

ARRANGEMENT OF SECTIONS

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DRAFT

No. of 20[]

Criminal Code

COUNTRY X

No. of 20[]

AN ACT to establish a code of criminal law and for related matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Country X and by the authority of the same as follows:

PART I

PRELIMINARY

1. Short title and commencement.

This Act may be cited as the Criminal Code, 20[] and shall come into operation on a day fixed by the Minister by Notice published in the *Gazette*.

2. Exclusion and saving of other laws.

(1) Subject to subsection (2), a person is not liable to punishment by the Common Law, or in any manner otherwise than according to the provisions of this Code, for any act done within the jurisdiction of the court.

(2) Nothing in this Code shall affect

- (a) the liability, trial or punishment of a person for an offence against any statute other than this Code; or
- (b) the liability of a person to be tried or punished for an offence under the provisions of any Act in respect of acts done beyond the ordinary jurisdiction of the court; or
- (c) the power of any court to punish a person for contempt of such court; or
- (d) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code; or

- (e) any power of the Governor-General as the representative of Her Majesty, to grant a pardon, or to remit or commute in whole or in part, or to respite, the execution of any sentence passed or to be passed; or
- (f) any of the laws, regulations or articles for the time being in force for the government of naval, military or air forces.

(3) If a person does an act which is punishable under this Code, and is also punishable under another enactment of any of the kinds referred to in this section, he or she shall not be punished for that act both under that enactment and also under this Code

3. Interpretation.

(1) In this Code, unless the context otherwise requires

“account”, in relation to a company or corporation, includes any book, register, balance sheet or document in writing or recorded in any other form or stored electronically, relating to the affairs of the company or corporation whether or not such affairs are the ordinary business or object of the company or corporation;

“act” includes any act or omission, and any series of acts or omissions, and any combination of acts and omissions;

“acts are done publicly”

- (a) if they are so done in any public place, as to be likely to be seen by any person, whether such person be or be not in a public place; or
- (b) if they are so done in any place, not being a public place, as to be likely to be seen by any person in any public place;

“administer”, when used with reference to administering any substance to a person, means causing the substance to be taken or introduced into any part of a person’s body, whether with or without his knowledge or consent;

“adult” means a person eighteen years of age or older;

“animal” means any domestic animal;

“brothel” means a place resorted to by persons of either sex for the purpose of prostitution;

“cart” includes any cart, wagon, truck, barrow, or other carriage on wheels used to carry loads or burdens;

“cattle” means the male, female or young of any animal of any of the following kinds, that is to say any horse, ass, mule, kine, sheep, goat or swine, and any animal, other than a dog, which is ordinarily kept or used as a beast of burden, or for draught, or for ding, or for the production of wool or of hair;

“child” means a person who is aged twelve years and under;

“civil office” means any public office other than an office in the military or naval service of Her Majesty;

“clerk of court” in the case of a Magistrate’s court, includes the person appointed by the Magistrate for any purpose in a case of emergency, where from any cause the services of a clerk are not available;

“clerk” includes any person

- (a) employed for any purpose as a clerk;
- (b) employed as a collector of money, whether temporarily or part time;
- (c) employed as a commission agent for the collection or disbursement of money or in any similar capacity;

“company” includes any partnership or association whether corporate or unincorporate, and whether the purposes be or be not the carrying on of any trade or business, and whether it be in course of formation or be actually formed, or be in course of dissolution, winding-up or liquidation;

“complaint” includes any information or charge;

“complainant” includes any informant or prosecutor;

“conviction” includes order, or minute or memorandum;

“corporation” does not include a corporation sole;

“court” means the High Court or a Magistrate’s court as the case may be, in the exercise of its criminal jurisdiction, and includes the Judge or a Magistrate except where specifically stated;

“crime” includes any offence;

“dangerous”, in relation to an act, means likely or calculated to cause dangerous harm;

“dangerous harm” means harm endangering life;

“deadly”, in relation to an act, means likely to cause death or which causes death;

“deception” means any deception, whether deliberate or recklessly, by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or of any other person;

“defendant” means an accused person charged with an offence;

“deliver” includes causing a person to receive a thing or permitting a person to take a thing, whether directly or indirectly or by any other person;

“document” includes any document in writing whether of a formal or informal character, any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means;

“duress” means any force, harm, constraint or threat, used with intent to cause a person against his will to do or to abstain from doing any act;

“drunk” includes a state produced by narcotics or drugs;

“enactment” means any Act and any orders or rules made under the authority of any Act;

“fine” includes any pecuniary penalty, forfeiture, or compensation payable under an order;

“gaming house” means any building or premises kept or used by any person without lawful authority, for the purpose of directly or indirectly making gain by providing any facilities for betting or for the playing of any game of chance for money or money’s worth;

“goods” include any goods, chattels, or anything which may be the subject of stealing;

“grievous harm” means any harm which amounts to a maim or dangerous harm or which seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement or to any

permanent or serious injury to any external or internal organ, limb or faculty;

“guardian”, in relation to a child, includes the person who has charge of, or has control over, such child;

“harm” means any bodily injury, disease or disorder, whether permanent or temporary;

“identifiable group” means any section of the public distinguished by colour, race, religion or ethnic origin;

“indictable offence” means any offence punishable under this Code or any other enactment;

“indictment” includes a criminal information triable before a jury;

“injury” means any harm, damage or trespass whatsoever illegally caused to any person or property;

“instrument of obeh” means any philtre, vial, blood, bone, image or other article or thing, which according to the testimony of two or more credible witnesses, is used or intended to be used in the practice of obeh;

“intention to defraud”, in relation to any act of forgery, falsification or other unlawful act, means an intent to cause by means of such forgery, falsification or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to the person at the expense or to the loss of any other person;

“Judge” means a Judge of the High Court of Justice;

“judicial officer” means any person executing judicial functions as a public officer, whether the person is entitled or not entitled to any salary or other remuneration in respect of the duties of his office;

“judicial proceedings” includes any civil or criminal trial, and any inquiry or investigation held by a judicial officer in pursuance of any duty or authority;

“knowingly”, in relation to any expression denoting uttering or using, includes knowledge of the character of the thing uttered or used;

“land” includes any immovable property;

“medical practitioner” means any person registered as a qualified medical practitioner;

“mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind, except intoxication;

“Minister” means the Minister responsible for Justice;

“minor” means any person under the age of eighteen years;

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

“notified plant” includes

- (a) arrowroot, banana, bean, cassava, cocoa, coconut, coffee, dasheen, Indian corn, kola, logwood, lime, manioc, nutmeg, peas, pimento, plantain, sweet potatoe, sugar cane, tania, tobacco, tonka bean, vanilla, yam;
- (b) any other plant which Cabinet may by Notice in the *Gazette* determine;

“notified plant product” means

- (a) the product of any notified plant, whether or not it is in its natural state or is raw, cured or prepared for commercial purposes;
- (b) any other plant product which Cabinet by notice in the *Gazette* declares to be a notified plant product;

“noxious matter” includes matter which is noxious only by reason of quantity taken or administered or of the circumstances under which it is taken or administered, or the state of health or peculiar bodily susceptibilities of the person by whom it is taken or to whom it is administered;

“oath” includes an affirmation and a statutory declaration;

“obeah” means any pretended assumption of supernatural power or knowledge, whatever, for fraudulent or illicit purposes, or for gain, or for the injury of any person;

“obtain”, in relation to deception, includes obtaining for another or enabling another to obtain or to retain;

“offence” means an act, attempt or omission punishable by law;

“offender” means a defendant convicted of an offence;

“officer”, in relation to a company or corporation, includes any officer, chairman, director, trustee, manager, secretary, treasurer, cashier, clerk, auditor, accountant or other person provisionally, permanently or temporarily charged with or performing any duty or function in respect of the affairs of the company or corporation, whether for or without any remuneration;

“order” includes any conviction;

“person” includes anybody of persons, corporate or unincorporate;

“plant” includes tree or any species of vegetable or any part of any such vegetable;

“poison” includes matter which is poisonous only by reason of the quantity taken or administered or of the circumstances under which it is taken or administered or of the state of health or the peculiar bodily susceptibilities of the person by whom it is taken or to whom it is administered;

“prison” means Her Majesty’s Prison or any lock-up house, police cell, or other authorized place of detention, whether such place of detention is, in the case of a juvenile or adult defendant sent, situate in Country X;

“property” includes money and all other property, land or personal including things in action or other intangible property;

“public election” means any election the qualification for voting at which, or the mode of voting at which, is determined or regulated by law;

“public office” means the office of any public officer;

“public officer” means any person holding any of the following offices, or performing the duties, whether as a deputy or otherwise, that is to say

- (a) any civil office, including the office of Governor-General, the power of appointing a person to which or of removing a person from which is vested in Her Majesty, or in the Governor-General or in any public commission or board; or

- (b) any office to which a person is nominated or appointed by an enactment or by public election; or
- (c) any civil office, the power of appointing to which or of removing from which is vested in any person or persons holding public office of any kind included in paragraphs (a) and (b); or
- (d) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court; or
- (e) any Justice of the Peace;

“public place” includes any public way and any building, place or conveyance to which for the time being the public are entitled or permitted to have access, either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meeting or assembly, or as an open court;

“public way” includes any highway, market place, road and road infrastructure and road related area, square, street, bridge, or other way which is lawfully used by the public;

“road” means an area that is open to, or used by the public and is developed for, traffic, or has as one of its main uses, the driving, riding or parking of a vehicle or other traffic;

“road infrastructure” includes

- (a) a road, including its surface or pavement;
- (b) anything under or supporting a road or its surface or pavement and maintained by the government or agency of the government;
- (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of a road system or supporting a road;
- (d) any bridge or other work or structure located above, in or on a road and maintained by the government or agency of the government;
- (e) anything as prescribed to be included in this definition;

“road related area” means

- (a) an area that divides a road;

- (b) a footpath or nature strip adjacent to a road;
- (c) an area that is open to the public and is designated for use by cyclists or animals;
- (d) an area that is not a road that is open to or used by the public for driving, riding or parking of vehicles;
- (e) a shoulder of a road;
- (f) any other area that is open to or used by the public and designated a road under an enactment;

“send” includes the causing, or attempting in any manner to cause, a thing to be received by a person;

“sentence” includes an order;

“spouse” means lawful husband or wife as the case may be;

“summary offence” means any offence punishable under sections 492 to 607 or punishable on summary conviction under any other enactment;

“termination of pregnancy” means termination of human pregnancy with an intention other than to produce a live birth;

“threat” means

- (a) any threat of criminal force or harm; or
- (b) any threat of criminal mischief to property; or
- (c) any threat of libel or of slander; or
- (d) any threat that a person is prosecuted on a charge of having committed any offence whether the alleged offence is punishable under this Code or under any other enactment, and whether it has or has not been committed;

“trust” includes the acquiring, holding, receiving, or having control over, or being in any manner entrusted with, any property for or belonging to another person, including property which belonged to a deceased person at the time of his death;

“trustee” means

- (a) a trustee of an express trust created by any deed, will or instrument in writing, or by parol, or otherwise, and includes the heir or personal representative of a trustee, and any other person upon whom the duty of such trust devolves, whether by appointment of a court or otherwise, and
- (b) an executor or administrator, and an official manager, assignee, liquidator or other like officer acting under any enactment relating to joint stock companies, bankruptcy or insolvency, and also includes the person who acquires, holds, receives, or has control over, or is in any manner entrusted with any property which belonged to a deceased person at the time of his death;

“utter” includes using or dealing with, and attempting to induce a person to use, deal with, or act upon, the thing in question;

“valuable security” includes any writing entitling or evidencing the title of the person to any share or interest in any public stock, annuity, fund or debt or to any deposit in any bank or any debenture, bill, note, warrant or other security for the payment of money or any authority for request for the payment of money;

“vehicle” includes any car, carriage, cart, wagon, truck, barrow, tricycle, bicycle, or other means of conveyance whatsoever, irrespective of how drawn or propelled;

“vessel” means any kind of ship, boat or raft, whether used for navigating the sea or for any inland navigation and includes any aircraft;

“violence” means

- (a) any criminal force or harm to any person;
- (b) any criminal damage to any property;
- (c) any threat or threat of criminal force or harm or damage;
- (d) the carrying or use of deadly, dangerous or offensive instrument in such a manner as is likely to cause in any person a reasonable apprehension of criminal force, harm, or damage to him or his property;
- (e) such conduct as is likely to cause a reasonable apprehension of criminal force, harm or damage to him or his property;

“will”, in relation to a document, means any testamentary document, whether formal or informal, complete or incomplete;

“wreck” includes the cargo, stores and tackle of any vessel and all parts of a vessel separated there from, and also the property of shipwrecked persons or property from any wrecked vessel;

“writing” includes typing, printing, lithography, photography or other mode of representing or reproducing words in a visible form;

“young person” means a person who is of or above the age of twelve years and under the age of sixteen years.

(2) For the purposes of any provision of this Code relating to defrauding a person or to committing any offence against the property of any person, the Government of Country X or of any other place or State, shall be deemed to be a person.

4. Definition of certain terms, etc.

(1) The expression “a person employed in the Public Service” includes a person who is by law authorized or required to discharge a particular duty to the public whether or not for a reward or remuneration and including, police officers and any person employed to execute any process of a court.

(2) The expression “be in possession” or “have possession” includes not only having in one’s own personal possession, but also

(a) knowingly having

(i) in the actual possession or custody of any other person;

(ii) in any place, whether belonging to or occupied by oneself or not, for the use or benefit of oneself or of any other person;

(b) where there are two or more persons, and any one or more of them, with the knowledge and the consent of the rest has or have anything in his or their custody or possession it shall be deemed to be in the custody or possession of each and all of them.

(3) A reference to “public” or “the public” is a reference not only to the whole of Her Majesty’s subjects within the jurisdiction of the Courts but also to persons inhabiting or using any particular place or any numbers of such persons, and also to such indeterminate persons as may happen to be affected by the conduct with reference to which the expression is used.

(4) A company is in the course of formation as soon as any act is done for the purpose of forming it; and it is immaterial whether or not it be at any time actually formed.

(5) A person acting as a minister of religion or ecclesiastical officer, of whatever denomination, is a public officer in so far as he performs functions in respect of the notification of intended marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect.

(6) Any expression in this Code referring to a threat shall be deemed to include any offer to abstain from doing, or to procure any other person to abstain from doing, anything the threat of which is a threat of any of the kinds in this section.

(7) It is immaterial whether

(a) a threat be that the matter is executed by the person using the threat, or against or in relation to the person to whom the threat is used, or by, or against, or in relation to any other person;

(b) a threat or offer be conveyed to any person by words, or by writing, or in any other manner, and whether it be conveyed directly, or through any other person, or in any other manner.

5. Construction.

(1) This Code is not to be construed strictly, either as against Her Majesty or as against a person of any offence, but must be construed amply and beneficially for giving effect to the purposes.

(2) In the construction of this Code, a court is not bound by any judicial decision or opinion on the construction of any other enactment, or of the Common Law, as to the definition of any offence or of any element of any offence.

6. Construction of “on conviction on indictment”

The expression “on conviction on indictment”, or any expression having the like meaning, where used in this Code or any other Act in relation to any offence or the punishment for any offence, shall be taken to imply that a person charged with that offence is triable on indictment before the High Court

7. Construction of “on summary conviction” etc

The expression “on summary conviction”, or “on conviction before a court of summary jurisdiction”, or any expression having the like meaning, when used in this Code or any other Act in relation to any offence or the punishment for any offence, shall be taken to imply that a person charged with that offence is triable and may be dealt with summarily by a

court of summary jurisdiction.

8. Jurisdiction.

(1) No act done or omitted outside Country X is an offence, unless it is an offence by virtue of any provision of this Code or of any other enactment.

(2) For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in Country X, the offence shall be deemed to be committed in Country X, whether the person charged with the offence was in Country X or not at the time of the act or omission.

(3) No proceedings for an offence triable by reason of any provision of the First Schedule may be instituted in Country X, except by, or with the consent of, the Director of Public Prosecutions.

(4) For the purposes of this Code the jurisdiction of the courts of Country X extend to every place within 12 miles of Country X, unless otherwise stated in another Act.

(5) Any act done or omitted beyond Country X by any person—

(a) on board any Country X ship; or

(b) on board any Country X aircraft; or

(c) on board any ship or aircraft, if that person arrives in Country X on that ship or aircraft in the course or at the end of a journey during which the act was done or omitted;

and that act or omission would, if it occurred within Country X, be a crime under this Code or under any other enactment (whether that enactment was passed before or after the commencement of this Code), then, subject to the provisions of this Code and of that other enactment, he shall be liable either on conviction on indictment or on summary conviction as if the act or omission had occurred in Country X: Provided that where any proceedings are taken by virtue of the jurisdiction conferred by this subsection it shall be a defence to prove that the act or omission would not have been an offence under the law of the State of which the person charged was a national or citizen at the time of the act or omission, if it had occurred in that State.

PART II

CRIMINAL RESPONSIBILITY

9. Application of Part II

This Part shall apply to all persons charged with any offence against this Code or any other Act.

10. Ignorance of law no excuse

(1) Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence, unless knowledge of the law by the defendant is expressly declared to be an element of the offence.

(2) Notwithstanding anything in subsection (1) 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.

11. Accident etc

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which 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.

12. Motive

Unless otherwise expressly declared, the motive by which a person is induced to do an act or to make an omission, or to form an intention, is immaterial so far as regards criminal responsibility.

13. Ignorance or mistake of fact or of law.

(1) A person is not to be punished for any act which, by reason of ignorance or mistake of fact in good faith, the person believes to be lawful.

(2) A person is not, except as in this Code otherwise expressly provided, exempt from liability to punishment for any act on the ground of ignorance that such act is prohibited by law.

14. Extraordinary emergencies

Subject to the express provisions of this Code relating to acts done or omissions made upon 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 powers of self-control could not reasonably be expected to act otherwise.

15. Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

16. 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—

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

(2) A person whose mind, at the time of his doing an act or making an omission, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit 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.

17. Intoxication

(1) Section 16 shall apply and have effect in relation to any person whose mind is disordered by intoxication—

- (a) where the intoxication is caused by the administration of any intoxicating liquor, drug or other thing whatsoever in circumstances—
 - (i) where the administration occurred without the consent of the person to whom such liquor, drug or other thing was administered; or
 - (ii) where the person, to whom such liquor, drug or other thing

was administered did not know or had no reason to believe that intoxication could result from such administration; or

- (b) where the intoxication results from the due carrying out of a *bona fide* course of medical treatment.

(2) For the purposes of subsection (1) it is immaterial whether the intoxication is caused by the administration of the intoxicating liquor, drugs or other thing whatsoever to the person who so became intoxicated by himself or by any other person.

(3) The onus of proving that anything in subsection (1) applies in relation to any particular person at any particular time shall be upon the person who alleges that the said provision so applies.

18. Intention in relation to intoxication

Where an intention to cause a specific result is an element of an offence, then intoxication of any person charged with that offence shall be taken into account for the purpose of determining whether or not he had such an intention.

19. Age of criminal responsibility

A child, aged 12 and under, is not criminally responsible for any act or omission.

20. Age of child

Where any person is charged with an offence under this Code or any other Act, in respect of a child who is alleged to be under any specified age and that the child appears to the court to be under that age, such child shall be presumed to be under that age unless the contrary is proven.

21. Judicial officers

Except where otherwise expressly provided by any provision of law, a judicial officer is not criminally responsible for any act done or omission made by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is required to do the act which he has omitted to do.

22. Acts done in execution etc of provision of law

(1) A person is not criminally responsible for an act or omission where he does the act or makes the omission—

- (a) in due execution of any provision of law; or

- (b) in due obedience to the order of a competent authority which he is required to obey by or under any provision of law, unless such order is manifestly unlawful.

(2) Whether an order is or is not manifestly unlawful is declared to be a question of law

23. Compulsion of husband

(1) A married woman is not relieved of responsibility for an act or omission solely because the act is done or, as the case may be, the omission is made, in the presence of her husband.

(2) Notwithstanding anything in subsection (1) a married woman is not criminally responsible for an act or omission—

- (a) which she is actually compelled by her husband to do or make; and
- (b) which is done or made in his presence,

except an act or omission which would constitute murder, in which case the presence of her husband is immaterial.

24. No conspiracy between husband and wife alone

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

25. Criminal responsibility of husband and wife for acts done by either with respect to the other's property

(1) This section applies in relation to the parties to a marriage, and to property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) Subject to subsection (4), a person has the same right to bring proceedings against that person's wife or husband for any offence, whether under this Code or otherwise, as if they were not married, and a person bringing any such proceedings is competent to give evidence for the prosecution at every stage of the proceedings.

(3) Subject to subsections (4) and (5), proceedings must not be instituted against a person for any offence of theft or doing unlawful damage to property which at the time of the offence belongs to that person's wife or husband, or for any attempt, incitement or conspiracy to commit such an offence, unless the proceedings are instituted by or with the consent of the Director of Public Prosecutions.

(4) Subsection (3) does not apply where there is in existence in relation to the husband and wife

- (a) a decree nisi of divorce or nullity granted under the Divorce Act;
- (b) a decree of judicial separation;
- (c) a separation agreement; or
- (d) a protection order or a peace binding order or an order for the husband not to molest his wife or have sexual intercourse with her or an order for the wife not to molest her husband or have sexual intercourse with him.

(5) Subsection (3)

- (a) shall not apply to proceedings against a person for an offence
 - (i) if that person is charged with committing the offence jointly with the wife or husband; or
 - (ii) if by virtue of any judicial decree or order, wherever made, that person and the wife or husband are at the time of the offence under no obligation to cohabit; and
- (b) shall not prevent the arrest, or the issue of a warrant for the arrest of a person for an offence, or the remand in custody or on bail of a person charged with an offence, where the arrest, if without a warrant, is made, or the warrant of arrest issues on an information laid by a person other than the wife or husband.

26. Offences by partners and members of companies with respect to partnership or corporate property.

Any person who, being a member of a partnership, corporation or any association recognized as a company under any relevant Act does any act or makes any omission with respect to the property of the partnership, corporation or company which, if he were not a member of the partnership, corporation or company, would constitute an offence, is criminally responsible to the same extent as if he were not such member.

PART III

DEFENCES

Consent

27. Claim of right.

A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right without intention to defraud.

28. Provisions relating to consent.

- (1) A consent shall be void if
 - (a) the person giving it is under seven years of age, or is, by reason of mental disorder, or of immaturity, or of any other permanent or temporary incapacity, whether from intoxication or any other cause, unable to understand the nature or consequences of the act to which he consents;
 - (b) it is obtained by means of deceit or of duress.
 - (a) it is obtained by the undue exercise of any official, parental, or other authority; and any such authority which is exercised otherwise than in good faith for the purposes for which it is allowed by law, shall be deemed to be unduly exercised.
- (2) A consent given on behalf of a person by his parent, guardian or any other person authorized by law to give or refuse consent on his behalf, shall be void if it is given otherwise than in good faith for the benefit of the person on whose behalf it is given.
- (3) A consent shall have no effect if it is given by reason of a mistake of fact.
- (4) A consent shall be deemed to have been obtained by means of deceit or of duress, or of the undue exercise of authority, or to have been given by reason of a mistake of fact, if it would have been refused but for such deceit, duress, exercise of authority or mistake, as the case may be.
- (5) For the purposes of this section, exercise of authority is not limited to exercise of authority by way of command, but includes influence or advice purporting to be used or given by virtue of an authority:

(6) A person is not prejudiced by the invalidity of any consent if the person did not know, and could not by the exercise of reasonable diligence have known, of such invalidity.

29. Extent of justification.

Notwithstanding section 28, the use of force against a person may be justified on the ground of his consent to the use of such force.

30. Use of force in case of consent of the person against whom it is used.

The use of force against a person may be justified on the ground of his consent, subject to the following:

- (a) the killing of a person cannot be justified on the ground of consent;
- (b) a wound or grievous harm cannot be justified on the ground of consent, unless the consent is given, and the wound or harm is caused, in good faith, for the purposes or in the course of medical or surgical treatment;
- (c) a party to a fight, whether lawful or unlawful cannot justify, on the ground of the consent of another party, any force which he uses with intent to cause harm to the other party;
- (d) a person may revoke any consent which he has given to the use of force against him, and his consent when so revoked has no effect for justifying force except that the consent given by a husband or wife at marriage, for the purposes of marriage, cannot be revoked until the parties are divorced or separated by a judgment or decree of a competent Court;
- (e) consent to the use of force for the purposes of medical or surgical treatment does not extend to any improper or negligent treatment;
- (f) consent to the use of force against a person for purposes of medical or surgical treatment, or otherwise for his benefit, may be given against his will by his parent or guardian, or a person acting as his guardian if he is under eighteen years of age, or by any person lawfully having the custody of him if he is insane or is a prisoner in any prison or reformatory, and, when so given on his behalf, cannot be revoked by him; and
- (g) if a person is intoxicated or insensible, or is from any cause unable to give or withhold consent, any force is justifiable which is used, in good faith and without negligence, for the purposes of medical

or surgical treatment, or otherwise for his benefit, unless some person authorized by him or by law to give or refuse consent on his behalf dissents from the use of such force.

Justifiable Force and Harm

31. Justification of person aiding another person in use of justifiable force.

A person who aids another person in a justifiable use of force is justified to the same extent and under the same conditions as the other person.

32. Use of force in arrest, detention, or recapture of person committing indictable offence.

(1) Any person may

(a) with or without warrant or other legal process, arrest and detain another person who has committed an indictable offence; and

(b) if the other person, having notice or believing that he is person of an indictable offence, avoids arrest by resistance or flight or escapes or endeavours to escape from custody, use any force which is necessary for his arrest, detention, or recapture, and may kill him, if he cannot by any means otherwise be arrested, detained, or retaken.

(2) A person who is authorized by warrant or other legal process to arrest or detain a person for an indictable offence may

(a) if that person has notice or believes that a warrant or other legal process is in force against him, justify any force which is necessary for his arrest, detention, or recapture; and

(b) kill him, if he cannot by any means otherwise be arrested, detained or retaken although in fact the indictable offence has not been committed by the other person, or although in fact an indictable offence has not been committed.

33. Use of force to arrest, detain, or search a person otherwise than for an indictable offence.

A person who has authority, by warrant or other legal process or under the provisions of any enactment, to arrest, detain, or search another person otherwise than for an indictable offence, may justify any necessary force not extending to a blow, wound, or grievous harm, if the other person has notice or believes that the force is used by virtue of any such authority.

34. *Bona fide* assistant and Superintendent of Prisons.

(1) Where a person, who is authorized to execute a warrant to arrest, arrests a person whom the person believes in good faith and on reasonable and probable grounds is the person named in the warrant, he is protected from criminal responsibility to the same extent and subject to the same provisions of this Code, as if the person arrested is the person named in the warrant.

(2) If a person who is called upon to assist in an arrest under subsection (1) believes that the person whose arrest he is called upon to assist is the person in respect of whom the warrant was issued, he and the Superintendent of Prisons who is required to receive and detain the person, is protected to the same extent and subject to the same provisions of this Code, as if the person arrested is the person named in the warrant.

35. *Bona fide* execution of defective warrant or process.

(1) Subject to subsection (2), the person who acts under a warrant or process which is bad in law on account of a defect in substance or form apparent on the face of it, is relieved of criminal responsibility to the same extent and subject to the same provisions of this Code, as if the warrant or process were good in law, if the person believed in good faith and without culpable ignorance or negligence that the warrant or process was good in law.

(2) It is a question of law whether or not the facts adduced in evidence constitute culpable ignorance or negligence in his believing the warrant or process is good in law.

36. Grounds on which force or harm may be justified, within prescribed limits.

Force may be justified in the following cases and manner, that is to say

- (a) express authority given by an enactment; or
- (b) authority to execute the lawful sentence or order of a court; or
- (c) the authority of an officer to keep the peace or of a court to preserve order; or
- (d) authority to arrest, and detain for an indictable offence; or
- (e) authority to arrest, detain or search a person otherwise than for an indictable offence; or
- (f) necessity for prevention of or defence against crime; or
- (g) necessity for defence of property or possession or for overcoming obstruction to the exercise of lawful rights; or

- (h) necessity for preserving order on board a vessel; or
- (i) authority to correct a child for misconduct; or
- (j) except where otherwise expressly provided in this Code, the consent of the person against whom the force is used.

37. General limits of justifiable force or harm.

Notwithstanding the existence of any matter of justification for force, force cannot be justified as having been used in pursuance of that matter

- (a) which is in excess of the limits prescribed in this Part relating to that matter; or
- (b) which in any case extends beyond the amount and kind of force reasonably necessary for the purpose for which force is permitted to be used.

38. Use of force for defence of property or possession, or overcoming obstruction of legal right.

A person may justify the use of force for the defence of property or possession, or for overcoming an obstruction to the exercise of any legal right, as follows

- (a) a person in actual possession of a house, land, vessel, or goods, or any other person authorized by him, may use such force, as is necessary for repelling a person who attempts forcibly and unlawfully to enter the house, land, or vessel, or to take possession of the goods;
- (b) a person in actual possession of a house, land, or vessel, or his servant or any other person authorized by him may use such force, as is necessary for removing a person who, being in or on the house, land, or vessel, and having been lawfully required to depart refuses to depart;
- (c) if a person wrongfully takes possession of or detains goods, any other person who, as against him, has a present right to the possession of them, may, upon his refusal to deliver up the goods on demand, use such force, by himself or by any other person, as is necessary for recovering possession of the goods; and
- (d) a person may use such force, as is necessary for overcoming any obstruction or resistance to the exercise by him of any legal right.

39. Use of force for prevention of or defence against crime.

(1) For the prevention of, or for the defence of himself or any other person against

- (a) any crime, a person may justify the use of necessary force;
- (b) any criminal force or harm, a person may justify the use of necessary force;
- (c) any indictable offence, a person may justify the use of necessary force;
- (d) any of the following crimes, a person may justify any necessary force or harm, extending, in case of extreme necessity, even to killing, that is to say
 - (i) high treason;
 - (ii) treason;
 - (iii) piracy;
 - (iv) murder;
 - (v) manslaughter, except manslaughter by negligence;
 - (vi) robbery;
 - (vii) burglary;
 - (viii) arson of a dwelling-house or vessel;
 - (ix) rape;
 - (x) grievous harm.

(2) For the suppression or dispersion of a riotous or unlawful assembly, force may be justified in the cases and subject to the conditions specified in this Code with respect to such assemblies.

(3) No force used in an unlawful fight can be justified under any provision of this Code; and every fight is an unlawful fight in which a person engages, or which he maintains, otherwise than solely in pursuance of some of the matters of justification specified in this Part.

40. Use of force against third person interfering in case of justifiable use of force.

A person who, in justifiably using force against another person, is obstructed or resisted by a third person, may in any case use such force against the third person, as is necessary for overcoming the obstruction or resistance; and may, if the obstruction or resistance amounts to a crime or to abetment of a crime, use force in accordance with the provisions of this Part with respect to the use of force in case of necessity for preventing crime.

41. Use of force in execution of sentence or order of a court.

A person who is authorized to execute any lawful sentence or order of a court may justify the use of the force mentioned in the sentence or order.

42. Use of force by Judicial or official authority, for preservation of order.

A person who is authorized as a peace officer, or in any judicial or official capacity, to keep the peace or preserve order at any place, or to remove or exclude a person from any place, or to use force for any similar purpose, may justify the execution of his authority by any necessary force.

43. Use of force for preserving order on board a vessel.

The master of a vessel, or any person acting by his order, may justify the use of any such force against any person on board a vessel as is necessary for suppressing any mutiny or disorder on board the vessel, whether among officers, seamen, or passengers, whereby the safety of the vessel, or of any person about to enter or leave the vessel, is likely to be endangered, or the master is threatened to be subject to the commands of any other person; and may kill any person who abets such mutiny or disorder, if the safety of the vessel, or the preservation of any person, cannot by any means be otherwise secured.

44. Use of force by authority of an enactment.

A person who is authorized by the provision of any statute to use force may justify the use of necessary force according to the terms and conditions of his authority.

45. Use of force against riotous or unlawful assembly.

For the suppression or dispersion of a riotous or unlawful assembly, reasonable force may be used subject to the provisions of this Code with respect to riotous or unlawful assembly.

46. Right of person arrested, etc., to inspect warrant.

Where the arrest, detention, or search of a person is justifiable only on the authority of a warrant or other written process, if the person demands a view of the warrant or process, the use of force against him cannot be justified unless he is permitted to inspect the warrant or process, and he refuses to submit to the authority.

47. Use of force in correcting a child for misconduct.

Use of force may be justified for the purpose of correction, as follows

- (a) a parent may correct his legitimate or illegitimate child, being under sixteen years of age, or any guardian or person acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command;
- (b) a school teacher may correct any person under sixteen years of age, for misconduct or default in his duty;
- (c) a parent or guardian, or a person acting as a guardian, may delegate to any person whom he entrusts permanently or temporarily with the governance or custody of his child or ward all his own authority for correction including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a principal of a school or a person acting as a principal of a school, in respect of a child or ward;
- (d) a person who is authorized to inflict correction in this section may, in any particular case, delegate to any fit person the infliction of such correction; and
- (e) no correction can be justified which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction can be justified in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.

Automatism

48. Automatism.

A person who acts in a state of automatism where the act alleged to constitute the offence is committed by the person involuntarily so that he has no control over his physical activities due to some external factor which causes him to be unconscious or otherwise act

without his will and the act or condition is not the result of anything done intentionally or recklessly or as a result of voluntary intoxication has not committed an offence.

Duress

49. Duress of circumstance.

(1) An act of a person does not constitute an offence if the act is done under duress of circumstance.

(2) A person does an act under duress of circumstance if

- (a) the person knows or believes that it is immediately necessary to avoid death or serious injury to him or another person he is bound to protect;
- (b) the danger that he knows or believes to exist is such that in all the circumstances he cannot reasonably be expected to act otherwise.

(3) It is for the person to show that the reason for his act is such knowledge or belief as is mentioned in subsection (2)(a).

(4) This section shall not apply to a person who knowingly and without reasonable excuse exposed himself to the danger known or believed to exist.

(5) If the question arises whether a person knowingly and without reasonable excuse exposed himself to such danger; it is for him to show that he did not so expose himself to such danger.

50. Duress by threat.

(1) An act of a person does not constitute an offence if the act is done under duress by threat, unless the act constitutes murder or attempted murder.

(2) A person does an act under duress by threat if he does it because the person knows or believes

- (a) that a threat has been made to cause death or serious injury to himself or to another person he is bound to protect if the act is not done; and
- (b) that the threat will be carried out immediately if he does not do the act or if not immediately before he or that other person can obtain any protection against the threat;

- (c) that there is no other way of preventing the threat being carried out, and the threat is one which in all the circumstances he cannot reasonably be expected to resist.

(3) It is for the person to show that the reasons for his act is the knowledge or belief as is mentioned in subsection (2).

(4) This section shall not apply to a person who knowingly and without reasonable excuse exposed himself to such a risk; it is for him to show that he did not so expose himself to such risk.

51. Necessity.

An act of a person which, but for this section would not constitute an offence, is an offence if

- (a) it was done in order to avoid consequences which could not otherwise be avoided and which if they had occurred would have inflicted upon him or another person whom he was bound to protect inevitable or irreparable harm or damage;
- (b) it was no more than was reasonably necessary for that purpose; and
- (c) the harm inflicted by it was not disproportionate to the danger avoided.

52. Proof of defence of automatism, duress or necessity.

(1) The burden of proof in respect of the defence of automatism, duress or necessity lies on the person and the court shall allow the prosecutor to adduce or elicit evidence to prove otherwise.

(2) Where a person relies on the defence of automatism, duress or necessity, the person shall give seven days notice prior to the trial to the prosecutor stating the particulars of his defence.

PART IV

PARTIES TO OFFENCES

53. Principal defendants.

(1) When an offence is committed, each of the following persons is 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 which constitutes the offence;
- (b) every person who does any act or makes any omission for the purpose of enabling or aiding another person to commit the offence;
- (c) every person who aids another person in committing the offence; and
- (d) any person who counsels or procures any other person to commit the offence.

(2) In the circumstances mentioned in subsection (1) (d) the person may be charged either with committing the offence himself or with counselling or procuring its commission.

(3) A person convicted of counselling or procuring an offence shall be liable to the same consequences in all respects as if he had been convicted of committing the offence.

(4) Any person who procures another person to do any act or make any omission of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same sentence, as if he had done the act or made the omission; and he may be charged with doing the act or making the omission.

54. Offences committed in prosecution of common purpose.

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and 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 such purpose, then each of such persons is deemed to have committed the offence.

55. Mode of execution immaterial.

(1) When a person counsels another person to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in a different way, if in either case the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

(2) In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

56. Accessories after the fact.

(1) A person who receives, relieves or assists another person who has to his knowledge committed an offence in order to enable him to escape punishment becomes an accessory after the fact to offence.

PART V

SENTENCING

General Principles

57. Act when punishable.

A person shall not be sentenced for doing any act which does not constitute an offence under the law in force when the act was done.

58. Conviction essential before sentence.

When a person is declared to be liable to be sentenced for doing an act, that person is only liable to sentence after he is convicted.

59. Different kinds of sentence.

The following sentences may be determined under this Code

- (a) imprisonment;
- (b) fine;
- (c) payment of compensation;
- (d) drug treatment order;
- (e) probation;
- (f) community service order

60. Sentence if not specified.

(1) Where a crime is declared by this Code, or by any other enactment

- (a) to be an indictable offence, and the punishment for it is not specified, a person convicted is liable to imprisonment for four years, or to a fine of seven thousand dollars; and
 - (b) the punishment for it is not specified, a person convicted is liable to imprisonment for two years, or to a fine of four thousand dollars.
- (2) Subject to the provisions of this Code or of any other enactment relating to
- (a) the crime, the court before which any person is convicted of a crime may, in its discretion, sentence him to any less term of imprisonment than the term prescribed by this Code, or such other statute, for the crime;
 - (b) the offence, the court may, in its discretion, sentence any person convicted before it of an offence punishable by penalty or fine, to any less penalty or fine than that prescribed by this Code, or such other statute, for the offence.
- (3) A fine for the infringement of any law relating to the revenue shall not be reduced below the amount or proportion allowed in that behalf by the law specially relating, except with the consent of the Governor-General.

