapable of proceeding, a Judge may, on application by the accused person or his counsel, or by a State Prosecutor, order that the trial be discontinued.

(2) If an order is made under Subsection (1), the accused person—

(a) shall remain in custody and may be again put on his trial on the same indictment; and

(b) has the same rights with respect to admission to bail as on an original committal for trial for the offence with which he is charged,

and a Judge or magistrate may, in a proper case, admit him to bail accordingly.

(3) If after an accused person has been convicted of an offence but before sentence the presiding Judge becomes incapable of proceeding, some other Judge may, on application by the accused person or his counsel, or by a State Prosecutor, proceed to sentence as though the accused person had been convicted by him.

#### **577. VERDICT ON SUNDAY.**

The taking of a verdict or any other proceeding of the court is not invalid by reason of its happening on a Sunday.

**578. FURTHER PLEAS.**

When the issues raised by any plea or pleas, except the plea of not guilty, have been found against an accused person who has not pleaded the plea of not guilty, he shall be called on to plead again, and the court may direct the issues raised by any fresh plea to be tried by the court constituted by the same or another Judge.

***Division 5. – Evidence: Presumptions of Fact.*****579. EVIDENCE ON CHARGE OF TREASON.**

On the trial of a person charged with treason, evidence shall not be admitted of an overt act not alleged in the indictment.

**580. EVIDENCE ON TRIALS FOR PERJURY AND SUBORNATION.**

On the trial of a person charged with an offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element, a certificate—

- (a) setting out the substance and effect only, without the formal parts, of the indictment or complaint and the proceedings at the trial; and
- (b) purporting to be signed by the officer having the custody of the records of the court where the indictment or complaint was tried, or by his deputy,

is sufficient evidence of the trial, without proof of the signature or official character of the person who appears to have signed the certificate.

**581. EVIDENCE OF PREVIOUS CONVICTION.**

(1) On the trial of a person charged with an offence alleged to have been committed after a previous conviction, a certificate—

- (a) setting out the substance and effect only, without the formal parts, of the indictment, verdict and judgement, or of the complaint and conviction; and
- (b) purporting to be signed by the officer having the custody of the records of the court where the accused person was first convicted, or by his deputy,

is, on proof of the identity of the person of the offender, sufficient evidence of the conviction, without proof of the signature or official character of the person who appears to have signed the certificate.

(2) If the previous conviction was a summary conviction, the conviction shall, until the contrary is shown, be presumed not to have been appealed against.

**582. EVIDENCE OF RELATIONSHIP ON CHARGE OF INCEST.**

On the trial of a person charged with an offence of which carnal knowledge, or an attempt to have carnal knowledge, of a woman or girl is an element, and of which blood relationship is also an element—

- (a) it is sufficient to prove that the woman or girl on whose person or by whom the offence is alleged to have been committed is reputed to be the daughter or other lineal descendant, or sister, of the person charged, or of the person with whom the offence is alleged to have been committed, as the case may be, and it is not

necessary to prove that she, or any person being her parent or ancestor and being a descendant of the person charged, or of the person with whom the offence is alleged to have been committed, as the case may be, was born in lawful wedlock; and

- (b) the accused person shall, until the contrary is proved, be presumed to have had knowledge at the time of the alleged offence of the relationship existing between the woman or girl on whose person or by whom the offence is alleged to have been committed and the person charged, or the person with whom the offence is alleged to have been committed, as the case may be.

### **583. EVIDENCE OF GAMING.**

On the trial of a person charged with an offence of such a nature that proof that any place was kept or used or resorted to for playing at any game of chance, or of mixed chance and skill, is necessary, it is not necessary to prove that any person found there playing at any game was playing for any money, wager or stake.

### **584. EVIDENCE OF AUTHORITY.**

The averment in an indictment that the prosecution is instituted by the direction of the Public Prosecutor, or at the request of the government of a State, is sufficient evidence of the fact, until the contrary is shown.

### **585. EVIDENCE ON CHARGES OF OFFENCES AGAINST CUSTOMS LAWS.**

On the trial of a person charged with any offence of which the fact that some person was at some particular time—

- (a) an officer of Customs; or
- (b) employed for the prevention of smuggling,

is an element, the averment in the indictment or complaint that any person mentioned in it was an officer of Customs, or was employed for the prevention of smuggling, at any time stated in it is sufficient evidence of the fact, until the contrary is shown.

### **586. EVIDENCE ON CERTAIN CHARGES OF STEALING MONEY.**

(1) On the trial of a person charged with stealing—

- (a) while employed in the Public Service, money that—
  - (i) was the property of the State; or
  - (ii) came into his possession by virtue of his employment; or
- (b) while a clerk or servant, money that—
  - (i) was the property of his employer; or
  - (ii) came into his possession on account of his employer,

an entry in any book of account kept by the accused person, or kept in, under or subject to his charge or supervision, purporting to be an entry of the receipt of any money, is evidence that the money purported to have been received was so received by him.

(2) On the trial of a person charged with an offence referred to in Subsection (1) it is not necessary to prove the stealing by the accused person of any specific sum of money, if—

- (a) on examination of the books of account of entries kept or made by him, or kept or made in, under or subject to his charge or supervision; or
- (b) by any other evidence,

there is proof of a general deficiency, and the court is satisfied that the accused person stole the deficient money or any part of it.

#### **587. EVIDENCE ON CHARGES RELATING TO SEALS AND STAMPS.**

On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue, or of the post office, in Papua New Guinea or in any part of Her Majesty's Dominions or in a foreign State, a despatch from one of Her Majesty's Principal Secretaries of State—

- (a) transmitting to the Head of State, any stamp, mark or impression; and
- (b) stating it to be a genuine stamp, mark or impression of a die, plate or other instrument provided, made or used by or under the direction of the proper authority of the country in question for the purpose of expressing or denoting any stamp duty or postal charge,

is admissible as evidence of the facts stated in the despatch, and the stamp, mark or impression so transmitted may be used by the court and by witnesses for the purposes of comparison.

#### **588. INTENTION TO DEFRAUD.**

On the trial of a person charged with an offence of which an intent—

- (a) to injure, deceive or defraud; or
- (b) to enable another person to deceive or defraud,

is an element, it is not necessary to prove an intent—

- (c) to injure, deceive or defraud any particular person; or
- (d) to enable any particular person to deceive or defraud any particular person.