61. Purpose.

- (1) The fundamental purpose of sentencing is to promote respect for the law and to maintain a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives—
- (a) to protect the community;
 - (b) to reinforce community-held values by denouncing unlawful conduct;
 - (c) to deter the offender and other persons from committing offences;
 - (d) to separate offenders from society, where necessary;
 - (e) to assist in rehabilitating offenders;
 - (f) to provide reparation for harm done to victims;
 - (g) to promote a sense of responsibility in offenders by acknowledgement of the harm done to victims and to the community.

(2) A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the person.

62. Imprisonment to be imposed only after consideration of alternatives.

(1) A court shall apply the principle that a sentence of imprisonment should only be imposed after consideration of all sanctions other than imprisonment that are authorized by law.

(2) In sentencing a person the court shall have regard to—

- (a) the nature and seriousness of the offence, including any physical or emotional harm done to a victim;
- (b) the extent to which the person is to blame for the offence;
- (c) any damage, injury or loss caused by the person;
- (d) the need for the community to be protected from the person;
- (e) the prevalence of the offence and the importance of imposing a sentence that will deter others from committing the same or a similar offence;
- (f) the presence of any aggravating circumstances relating to the offence or the person, including—
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factors;
 - (ii) evidence that the person, in committing an offence, abused a position of trust or authority in relation to the victim;
- (g) the presence of any mitigating circumstances relating to the offence or the person including—
 - (i) a person's good character, including the absence of a criminal record;
 - (ii) the youth of the person;
 - (iii) a diminished responsibility of the person that may be associated with age or mental or intellectual capacity;

- (iv) a plea of guilty and, in particular, the time at which the person pleaded guilty or informed the police, the prosecutor or the court of his intention so to plead;
- (v) any assistance the person gave to the police in the investigation of the offence or other offences;
- (vi) an undertaking given by the person to co-operate with any public authority in a proceeding about an offence, including a confiscation proceeding;
- (vii) a voluntary apology or reparation provided to a victim by the person.

63. Determination of sentence.

(1) Where an enactment prescribes a punishment in respect of an offence, the sentence to be imposed is, subject to the limitations provided in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where a person is convicted of an offence punishable with both fine and imprisonment and a term of imprisonment in default of payment of the fine is not specified in the enactment that prescribed the punishment to be imposed, the imprisonment that may be imposed in default of payment shall not exceed the term of the imprisonment that is prescribed in respect of the offence.

(3) Where the person—

- (a) is sentenced while serving a term of imprisonment for a prior offence, and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;
- (b) is convicted of an offence punishable with both a fine and imprisonment and both are imposed; or
- (c) is convicted of more offences than one, and—
 - (i) more than one fine is imposed,
 - (ii) terms of imprisonment for the respective offences are imposed, or
 - (ii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence,

the court that sentences the person may direct that the terms of imprisonment that are imposed,

whether in default of payment of a fine or otherwise, be served consecutively.

64. Time in custody to be taken into account.

In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence.

65. Time at large to be excluded from term of imprisonment.

Any time during which a convicted person is unlawfully at large or is at large on release on licence does not count as part of any term of imprisonment imposed on the person.

66. Commencement of sentence.

(1) Subject to subsections (2) and (3), a sentence commences when it is imposed, except where an enactment otherwise provides.

(2) A term of imprisonment, whether imposed by a trial court or the court appealed to, commences or shall be deemed to be resumed, as the case may be, on the day on which the person is arrested and taken into custody under the sentence.

(3) Where a sentence that is imposed is a fine with a term of imprisonment in default of payment, no time prior to the day of the execution of the warrant of committal counts as part of the term of imprisonment.

Procedure and Evidence

67. Sentencing proceedings.

A court shall, as soon as practicable after a person has been found guilty, conduct proceedings to determine the appropriate sentence to be imposed.

68. Presentence report by probation officer.

(1) Where a person, other than a corporation, pleads guilty to or is found guilty of an offence, a probation officer, if required to do so by a court, shall, as soon as practicable, prepare and file with the court a report in writing relating to the person for the purpose of assisting the court in imposing a sentence

(2) Upon the report being filed with the court the clerk or registrar of the court shall give a copy of the report to the offender or his attorney.

(3) Unless otherwise specified by the court, the report shall, wherever possible, contain information on the following matters—

- (a) the offender's age, maturity, character, home circumstances, employment history, behaviour, attitude and willingness to make amends;
- (b) the history of relevant previous convictions;
- (c) the history of any measures other than imprisonment used to deal with the offender, and the offender's response to those measures; and
- (d) an analysis of the likelihood of the offender to reoffend.

(4) The presentence report shall also contain information on any other matter required by the court, after hearing argument from the prosecutor and the offender, to be included in the report.

(5) Where the court orders a presentence report and the court is considering an order other than a fine or imprisonment, the court may order that the offender undergo an assessment by a qualified person, which assessment shall form part of the presentence report.

(6) Where—

- (a) a request has been made by the prosecution or the offender for a presentence report; and
- (b) the court rejects the request, the court shall give reasons for the rejection of the request.

69. Victim impact statement.

(1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged in respect of any offence, the court may consider any statement made by the victim or by the prosecution on behalf of the victim describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

(2) A victim impact statement shall be in written form and shall be filed with the court.

(3) At the request of a victim, the court may instruct the clerk of the court or registrar to read the statement into the record in open court.

(4) Where the victim impact statement discloses confidential or sensitive information or material that may cause embarrassment or distress to the victim or his family, the court may direct that the statement be dealt with *in camera*.

(5) The prosecutor shall notify the victim as soon as a date has been set for sentencing as to the date fixed for sentencing and the right of the victim to make a victim impact statement.

(6) The clerk or registrar of the court shall provide a copy of the victim impact statement, as soon as possible after a finding of guilt, to the offender or attorney for the offender and the prosecutor.

(7) As soon as practicable after a finding of guilt and in any event before sentence, the court shall inquire of the prosecutor or a victim of the offence whether the victim has been advised of the opportunity to make a victim impact statement.

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

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

(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 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 dependant of that person.

70. Evidence relevant to determination of sentence.

(1) In determining the sentence, the court shall consider any relevant information placed before it, including any representations or submissions made by or on behalf of the prosecutor or the offender.

(2) Before determining the sentence the court shall give the prosecutor and the offender an opportunity to make submissions relevant to the sentence to be imposed.

(3) In determining the sentence, a court may consider any evidence disclosed at the trial.

(4) The court may, on its own motion, after hearing argument from the prosecutor and the offender require the production of evidence that would assist it in determining the appropriate sentence.

(5) Hearsay evidence is admissible at sentencing proceedings, but the court may, if the court considers it to be in the interests of justice, compel a person to testify where the person—

(a) has personal knowledge of the matter;

(b) is reasonably available; and

(c) is a compellable witness.

(6) Where the court is composed of a Judge and jury, the court shall accept as proved all facts, express or implied, that are essential to the jury's verdict of guilty.

(7) Where there is a dispute with respect to any fact that is relevant to the determination of a sentence—

- (a) the court shall request that evidence be adduced as to the existence of the fact unless the court is satisfied that sufficient evidence was adduced at the trial;
- (b) the party wishing to rely on a relevant fact, including a fact contained in a presentence report, has the burden of proving it;
- (c) either party may cross-examine any witness called by the other party;
- (d) subject to paragraph (e) the court must be satisfied on a balance of probabilities of the disputed fact before relying on it in determining the sentence; and
- (e) the prosecutor must establish, by proof beyond a reasonable doubt, the existence of any aggravating fact or any previous conviction by the offender.

71. Other offences taken into consideration.

(1) In determining the sentence, the court—

- (a) shall consider, if it is possible and appropriate to do so, any other offences of which the offender was found guilty by the same court, and shall determine the sentence to be imposed for each of those offences;
- (b) shall consider, if the Director of Public Prosecutions and the offender consent, any outstanding charges that the court has jurisdiction to try against the person to which the person consents to plead guilty and pleads guilty, and shall determine the sentence to be imposed for each charge unless the court is of the opinion that a separate prosecution for any of the outstanding charges is necessary in the public interest; and
- (c) may consider any facts forming part of the circumstances of the offence that could constitute the basis for a separate charge.

(2) The court shall, on the information or indictment, note—

- (a) any outstanding charges considered in determining the sentence under paragraph (1)(b); and

- (b) any facts considered under paragraph (1)(c) in determining the sentence under that paragraph,

and no further proceedings may be taken with respect to any offence described in those charges or disclosed by those facts unless the conviction for the offence of which the offender has been found guilty is set aside or quashed on appeal.

72. Punishment not to be double.

An offender shall not be sentenced twice for the same offence under the provisions of this Code or any other law, except in the case where an offender causes the death of another person, in which case he may be convicted of the offence which he committed by reason of causing such death, although he has already been convicted of some other offence constituted by his act.

73. Prosecution and punishment under one or more enactments.

Where an act constitutes an offence, punishable on summary conviction or on indictment, under the same enactment or under two or more enactments, the person convicted of the offence is, unless the contrary intention appears, liable to be prosecuted and punished accordingly under either or any of such enactments, but is not liable to be punished twice for the same offence.

74. Increase of sentence on repetition of crime; and execution of sentence where former term of imprisonment unexpired.

(1) Where an offender, having been convicted of crime, is again convicted of a crime, the offender is liable to an increased sentence in the cases and manner provided in the Seventh Schedule.

(2) A previous conviction shall not be admitted in evidence against an offender for the purpose of increasing his sentence, except within the period specified in the Seventh Schedule after the expiration or execution of the sentence passed upon that previous conviction, or of any sentence into which that sentence has been commuted.

(3) Nothing in this section, or in the Seventh Schedule, exempts a person from any liability to which he may be subject under this Code or to any greater or other punishment, and any or other different punishment to which he is liable under this Code may be inflicted in addition to the punishments mentioned in the Seventh Schedule.

(4) Nothing in this section or in the Seventh Schedule, applies to libel, or to any act which is a crime on the ground of negligence.

(5) Where an offender after conviction for a crime is convicted of a different crime, either before sentence is passed upon the person under the first conviction or before the expiration of that sentence, any sentence, which is passed upon him under the subsequent

conviction, must be executed after the expiration of the former sentence, unless the court directs that it must be executed in lieu of the former sentence or of any part of the sentence.

(6) A conviction of a person for a crime committed by the person before attaining the age of eighteen years shall not be admitted in evidence against him for the purpose of increasing his sentence after he has attained the age of twenty years.

75. Reduction in sentence for guilty plea.

(1) In determining what sentence to pass on a person who has pleaded guilty to a crime the court shall take into account

- (a) the stage in the proceedings for the crime at which the defendant indicated his intention to plead guilty; and
- (b) the circumstances in which this indication was given.

(2) If a guilty plea was entered at the earliest stage of the proceedings then a defendant will be entitled to a reduction of up to a third of the sentence he would have received had he been found guilty after trial.

(3) Subsection (2) shall not apply to crimes for which the sentence is fixed by law.

(4) If, as a result of taking into account any matter referred to in subsection (1), the court imposes a sentence on the defendant which is less severe than the sentence it would otherwise have imposed, the court shall state in open court that it has done so.

76. Consequences of conviction.

(1) Subject to subsections (2) and (3), if a defendant is sentenced to imprisonment for three years or more, the following consequences ensue, unless the court otherwise orders, that is to say

- (a) any public office held by him within the jurisdiction of the court immediately becomes vacant; and
- (b) any pension, superannuation allowance, or emolument payable to him out of the revenues of this state or out of any public fund, or chargeable on any rate or tax, and any according right to any such pension, allowance, or emolument, determines and is forfeited as from the time of the commission of the crime.

(2) None of the consequences mentioned in this section ensue in the case of a person who, at the time of committing the crime of which he is convicted, was a minor.

(3) In case the person receives a pardon, he is, unless the pardon otherwise directs, relieved from all the consequences mentioned in this section, except as to any office or employment which, having been vacated under the provisions of this section, has been filled up before he receives the pardon.

77. Imposition of alternative sentence.

The court before which a person is convicted may, according to the circumstances of the case, substitute for a sentence assigned by this Code a different punishment, as follows -

- (a) the court before which a person is convicted of any offence may order that, in lieu of or in addition to any other punishment, he enter into his own recognisance, with or without sureties, for keeping the peace and being of good behaviour; and that, in default of such recognisance or sureties, he be imprisoned, in addition to the term, if any, of imprisonment to which he is sentenced, for any term not exceeding six months in the case of a conviction before the High Court, or three months in the case of a conviction before a Magistrate's Court, not exceeding in either case the term for which he is liable to be imprisoned for the offence of which he is convicted.

78. Person may speak to sentence.

Before determining the sentence to be imposed, the court shall ask whether the defendant, if present, has anything to say.

79. Reasons for sentence.

When imposing a sentence, a court shall state the terms of the sentence imposed and the reasons for it, and enter those terms and reasons into the record of the proceedings.

Fines, Compensation and Costs

80. Fines.

(1) Where a person is convicted of any offence, the court may, in its discretion, sentence him to a fine in addition to any other punishment to which he is sentenced.

(2) When deciding to impose a fine the court should consider payment of compensation as a priority.

(3) Before imposing a fine the court should determine whether there will be any confiscation proceedings and consider deferring sentence until the confiscation hearing has been heard.

(4) Where the amount of the fine which a person may be sentenced to pay upon conviction on indictment is not expressly limited, the amount of fine to which he may be sentenced is in the discretion of the court, but shall not be excessive.

(5) In fixing the amount of any fine to be imposed on an offender, the court shall take into consideration the means and responsibilities of the offender so far as they appear or are known to the court.

(6) Where the court is of the opinion that the offender is unable to pay a fine, it shall determine whether the offender would be a suitable candidate to perform any other order the court in its discretion may sentence the offender to.

(7) All or any part of a fine imposed under this section may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

(8) A court that fines an offender under subsection (1) may order that the fine be paid by installments at stipulated times or may allow the offender time to pay the fine and, on the application of the offender, may extend the time for payment of the fine.

(9) In the absence of an order under subsection (8) the fine shall be due and payable on the twenty-eighth day after the order was made.

(10) Where the offender is directed to pay by installments makes default in the payment of any installment any part therefore, the whole amount of the fine outstanding shall become payable forthwith and the person shall be liable to be imprisoned for such proportion of the full term passed on him in default of payment of the fine or such term as he is liable to serve under subsection (11), as the sum remaining unpaid by him bears to the fine imposed upon him

(11) The court may secure the payment of the fine by imposing such terms of imprisonment in default as the court thinks appropriate. Where no direction has been made the period in default will be to the maximum term provided in section 84.

(12) In the case of an offence in which the offender is sentenced to a fine, whether with or without imprisonment, the court in passing sentence may, in its discretion –

- (a) direct that in default of payment of the fine the offenders shall be sentenced to a period of imprisonment for a term not exceeding the maximum term specified in section 84 in relation to that fine: such imprisonment shall be in addition to and consecutive with any other imprisonment to which he may have been sentenced; and also
- (b) issue a warrant for the levy of the amount on the immovable property of the offender by distress and sale:

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such person has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons, to be recorded in writing by the court, it considers it necessary to do so.

(13) When a minor is convicted of any offence and a fine, costs or compensation, or all or any combination thereof, is imposed, the court shall order that the fine, costs or compensation shall be paid by the parents or the guardian of the child unless it is satisfied that the parent or guardian has not conducted to the commission of the offence by neglecting to exercise due care of the minor.

(14) An order under subsection (13) may be made against a parent or guardian who, having received notice to attend, has failed to attend but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity to be heard.

(15) Any sum ordered to be paid by a parent or guardian under subsection (13) may be recovered by distress or imprisonment.

81. Power to order offender to make compensation and costs.

(1) Where an offender is convicted or discharged, the court imposing sentence on or discharging the offender may, in the case of damage to or the loss or destruction of property of any person as a result of the commission of an offence or the arrest or attempted arrest of the offender, make a compensation order requiring the offender to pay that person an amount not exceeding the replacement value of the property at the date the order is imposed less the value of any part of the property that is returned to that person at the date it is returned.

(2) Where bodily harm is caused to any person as a result of the commission of an offence or the arrest or attempted arrest of the offender, the court may make a compensation order requiring the offender, to pay to that person out of pocket expenses directly incurred as a result of the bodily harm.

(3) Where the amount of compensation under subsection (1) or (2) is not readily ascertainable, the court may adjourn the proceedings and order a probation

officer or any other person designated by the court for the purpose to prepare a report to determine—

- (a) the loss or damage;
- (b) the means of the offender;
- (c) the nature and extent of the offender's existing financial obligations;
- (d) the maximum amount the offender is likely to be able to pay under a sentence to make compensation; and
- (e) where payment by installments is considered appropriate, the frequency and magnitude of any payments that would be required.

(4) The person who suffered the loss or damage or bodily injury (“victim”), after the time has expired under the compensation order for the offender to pay, may apply to the court for enforcement of the compensation order.

(5) On receipt of an application under subsection (4) the court shall cause a summons to be issued for the appearance of the offender and the victim shall be notified of the hearing date.

(6) Upon the appearance of the offender the court shall enquire into—

- (a) the reasons why the compensation order was not complied with; and
- (b) the offender's present ability to pay the balance of the compensation order.

(7) The court may impose such new terms for the payment of the compensation as it considers necessary to secure payment of the balance owing under the compensation order.

(8) Where—

- (a) the court—
 - (i) finds it appropriate in the circumstances to make an order for compensation in relation to an offender,
 - (ii) is also considering an order to require the offender to pay a fine; and

(b) it appears to the court that the offender would not have the means or ability to comply with both an order for compensation and an order to pay the fine, the court shall first make the order of compensation and shall then consider whether and to what extent an order to pay a fine is appropriate in the circumstances.

(9) Where both compensation and a fine are ordered, payments will be applied first to compensation and secondly towards the fine.

(10) All or any part of any amount that is ordered to be paid by way of compensation under subsection (1) or (2) may be taken out of monies found in the possession of the offender at the time of his arrest if the court is satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender.

(11) Nothing in this section affects the right of any person to recover compensation by civil proceedings for damages.

(12) A court may order an offender convicted of an offence to pay the costs of and incidental to the prosecution of such offence or any part thereof. An order for payment of costs may be in addition to any other payment.

82. Order in default of payment of compensation and costs.

A court which makes an order under section 81 shall have the same powers in respect of default of payment of compensation and costs as it has in default of payment of a fine, and the provisions of section 80 (8), (10) and (12)

83. Effect of payment of compensation or imprisonment for non-payment.

(1) Where any person

(a) injured by any assault punishable under this Code by a Magistrate, receives compensation for the injury under Order of the Court, or where the person, having been ordered to make the compensation or to pay a fine or penalty, suffers imprisonment for non-payment; or

(b) charged with assault before a Magistrate, receives a certificate of an order of dismissal, the receipt of the compensation or the undergoing of the penalty or the receipt of such certificate, as the case may be, is a bar to any action or proceeding for the same injury.

(2) In other cases in which compensation is awarded by order under this Code, to the extent of the amount duly paid under such order, any claim of the person injured or of his representatives for damages sustained by reason of the crime shall be

deemed to have been satisfied; but the order for payment of compensation does not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order

84. Imprisonment in default of payment of fine, compensation and costs.

(1) In the absence of any express provision in any Act, the term of imprisonment which may be ordered by a court in default of a fine, compensation, costs, or any sum which the offender has been ordered to pay under any other Act under which he has been convicted of an offence, shall be such term as, in the opinion of the court, will satisfy the justice of the case but shall not exceed the maximum fixed by the following scale –

<i>Amount</i>	<i>Maximum Period</i>
Not exceeding \$250	14 days
Exceeding \$250 but not exceeding \$500	28 days
Exceeding \$500 but not exceeding \$1000	90 days
Exceeding \$1000 but not exceeding \$2500	180 days
Exceeding \$2500	1 year

Suspended Sentence

85. Suspended sentence of imprisonment.

(1) If a court sentences a person to imprisonment for 5 years or less it may order that the term of imprisonment be suspended in whole or in part during the period specified in the order (“the operational period”), which period shall not exceed 5 years, if the court is satisfied that it is appropriate to do so in the circumstances.

(2) A court shall not make an order under subsection (1) if it would not have sentenced the offender to imprisonment in the absence of power to make an order suspending the sentence.

(3) Before making an order under subsection (1) the court shall explain to the offender in ordinary language his liability under subsection (5) if during the operational period he commits in Country X an offence for which he is sentenced to imprisonment.

(4) A court making an order under subsection (1) shall specify a suspended sentence that corresponds in length to the sentence of imprisonment that it would have imposed in the absence of power to make an order suspending the sentence.

(5) Where an offender whose term of imprisonment has been suspended under this section is convicted of a further offence which is committed during the operational period and for which he is sentenced to imprisonment, the court which sentences the offender for the further offence shall order that the suspended sentence shall take effect unless it is of the opinion that it is unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the further offence.

(6) Where a court decides under subsection (5) that it would be unjust for a suspended sentence to take effect, the court shall—

- (a) order that the suspended sentence—
 - (i) take effect with a substitution of a lesser term of imprisonment; or
 - (ii) be cancelled and be replaced by any non-custodial sentence that could have been imposed on the offender at the time when the person was convicted of the offence for which the suspended sentence was imposed; or
- (b) decline to make any order referred to in paragraph (a) concerning the suspended sentence.

(7) Where pursuant to subsection (5) or subsection (6) a court orders that the suspended sentence shall take effect, the sentence shall commence on the date of the making of that order.

(8) Where a court imposes a suspended sentence for one offence, the court may also impose suspended sentences under subsection (1) for other offences for which the offender has appeared for sentence, so long as the total period of all suspended sentences to which the offender is subject does not exceed 5 years from the date of the commencement of the first such sentence, and, where two or more suspended sentences are imposed on an offender, the sentences shall be served concurrently.

(9) For the purposes of any Act conferring rights of appeal in criminal cases any order made by a court under this section shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

Dangerous Persons

86. Sentencing of dangerous person.

(1) In this section “dangerous person” means a person suffering from a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person whether or not he requires or is susceptible to medical treatment.

(2) Where any offender convicted in the High Court of any offence punishable under this Code or any other law, and the Court is satisfied by evidence tendered by the prosecution upon each of the matters specified in subsection (4), the offender shall be sentenced to serve an indeterminate period of imprisonment for a period of not less than two but not more than seven years.

(3) Where any person is convicted by a court of summary jurisdiction of any offence punishable under this Code or any other Act and the Court is satisfied by evidence tendered by the prosecution upon each of the matters specified in subsection (4), the offender shall be committed in custody for sentence to the High Court and if the High Court is satisfied by such evidence, such offender shall be sentenced in accordance with subsection (2).

(4) The evidence referred to in subsections (2) and (3) is evidence tending to show that -

- (a) the offender has been assessed as a dangerous person by at least two medical practitioners one of whom is a medical practitioner specializing in psychiatry;
- (b) the offender is a danger to himself and to the community; and
- (c) there is no other appropriate means of dealing with him having regard to those dangers.

(5) Where an assessment is made by a medical practitioner referred to in subsection (4)(a) a certificate of that assessment shall be admissible as evidence in a court of summary jurisdiction.

(6) A dangerous person shall, during the period of his imprisonment be assessed by a psychiatrist at successive periods of not more than twenty-four months, and the Minister responsible for corrections may, after consideration of the reports submitted to him by the a psychiatrist, release at any time the person so detained.

(7) The Minister responsible for corrections may direct, after consideration of a psychiatrist's report relating to the assessment of a person sentenced under this section, that such person be transferred from a prison to a hospital or some other institution approved by the Minister for the reception of detainees under this section; and the Minister may from time to time after consideration of any further such report direct that such person be transferred back to a prison or between any such hospital or other institution as aforesaid.

Drug Treatment Programmes

87. Drug treatment programmes.

(1) There is established a special Magistrates court to be known as the Drug Treatment Court.

(2) The Chief Justice may designate any Magistrate as a Judge of the Drug Treatment Court.

(3) Where a defendant other than a corporation—

- (a) pleads guilty to or is found guilty of an offence;
- (b) appears to the court to satisfy the eligibility criteria; and
- (c) is willing to undergo an assessment by a qualified person to determine his suitability for a drug treatment programme,

the court may by order direct the defendant to appear before the Drug Treatment Court.

(4) The Drug Treatment Court on being satisfied—

- (a) that the defendant is suitable for enrollment in a drug treatment programme;
- (b) that it is in the best interests of the defendant that he be enrolled in such programme;
- (c) that the defendant agrees to be enrolled in such programme; and
- (d) such programme is available

may, instead of convicting the defendant, order that he be enrolled in a drug treatment programme of such description, for such period and subject to such conditions as the Drug Treatment Court may specify in the order.

(5) Where a defendant has been enrolled in a drug treatment programme, the Drug Treatment Court shall monitor the progress of the defendant throughout the duration of the programme.

(6) Where the defendant fails, without reasonable excuse, to comply with the rules of a drug treatment programme or any conditions set out in an order under subsection (4), the Drug Treatment Court may—

- (a) (i) impose any sanction, including, imprisonment for a period not

exceeding 20 days, that it could have imposed for the offence in respect of which the order was made; and

- (ii) require the defendant to continue in the drug treatment programme; or
- (b) (i) or revoke the order,
- (ii) convict the defendant of the offence in respect of which the order was made, and
- (iii) impose any sentence that could have been imposed if the defendant had been convicted at the time the order was made.

(7) For the avoidance of doubt it is declared that where a defendant—

- (a) has pleaded guilty to an offence; and
- (b) has been enrolled in a drug treatment programme,

the plea is irrevocable.

(8) In this section—

- (a) “drug treatment programme” means a drug treatment and rehabilitative programme approved by the Minister responsible for drug prevention;
- (b) “eligibility criteria” means eligibility criteria for participation in a drug treatment programme that are approved by the Minister responsible for drug prevention and are published in the Gazette;
- (c) “qualified person” means a person approved by the Minister responsible for drug prevention as qualified to conduct an

Discharge

88. Conditional and absolute discharge.

(1) Where a defendant, other than a corporation, pleads guilty to or is found guilty of an offence, the court may, if it considers it to be in the best interests of the defendant and not contrary to the public interest, instead of convicting the defendant, by order direct that the defendant be discharged absolutely or on conditions prescribed in a probation order made under section 90 or 91.

(2) Where a court directs under subsection (1) that a defendant be discharged of an offence, the defendant shall be deemed not to have been convicted of the offence

except that—

- (a) the defendant may appeal from the determination of guilt as if it were a conviction in respect of the offence;
- (b) the Director of Public Prosecutions or the informant may appeal from the decision of the court not to convict the defendant of the offence as if that decision were a judgment or verdict of acquittal of the offence or a dismissal of the information against the defendant; and
- (c) the defendant may plead *autrefois convict* in respect of any subsequent charge relating to the offence.

(3) Where an defendant who is bound by the conditions of a probation order made at a time when the defendant was directed to be discharged under this section is convicted of an offence, the court that made the probation order may, in addition to or in lieu of exercising its authority under section 93, at any time when it may take action under that section—

- (a) revoke the discharge;
- (b) convict the defendant of the offence to which the discharge relates; and
- (c) impose any sentence that could have been imposed if the defendant had been convicted at the time of discharge,

and no appeal lies from a conviction under this subsection where an appeal was taken from the order directing that the defendant is discharged.

Probation Order

89. Making of probation order.

(1) Where a person is convicted of an offence, a court may, having regard to the age and character of the defendant, the nature of the offence and the circumstances surrounding its commission—

- (a) direct that the defendant be released on conditions prescribed in a probation order; or
- (b) in addition to fining or sentencing the defendant to imprisonment for a term not exceeding five years, direct that the defendant comply with conditions prescribed in a probation order;

(2) A court may also make a probation order where it discharges a defendant

under section 88

90. Compulsory conditions.

The court shall direct, as conditions of a probation order, that the defendant—

- (a) not commit another offence during the period of the order;
- (b) appear before the court when required to do so by the court;
- (c) notify the probation officer in writing in advance of any intended change of address and promptly notify the probation officer of any change of employment or occupation;
- (d) report to a probation officer at the place and within the times stated in the order and thereafter when required by the probation officer and in the manner directed by the probation officer; and
- (e) not leave Country X without the written permission of a probation officer.

91. Optional conditions of probation order.

The court may direct, as additional conditions of a probation order, that the defendant—

- (a) perform up to 1000 hours of community service over a period not exceeding 18 months;
- (b) submit to drug testing as directed by the court;
- (c) abstain from—
 - (i) the consumption of alcohol or other intoxicating substance,
 - (ii) the consumption of controlled drugs within the meaning of the [Relevant] Act except in accordance with a medical prescription;
- (d) with the agreement of the defendant and the director of the relevant programme, participate in a treatment or rehabilitative programme approved by the Minister responsible for drug prevention and comply with the rules of the programme;
- (e) complete to the satisfaction of the probation officer any specified course of education or training designed to improve work skills or

social skills, or both;

- (f) make restitution of property in accordance with sections 100;
- (g) refrain from—
 - (i) participating in specified activities or attending specified places,
 - (ii) associating with specified persons or with persons of a specified description;
- (h) abide by conditions of any curfew;
- (i) wears electronic monitoring equipment that will enable his movements and locations to be monitored, where available;
- (j) comply with such other reasonable conditions as the court may direct for facilitating the successful reintegration of the defendant into the community.

92. Probation order.

- (1) A court that makes a probation order shall—
 - (a) take reasonable steps to ensure the defendant understands the order;
 - (b) explain the procedure for applying under subsection (5) for a change to the optional conditions;
 - (c) explain the consequences of being convicted of an offence while on probation;
 - (d) explain the consequences of non-compliance with the order;
 - (e) require the defendant to sign the probation order; and
 - (f) cause a copy of the order to be given to the defendant.

(2) A probation order comes into force when the order is made except that where the defendant at that time is sentenced to imprisonment under section 89(1)(b) or is serving time in prison, it shall come into force when the defendant is released from prison.

(3) If a person who is bound by a probation order is subsequently convicted of an offence or is imprisoned under section 89(1)(b), the order continues in force except in

so far as the imprisonment renders it impossible for the defendant to comply with the order.

(4) A probation order continues in force for such period as the court may specify in it but no probation order shall continue in force for more than three years after the date on which the order came into force.

(5) A court that makes a probation order may at any time, on application by the defendant, the probation officer or the prosecutor, require the defendant to appear before it and, after hearing the defendant and one or both of the probation officer and the prosecutor—

- (a) make any changes to the optional conditions that in the opinion of the court are rendered desirable by a change in the circumstances since those conditions were imposed under section 70B;
- (b) relieve the defendant, either absolutely or on such terms or for such period as the court thinks desirable of compliance with any optional condition; or
- (c) decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and inform the defendant of its action and require the defendant to sign the probation order as amended and cause a copy of the order to be given to the defendant.

(6) Where a court that makes a probation order imposes a condition that the defendant be treated for drug or alcohol addiction and report to a Magistrate who is designated to monitor such order, the powers set out in subsection (5) may be exercised by that Magistrate.

(7) All the functions of the court under subsection (5) may be exercised in chambers.

93. Breach of requirement of probation order.

(1) Where a probation order has been made by a court and at any time during the probation period it appears on information to a Magistrate that the probationer is in breach of any of the conditions of the order, the Magistrate may issue a summons requiring the probationer to appear before the Magistrates Court at a date and time specified therein or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) If it is proved to the satisfaction of the Magistrates Court before which a probationer appears or is brought under this section that the probationer is in breach of any of the conditions of the probation order, then—

- (a) if the probation order was made by the Magistrates Court, the court may, without prejudice to the continuance of the probation order,

impose on him a fine of \$500, or may—

- (i) amend the order by cancelling any of the optional conditions of the order or by inserting therein (either in addition to or in substitution for any such condition) any condition which the court could impose under section 91;
- (ii) extend the period of the order but so that the period of the order as extended shall not exceed three years from the date when the order first came into force;
- (iii) discharge the order and deal with him for the offence in respect of which the probation order was made, in any way in which the court could deal with him if the court had just convicted him of that offence; and where the order was made under section 89(1)(b), the court in so dealing with the probationer, shall take into account any period of imprisonment that he has served;

- (b) if the probation order was made by the High Court, the court shall remand him in custody or release him on bail (with or without sureties) until he can be brought or appear before the High Court.

then— (3) Where the court deals with the case as provided in subsection (2)(b)

- (a) the court shall send to the High Court a certificate signed by the Magistrate, certifying that the probationer is in breach of such of the conditions of the probation order as may be specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the High Court; and

- (b) where the probationer is brought or appears before the High Court, and it is proved to the satisfaction of that court that he is in breach of any of the conditions of the probation order, that court may, without prejudice to the continuance of the probation order, impose on him a fine of \$ 1000, or may—

- (i) amend the order by cancelling any of the optional conditions of the order or by inserting therein (either in addition to or in substitution for any such condition) any condition which the court could impose under section 91;

- (ii) extend the period of the order but so that the period of the

order as extended shall not exceed three years from the date when the order first came into force;

(iii) discharge the order and deal with him for the offence in respect of which the probation order was made, in any way in which the court could deal with him if the court had just convicted him of that offence; and where the order was made under section 89(1)(b), the court, in so dealing with the probationer, shall take into account any period of imprisonment that he has served.

(4) A fine imposed under this section in respect of a failure to comply with the conditions of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid on a conviction.

(5) If it appears to a Judge or Magistrate that the person in respect of whom a probation order has been made has, as a result of criminal proceedings instituted later than twelve months after the expiration of the probation period, been convicted of an offence committed during the probation period and has been dealt with in respect of that offence, the Judge or Magistrate, as the case may be, shall take no further proceedings for such breach.

94. Presentence report.

(1) Before imposing a condition under section 91(a), (d) or (e) the court must have before it a presentence report prepared by a probation officer, which has addressed the following—

- (a) the defendant's circumstances;
- (b) the feasibility of securing compliance with the relevant condition;
- (c) where participation in any programme or activities would involve the co-operation of a person other than the defendant and the probation officer who is responsible for his supervision, that person's written consent to the inclusion of the defendant in the programme or activities;

(2) Where the court orders a presentence report and the court is considering the making of a probation order containing a condition that the defendant participate in a treatment or rehabilitation programme for alcohol or drug abuse, the court may order at the time when a presentence report is requested that the defendant undergo an assessment by a qualified person of the suitability of the defendant for such programme.

95. Appointment, functions etc of probation officers.

(1) The Governor-General may appoint such number of probation officers as may appear to him to be necessary.

(2) A probation officer shall have the powers and discharge the duties conferred or imposed on a probation officer under this Code or any other enactment and, in particular, it shall be the duty of a probation officer—

- (a) to supervise, having regard to the requirements of the probation orders made in their respective cases, the defendants placed under his supervision;
- (b) to advise and assist them;
- (c) to inquire, without prejudice to any special directions that may be given by the court, into the circumstances and past and present environment of any defendant or offender, with the view to assisting the court in determining the most suitable way of dealing with his case;
- (d) to assist the court by which a probation order was made in determining how best to exercise its powers in relation to the defendant; and
- (e) to advise and assist defendants who, on release from custody, have been placed under his supervision.

(3) It shall be the duty of the Director, subject to any general or special directions given to him by the responsible Minister, to provide for the efficient carrying out of the work of probation officers and to review the work of probation officers in individual cases.

(4) The probation officer who is to be responsible for the supervision of an defendant shall be selected under arrangements made by the Director from among the available probation officers; and, if the probation officer so selected dies or is unable for any reason to carry out his or her duties, or if the Director thinks it desirable that another probation officer should take his or her place, then another probation officer shall be selected in like manner from among the available probation officers.

(5) In this section “the Director” means the public officer responsible for probation services.

Community Service Order

96. Power to make community service order

(1) Where a person of over sixteen years of age is convicted of an offence punishable with imprisonment, the court by which he is convicted may, instead of dealing with him in any other way but subject to subsection (3) make an order (referred to in this Code as a “community service order”) requiring him to perform unpaid work in accordance with this Part for such number of hours as may be specified in the order.

(2) Where a court makes a community service order in respect of any offender, the number of hours specified in such order shall not in the aggregate exceed 1000.

(3) A court shall not make a community service order in respect of any offender unless the offender consents and the court is satisfied, after considering a report by a probation officer about the offender and his circumstances and, if the court thinks it necessary, hearing evidence of a probation officer, that the offender is a suitable person to perform work and such work is available under an order.

(4) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by, or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent shall not exceed the maximum specified in subsection (2).

(5) Before making a community service order the court shall explain to the offender in ordinary language—

- (a) the purpose and effect of the order and in particular the requirements of the order as specified in section 91;
- (b) the consequences which may follow under section 92 if he fails to comply with any of those requirements; and
- (c) that the court has under section 93 the power to review the order on the application either of the offender or of a probation officer.

(6) The court by which a community service order is made shall forthwith give copies of the order to a probation officer assigned to the court and he shall give a copy to the offender.

97. Obligations of person subject to community service order.

(1) An offender in respect of whom a community service order is in force shall—

- (a) report to the Director and subsequently from time to time notify him of any change of address; and
- (b) perform for the number of hours specified in the order such work at such times as he may be instructed by the Director.

(2) Subject to section 98, the work required to be performed under a community service order shall be performed during the period of eighteen months beginning with the date of the order.

(3) The instructions given by the Director under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

(4) In this section and section 99 "Director" means the public officer responsible for probation services.

98. Breach of requirement of community service order.

(1) If at any time while a community service is in force in respect of an offender it appears on information to a court of summary jurisdiction that the offender has failed to comply with any of the requirements of section 97 (including any failure to perform satisfactorily the work which he has been instructed to do), the court may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before a court of summary jurisdiction.

(3) If it is proved to the satisfaction of the court before which an offender appears or is brought under this section that he has failed without reasonable excuse to comply with any of the requirements of section 97 the court may, without prejudice to the continuance of the order, impose on him a fine of \$200 or may—

- (a) if the community service order was made by a court of summary jurisdiction, revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made;
- (b) if the order was made by the High Court, commit him to custody or release him on bail until he can be brought or appear before the High Court.

(4) A court of summary jurisdiction which deals with an offender's case under subsection (3)(b) shall send to the High Court a certificate signed by a Magistrate certifying that the offender has failed to comply with the requirements of section 97 in the respect specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the High Court.

(5) Where by virtue of subsection (3)(b) the offender is brought or appeals before the High Court and it is proved to the satisfaction of the Court that he has failed to comply with any of the requirements of section 97 that court may either—

- (a) without prejudice to the continuance of the order, impose on him a fine of \$200; or
- (b) revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(6) A person sentenced under subsection (3)(a) for an offence may appeal to the High Court against the sentence.

(7) In proceedings before the High Court under this section any question whether the offender, has failed to comply with the requirements of section 97 shall be determined by the court and not by the verdict of a jury.

99. Amendment and revocation of community service order, and substitution of other sentence.

(1) Where a community service order is in force in respect of any offender and, on the application of the offender or the Director, it appears to a court of summary jurisdiction that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may exceed, in relation to the order, the period of eighteen months specified in section 97.

(2) Where such an order is in force and on any such application it appears to a court of summary jurisdiction that, having regard to such circumstances, it would be in the interests of justice that the order should be revoked or that the offender should be dealt with in some other manner for the offence in respect of which the order was made, the court may—

- (a) if the order was made by a court of summary jurisdiction revoke the order or revoke it and deal with the offender for that offence in any manner in which he could have been dealt with for that offence if the order had not been made;

(b) if the order was made by the High Court, commit him to custody or release him on bail until he can be brought or appear before the High Court, and where the court deals with his case under paragraph (b) it shall send to the High Court such particulars of the case as may be desirable.

(3) Where by virtue of subsection (2)(b) the offender is brought or appears before the High Court and it appears to the High Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the High Court may revoke the order, or revoke the order and deal with the offender for the offence in respect of which the order was made in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(4) A person sentenced under subsection (2)(a) for an offence may appeal to the High Court against the sentence.

Restitution

100. Restitution.

(1) Where an offender—

- (a) deprives a person of property of which that person was in possession; and
- (b) is in possession of the property,

the court may order the offender to restore the property to the person who was in possession of it immediately before the commission of the offence.

(2) The court may enforce an order for restitution by—

- (a) imposing it as a condition in a probation order; or
- (b) by suspending the passing of sentence to allow the property to be restored before sentencing.

Forfeiture

101. Forfeiture of proceeds.

(1) Where any person is convicted of an offence the court may, in addition to or in lieu of any other penalty which may be imposed, order the forfeiture to the Crown of any property which has passed in connection with the commission of the offence or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property.

(2) Payment of any such sum ordered to be forfeited may be enforced in the same

manner and subject to the same incidence as in the case of a fine, costs or compensation.

(3) Before any forfeiture order is made the court must consider whether any property will be subject to any appropriate powers of confiscation.

102. Forfeiture of property used for commission of offence.

(1) When a person is convicted of an offence punishable with imprisonment for two years or more and the court is satisfied that any property which is in the possession or under his possession or under his control at the time of his apprehension –

- (a) has been used for the purpose of committing or facilitating the commission of the offence ; or
- (b) was intended to be used for that purpose,

the court may make an order of forfeiture of that property to the Crown.

(2) In this section, “facilitating the commission of the offence” includes the taking of any steps after the offence has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection. The expression “punishable with imprisonment” shall be construed without regard to any prohibition or restriction imposed by any law on the imprisonment of an offender by reason of his age.

(3) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall, if not already in the custody of the police, be taken into the custody of the police.

(4) When any property is forfeited by an order under this section, any claimant may, within a period of six months from the date of the determination of the case, make an application to the court which made the order and thereupon the court, if satisfied that –

- (a) he is the lawful owner; and
- (b) he had not consented to the offender having possession of it or did not know and had no reason to suspect or believe that the property was to be used for the commission of the offence,

may order that the property be returned to the claimant: Provided that the Crown shall not be liable or responsible for any damage to or deterioration of the property.

103. Application to dispose of property used for the commission of offence.

(1) The Crown may apply to the Magistrates’ court for an order to dispose of seized property used in the facilitation of the commission of an offence, as defined in section 102 (2), before conviction, after giving notice to all persons known to have an interest in the property

in accordance with subsection (7)

(2) At an application to dispose the Magistrate must be satisfied beyond a reasonable doubt of -

- (a) proof of service of notice on interested parties in accordance with subsection (7); and
- (b) proof of service of the date and time of the application on interested parties in accordance with subsections (9) and (10)
- (c) that all interested parties have had an opportunity to be heard; and
- (d) the property to be disposed of was used in an offence contrary to this Code or any other Act; and
- (e) failure to enter the order will result in the property –
 - (i) being destroyed; or
 - (ii) being removed from the court's jurisdiction; or
 - (iii) deteriorating in condition so its value is significantly reduced by the conclusion of any criminal proceedings; or
 - (iii) otherwise being made unavailable for forfeiture or confiscation; and
- (f) the need to dispose of the property outweighs the hardship to any interested party; and
- (h) no other relevant factors that prevent disposal

(3) If the Magistrate is satisfied of all the conditions in subsection (2) he will order disposal and determine how the property will be disposed of after hearing representations from the Crown.

(4) However if a lawful owner can prove on the balance of probabilities that he had not consented to the offender having possession of the seized property or did not know and had no reason to suspect or believe that the property was to be used for the commission of the offence, the property will not be disposed of pursuant to this section

(5) Evidence in any application must not be excluded on the ground that it is hearsay, of whatever degree.

(6) This section does not affect the admissibility of evidence, which is admissible apart from this section for such applications

(7) Before applying for disposal of any seized property under this section, the Commissioner of Police shall serve interested parties residing in Country X, 90 days written notice of the Crown's intention to dispose of the property

(8) At the expiration of 90 days commencing on the date of the notice, an application for disposal may be made.

(9) Notice of the date and time of the application must be served on all interested parties at their last known address in Country X.

(10) For those interested parties who reside out of State all reasonable efforts must be made to inform them of the time and date of the application

(11) Where an order is granted by the Magistrate for disposal in accordance with this section a notice must be placed in the Gazette by the Police Commissioner confirming the order to dispose

(12) The notice in the Gazette must confirm the right to appeal to the High Court against the order to dispose within 30 days of the notice appearing in the Gazette.

(13) Any interested party can appeal to the High Court against an order to dispose within 30 days of the notice of disposal appearing in the Gazette.

(14) If no appeal notice is lodged in accordance with subsection (13) or the appeal is dismissed the property can be disposed of in the manner ordered.

(15) The Police Commissioner must keep a record of -

- (a) the manner in which the property was disposed;
- (b) the date of disposition;
- (c) detailed financial records concerning any property sold; and
- (d) the name of any person who received the property unless this is against the public interest.

(16) The amount gained from the sale of the property shall be paid into the Consolidated Fund or any account deemed appropriate by the Minister.

(17) For the purposes of this section, "hearsay" means a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(18) For the purposes of this section "interested party" includes any bona fide purchaser of property and any person who has a legal interest in the property.

104. Life sentence.

Any offender who is sentenced to life imprisonment for an offence for which no minimum period of imprisonment is provided before he is eligible for release on licence shall serve at least 15 years of his imprisonment before any application for his release on licence may be entertained or granted by the Parole Board.

105. Eligibility for parole generally.

(1) Where no minimum period of imprisonment is provided before an offender can apply for his release on licence an offender must serve at least one-third of the term of imprisonment before any application for his release on licence may be entertained or granted by the Parole Board in the absence of an order made under subsection (3).

(2) Subsection (1) applies where the sentence was imposed before, on or after the date on which this section comes into operation.

(3) Notwithstanding subsection (1), where an offender receives a sentence of imprisonment for two years or more on conviction on indictment, the court, may, if satisfied, having regard to—

- (a) the circumstances of the commission of the offence; and
- (b) the character and circumstances of the offender,

that the expression of society's denunciation of the offence or the objective of specific or general deterrence so requires, order that the portion of the sentence that must be served before the offender may be released on licence is one-half of the sentence or 10 years, whichever is less.

106. Eligibility for parole, offenders under 18 convicted of murder.

Where an offender who was under the age of 18 years at the time of the commission of the offence is convicted of murder and is sentenced to imprisonment for life, the offender shall not be eligible for release on licence until he has served—

- (a) 10 years, in the case of an offender convicted of murder who was 16 or 17 years of age at the time of the commission of the offence; and
- (b) 7 years, in the case of an offender convicted of murder who was 12, 13, 14 or 15 years of age at the time of the commission of the offence.

PART VI

CAUSATION AND INTENTION

107. Event caused by involuntary agent.

(1) For the purposes of this section, “involuntary agent” means any animal or other thing, or any person who is exempted from liability to punishment for causing the event, by reason of infancy, or insanity, or otherwise, under Part II.

(2) A person shall be deemed to have caused an event if the person intentionally, recklessly or negligently causes any involuntary agent to cause the event.

(3) A person shall be deemed to have caused an event within the jurisdiction of the courts if the person outside the jurisdiction of the courts causes an involuntary agent to cause an event within the jurisdiction of the courts.

108. Event caused by several persons.

(1) Subject to this section and section 608 and 611, each person who has intentionally, recklessly or negligently contributed to cause an event shall be deemed to have caused the event if the event is caused by the acts of several persons acting either jointly or independently.

(2) Any matter of exemption, justification, extenuation or aggravation which exists in the case of any one of those persons has effect in his case, whether it exists or not in the case of any of the other persons.

109. Event caused by intervening circumstances.

(1) A person shall not be convicted of having intentionally, recklessly or negligently caused an event if, notwithstanding his act and the acts of any person acting jointly with him, the event would not have happened but for the existence of some state of facts or the intervention of some other event or of some other person, the probability of the existence or intervention of which other event or person did not take into consideration, and had no reason to take into consideration.

(2) This section shall not apply where a person is charged with having caused an event by an omission to perform a duty to prevent the occurrence of the event.

110. Liability for attempts and negligence or recklessness.

A person shall not by reason of anything

- (a) be relieved from any liability in respect of an attempt to cause an event; and

- (b) be relieved from any liability in respect of negligent or reckless conduct, if such negligent conduct is punishable under this Code irrespective of whether it actually causes any event.

111. Intent.

- (1) A person intends to cause an event in this Code if the person
 - (a) does an act for the purpose of causing or contributing to cause the event, although either in fact or in his belief, or both in fact and also in his belief, the act is unlikely to cause or to contribute to cause the event;
 - (b) does an act voluntarily, believing that it will probably cause or contribute to cause an event, although he does not do the act for the purpose of causing or of contributing to cause the event.

(2) A person shall be presumed to have intended to cause an event if the person does an act of such a kind or in such a manner as that, if he used reasonable caution and observation, it would appear to him that the act would probably cause or contribute to cause the event, or that there would be a great risk of the act causing or contributing to cause the event, unless it is shown that he believed that the act would probably not cause or contribute to cause the event.

(3) A person who, intending to cause an event with respect to one or some of several persons or things, or to such indeterminate person or thing as may happen to be affected by his act, causes the event with respect to the person or thing, is liable in the same manner as if he had intended to cause the event with respect to that person or thing.

(4) A person who does an act with intent to assault, harm, kill or cause any other event to a particular person, and his act happens to take effect, whether completely or incompletely, against a different person, is liable to be tried and punished as if his intent had been directed against that different person; but any ground of defence or extenuation is admissible on behalf of the person, which would have been admissible if his act had taken effect against the person or in respect of the thing against whom or in respect of which he intended it to take effect.

112. Transferred intention.

A person who intends to commit a particular crime and brings about the elements which constitute that crime may be guilty of the crime although the crime takes effect in a manner which was unintended or unforeseen.

113. Negligence.

(1) A person causes an event negligently if the person, without intending to cause the event, causes it by his voluntary act, done without such skill and precaution as are reasonably necessary under the circumstances, or as he is in the particular case bound by law to have and use, for preventing the event from being caused.

(2) If an act is such that, notwithstanding the use of skill and precaution, it is likely to cause an event which there is no justification for causing, the act, if not done with intent to cause that event, is negligently done with reference to causing that event, even though it be done with skill and precaution.

114. Recklessness.

A person acts recklessly:

- (a) when he is aware of a risk that it exists or will exist; or
- (b) when he is aware of a risk that it will occur; and
- (c) it is, in the circumstances known to him, unreasonable to take the risk.

PART VII

OFFENCES AGAINST THE PERSON

General provisions relating to homicide

115. Killing of a human being unlawful.

It is unlawful to kill any person unless such killing is authorized or justified or excused by law.

116. Definition of killing.

Except as hereinafter provided, any person who causes the death of another person, directly or indirectly, by any means whatsoever is deemed to have killed that other person.

117. Time at which child becomes a person capable of being killed.

A child becomes a person capable of being killed when it has wholly proceeded in a living state from the body of its mother, and is breathing through its own lungs, and has an independent circulation, whether the navel string is severed or not.

118. Death by act etc done at childbirth.

When a child dies in consequence of an act done or omission made by any person before or during its birth, the person who did such act or made such omission is deemed to have killed the child.

119. Causing death by threats.

A person who, by threats or intimidation of any kind, or by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed that other person.

120. Acceleration of death.

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder, injury or disease arising from another cause, is deemed to have killed that other person.

121. Immaterial that injury might have been avoided.

When a person causes a bodily injury to another person from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that his death from that injury might have been prevented by proper care or treatment.

122. Injury causing death in consequence of subsequent treatment.

When a person does grievous bodily harm to another person, and such other person has recourse to surgical or medical treatment, and death results either from the injury or the treatment, he is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment, if the treatment was reasonably proper under the circumstances, and was applied in good faith.

Offences constituted by homicide

123. Offences constituted by unlawful homicide.

Any person who unlawfully kills another person is guilty of premeditated murder, murder or manslaughter or infanticide according to the circumstances of the case.

Premeditated Murder

124. Premeditated murder.

(1) Any person who with premeditation unlawfully kills another person is guilty of premeditated murder.

(2) Any person who is convicted of premeditated murder on indictment shall be sentenced to imprisonment for life without eligibility for release on licence until the person has served twenty-five years of the sentence.

(3) Premeditation is established by evidence proving, whether expressly or by implication, an intention to cause the death of any person, whether such person is the person actually killed or not, deliberately formed before the act causing the death is committed or the omission causing the death is made, and existing at the time of the commission of that act or the making of that omission.

Murder

125. Constitution of offence of murder.

(1) Except as hereinafter provided, a person who unlawfully kills another person under any of the following circumstances is guilty of murder, that is to say,—

- (a) if the offender intends to cause the death of the person killed, or that of some other person;
- (b) if the offender intends to do to the person killed or to some other person some grievous bodily harm;
- (c) if the offender causes death by means of an act done or omission made in the prosecution of an unlawful purpose, which act or omission is of such a nature as to be likely to endanger human life;
- (d) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
- (e) if the offender causes death by administering any stupefying or overpowering thing for either of the purposes last aforesaid; or
- (f) if the offender causes death by wilfully stopping the breath of any person for either of such purposes.

(2) In the circumstances set out in paragraph (b) of subsection (1) it is immaterial that the offender did not intend to hurt the particular person who is killed.

(3) In the circumstances set out in paragraph (c) of subsection (1) it is immaterial that the offender did not intend to hurt any person.

(4) In the circumstances set out in paragraphs (d), (e) and (f) of subsection (1) it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

126. Punishment of murder; alternative verdict

(1) Any person who commits the offence of murder, on conviction on indictment, shall be sentenced to imprisonment for life: Provided that where any person is sentenced under this section, such person shall, before any application for his release on licence may be entertained or granted serve at least fifteen years of the term of his imprisonment.

(2) Where any person is charged upon indictment with the offence of premeditated murder, he may be convicted of murder or manslaughter, and where a person is so charged with the offence of murder, he may be convicted of manslaughter, if any such offence is established by the evidence, but not, except as herein provided, of any offence other than that with which he is charged; and a person convicted under this subsection 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.

(3) Upon an indictment charging a person with the premeditated murder or murder of any other person, if upon the evidence it appears that the person alleged to have been killed was a child of which a woman or girl was recently delivered, the defendant—

- (a) may be convicted of the offence of preventing such 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
- (b) may be convicted of the offence of endeavouring by a secret disposition of the dead body of such child to conceal its birth, if either of those offences is established by the evidence; and a person convicted under any of the foregoing provisions of this subsection 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.

(4) For the purposes of subsection (3) a woman or girl shall be deemed to have been recently delivered of a child if she had been delivered of the child within twelve months before its death.

127. Attempted murder

Any person—

- (a) who attempts unlawfully to cause the death of another person; or
- (b) who, with intent unlawfully to cause the death of another person, does

any act or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, on conviction on indictment, is liable to imprisonment for twenty years.

128. Threatening to murder

Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person, on conviction on indictment, is liable to imprisonment for seven years.

129. Conspiracy to murder

Any person who conspires with any other person to kill any person, whether such person is in Country X or elsewhere, on conviction on indictment, is liable to imprisonment for life.

130. Becoming accessory after the fact to murder

Any person who becomes an accessory after the fact to murder, on conviction on indictment, is liable to imprisonment for seven years.

131. Diminished responsibility.

(1) A person who kills or is a party to the killing of another person, is not liable to be convicted of premeditated murder or murder if the person was suffering from a mental disorder, whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury, as substantially impaired his mental responsibility for his acts in doing or being a party to the killing.

(2) On a charge of premeditated murder or murder, it is for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who, but for this section would be liable to be convicted of premeditated murder or murder, whether as principal or accessory, is liable to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of premeditated murder or murder shall not affect the question whether the killing amounted to murder in the case of any other party to the killing.

132. Provocation.

(1) If on a charge of murder there is evidence on which the jury can find that the person charged was provoked, whether by things done or by things said or by both, to lose his self-control, then the person is guilty of manslaughter.

(2) The question whether the provocation was enough to make a reasonable person do as he did is left to be determined by the jury; and in determining the question the jury shall take into account everything both done and said according to the effect which in their opinion, it would have on a reasonable person.

133. Killing by use of excessive force where some force is lawful

An unlawful killing by a person of another person is manslaughter and not murder if the offender while in the exercise in good faith of any right to use force against another person uses more force than that allowed to him by law in relation to the exercise of that right and causes the death of the person against whom the force is used without premeditation and without any intention of doing more bodily harm than he honestly believes is necessary for the purpose of exercising that right.

Manslaughter

134. Constitution of offence of manslaughter

A person who unlawfully kills another person under such circumstances as not to constitute murder is guilty of manslaughter and is liable to conviction on indictment to imprisonment for life.

135. Manslaughter by negligence

(1) A person who the law imposes a duty or who has taken upon himself any duty tending to preserve life and who

- (a) regardless of the life, safety, welfare and health of others, neglects to perform that duty or performs it negligently and causes the death of another person; or
- (b) acts recklessly in such a manner as to create an obvious and serious risk of causing physical injury to some other person who causes the death of that other person,

commits an offence and is liable to conviction on indictment to imprisonment for life.

(2) For the purposes of subsection (1) the

- (a) degree of negligence must be higher than that required to establish negligence for civil liability;
- (b) negligence or recklessness must have been a substantial cause of the death and there must have been personal misconduct or personal negligence on the part of the person.

(3) It shall not be a defence to a charge on indictment under subsection (1) that the death was caused by the negligence of others as well as of the person; if the death is caused by the act or default of several persons they all commit manslaughter but the negligence imputed to the person must have been a substantial cause of the death.

(4) If the negligent act of the person was a substantial cause of death, the fact that the deceased was himself negligent and contributed to the accident or other circumstances by which the death occurred does not afford a defence to a charge under subsection (1).

Suicide

136. Attempt to commit and abetment of suicide.

A person who

- (a) attempts to commit suicide commits an offence and is liable to imprisonment for two years; and
- (b) abets the commission of suicide by any person commits an offence, whether or not the suicide is actually committed, and is liable to imprisonment for fifteen years.

137. Suicide pact.

(1) In this section “suicide pact” means a common agreement between two or more persons having for its object the death of all of them, whether or not each of them is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

(2) A person who, acting in pursuance of a suicide pact between himself and another, kills the other person or is a party to the killing of the other person by a third party commits the offence of manslaughter and is liable on conviction on indictment to imprisonment for life.

(3) A person acting in pursuance of a suicide pact between himself and another person to kill that other person or be a party to the killing of that other person commits the offence of manslaughter and is liable on conviction on indictment to imprisonment for life.

Noxious Matter

138. Administration of noxious matter.

(1) A person who intentionally or recklessly administers any noxious matter to any person which endangers or is likely to endanger the life of that person commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

(2) A person who intentionally or recklessly administers any noxious matter to any person which injures or is likely to injure the health of that person commits an offence and is liable on conviction on indictment to imprisonment for five years.

Infanticide

139. Infanticide; alternative convictions of other offences

(1) Where a woman or girl by any wilful act or omission causes the death of her child (being a child under the age of twelve months) but at the time of the act or omission the balance of her mind was disturbed—

- (a) by reason of her not having fully recovered from the effect of giving birth to the child; or
- (b) by reason of the effect of lactation consequent upon the birth of the child,

then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the manslaughter of the child.

(2) Where upon the trial of a woman or girl for the murder of her child (being a child under the age of twelve months) the jury are of opinion that she by any wilful act or omission caused the death of the child, but that at the time of the act or omission the balance of her mind was disturbed—

- (a) by reason of her not having fully recovered from the effect of giving birth to the child; or
- (b) by reason of the effect of lactation consequent upon the birth of the child,

then the jury may, notwithstanding that the circumstances were such that but for this section they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

(3) Nothing in this section shall have effect so as to affect the powers of the jury upon indictment for the murder of a child—

- (a) to return a verdict of manslaughter; or
- (b) to return a verdict of acquittal on the ground of insanity; or (c) to return a verdict of concealment of birth in pursuance of section 126(3).

(4) The provisions of section 126(2) shall apply in the case of a woman or girl charged upon an indictment for infanticide as those provisions apply in the case of a woman or girl charged upon an indictment for premeditated murder or murder.

Child destruction

140. Child destruction

Any person who, when a woman or girl 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, on conviction on indictment, is liable to imprisonment for ten years.

Harm

141. Intentionally or recklessly causing harm.

(1) A person who intentionally causes harm to another person commits an offence and is liable

- (a) on conviction on indictment to imprisonment for five years; or
- (b) on summary conviction to imprisonment for two years.

(2) A person who recklessly causes harm to another person commits an offence and is liable

- (a) on conviction on indictment to imprisonment for two years; or
- (b) on summary conviction to imprisonment for six months.

142. Intentionally or recklessly causing grievous harm.

(1) A person who intentionally causes grievous harm to any person commits an offence and is liable

- (a) on conviction on indictment to imprisonment for ten years; or
- (b) on summary conviction to imprisonment for three years.

(2) A person who recklessly causes grievous harm to any person commits an offence and is liable

(a) on conviction on indictment to imprisonment for five years; or

(b) on summary conviction to imprisonment for one year.

143. Intentionally or recklessly causing maim or dangerous harm.

(1) In this section, “maim” means the destruction or permanent disabling of any external or internal organ, limb or faculty.

(2) A person who intentionally a maim or any dangerous harm to any person commits an offence and is liable

(a) on conviction on indictment to imprisonment for twenty years; or

(b) on summary conviction to imprisonment for five years.

(3) A person who recklessly causes a maim or any dangerous harm to any person commits an offence and is liable

(a) on conviction on indictment to imprisonment for ten years; or

(b) on summary conviction to imprisonment for three years.

144. Intentionally or recklessly causing wound.

(1) In this section “wound” means any incision or puncture which divides or pierces any exterior membrane of the body; and any membrane is exterior, for the purposes of this definition, which can be touched without dividing or piercing any other membrane.

(2) A person who intentionally causes a wound to any person commits an offence and is liable

(a) on conviction on indictment to imprisonment for ten years; or

(b) on summary conviction to imprisonment for three years.

(3) A person who recklessly causes a wound to any person commits an offence and is liable on conviction on indictment to imprisonment for five years.

145. Use of means or instrument to cause harm.

(1) A person commits an offence if that person uses a cutlass, knife, razor, sword, dagger, bayonet, fireworks or any explosive, corrosive, deadly, or destructive means or instrument with intent unlawfully

- (a) to cause harm to any person;
- (b) to wound or to cause grievous harm to any person; or
- (c) to maim or to cause dangerous harm to any person.

(2) A person who is convicted of an offence under

- (a) subsection (1)(a) is liable on conviction on indictment to imprisonment for five years or on summary conviction to imprisonment for one year;
- (b) under subsection (1)(b) is liable on conviction on indictment to imprisonment for ten years or on summary conviction to imprisonment for three years;
- (c) under subsection (1)(c) is liable on conviction on indictment to imprisonment for twenty years or on summary conviction to imprisonment for ten years.

(3) A person commits an offence if that person in or in the vicinity of a public place, recklessly or maliciously

- (a) casts or throws at or upon or otherwise applies to another person
 - (i) any corrosive fluid or any destructive or explosive substance;
 - (ii) any other dangerous or noxious matter;
- (b) causes any explosive substance to explode, with intent in any such case to alarm or cause panic, burn, maim, disfigure or disable another or to cause some dangerous harm to another person.

(4) A person who is convicted under subsection (3) is liable

- (a) on conviction on indictment to imprisonment for not less than five years nor more than twenty years; or

- (b) on summary conviction to imprisonment for not less than three years nor more than ten years.

146. Committing certain offences with aggravation.

- (1) A person commits an offence if that person
 - (a) with intent to facilitate the commission of any crime under sections 141 to 145 by himself or by any other person; or
 - (b) with intent to hinder the arrest or detention of himself or of any other person for any crime under sections 141 to 145; or
 - (c) with intent to hinder the discovery of any crime under sections 141 to 145; or
 - (d) with intent to enable himself or any other person to escape from legal custody, whether for a crime or for any other cause.
- (2) A person who is convicted of an offence under subsection (1) is liable
 - (a) if the crime is an indictable offence, to imprisonment for a term which may exceed seven years the term for which he is otherwise liable to such imprisonment;
 - (b) in any other case, to imprisonment for five years.

147. Committing certain offence with violence.

- (1) A person commits an offence if that person with any of the intents under section 146, and
 - (a) by means of choking, suffocating, or strangling, or by any other violence; or
 - (b) by means of any stupefying or overpowering drug, gas, or other matter,
makes or attempts to make a person unconscious or insensible or physically incapable of resistance.
- (2) A person who is convicted of an offence under subsection (1) is liable
 - (a) on conviction on indictment to imprisonment for twenty years; or
 - (b) on summary conviction to imprisonment for ten years.

148. Causing harm by hindering escape from wreck, etc.

A person shall be deemed to have intentionally caused harm to another person if the person intentionally hinders the other person from escaping from a wrecked vessel, or from lawfully protecting himself or any other person against harm in any case.

149. Causing harm by omission.

(1) In this section “necessaries of health and life” includes proper food, clothing, shelter, warmth, medical or surgical treatment, and any other matters which are reasonably necessary for the preservation of the health and life of a person.

(2) A person causes harm by an omission, for the purposes of this Code, if harm is caused by his omission to perform any duty for preventing harm under subsection (3).

(3) A person is under a duty to prevent harm to another person

(a) if he is under a duty, under this section, to supply a person with the necessaries of health and life; or

(b) if he is otherwise under a duty, by virtue of the provisions of an enactment, or by virtue of any office or employment, or by virtue of a lawful order of any Court or person, or by virtue of any agreement or undertaking, to do any act for the purpose of averting harm from any person, whether ascertained or unascertained.

(4) A man is under a duty to supply the necessaries of health and life to his wife, being actually under his control, and to his legitimate or illegitimate child, being actually under his control and not being of such age and capacity as to be able to obtain such necessaries.

(5) A guardian has the like duty of a man under subsection (4) with respect to his ward, being actually under his control.

(6) A woman, upon being delivered of a child, whether legitimate or illegitimate, is under a duty, so far as she is able, to summon assistance and to do all such other acts as are necessary and reasonable for preserving the child from harm by exposure, exhaustion, or otherwise by reason of its condition as a newly-born child and she is also under a duty, so far as she is able, to support and take reasonable care of the child, being under her control or in her care or charge, until it can safely be weaned.

(7) A person who, by virtue of office as a Superintendent of Prisons, relieving officer, or otherwise, or by reason of the provisions of an enactment, is bound to supply any of the necessaries of health and life to a person, is under a duty to supply them accordingly.

(8) A person who wrongfully imprisons another person is under a duty to supply that person with the necessaries of health and life.

(9) A person who has agreed or undertaken to supply any of the necessaries of health and life to another person, whether as his servant, apprentice, or otherwise, is under a duty to supply them accordingly.

(10) If a person is under a duty under this section and he has not the means for performing the duty, and there is any person or public authority bound to furnish him with the means, he is under a duty to take all reasonable steps for obtaining the means from that person or authority.

(11) If a person, being under a duty to supply any of the necessaries of health and life to another person, lawfully charges his wife, servant, or any other person with the supply of such necessaries, and furnishes the means for that purpose, the wife, servant, or other person so charged is under a duty to supply such necessaries accordingly.

(12) For the purposes of this section, a duty is constituted by an office, employment, agreement, or undertaking, the duty is sufficiently constituted in the case of a person who is actually performing the functions belonging to the office or employment, or who is acting as if the person were under such an agreement or undertaking with respect to another person.

(13) A person shall not be excused from liability for failure to perform a duty under this section, on the ground that another person is also under the same duty, whether jointly with him or independently of him, and whether on the same or on a different ground.

(14) Any person who, being charged with the duty of providing for another person the necessaries of life, without lawful excuse fails to do so, whereby 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 liable on conviction by a court of summary jurisdiction to imprisonment for twelve months and on conviction on indictment to imprisonment for two years.

150. Negligently causing harm by medical or surgical treatment.

Where any person in good faith, for the purposes of medical or surgical treatment, intentionally causes harm to another person, which in the exercise of reasonable skill and precaution according to the circumstances of the case, he ought to have known to be plainly improper, he is liable to punishment as if he had caused the harm negligently, within the meaning of this Code, and not otherwise.

151. Negligently causing harm.

A person who negligently and unlawfully causes harm to any person commits an offence and is liable

- (a) on conviction on indictment to imprisonment for one year; or
- (b) on summary conviction to imprisonment for six months.

152. Negligently causing grievous harm.

A person who negligently and unlawfully causes grievous harm to any person commits an offence and is liable

- (a) on conviction on indictment to imprisonment for eighteen months; or
- (b) on summary conviction to imprisonment for one year.

153. Negligently causing harm or endangering life.

A person who

- (a) being solely or partly in charge of any ship, boat, or other dangerous thing or object of any kind;
- (b) having undertaken or engaged in medical or surgical treatment of any person;
- (c) having undertaken or engaged in the dispensing, supplying, selling or administering, of any medicine or any poisonous or dangerous matter,

negligently causes harm to the person, or negligently endangers the life of the person, commits an offence and is liable on conviction on indictment to imprisonment for two years.

154. Application of provisions as to causing an event to sections 141 to 153.

(1) Except as provided in this section, sections 107 to 109 apply to sections 141 to 153.

(2) A person shall not be deemed to have caused harm to another person by omitting to supply him with the necessaries of health and life, unless it is proved against the person that the other person, by reason of his age or physical or mental state, or by reason of control by the person person, could not by reasonable exertion have avoided the harm.

(3) A person shall not be deemed to have caused harm to another person by disease or disorder which the other person suffers as the inward effect of his grief, terror, or other emotion, although the grief, terror or emotion has been caused by the person, whether with intent to cause harm or otherwise.

(4) A person shall not be deemed to have caused harm to another person who suffers by execution of a sentence of a court in consequence of a prosecution instituted, or procured, or of evidence given or procured to be given, by another person, whether in good faith or not.

(5) A person shall not be excused from liability to punishment for causing harm to another person or be acquitted of having caused harm to another person, on the ground that the other person, by his own trespass, negligence, act, or omission, contributed to causing the harm

Threat of Death

155. Threat of death or grievous harm.

A person who threatens any person with death or grievous harm, with intent to put him in fear of death or grievous harm commits an offence and is liable

- (a) on conviction on indictment to imprisonment for five years; or
- (b) on summary conviction to imprisonment for two years.

Assault

156. Assault.

(1) A person who intentionally or recklessly

- (a) applies force to, or causes any impact on, the body of another person; or
- (b) causes any person to fear that any such force or impact is imminent;

without the consent of the other person or, where the act is likely or intended to cause injury to another person, with or without that other person's consent commits an offence and is liable on conviction on indictment to imprisonment for three years.

(2) Without prejudice to subsection (1) a person commits an offence if that person is convicted of

- (a) assault upon any person acting as a judicial officer;
- (b) assault upon a minister of religion;
- (c) assault upon a person in any court;

- (d) assault upon a person in order to prevent him from doing or on account of his doing or having done anything as party, agent, counsel or witness in any judicial proceedings;
- (e) assault with the intention to commit or attempt to commit any other crime.

(3) An act which constitutes an assault is lawful if the act amounts to use of reasonable force in exercise of a right.

- (4) A person who is convicted of an offence under subsection (2) is liable
 - (a) on conviction on indictment to imprisonment for three years; or
 - (b) on summary conviction to imprisonment for one year.

157. Aggravated assault on male child or female.

A person commits assault upon a male child or upon any female if the court is of the opinion that the assault is of such an aggravated nature that it cannot be sufficiently punished under section 156, and is liable on conviction on indictment to imprisonment for five years or a fine of three thousand dollars.

158. Stalking.

(1) In this section “course of conduct” means a persistent pattern of conduct comprising two or more acts carried out over a period of time that shows a continuity of purpose aimed at a particular person who is a victim of the offence.

- (2) A person commits an offence of stalking if that person
 - (a) intentionally and maliciously follows about or harasses another person in such a manner as would cause that person to be in reasonable fear of being assaulted or of suffering serious bodily injury or death;
 - (b) wilfully and maliciously engages in a course of conduct that involves an express or implied threat to kill another person or cause serious bodily injury to another person or cause emotional distress to another person;
 - (c) persistently makes harassing phone calls, texts, social media messages, emails or sends unsolicited mail in any form, to another person in such manner as would cause emotional distress to the other person.

- (3) A person who is convicted of an offence of stalking is liable
 - (a) on conviction on indictment to imprisonment for five years; or
 - (b) on summary conviction to imprisonment for one year.

159. Abuse against young person.

- (1) In this section

“abuse” means an unlawful sexual intercourse or connection with a young person in terms of sexual offences or unlawful use of force on a young person;

“person who is in a position of trust or authority” includes a parent, guardian, teacher, medical practitioner, social worker, drivers of school buses or any other person having charge of a young person.

- (2) A person who is in a position of trust or authority towards a young person, who in the course of his duty becomes aware of any act of abuse committed against that young person shall as soon as is practicable make a written report of the case to any police officer, or to the Government department responsible for social services.

- (3) A person referred to in subsection (2) who without reasonable cause fails or refuses to make a report to a police officer or the Government department responsible for social services commits an offence and is liable on summary conviction to a fine of one thousand dollars.

- (4) A civil action shall not be brought against a person referred to in subsection (2) in respect of a report made under that subsection in good faith for the purpose of complying with that subsection.

160. Kidnapping.

- (1) A person who, without lawful excuse, proof of which lies on him, takes or carries away any person by force or deception without the consent of that person commits the offence of kidnapping and is liable on conviction on indictment to imprisonment for twenty years.

- (2) A person who knowing that an offence under subsection (1) has been committed in respect of another person assists or encourages the execution of the intent with which the offence was committed, also commits that offence.

- (3) It shall not be a defence to show that the person kidnapped did not resist unless it appears that the kidnapping was not caused by threats or force.

161. False imprisonment.

- (1) A person commits an offence if that person falsely imprisons another person
- (a) intentionally and without lawful excuse; proof of which lies on him; or
 - (b) recklessly and without lawful excuse, proof of which lies on him; and restrains the person's freedom of movement, whether or not the restraint is only momentary, and it is not necessary that the person restrained knew he has been falsely imprisoned.
- (2) A person who is convicted of an offence
- (a) under subsection (1)(a), is liable on conviction on indictment to imprisonment for two years;
 - (b) under subsection (1)(b), is liable on conviction on indictment to imprisonment for one year.
- (3) False imprisonment may take place anywhere so long as the person is prevented from moving from a particular place, and it is not necessary that the area of confinement has physical boundary.
- (4) A person does not commit an offence of falsely imprisoning another person where that person is wrongfully prevented from moving in a particular direction if he is free to move in another direction without taking an unreasonable risk of any danger or injury to himself.

PART VIII

SEXUAL OFFENCES

General Provisions Relating to Sexual Offences

162. Interpretation for sections 163 to 256.

- (1) For the purposes of sections 163 to 256
- (a) penetration is a continuing act from entry to withdrawal;

- (b) references to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery);
- (c) “image” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image;
- (d) references to an image of a person include references to an image of an imaginary person;
- (e) “mental disorder” has the meaning assigned under the [Relevant] Act;
- (f) references to observation (however expressed) are to observation whether direct or by looking at an image;
- (g) touching includes touching
 - (i) with any part of the body,
 - (ii) with anything else,
 - (iii) through anything,

and in particular includes touching amounting to penetration;

- (h) “vagina” includes vulva;
 - (i) in relation to an animal, references to the vagina or anus include references to any similar part.