#### **589. ADMISSIONS.**

An accused person may admit on the trial any fact alleged against him, and the admission is sufficient proof of the fact without other evidence.

#### *Division 6. – Verdict: Judgement: Appeal from Arrest of Judgement.*

#### **590. ACCUSED PERSON INSANE DURING TRIAL.**

(1) If on the trial of a person charged with an indictable offence it is alleged or appears that he is not of sound mind, the court shall consider the matter, and if it finds that the accused person is not of sound mind it shall—

- (a) record the finding; and
- (b) order the accused person to be kept in strict custody in such place and in such manner as the court thinks proper until he is dealt with under the laws relating to persons of unsound mind.

(2) A person found under Subsection (1) to be not of sound mind may be again indicted and tried for the offence.

**591. DISCHARGE OF PERSONS ACQUITTED.**

If the accused person is found not guilty or any other verdict is given that shows that he is not liable to punishment, he shall be discharged from the charge of which he is acquitted.

**592. ACQUITTAL ON GROUNDS OF INSANITY.**

(1) If on the trial of a person charged with an indictable offence it is alleged or appears that he was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, the court shall—

- (a) if it finds him not guilty, find specifically whether or not he was of unsound mind at the time when the act or omission took place; and
- (b) whether he is acquitted on account of such unsoundness of mind.

(2) If in a case to which Subsection (1) applies the court—

- (a) finds that the accused person was of unsound mind at the time when the act or omission took place; and
- (b) says that he is acquitted on account of that unsoundness of mind,

it shall order him to be kept in strict custody in such place and in such manner as the court thinks proper pending a decision by the Head of State, acting on advice.

(3) In a case referred to in Subsection (1), the Head of State, acting on advice, may give such order for the safe custody of the person pending a decision by the Head of State, acting on advice, in such place or confinement and in such manner as the Head of State, acting on advice, thinks proper.

(4) Where a person is confined under this section, the Head of State, acting on advice, may at any time order that he be released from custody either unconditionally or on such conditions as are laid down by the National Executive Council.

**593. CONVICTED PERSON TO BE CALLED ON TO SHOW CAUSE.**

Where an accused person—

- (a) pleads that he is guilty of an offence; or
- (b) on trial, is convicted of any offence,

the proper officer shall ask him whether he has anything to say why sentence should not be passed on him, but an omission to do so does not invalidate the judgement.

**594. ARREST OF JUDGEMENT.**

(1) A person convicted of an indictable offence, whether on his plea of guilty or otherwise, may at any time before sentence move the judgement be arrested on the ground that the indictment does not disclose an offence.

(2) On hearing of a motion under Subsection (1) the court may allow any amendment of the indictment that it might have allowed before verdict.

(3) The court may either hear and determine the motion under Subsection (1) immediately or may reserve the question of law for the consideration of the Supreme Court as if it were a question of law arising on the trial.

**595. APPEAL FROM ARREST OF JUDGEMENT.**

(1) When the court before which an accused person is convicted on indictment arrests judgement, the court shall, on the application of a State Prosecutor, reserve a case for the consideration of the Supreme Court as provided by Section 594.

(2) On the hearing of a case under Subsection (1) the Supreme Court may affirm or reverse the order arresting judgement.

(3) If an order arresting judgement is reversed—

- (a) the Supreme Court shall direct that judgement be pronounced on the offender; and
- (b) the offender shall be ordered to appear at such time and place as the Court may direct to receive judgement; and
- (c) any justice may issue his warrant for the arrest of the offender.

(4) An offender arrested under Subsection (3) may be admitted to bail by order of the Supreme Court or the National Court or a Judge, which may be made at the time when the order directing judgement to be pronounced is made, or afterwards.

**596. SENTENCE.**

(1) If a motion to arrest the judgement is not made or is dismissed, the court may—

- (a) pass sentence on the offender immediately; or
- (b) discharge him on his recognizance, as provided for in this Code, conditioned that he shall appear and receive judgement—
  - (i) at some future sittings of the court; or
  - (ii) when called on by notice in the prescribed form.

(2) If sentence is not passed immediately, a Judge may at any subsequent sitting of the court at which the offender is present pass sentence on him.

(3) If an offender (including an offender called on by notice in the prescribed form to appear and receive judgement in respect of a portion of his sentence suspended under any provision of this Code) does not appear at the required time and place, a Judge—

- (a) may forfeit the offender's recognizance and the recognizance of his sureties (if any); and
- (b) may issue a warrant to arrest the offender and to bring him before a Judge, and such offender may be arrested and brought before the court accordingly.

(4) Before passing sentence, the court may receive such evidence as it thinks proper in order to inform itself as to the proper sentence to be passed.

**597. SENTENCE OF DEATH.**

Subject to Section 598, the sentence to be pronounced on a person who is convicted of a crime punishable with death is that he be returned to his former custody, and that at a time and place to be appointed by the Head of State, acting on advice, he be hanged by the neck until he is dead.

**598. RECORDING SENTENCE OF DEATH.**

(1) When a person is convicted of any crime punishable with death, except treason and wilful murder, if the court is of opinion that, under the circumstances of the case, it is proper that the offender should be recommended for mercy, the court may, if it thinks fit, direct the proper officer, instead of asking the offender whether he has anything to say why sentence of death should not be passed on him, to ask the offender, and that officer shall ask the offender, whether he has anything to say why judgement of death should not be recorded against him.

(2) In a case referred to in Subsection (1) the court may abstain from pronouncing sentence of death, and may, instead, order judgement of death to be entered on record.

(3) On an order under Subsection (2) the proper officer is to enter judgement of death on record against the offender in the usual form, as if sentence of death had actually been pronounced by the court against the offender in open court.

(4) A record of a judgement of death entered under this section has the same effect as if sentence of death had been pronounced in open court.

**599. PREGNANT WOMEN.**

(1) When sentence of death is passed on a woman, she may apply for an order to stay execution on the ground that she is pregnant.

(2) If an application is made under Subsection (1), the court shall direct one or more medical practitioners to be sworn to examine the woman in some private place either together or successively, and to ascertain whether or not she is pregnant.

(3) If on the report of an examination conducted in pursuance of a direction under Subsection (2), verified on oath, it appears that the woman is pregnant, the court shall order that execution of the sentence be postponed until—

- (a) she is delivered of a child; or
- (b) it is no longer possible in the course of nature that she should be so delivered.