(2) For the purposes of this Part (except section 246), penetration, touching or any other activity is sexual if a reasonable person would consider that

- (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

(3) For the purposes of sections 163 to 256

“care home” means an establishment which provides accommodation, together with nursing or personal care, for any of the following persons

- (a) a person who is or has been ill;
- (b) a person who has or has had a mental disorder;
- (c) a person who is disabled or infirm;
- (d) a person who is or has been dependent on alcohol or drugs;

“children’s home” means an establishment that provides care and accommodation wholly or mainly for children;

“community home” means a home equipped, maintained and managed by the State or by a voluntary organization;

“independent clinic” means an establishment of a prescribed kind (not being a hospital) in which services are provided by medical practitioners (whether or not any services are also provided for the purposes of the establishment elsewhere);

“voluntary home” means a children’s home which is carried on by a voluntary organization but does not include a community home.

163. Rape.

(1) A person who intentionally penetrates the vagina, anus or mouth of another person with his penis

- (a) without the consent of the other person; and
- (b) without reasonably believing that the other person consents,

commits an offence and is liable on conviction on indictment, to imprisonment for life.

(2) In determining whether a belief is reasonable the court shall have regard to all the circumstances, including any steps the person has taken to ascertain whether the other person consents.

(3) A child shall be deemed incapable of committing the offence of rape.

164. Assault by penetration.

(1) A person who intentionally penetrates the vagina or anus of another person with a part of his body or anything else and the penetration is sexual

- (a) without the consent of the other person; and

(b) without reasonably believing that the other person consents,
commits an offence and is liable, on conviction on indictment, to imprisonment for life.

(2) In determining whether a belief is reasonable the court shall have regard to all the circumstances, including any steps the person has taken to ascertain whether the other person consents.

165. Sexual assault.

(1) A person commits an offence if that person intentionally touches another person for the purpose of obtaining sexual gratification

- (a) without the consent of the other person; and
- (b) without reasonably believing that the other person consents.

(2) A person who is convicted of an offence under subsection (1) is liable

- (a) on summary conviction, to imprisonment for three years or a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for ten years.

(3) In determining whether a belief is reasonable the court shall have regard to all the circumstances, including any steps the person has taken to ascertain whether the other person consents.

166. Causing a person to engage in sexual activity without consent.

(1) A person who

- (a) intentionally causes another person to engage in sexual activity
 - (i) without the consent of the other person; and
 - (ii) without reasonably believing that the other person consents;
- (b) intentionally causes or incites a child to engage in a sexual activity.

(2) In determining whether a belief is reasonable under subsection (1)(a)(ii) the court shall have regard to all the circumstances, including any steps the person has taken to ascertain whether the other person consents.

(3) Sections 254 and 255 apply to an offence under this section.

(4) A person is convicted of an offence under this section, if the activity caused involved

- (a) penetration of the other person's anus or vagina;
- (b) penetration of the other person's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of the other person's body or by the other person with anything else; or
- (d) penetration of a person's mouth with the other person's penis,

is liable, on conviction on indictment, to imprisonment for life.

(5) Unless subsection (4) applies, a person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for ten years.

Rape and other offences against children under thirteen

167. Rape of a child under thirteen.

A person who intentionally penetrates the vagina, anus or mouth of another person with his penis and the other person is under thirteen commits an offence and is liable on conviction on indictment to imprisonment for life.

168. Assault of a child under thirteen by penetration.

A person who intentionally sexually penetrates the vagina or anus of another person who is under thirteen with a part of his body or anything else commits an offence and is liable on conviction on indictment to imprisonment for life.

169. Sexual assault of a child under thirteen.

A person who intentionally touches another person and the touching is sexual and the other person is under thirteen commits an offence and is liable

- (a) on summary conviction, to imprisonment for three years or a fine of two thousand dollars;
- (b) on conviction on indictment, to imprisonment for fourteen years.

170. Causing or inciting a child under thirteen to engage in sexual activity.

(1) A person who intentionally causes or incites another person under thirteen to engage in a sexual activity commits an offence and, subject to subsection (2), is liable

- (a) on summary conviction, to imprisonment for two years or to a fine of two thousand dollars;
- (b) on conviction on indictment, to imprisonment for fourteen years.

(2) If the activity caused or incited involved

- (a) penetration of the other person's anus or vagina;
- (b) penetration of the other person's mouth with a person's penis;
- (c) penetration of the other person's anus or vagina with a part of the person's body or anything else; or
- (d) penetration of the other person's mouth the person's penis;

the person is liable, on conviction on indictment, to imprisonment for life.

Child sex offences

171. Sexual activity with a child.

(1) A person who intentionally touches another person and the touching is sexual and the other person is under sixteen and the person does not reasonably believe that he is sixteen or over or under thirteen commits an offence and is liable

- (a) on summary conviction, to imprisonment for three years or to a fine of two thousand dollars;
- (b) on conviction on indictment, to imprisonment of fourteen years.

(2) If the touching involved

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body; or

- (d) penetration of the person's mouth with the other person's penis;

the person is liable on conviction on indictment, to imprisonment for fourteen years.

172. Causing or inciting a child to engage in sexual activity.

(1) An adult who intentionally causes or incites another person to engage in a sexual activity and the other person is under sixteen and the person does not reasonably believe that the other person is sixteen or over or the other person is thirteen, commits an offence and is liable

- (a) on summary conviction, to imprisonment for two years or to a fine of two thousand dollars;
- (b) on conviction on indictment, to imprisonment for fourteen years.

(2) If the activity caused or incited involved

- (a) penetration of the other person's anus or vagina;
- (b) penetration of the other person's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of the other person's body or by the other person with anything else; or
- (d) penetration of person's mouth with the other person's penis,

the person is liable, on conviction on indictment, to imprisonment for fourteen years.

173. Engaging in sexual activity in the presence of a child.

(1) An adult commits an offence if that adult intentionally engages in a sexual activity

- (a) for the purpose of obtaining sexual gratification
 - (i) when another person is present or in a place from which the person can be observed; and
 - (ii) knowing or believing that the other person is aware, or intending that the other person should be aware, that he is engaging in it; and
- (b) the other person is under sixteen and the person does not reasonably believe that the other person is sixteen or over; or

- (c) the other person is under thirteen.
- (2) A person convicted of an offence under subsection (1) is liable
 - (a) on summary conviction, to imprisonment for two years or to a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for ten years.

174. Causing a child to watch a sexual activity.

- (1) An adult commits an offence if that adult
 - (a) for the purpose of obtaining sexual gratification, the adult intentionally causes another person to watch a third person engaging in a sexual activity, or to look at an image of any person engaging in a sexual activity; and
 - (b) the other person is under sixteen and the adult does not reasonably believe that the other person is sixteen or over; or
 - (c) the other person is under thirteen.
- (2) A person convicted of an offence under section (1) is liable
 - (a) on summary conviction, to imprisonment for two years or to a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for ten years.

175. Child sex offences committed by children or young persons.

A person under eighteen who does anything which would be an offence under sections 171 to 174 if he were aged eighteen commits an offence and is liable

- (a) on summary conviction, to imprisonment for twelve months or to a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for five years.

176. Arranging or facilitating commission of a child sex offence.

(1) A person who he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any

part of the world, and doing it will involve the commission of an offence under sections 171 to 175 commits an offence and is liable

- (a) on summary conviction, to imprisonment for two years or to a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for fourteen years.
- (2) A person does not commit an offence under this section if
- (a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do, and
 - (b) any offence within subsection (1)(b) would be an offence against a child for whose protection he acts.
- (3) For the purposes of subsection (2), a person acts for the protection of a child if he acts for the purpose of
- (a) protecting the child from sexually transmitted infection;
 - (b) protecting the physical safety of the child;
 - (c) preventing the child from becoming pregnant; or
 - (d) promoting the child's emotional well-being by the giving of advice, and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.

177. Meeting a child following sexual grooming etc.

(1) An adult who having met or communicated with another person on at least two earlier occasions, intentionally meets the other person or travels with the intention of meeting the other person in any part of the world, and at the time, the adult intends to do anything to or in respect of the other person, during or after the meeting and in any part of the world, which if done will involve the commission by the adult of an offence under this Part, and the other person is under sixteen and the adult does not reasonably believe that the other person is sixteen or over, commits an offence and is liable

- (a) on summary conviction, to imprisonment for two years or to a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for ten years.

(2) In subsection (1) a reference to an adult having met or communicated with another person is a reference to an adult having met another person in any part of the world or having communicated with the other person by any means from, to or in any part of the world.

Abuse of position of trust

178. Sexual activity with a child by abuse of position of trust.

- (1) An adult commits an offence if that adult
- (a) intentionally touches another person;
 - (b) the touching is sexual;
 - (c) is in a position of trust in relation to the other person;
 - (d) where subsection (2) applies, knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to the other person;

and the other person is under eighteen and the adult does not reasonably believe that the other person is eighteen or over, or the other person is under thirteen.

- (2) An adult
- (a) is in a position of trust in relation to the other person by virtue of circumstances within section 182 (3), (4), (5) or (6); and
 - (b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under eighteen, the person is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

- (4) Where in proceedings for an offence under this section
- (a) it is proved that the person was in a position of trust in relation to the other person by virtue of circumstances within section 182 (3), (4), (5) or (6); and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances, it is to be taken that the person knew or could reasonably have been expected to know of the circumstances by

virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

- (5) A person convicted of an offence under this section is liable
 - (a) on summary conviction, to imprisonment for twelve months or to a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for five years.

179. Causing or inciting a child to engage in sexual activity by abuse of position of trust.

- (1) An adult commits an offence if
 - (a) he intentionally causes or incites another person to engage in a sexual activity;
 - (b) the adult is in a position of trust in relation to the other person;
 - (c) where subsection (2) applies, the adult knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to the other person; and
 - (d) the other person is under eighteen and the adult does not reasonably believe that the other person is eighteen or over; or
 - (e) the other person is under thirteen.

- (2) An adult
 - (a) is in a position of trust in relation to the other person by virtue of circumstances within section 182 (3), (4), (5) or (6); and
 - (b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under eighteen, the person is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

- (4) Where in proceedings for an offence under this section

- (a) it is proved that the person was in a position of trust in relation to the other person by virtue of circumstances within section 182 (3), (4), (5) or (6); and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances, it is to be taken that the person knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.
- (5) A person convicted of an offence under this section is liable
- (a) on summary conviction, to imprisonment for twelve months or to a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for five years.

180. Sexual activity in the presence of a child by abuse of position of trust.

- (1) An adult commits an offence if
- (a) he intentionally engages in a sexual activity;
 - (b) for the purpose of obtaining sexual gratification, he engages in it
 - (i) when another person is present or is in a place from which the adult can be observed; and
 - (ii) knowing or believing that the other person is aware, or intending that the other person should be aware, that he is engaging in it;
 - (c) he is in a position of trust in relation to the other person;
 - (d) where subsection (2) applies, he knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to the other person; and
 - (e) the other person is under eighteen and he does not reasonably believe that the other person is eighteen or over; or
 - (f) the other person is under thirteen.
- (2) An adult

(a) is in a position of trust in relation to the other person by virtue of circumstances within section 182 (3), (4), (5) or (6); and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under eighteen, the person is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section

(a) it is proved that the person was in a position of trust in relation to the other person by virtue of circumstances within section 182 (3), (4), (5) or (6); and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances, it is to be taken that the person knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person convicted of an offence under this section is liable

(a) on summary conviction, to imprisonment for twelve months or to a fine of two thousand five hundred dollars;

(b) on conviction on indictment, to imprisonment for five years.

181. Causing a child to watch a sexual act by abuse of position of trust.

(1) An adult commits an offence if

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person to watch a third person engaging in a sexual activity, or to look at an image of any person engaging in an activity;

(b) he is in a position of trust in relation to the other person;

(c) where subsection (2) applies, he knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to the other person; and

- (d) the other person is under eighteen and he does not reasonably believe that the other person is eighteen or over; or
 - (e) the other person is under thirteen.
- (2) An adult
- (a) is in a position of trust in relation to the other person by virtue of circumstances within section 182 (3), (4), (5) or (6); and
 - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under eighteen, the person is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this section
- (a) it is proved that the person was in a position of trust in relation to the other person by virtue of circumstances within section 182 (3), (4), (5) or (6); and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances, it is to be taken that the person knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.
- (5) A person convicted of an offence under this section is liable
- (a) on summary conviction, to imprisonment for twelve months or to a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for five years.

182. Positions of trust.

- (1) In this section

“care order” means a care order issued under an enactment by a court;

“residential care home” means an establishment which is a residential care home;

“residential family centre” means any establishment at which

- (a) accommodation is provided for children and their parents;
- (b) the parents’ capacity to respond to the children’s needs and to safeguard their welfare is monitored or assessed; and
- (c) the parents are given such advice, guidance or counseling as is considered necessary;

“supervision order” means an order made by the court putting a child under supervision of a person;

(2) For the purposes of sections 178 to 181, an adult is in a position of trust in relation to another person if

- (a) subsections (3) to (16) apply; or
- (b) any condition specified in an order made by the Attorney General is met.

(3) This section applies if an adult looks after persons under eighteen who are detained in an institution by virtue of a court order or under an enactment, and the other person is so detained in that institution.

(4) This section applies if the adult looks after persons under eighteen who are resident in a home or other place in which

- (a) accommodation and maintenance are provided by the State under an enactment; or
- (b) accommodation is provided by a voluntary organization under an enactment, and the person under eighteen is resident, and is so provided with accommodation and maintenance or accommodation, in that place.

(5) This section applies if an adult looks after persons under eighteen who are accommodated and cared for in one of the following institutions

- (a) a hospital;
- (b) an independent clinic;

- (c) a care home, residential care home or private hospital;
- (d) a community home, voluntary home or children's home;
- (e) a home provided under an enactment relating to children; or
- (f) a residential family centre,

and the person under eighteen is accommodated and cared for in that institution.

(6) This section applies if an adult looks after persons under eighteen who are receiving education at an educational institution and the person under eighteen is receiving, and the adult is not receiving, education at that institution.

(7) This section applies if an adult is appointed to be the guardian of a person under eighteen under an enactment.

(8) This section applies if an adult is engaged in the provision of services under, or pursuant to anything done under

- (a) any enactment relating to employment and training; or
- (b) any enactment relating to learning and skills,

and, in that capacity, looks after the person under eighteen on an individual basis.

(9) This section applies if an adult, as a person who is to report to the court on matters relating to the welfare of a person under eighteen, regularly has unsupervised contact with the person under eighteen (whether face to face or by any other means).

(10) This section applies if an adult is a personal adviser appointed for the person under eighteen under

- (a) an enactment; or
- (b) in that capacity, looks after the person under eighteen on an individual basis.

(11) This section applies if

- (a) the person under eighteen is subject to a care order or a supervision order; and
- (b) in the exercise of functions conferred by virtue of the order on an authorized person designated by the order, the adult looks after the person under eighteen on an individual basis.

- (12) This section applies if an adult
- (a) is an officer appointed for the person under eighteen;
 - (b) is appointed a children's guardian of the person under eighteen; or
 - (c) is appointed to be the guardian *ad litem* of the person under eighteen and, in that capacity, regularly has unsupervised contact with the person under eighteen (whether face to face or by any other means).

- (13) This section applies if
- (a) a person under eighteen is subject to requirements imposed by or under an enactment on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings; and
 - (b) an adult looks after the person under eighteen on an individual basis in pursuance of the requirements.

(14) Subject to subsection (15), a person looks after persons under eighteen if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

- (15) An adult looks after another person on an individual basis if
- (a) the adult is regularly involved in caring for, training or supervising the other person; and
 - (b) in the course of his involvement, the adult regularly has unsupervised contact with the other person (whether face to face or by any other means).

- (16) A person receives education at an educational institution if
- (a) he is registered or otherwise enrolled as a pupil or student at the institution; or
 - (b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

183. Marriage exception under sections 178 to 181.

(1) Conduct by an adult which would otherwise be an offence under any of sections 178 to 181 against another person is not an offence under that section if at the time

- (a) the other person is sixteen or over; and
- (b) the adult and the other person are lawfully married.

(2) In proceedings for such an offence it is for the person to prove that the adult and the other person were lawfully married at the time.

184. Sexual relationships which pre-date position of trust under sections 178 to 181.

(1) Conduct by an adult which would otherwise be an offence under any of sections 178 to 181 against another person is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between the adult and the other person.

(2) Subsection (1) does not apply if at that time sexual intercourse between the adult and the other person would have been unlawful.

(3) In proceedings for an offence under any of sections 178 to 181 it is for the person to prove that such a relationship existed at that time.

Familial child sex offences

185. Sexual activity with a child family member.

(1) An adult commits an offence if

- (a) he intentionally touches another person;
- (b) the touching is sexual;
- (c) the relation of the adult to the other person is within section 187;
- (d) he knows or could reasonably be expected to know that his relation to the other person is of a description falling within section 187; and
- (e) the other person is under eighteen and he does not reasonably believe that the other person is eighteen or over; or
- (f) the other person is under thirteen.

(2) Where in proceedings for an offence under this section it is proved that the other person was under eighteen, the person is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the relation of the person to the other person was of a description falling within section 187, it is to be taken that the person knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person convicted of an offence under this section, if aged eighteen or over at the time of the offence, is liable

- (a) where subsection (5) applies, on conviction on indictment to imprisonment for fourteen years;
- (b) in any other case -
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.

(5) This section applies where the touching involved

- (a) penetration of the other person's anus or vagina with a part of the adult's body or anything else;
- (b) penetration of the other person's mouth with the adult's penis;
- (c) penetration of the adult's anus or vagina with a part of the other person's body; or
- (d) penetration of the adult's mouth with the other person's penis.

186. Inciting a child family member to engage in sexual activity.

(1) An adult commits an offence if

- (a) he intentionally incites another person to touch, or allow the other person to be touched by him;

- (b) the touching is sexual;
- (c) the relation of the adult to the other person is within section 187;
- (d) he knows or could reasonably be expected to know that his relation to the other person is of a description falling within section 187; and
- (e) the other person is under eighteen and he does not reasonably believe that the other person is eighteen or over; or
- (f) the other person is under thirteen.

(2) Where in proceedings for an offence under this section it is proved that the other person was under eighteen, the person is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the relation of the person to the other person was of a description falling within section 187, it is to be taken that the person knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person convicted of an offence under this section, if he was aged eighteen or over at the time of the offence, is liable

- (a) where subsection (5) applies, on conviction on indictment to imprisonment for fourteen years;
- (b) in any other case
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.

(5) This subsection applies where the touching to which the incitement related involved

- (a) penetration of the other person's anus or vagina with a part of the adult's body or anything else;
- (b) penetration of the other person's mouth with the adult's penis;

- (c) penetration of the adult's anus or vagina with a part of the other person's body; or
- (d) penetration of the adult's mouth with the other person's penis.

187. Family relationships.

- (1) In this section
 - (a) "aunt" means the sister or half-sister of a person's parent, and "uncle" has a corresponding meaning;
 - (b) "cousin" means the child of an aunt or uncle;
 - (c) a person is a child's foster parent if
 - (i) he is a person with whom the child has been placed under an enactment; or
 - (ii) he fosters the child privately;
 - (d) a person is another's partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;
 - (e) "step-parent" includes a parent's partner and "stepbrother" and "stepsister" include the child of a parent's partner.
- (2) The relation of an adult to another person is within this section if
 - (a) it is within subsection (3), (4) or (5); or
 - (b) it would be within one of those subsections but for an enactment relating to adoption or children.
- (3) The relation of an adult to the other person is within this section if
 - (a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle; or
 - (b) the adult is or has been the other person's foster parent.
- (4) The relation of an adult to the other person is within this section if the adult and the other person live or have lived in the same household, or the adult is or has

been regularly involved in caring for, training, supervising or being in sole charge of the other person, and

- (a) one of them is or has been the other's step-parent;
 - (b) the adult and the other person are cousins;
 - (c) one of them is or has been the other's stepbrother or stepsister; or
 - (d) the parent or present or former foster parent of one of them is or has been the other's foster parent.
- (5) The relation of an adult to the other person is within this section if
- (a) the adult and the other person live in the same household; and
 - (b) the adult is regularly involved in caring for, training, supervising or being in sole charge of the other person.

188. Marriage exception under sections 185 and 186.

- (1) Conduct by an adult which would otherwise be an offence under section 185 or 186 against another person is not an offence under that section if at the time
- (a) the other person is sixteen or over; and
 - (b) the adult and the other person are lawfully married.
- (2) In proceedings for such an offence it is for the person to prove that the adult and the other person were lawfully married at the time.

189. Sexual relationships which pre-date family relationships under sections 185 and 186.

- (1) Conduct by an adult which would otherwise be an offence under section 185 or 186 against another person is not an offence under that section if
- (a) the relation of the adult to the other person is not within subsection (3) of section 187;
 - (b) it would not be within that subsection if an enactment relation to adoption or children did not apply; and
 - (c) immediately before the relation of the adult to the other person first became such as to fall within section 187, a sexual relationship existed between the adult and the other person.

(2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual intercourse between the adult and the other person would have been unlawful.

(3) In proceedings for an offence under section 185 or 186 it is for the person to prove the matters mentioned in subsection (1)(a) to (c).

Offences against persons with a mental disorder impeding choice

190. Sexual activity with a person with a mental disorder impeding choice.

- (1) A person commits an offence if
- (a) he intentionally touches another person;
 - (b) the touching is sexual;
 - (c) the other person is unable to refuse because of or for a reason related to a mental disorder; and
 - (d) the person knows or could reasonably be expected to know that the other person has a mental disorder and that because of it or for a reason related to it the other person is likely to be unable to refuse.
- (2) The other person is unable to refuse if
- (a) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or
 - (b) he is unable to communicate such a choice.
- (3) A person convicted of an offence under this section, is liable
- (a) where subsection (4) applies, on conviction on indictment to imprisonment for fourteen years;
 - (b) in any other case
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.

(4) This subsection applies where a person convicted of an offence and the touching involved -

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body; or
- (d) penetration of the person's mouth with the other person's penis,

191. Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity.

- (1) A person commits an offence if
 - (a) he intentionally causes or incites another person to engage in a sexual activity;
 - (b) the other person is unable to refuse because of or for a reason related to a mental disorder; and
 - (c) he knows or could reasonably be expected to know that the other person has a mental disorder and that because of it or for a reason related to it the other person is likely to be unable to refuse.
- (2) The other person is unable to refuse if
 - (a) he lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason), or
 - (b) he is unable to communicate such a choice.
- (3) A person convicted of an offence under this section, is liable
 - (a) where subsection (4) applies, on conviction on indictment to imprisonment for fourteen years;
 - (b) in any other case
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;

- (ii) on conviction on indictment, to imprisonment for fourteen years.

(4) This subsection applies where a person convicted of an offence and the touching involved -

- (a) penetration of the other person's anus or vagina;
- (b) penetration of the other person's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of the other person's body or by the other person with anything else; or
- (d) penetration of a person's mouth with the other person's penis;

192. Engaging in sexual activity in the presence of a person with a mental disorder impeding choice.

(1) A person commits an offence if

- (a) he intentionally engages in a sexual activity;
- (b) for the purpose of obtaining sexual gratification, he engages in the sexual activity
 - (i) when another person is present or is in a place from which the person can be observed; and
 - (ii) knowing or believing that the other person is aware, or intending that the other person should be aware, that he is engaging in it;
- (c) the other person is unable to refuse because of or for a reason related to a mental disorder; and
- (d) he knows or could reasonably be expected to know that the other person has a mental disorder and that because of it or for a reason related to it the other person is likely to be unable to refuse.

(2) The other person is unable to refuse if

- (a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) he is unable to communicate such a choice.

(3) A person convicted of an offence under this section is liable

(a) on summary conviction, to imprisonment for two years or to a fine not exceeding two thousand five hundred dollars;

(b) on conviction on indictment, to imprisonment for ten years.

193. Causing a person, with a mental disorder impeding choice, to watch a sexual act.

(1) A person commits an offence if

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person to watch a third person engaging in a sexual activity, or to look at an image of any person engaging in a sexual activity;

(b) the other person is unable to refuse because of or for a reason related to a mental disorder; and

(c) he knows or could reasonably be expected to know that the other person has a mental disorder and that because of it or for a reason related to it the other person is likely to be unable to refuse.

(2) The other person is unable to refuse if

(a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or

(b) he is unable to communicate such a choice.

(3) A person convicted of an offence under this section is liable

(a) on summary conviction, to imprisonment for two years or to a fine not exceeding two thousand five hundred dollars;

(b) on conviction on indictment, to imprisonment for ten years.

194. Inducement, threat or deception to procure sexual activity with a person with a mental disorder.

- (1) A person commits an offence if
 - (a) with the agreement of another person he intentionally touches the other person;
 - (b) the touching is sexual;
 - (c) he obtains the other person's agreement by means of an inducement offered or given, a threat made or a deception practised by him for that purpose;
 - (d) the other person has a mental disorder; and
 - (e) he knows or could reasonably be expected to know that the other has a mental disorder.
- (2) A person convicted of an offence under this section, is liable
 - (a) where subsection (3) applies, on conviction on indictment to imprisonment for fourteen years;
 - (b) in any other case
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.
- (3) This subsection applies where a person convicted of an offence and the touching involved -
 - (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
 - (b) penetration of the other person's mouth with the person's penis;
 - (c) penetration of the person's anus or vagina with a part of the other person's body; or
 - (d) penetration of the person's mouth with the other person's penis,

195. Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception.

- (1) A person commits an offence if
 - (a) by means of an inducement offered or given, a threat made or a deception practised by him for this purpose, he intentionally causes another person to engage in, or to agree to engage in, a sexual activity;
 - (b) the other person has a mental disorder; and
 - (c) he knows or could reasonably be expected to know that the person has a mental disorder.
- (2) A person convicted of an offence under this section, is liable
 - (a) where subsection (3) applies, on conviction on indictment to imprisonment for fourteen years;
 - (b) in any other case
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.
- (3) This subsection applies where a person convicted of an offence and the sexual activity caused or agreed to involved -
 - (a) penetration of the other person's anus or vagina;
 - (b) penetration of the other person's mouth with a person's penis;
 - (c) penetration of a person's anus or vagina with a part of the other person's body or by the other with anything else; or
 - (d) penetration of a person's mouth with the other person's penis,

196. Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder.

- (1) A person commits an offence if
 - (a) he intentionally engages in a sexual activity;

- (b) for the purpose of obtaining sexual gratification, he engages in it
 - (i) when another person is present or is in a place from which he can be observed; and
 - (ii) knowing or believing that the other person is aware, or intending that the other person should be aware, that he is engaging in it;
 - (c) the other person agrees to be present or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
 - (d) the other person has a mental disorder; and
 - (e) he knows or could reasonably be expected to know that the other person has a mental disorder.
- (2) A person convicted of an offence under this section is liable
- (a) on summary conviction, to imprisonment for two years or to a fine not exceeding two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for ten years.

197. Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception.

- (1) A person commits an offence if
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person to watch a third person engaging in a sexual activity, or to look at an image of any person engaging in a sexual activity;
 - (b) the other person agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by him for the purpose of obtaining that agreement;
 - (c) the other person has a mental disorder; and
 - (d) he knows or could reasonably be expected to know that the other person has a mental disorder.

- (2) A person convicted of an offence under this section is liable
 - (a) on summary conviction, to imprisonment for two years or to a fine not exceeding two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for ten years.

Care workers for persons with a mental disorder

198. Sexual activity with a person with a mental disorder by care worker.

- (1) A person commits an offence if
 - (a) he intentionally touches another person;
 - (b) the touching is sexual;
 - (c) the other person has a mental disorder;
 - (d) he knows or could reasonably be expected to know that the other person has a mental disorder; and
 - (e) he is involved in the other person's care in a way that falls within section 202.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the person knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person convicted of an offence under this section, if he was aged eighteen or over at the time of the offence, is liable

- (a) where subsection (4) applies, on conviction on indictment to imprisonment for fourteen years;
- (b) in any other case
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.

(4) This subsection applies where a person convicted of an offence under this section, if the touching involved

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body; or
- (d) penetration of the person's mouth with the other person's penis,

199. Causing or inciting sexual activity by care worker.

- (1) A person commits an offence if
 - (a) he intentionally causes or incites another person to engage in a sexual activity;
 - (b) the other person has a mental disorder;
 - (c) he knows or could reasonably be expected to know that the other person has a mental disorder; and
 - (d) he is involved in the other person's care in a way that falls within section 202.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the person knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person convicted of an offence under this section, if he was aged eighteen or over at the time of the offence, is liable

- (a) where subsection (4) applies, on conviction on indictment to imprisonment for fourteen years;
- (b) in any other case
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.

(4) This subsection applies where a person convicted of an offence under this section, if the activity caused or incited involved

- (a) penetration of the other person's anus or vagina;
- (b) penetration of the other person's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of the other person's body or by the other person with anything else; or
- (d) penetration of a person's mouth with the other person's penis,

200. Sexual activity in the presence of a person with a mental disorder by care worker.

(1) A person commits an offence if

- (a) he intentionally engages in a sexual activity;
- (b) for the purpose of obtaining sexual gratification, he engages in it
 - (i) when another person is present or is in a place from which he can be observed; and
 - (ii) knowing or believing that the other person is aware, or intending that the other person should be aware, that he is engaging in it;
- (c) the other person has a mental disorder;
- (d) he knows or could reasonably be expected to know that the other person has a mental disorder; and
- (e) he is involved in the other person's care in a way that falls within section 202.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the person knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for six months or to a fine not exceeding two thousand five hundred dollars;

- (b) on conviction on indictment, to imprisonment for seven years.

201. Causing a person with a mental disorder to watch a sexual act by care worker.

- (1) A person commits an offence if
 - (a) for the purpose of obtaining sexual gratification, he intentionally causes another person to watch a third person engaging in a sexual activity, or to look at an image of any person engaging in a sexual activity;
 - (b) the other person has a mental disorder;
 - (c) he knows or could reasonably be expected to know that the other person has a mental disorder; and
 - (d) he is involved in the other person's care in a way that falls within section 202.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the person knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

- (3) A person convicted of an offence under this section is liable
 - (a) on summary conviction, to imprisonment for six months or to a fine not exceeding two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for seven years.

202. Care worker.

(1) For the purposes of sections 198 to 201, a person is a "care worker" if involved in the care of another person in a way that falls within this section if subsections (2) to (4) applies.

- (2) This section applies if
 - (a) the other person is accommodated and cared for in a care home, community home, voluntary home or children's home; and

- (b) the person who is involved in the care of the other person has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with the other person.
- (3) This section applies if the other person is a patient for whom services are provided
 - (a) by a medical hospital or an independent medical agency; or
 - (b) in an independent clinic or an independent hospital, and the person in the care of the other person has functions to perform for the body or agency or in the clinic or hospital in the course of employment which have brought him or are likely to bring him into regular face to face contact with the other person.
- person (4) This section applies if the person involved in the care of the another
 - (a) is, whether or not in the course of employment, a provider of care, assistance or services to the other person in connection with the other person's mental disorder; and
 - (b) as such, has had or is likely to have regular face to face contact with the other person.

203. Marriage exception under sections 198 to 201.

- (1) Conduct by a person which would otherwise be an offence under any of sections 198 to 201 against another person is not an offence under that section if at the time
 - (a) the other person is sixteen or over; and
 - (b) the person and the other person are lawfully married.
- (2) In proceedings for an offence it is for the person to prove that the person and the other person were lawfully married at the time.

204. Sexual relationships which pre-date care relationships under sections 198 to 201.

- (1) Conduct by a person which would otherwise be an offence under any of sections 198 to 201 against another person is not an offence under that section if, immediately before the person became involved in the other person's care in a way that falls within section 202, a sexual relationship existed between the person and the other person.

(2) Subsection (1) does not apply if at that time sexual intercourse between the person and the other person would have been unlawful.

(3) In proceedings for an offence under sections 198 to 202 it is for the person to prove that such a relationship existed at that time.

Indecent photographs of children

205. Interpretation for sections 206 to 210.

For the purposes of sections 206 to 210

- (a) references to an indecent photograph, include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film;
- (b) photographs (including those comprised in a film) shall, if they show children and are indecent, be treated for all purposes of this Code as indecent photographs of children;
- (c) references to a photograph include
 - (i) the negative as well as the positive version; and
 - (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
- (d) “film” includes any form of video-recording;
- (e) “child”, subject to paragraph (g), means a person under the age of eighteen;
- (f) “pseudo-photograph” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph;
- (g) if the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Code as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult;
- (h) references to an indecent pseudo-photograph include
 - (i) a copy of an indecent pseudo-photograph; and

- (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

206. Indecent photographs of persons aged sixteen or seventeen.

- (1) A person commits an offence if he
 - (a) takes, permits to be taken, makes, any indecent photograph or pseudo-photograph; or
 - (b) distributes or shows any indecent photographs or pseudo-photographs; or
 - (c) has in his possession indecent photographs or pseudo-photographs, with a view to the photographs being distributed or shown by himself or others; or
 - (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows indecent photographs or pseudo-photographs, or intends to do so.
- (2) A person convicted of an offence under subsection (1) is liable
 - (a) on conviction on indictment to imprisonment for ten years or to a fine;
 - (b) on summary conviction to imprisonment for six months.
- (3) For purposes of this Code, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.
- (4) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions.
- (5) Where a person is charged with an offence under subsection (1)(b) or (c), it shall be a defence for him to prove
 - (a) that he had a legitimate reason for distributing or showing the photographs or pseudo-photograph or (as the case may be) having them in his possession; or
 - (b) that he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

207. Marriage and other relationships.

(1) This section applies where, in proceedings for an offence under section 206(1)(a) of taking or making an indecent photograph of a child, or for an offence under section 206(1)(b) or (c) relating to an indecent photograph of a child, the person proves that the photograph was of the child aged sixteen or over, and that at the time of the offence charged the child and he

- (a) were married, or
- (b) lived together as partners in an enduring family relationship.

(2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 206(1)(b) or (c) relating to an indecent photograph of a child, the person proves that the photograph was of the child aged sixteen or over, and that at the time when he obtained it the child and he

- (a) were married, or
- (b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph showed the child alone or with the person, but not if it showed any other person.

(4) In the case of an offence under section 206(1)(a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the person reasonably believed that the child so consented, the person is not guilty of the offence unless it is proved that the child did not so consent and that the person did not reasonably believe that the child so consented.

(5) In the case of an offence under section 206(1)(b), the person is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.

(6) In the case of an offence under section 206(1)(c), if sufficient evidence is adduced to raise an issue both

- (a) as to whether the child consented to the photograph being in the person's possession, or as to whether the person reasonably believed that the child so consented, and
- (b) as to whether the person had the photograph in his possession with a view to its being distributed or shown to anyone other than the child, the person is not guilty of the offence unless it is proved either that the child did not so consent and that the person did not reasonably believe that the child so consented, or that the person

had the photograph in his possession with a view to its being distributed or shown to a person other than the child.

208. Exception for criminal proceedings, investigations etc.

In proceedings for an offence under section 206(1)(a) of making an indecent photograph or pseudo-photograph of a child, the person is not guilty of the offence if he proves that it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world.

209. Evidence.

In proceedings under this Code relating to indecent photographs of children a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of eighteen.

210. Entry, search and seizure.

(1) A Magistrate may, on an application by a police officer accompanied by an affidavit stating that there is reasonable ground for suspecting that, in any premises there is an indecent photograph or pseudo-photograph of a child, issue a warrant authorizing any police to enter (if need be by force) and search the premises and to seize and remove any articles which he believes to be or include indecent photographs or pseudo-photographs of children.

(2) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, shall be brought before a Magistrate acting for the same district as the Magistrate who issued the warrant.

(3) This section and section 211 apply in relation to any stall or vehicle, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use of references to occupation.

211. Forfeiture.

(1) The Magistrate before whom any articles are brought in pursuance of section 210 may issue a summons to the occupier to the premises to appear on a day specified in the summons before a Magistrates' court for that district to show cause why they should not be forfeited.

(2) If the court is satisfied that the articles are in fact indecent photographs or pseudo-photographs of children the court shall order them to be forfeited; but if the person summoned does not appear, the court shall not make an order unless service of the summons is proved.

(3) In addition to the persons summoned, any other person being the owner of the articles brought before the court, or the person who made them, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

(4) Where any of the articles are ordered to be forfeited under subsection (2), any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the High Court.

(5) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for their seizure was issued to pay such costs as the court thinks reasonable to any person who has appeared before it to show cause why the photographs or pseudo-photographs should not be forfeited; and costs ordered to be paid under this subsection shall be recoverable as a civil debt.

(6) Where indecent photographs or pseudo-photographs of children are seized under section 210 and a person is convicted under section 206(1) of offences in respect of those photographs, the court shall order them to be forfeited.

(7) An order made under subsection (2) or (6) (including an order made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose

- (a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and
- (b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Abuse of children through prostitution and pornography

212. Interpretation for sections 213 to 216.

(1) For the purposes of sections 213 to 216, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and “pornography”, are to be interpreted accordingly.

(2) In sections 213 to 216 “prostitute” means a person who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another

person in return for payment or a promise of payment to the person or a third person; and “prostitution” is to be interpreted accordingly.

(3) In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

213. Paying for sexual services of a child.

(1) In this section, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(2) A person commits an offence if

- (a) he intentionally obtains for himself the sexual services of another person;
- (b) before obtaining those services, he has made or promised payment for those services to the other person or a third person, or knows that another person has made or promised such a payment; and
- (c) the other person is under eighteen, and the person does not reasonably believe that the other person is eighteen or over; or
- (d) the other person is under thirteen.

(3) A person convicted of an offence under this section against a person under thirteen, where subsection (6) applies, and subject to subsection (5), is liable on conviction on indictment to imprisonment for life.

(4) A person convicted of an offence under this section, is liable

- (a) where subsection (5) applies, on conviction on indictment to imprisonment for fourteen years;
- (b) in any other case
 - (i) on summary conviction, to imprisonment for three years or to a fine of two thousand five hundred dollars;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.

(5) This subsection applies where the offence involved -

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body or by the other person with anything else; or
- (d) penetration of the other person's mouth with the person's penis.

214. Causing or inciting child prostitution or pornography.

- (1) A person commits an offence if
 - (a) he intentionally causes or incites another person to become a prostitute, or to be involved in pornography, in any part of the world; and
 - (b) the other person is under eighteen, and the person does not reasonably believe that the other person is eighteen or over; or
 - (c) the other person is under thirteen.
- (2) A person convicted of an offence under this section is liable
 - (a) on summary conviction, to imprisonment for three years or a fine not exceeding two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for fourteen years.

215. Controlling a child prostitute or a child involved in pornography.

- (1) A person commits an offence if
 - (a) he intentionally controls any of the activities of another person relating to the other person's prostitution or involvement in pornography in any part of the world; and
 - (b) the other person is under eighteen, and the person does not reasonably believe that the other person is eighteen or over; or
 - (c) the other person is under thirteen.
- (2) A person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for three years or a fine not exceeding two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for fourteen years.

216. Arranging or facilitating child prostitution or pornography.

- (1) A person commits an offence if
 - (a) he intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person; and
 - (b) the other person is under eighteen, and the person does not reasonably believe that the other person is eighteen or over; or
 - (c) the other person is under thirteen.
- (2) A person convicted of an offence under this section is liable
 - (a) on summary conviction, to imprisonment for three years or a fine not exceeding two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for fourteen years.

Exploitation of prostitution

217. Interpretation for sections 218 and 219.

- (1) In sections 218 and 219, “gain” means
 - (a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or
 - (b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.
- (2) In sections 218 and 219 “prostitute” and “prostitution” have the meaning given by section 212(2).

218. Causing or inciting prostitution for gain.

- (1) A person commits an offence if that person

- (a) intentionally causes or incites another person to become a prostitute in any part of the world; and
- (b) does so for or in the expectation of gain for himself or a third person.

(2) A person convicted of an offence under this section is liable on conviction on indictment, to imprisonment for seven years.

219. Controlling prostitution for gain.

- (1) A person commits an offence if that person
 - (a) intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world; and
 - (b) does so for or in the expectation of gain for himself or a third person.

(2) A person convicted of an offence under this section is liable on conviction on indictment, to imprisonment for seven years.

Prostitution

220. Prostitution.

- (1) A person commits an offence if that person
 - (a) procures any male or female under eighteen years of age to have unlawful sexual intercourse or sexual connection with another person within or outside Country X;
 - (b) procures any male or female to become, either within or outside Country X, a common prostitute;
 - (c) procures any male or female to leave Country X with intent that he may, for the purposes of prostitution, become an inmate of, or frequent, a brothel elsewhere;
 - (d) procures any male or female to leave his usual place of abode in Country X with intent that he may for the purposes of prostitution, become an inmate or frequent a brothel, in any country.

(2) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for seven years.

(3) A person commits an offence under subsection (1) if he, knowing that the offence has been committed by a person, aids and abets the unlawful detention of any person, or otherwise aids and abets the execution of the intent with which that offence was committed.

(4) A police officer may take into custody without a warrant the person whom he has reasonable cause to suspect of having committed or attempted to commit, any offence under this section.

221. Procuring or abetment of defilement by guardian or parent.

(1) A person commits an offence if that person being the parent or guardian of any male or female

- (a) procures the male or female to have sexual intercourse or sexual connection with any person;
- (b) orders, is party to, permits or knowingly receives the profits of, the defilement, seduction or prostitution of such male or female.

(2) A person who is convicted of an offence under subsection (1) is liable

- (a) if the male or female is a child, on conviction on indictment to imprisonment for fifteen years;
- (b) if the male or female is above the age of twelve years, on summary conviction to imprisonment for five years.

222. Keeping of brothel.

(1) A person commits an offence if that person keeps, manages, acts or assists in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).

(2) In this section “prostitution” has the meaning given by section 212 (2).

(3) A person convicted of an offence under this section is liable

- (a) on summary conviction to imprisonment for two years or a fine of two thousand five hundred dollars;
- (b) on conviction on indictment to imprisonment for seven years.

223. Trading in prostitution.

A Magistrate may, on an application by a police officer accompanied by an affidavit, issue a warrant authorizing any police officer to enter a house at any time and to arrest and bring a male or female person before him, to be dealt with according to law if he is satisfied that the house or part of the house is used by a male or female for purposes of prostitution, and that any male or female person who resides in or frequents the house lives wholly or in part on the earnings of the prostitute.

224. Trading in prostitution by female.

(1) A female commits an offence if she, for the purposes of gain, exercised control, or influence over the movements of a prostitute in such manner as to show that she is aiding and abetting or compelling her prostitution with the person or generally.

(2) A person convicted of an offence under this section is liable

(a) on conviction on indictment to imprisonment for five years; or

(b) on summary conviction to imprisonment for two years.

225. Soliciting prostitution.

A person commits an offence if that person loiters about or importunes any passer-by in a public place for the purpose of prostitution and is liable on summary conviction to a fine not exceeding one thousand dollars.

226. Living on earnings of prostitution.

(1) A person commits an offence if that person

(a) knowingly lives wholly or in part on the earnings of prostitution;

(b) in any public place persistently solicits or importunes for immoral purposes.

(2) A person convicted of an offence under this section (1) is liable

(a) on conviction on indictment to imprisonment for five years; or

(b) on summary conviction to imprisonment for two years.

(3) If a male or female person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, or influence over the movements of a prostitute in such a manner as to show that he is aiding and abetting, or compelling his prostitution with the person or generally, he shall be presumed to be

knowingly living on the earnings of prostitution unless he proves otherwise to the satisfaction of the court.

227. Preventing, obstructing or delaying police entry into building or premises.

(1) A person commits an offence if that person

(a) wilfully prevents any police officer from entering any building or premises suspected to be used as a brothel; or

(b) uses any means or contrivance whatsoever for the purpose of preventing, obstructing, or delaying the entry of any police officer into any building or premises.

(2) A person convicted of an offence under this section is liable on summary conviction to imprisonment for three months or to a fine not exceeding one thousand dollars.

228. Unlawful sexual intercourse by false pretence or other fraudulent means.

(1) A person commits an offence if that person conspires with another to induce any male or female, by means of any false pretence or other fraudulent means, to permit any man or woman to have unlawful sexual intercourse with him.

(2) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for five years.

229. Counselling or inciting male or female suffering from mental or physical disability.

(1) For the purposes of this section “consent” means, subject to subsection (3), the voluntary agreement of the complainant to engage in the sexual activity in question.

(2) A person commits an offence if that person is in a position of authority towards a person with a mental or physical disability or is a person with whom a person with a mental or physical disability is in a relationship of dependency, for a sexual purpose, counsels or incites that person to touch, without that person’s consent, his own body, the body of the person who so counsels or incites, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person with the disability.

(3) A person convicted of an offence under this section is liable

(a) on conviction or on indictment to imprisonment for fifteen years; or

(b) on summary conviction to imprisonment for three years.

- (4) Consent is not obtained under this section, if
- (a) the agreement is expressed by the words or conduct of a person other than the complainant;
 - (b) the complainant is incapable of consenting to the activity;
 - (c) the person counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority;
 - (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
 - (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

(5) Nothing in subsection (4) shall be construed as limiting the circumstances in which consent is not obtained.

(6) It shall not be a defence to a charge under this section that the person believed that the complainant consented to the activity that forms the subject-matter of the charge if

- (a) the person's belief arose from the person's
 - (i) self-induced intoxication, or
 - (ii) recklessness or wilful blindness; or
- (b) the person did not take reasonable steps, in the circumstances known to the person at the time, to ascertain that the complainant was consenting.

(7) If a person alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a Judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the person's belief, to consider the presence or absence of reasonable grounds for that belief.

230. Defilement of person in psychiatric hospital.

- (1) A person commits an offence if that person

- (a) has or attempts to have unlawful sexual intercourse or sexual connection with any person suffering from a mental disorder who is in a psychiatric hospital, whether with or without that person's consent;
 - (b) being an officer or employee of such asylum, permits any person to have sexual intercourse or sexual connection with any person suffering from a mental disorder who is in a psychiatric hospital.
- (2) A person convicted of an offence under this section (1) is liable
- (a) in the case of an officer or employee of a psychiatric hospital, on conviction on indictment to imprisonment for fifteen years; and
 - (b) in any other case, on conviction on indictment to imprisonment for ten years.

231. Permitting or aiding and abetting defilement of male or female.

(1) An owner or occupier of any premises, or any person managing such premises whether or not as the owner commits an offence if he induces or knowingly allows any male or female of the ages specified in this section to resort to or be in such premises for the purpose of having unlawful sexual intercourse or sexual connection with the person.

- (2) A person convicted of an offence under this section is liable
- (a) in the case of a male or female child, on conviction on indictment to imprisonment for fifteen years;
 - (b) in the case of a male or female young person, on conviction on indictment to imprisonment for two years.

(3) A person commits an offence under subsection (1) if he, knowing that a person has committed the offence, aids and abets the unlawful detention of a person, or otherwise aids and abets the execution of the intent with which the offence was committed.

(4) It shall be a sufficient defence to any charge under this section for the person to prove to the court or jury that he had reasonable cause to believe that the male or female was of or above sixteen years of age.

232. Abduction.

(1) A person commits an offence if that person, with intent to deprive of the possession or control of a female any person entitled, or with intent to cause her to be married to, or carnally known by, any person

- (a) unlawfully takes her from the lawful possession, care or charge of any person; or
- (b) detains her from returning to the lawful possession, care or charge of any person.

(2) A person convicted of an offence of abduction of an unmarried female under eighteen years of age is liable to imprisonment for two years.

(3) The possession, control, care or charge of a female by a parent, guardian or other person is held to continue, notwithstanding that the female is absent from his actual possession, control, care or charge, if the absence is for a special purpose only, and is not intended by the parent, guardian or other person to exclude or determine such possession, control, care or charge for the time being; but a person is not guilty of abduction by taking or detaining a female unless he knew, or had grounds for believing that she was in the possession, control, care or charge of some other person.

(4) Any person who commits the offence of an abduction of any unmarried male or female under sixteen years of age, is liable on indictment to imprisonment for five years.

(5) Any person who, knowing that a person has committed an offence under subsection (4), aids and abets the unlawful detention of the male or female person, or otherwise aids and abets the execution of the intent with which that offence was committed, also commits that offence.

(6) A person who takes away or detains a male or female of any age against his or her will, with intent to marry, or have sexual intercourse or sexual connection with him or her or to cause him or her to be married or have sexual intercourse or sexual connection with any other person, commits an offence and is liable on conviction on indictment to imprisonment for fourteen years.

(7) A person commits an offence under subsection (6) if he, knowing that a person has committed an offence under subsection (6) aids and abets the unlawful detention of the person or otherwise aids and abets the execution of the intent with which that offence was committed.

(8) For the purposes of proof of abduction

- (a) it is not necessary that the taking or detaining should be without the consent of the person taken or detained, and it suffices if the person is persuaded, aided or encouraged to depart or not to return;

- (b) it is not necessary that there should be an intent permanently to deprive any person of the possession or control of the person taken or detained;
- (c) a taking or detention is unlawful unless some person entitled to give consent to the taking or detention of the person taken or detained, for the purposes for which he is taken or detained, gives consent to the taking or detention for those purposes;
- (d) a person having the temporary possession, care, or charge of another person for a special purpose, as his attendant, employer, or schoolmaster, or in any other capacity, can be guilty of stealing or abduction of that person by acts which he is not authorized to do for such special purpose, and he cannot give consent to any act by another person which would be inconsistent with such special purpose; and
- (e) subject to section 13 with respect to mistake of fact, a person does not commit the offence of abduction of another person by anything which he does in the belief that he is entitled by law as a parent or guardian, or by virtue of any other legal right, to take or detain the other person for the purposes for which he takes or detains him.

(9) Subsection (8)(e) shall not be construed to exempt a person from liability to punishment on the plea that he did not know or believe, or had not the means of knowing, that the age of the other person was under twelve or sixteen years, as the case may be; nor to exempt a person from liability to punishment as for stealing or abduction if he took or detained the other person for any immoral purpose.

Sexual Trafficking

233. Interpretation and jurisdiction for sections 234 to 236.

- (1) In sections 234 to 236, “relevant offence” means
 - (a) an offence under this Part;
 - (b) an offence under section 206(1)(a);
 - (c) anything done outside Country X which is not an offence within paragraph (a) or (b) but would be if done in Country X.
- (2) Sections 234 to 236 apply to anything done
 - (a) in Country X; or

(b) outside Country X, by a body incorporated under the law of a part of Country X or by an individual to whom subsection (3) applies.

(3) This section applies to a citizen of Country X.

234. Trafficking into Country X for sexual exploitation.

(1) A person commits an offence if that person intentionally arranges or facilitates the arrival in Country X of another person and either

(a) the person intends to do anything to or in respect of the other person, after the other person's arrival in any part of the world, which if done will involve the commission of a relevant offence; or

(b) the person believes that another person is likely to do something to or in respect of the other person, after the other person's arrival in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person convicted of an offence under this section is liable on conviction on indictment, to imprisonment for fourteen years

235. Trafficking within Country X for sexual exploitation.

(1) A person commits an offence if that person intentionally arranges or facilitates travel within Country X by another person and either

(a) the person intends to do anything to or in respect of the other person, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence; or

(b) the person believes that another person is likely to do something to or in respect of the other person, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person convicted of an offence under this section is liable on conviction on indictment, to imprisonment for fourteen years.

236. Trafficking out of Country X for sexual exploitation.

(1) A person commits an offence if he intentionally arranges or facilitates the departure from Country X of another person and either

(a) the person intends to do anything to or in respect of the other person, after the other person's departure but in any part of the

world, which if done will involve the commission of a relevant offence; or

- (b) the person believes that another person is likely to do something to or in respect of the other person, after the other person's departure but in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person convicted of an offence under this section is liable on conviction on indictment, to imprisonment for fourteen years.

Preparatory offences

237. Administering a substance with intent.

(1) A person commits an offence if that person intentionally administers a substance to, or causes a substance to be taken by, another person

- (a) knowing that the other person does not consent; and
- (b) with the intention of stupefying or overpowering the other person, so as to enable any person to engage in a sexual activity that involves the other person.

(2) A person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for two years or a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for ten years.

238. Committing an offence with intent to commit a sexual offence.

(1) In this section, "relevant sexual offence" means any offence under this Part (including an offence of aiding, abetting, counselling or procuring such an offence).

(2) A person commits an offence if that person commits any offence with the intention of committing a relevant sexual offence.

(3) A person convicted of an offence under this section, subject to subsection (4), is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, to imprisonment for life.

(4) A person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for two years or a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for ten years.

239. Trespass with intent to commit a sexual offence.

- (1) In this section
 - “premises” includes a structure or part of a structure;
 - “relevant sexual offence” has the meaning given in section 238;
 - “structure” includes a tent, vehicle or vessel or other temporary or movable structure.
- (2) A person commits an offence if that person
 - (a) is a trespasser on any premises;
 - (b) intends to commit a relevant sexual offence on the premises; and
 - (c) knows that, or is reckless as to whether, he is a trespasser.
- (3) A person convicted of an offence under this section is liable
 - (a) on summary conviction, to imprisonment for three years or a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for ten years.

Sex with an adult relative

240. Sex with an adult relative: penetration.

- (1) A person aged sixteen or over commits an offence if
 - (a) he intentionally penetrates another person’s vagina or anus with a part of his body or anything else, or penetrates another person’s mouth with his penis;
 - (b) the penetration is sexual;
 - (c) the other person is aged eighteen or over;

- (d) he is related to the other person in a way mentioned in subsection (2); and
- (e) he knows or could reasonably be expected to know that he is related to the other person in that way.

(2) The ways the person may be related to the other person are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2)

- (a) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;
- (b) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

(4) Where in proceedings for an offence under this section it is proved that the person was related to the other person in any of those ways, it is to be taken that the person knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) A person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for two years or a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for five years.

241. Sex with an adult relative: consenting to penetration.

(1) A person aged sixteen or over commits an offence if

- (a) another person penetrates the other person’s vagina or anus with a part of the other person’s body or anything else, or penetrates the person’s mouth with the other person’s penis;
- (b) he consents to the penetration;
- (c) the penetration is sexual;
- (d) the other person is aged eighteen or over;

- (e) he is related to the other person in a way mentioned in subsection (2); and
- (f) he knows or could reasonably be expected to know that he is related to the other person in that way.

(2) The ways the person may be related to the other person are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2)

- (a) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;
- (b) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

(4) Where in proceedings for an offence under this section it is proved that the person was related to the other person in any of those ways, it is to be taken that the person knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) A person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for six months or a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for two years.

Other offences

242. Exposure.

(1) A person commits an offence if that person

- (a) intentionally exposes his genitals; and
- (b) intends that someone will see them and be caused alarm or distress.

(2) A person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for six months or a fine of two thousand five hundred dollars;

(b) on conviction on indictment, to imprisonment for two years.

243. Voyeurism.

(1) A person commits an offence if that person

- (a) for the purpose of obtaining sexual gratification, observes another person doing a private act; and
- (b) knows that the other person does not consent to being observed for his sexual gratification.

(2) A person commits an offence if that person

- (a) operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person doing a private act, and
- (b) knows that the third party does not consent to his operating equipment with that intention.

(3) A person commits an offence if that person

- (a) records another person doing a private act;
- (b) does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of the other person doing the act; and
- (c) knows that the other person does not consent to his recording the act with that intention.

(4) A person commits an offence if he installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under subsection (1).

(5) A person convicted of an offence under this section is liable

- (a) on summary conviction, to imprisonment for six months or a fine of two thousand five hundred dollars;
- (b) on conviction on indictment, to imprisonment for two years.

(6) For the purposes of this section, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and

- (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;
- (b) the person is using a lavatory; or
- (c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(7) In this section, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

244. Intercourse with an animal.

- (1) A person commits an offence if
 - (a) the person intentionally performs an act of penetration with his penis;
 - (b) what is penetrated is the vagina or anus of a living animal; and
 - (c) the person knows that, or is reckless as to whether, that is what is penetrated.
- (2) A person commits an offence if
 - (a) the person intentionally causes, or allows, A's vagina or anus to be penetrated;
 - (b) the penetration is by the penis of a living animal; and
 - (c) the person knows that, or is reckless as to whether, that is what A is being penetrated by.
- (3) A person convicted of an offence under this section is liable
 - (a) on summary conviction, to imprisonment for six months or a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for two years.

245. Sexual penetration of a corpse.

- (1) A person commits an offence if

- (a) the person intentionally performs an act of penetration with a part of his body or anything else;
 - (b) what is penetrated is a part of the body of a dead person;
 - (c) the person knows that, or is reckless as to whether, that is what is penetrated; and
 - (d) the penetration is sexual.
- (2) A person convicted of an offence under this section is liable
- (a) on summary conviction, to imprisonment for six months or a fine of two thousand five hundred dollars;
 - (b) on conviction on indictment, to imprisonment for two years.

246. Sexual activity in a public lavatory.

- (1) A person commits an offence if that person
- (a) is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise;
 - (b) intentionally engages in a sexual activity.
- (2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances but regardless of any person's purpose, consider it to be sexual.
- (3) A person convicted of an offence under this section is liable on summary conviction, to imprisonment for six months or a fine of two thousand five hundred dollars.

247. Gross indecency.

- (1) In this section "gross indecency" means an act other than sexual intercourse, whether natural or unnatural, by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.
- (2) A person commits an offence if that person commits an act of gross indecency with another person and is liable
- (a) on conviction on indictment to imprisonment for ten years; or
 - (b) on summary conviction to five years.

(3) Subsection (2) shall not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent.

(4) For the purposes of subsection (3)

- (a) an act shall be deemed not to have been committed in private if it is committed in a public place; and
- (b) a person shall be deemed not to consent to the commission of such an act if
 - (i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act;
 - (ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or
 - (iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.

248. Unlawful detention of a person with intent to have sexual intercourse.

(1) A person commits an offence if that person detains another person against his will

- (a) in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
- (b) in any brothel.

(2) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for ten years.

(3) A Magistrate who is satisfied, by an application accompanied by an affidavit by a police officer, that there is reasonable ground for believing that a person is unlawfully detained in any place for immoral purposes, may issue a warrant authorizing any police officer to enter, if need be by force, and search any place specified in the warrant and to remove any person so detained, and to arrest any person or suspected of the unlawful detention of that person.

(4) A police officer referred to in subsection (3) shall cause the person arrested under that subsection to be brought before the Magistrate and proceedings shall be taken to punish the person according to law.

249. Soliciting sexual favours in the workplace.

(1) An employer or a supervisor of an employee who makes it reasonably appear to the employee that the prospects or working conditions of the employee are dependent upon the acceptance or tolerance by the employee of sexual advances or persistent sexual suggestions from the employer or supervisor commits an offence and is liable on summary conviction to imprisonment for one year.

(2) A prospective employer who makes it reasonably appear to a person that

(a) an offer of employment to that person;

(b) the terms on which employment is so offered,

is or are dependent on that person's acceptance or tolerance of sexual advances or tolerance of persistent sexual suggestions from the prospective employer commits an offence and is liable on summary conviction to imprisonment for one year.

250. Aggravated sexual assault by transmission of HIV.

(1) A person who, knowing that he suffers from Acquired Immune Deficiency Syndrome commonly known as AIDS, intentionally or recklessly infects any person with the human-immuno deficiency virus known as HIV, whether through sexual intercourse or any other means by which the disease may be transmitted to the other person commits the offence of aggravated sexual assault and is liable on conviction on indictment to imprisonment for ten years.

(2) It shall not be a defence for a person charged with an offence under subsection (1), to prove that the act was committed with the consent of the other person.

Offences outside Country X

251. Offences outside Country X.

(1) Subject to subsection (2), any act done by a person in a country or territory outside Country X which

(a) constituted an offence under the law in force in that country or territory; and

(b) would constitute a sexual offence to which this section applies if it had been done in Country X, constitutes that sexual offence under the law of that part of Country X.

(2) An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of this section, however it is described in that law.

(3) Subject to subsection (4), the condition in subsection (1)(a) is to be taken to be met unless, not later than rules of court may provide, the person serves on the prosecution a notice

- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion met;
- (b) showing his grounds for that opinion; and
- (c) requiring the prosecution to prove that it is met.

(4) The court, if it thinks fit, may permit the person to require the prosecution to prove that the condition is met without service of a notice under subsection (3).

(5) In the High Court the question whether the condition is met is to be decided by the Judge alone.

(6) The Second Schedule lists the sexual offences to which this section applies.

General

252. Exceptions to aiding, abetting and counseling.

(1) A person does not commit the offence of aiding, abetting or counseling the commission against a child of an offence to which this section applies if he acts for the purpose of

- (a) protecting the child from sexually transmitted infection;
- (b) protecting the physical safety of the child;
- (c) preventing the child from becoming pregnant; or
- (d) promoting the child's emotional well-being by the giving of advice, and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to

- (a) an offence under section 167, 168 or 169;

- (b) an offence under section 171;
- (c) an offence under section 175 which would be an offence under section 171 if the person were aged eighteen;
- (d) an offence under section 178, 185, 190, 194 and 198 against a person under sixteen.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counseling an offence under this Part.

253. Consent.

For the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

254. Evidential presumptions about consent.

(1) If in proceedings for an offence to which this section applies it is proved

- (a) that the person did the relevant act;
- (b) that any of the circumstances specified in subsection (2) existed; and
- (c) that the person knew that those circumstances existed,

the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the person is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) The circumstances are that

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;
- (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;

- (c) the complainant was, and the person was not, unlawfully detained at the time of the relevant act;
- (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
- (e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the person whether the complainant consented;
- (f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(3) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

255. Conclusive presumptions about consent.

(1) If in proceedings for an offence to which this section applies it is proved that the person did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed

- (a) that the complainant did not consent to the relevant act; and
- (b) that the person did not believe that the complainant consented to the relevant act.

(2) The circumstances are that

- (a) the person intentionally deceived the complainant as to the nature or purpose of the relevant act;
- (b) the person intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

256. Sections 254 and 255: relevant acts.

In relation to an offence to which sections 254 and 255 apply, references in those sections to the relevant act and to the complainant are to be read as follows

Offence

Relevant act

An offence under section 163

The person intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”), where the penetration is sexual.

An offence under section 164

The person intentionally touching another person (“the complainant”), where the touching is sexual.

An offence under section 165

The person intentionally causing another person (“the complainant”) to engage in an activity, where the activity is sexual.

Notification

257. Notification requirements for sex defendants

(1) A person becomes subject to the notification requirements of this section, if—

(a) after this section comes into force he is convicted of a sexual offence; or

(b) at the time this section comes into force—

(i) he is serving a sentence of imprisonment; or

(ii) he has been released on licence after serving the whole or part of a sentence of imprisonment,

in respect of a sexual offence.

(2) A person who is subject to the notification requirements of this section shall

continue to be so subject for a period of ten years commencing on—

- (a) the date of his conviction; or
- (b) if later, the date of his release from prison, whether released on licence or on the expiration of his term of imprisonment.

(3) A person who is subject to the notification requirements of this section shall immediately upon his release notify the police of the following information—

- (a) his name, and, where he uses one or more other names, each of those names; and
- (b) his home address.

(4) A person who is subject to the notification requirements of this section shall immediately upon—

- (a) his using a name which has not been notified to the police under subsection (3); or
- (b) any change in his home address, notify that name or that change of address to the police.

(5) Any notification under this section shall be acknowledged in writing in such form as the Minister may direct.

(6) A person who—

- (a) fails, without reasonable excuse, to comply with the notification requirements set out in subsection (3) or (4); or
- (b) notifies to the police, in purported compliance with those requirements, any information which he knows to be false,

is guilty of an offence and is liable on summary conviction to a fine of \$3,000 or imprisonment for six months, or to both.

(7) A certificate issued by the registrar or clerk of the court that a person has been convicted of a sexual offence and of the date of conviction shall be conclusive evidence of those facts.

(8) A certificate of the Superintendent of Prisons that a person was released from prison and the date of release shall be conclusive evidence of those facts.

258. Public notification of information on sex defendants

- (1) The Minister, having regard to—
 - (a) the need to protect the public, an affected group of people or an individual; and
 - (b) the objective of effective management of sex defendants,

may establish a protocol governing the disclosure of information in relation to sex defendants who are considered to present a risk of significant harm to the health or safety of the public, an affected group of people or an individual.

- (2) The protocol may provide for the following notification options—
 - (a) no notification;
 - (b) notification of a specified group of persons;
 - (c) notification of a specified individual;
 - (d) notification to the public.

(3) Notification may include such identifying information (including a photograph of the sex defendant) as the Minister may determine.

(4) Before determining to give any notification in accordance with the protocol in relation to a particular sex defendant the Minister shall consult with the Commissioner of Police.

PART IX

ABORTION and CAUSING HARM to CHILDREN

259. Medical or surgical treatment.

(1) Where any person does an act in good faith, for the purposes of medical or surgical treatment, an intent to cause death shall not be presumed from the fact that the act was or appeared likely to cause death.

(2) Any act which is done, in good faith and without negligence, for the purposes of medical or surgical treatment of a pregnant woman is justifiable, although it causes or is intended to cause a termination of pregnancy or miscarriage, or premature delivery, or the death of the child.

(3) Subject to subsection (4), the treatment for the termination of a pregnancy is lawful if administered under subsection (8).

(4) Subject to subsection (8), the offence of causing a termination of pregnancy or miscarriage of a woman can be committed either by that woman or by any other person; and that woman or any other person may be convicted of using means with intent to commit that offence, although the woman is not in fact pregnant.

(5) The offence of causing a termination of pregnancy is committed by causing a woman to be prematurely delivered of a child, with intent unlawfully to cause or hasten the death of the child.

(6) A person commits an offence if that person intentionally and unlawfully causes a termination of pregnancy or a miscarriage and is liable on conviction on indictment to imprisonment for seven years.

(7) For the purposes of this section, the duration of a pregnancy is determined

(a) by calculating from the first day of the last normal menstruation of the pregnant woman and ending on the last day of the relevant week; and

(b) by clinical examination.

(8) Where two medical practitioners have reason to believe that

(a) that the pregnancy has not exceeded its twenty fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or

(b) that the pregnancy was caused through rape or incest; or

(c) that the termination of the pregnancy is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(d) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated

(e) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

the medical practitioners may, with the consent of the pregnant woman or a person authorized by the pregnant woman, administer treatment for the termination of the pregnancy.

(9) For purposes of this section and notwithstanding any other provisions of this Code regarding rape or incest, where a treatment for termination of pregnancy is pursuant to subsection (8)(b), it is enough for a woman to show that a rape or incest occurred by providing to the medical practitioners, a copy of a police report in the form set out in the Third Schedule signed by the Commissioner of Police or a person authorized by him for that purpose, showing

- (a) the date and time the incidence of the rape or incest was reported;
- (b) that an investigation by the police is underway.

(10) In the treatment of the termination of a pregnancy of a woman of any marital status, while the medical practitioners may encourage the woman to inform her partner, they are not required either to obtain the partner's consent or to notify him.

(11) A medical practitioner shall advise a pregnant woman that she may seek pre-termination counselling and to facilitate such counselling no treatment for a termination shall be administered until forty-eight hours after the woman has made a request for such termination of pregnancy has passed.

(12) The following subsections shall not apply where the treatment to terminate the pregnancy is immediately necessary to save the life of the pregnant woman or to prevent grave permanent injury to her physical or mental health that is to say

- (a) subsection (8) relating to the number of medical opinions required;
- (b) subsection (8) insofar as it relates to the length of the pregnancy;
- (c) subsection (11) relating to counselling,

and in such circumstances a single medical practitioner may administer the treatment.

(13) Treatment for termination of pregnancy shall not be administered in accordance with this section at any place other than at an approved institution certified by the Minister responsible for health by order in the *Gazette*.

260. Causing harm to child at birth.

(1) For the purposes of this section "during the time of birth" includes the whole period from the commencement of labour till the time when the child so becomes a person as that it may be murder or manslaughter to cause its death.

(2) A person commits an offence if that person intentionally and unlawfully causes harm to a living child during the time of its birth and is liable on conviction on indictment to imprisonment for ten years.

(3) Where harm is caused to a child during the time of its birth, or where, upon the discovery of the concealed body of the child, harm is found to have been caused to it, the harm shall be presumed to have been caused to the child before the death of the child.

Child abandonment or exposure

261. Abandonment of child.

(1) A person commits an offence if that person, being bound by law or by virtue of any agreement or employment, to keep charge of or to maintain any child under five years of age, or being unlawfully in possession of any such child, abandons the child by leaving the child at a hospital, or at the house of any person, or in any other manner.

(2) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for five years.

262. Causing harm to child.

(1) A person commits an offence if that person unlawfully exposes or abandons any child, under seven years of age, in such a manner that any harm is likely to be caused to the child.

(2) A person convicted of an offence under this section is liable –

(a) on conviction on indictment to imprisonment for five years;

(b) on summary conviction to 12 months imprisonment.

263. Child-stealing.

(1) A person commits an offence if that person

(a) kidnaps a child; or

(b) unlawfully takes or detains a child, with intent to deprive of the possession or control of him any person entitled, or with intent to steal anything upon or about his body or with intent to cause any harm to him.

(2) For the purposes of subsection (1), it is not necessary to prove that the person stolen had been taken from the possession, care or charge of any person, if it is shown that some person, other than the person, was entitled to the control or possession of the person stolen.

(3) A person who is convicted of an offence under subsection (1), whether with or without the consent of the child, commits an offence and is liable on conviction on indictment to imprisonment for ten years.

(4) A person commits an offence under subsection (1) if he, knowing that a person has committed an offence, aids and abets the unlawful detention of the person, or otherwise aids and abets the execution of the intent with which the offence was committed.

Child Substitution

264. Child substitution.

(1) A person commits an offence if that person, with intent to defeat, obstruct or pervert the law with respect to inheritance or succession, or with intent to defraud or injure any person, falsely pretends that a child, whether living or dead, is a legitimate child, or substitutes one child, whether living or dead, legitimate or illegitimate, for another child, whether living or dead, legitimate or illegitimate.

(2) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for ten years.

Concealment of body of child

265. Concealment of body of child.

(1) A person commits an offence if that person conceals the body of a child, whether the child was born alive or not, with intent to conceal the fact of its birth, existence, or death, or the manner or cause of its death.

(2) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for two years.

(3) If any person tried for the murder of a child is acquitted, the jury may find if it appears in evidence, that such person did endeavour to conceal the body of such child, with intent to conceal the fact of its birth, existence, or death or the manner or cause of its death, and the Court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the body of such child.

(4) Any secret disposition of the body of a child whether it be intended to be permanent or not, may be a concealment.

(5) The abandonment of the body of a child in any public place may be a concealment, if the body is abandoned for the purpose of concealing the fact of its birth or existence.

(6) This section shall not apply

- (a) to the case of a child of less than six months' growth before its birth.
- (b) to the case of intent to conceal the birth, existence or death of a child, or the manner or cause of its death, from any particular person or persons only, but it is requisite that there should be an intent to conceal the same from all persons, except such persons as abet or consent to the concealment.

PART X

MARRIAGE OFFENCES

266. Effect of avoidance of marriage as regards consent.

If a person is compelled to marry another person by such duress as avoids the marriage or makes it voidable, the marriage shall have no effect for the purpose of Part III of this Code with respect to consent.

267. Proof of marriage or divorce.

(1) Where, it is requisite to prove a former marriage of any person, it is requisite and sufficient to prove a marriage, where ever and however celebrated, which would be admitted by the court as a valid marriage for the purposes of any civil proceeding, or for the purposes of the administration or distribution of the effects of a person upon his decease.

(2) Where a person person of bigamy defends himself or herself on the ground of a divorce from a former wife or husband, any such divorce shall be deemed sufficient as would be admitted by the Court as a valid divorce from the bond of marriage.

Bigamy

268. Bigamy.

(1) A person commits an offence of bigamy if that person, knowing that a marriage subsists between him and another person, goes through a ceremony of marriage with some other person and is liable on conviction on indictment to imprisonment for seven years.

(2) A person accused of bigamy may be acquitted if at the time of the subsequent marriage his former wife or her former husband has been continually absent from him or her for seven years, and has not been heard of by him or her as being alive within that time, and if before the subsequent marriage he or she informs the other party of the facts of the case so far as they are known to him or her.

(3) Upon proof by the person accused of such continued absence and information under subsection (2), the prosecution shall prove that the former wife or husband has been heard of during the past seven years.

(4) The fact that the parties would, if unmarried, have been incompetent to contract marriage shall not be a defence to a prosecution of bigamy.

(5) If a person accused of bigamy defends himself on the ground of a divorce from a former spouse, evidence of such divorce as would be admitted by the Court as a valid divorce from the bond of marriage shall be deemed sufficient proof of the divorce.

269. Compulsion of marriage.

(1) A person commits an offence if that person by duress causes any person to marry against his will and is liable on conviction on indictment to imprisonment for two years.

(2) A person commits an offence under subsection (1) if he, knowing that a person has committed the offence, aids and abets the unlawful detention of the person, or otherwise aids and abets the execution of the intent with which that offence was committed.

270. Making false declaration, etc., for marriage.

A person commits an offence if that person, in any declaration, certificate, licence, document, or statement required by law to be made or issued for the purposes of a marriage, declares, enters, certifies, or states any material matter which is false and is liable

- (a) if he does so without having taken reasonable means to ascertain the truth or falsity of the matter, on conviction on indictment to imprisonment for one year; or
- (b) if he does so knowing that the matter is false, on conviction on indictment to imprisonment for five years.

271. False pretence of impediment to marriage.

A person commits an offence if that person, endeavours to prevent a marriage by pretence that his consent is required by law, or that any person whose consent is so required does not consent, or that there is any legal impediment to the performing of the marriage and is, if he does so knowing that such pretence is false or without having reason to believe that it is true, liable on conviction on indictment to imprisonment for two years.

272. Unlawfully performing marriage ceremony.

A person commits an offence if that person performs or witnesses as a marriage officer the ceremony of marriage, knowing that he is not qualified to do so, or that any of the matters required by law for the validity of the marriage has not happened or been performed, so that the marriage is void or unlawful on any ground and is liable on conviction on indictment to imprisonment for seven years.

273. Fictitious marriage.

A person commits an offence if that person goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground, and that the other person believes it to be valid and is liable on conviction on indictment to imprisonment for seven years.

274. Marriage with a person previously married.

A person commits an offence if that person, being unmarried, goes through the ceremony of marriage with a person whom he knows to be married to another person, whether or not the other party to the ceremony has such knowledge as to commit the offence of bigamy and is liable on conviction on indictment to imprisonment for two years.

275. Personation in marriage.

A person commits an offence if that person personates any other person in marriage, or marries under a false name or description, with intent to deceive the other party to the marriage and is liable on conviction on indictment to imprisonment for seven years.

PART XI

DEFAMATION

276. Cases in which a person is guilty of libel.

(1) A person who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, either negligently or with intent to defame that other person commits the offence of libel and is liable on summary conviction to two years imprisonment.

(2) In the case of a dead person, it shall be alleged and proved that it was done with intent to bring contempt on his family and relatives and so provoke them to a breach of the peace.