**600. RESTRICTION OF MOVEMENT.**

<sup>196</sup>(1) For the purposes of this section—

“home”, in relation to a person, means—

- (a) the place (if any) where he has resided continuously during the period of five years immediately preceding the date of the offence giving rise to the conviction in respect of which a punishment under this section is being imposed; or
- (b) an area of customary land on which he may by custom build or occupy a house or garden, whether in his own right or in right of his spouse or some other relation; or
- (c) an area of customary land owned by a linguistic or cultural group with which he or his spouse has customary affiliations involving usage rights in land; or

<sup>196</sup> Section 600 repealed and replaced by the *Criminal Code (Restriction of Movement) Act* 1986 (No. 18 of 1986), s3.



- (d) an area of land leased for a term of not less than 12 months or held in freehold by him or his spouse under a Law in force in the country; or
- (e) in a particular case where the provisions of Paragraph (a), (b), (c) or (d) are inapplicable—any other place with which he or his spouse has connections such that it should, in the opinion of the court, be reasonably regarded as his home;

**“Probation Officer”** means a probation officer appointed under the *Probation Act 1979*.

(2) Where a person is convicted of an offence, the court that convicts him may, in addition to or instead of any other punishment that may be imposed, order him—

- (a) not to come or be within such part of the country as the court specifies; or
- (b) to be returned to his home, as specified by the court,

during such period, not exceeding five years, as is specified by the court.

(3) An order under Subsection (2)—

- (a) may be made subject to such exceptions and conditions as to the court seem proper, including a condition requiring the person to report his presence at regular intervals to a District Officer or Probation Officer or member of the Police Force; and
- (b) remains in force for such period as is specified.

(4) An order made under Subsection (2)(b) does not operate so as to hinder or prevent a person from leaving the country.

(5) A person who, without reasonable excuse (proof of which is on him), contravenes or fails to comply with an order made under Subsection (2) is guilty of an offence.

Penalty: Imprisonment for a term not exceeding six months.

(6) A person who is convicted of an offence against Subsection (5) is liable to be again removed from the part of the country specified in the order, or to be removed to the part of the country specified by the court, as the case may be, or a new order under this section may be made against him.

## 601. CONDITIONAL SUSPENSION OF PUNISHMENT ON FIRST CONVICTION.

<sup>197</sup>(1)<sup>198</sup> <sup>199</sup>When a person who has not been previously convicted in Papua New Guinea or elsewhere of an offence of such a nature that, on conviction, a sentence may be imposed restricting the liberty of the offender for a period of six months or upwards, is convicted of any offence of such a nature that he may be sentenced on the conviction, to imprisonment for a period not exceeding three years, then, if in the opinion of the court that convicts him a sentence of imprisonment for a period not exceeding three years is an adequate punishment, the court—

- (a) shall proceed to pass sentence on the offender in the usual form; and
- (b) may, if it thinks fit, suspend the execution of the sentence on the offender entering into a recognizance in accordance with Subsection (2), in such amount as the court directs.

(2) A recognizance under Subsection (1)(b) shall be conditioned that the offender shall—

<sup>197</sup> Section 601 amended by Act No. 29 of 1983, s12.

<sup>198</sup> Section 601(1) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s39(a).

<sup>199</sup> Section 601(1) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s39(a).

- (a) be of good behaviour; and
- (b) comply with such other conditions as the court, in its discretion, imposes,

for—

- (c) a period from the date of the sentence equal to the term of the sentence; or
- (d) if the term of the sentence is less than 12 months—for the period of 12 months,

and will not during that period do or omit to do any act by which the recognizance would become liable to be forfeited under this section.

(3) The court may, if it thinks fit, instead of proceeding in accordance with Subsection (1)(b) direct that—

- (a) the offender be imprisoned for such portion of the term of sentence as it thinks proper; and
- (b) execution of the remaining portion of the sentence be suspended on the offender entering into a recognizance in accordance with Subsection (4) in such amount as the court directs.

(4) A recognizance under Subsection (3)(b) shall be conditioned that the offender shall—

- (a) be of good behaviour; and
- (b) comply with such other conditions as the court in its discretion imposes,

for—

- (c) a period from the termination of his imprisonment equal to the term of the remaining portion of his sentence; or
- (d) if the remaining portion is less than 12 months—for the period of 12 months, and shall not during that period do or omit to do any act by which the recognizance would become liable to be forfeited under this section.

(5) When a recognizance is entered into under Subsection (1) or (3), the offender shall be discharged from custody, but is liable to be committed to prison to undergo his sentence, if, during the period specified in the recognizance, any of the conditions specified in the subsequent provisions of this section happens with respect to him.

(6) A written notice shall be given to the offender on his discharge specifying the conditions under which he will become liable to be committed to prison in accordance with Subsection (5).

(7) When an offender is committed to prison in accordance with Subsection (5), the term of the sentence begins to run from the commencement of his custody on the commitment, but the term of the imprisonment does not extend beyond the period specified in the recognizance, and at the expiration of that period the offender shall be released.

(8) If the offence—

- (a) has relation to property; or
- (b) is an offence against the person,

the court may, on suspending the execution of the sentence under Subsection (1)(b) or (3)(b) order the offender—

- (c) to make restitution of the property in respect of which the offence was committed; or
- (d) to pay compensation for—
  - (i) the injury done to the property; or

- (ii) the injury done to the person injured, as the case may be,

and may—

- (e) assess the amount to be paid by the offender in any such case; and
- (f) direct when, to whom and in what instalments the amount is to be paid.

(9) An order under Subsection (8) may be enforced in the same manner as orders made by magistrates on summary convictions.

(10) The court may—

- (a) require the offender to give security for the performance of an order under Subsection (8); and
- (b) make the discharge of the offender from custody conditional on such security being given.

(11) An offender discharged under this section must, once at least in every three months during the period specified in the recognizance, report his address and occupation to the member of the Police Force in charge at the place where he was convicted, or at such other place as the Commissioner of Police appoints.

(12) A report referred to in Subsection (11) may be made either by the offender—

- (a) personally attending; or
- (b) by letter signed by him and addressed to the member of the Police Force referred to in that subsection,

unless in any case the Head of State, acting on advice, directs that the report be made by the offender personally, in which case it must be made in that manner only.

(13) If, during the period specified in the recognizance—

- (a) it is proved to a magistrate in a court of summary jurisdiction that an offender discharged under this section has failed to report his address and occupation to the person, at the times and in the manner prescribed by Subsections (11) and (12); and
- (b) an offender discharged under this section is charged by a member of the Police Force with getting his livelihood by dishonest means, and, on his being brought before a magistrate in a court of summary jurisdiction, it appears to the magistrate that there are reasonable grounds for believing that he is getting his livelihood by dishonest means; or
- (c) an offender discharged under this section is charged with an offence punishable on indictment or summary conviction, and, on his being required by the magistrate before whom he is charged to give his name and address, he refuses to do so, or gives a false name or a false address; or
- (d) an offender discharged under this section is convicted of—
  - (i) an indictable offence, whether on indictment or summarily; or
  - (ii) an offence punishable on summary conviction for which imprisonment for a period exceeding one month may be imposed,

the court or magistrate before whom the offender is charged or convicted may—

- (e) forfeit the recognizance; and
- (f) commit him to prison to undergo his original sentence, or so much of it (if any) as remains to be undergone under the provisions of this section; and

(g) grant any necessary warrant for his committal.

(14) If during the period specified in the recognizance none of the events referred to in Subsection (13) happens—

(a) the offender is discharged from the original sentence; and

(b) the conviction on which the sentence was imposed is not, on any subsequent conviction against him, to be treated as a previous conviction for the purposes of any law under which a greater punishment may be inflicted on a person who has been previously convicted.

(15)<sup>200</sup> [Repealed.]

### 602. DISCHARGE OF OFFENDER IN CERTAIN CASES.

<sup>201</sup>(1)<sup>202</sup> <sup>203</sup>When a person is summarily convicted of an offence relating to property, the court that convicts him may discharge the offender, without inflicting any punishment, on his making such satisfaction to the person aggrieved for damages, with or without costs, as may be approved by the court.

(2) When satisfaction in accordance with Subsection (1) has been made the offender is not liable to any civil proceedings for the same cause at the suit of the person aggrieved.

(3)<sup>204</sup> [Repealed.]

### 603. TAKING OUTSTANDING CHARGES INTO ACCOUNT.

(1) Where the court before which a person is convicted on indictment of an offence not punishable with death or imprisonment for life is satisfied that—

(a) there has been filed in court a document in or to the effect of the prescribed form, signed by a member of the Police Force and by the person so convicted, showing on the back of it a list of other indictable offences not punishable with death or imprisonment for life with which he has been charged (whether or not he has been committed for trial in respect of those other offences); and

(b) a copy of that document has been furnished to the person so convicted; and

(c) in all the circumstances of the case it is proper to do so,

the court may, with the consent of the State Prosecutor and before passing sentence on the person for the offence of which he has been convicted, ask the person whether he admits his guilt in respect of all or any of the offences specified in the list and wishes them to be taken into account in passing sentence on him.

(2) If the convicted person admits his guilt in respect of all or any of the offences specified in the list filed under Subsection (1) and wishes them to be taken into account by the court in passing sentence for the offence of which he has been convicted, the court may, if it thinks fit, take all or any of the offences in respect of which he has so admitted guilt into account.

<sup>200</sup> Section 601(15) repealed by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s39(b).

<sup>201</sup> Section 602 amended by No. 29 of 1983, s13.

<sup>202</sup> Section 602(1) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s40(a).

<sup>203</sup> Section 602(1) amended by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s40(a).

<sup>204</sup> Subsection 602(3) repealed by the *Criminal Code (Amendment No. 2) Act 1986* (No. 17 of 1986), s40(b).

(3) In a case to which Subsection (2) applies, the sentence passed on the convicted person shall not exceed the maximum sentence that may be passed in respect of the offence of which he has been convicted.

(4) The court shall certify on the document filed under Subsection (1) the offences specified in the list on the back of it that have, in respect of the conviction of the person concerned, been taken into account in passing sentence on that conviction, and afterwards proceedings or further proceedings on those offences shall not be taken against the person unless the conviction is quashed or set aside.

(5) An admission of guilt under and for the purposes of this section in respect of an offence is not admissible in evidence—

- (a) in any proceedings or further proceedings taken under the exception to Subsection (4); or
- (b) in any proceedings or further proceedings in respect of the offence if the offence was not taken into account under this section in passing sentence.

(6) An offence taken into account under this section in passing sentence on a person for another offence of which he has been convicted shall not, by reason of its being so taken into account, be regarded for any purpose as an offence of which he has been convicted.

(7) Where the court before which a person was convicted of an indictable offence took into account in accordance with this section, in passing sentence for the offence, any other offence or offences, then whenever in or in relation to any criminal proceedings—

- (a) reference may lawfully be made to the fact that the person was convicted of the indictable offence, reference may also be made to the fact that that other offence or those other offences was or were so taken into account; and
- (b) evidence may lawfully be given of the fact that that person was convicted of the indictable offence, evidence may also be given of the fact that that other offence or those other offences was or were so taken into account.

(8) The fact that that other offence or the other offences was or were so taken into account may be proved in the same manner as the conviction for the indictable offence may be proved.

(9) Subsections (7) and (8) do not affect the operation of Subsection (6).

#### **604. ASSESSMENT OF VALUE OF PROPERTY: APPROPRIATION OF FINES DEPENDENT ON VALUE.**

(1) Subject to Subsection (2), on a summary conviction by which a penalty is imposed on the basis of—

- (a) the value of any property taken, killed or destroyed; or
- (b) the amount of any injury done to any property,

the value or amount shall be assessed by the convicting court and the amount, when recovered, shall be paid to the person aggrieved, unless he is unknown, or unless the property taken or injured is of a public nature, when it is to be applied in the same manner as other fines imposed by the court.

(2) When several persons join in the commission of the same offence, and on conviction a penalty is imposed on each of them on the basis of the value of the property or of the amount of

the injury, no sum further than the value or amount shall be paid to the person aggrieved, and the remainder shall be applied in the same manner as other fines imposed by the court.

**605. EFFECT OF SUMMARY CONVICTION FOR INDICTABLE OFFENCES.**

When a person has been summarily convicted of an indictable offence, the conviction shall be deemed to be a conviction of a simple offence only and not of an indictable offence.

*Division 7. – Habitual Criminals.*

**606. DECLARATION OF CONVICTED PERSONS AS HABITUAL CRIMINALS.**

(1) Where a person–

- (a) is convicted on indictment of an offence against any provision of Division IV.2; and
- (b) has been previously so convicted on indictment on at least two occasions of any of those offences (whether of the same description of offence or not),

the Judge may, in his discretion, declare as part of the sentence of the person that he is an habitual criminal.