(3) Matter is defamatory which imputes to a person any crime, or misconduct in any public office, or which is likely to injure him in his occupation, calling or office, or to expose him to general hatred, contempt or ridicule.

(4) In subsection (3), “crime” means any offence punishable on indictment under this Code, and any act punishable on indictment under any law in force within the jurisdiction of the court, and also any act, where ever committed, which if committed by a person within the jurisdiction of the court, would be punishable on indictment under any law.

(5) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, so that the defamatory meaning becomes known or is likely to become known to either the person defamed or any other person.

(6) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed, can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

(7) Any publication of defamatory matter concerning a person is unlawful, within the meaning of this Part, unless it is privileged on one of the grounds mentioned in section 277.

277. Cases in which publication of defamatory matter is absolutely privileged.

(1) The publication of defamatory matter is absolutely privileged, and a person shall not under any circumstances be liable to punishment under this Code, in any of the following cases, that is to say

- (a) if the matter is published by the Governor-General or by the House of Assembly in any official document or proceeding;
- (b) if the matter is published in the House of Assembly by the Governor-General or by any member of either house;
- (c) if the matter is published by order of the Governor-General;
- (d) if the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct;

- (e) if the matter is published by a person acting in any judicial proceeding as a Judge or Magistrate, or as Attorney-General or other public prosecutor, or as a juror or witness;
- (f) if the matter published is in fact a fair report of anything said, done or published in the House of Assembly;
- (g) if the person publishing the matter is legally bound to publish it; or
- (h) if the matter is true, and if it is found by the jury that it was for the public benefit that it should be published.

(2) For the purposes of this section references to the House of Assembly shall be deemed to include any committee of such House.

(3) Where a publication is absolutely privileged, it is immaterial for the purposes of this Part, notwithstanding any of the general provisions of Part III with respect to justifications or excuses, whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith.

(4) Nothing in this section exempts a person from any liability to punishment under any other provision of this Code or under any other law.

278. Cases in which publication of defamatory matter is conditionally privileged.

(1) A publication of defamatory matter is privileged, on condition that it was published in good faith, in any of the following cases, that is to say

- (a) if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court unless the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral or blasphemous, the publication be privileged;
- (b) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under section 277;
- (c) if the matter is published by a person acting as counsel or advocate in the course of or in preparation for any legal proceeding;
- (d) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct;

- (e) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct;
- (f) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct;
- (g) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech or other work, performance or act published, or publicly done or made, or submitted by a person to the judgment of the public, or as to the character of the other person so far as it appears in it;
- (h) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct;
- (i) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter; or
- (j) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published or of some person in whom the person to whom it is published is interested.

(2) A publication of defamatory matter shall not be deemed to have been made in good faith by a person if it is made to appear

- (a) that the matter was untrue, and that he did not believe it to be true; or
- (b) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or
- (c) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially

otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

(3) If it is proved, on behalf of the defendant, that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself, or from the evidence given on behalf of the defendant, or from evidence given on the part of the prosecution.

Newspapers, Books, Periodicals

279. Newspaper proprietor presumed responsible.

A proprietor of any newspaper shall be presumed to be criminally responsible for defamatory matter inserted and published in the newspaper, but such presumption may be rebutted by proof that the particular defamatory matter was inserted and published in the newspaper without knowledge of the proprietor or negligence on his part.

280. Newspaper proprietor's general authority to manage, when negligence.

A general authority given to the person who actually inserts and publishes defamatory matter to manage, as editor or otherwise, the newspaper, and to insert and publish in the newspaper what he in his discretion thinks fit, is not negligence unless it is proved that the proprietor when originally giving such authority had meant that it should extend to the insertion and publication of defamatory matter, or had meant to continue such general authority knowing that it had been exercised by inserting and publishing defamatory matter in any number or part of the newspaper.

281. Protection of innocent seller of newspaper.

A person is not liable if the person sells any number or part of a newspaper, unless he knows that such number or part of the newspaper contains defamatory matter or that the newspaper has regularly contained the defamatory matter.

282. Protection of the innocent seller of book or periodical.

A person is not liable when he sells any book, magazine, pamphlet or other publication, whether forming part of any periodical or not, which contains the defamatory matter, if he proves at the time of such sale that he did not know that such defamatory matter was contained in the book, magazine, pamphlet or other publication.

283. Sale by employee.

The sale by an employee of any book, magazine, pamphlet or other publication, whether periodical or not, does not make his employer criminally responsible in respect of

defamatory matter contained in it unless it is proved that the employer authorized the sale knowing that the book, magazine, pamphlet or other publication contained defamatory matter, or in case of a number or part of a periodical, that such periodical has regularly contained defamatory matter.

284. Plea of justification of libel.

(1) Where a defendant accused of publishing defamatory matter pleads that the defamatory matter published by him was true, and that it was for the public benefit that the matter should be published in the manner in which and at the time when it was published, such plea may justify the defamatory matter in the sense specified, if any, in the count, or in the sense which the defamatory matter bears without any such specific justification, or separate pleas justifying the defamatory matter in each sense may be pleaded separately, as if two libels had been charged in separate counts.

(2) Every such plea must be in writing, and must set out the particular fact or facts by reason of which it was for the public benefit that such matter should be so published.

(3) The Director of Public Prosecutions shall reply generally denying the truth of the plea.

(4) The truth of matters charged in an alleged libel is not inquired into if a plea of justification has not been pleaded, unless the defendant is put upon his trial on any indictment charging him with publishing the libel, which he knows to be false in which case evidence of the truth may be given in order to negative allegations that the defendant knew the libel to be false.

(5) The defendant may, in addition to such plea, plead not guilty, and both pleas are inquired into together.

(6) A plea of justification shall not be pleaded to any indictment or count of a charge of seditious, blasphemous or obscene libel.

(7) Where a defendant despite his plea of justification is convicted, the court may, in pronouncing sentence, consider whether his guilt is aggravated or mitigated by the plea.

(8) Where the issue raised by a plea of justification is found against the defendant, the prosecutor is entitled to recover from the person the costs sustained by reason of such plea.

(9) If the defendant is acquitted either upon an indictment preferred or complaint filed by a private prosecutor for libel, the person is entitled to recover from the private prosecutor the costs sustained by him by reason of such prosecution.

(10) Any costs recoverable under subsection (8) or (9) by the prosecutor or the person respectively shall be taxed by the Registrar.

285. Negligent and intentional libel.

(1) A person who commits an offence of negligent libel is liable to imprisonment for six months.

(2) A person who commits an offence of intentional libel is liable to imprisonment for two years.

286. Defaming Her Majesty.

A person who with intent to bring Her Majesty into hatred, contempt, or ridicule, publishes any defamatory or insulting matter, whether by writing, print, word of mouth, or in any other manner, concerning Her Majesty commits an offence and is liable on conviction on indictment to imprisonment for five years.

**PART XII
CYBERCRIME**

287. Interpretation.

(1) In this Part, unless the contrary intention appears:

“access” includes the action of a person who, after taking note of any data, becomes aware of the fact that he is not authorised to access that data and still continues to access that data,

“computer system” means a device or a group of inter-connected or related devices, including the Internet, one or more of which, pursuant to a program, performs automatic processing of data or any other function;

“data” means electronic representations of information in any form;

“electronic” means created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic, optical or by any other means that has capabilities for creation, recording, transmission or storage similar to those means;

“electronic data storage medium” means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of other article or device;

“electronic communication” means any transfer of signs, signals, writing, images,

sounds, data or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photo-electric or photo-optical system;

“electronic mail” means the transmission of information or communication by the use of the internet, a computer, a facsimile machine, a pager, a cellular telephone or other electronic means sent to a person identified by a unique address or address numbers and received by that person;

“information system” means a system for generating, sending, receiving, storing, displaying or otherwise processing data messages and includes the internet and wireless application protocol communications;

(2) This Part applies to an act done or an omission made:

- (a) in Country X;
- (b) on a ship or air craft registered in Saint Vincent and the Grenadines;
- (c) by a national of Country X;
- (d) by a national of Country X outside the territory of Country X, if the person’s conduct would also constitute an offence under a law of the country where the offence was committed.

288. Illegal Access.

A person who intentionally, without lawful excuse or justification, accesses the whole or any part of an information system commits an offence and is liable on conviction on indictment to imprisonment for two years or a fine of five thousand dollars or both.

289. Interfering with Data.

(1) A person who, intentionally or recklessly, without lawful excuse or justification, does any of the following acts:

- (a) destroys or alters data;
- (b) renders data meaningless, useless or ineffective;
- (c) obstructs, interrupts or interferes with the lawful use of data;
- (d) obstructs, interrupts or interferes with any person in the lawful use of data;

- (e) denies access to data to any person entitled to it;

commits an offence and is liable on conviction on indictment to imprisonment for three years or a fine of thirty thousand dollars or both.

(2) Subsection (1) applies whether the person's act is of temporary or permanent effect.

290. Interfering with computer system.

(1) A person who intentionally or recklessly, without lawful excuse or justification:

- (a) hinders or interferes with the functioning of an information system; or
- (b) hinders or interferes with a person who is lawfully using or operating an information system;

commits an offence and is liable on conviction on indictment to imprisonment for ten years or a fine of one hundred thousand dollars or both.

(2) In subsection (1) "hinder" in relation to an information system, includes:

- (a) cutting the electricity supply to an information system;
- (b) causing electromagnetic interference to an information system;
- (c) corrupting a computer system by any means; or
- (d) inputting, deleting or altering data.

291. Illegal interception of data.

A person who intentionally without lawful excuse or justification intercepts by technical means:

- (a) any non-public transmission to, from or within an information system; or
- (b) electromagnetic emissions from an information system that are carrying data;

commits an offence and is liable on conviction on indictment to imprisonment of twelve months or a fine of fifteen thousand dollars or both.

292. Illegal devices.

- (1) A person commits an offence if the person:
- (a) intentionally or recklessly, without lawful excuse or justification, produces, sells, procures for use, imports, exports, distributes or otherwise makes available -
 - (i) a device, including a computer programme, that is designed or adapted for the purpose of contravening section 388, 389, 390, 391
 - (ii) a password, access code or similar data by which the whole or any part of an information system is capable of being accessed, with the intent that it be used by any person for the purpose of contravening section 388, 389, 390, 391; or
 - (b) has an item mentioned in sub-paragraph (i) or (ii) in his possession with the intent that it be used by any person for the purpose of contravening section 388, 389, 390, 391.

(2) A person found guilty of an offence under this section is liable on conviction on indictment to imprisonment for twelve months or a fine of three thousand dollars or to both

293. Child pornography.

- (1) A person who intentionally, does any of the following acts:
- (a) publishes child pornography through an information system;
 - (b) produces child pornography for the purpose of its publication through an information system; or
 - (c) possesses child pornography in an information system or on an electronic data storage medium,

commits an offence and is liable on conviction on indictment :

- (d) in the case of an individual, to fifteen years imprisonment or a fine of twenty thousand dollars or to both;
- (e) in the case of a corporation to a fine of twenty-five thousand dollars.

(2) It is a defence to a charge of an offence under subsection (1) (a) or (1) (c) if the person establishes that the child pornography was for a bona fide scientific research, medical or law enforcement purpose.

(3) In this section:

“child pornography” includes material that visually depicts -

- (a) a minor engaged in sexually explicit conduct;
- (b) a person who appears to be a minor engaged in sexually explicit conduct; or
- (c) realistic images representing a minor engaged in sexually explicit conduct;

“minor” means a person under the age of 16 years.

“publish” includes:

- (a) distribute, transmit, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any other way, or make available in any way;
- (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a); or
- (c) print, photograph, copy or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing an act referred to in paragraph (a).

294. Cyber Stalking.

A person who -

- (a) in an electronic mail or communication uses any words or language threatening to inflict bodily harm to any person or to any member of that person’s family or damage to the property of any person;
- (b) uses electronic mail or communication, whether or not conversation ensues, for the purpose of abusing, annoying, threatening terrifying, harassing or embarrassing any person;
- (c) uses electronic mail or communication to knowingly make any false statement concerning death, injury, illness, disfigurement,

indecent conduct or criminal conduct with the intent to abuse, annoy, threaten, terrify, harass or embarrass;

commits an offence and is liable on summary conviction to three years imprisonment or a fine of ten thousand dollars or to both.

295. Cyber Fraud

A person who fraudulently causes loss of property to another person by:

- (a) any input, access, alteration, deleting or suppression of data;
- (b) any interference with the functioning of an information system;

with intent to procure for himself or another person an advantage, commits an offence and is liable upon conviction on indictment to imprisonment for five years and a fine of ten thousand dollars or both.

PART XIII

FEMALE GENITAL MUTILATION

296. Interpretation for sections 297 to 301.

- (1) Girl includes woman.
- (2) A Country X national is an individual who is a citizen
- (3) A permanent Country X resident is an individual who is settled in Country X (within the meaning of the [Relevant] Act).

297. Offence of female genital mutilation.

- (1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.
- (2) But no offence is committed by an approved person who performs—
 - (a) a surgical operation on a girl which is necessary for her physical or mental health, or
 - (b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.

- (3) The following are approved persons—
- (a) in relation to an operation falling within subsection (2)(a), a medical practitioner,
 - (b) in relation to an operation falling within subsection (2)(b), a medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.
- (4) There is also no offence committed by a person who—
- (a) performs a surgical operation falling within subsection (2)(a) or outside Country X, and
 - (b) in relation to such an operation exercises functions corresponding to those of an approved person
- (5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual

298. Offence of assisting a girl to mutilate her own genitalia.

A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.

299. Offence of assisting a non-national of Country X to mutilate overseas a girl's genitalia.

- (1) A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a Country X national or permanent Country X resident to do a relevant act of female genital mutilation outside of Country X.
- (2) An act is a relevant act of female genital mutilation if—
- (a) it is done in relation to a Country X national or permanent Country X resident, and
 - (b) it would, if done by such a person, constitute an offence under section 297.
- (3) But no offence is committed if the relevant act of female genital mutilation—

- (a) is a surgical operation falling within section 297(2)(a) or (b), and
- (b) is performed by a person who, in relation to such an operation, is an approved person or exercises functions corresponding to those of an approved person.

300. Extension of sections 297 to 299 to extra-territorial acts.

- (1) Sections 297 to 299 extend to any act done outside Country X by a Country X national or permanent Country X resident.
- (2) If an offence under this Part is committed outside Country X—
 - (a) proceedings may be taken, and
 - (b) the offence may for incidental purposes be treated as having been committed,in any place in Country X.

301. Penalties for offences.

A person guilty of an offence under this Part is liable—

- (a) on conviction on indictment, to imprisonment for fourteen years or a fine or both,
- (b) on summary conviction, to imprisonment for three years or a fine of five thousand dollars or both.

PART XIV

OFFENCES AGAINST PROPERTY

Theft

302. Theft.

- (1) A person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other person of it commits an offence of theft and is liable
 - (a) on conviction on indictment to imprisonment for fourteen years or a fine or both;
 - (b) on summary conviction, where the value of the property was under three thousand dollars, to imprisonment for three years or a fine

of five thousand dollars or both.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the benefit of the thief.

(3) A person does not dishonestly appropriate the property belonging to another

- (a) if the person appropriates the property in the belief that he has in law the right to deprive the other person of it, on behalf of himself or of a third person; or
- (b) if the person appropriates the property in the belief that he would have the other person's consent if the other person knew of the appropriation and the circumstances of it; or
- (c) except where the property came to him as trustee or personal representative, if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(4) A person may dishonestly appropriate the property belonging to another person although he is willing to pay for the property.

(5) Any assumption by a person of any of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property, whether innocently or not, without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(6) Where property, or a right or interest in property is, or purports to be transferred for value to a person acting in good faith, no later assumption by him of the rights which he believed himself to be acquiring, by reason of any defect in the title of the transferor, amounts to theft of the property.

(7) A person cannot steal land, or things forming part of land severed from it by him or her or by his or her direction, except in the following cases

- (a) when he is a trustee or personal representative, or is authorized by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land belonging to another, or anything forming part of it by dealing with it in breach of the confidence reposed in him; or
- (b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

(8) In subsection(7)

“land” does not include an incorporeal hereditament;

“tenancy” means a tenancy which may be for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise shall be treated as having possession under the tenancy.

(9) Wild creatures, tamed or untamed, are regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or carcass of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in the course of reducing it into possession.

(10) Anything produced by or forming part of any living creature capable of being stolen or otherwise dishonestly appropriated is capable of being stolen or otherwise dishonestly appropriated.

(11) Any person who, without lawful authority or excuse, the proof of which lies on him, sets loose or drives or takes or removes or entices away any animal capable of being stolen is liable to prosecution and punishment for stealing the animal.

(12) Property is regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest, not being an equitable interest arising only from an agreement to transfer or grant an interest.

(13) Where property is subject to a trust, any persons to whom it belongs includes the person having a right to enforce the trust, and an intention to defeat the trust is regarded accordingly as an intention to deprive the person having that right.

(14) Where a person receives property from, or on account of another person and is under an obligation to the other person to retain and deal with that property or its proceeds in a particular way, the property or proceeds is regarded, as against him, as belonging to that other person.

(15) Where a person gets property by the mistake of another person, and is under an obligation to make restoration, in whole or in part, of the property or its proceeds or of the value of it, then to the extent of that obligation the property or proceeds is regarded, as against him, as belonging to the person entitled to restoration, and an intention not to make

restoration is regarded accordingly as an intention to deprive that person of the property or proceeds.

(16) Property of a corporation sole is regarded as belonging to the corporation despite a vacancy in the corporation.

(17) A person who appropriates property belonging to another person without meaning the other person permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other person of it if his intention is to treat the thing as his own to dispose of regardless of the right of the other; and a borrowing or lending of it may amount to so treating it if the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(18) Without prejudice to subsection (17), where a person, having possession or control, whether lawfully or not, of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this, if done for his own purposes and without the authority of the other person, amounts to treating the property as his own to dispose of regardless of the right of the other person.

303. Common thief.

(1) A person shall be deemed to be a common thief if the person, in or whilst committing or attempting to commit or aiding and abetting the commission of any indictable offence of burglary, house-breaking, unlawful entry, extortion, false pretences or other fraud, robbery, or fraudulent breach of trust, he used or was in possession of any tools, implement, or means specially contrived or adapted for the purpose of committing the offence, or acted in company with or abetted, or was abetted by, any other person using or in possession of any such tools, implements, or means.

(2) A person who is convicted of being a common thief is liable –

- (a) on conviction on indictment to imprisonment for fourteen years or a fine or both;
- (b) on summary conviction, to imprisonment for three years or a fine of five thousand dollars or both.

304. Stealing from dwelling, place of business or worship.

(1) A person who steals from or in any dwelling-house, shop, factory, warehouse, or place of worship, subject to subsection (2), commits an offence and is liable

- (a) on conviction on indictment to imprisonment for seven years; or
- (b) on summary conviction to imprisonment for two years.

(2) If because of a previous conviction, either summarily or on indictment, for a similar offence, or for any cause the Magistrate is of opinion that a summary charge under this section ought to be tried as an indictable offence, he may deal with it as such.

305. Stealing by employee.

(1) A person who steals anything of which he has the custody, control or possession, or to which he has the means of access, by reason of any office, employment, or service, subject to subsection (2), commits an offence and is liable

(a) on conviction on indictment to imprisonment for seven years; or

(b) on summary conviction to imprisonment for two years.

(2) If because of a previous conviction, either summarily or on indictment, for a similar offence, or for any other cause the Magistrate is of opinion that a summary charge under this section ought to be tried as an indictable offence, he may deal with it as such.

306. Stealing from person.

(1) A person who steals from another person, subject to subsection (2), commits an offence under subsection (1) and is liable

(a) on conviction on indictment to imprisonment for seven years; or

(b) on summary conviction to imprisonment for two years.

(2) If because of a previous conviction either summarily or on indictment, for a similar offence, or for any other cause the Magistrate is of opinion that a summary charge under this section ought to be tried as an indictable offence he may deal with it as such.

(3) Property is stolen from a person if it is stolen from the body, clothes, or immediate presence of a person.

307. Stealing telegraph or telephone parts.

A person who steals any pole, wire, or apparatus used for the purposes of any telegraph or telephone commits an offence and is liable on conviction on indictment to imprisonment for seven years.

308. Stealing from vessels.

(1) A person who steals from or in any vessel, subject to subsection (2), commits an offence and is liable

(a) on conviction on indictment to imprisonment for seven years; or

(b) on summary conviction to imprisonment for two years.

(2) If because of a previous conviction, either summarily or on indictment, for a similar offence, or for any other cause the Magistrate is of opinion that any summary charge under this section ought to be tried as an indictable offence, he may deal with it as such.

Fraudulent Breach of Trust

309. Theft or fraudulent breach of trust by part owners.

A person who is an owner of or interested in a thing, or in the amount, value or proceeds of a thing, jointly or in common with another person or as a member of a company, or who is owner of a thing as a trustee for himself jointly or in common with another person or for a company of which he is a member, can commit the offence of theft or of fraudulent breach of trust in respect of the thing; and a person can be a clerk, servant, or officer of a company of which he is a member.

310. Money, etc., in cases of embezzlement.

If it is proved, on behalf of a defendant of having stolen or committed a fraudulent breach of trust in respect of monies or other things, that it was lawful for him to appropriate the particular monies or other things, or any of them, and that he was only bound to account for the amount or value of the thing, he shall not be deemed guilty in respect of the monies or things which he has appropriated, unless proof is given against him that

- (a) he has admitted that the appropriation of them was dishonest; or
- (b) proof is given that he has concealed or absconded with them or with the proceeds of them; or
- (c) he has concealed or denied, or attempted to conceal, or refused or omitted to disclose according to his duty, the fact of the receipt or disposal of them; or
- (d) it is made to appear that he knew that the effect of the disposal of them would be to disable him from accounting for the amount, value, or proceeds of them according to his duty.

311. Fraudulent breach of trust.

(1) A person who dishonestly appropriates a thing, the ownership of which is vested in him as a trustee for any other person, subject to subsection (2), commits a fraudulent breach of trust is liable on

- (a) conviction on indictment to imprisonment for five years; or
- (b) on summary conviction to imprisonment for two years.

(2) If because of a previous conviction, either summarily or on indictment, for a similar offence, or for any other cause, the Magistrate is of opinion that a summary charge under this section ought to be tried as an indictable offence, he may deal with it as such.

(3) Where a person, being the owner of a thing in his own right and for his own benefit, undertakes to hold or apply the thing as a trustee for another person, he shall not be deemed to become a trustee, within the meaning of the provisions of this Code relating to fraudulent breaches of trust, unless he has constituted himself such trustee by an instrument in writing executed by him and specifying the nature of the trust and the persons to be benefited.

Robbery, Burglary, etc.

312. Robbery.

A person who steals a thing, and immediately before or at the time of doing so, and in order to do so, he uses force on the person or puts or seeks to put the person in fear of being then and there subjected to force commits an offence of robbery, or of an assault with the intent to rob and is liable on conviction on indictment to imprisonment for twenty years.

313. Burglary.

(1) A person who

- (a) enters any building or part of a building as a trespasser with the intent to commit any offence under subsection (2); or
- (b) having entered any building or part of a building as a trespasser, steals or attempts to steal anything in the building or part of it or inflicts or attempts to inflict on any person grievous bodily harm,

commits the offence of burglary and is liable on conviction on indictment to imprisonment for twenty years.

(2) The offences referred to in subsection (1)(a) are offences of

- (a) stealing anything in the building or part of the building in question;
- (b) inflicting on the person in the building any grievous bodily harm;
- (c) raping a woman in the building; and

(d) doing unlawful damage to the building or anything in the building.

(3) A reference in subsections (1) and (2) to a building apply to an uninhabited vehicle or vessel, and apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

314. Aggravated burglary.

(1) In this section

“explosive” means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him or her for that purpose;

“firearm” includes an airgun or air pistol;

“imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not;

“weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him or her for such use.

(2) A person who commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive commits the offence of aggravated burglary and is liable on conviction on indictment to imprisonment for life.

315. Removal of articles from places open to the public.

(1) Subject to subsections (2) and (3), where the public has access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, a person who without lawful authority, removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds commits an offence and is liable –

(a) on conviction on indictment to imprisonment for fourteen years or a fine or both;

(b) on summary conviction, where the value of the property was under three thousand dollars, to imprisonment for three years or a fine of five thousand dollars or both.

(2) In subsection (1), “collection” includes a collection got together for a temporary purpose, but references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(3) Subject to subsection (4), it is immaterial for the purposes of subsection (1), that access to the public to a building is limited to a particular period or particular occasion.

(4) Where anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not commit an offence under this section unless he removes it on a day when the public has access to the building as mentioned in subsection (1).

(5) A person does not commit an offence under this section if the person believes that he has lawful authority for the removal of the thing in question or that he would have it if the person entitled to give it, knew of the removal and the circumstances of it.

316. Abstracting of electricity.

A person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity commits an offence and is liable on summary conviction to imprisonment for one year.

Fraud and Blackmail

317. Interpretation for sections 318 to 329.

For the purposes of sections 318 to 329

“gain” includes a gain by keeping what one has, as well as a gain by getting what one has not;

“goods” includes money and every other description of property except land, and includes things severed from the land by stealing;

“loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

318. Fraud.

(1) In this section

“property” means any property whether real or personal, including things in action and other intangible property;

“representation” means any representation as to fact or law, including a representation as to the state of mind of the person making the representation or any other person.

- (2) A person commits the offence of fraud if that person
 - (a) dishonestly makes a false representation and intends by making the representation;
 - (b) dishonestly fails to disclose to another person information which he is under a legal duty to disclose and intends, by failing to disclose the information;
 - (c) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, and dishonestly abuses that position and intends, by means of the abuse of that position;

to make a gain for himself or another person or to cause loss to another or to expose another person to a risk of loss.

- (3) A person who is convicted of an offence under subsection (1) is liable
 - (a) on summary conviction, where the gain for himself or another person or loss caused to another or risk of loss was under three thousand dollars, to imprisonment for one year or to a fine not exceeding five thousand dollars;
 - (b) on conviction on indictment to imprisonment for ten years or to a fine not exceeding sixty thousand dollars.

(4) Gain and loss extend only to gain or loss in money or other property and includes any such gain or loss whether temporary or permanent.

(5) A representation is false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading.

(6) A representation may be express or implied.

(7) For the purposes of this section a representation is regarded as made if it, or anything implying it, is submitted in any form to any system or device designed to receive, convey or respond to communications, with or without human intervention.

(8) A person is regarded as having abused his position even though his conduct consisted of an omission rather than an act.

319. Possession, making or supplying articles for use in frauds.

(1) In this section “article” includes any program or data held in electronic form.

- (2) A person commits an offence if that person
 - (a) has in his possession or under his control any article for use in the course of or in connection with any fraud;
 - (b) makes, adapts, supplies or offers to supply any article knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit, or assist in the commission of, fraud.
- (3) A person who is convicted of an offence under subsection (2) is liable
 - (a) on summary conviction to imprisonment for one year or to a fine not exceeding five thousand dollars;
 - (b) on conviction on indictment to imprisonment for five years or to a fine not exceeding thirty thousand dollars.

320. Participating in fraudulent business carried on by sole trader.

- (1) A person commits an offence if that person is knowingly a party to the carrying on of a business
 - (a) by a person who is committing the offence of fraudulent trading under the [Relevant] Act; and
 - (b) with intent to defraud creditors or any person or for any other fraudulent purpose.
- (2) A person who is convicted of an offence under subsection (1) is liable
 - (a) on summary conviction to imprisonment of one year or to a fine not exceeding five thousand dollars;
 - (b) on conviction on indictment to imprisonment for ten years or to a fine not exceeding sixty thousand dollars.

321. Obtaining services dishonestly.

- (1) A person commits an offence if that person obtains services for himself or another person by a dishonest act and
 - (a) the service is made available on the basis that payment has been, is being or will be made for or in respect of the service;

(b) he obtains the service without any payment having been made for or in respect of the service or without payment having been made in full and when he obtains the service he knows that they are being made available on the basis described in paragraph (a), or that they might be but intends that payment will not be made, or will not be made in full.

(2) A person who is convicted of an offence under subsection (1) is liable

(a) on summary conviction to imprisonment, the payment for the service or to be made is under three thousand dollars, for one year or a fine not exceeding five thousand dollars;

(b) on conviction on indictment to imprisonment for five years or a fine not exceeding thirty thousand dollars.

322. Issuing cheque or negotiable instrument with intent to defraud.

(1) A person who draws, makes, utters, or issues and delivers to another any negotiable instrument with the intent, knowledge, or expectation that it will not be honoured by the drawee commits an offence and is liable

(a) if the sum stated on the cheque is up to three thousand dollars, on summary conviction to imprisonment for one year;

(b) if the sum stated on the cheque is above three thousand dollars, on conviction on indictment to imprisonment for three years.

(2) The fact that

(a) the maker or drawer had no account with the drawee at the time the negotiable instrument was issued and delivered; or

(b) payment was refused by the drawee for lack of funds, upon presentation within thirty days after delivery and the maker or drawer failed to make good within ten days after receiving notice of non-payment;

is *prima facie* evidence of intent, knowledge, or expectation that the negotiable instrument would not be honoured upon presentation.

(3) In every trial in which the person is convicted under this section, the court shall award as an element of its judgment, restitution to the payee of the negotiable instrument except in the following cases, that is to say

(a) where the negotiable instrument is post dated; or

- (b) where the payee or other holder believed or had reason to believe at the time he accepted the instrument that the maker or drawer did not have credit with or funds on deposit in the drawee bank sufficient to cover the instrument or that the negotiable instrument would not be paid upon presentation; or
 - (c) where the negotiable instrument has been held by the payee or other holder for a period in excess of thirty days from the date of its making before presentation for payment; or
 - (d) where the payee has failed to notify the maker or drawer of the instrument of its non payment for insufficient funds and has failed to allow the maker or drawer ten days to make restitution.
- (4) For the purpose of this section notice may be given orally to the maker, or in writing.
- (5) Written notice may be sent by registered or certified mail with return receipt requested or by telegram, and addressed to the maker or drawer at his address shown
- (a) on the instrument; or
 - (b) on the records of the bank or of the drawee; or
 - (c) on the records of the person to whom the instrument has been issued and delivered.
- (6) If written notice is given in accordance with this section, it shall be presumed that notice was received by the maker or drawee no later than five days after such written notice was mailed.
- (7) It shall be a defence for the person charged under this section that restitution was made to the payee within ten days of receipt by the maker of notice of non-payment of the instrument or that he did not receive notice as required under this section.

323. Fraud by pawner of property.

A person who secretly or by force, threats or deception and with intent to defraud

- (a) takes or obtains any property from any person to whom he has pawned, pledged or otherwise bailed it; or
- (b) takes or obtains from any person who by virtue of any order of execution, seizure or other process of law has possession, custody or control of any property,

commits an offence and is liable on conviction on indictment to imprisonment for two years.

324. Fraud by person evading intended execution against property.

A person who, knowing that execution, warrant or other process of law has been issued for the seizure of any property belonging to him or in his possession, custody or control, unlawfully removes, conceals or in any manner disposes of any such property with intent to defeat or evade such execution, warrant or other process commits an offence and is liable on conviction on indictment to imprisonment for five years.

325. Falsification of accounts.

(1) A person who being a clerk, officer or servant, or a person employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud

- (a) removes, conceals, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for and on account of his employer; or
- (b) makes, or concurs in making any false entry in, or omits or alters or concurs in omitting or altering any material particular from or in any book, document or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer,

commits an offence and is liable to imprisonment for seven years.

(2) Where an offence committed by a company under subsection (1) is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the company commits the offence, and is liable to be proceeded against and punished accordingly.

(3) Where the affairs of a company are managed by its members, this section applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company.

326. False statement by company director, etc.

(1) A person who being an officer of a company, with intent to defraud, publishes any account, statement or prospectus relating to the affairs of the company which he knows to be false in any material particular commits an offence and is liable to imprisonment for seven years.

(2) For the purposes of this section a person who has entered into a security for the benefit of a company shall be treated as a creditor of it.

(3) Where the affairs of a company are managed by its members, this section applies to any statement which a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of the company.

327. Destroying, defacing or concealing of documents.

(1) For the purposes of this section “valuable security” means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorizing the payment of money or delivery of any property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

(2) A person who dishonestly, with a view to gain for himself or another person or with intent to cause loss to another person

- (a) destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court or any government department;
- (b) or with intent to cause loss to another person, by any deception procures the execution of a valuable security,

commits an offence and is liable on conviction on indictment to imprisonment for seven years.

(3) This section applies in relation to the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as a valuable security, as if that were the execution of a valuable security.

328. Conspiring to defraud

Any person who conspires with another person by deceit or any fraudulent means—

- (a) to affect the market price of anything publicly sold; or
- (b) to defraud the public, or any person, whether a particular person or not; or
- (c) to extort any property from any person,

is liable on conviction on conviction on indictment to imprisonment for ten years.

329. Blackmail.

(1) A person who, with a view to gain for himself or another person or with intent to cause loss to another person, makes any unwarranted demand with menaces commits the offence of blackmail and is liable on conviction on indictment to imprisonment for fourteen years.

(2) For the purposes of subsection (1) a demand with menaces is unwarranted unless the person making it does so in the belief

- (a) that he has reasonable grounds for making the demand; and
- (b) that the use of the menaces is a proper means of reinforcing the demand.

(3) The nature of the act or omission demanded is immaterial, and it is also immaterial that the menaces relate to action to be taken by the person making the demand.

Stolen goods

330. Handling stolen goods.

(1) A person who handles stolen goods otherwise than in the course of the stealing knowing or believing them to be stolen goods or he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so commits the offence of handling stolen goods and is liable –

- (a) on conviction on indictment to imprisonment for fourteen years or a fine or both;
- (b) on summary conviction, where the value of the stolen goods is under three thousand dollars, to imprisonment for three years or a fine of five thousand dollars or both.

(2) Where any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that no questions will be asked, or that the person producing the goods will be safe from arrest or inquiry, or that any money paid for the purchase of the goods or advanced by way of loan on them will be repaid, the person advertising the reward and the person who prints or publishes the advertisement commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(3) The provisions relating to goods which have been stolen apply whether the stealing occurred in Country X or elsewhere, provided that the stealing, if not an offence under this Code, amounted to an offence where and at the time when the goods were stolen; and references to stolen goods are to be construed accordingly.

(4) For the purposes of this section a reference to stolen goods includes, in addition to the goods originally stolen and parts of them, whether in their original state or not

- (a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and
- (b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by him or her or of goods so representing them.

(5) Goods are not regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen, or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(6) For the purposes of this section goods obtained in Country X or elsewhere either by blackmail or in the circumstances described in subsection (1) and (2) are regarded as stolen.

Housebreaking Implements

331. Going equipped for stealing, etc.

(1) A person who, when not at his place of abode or work, has with him any article for use in the course of or in connection with any burglary or theft commits an offence and is liable -

- (a) on conviction on indictment to imprisonment for fourteen years or a fine or both;
- (b) on summary conviction, to imprisonment for three years or a fine of five thousand dollars or both.

(2) Where a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary or theft is evidence that he had it with him for such use.

(3) A person may arrest without warrant anyone whom he, with reasonable cause, suspects to be committing an offence under this section.

Forgery

332. Interpretation for sections 333 to 335.

(1) For the purposes of subsections (2) to (11) and sections 333 to 335

“document” includes a document of title of land, will, power of attorney, judicial record, policy of insurance or bank note, cheques, credit cards, bill of exchange, promissory note or other negotiable instrument or other authority for the payment of money by a person carrying on business as a bank, or any instrument in writing entitling or evidencing the title of the person to any share, interest in any public stock, annuity, fund or debt of any government or State or the stock, fund or debt of a company established in Country X or elsewhere;

“note” means any metal or paper used for the time being as money, either in Country X or in any other place or country, and issued by authority of any government in order to be so used.

(2) A person counterfeits a stamp, die, coin, or mark if the person makes any imitation of it, or anything which is intended to pass or which may pass as such stamp, die, coin, or mark; and if a person makes anything which is intended to serve as a specimen, or pattern, or trial of, any process for counterfeiting a stamp, die, coin, or mark, he shall be deemed to be guilty of counterfeiting, although he does not intend that any person should be defrauded or injured by, or that any further use should be made of, such specimen or pattern.

(3) A person falsifies a note of any metal, coinage, denomination, date, or country, if the person removes any such part of it, or if by any means he alters it, whether permanently or temporarily, and whether in substance or appearance, as that it may pass for a note of a different metal, coinage, denomination, date or country.