(2) Where a person–

- (a) is convicted on indictment of an offence against any provision of Division III.7, Division V.4, Subdivision VI.1.A,B,C,D,E or F, Subdivision VI.2.A, Subdivision VI.3.A, or Subdivision VI.3.C; and
- (b) has been previously convicted on indictment on at least three occasions of an offence against any provision of Division III.7 or IV.2 or any provision referred to in Paragraph (a) (whether of the same description of offence or not),

the Judge may, in his discretion, declare as part of the sentence of the person that he is an habitual criminal.

(3) Where any person–

- (a) has been previously convicted on indictment on at least two occasions of an offence referred to in Subsection (2)(b) (whether of the same description of offence or not); and
- (b) has been previously convicted summarily on at least two occasions of an offence punishable by imprisonment for not less than three months; and
- (c) is convicted summarily of an offence punishable by imprisonment for not less than three months,

the court that convicts him may, in addition to sentencing him to a term of imprisonment, order that he be brought before the National Court or a Judge to be dealt with as an habitual criminal.

(4) Where a person–

- (a) is convicted of any offence against any provision of the *Summary Offences Act 1977* or the *Vagrancy Act 1977*; and
- (b) has been previously convicted on at least four occasions of an offence against any provision of any of those Acts (whether of the same description of offence or not),

the court that convicts him may, in addition to sentencing him to a term of imprisonment, order that he be brought before the National Court or a Judge to be dealt with as an habitual criminal.

(5) Where a person is brought before the National Court or a Judge under Subsection (3) or (4), the Court or the Judge may—

- (a) declare the person to be an habitual criminal; and
- (b) direct that on the expiration of his sentence he shall be detained in a reformatory prison under this Code.

(6) This section applies whether the previous convictions took place within Papua New Guinea or for similar offences under similar laws of places outside Papua New Guinea.

(7) For the purposes of this section, a committal for sentence under the *District Courts Act 1963*, shall be deemed to be a previous conviction on indictment.

#### **607. REFORMATORY PRISONS.**

(1) The Head of State, acting on advice, may, by notice in the National Gazette, set apart a correctional institution or other suitable place to be a reformatory prison for the detention of habitual criminals.

(2) The Head of State, acting on advice, may appoint for each reformatory prison a manager, a matron, and such other officers and attendants as the National Executive Council thinks necessary.

#### **608. APPLICATION OF CODE AND CORRECTIONAL SERVICE ACT 1995..**

Every reformatory prison shall be deemed to be a correctional institution and a prison, and every person detained in it shall be deemed to be a detainee and a prisoner, within the meaning of the *Correctional Service Act 1995* and this Code.

#### **609. DETENTION OF HABITUAL CRIMINALS.**

At the expiration of his sentence, an habitual criminal shall be detained until discharged at the direction of the Minister under this Code.

#### **610. DISCHARGE.**

(1) A person detained as an habitual criminal may apply to the National Court or a Judge for a recommendation that he be discharged on the ground of his having sufficiently reformed or for other sufficient reason.

(2) The case of each person detained as an habitual criminal shall be submitted by the Minister to the National Court or a Judge for review at six-monthly intervals, or as near to six-monthly intervals as circumstances permit.

(3) On receipt of an application under Subsection (1) or a case submitted for review under Subsection (2), the National Court or Judge—

- (a) may make inquiry in such manner as the Court or Judge thinks proper; and
- (b) shall furnish to the Minister a report on the case of the person concerned; and
- (c) may—
  - (i) if satisfied that the person is sufficiently reformed or that there is some other sufficient reason to warrant his discharge, recommend to the Minister that the person be discharged; or

(ii) recommend that he be not discharged.

(4) On receipt of a report and recommendation under Subsection (3), the Minister may direct the discharge of the person concerned or otherwise as he thinks proper.

(5) If the Minister directs the discharge of a person, he may also order that, if the person remains in the country, he shall, either personally or by a letter sent by post, for a period not exceeding two years and at such intervals as are specified in the order, report his address and occupation to the member of the Police Force in charge at the place where he was convicted or at such other place as the Commissioner of Police appoints.

#### **611. CONDITIONS UNDER WHICH OFFENDER MAY BE ARRESTED.**

(1) If during the period specified in an order under Section 610(5) the person discharged—

- (a) is proved to any court of summary jurisdiction to have failed without reasonable excuse (proof of which is on him), to report his address and occupation to the proper person at the times and in the manner prescribed by the order; or
- (b) is charged by a member of the Police Force with getting his livelihood by dishonest means, and on his being brought before any court of summary jurisdiction it appears to the court that there are reasonable grounds for believing that he is getting his livelihood by dishonest means; or
- (c) on being charged with an offence punishable on indictment or summary conviction, and on being required by the court before which he is charged to give his name and address, refuses to do so, or gives a false name or a false address; or
- (d) is convicted of any offence against the *Summary Offences Act 1977* or the *Vagrancy Act 1977* or of an indictable offence, or of any offence punishable on summary conviction by imprisonment for not less than three months,

the court before which such proof is given, or before which the offender is so charged or convicted, may direct him, in addition to any penalty or on the completion of any term of imprisonment then imposed on him, to be recommitted to a reformatory prison, and he shall be so recommitted accordingly and the court may grant any necessary warrant for his committal.

(2) If during the period specified in an order under Section 610(5) none of the events specified in Subsection (1) happens, the person discharged ceases to be an habitual criminal.

#### *Division 8. – Costs.*

#### **612. COSTS OF PROSECUTION IN CERTAIN CASES.**

(1) When a person is convicted on indictment of an indictable offence relating to the person of any person, the court, on the application of the person aggrieved by the offence, may, in addition to any sentence that is passed on the offender, order him to pay to the person aggrieved—

- (a) his costs of prosecution; and
- (b) a sum by way of compensation for any loss of time suffered by him by reason of the offence of which the offender is convicted.

(2) An order under Subsection (1) for the payment of costs, or of any sum awarded by way of compensation may be enforced in the same manner as a judgement of the court given in civil proceedings.



(3) If any money was found on the person of the offender on his arrest, the court may order it to be applied towards the payment of any money ordered under Subsection (1) to be paid by him.