(4) A person forges a document if the person

(a) makes a false document with the intention that he or another person use it to induce somebody to accept it as genuine and by reason of so accepting it to do or not to do any act to his or any other person’s prejudice;

(b) makes or alters the document, or any material part of it, with intent to cause it to be believed

- (i) that the document or part of it has been so made or altered by any person who did not in fact so make or alter it; or
 - (ii) that the document or part of it has been so made or altered with the authority or consent of any person who did not in fact give such authority or consent; or
 - (iii) that the document or part of it has been so made or altered at a time different from that at which it was in fact so made or altered;
- (c) issues or uses any document which is exhausted or cancelled, with intent that it may pass or have effect as if it were not exhausted or cancelled.
- (5) The making or alteration of a document or part of it by a person
- (a) in his own name may be forgery if the making or alteration is with either of the intents mentioned in subsection (4);
 - (b) in a name which is not his real or ordinary name is not forgery unless the making or alteration is with one or other of the intents mentioned in subsection (4).
- (6) In subsections (4) and (5) “alteration” includes any cancelling, erasure, severance, interlineations, or transposition of or in a document or of or in any material part of it, and the addition of any material part to it, and any other act or device the purport, operation, or validity of the document may be affected.
- (7) It is immaterial whether the person by whom, or with whose authority or consent, a document or part of it purports to have been made, or is intended to be believed to have been made, be living or dead, or be a fictitious person.
- (8) Every word, letter, figure, mark, seal or thing expressed on or in a document, or forming part of it, or attached to it, and any colouring, shape, or device used in it, which purports to indicate the person by whom, or with whose authority or consent, a document or part of it has been made, altered, executed, delivered, attested, verified, certified, or issued, or which may affect the purport, operation, or the validity of the document in any material particular, is a material part of the document.
- (9) Subsections (2) to (8) apply with respect to the forgery of a stamp in the same manner as with respect to the forgery of a document.
- (10) A person possesses or does any act

- (a) with respect to a stamp or note knowing it not to be genuine, if the person possesses it, or does the act with respect to it, knowing that it is in fact counterfeit or falsified;
- (b) with respect to a document which the person knows is not genuine, if he possesses it, or does such act with respect to it, knowing that it was not in fact made or altered at the time, or by the person, or with the authority or consent of the person, at which, or by whom, or with whose authority or consent, it purports or is represented by him to have been made or altered.

(11) It is immaterial whether or not the act of the person referred to in subsection (10) who made or altered the document was a crime.

333. Imitation of forged document, etc., need not be perfect.

For the purposes of the provisions of this Code relating to the forgery, counterfeiting, falsifying, uttering, dealing with, using or possessing of any document, stamp or note, it is not necessary that the document, stamp or note, should be so complete, or should be intended to be made so complete, or should be capable of being made so complete, as to be valid or effectual for any of the purposes of a thing of the kind which it purports or is intended to be or to represent, or as to deceive a person of ordinary judgment and observation.

334. Jurisdiction in relation to document etc.

For the purpose of the provisions of this Code relating to the possessing or doing any act with respect to a document, stamp or note which is forged, counterfeited or falsified, or which is not genuine, it is immaterial whether the document, stamp or note, has been forged, counterfeited, falsified, made, or altered beyond or within the jurisdiction of the courts.

335. Mode of dealing with suspected note when tendered in payment.

(1) Where any note is tendered as legal tender to any person who suspects such note to be diminished, otherwise than by reasonable wear and tear or to be counterfeit, the person may cut or deface the note.

(2) If any note cut or defaced appears to be diminished, otherwise than by reasonable wear and tear or to be counterfeit, the person tendering the note bears the loss of it; but if the note is of due weight and appears to be a lawful note, the person cutting or defacing it is required to receive it at the rate for which it was noted.

(3) If any dispute arises whether the note cut or defaced is diminished in the manner stated in subsection (1) or is counterfeit, the dispute must be heard and finally

determined in a summary manner by any Magistrate on application accompanied by an affidavit of any of the parties to the dispute or any other person.

False Claims

336. False claims.

(1) In this section “make” includes to put forward or to be concerned in or be a party to the making or putting forward of a false claim.

(2) A person who, with intent to defraud by any means or in any way or manner makes any false claim to any public monies or to public property commits an offence and is liable on conviction on indictment to imprisonment for five years.

(3) When a person is convicted of obtaining by fraud any notified plant or notified plant product, the court may, in substitution for or in addition to any penalty to which he may otherwise be liable, sentence him to an additional term of six months imprisonment.

Noteage Offences

337. Common noteer.

A person who

- (a) is proved to have used, or to have abetted the use of, any means specially contrived or adapted for purposes of forgery; or
- (b) is convicted of any forgery, after having been convicted of any offence punishable on indictment for counterfeiting, falsification or forgery; or
- (c) is proved to have had in his possession, custody, or control at the same or at different times, two or more notes which he knew to have been counterfeited or falsified, and by means of which he intended to commit any such indictable offence,

commits the offence of being a common noteer and is liable on conviction on indictment to imprisonment for life.

338. Counterfeiting, falsifying note.

A person who, with intent to defraud or deceive counterfeits or falsifies any note

or coin commits an offence and is liable on conviction on indictment to imprisonment for seven years.

339. Damaging or destroying note.

A person who, without lawful authority defaces, or destroys any note, which is for the time being legal tender in Country X, commits an offence and is liable on conviction on indictment to imprisonment for two years.

340. Possessing false note.

A person who has in his possession any note which is counterfeited, or falsified, or which he knows not to be genuine commits an offence and is liable to be punished in the same manner as if he had himself, with any of the requisite intents stated in this Part counterfeited or falsified such note.

341. Purchasing or possessing forged bank note.

A person who, without lawful authority or excuse, the proof of which lies on him or her, purchases or receives from any person, or has in his custody or possession, any forged bank note or forged blank bank note, whether or not complete, which he knows is forged commits an offence and is liable on conviction on indictment to imprisonment for five years.

342. Imitation of currency notes.

(1) A person who makes or causes to be made or uses for any purpose whatsoever, or utters any document purporting to be or in any way resembling or so nearly resembling as to be calculated to deceive any currency note or any part of it commits an offence and is liable on conviction on indictment to imprisonment for ten years.

(2) In addition, the court shall order the document in respect of which the offence was committed and any copies of that document as well as any plates, blocks, dies or other instruments used for or capable of being used for printing and reproducing any such document found in the possession of such person, to be forfeited and destroyed.

343. Uttering or using false note.

A person who, with any of the intents in this Part, utters, or in any manner deals with or uses, any note as stated in this Part which he knows is counterfeited, or falsified, or not genuine commits an offence and is liable to the same punishment as if he had himself with that intent counterfeited or falsified the note.

344. Forging hallmark on gold or silver plate or bullion.

A person who with intent to defraud forges or counterfeits any hall-mark or mark appointed, under authority of law, by any corporation or public officer to denote the weight,

fineness, or age, or place of manufacture of any gold or silver plate or bullion commits an offence and is liable to imprisonment for two years.

345. Common forgery.

- (1) A person commits the offence of being a common forger if that person
 - (a) is proved to have used, or to have aided and abetted the use of a device specially contrived or adapted for the purposes of forgery;
 - (b) is convicted on indictment of forgery, having been previously convicted on indictment for counterfeiting, falsification or forgery;
 - (c) is proved to have had in his possession, custody, or control, at the same time or at different times, two or more documents which he knew to have been forged, and by which he intended to commit any such indictable offence.

(2) A person who is convicted of being a common forger is liable on conviction on indictment to imprisonment for life.

346. Prohibition of importation and exportation of counterfeit notes.

(1) The importation, landing or unloading of a counterfeit note without the consent of the [Relevant] Central Bank commits an offence and is liable on conviction on indictment to imprisonment for seven years.

(2) The exportation, landing or unloading of a counterfeit note without the consent of the [Relevant] Central Bank commits an offence and is liable on conviction on indictment to imprisonment for seven years.

347. Falsification of affairs of company or trust.

(1) A person who, with intent to defraud, conceals, forges, alters or falsifies any account or document which relates to the affairs of any company or trust, or which he is under any duty to make, keep, or deal with, as the clerk or employee of any person commits an offence and is liable on conviction on indictment to imprisonment for five years.

(2) Nothing in this section relieves a person of any liability to greater or other punishment under any other provision of this Code or any other enactment, but a person must not be punished twice for the same offence.

348. Falsification of certain documents.

(1) A person who, with intent to defraud or deceive, conceals, forges, alters or falsifies any bill of lading, invoice, manifest, receipt, or other document evidencing the

quantity, character, or condition of any property, or the receipt or disposition of, or the title of any person to any property commits an offence and is liable on conviction on indictment to imprisonment for two years.

(2) Nothing in this section relieves a person of any liability to greater or other punishment under any other provision of this Code or any other enactment, but a person shall not be punished twice for the same offence.

349. Concealing document in sale or mortgage of land.

A person who, in order to induce any person to become a purchaser or mortgagee of any land or interest in land, fraudulently conceals any document which is material to the title to such land or interest commits an offence and is liable to imprisonment for two years.

350. Claiming upon forged document.

A person who, with intent to defraud, demands or accepts, for himself or for any other person, any money or money's worth as being due under or by virtue of any document which he knows to be forged or not to be genuine commits an offence and is liable to the same punishment as if he had forged the document with intent to defraud some other person of the money or money's worth.

351. Making, etc., of document by force, etc.

A person who, with any of the intents mentioned in this Part, causes any person, by force, duress, threats, deception or in any manner without that person's consent, to make, alter, cancel, or mutilate any document as is mentioned in this Part commits an offence and is liable to the same punishment as if he had forged the document with such intent.

352. Forgery of document less than or more than ten thousand dollars.

(1) A person who, with intent to defraud or deceive any person to the amount or value of ten thousand dollars or upwards forges any document commits an offence and is liable on conviction on indictment to imprisonment for five years.

(2) A person who, with intent to defraud or deceive any person of an amount or value less than ten thousand dollars, forges any document commits an offence and is liable on summary conviction to imprisonment for two years.

353. Procuration etc.

A person who, with intent to defraud or deceive and without lawful authority or excuse, makes or executes, draws, signs, accepts or indorses, in the name or on behalf of another person, by procuration or otherwise, any document, or uses or utters any such document which he or she knows to have been so made, executed, signed, accepted or

indorsed commits an offence and is liable to the same punishment as if he had forged such document.

354. Forgery of other documents.

A person who, with intent to defraud or defeat, obstruct, or pervert the course of justice forges any document commits an offence and is liable to imprisonment for fifteen years.

355. Forgery of judicial or official document.

(1) For the purposes of this section “official document” means any document purporting to be made, used, or issued by any public officer for any purpose relating to his office or connected with the functions of his office.

(2) A person who, with intent to defraud or deceive, or with intent to defeat, obstruct or pervert the course of justice or the due execution of the law, forges any judicial or official document commits an offence and is liable to imprisonment for ten years.

356. Forgery of stamp.

A person who forges any stamp, with intent

- (a) to defraud or deceive or injure another person;
- (b) to defeat, obstruct, or pervert the course of justice or the due execution of the law;
- (c) to evade the requirements of the law; or
- (d) to commit, or facilitate the commission of any other crime,

commits an offence and is liable on conviction on indictment to imprisonment for five years.

357. Forgery of documents other than stamps.

A person who forges any document other than a stamp, with intent

- (a) to defraud or deceive or injure another person;
- (b) to defeat, obstruct, or pervert the course of justice or the due execution of the law;
- (c) to evade the requirements of the law; or
- (d) to commit or facilitate the commission of any other crime,

commits an offence and is liable on conviction on indictment to imprisonment for two years.

358. Uttering forged documents, etc.

A person who, with any of the intents mentioned in this Part, utters or in any manner deals with or uses, any such document or stamp knowing the same to be forged, counterfeited, or falsified, as the case may be, or knowing the same not to be genuine commits an offence and is liable to the same punishment as if he had, with that intent forged, counterfeited, or falsified, as the case may be, the document, or stamp.

Possessing false document

359. Possessing forged document, etc.

A person who, with any of the intents mentioned in this Part, has in his possession any document or stamp which is forged or falsified, or which he knows not to be genuine commits an offence and is liable to the same punishment as if he had, with that intent, forged or falsified, as the case may be, the document or stamp.

Specific Fraud

360. Fraud as to boundaries.

A person who with intent to defraud removes, damages, alters or falsifies any boundary mark or thing serving or intended to distinguish the land or other property of himself, or of any person, from the land or other property of any other person commits an offence and is liable on summary conviction to imprisonment for five years.

361. Fraud as to insurance.

A person who intentionally destroys or causes damage to any building, vessel, goods, cattle or other thing, with the intention of claiming or obtaining, or of enabling any person to claim or obtain, any monies or compensation of any kind from any person who has insured the building, vessel, goods, cattle or other thing commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

362. Interpretation for sections 363 to 365.

For the purposes of sections 363 to 365

“courier” includes a person or company operating a courier service and utilizing any airline for such purpose;

“Court” means the High Court in the exercise of its criminal jurisdiction;

“financial institution” has the same meaning as it has under the [Relevant] Act, and includes the term “foreign financial institution” as this latter term is defined by the [Relevant] Act;

“Post Office” includes the General Post Office and any inland post office established by or under the [Relevant] Act;

“scheme or artifice to defraud” includes a scheme or artifice by one person to deprive another of the intangible right of honest services;

“bankrupt” means an individual who has been adjudged bankrupt or in respect of whose estate a receiving order has been made;

“bankruptcy petition” means a petition to the Court for a bankruptcy order;

“initial period” means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy;

“trustee” means the official receiver of the debtor’s estate or trustee administering his estate for the benefit of his creditors.

363. Mail fraud.

(1) A person who, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretences, representations, or promises, or to sell dispose of, loan, exchange, alter, give away, distribute, supply or furnish or procure for unlawful use any counterfeit or spurious note, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting to do so

- (a) places in any post office or authorized depository for mail matter; or
- (b) delivers to any courier, any matter or thing whatever to be sent or delivered by the Post Office or such courier, or takes or receives from the Post Office or such courier, any such matter or thing; or
- (c) knowingly causes to be delivered by mail or courier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing,

commits an offence and is liable on conviction on indictment to imprisonment for ten years or a fine of fifty thousand dollars or both.

(2) If the offence referred to in subsection (1) is committed on, in relation to, or on behalf of a company, partnership, other corporate entity, bank, or other financial institution, the person committing the offence is liable on conviction on indictment to imprisonment for twenty years or a fine of seventy five thousand dollars or both.

364. Using fictitious or false name to conduct mail fraud.

A person who, for the purpose of conducting, promoting, or carrying on by means of the Post Office or by courier any scheme or device made unlawful by section 224 or by any other provision of any other law,

- (a) uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name; or
- (b) takes or receives from the Post Office or any authorized depository of mail matter, or from any courier, any letter, post card, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name,

commits an offence and is liable on conviction on indictment to imprisonment for ten years or a fine of fifty thousand dollars or both .

365. Fraud by wire, radio, television or other electronic communication.

(1) A person who, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretences, representations, or promises, transmits or causes to be transmitted by means of wire, radio, television communication, or other electronic communication, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice commits an offence and is liable on conviction on indictment to imprisonment for ten years or a fine of fifty thousand dollars or both.

(2) If the offence referred to in subsection (1) is committed on, in relation to, or on behalf of a company, partnership, other corporate entity, bank, or other financial institution, the person committing the offence is liable on conviction on indictment to imprisonment for twenty years or a fine of seventy five thousand dollars or both.

Bankruptcy Fraud

366. Non-disclosure of property.

- (1) A bankrupt commits an offence if that bankrupt

- (a) does not to the best of his knowledge and belief disclose all the property comprised in his estate to the trustee; or
 - (b) does not inform the trustee of the disposal of any property which but for the disposal would be comprised in his estate stating how, when, to whom and for what consideration the property was disposed of.
- (2) A bankrupt who is convicted of an offence under subsection (1) is liable
- (a) on conviction on indictment to imprisonment for two years; or
 - (b) on summary conviction to imprisonment for one year.
- (3) Subsection (1)(b) shall not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

367. Concealment of property.

A bankrupt commits an offence if that bankrupt

- (a) does not deliver up possession to the trustee, or as the trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up;
- (b) conceals any debt due to or from him or her or conceals any property the value of which is not less than five hundred dollars and possession of which he is required to deliver up to the trustee; or
- (c) in the six months before the petition or in the initial period, did anything which would have been an offence under paragraph (b) if the bankruptcy order had been made immediately before he did it;
- (d) removes or in the initial period removed any property the value of which was not less than five hundred dollars and possession of which he has or would have been required to deliver up to the trustee;
- (e) without reasonable excuse fails on being required to do so by the trustee or the Court

- (i) to account for the loss of any substantial part of his property incurred in the six months before the petition or in the initial period; or
 - (ii) to give satisfactory explanation of the manner in which such a loss was incurred;
 - (iii) makes, or causes or permits the making of any false entries in any book, or records relating to his estate or affairs; or
 - (iv) in the six months before the petition or in the initial period, he did anything which would have been an offence under paragraph (b) or (c) if the bankruptcy order had been made before he did it;
- (f) disposes, or alters or makes any omission in or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs; or
- (g) in the six months before the petition, or in the initial period he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made before he did it.
- (2) A bankrupt who is convicted of an offence under subsection (1) is liable
- (a) on conviction on indictment to imprisonment for two years; or
 - (b) on summary conviction to imprisonment for one year.

368. Concealment or falsification of books and papers.

- (1) A bankrupt commits an offence if that bankrupt
- (a) does not deliver up possession to the trustee, or as the trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or affairs;
 - (b) prevents or in the initial period prevented, the production of any books, papers or other records relating to his estate or affairs;
 - (c) conceals, destroys, mutilates or falsifies or causes or permits the concealment, destruction, mutilation or falsification of any books, papers or other records relating to his estate or affairs;
 - (d) makes or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or

- (e) in the six months before the petition or in the initial period, did anything which would have been an offence under paragraph (c) or (d) if the bankruptcy order had been made before he did it;
 - (f) disposes of, or alters or makes any omission or causes or permits the disposal, altering or making of any omission in any book, document or record relating to his estate or affairs;
 - (g) six months before the petition or in the initial period, did anything which would have been an offence under paragraph (f) if the bankruptcy order had been made before he did it.
- (2) A bankrupt who is convicted of an offence under subsection (1) is liable
- (a) on conviction on indictment to imprisonment for two years; or
 - (b) on summary conviction to imprisonment for one year.

369. False statements.

- (1) A bankrupt commits an offence if that bankrupt
- (a) makes or has made any material omission in any statement required to be made under any provision of this Part in relation to his affairs;
 - (b) knowing or believing that a false debt has been proved by the person under the bankruptcy, fails to inform the trustee as soon as practicable;
 - (c) attempts to account for any part of his property by fictitious losses or expenses;
 - (d) at any meeting of his creditors in the six months before the petition or, whether or not at such a meeting, at any time in the initial period, did anything which would have been an offence under paragraph (c) if the bankruptcy order had been made before he did it; or
 - (e) is or at any time has been, convicted of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy;

(f) conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within six months before, the date on which a judgment or an order for the payment of the money has been obtained against him, being a judgment or an order which was not satisfied before the commencement of the bankruptcy.

(2) A bankrupt who is convicted of an offence under subsection (1) is liable

(a) on conviction on indictment to imprisonment for two years; or

(b) on summary conviction to imprisonment for one year.

370. Fraudulent disposal of property.

(1) A bankrupt who makes or causes to be made or has in the period of five years ending with the commencement of the bankruptcy, made or caused to be made, any gift or transfer of, or any charge on, his property commits an offence and is liable

(a) on conviction on indictment to imprisonment for two years; or

(b) on summary conviction to imprisonment for one year.

(2) A reference to making a transfer of or charge on any property includes causing or conniving at the levying of any execution against such property.

(3) A bankrupt commits an offence under subsection (1) if he conceals or removes or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within two months before, the date on which a judgment or an order for the payment of money has been obtained against him, being a judgment or an order which was not satisfied before the commencement of the bankruptcy.

371. Absconding.

A bankrupt who

(a) leaves, or attempts or makes preparations to leave Country X with any property the value of which is not less than five hundred dollars and possession of which he is required to deliver up to the trustee; or

(b) in the six months before the petition, or in the initial period, did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made before he did it,

commits an offence and is liable on conviction on indictment to imprisonment for seven years.

372. Fraudulent dealing with property obtained on credit.

(1) A bankrupt commits an offence if that bankrupt, in six months before the petition or in the initial period

- (a) disposed of any property which he had obtained on credit and, at the time he disposed of it, he had not paid for it;
- (b) acquired or received any property from the bankrupt knowing or believing
 - (i) that the bankrupt owed money in respect of the property; and
 - (ii) that the bankrupt did not intend, or was unlikely to be able, to pay the money he owed.

(2) A bankrupt who is convicted of an offence under subsection (1) is liable

- (a) on conviction on indictment to imprisonment for two years; or
- (b) on summary conviction to imprisonment for one year.

(3) A bankrupt or person is not liable under subsection (1) if the disposal, acquisition or receipt of the property was in the ordinary course of business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(4) In determining for the purposes of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt regard may be had, in particular, to the price paid for the property.

(5) In this section a reference to disposing of property include pawning or pledging it, and reference to acquiring or receiving property are to be construed accordingly.

373. Obtaining credit by false pretence.

A bankrupt who, in incurring any debt or liability, obtains credit under false pretences or by means of any other fraud commits an offence and is liable on conviction on indictment to imprisonment for one year.

374. False claims or proofs in bankruptcy.

A creditor or person who claims to be a creditor in any bankruptcy proceedings who, wilfully and with intent to defraud makes any false claim, or any proof, declaration or

statement of account, which is false in any material particular commits an offence and is liable on conviction on indictment to imprisonment for two years.

375. Obtaining credit: engaging in business.

- (1) A bankrupt commits an offence if that bankrupt
 - (a) either alone or jointly with any other person, obtains credit to the extent of five hundred dollars or more without giving the person from whom he obtains it the relevant information about his status; or
 - (b) engages, whether directly or indirectly, in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.
- (2) A person who is convicted of an offence under subsection (1) is liable
 - (a) on conviction on indictment to imprisonment for two years; or
 - (b) on summary conviction to imprisonment for one year.
- (3) A reference to a bankrupt obtaining credit includes the following cases
 - (a) where goods are bailed out to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement; and
 - (b) where he is paid in advance, whether in money or otherwise, for the supply of goods or services.
- (4) For the purposes of subsection (1)(a) the relevant information about status of the person in question is the information that he is an undischarged bankrupt.

376. Failure to keep proper accounts of business.

- (1) A bankrupt commits an offence if that bankrupt has been engaged in any business for any period of two years before the petition and
 - (a) has not kept proper accounting records throughout that period and throughout any part of the initial period in which he was so engaged; or
 - (b) has not preserved all the accounting records which he has kept.

- (2) A bankrupt who is convicted of an offence under subsection (1) is liable
 - (a) on conviction on indictment to imprisonment for two years; or
 - (b) on summary conviction to imprisonment for one year.
- (3) A bankrupt is not liable under subsection (1)
 - (a) if his unsecured liabilities at the commencement of the bankruptcy did not exceed one thousand dollars; or
 - (b) if he proves that in the circumstances in which he carried on business the omission was honest and excusable.
- (4) For the purposes of this section a person shall be deemed not to have kept proper accounting records if in the two years before the petition he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including
 - (a) records containing entries from day to day, in sufficient detail, of all cash paid and received;
 - (b) where the business involved dealings in goods, statements of annual stock takings; and
 - (c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and buyers and sellers to be identified.

377. Gambling.

- (1) A bankrupt commits an offence if that bankrupt
 - (a) in the two years before the petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations; or
 - (b) in the initial period, lost part of his property by gambling or by rash and hazardous speculations.
- (2) A bankrupt who is convicted of an offence under subsection (1) is liable
 - (a) on conviction on indictment to imprisonment for two years; or
 - (b) on summary conviction to imprisonment for one year.

(3) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the bankrupt at the time when he entered into them is taken into consideration.

378. Defence of innocent intention.

Except as otherwise provided in section 305 and section 309 a person is not liable under the provisions of this Part if he proves that, at the time of the conduct constituting the offence, he had no intention to defraud or to conceal the state of his affairs.

379. Criminal liability of debtor despite composition or discharge.

Where a debtor commits any criminal offence he is not exempt from prosecution for the offence by reason of the fact that he has been discharged or that a composition or arrangement has been accepted or approved.

Extortion

380. Extortion.

(1) In this section “infamous offence” means any indictable offence, or sexual assault, or assault by penetration with a person or animal, or an attempt to commit, or aiding and abetting of, or conspiracy for, any such offence.

(2) A person who, for purposes of extortion, accuses or threatens to accuse any other person of an infamous offence commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

Jurisdiction

381. Offences to which this Part applies

(1) This section applies to two groups of offences

(a) any offence committed in subsection (2) (a “Group A offence”);
and

(b) any offence mentioned in subsection (3) (a “Group B offence”).

(2) The Group A offences are –

(i) section 302 - theft.

- (ii) section 309 - theft or fraudulent breach of trust by part owners
- (iii) section 311 - fraudulent breach of trust.
- (iv) section 318 - fraud
- (v) section 319 - possession, making or supplying articles for use in frauds.
- (vi) section 320 - participating in fraudulent business carried on by sole trader.
- (vii) section 321 - obtaining services dishonestly.
- (viii) section 322 - issuing cheque or negotiable instrument with intent to defraud..
- (ix) section 324 - fraud by person evading intended execution against property.
- (x) section 325 - falsification of accounts.
- (xi) section 326 - false statement by company director, etc.
- (xii) section 329 - blackmail.
- (xiii) section 342 - imitation of currency notes.
- (xiv) section 343 - uttering or using false note.
- (xv) section 347 - falsification of affairs of company or trust.
- (xvi) section 363 - mail fraud.
- (xvii) section 364 - using fictitious or false name to conduct mail fraud.
- (xviii) section 365 - fraud by wire, radio, television or other electronic communication.
- (xix) section 372 - fraudulent dealing with property obtained on credit.
- (xx) section 373 - obtaining credit by false pretence.

- (xxi) section 374 - false claims or proofs in bankruptcy.
- (xxii) section 375 - obtaining credit: engaging in business.
- (xxiii) section 376 - failure to keep property accounts of business.
- (xxiv) Section 380 - Extortion

- (3) The Group B Offences are -
- (a) conspiracy to commit a Group A offence;
 - (b) conspiracy to defraud
 - (c) attempting to commit a Group A offence;
 - (d) incitement to commit a Group A offence.

382. Jurisdiction in respect of Group A offences

(1) For the purposes of this Part, “relevant event” , in relation to any Group A offence, means any act or omission or other event (including any result of one or more acts or omissions).

(2) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.

(3) A person may be guilty of a Group A offence if any of the events which are relevant events in relation to the offence occurred in Country X.

383. Questions immaterial to jurisdiction in the case of certain offences

(1) A person may be guilty of a Group A or Group B offence whether or not—

- (a) he was a citizen of Country X at any material time; or
- (b) he was in Country X at any such time.

(2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in Country X, the defendant may be guilty of the offence whether or not—

- (a) he became a party to the conspiracy in Country X or

(b) any act or omission or other event in relation to the conspiracy occurred in Country X.

(3) On a charge of attempting to commit a Group A offence, the defendant may be guilty of the offence whether or not—

(a) the attempt was made in Country X; or

(b) it had an effect in Country X.

(4) Subsection (1)(a) does not apply where jurisdiction is given to try the offence in question by an enactment which makes provision by reference to the nationality of the person charged.

384. Rules for determining certain jurisdictional questions relating to the location of events

In relation to a Group A or Group B offence—

(a) there is an obtaining of property in Country X if the property is either despatched from or received at a place in Country X; and

(b) there is a communication in Country X of any information, instruction, request, demand or other matter if it is sent by any means—

(i) from a place in Country X to a place elsewhere; or

(ii) from a place elsewhere to a place in Country X

385. Conspiracy, attempt and incitement

(1) A person may be guilty of conspiracy to defraud if—

(a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in Country X in relation to the agreement before its formation; or

(b) a party to it became a party in Country X (by joining it either in person or through an agent); or

(c) a party to it, or a party's agent, did or omitted anything in Country X in pursuance of it,

and the conspiracy would be triable in Country X but for the fraud which the parties to it had in view not being intended to take place in Country X.

(2) A person may be guilty of incitement to commit a Group A offence if the incitement—

- (a) takes place in Country X; and
- (b) would be triable in Country X but for what the person charged had in view not being an offence triable in Country X.

(3) Subsections (1) and (2) are subject to section 386.

386. Relevance of external law

(1) A person is guilty of an offence triable by virtue of section 385(1), only if the pursuit of the agreed course would at some stage involve—

- (a) an act or omission by one or more of the parties; or
- (b) the happening of some other event,

constituting an offence under the law in force where the act, omission or other event was intended to take place.

(2) A person is guilty of an offence triable by virtue of section 385(2), only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) shall be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice—

- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;
- (b) showing their grounds for that opinion; and
- (c) requiring the prosecution to show that it is satisfied.

(5) In subsection (4) “the relevant conduct” means—

- (a) where the condition in subsection (1) is in question, the agreed course of conduct; and
- (b) where the condition in subsection (2) is in question, what the defendant had in view.

(6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the High Court, the question whether the condition is satisfied shall be decided by the Judge alone.

387. Application

Nothing in any provision in this Part applies to any act, omission or other event occurring before the coming into force of that provision.

PART XV

DAMAGE TO PROPERTY

Arson

388. Interpretation for sections 389 to 393.

For the purposes of sections 389 to 383

“arson” means any offence committed by fire;

“building” means any structure, booth, tent, excavation, cave or other covered place, whether fixed or movable, which is constructed, used or adapted for the habitation or meeting, or shelter of human beings, or for the keeping or shelter of any cattle or goods, or for the manufacture, keeping, or sale of goods, and any fixture in or attached to a building;

“damage” includes not only damage to the matter of a thing, but also any interruption of the use thereof, or any interference, by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained;

“dwelling-house” means any building or vessel which, or any part of which, is ordinarily or at the time of the alleged crime occupied by any person, whether as an owner or as a tenant, servant, trespasser or otherwise, as a sleeping-place during the night or any part of the night;

and, for the purposes of this definition, every outhouse or covered place which communicates, by any interior or covered doorway, window, passage or other opening, with a building shall be deemed to be a part of that building, whether the doorway, window, passage or opening be used or disused, or fastened or unfastened on either or both sides, and whether the outhouse or covered place be occupied by the same person as the building or by a different person, or be not occupied by any person.

389. Arson of building, etc.

A person who intentionally or recklessly sets on fire or causes to be set on fire any building, whether it be completed or in an unfinished state, vessel, or anything in or near to any building, to be set on fire, with intent to destroy or materially damage that or any other building commits an offence and is liable on conviction on indictment to imprisonment for twenty years.

390. Arson of dwelling-house or vessel.

A person who intentionally or recklessly sets on fire or causes to be set on fire any dwelling-house or vessel commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

391. Arson of crop, forest or plantation.

A person who intentionally or recklessly sets on fire or causes to be set on fire any crop, or any forest or plantation of trees commits an offence and is liable on conviction on indictment to imprisonment for ten years or on summary conviction to imprisonment for two years.

392. Arson by explosive matter.

(1) A person who intentionally or recklessly uses an explosive matter to cause damage to any

(a) building, engine, or machine or to any road, or to any property, moveable or immovable;

(b) property whereby harm is likely to be caused to the person,

commits an offence and is liable on conviction on indictment to imprisonment for twenty years.

(2) A person who has in his possession or control any explosive matter without lawful authority or excuse, proof of which lies on him commits an offence and is liable on conviction on indictment to imprisonment for five years or on summary conviction to imprisonment for one year.

393. Arson by fire not otherwise expressly provided for.

A person who intentionally or recklessly in any case not otherwise expressly provided for in this Part, causes damage by fire or explosion to any movable or immovable property commits an offence and is liable on conviction on indictment to imprisonment for ten years or on summary conviction to imprisonment for two years.

Criminal damage to property

394. Intentionally or recklessly causing damage to property.

(1) Except as otherwise expressly provided in this Part, a person who intentionally or recklessly causes damage to any property commits an offence and is liable –

- (a) on conviction on indictment to imprisonment for fifteen years;
- (b) and on summary conviction, where the value of the damage is less than three thousand dollars, to three years imprisonment and a fine of five thousand dollars.

(2) It is immaterial whether or not the defendant under subsection (1) is in possession or occupation of such property.

(3) A person who has jointly or in common with other persons interest in such property as owner or otherwise, or who is a trustee may commit an offence under subsection (1).

(4) A person who is sole owner of such property for his or her own benefit may commit any crime punishable under this section with respect to any act done with intent to injure or defraud any other person or to cause harm to any other person, although such act is not otherwise unlawful.

(5) A person is not liable to punishment under the provisions of this section in respect of anything done in good faith and which he believes he is entitled to do.

(6) Where proof of an intention to cause damage to a certain amount is required by any provisions of this Code relating to unlawful damage, it is not necessary that damage to that amount should be intended or done or intended to be done to any individual thing of a kind mentioned in any such provision, but it is sufficient if damage to that amount in the aggregate is intended or done, as the case may be, to any number or combination of such things.

(7) Where different punishments are provided by any provisions of this Code with respect to unlawful damage according to differences in the amount or damage caused, a person who is person of having attempted to cause damage to a greater amount is not

acquitted or relieved of liability to the greater punishment on the ground that he actually caused damage to a lesser amount.

395. Destroying bankers' books.

(1) In this section "bankers' books" include ledgers, day books, cash books, accounts books and other records used in the ordinary business of the bank, whether these records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

(2) An employee or officer of a bank who, without lawful authority, proof of which lies on him, destroys or damages or attempts to destroy or damage any bankers' books commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

396. Damage to work on land, in water or machinery or tools.

(1) A person commits an offence if that person in any manner intentionally or recklessly causes material damage

- (a) to any building or vessel, or to any engine, or to any bridge; or
- (b) to any structure, work or apparatus constructed, used or maintained
 - (i) for the purposes of any dock, harbour, canal, waterworks or gasworks; or
 - (ii) for the purpose of regulating the action of the sea or any river; or
 - (iii) for the purpose of protecting any coast or land from inundation by sea-water or other body of water; or
 - (iv) for the purposes of the supply of water to or from any factory, machinery, building or stream; or
 - (v) for the purposes of irrigation.

(2) A person who is convicted of an offence under subsection (1) is liable

- (a) on conviction on indictment to imprisonment for ten years; or
- (b) on summary conviction, where the value of the damage is less than three thousand dollars, to imprisonment for two years.

397. Damage to document.

A person who intentionally or recklessly destroys or materially damages any document with intent to defraud or injure any person commits an offence and is liable if the document is a will or a document of title to land or interest in land on conviction on indictment to imprisonment for five years or to imprisonment for twenty years.

398. Damage to apparatus or thing.

A person commits who intentionally and recklessly causes damage to, or renders permanently or temporarily useless, or obstructs the working of, any lighthouse, beacon, buoy, signal or other apparatus or thing whatsoever, which is used or maintained for the safety of navigation, whether on the sea or on a river or other body of water commits an offence and is liable on conviction on indictment to imprisonment for ten years.

399. Damage to manufacture, etc.

A person who intentionally or recklessly causes damage to anything in the course of manufacture or of preparation for sale or to anything manufactured or prepared for sale commits an offence and is liable

- (a) on conviction on indictment to imprisonment for two years; or
- (b) on summary conviction, where the value of the damage is less than three thousand dollars, to imprisonment for six months.

PART XVI

INTELLECTUAL PROPERTY

400. Circulating, altering or adapting copyrighted work or performance.

(1) A person who under his name or the name of another person publishes or puts into circulation copies of another's copyrighted work or performance or otherwise publicly presents another's copyrighted work or performance, in entirety or in part commits an offence and is liable on conviction on indictment to imprisonment for three years or to a fine not exceeding twenty thousand dollars.

- (2) A person who
 - (a) without the permission of an author alters or adapts copyrighted work of another person or alters a recorded performance of another person;

- (b) puts into circulation copies of copyrighted work of another person or performance in a manner insulting the honour and reputation of the author or performer,

commits an offence and is liable on summary conviction to imprisonment for six months or to a fine not exceeding five hundred dollars.

- (3) Things referred to under this section shall be seized.

(4) Prosecution for offences under subsection (2)(a) shall be initiated by the Director of Public Prosecutions, and for offences under subsection (2)(b) by private action.

401. Unauthorized use of copyrighted work or other work protected by similar right.

(1) A person who without permission publishes, records, copies or otherwise presents in public, in part or entirety, a copyrighted work, performance, phonogram, videogram, show, computer program or database commits an offence and is liable on conviction on indictment to imprisonment for three years or to a fine not exceeding twenty thousand dollars.

(2) The punishment specified in subsection (1) shall be imposed on a person who puts into circulation or with intent to put into circulation keeps illegally multiplied or illegally put into circulation copies of copyrighted work, performance, phonogram, videogram, show, computer program or database.

(3) If an offence under subsection (1) or (2) was committed with intent to acquire material gain for oneself or another, the person is liable on summary conviction for three months or on conviction on indictment to imprisonment for five years.

(4) A person who produces, imports, puts into circulation, sells, rents, advertises for sale or renting, or keeps for commercial purposes, equipment and devices whose basic or prevailing purpose is to remove, bypass or forestall technological measures intended for prevention of violation of copyright and other similar rights, or who uses such equipment or devices with an aim to violate copyright or other similar right commits an offence and is liable on conviction on indictment to imprisonment for three years or to a fine not exceeding twenty thousand dollars.

- (5) The things referred to in this section shall be seized and destroyed.

402. Unauthorized removal or alteration of electronic information on copyright and similar rights .

(1) A person who without authorization removes or alters electronic information on copyright or other similar right, or puts into circulation, imports, exports, broadcasts or otherwise presents in public a copyrighted work or other work protected by

similar right, from which electronic information on rights was removed or altered without authorization commits an offence and is liable on conviction on indictment to imprisonment for three years or to a fine not exceeding twenty thousand dollars.

(2) The things referred to in subsection (1) shall be seized and destroyed.

403. Unauthorized use of patented product or procedure.

(1) A person who without permission produces, imports, exports, offers for circulation, puts into circulation, stores or uses for commercial operations a patented product or procedure commits an offence and is liable on conviction on indictment to imprisonment for three years or to a fine not exceeding twenty thousand dollars.

(2) If an offence under subsection (1) results in material gain or damage in an amount exceeding one million dollars, the person is liable on summary conviction to imprisonment for one year or on conviction on indictment to imprisonment for eight years.

(3) A person who without permission publishes or otherwise presents in public the essence of another's patent that has been applied for, before such patent is published in the manner set out by law commits an offence and is liable on summary conviction to imprisonment for two years or to a fine not exceeding ten thousand dollars.