(4) When an order is made under this section for the payment of money by way of compensation to an aggrieved person, the offender is not liable to any civil proceedings for the same cause at the suit of that person.

### **613. TAXATION.**

(1) In this section—

“**costs of defence**” includes costs incurred by the accused person both before and after his committal;

“**costs of prosecution**” includes costs incurred by the person aggrieved in order to the committal of the offender, and costs incurred by him with the consent of the State Prosecutor for the purposes of the trial.

(2) Costs of a prosecution or defence shall be taxed by the proper officer of the court in which the indictment is presented.

### *Division 9. – Execution of Sentence.*

### **614. EXECUTION OF SENTENCE OF DEATH.**

(1) The punishment of death shall be carried out by hanging the offender by his neck until he is dead.

(2) The time and place of execution shall be appointed by the Head of State, acting on advice.

(3) The Sheriff, or a Sheriff’s officer appointed by the Sheriff, shall be present at the execution.

(4) The officer-in-charge and the proper officers of the correctional institution (including the visiting medical officer), all justices who wish to be present, and such members of the Police Force as the Sheriff or Sheriff’s officer allow may also be present.

(5) All the persons attending the execution shall remain in the enclosure until the execution has been carried out according to law, and until the visiting medical officer has signed a certificate in the following form—

“I, ... , the visiting medical officer of the ... Correctional Institution, certify that I have today witnessed the execution of ... , lately, as I am informed, convicted and duly sentenced to death by the National Court and I further certify that he was, in pursuance of the sentence, hanged by the neck until he was dead.

Dated ... 20 .

Visiting Medical Officer.”

(6) The Sheriff or Sheriff’s officer, the officer-in-charge and officers of the correctional institution, and the members of the Police Force who are present shall sign, before leaving the correctional institution, a declaration in the following form adding their description—

“We declare and testify that we were this day present when the extreme penalty of the law was executed on ..., lately, as we are informed, convicted by the National Court, and duly sentenced to death on ... 20 , and that he was, in pursuance of the sentence, hanged by the neck until he was dead.

(Signatures of Witnesses.)”

(7) Every certificate and declaration under this section shall be transmitted by the Sheriff, Sheriff’s officer, or deputy of the Sheriff, whichever of them is present at the execution, to the Registrar of the National Court and shall be entered and kept in his office as a record of the Court, and a copy of it is to be twice published in the National Gazette.

(8) The body of the offender shall be buried at such place as the Head of State, acting on advice, directs.

### *Division 10. – Release of Prisoners on Licence.*

#### **615. RELEASE OF PRISONERS ON LICENCE.**

(1) In this section–

“**licence**” means a licence to be at large granted under Subsection (2);

“**prescribed authority**” means a District Court Magistrate or a Reserve Magistrate under the *District Courts Act 1963*;

“**the prescribed period**”, in relation to a licence, means the period commencing on the day on which the licence was granted and ending on the day that, if no remissions of sentence were granted, would be the last day of the term of imprisonment being served by the person to whom the licence was granted.

(2) Where a person is serving a term of imprisonment for an offence against a law, the Minister may, if he thinks proper to do so in the circumstances, grant to him, by writing under his hand, a licence to be at large.

(3) A licence is sufficient authority for the release from prison of the person to whom it is granted.

(4) A licence is subject to such conditions (if any) as are specified in the licence.

(5) The Minister may, at any time before the expiration of the prescribed period, by writing under his hand–

(a) vary or revoke a condition of a licence or impose additional conditions; or

(b) revoke a licence.

(6) The varying of a condition or the imposing of an additional condition under Subsection (5) does not have effect until notice of it has been given to the person to whom the licence was granted, being notice given before the expiration of the prescribed period.

(7) Where–

(a) a licence granted to a person is revoked; or

(b) the person to whom a licence has been granted has, during the prescribed period, failed to comply with a condition of the licence; or

(c) there are reasonable grounds for suspecting that he has, during that period, failed to comply with a condition of the licence,

then—

- (d) a member of the Police Force may, without warrant arrest him; and
- (e) a District Court Magistrate may, after receiving evidence on oath, issue a warrant for his arrest.

(8) Where a member of the Police Force arrests a person under Subsection (7) on a ground specified in Subsection (7)(b) or (c), the member shall, as soon as practicable, take him before a prescribed authority.

(9) If the prescribed authority is satisfied that a person brought before him under Subsection (8) failed without lawful excuse to comply with a condition of the licence, the prescribed authority shall cancel the licence.

(10) A person brought before a prescribed authority under Subsection (8) shall, unless the prescribed authority otherwise directs, be kept in custody until the prescribed authority has determined the matter.

(11) Where a licence granted to a person is revoked or cancelled—

- (a) the person may, subject to Subsection (12), be detained in prison to undergo imprisonment for a period equal to the part of his term of imprisonment that he had not served at the time when he was released from prison under the licence; and
- (b) a prescribed authority may give a warrant under his hand for the detention of a person under Paragraph (a).

(12) Where a prescribed authority cancels a licence under Subsection (9), the person to whom the licence was granted may appeal to the National Court against the cancellation.

(13) On an appeal under Subsection (12), the National Court may—

- (a) if it is satisfied that the ground on which the licence was cancelled has been established—confirm the cancellation; or
- (b) if it is not so satisfied—order that the cancellation cease to have effect.

(14) An appeal under Subsection (12) shall be by way of re-hearing, but the National Court may have regard to any evidence given before the prescribed authority.

***Division 11. – Information by Private Persons for Indictable Offences: Ex Officio Indictments.***

**616. INFORMATION BY LEAVE OF THE COURT BY PRIVATE PROSECUTORS.**

(1) Any person may by leave of the National Court present any information against any other person for an indictable offence not punishable with death that is alleged to have been committed by the other person.

(2) An information presented under Subsection (1) shall be—

- (a) signed by the person on whose application the leave is granted or some other person appointed by the National Court for the purpose; and
- (b) filed in the National Court.

(3) The person who signs the information is called the prosecutor.

(4) The information is to be intitled “The Independent State of Papua New Guinea on the prosecution of the prosecutor (naming him) against the accused person (naming him)”, and must state that the prosecutor informs the National Court by leave of the Court.

(5) Except as otherwise expressly provided, the information and the proceedings on it are subject to the same rules and incidents as an indictment presented by the Public Prosecutor and the proceedings on such an indictment as set out in the preceding provisions of this Code.

**617. SECURITY TO BE GIVEN BY PROSECUTOR FOR COSTS OF DEFENCE.**

Before an information under this Division is presented, the prosecutor shall give security in such amount and in such manner as the National Court directs when it gives leave to present the information that he will—

- (a) prosecute the information without delay; and
- (b) pay to the accused person such costs incurred by him in respect of his defence to the charge as the Court orders him to pay.

**618. COST OF DEFENCE.**

<sup>205</sup>Subject to Section 618A, if in a case to which this Division applies—

- (a) the Public Prosecutor informs the National Court that he will not further proceed on the information; or
- (b) the accused person is acquitted on trial,

the Court or the Judge before whom the trial (if any) is had, may award costs to the accused person.

**618A. COSTS OF SUCCESSFUL DEFENDANT.**

<sup>206</sup>(1) Notwithstanding the provisions of Section 618, the Court or the Judge shall, before making an order for costs under that section, consider all relevant circumstances and, in particular, where appropriate, shall consider—

- (a) whether the prosecution acted in good faith in bringing and in continuing the proceedings; and
- (b) whether at the commencement of the proceedings the prosecution had sufficient evidence to support the conviction of the defendant; and
- (c) whether the prosecution took reasonable steps to investigate any matter that—
  - (i) came to its attention; and
  - (ii) suggested that the defendant might not be guilty; and
- (d) whether the prosecution conducted the investigation into the offence in a reasonable manner; and
- (e) whether the evidence was sufficient to support the conviction of the defendant but the information was dismissed on a technical point; and
- (f) whether the information was dismissed because the defendant established that he was not guilty; and
- (g) whether the conduct of the defendant in relation to—
  - (i) the act or omission on which the charge was based; and
  - (ii) the investigation and proceedings,

was such, that a sum should be paid towards the cost of his defence.

<sup>205</sup> Section 618 amended by the *Criminal Code (Costs) Act 1986* (No. 7 of 1986), s1.

<sup>206</sup> Section 618A added by the *Criminal Code (Costs) Act 1986* (No. 7 of 1986), s2.

(2) There shall be no presumption for or against an award of costs.

(3) A defendant shall not be awarded costs under Section 618 or under any provision in any other Act by reason only of the fact that—

- (a) he has been acquitted or discharged; or
- (b) an information charging him with an offence has been dismissed or withdrawn.

**PART IX. – MISCELLANEOUS.****619. CERTAIN ERRORS NOT TO AVOID CONVICTION.**

(1) A conviction shall not be set aside–

- (a) on the ground of the improper admission of evidence, if it appears to the court that the evidence was merely of a formal character and not material; or
- (b) on the ground of the improper admission of evidence adduced for the defence.

(2) A conviction cannot be set aside for any informality in swearing or affirming any witness or interpreter.

**620. WOMEN DETAINED FOR IMMORAL PURPOSES.**

(1) If it appears to a magistrate on complaint made on oath–

- (a) by a parent, relative or guardian of a woman or girl; or
- (b) by any other person who, in the opinion of the magistrate, is acting in good faith in the interest of a woman or girl,

that there is reasonable cause to suspect that the woman or girl is unlawfully detained for immoral purposes by any person in any place within his jurisdiction, he may issue a warrant directed to a member of the Police Force, authorizing him to search for the woman or girl, and, when found, to take her to and detain her in a place of safety until she can be brought before a magistrate.

(2) The magistrate before whom a woman or girl is brought under Subsection (1) may cause her to be delivered up to her parents or guardians, or otherwise dealt with as the circumstances permit and require.

(3) The magistrate issuing the warrant may, by the same or another warrant, direct any person accused of unlawfully detaining the woman or girl to be arrested and brought before a magistrate, and may direct proceedings to be taken for punishing him according to law.

(4) A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she–

- (a) is under the age of 16 years; or
- (b) being of or over the age of 16 years and under the age of 18 years, is detained against her will, or against the will of her father or mother or of any other person who has the lawful care or charge of her; or
- (c) being of or above the age of 18 years, is detained against her will,

and is detained by any person for the purpose of her being unlawfully carnally known by any man, whether a particular man or not.

(5) A person authorized by warrant under this section to search for a woman or girl may enter, if need be by force, any house or other place specified in the warrant, and may remove the woman or girl from it.

(6) A warrant under this section shall be executed by the member of the Police Force mentioned in it, who must, unless the magistrate otherwise directs, be accompanied by the parent, relative, guardian or other person by whom the complaint is made, if the person so desires.

**621. CUSTODY OF GIRLS UNDER 18.**

(1) When on the trial of a person charged with an offence against any provision of Division IV.2 relating to women or girls, it is proved to the satisfaction of the court that the seduction, prostitution or incest of a girl under the age of 18 years has been caused, encouraged or favoured by her father, mother, guardian, master or mistress, the court may—

- (a) make an order divesting the father, mother, guardian, master or mistress of all authority over her; and
- (b) appoint any person or persons who is or are willing to take charge of the girl to be her guardian or guardians until she has attained the age of 18 years, or any age under 18 years that the court directs.

(2) The National Court or a Judge may rescind or vary any order under Subsection (1) by the appointment of any other person or persons as guardian or guardians, or in any other respect.

**622. CERTIFICATE OF DISMISSAL BY MAGISTRATES.**

(1) When a magistrate dismisses a complaint of an offence, whether an indictable offence or not, punishable on summary conviction he may, if required and if he thinks fit, give the accused person a certificate of dismissal.

(2) A certificate of dismissal given under Subsection (1) is a bar to any further prosecution of the accused person for the same cause.

**623. SAVING OF CIVIL REMEDIES.**

Except when expressly provided, the prosecution or conviction of a person for an offence does not affect any civil remedy that any person aggrieved by the offence has against the offender.

**623A. RESTITUTION OF PROPERTY.**

<sup>207</sup>(1) When a person is prosecuted, on the complaint of the owner of property or any person on whom the right to property has devolved by operation of law, on a charge or an indictable offence of which the unlawful acquisition of the property by him is an element, and is convicted of the offence on indictment, the court may order the property to be restored to the owner.

(2) An order made under Subsection (1) has the effect of a judgement, and is binding on the offender and any person claiming through him as determining the ownership of the property, but as regards any other person has the effect only of changing the possession of the property, and does not affect any right of property or right of action.

(3) In any case referred to in Subsection (1), the court before which the offender is convicted may order that any personal property which is found in his possession, and which appears to the court to have been derived, directly or indirectly, from such unlawful acquisition of property, shall be delivered to any person who appears to the court to be entitled to the property so unlawfully acquired.

(4) This section does not apply to a valuable security, if it appears that the security has been paid or discharged in good faith by some person liable to the payment of it, or, being a

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<sup>207</sup> Section 623A added by No. 13 of 1977, s33.

negotiable instrument, has been taken or received by transfer or delivery in good faith by some person for a valuable consideration without any notice and without any reasonable cause to suspect that the same had been so unlawfully acquired.

#### **624. LIMITATION OF PROCEEDINGS.**

(1) An action or prosecution against any person for any thing done in pursuance of any of the provisions of this Code with respect to the arrest of offenders or the seizure of goods must be commenced within six months after the fact committed.

(2) Written notice of the action and of the cause of action must be given to the defendant one month at least before the commencement of the action.

(3) The plaintiff is not entitled to recover in an action referred to in Subsection (1) if—

- (a) tender of sufficient amends is made before action brought; or
- (b) a sufficient sum of money is paid into court by the defendant after action.

(4) If—

- (a) a verdict is given for the defendant; or
- (b) the plaintiff is non-suited or discontinues the action; or
- (c) judgement, on demurrer or otherwise, is given against the plaintiff,

the defendant is entitled to full costs of action as between solicitor and client.

#### **625. COURT FEES IN CRIMINAL CASES.**

No fees can be taken in any court of criminal jurisdiction or before any magistrate from any person who is charged with an indictable offence for any proceeding had or taken in the court or before the magistrate with respect to the charge.

#### **626. COPIES OF DEPOSITIONS TO BE ALLOWED TO PERSONS COMMITTED FOR TRIAL.**

(1) Subject to Subsection (2), a person who is committed for trial or held to bail for an indictable offence is entitled to have on demand from the person who has the lawful custody of the copies of the depositions of the witnesses on whose depositions he has been committed or is held to bail.

(2) If a demand under Subsection (1) is not made before the day appointed for the commencement of the sittings of the court at which the trial of the person on whose behalf the demand is made is to take place, he is not entitled to have a copy of any deposition unless the Judge is of opinion that the copy may be made and delivered without delay or inconvenience to the trial.

(3) The court may postpone a trial on account of the accused person not having previously had a copy of the depositions.

#### **627. INSPECTION OF DEPOSITIONS AT TRIAL.**

A person who is tried for an offence is entitled at the time of his trial to inspect without fee all depositions or copies of depositions, that have been taken against him and returned into the court before which the trial is had.



**628. EXHIBITS.**

Where an exhibit is tendered in a court and it appears to the court that in the public interest the exhibit should not be returned to its owner, the court may order that the exhibit be forfeited, destroyed or otherwise dealt with.

**SCHEDULE 2 – INDICTABLE OFFENCES TRIABLE SUMMARILY.**

Sec. 420.

<sup>208</sup> Code Section No.	Brief description of offence.
64	Unlawful assembly
138	Aiding prisoners to escape
140	Permitting escape
141	Harbouring escaped prisoners
143	Removing, etc., property under lawful seizure
170	Intercepting things sent by post or telegraph
171	Tampering with things sent by post or telegraph
172	Wilful misdelivery of things sent by post or telegraph
173	Obtaining letters by false pretences
174	Secreting letters
175	Fraudulent issue of money orders and postal notes
176	Fraudulent messages respecting money orders
177	Sending dangerous or obscene things by post
207	Offering violence to officiating ministers of religion
216	Defilement of girls under 16 and of idiots
217	Indecent treatment of girls under 16 if girl under 12
227	Indecent acts
228	Obscene publications and exhibitions
230	Common nuisances
231	Bawdy houses

<sup>208</sup> Schedule 2 added by No. 28 of 1980, s6; amended by *Criminal Code (Amendment No. 2) Act 1991* (No. 18 of 1991), s2.

<sup>208</sup> Code Section No.	Brief description of offence.
232	Gaming houses
233	Betting houses
234	Lotteries
237	False information as to health on foreign ships
238	Exposing for sale things unfit for food
239	Dealing in diseased meat
240	Adulterating liquor
322	Wounding and similar acts
328(5)	Dangerous driving of a motor vehicle causing death
335	Common assault
337	Indecent assault on males
340	Assault occasioning bodily harm
341	Serious assaults
349	Indecent assaults on females
359	Threats
362	Desertion of children
372(1)	Punishment of stealing
	Punishment in Special Cases:
372(2)	Stealing wills
372(3)	Stealing things sent by post
372(5)	Stealing from the person
372(5)	Stealing goods in transit
372(6)	Stealing by persons in the Public Service

<sup>208</sup> Code Section No.	Brief description of offence.
372(7)	Stealing by clerks and servants
372(8)	Stealing by directors and officers of companies
372(9)	Stealing by agents, etc.
372(10)	Stealing property of value of K1,000.00
372(11)	Stealing by tenants and lodgers
372(12)	Stealing after previous conviction
376	Killing with intent to steal skin or carcass of animal
377	Making anything movable with intent to steal
383	Unlawful using motor vehicles
390A 390A	Demands for compensation or other payment
395	House-breaking; burglary
396	Unlawful breaking and entering
397	Entering dwelling-house with intent to commit crime
398	Breaking into buildings and committing crime
399	Breaking into buildings with intent to commit crime
400	Breaking into place of worship and committing crime
401	Breaking into place of worship with intent to commit crime
404(1)	Obtaining or procuring anything by false pretence- Chattel, money or valuable security
404(3)	Obtaining or procuring anything by false pretence-Credit
406	Obtaining anything by fraudulent trick
409	Pretending to exercise witchcraft or tell fortunes
410	Receiving stolen property, etc. means by which obtained:

<sup>208</sup> Code Section No.	Brief description of offence.
	if a crime
	in other cases
438	Setting fire to crops and growing plants
439	Attempting to set fire to crops, etc.
443	Injuring animals
444(1)	Malicious injuries in general; punishment in special cases
451	Travelling with infected animals
467	Obliterating crossing on cheques
468	Making documents without authority
472	Falsifying warrants for money payable under public authority
473	Falsification of registers
474	Sending false certificate of marriage to Registrar
475	False statement for purposes of Registers of Births, Deaths and Marriages
476	Attempts to procure an unauthorized status
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