(4) A person who without permission applies for a patent or fails to give or gives an incorrect name of inventor in the application commits an offence and is liable on summary conviction to imprisonment for six months or on conviction on indictment to imprisonment for five years.

(5) The things under subsection (1) and (3) shall be seized and destroyed.

404. Unauthorized use of design of another person.

(1) A person who on his product in circulation uses without authorization a design of another person which has been applied for or protected commits an offence and is liable on conviction on indictment to imprisonment for three years or to a fine not exceeding twenty thousand dollars.

(2) A person who without authorization publishes or otherwise presents in public the essence of the design of another person before it has been published in the manner set out by law commits an offence and is liable on summary conviction to imprisonment for one year or to a fine not exceeding five thousand dollars.

(3) The products referred to in subsection (1) shall be seized.

PART XVII

OFFENCES AGAINST PUBLIC ORDER

Treason

405. Treason.

- (1) A person who, in Country X
 - (a) kills or attempts to kill the Governor General or any person performing the functions of the Governor General under the Constitution;
 - (b) levies war against Country X or does any act preparatory to such war; or
 - (c) assists an enemy at war with Country X, commits the offence of high treason and is liable on conviction on indictment to imprisonment for life.

- (2) A person who while in Country X
 - (a) uses force or violence for the purpose of overthrowing the Government of Country X;
 - (b) without lawful authority, communicates or makes available to an agent of a State other than Country X, any information, or any sketch, plan, model, article, note or document of any character that he knows or ought to know can be used for a purpose prejudicial to the safety or defence of Country X;
 - (c) instigates any person to make an invasion into Country X;
 - (d) conspires with any person to commit treason or to do anything mentioned in paragraph (a);
 - (e) forms an intention to do anything that is treason or that is mentioned in paragraph (a) and manifests that intention by an overt act;
 - (f) conspires with any person to do anything mentioned in paragraph (b) or forms an intention to do anything mentioned in paragraph (b) and manifests that intention by an overt act,

commits the offence of treason and is liable on conviction on indictment to imprisonment for twenty-five years.

406. Two witnesses necessary.

(1) A person charged with high treason or treason, cannot be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses to the evidence that implicates the defendant.

407. Concealment of treason.

A person who

- (a) knowing that a person intends to commit treason, does not report such information with all reasonable despatch to a Magistrate, justice of the peace or a police officer, or use other reasonable means to prevent the commission of the offence; or
- (b) knowing or believing that a person has committed the offence of treason, does any act with intent to obstruct or prevent his arrest or prosecution for that offence,

commits an offence and is liable on conviction on indictment to imprisonment for seven years.

408. Inciting to mutiny.

A person owing allegiance to Her Majesty the Queen in right of Country X is liable to imprisonment on conviction on indictment to 10 years imprisonment who, within or outside Country X, for any traitorous or mutinous purpose,—

- (a) endeavours at any time to seduce any person serving in the Country X forces from his duty; or
- (b) during any war or state of hostilities in which Country X forces are engaged, endeavours to seduce any person serving in any allied armed force, whether a Commonwealth force or not, from his duty.

409. Espionage.

A person is liable to imprisonment on conviction on indictment to 14 years imprisonment who, being a person who owes allegiance to the Queen in right of Country X, within or outside Country X,—

- (a) with intent to prejudice the security or defence of Country X, communicates information or delivers any object to a country or

organisation outside Country X or to a person acting on behalf of any such country or organisation; or

- (b) with intent to prejudice the security or defence of Country X and with the intention of communicating information or delivering any object to a country or organization outside Country X or to a person acting on behalf of any such country or organisation,—
 - (i) collects or records any information; or
 - (ii) copies any document; or
 - (iii) obtains any object; or
 - (iv) makes any sketch, plan, model, or note; or
 - (v) takes any photograph; or
 - (vi) records any sound or image; or
 - (vii) delivers any object to any person,— if the communication or delivery or intended communication or intended delivery under paragraph (a) or paragraph (b) is likely to prejudice the security or defence of Country X.

410. Wrongful communication, retention, or copying of official information.

(1) A person is liable to imprisonment on conviction on indictment to 10 years imprisonment who, being a person who owes allegiance to the Queen in right of Country X, within or outside Country X,—

- (a) knowingly or recklessly, and with knowledge that he is acting without proper authority, communicates any official information or delivers any object to any other person knowing that such communication or delivery is likely to prejudice the security or defence of Country X; or
- (b) with intent to prejudice the security or defence of Country X, retains or copies any official document—
 - (i) which he knows he does not have proper authority to retain or copy; and

- (ii) which he knows relates to the security or defence of Country X; and
 - (iii) which would, by its unauthorised disclosure, be likely to prejudice the security or defence of Country X; or
- (c) knowingly fails to comply with any directions issued by a lawful authority for the return of an official document—
- (i) which is in his possession or under his control; and
 - (ii) which he knows relates to the security or defence of Country X; and
 - (iii) which would, by its unauthorised disclosure, be likely to prejudice seriously the security or defence.

411. Consent of Director of Public Prosecutions to proceedings in relation to espionage or wrongful communication, retention, or copying of official information.

- (1) No information shall be laid against any person for—
- (a) an offence against section 409 or section 410 (1); or
 - (b) the offence of conspiring to commit an offence against section 409 or section 410 (1); or
 - (c) the offence of attempting to commit an offence against section 409 or section 410 (1)

except with the consent of the Director of Public Prosecutions

(2) The Director of Public Prosecutions may, before deciding whether or not to give his consent under subsection (1), make such inquiries as he thinks fit.

412. Questions of law in relation to espionage or wrongful communication of information.

- (1) It is a question of law, in the case of—
- (a) an offence against section 409 or section 410 (1)(a); or
 - (b) the offence of conspiring to commit an offence against section 409 or section 410 (1) (a); or

- (c) the offence of attempting to commit an offence against 409 or section 410 (1)(a),

whether the communication or delivery or intended communication or intended delivery was or would have been, at the time of the alleged offence, likely to have prejudiced the security or defence of Country X.

- (2) It is a question of law, in the case of,—
 - (a) an offence against section 410(1)(b) or (c); or
 - (b) the offence of conspiring to commit an offence against section 410 (1)(b) or (c); or
 - (c) the offence of attempting to commit an offence against section 410 (1)(b) or (c),

whether the document would, by its unauthorised disclosure at the time of the alleged offence, have been likely to have prejudiced or to have prejudiced seriously, as the case may require, the security or defence of Country X.

(3) Where the decision on any question of law to which this section applies depends on any questions of fact, the prosecutor or the defendant may adduce, and the Judge may hear, in addition to the evidence heard by the jury, any evidence relevant to those questions of fact.

413. Sabotage.

(1) A person is liable to imprisonment on conviction on indictment to 10 years Imprisonment who, with intent to prejudice the safety, security, or defence of Country X or the safety or security of the armed forces of any other country, lawfully present in Country X,—

- (a) impairs the efficiency or impedes the working of any ship, vehicle, aircraft, arms, munitions, equipment, machinery, apparatus, or atomic or nuclear plant; or
- (b) damages or destroys any property which it is necessary to keep intact for the safety or health of the public.

(2) No person shall be convicted of an offence against this section by reason only of the fact that he takes part in any strike or lockout.

Sale of Pornographic Material

414. Sale of pornographic material.

(1) A person who knowingly and publicly sells or exposes for sale, or lets on hire or exposes for letting on hire, any obscene book or other obscene printed or written matter, any obscene picture, photograph, video recording, or model, or any other object tending to corrupt morals of a minor commits an offence and is liable on conviction on indictment to imprisonment for five years.

(2) It is a defence to a charge of any of the offences in subsection (1) to prove that it was for the public benefit that the act complained of should be done.

(3) It is a question of fact whether or not the doing of any such act is for the public benefit.

Public Election Offences

415. Intimidation.

A person who at a public election if he endeavours to influence the conduct of any voter in respect of the election by a threat of any consequences to be caused to the voter, or to any other person, on account of his conduct as such voter commits the offence of intimidation and is liable on conviction on indictment to imprisonment for two years.

416. Irregularity or informality no defence.

A person is not relieved from any liability to punishment for any offence in connection with a public election under this Part by reason of any irregularity or informality in the proceedings at or preliminary or subsequent to an election.

417. Corruption, intimidation, and personation in respect of election.

(1) In this section “personation” means a false pretence or representation by a person that he is a different person, whether that different person be living or dead or be a fictitious person.

(2) A person who commits an offence of corruption, intimidation or personation in respect of a public election, is liable on conviction on indictment to imprisonment for two years, and is, during seven years from the date of his conviction, incapable of voting at any public election and of holding the public office in respect of which the election was held, or any public office of the same nature.

(3) A person commits the offence of personation although he gives or uses his own name, if he does so with the intention that he may be believed to be a different person of the same or similar name.

418. False declaration etc. for voting at election.

A person who, in order that he may qualify to vote at any public election, makes, signs, publishes, or uses

- (a) any declaration, statement or oath required by law in such cases; or
- (b) any certificate or testimonial as to his or her conduct or services, or as to any other matter which is material for his qualification to vote at such election,

if he does so knowing that the declaration, statement, oath, certificate, or testimonial is false in any material particular commits an offence and is liable on conviction on indictment to imprisonment for two years.

419. Forging of voting paper or other similar thing.

A person who

- (a) forges or falsifies, or intentionally and unlawfully damages or destroys, any voting paper or other similar thing; or
- (b) intentionally and unlawfully injures or destroys any ballot box, polling booth, or other apparatus or thing used for the purposes of a public election,

commits an offence and is liable on conviction on indictment to imprisonment for seven years.

420. Prevention, etc., of election by force, etc.

A person who attempts to prevent, obstruct, or disturb any public election by any kind of force, violence or threats, or by any act which is a crime punishable under this Code commits an offence and is liable on conviction on indictment to imprisonment for ten years.

421. Falsification of return at election.

A person who, being a public officer, charged with the counting of votes or the making of a return at any public election, wilfully falsifies the account of such votes or makes a false return commits an offence and is liable on conviction on indictment to imprisonment for ten years.

422. Unlawfully voting or offering to vote.

A person who votes or offers to vote at any public election at which he knows that he is not entitled or qualified to vote commits an offence and is liable on summary conviction to imprisonment for one year.

Riot, Violent Disorder, Affray and Disorderly Offences

423. Riots.

(1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot.

(2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

(6) A person guilty of riot is liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine or both.

424. Violent disorder

(1) Where 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using or threatening unlawful violence is guilty of violent disorder.

(2) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) Violent disorder may be committed in private as well as in public places.

(5) A person guilty of violent disorder is liable

- (a) on conviction on indictment to imprisonment of seven years or a fine or both; or
- (b) on summary conviction to imprisonment for three years or a fine of five thousand dollars or both.

425. Affray.

(1) A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

(2) Where 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

(6) A constable may arrest without warrant anyone he reasonably suspects is committing affray.

(7) A person guilty of affray is liable on conviction:

- (a) on indictment to imprisonment of five years or a fine or both;
- (b) or on summary conviction to imprisonment of two years or a fine of five thousand dollars or both.

426. Fear of provocation of violence.

(1) A person who

- (a) uses towards another person threatening, abusive or insulting words or behaviour; or
- (b) distributes or displays to another person any writing, signs or other visible representation which is threatening, abusive or insulting with intent

- (i) to cause the other person to believe that unlawful violence will be used against him or another by the person;

(ii) to provoke the immediate use of unlawful violence by that person or another person, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked;

(c) intends by his words or behaviour or the writing, sign or visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting,

commits an offence and is liable on summary conviction to imprisonment for 12 months.

(2) An offence under this section may be in a private or public place except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed by a person inside a dwelling and the other person is also inside that or another dwelling.

427. Harassment, alarm or distress.

(1) A person who

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representations which is threatening, abusive or insulting;

within the hearing or sight of a person likely to be harassed, alarmed or distressed by such threatening, abusive or insulting words or writing or sign or other visible representation or disorderly behavior;

(c) intends his words or behaviour or the writing, sign or other visible representation to be threatening, abusive or insulting or, as the case may be, or intends his behaviour to be or is aware that it may be disorderly,

commits an offence and is liable on summary conviction to imprisonment for 6 months.

(2) An offence under this section may be committed in a private or public place, except that no offence is committed where the words or behaviour are used, or the writing, sign or visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It shall be a defence for a person charged with an offence under this section to prove

- (a) that he had no reason to believe that there was a person within hearing who was likely to be harassed, alarmed or distressed;
- (b) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation, would be heard or seen by a person outside that or any other dwelling;
- (c) that his conduct was reasonable.

428. Mental element: miscellaneous.

(1) A person is guilty of riot only if he intends to use violence or is aware that his conduct may be violent.

(2) A person is guilty of violent disorder or affray only if he intends to use or threaten violence or is aware that his conduct may be violent or threaten violence.

(3) A person is guilty of an offence under section 426 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(4) A person is guilty of an offence under section 427 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly.

(5) For the purposes of this section a person whose awareness is impaired by intoxication shall be taken to be aware of that of which he would be aware if not intoxicated, unless he shows either that his intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(6) In subsection (5) “intoxication” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

(7) Subsections (1) and (2) do not affect the determination for the purposes of riot or violent disorder of the number of persons who use or threaten violence.

429. Procedure: miscellaneous.

(1) No prosecution for an offence of riot or incitement to riot may be instituted except by or with the consent of the Director of Public Prosecutions.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 423 to 427 creates one offence.

(3) If on the trial on indictment of a person charged with violent disorder or affray the jury find him not guilty of the offence charged, they may find him guilty of an offence under section 426.

430. Interpretation for sections 426 and 427.

For the purposes of sections 426 and 427

“dwelling” means any structure or part of a structure occupied as a person’s home or as other living accommodation, whether the occupation is separate or shared with others, and does not include any part not so occupied;

“structure” includes a tent, vehicle, vessel or other temporary or movable structure.

Genocide and Racial Hatred

431. Advocating genocide.

(1) In this section “genocide” means any of the following acts committed with intent to destroy in whole or in part any identifiable group, that is to say

- (a) killing members of the group; or
- (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

(2) A person who advocates or promotes genocide commits an indictable offence and is liable to imprisonment for fifteen years.

(3) A proceeding for an offence under this section shall not be instituted without the consent of the Director of Public Prosecutions.

432. Public incitement of hatred.

(1) In this section

“communicating” includes communicating by telephone, broadcasting or other audible or visible means;

“public place” includes any place to which the public has access as of right or by invitation, express or implied;

“statements” includes words spoken or written or recorded electronically or electromagnetically or otherwise, and gestures, signs or other visible representations.

(2) A person who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

(3) A person who, by communicating statements other than in private conversation, wilfully promotes hatred against any identifiable group commits an offence and is liable on conviction on indictment to imprisonment for ten years.

(4) A person shall not be convicted of an offence under subsection (3)

(a) if he establishes that the statements communicated were true;

(b) if, in good faith, he expressed or attempted to establish by argument an opinion on a religious subject;

(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Country X.

(5) Where a person is convicted of an offence under section 431 or subsection (2) or (3) of this section, anything by means of or in relation to which the offence was committed, on such conviction, may, in addition to any other punishment imposed, be ordered by the court to be forfeited to the State for disposal as the court may direct.

(6) A proceeding for an offence under subsection (3) shall not be instituted without the consent of the Director of Public Prosecutions.

Unlawful Disturbance

433. Bombs, hoaxes, sending messages or articles to alarm or injure other persons.

(1) In this section “article includes a substance.

(2) A person commits an offence if that person

(a) places any article in any place; or

(b) dispatches any article by post or by any other means;

with intention, in either case, of inducing in another person a belief that such article is likely to explode or ignite and cause personal injury or damage to property.

(3) A person who is convicted of an offence under subsection (2) is liable

(a) on conviction on indictment to imprisonment for two years; or

(b) on summary conviction to imprisonment for one year.

(4) A person who communicates any information which he knows or believes to be false to another person with the intention of inducing in him or any other person a false belief that a bomb or other thing likely to explode or ignite is planted in any place or location commits an offence and is liable

(a) on conviction on indictment to imprisonment for five years; or

(b) on summary conviction to imprisonment for two years.

(5) For a person to be convicted of an offence under subsection (2) or (4) it is not necessary for him to have any particular person in mind as the person in whom he intends to induce such belief.

434. Disturbance of lawful assembly.

A person who unlawfully and with violence obstructs the assembly of any persons for any lawful purpose or disturbs any such assembly, or disperses or attempts to disperse any such assembly commits an offence and is liable on conviction on indictment to imprisonment for two years.

435. Forcible occupation or possession of building or land.

A person who, being unlawfully in or upon any building or land, maintains or attempts to maintain his possession or occupation of such building or land with violence commits an offence and is liable

(a) on conviction on indictment to imprisonment for two years; or

(b) on summary conviction to imprisonment for six months.

436. Forcible entry.

(1) A person who with violence makes an entry into any building or land, whether he is entitled to the possession of it or not, unless he does so in pursuance of a warrant or other lawful authority to use such violence commits an offence and is liable

(a) on conviction on indictment to imprisonment for two years; or

(b) on summary conviction to imprisonment for six months.

(2) A person who is the owner or in possession of any building or land may use such force as is reasonable in the circumstance to resist any forcible entry into such building or land.

Offences Relating to Prisons

437. Superintendent of Prisons torturing etc. prisoner.

A Superintendent of Prisons who uses any kind of torture on a prisoner, or of cruelty to a prisoner or who intentionally and unlawfully causes any harm to a prisoner commits an offence and is liable on conviction on indictment to imprisonment for seven years.

438. Taking prohibited things into or out of prison, etc.

A person who, without authority from the person in charge of any prison or lock-up conveys anything into or out of any such prison or lock-up, or delivers to or receives from a prisoner in any such prison or lock-up anything whatsoever commits an offence and is liable on conviction on indictment to imprisonment for two years.

Offences Relating to Trade

439. Disturbing market or exchange by publication of false news.

A person who with intent to cause any public alarm or disturbance, or with intent to disturb or maintain the price of any goods, stocks, or other things in any public market or exchange, publishes, or attempts to cause the publication by print or electronic or telegraphic or any other means any information, data, statement or report or any other matter which he knows or believes to be false commits an offence and is liable on conviction on indictment to imprisonment for two years.

PART XVIII

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

Unlawful oaths

440. Taking or administering unlawful oath.

(1) In this section

“crime” includes any crime punishable on indictment, whether under this Code or under any other law;

“unlawful oath” means any oath or engagement to commit or abet any crime, or to conceal a design to commit any crime, or to prevent the discovery of any crime or the conviction of any person for any crime, and any oath or engagement to conceal the existence, purposes or proceedings of any associations of persons associated for any treasonable or seditious purpose.

(2) A person who takes, or administers, or attempts or offers to administer to any other person, any unlawful oath commits an offence and is liable to imprisonment for five years.

Compounding offences

441. Interpretation for sections 442 to 444.

For the purposes of sections 442 to 444, a person compounds a crime if he offers or agrees to forbear from prosecuting or giving evidence against a person on a criminal charge, in consideration of money, or of any other valuable thing, or of any advantage whatsoever to himself or to any other person or on an account of compassion or fear of bodily injury or by agreement with the person charged.

442. Compounding crime.

A person who accepts, or agrees or offers to accept any reward under pretence or on account of restoring to the person, or of helping the person to recover, anything which has been appropriated by deception, or other frauds, fraudulent breach of trust or stealing, handling, robbery, or extortion, or unlawful possession, upon the terms or with the understanding that the crime is compounded commits an offence and is liable on conviction on indictment to imprisonment for ten years.

443. Compounding indictable offence on summary offence.

(1) A person who, without leave of a Court, compounds any crime punishable on indictment commits an offence and is liable on conviction on indictment to imprisonment for ten years.

(2) Unless in the opinion of the Court it was proper to do so in the circumstances, any person who without leave of the Court directly or indirectly, receives any sum of money or other reward in order not to prosecute a summary offence is liable on conviction on indictment to imprisonment for two years.

444. Compounding any offence involving a child.

A person who, without leave of a Court, compounds any crime in which a child was abused in any way commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

Interference with Witnesses

445. Causing person to refrain from giving evidence on criminal trial.

A person who with intent to defeat, obstruct or pervert the course of justice at the trial of any person for any crime, in any manner causes any person to refrain from giving evidence at the trial commits an offence and is liable on conviction on indictment to imprisonment for seven years.

446. Causing witness to disobey summons.

A person who in any manner wilfully causes any person to disobey any summons, process or order lawfully issued or made for his attendance as a witness in any judicial proceeding, or for the production by him of any written or other evidence in any judicial proceeding commits an offence and is liable on conviction on indictment to imprisonment for five years.

447. Perverting the course of justice.

(1) A person who acts or embarks upon a course of conduct which has a tendency to and is intended to pervert the course of justice commits an offence and is liable on conviction on indictment to imprisonment for five years.

(2) Without prejudice to the generality of subsection (1) the following acts or course of conduct may amount to the offence of perverting the course of justice:

- (a) where a person knowingly makes a false allegation to the police to the effect that another person has committed a crime and as a result that other person is arrested;

- (b) where an act is done by a person with the intention of concealing the fact that a crime has been committed, and it is immaterial whether or not proceedings are pending or have commenced in respect of the crime;
- (c) where a person does an act with the intention of assisting another person whom he knows is wanted by the police to evade lawful arrest;
- (d) where in judicial proceedings a witness alters his evidence or does not give evidence on account of affection, gain, reward or hope or promise of a reward;
- (e) where a person who has been summoned as a witness without lawful excuse absents himself in return for payment or reward;
- (f) where a person by any means or with any promise, induces another to withdraw charges made or induces another not to pursue the prosecution of an offence;
- (g) the publication of any matter calculated to prejudice the fair trial of a case pending in a court.

(3) A person who conspires to obstruct, prevent, pervert, or defeat the course of justice in Country X or the course of justice in an overseas jurisdiction commits an offence and is liable on conviction on indictment to imprisonment for seven years.

Intimidation of Judicial Officers

448. Violence to intimidate judicial officers.

A person who uses any violence with intent to deter any other person

- (a) from acting in any manner as a Judge, Magistrate, juror, witness, counsel, agent, prosecutor, or party in any legal proceeding or inquiry; or
- (b) from acting in execution of his duty as a Judge or Magistrate, or in any judicial capacity;
- (c) from having recourse to any court or on account of his having so acted or had recourse to the Court,

commits an offence and is liable on conviction on indictment to imprisonment for ten years.

Inquests

449. Hindrance of inquest.

A person who with intent to prevent, obstruct or delay the taking of any inquest upon the body or touching the death of any person, or to defeat the ends of justice, buries or in any manner conceals or disposes of the body commits an offence and is liable on conviction on indictment to imprisonment for two years.

450. Neglect to hold inquest, etc.

(1) A person who, being under a duty as a Magistrate, Coroner, Superintendent of Prisons, police officer, or in any other capacity, to give any notice or take any measures requisite for the holding of an inquest upon the body or touching the death of any person, wilfully and without reasonable excuse fails to perform the duty commits an offence and is liable on conviction on indictment to imprisonment for two years.

(2) A prosecution for an offence under this section shall not be instituted except by the Director of Public Prosecutions or with his consent.

Contempt

451. Contempt of court.

A person who

- (a) assaults a Judge or any other judicial officer while he is carrying out his official functions in the court or threatens to assault the person in court during court proceedings;
- (b) disturbs or obstructs court proceedings by insulting behaviour;
- (c) by words or conduct wilfully interrupts or disturbs proceedings of the court;
- (d) wilfully with force or threats hinders the person from entering or leaving any court or removes any person from, or detains him in any court;
- (e) being a witness, without lawful excuse, refuses to be sworn or on being sworn in refuses to answer any question;
- (f) being counsel in proceedings of a court fails or refuses without lawful excuse to obey an order of the court;

- (g) publishes any matter which is intended or is likely to prejudice the fair trial or conduct of criminal proceedings;
- (h) publishes any matter which prejudices issues which are to be tried or are being tried by the court;
- (i) publishes any matter which is calculated to bring a court or a Judge into contempt or to lower his or her authority or the lawful process of the court;
- (j) makes any false or misleading statement either orally or in writing to or concerning a Judge or Magistrate in respect of the performance of his function which is calculated or is likely to bring him into ridicule, odium or contempt,

commits of an offence and is liable on conviction

- (a) on indictment to imprisonment for two years; or
- (b) summary conviction to imprisonment for a year

Perjury

452. Destruction, etc., of public register, etc.

A person who intentionally and unlawfully falsifies, destroys, injures, removes or conceals any public register of marriages, births, baptisms, deaths or burials, or any other public register or record, or any will or any document of title to land, with intent to defeat, obstruct or pervert the course of justice, or to defraud or injure any person commits an offence and is liable on conviction on indictment to imprisonment for ten years.

453. Removal, etc., of document used in judicial proceeding.

A person who unlawfully, with intent to defeat, obstruct or pervert the course of justice, or to defraud or injure any person, removes, conceals, injures or alters any instrument or document used or intended to be used in any judicial proceeding commits an offence and is liable on conviction on indictment to imprisonment for two years.

454. Fabrication of evidence.

(1) A person who fabricates evidence, with intent to defeat, obstruct or pervert the course of justice in any proceeding commits an offence and is liable to the same penalties as if he had committed perjury in that proceeding.

(2) A person fabricates evidence if he causes any circumstance to exist, or makes any false entry in any book, account or record, or makes any document containing a

false statement, or forges any document with intent to mislead any public officer, Judge, Magistrate or juror acting in any judicial proceeding.

455. Bringing fictitious action.

A person who fraudulently brings any action against another person in a false or fictitious name, having no ground for such action commits an offence and is liable on conviction on indictment to imprisonment for two years.

456. Fraudulent acknowledgement of judgment, etc.

A person who acknowledges or consents to any judgment or confession of a cause of action, or acknowledges any deed to be enrolled or registered, or enters into any recognizance or bail, whether or not it is filed, in the name of any other person without the consent of the other person commits an offence and is liable on conviction on indictment to imprisonment for four years.

457. Deceiving court by personation, etc.

A person who with intent to defeat, obstruct or pervert the course of justice, or to defraud or injure any person, endeavours to deceive any Court, or any judicial officer by personation, or by any false instrument, document, seal or signature commits an offence and is liable on conviction on indictment to imprisonment for five years.

458. False interpretation.

- (1) A person commits an offence if, being an interpreter, whether sworn or not
 - (a) wilfully and falsely interprets the evidence of any witness;
 - (b) wilfully makes
 - (i) any false statement or translation of any fact or witness' evidence; or
 - (ii) statement to a court, Judge or Magistrate, or in any court inquiry or proceeding, or in any other matter or on any other occasion;

while performing the duty of an interpreter, or interpreting the evidence of any witness, or in any translation of a document by him as an interpreter.

- (2) A person who is convicted of an offence under subsection (1) is liable
 - (a) on conviction on indictment to imprisonment for five years; or

- (b) on summary conviction to a fine of five thousand dollars.

459. Interpreter liable for perjury.

An interpreter who has been sworn is also liable to prosecution and punishment for perjury.

460. Making false sentence under oath.

(1) In this section “oath” includes any form of declaration or affirmation permitted or prescribed by law to be taken as or in lieu of an oath.

(2) A person who with intent to defeat, obstruct or pervert the course of justice or the execution of the law, or with intent to defraud or injure the person states anything which he knows to be false, or which he has no reason to believe to be true, in any written or verbal statement made or verified by him upon oath before a court or public officer, commits the offence of perjury and is liable –

- (a) on conviction on indictment to imprisonment for ten years; or
- (b) on summary conviction imprisonment for two years

(3) A person may commit the offence of perjury if he swears that he believes a thing which he does not in fact believe.

(4) It shall be a defence that the person was not a competent or compellable witness or was not competent, or compelled, to make the statement.

461. Aiding and abetting perjury.

A person who aids and abets perjury commits an offence and is liable -

- (a) on conviction on indictment to imprisonment for ten years; or
- (b) on summary conviction to imprisonment for two years.

462. Perjury to defraud by personation.

A person who commits or aids and abets perjury in furtherance of any purpose or conspiracy to defraud by personation commits an offence and is liable –

- (a) on conviction on indictment to imprisonment for ten years; or
- (b) on summary conviction to imprisonment for two year

Escape

463. Escape from lawful custody.

(1) A person commits an offence if that person endeavours to resist or prevent the execution of the law

- (a) by escaping from lawful custody for crime; or
- (b) by aiding or permitting any other person to escape from lawful custody for a crime;
- (c) by permitting himself to be rescued from lawful custody for a crime;
- (d) by rescuing any other person from lawful custody for crime.

(2) A person who is convicted of an offence under subsection (1) is liable

- (a) if the crime is punishable with imprisonment for more than seven years, on conviction on indictment to imprisonment for fifteen years; or
- (b) if the crime is punishable with imprisonment for not more than seven years, to imprisonment for ten years; or
- (c) if the crime is a summary offence to imprisonment for seven years or to a fine not exceeding two thousand dollars.

464. Rescue.

A person who endeavours to resist or prevent the execution of the law

- (a) by rescuing any other person from lawful custody for any cause other than a crime; or
- (b) by rescuing any goods or things from any public officer or peace officer or other person having the possession, custody or care of such goods or things under or by virtue of any lawful warrant or process,

commits an offence and is liable on conviction on indictment to imprisonment for five years.

465. Refusal or neglect to aid public officer, etc., in prevention of crime.

A person who, being lawfully commanded by any public officer or other person to give aid for the prevention of crime, or for arresting any persons, or for preventing the rescue

or escape of any person refuses or neglects to give such aid according to his ability commits an offence and is liable

- (a) on conviction on indictment to imprisonment for two years; or
- (b) on summary conviction to imprisonment for six months.

466. Resisting lawful arrest for crime.

A person who endeavours to resist or prevent the execution of the law by resisting the lawful arrest of himself or any other person for a crime commits an offence and is liable

- (a) if the crime is punishable with imprisonment for more than seven years, on conviction on indictment to imprisonment for seven years; or
- (b) if the crime is punishable with imprisonment for not more than seven years, to imprisonment for five years; or
- (c) if the crime is a summary offence to imprisonment for two years.

467. Resisting or preventing arrest for cause not crime.

A person who endeavours to resist or prevent the execution of the law by resisting the lawful arrest of himself or of any other person for any cause other than a crime commits an offence and is liable on conviction on indictment to imprisonment for two years.

468. Harboursing criminal.

A person who, knowing or having reason to believe that any person has committed or has been convicted of any crime, aids, conceals or harbours the person, with the intention of enabling him to avoid lawful arrest, or the execution of his sentence, or to escape punishment commits an offence and is liable

- (a) if the crime is punishable with imprisonment for ten years or upwards, to imprisonment on conviction on indictment for five years; or
- (b) if the crime is an indictable offence other than that referred to in paragraph (a), on conviction on indictment to imprisonment for two years; or
- (c) if the crime is a summary offence, to a fine on summary conviction not exceeding one thousand dollars unless the court is of opinion that in the circumstances there should be no conviction or punishment to the trivial nature of the offence or other sufficient reason.

Breach of Trust and other frauds

469. Breach of trust by public officer.

A public officer, who in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, is liable

- (a) on conviction on indictment to imprisonment for ten years; or
- (b) on summary conviction to imprisonment for two years.

470. Failing or refusing to deliver money or other property.

A person who is employed in the service of the government of Country X or any parish or district in Country X, and entrusted by virtue of such employment with the keeping, receipt, custody, management or control of chattel, money, valuable security, book of account or document, or other property, who refuses or fails to deliver up any such thing or property to any one authorized to demand it, commits an offence and is liable on conviction on indictment to imprisonment for seven years.

471. Failure by public officer to pay or account for or produce money or property.

(1) A public officer who is under a duty by reason of his employment, to pay or account for any monies or valuable security or to produce or deliver up any documents or other things, or who fails to do so in compliance with a demand to do so in accordance with his duty made to him by any other officer or person authorized in that behalf commits an offence and is liable on summary conviction to imprisonment for three months, and his conviction is without prejudice to his liability in any civil proceedings or for any other offence punishable under this Code.

(2) A public officer sentenced to imprisonment under subsection (1) shall be discharged upon his satisfying the court before which he was sentenced, or any other court of similar jurisdiction that he has since his conviction performed the duty in respect of which he was sentenced to imprisonment.

472. False attestation or certificate by public officer.

A person who, being bound or authorized as a public officer to attest or certify, by writing or otherwise, any document or matter, or that an event has or has not happened, who certifies such document or matter which he knows is false in any material particular, or attests or certifies that such event has or has not happened, without knowing or having reason to believe that the event did or did not in fact happen or has not happened, according to his attestation or certificate commits an offence and is liable on conviction on indictment to imprisonment for two years.

473. Falsifying, etc., document by public officer.

A public officer who intentionally or recklessly destroys, damages, falsifies, or conceals any document which is in his possession, custody, or control, or to which he has access by virtue of his office commits an offence and is liable on conviction on indictment to imprisonment for two years.

474. Furnishing false statement or return of money or property.

(1) A public officer who charged with the receipt, custody, or management of any part of public revenue or property of the State or of any city, town or village of the State, who intentionally or recklessly furnishes any false statement or account of any money or property received by him or entrusted to his, or of any balance of any money or property in his possession or under his control commits an offence and is liable on conviction on indictment to imprisonment for two years.

(2) Nothing in this section exempts any person from liability to greater or other punishment under any other provision of this Code or of any other enactment, but the person is not to be punished twice for the same act.

Bribery

475. Bribing another person.

- (1) A person commits an offence if that person
- (a) offers, promises or gives a financial or other advantage to another person, and intends the advantage
 - (i) to induce a person to perform improperly a function or activity; or
 - (ii) to reward a person for the improper performance of such a function or activity;
 - (b) offers, promises or gives a financial or other advantage to another person, and knows or believes that the acceptance of the advantage would itself constitute the improper performance of a function or activity.
- (2) A person who is convicted of an offence under subsection (1) is liable
- (a) on summary conviction, to imprisonment for one year, or to a fine of five thousand dollars; or

(b) on conviction on indictment, to imprisonment for ten years, or to a fine of ninety thousand dollars.

(3) Under subsection (1)(a) it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity.

(4) Under subsection (1)(a) and (b) it does not matter whether the advantage is offered, promised or given by the person directly or through a third party.

476. Requesting, agreeing to receive or accept a financial or other advantage.

(1) A person commits an offence if that person

(a) requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly, whether by himself or another person;

(b) requests, agrees to receive or accepts a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by him of a function or activity;

(c) requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance, whether by himself or another person, of a function or activity;

(d) in anticipation of or in consequence of requesting, agreeing to receive or accepting a financial or other advantage, a function or activity is performed improperly

(i) by him; or

(ii) by another person at his request or with his assent or acquiescence.

(2) A person who is convicted of an offence under subsection (1) is liable

(a) on summary conviction, to imprisonment for one year, or to a fine of five thousand dollars; or

(b) on conviction on indictment, to imprisonment for ten years, or to a fine of ninety thousand dollars.

- (3) Under subsection (1)(a) to (d) it does not matter
 - (a) whether the person requests, agrees to receive or accepts, or is to request, agree to receive or accept the advantage directly or through a third party;
 - (b) whether the advantage is, or is to be, for the benefit of the person or another person.

(4) Under subsection (1)(b) to (d) it does not matter whether the person knows or believes that the performance of the function or activity is improper.

(5) Under subsection (1)(d), where a person other than the person is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

477. Function or activity to which bribe relates.

- (1) In this section “business” includes trade or profession.
- (2) For the purposes of this Code a function or activity is a relevant function or activity if
 - (a) it falls within subsection (2); and
 - (b) meets one or more of conditions A to C.

(3) The following functions and activities fall within this section

- (a) any function of a public nature;
- (b) any activity connected with a business;
- (c) any activity performed in the course of a person’s employment;
- (d) any activity performed by or on behalf of a body of persons (whether corporate or un-incorporate).

(4) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(5) Condition B is that a person performing the function or activity is expected to perform it impartially.

(6) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

- (7) A function or activity is a relevant function or activity even if it
 - (a) has no connection with Country X; and
 - (b) is performed in a country or territory outside Country X.

478. Improper performance to which bribe relates.

- (1) For the purposes of this Code a relevant function or activity
 - (a) is performed improperly if it is performed in breach of a relevant expectation; and
 - (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.
- (2) In subsection (1) “relevant expectation”
 - (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned; and
 - (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.
- (3) Anything that a person does (or omits to do) arising from or in connection with that person’s past performance of a relevant function or activity is to be treated for the purposes of this Code as being done (or omitted) by that person in the performance of that function or activity.

479. Expectation test.

- (1) For the purposes of sections 477 and 478, the test of what is expected is a test of what a reasonable person in Country X would expect in relation to the performance of the type of function or activity concerned.
- (2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of Country X, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.
- (3) In subsection (2) “written law” means law contained in

- (a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
- (b) any judicial decision which is so applicable and is evidenced in published written sources.

480. Bribery of foreign public officials.

(1) In this section

“foreign public official” means an individual who

- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country outside Country X;
- (b) exercises a public function
 - (i) for or on behalf of a country outside Country X; or
 - (ii) for any public agency or public enterprise of that country; or
- (c) is an official or agent of a public international organization;

“public international organization” means an organization whose members are any of the following

- (a) countries;
- (b) governments of countries;
- (c) other public international organizations;
- (d) a mixture of paragraphs (a) to (c).

with (2) A person commits an offence if that person bribes a foreign public official

- (a) the intention of influencing the foreign public official in his capacity as a foreign public official;
- (b) the intention of obtaining or retaining a business or an advantage in the conduct of a business.

(3) A person who is convicted of an offence under subsection (2) is liable

- (a) on summary conviction, to imprisonment for one year, or to a fine of five thousand dollars;
 - (b) on conviction on indictment, to imprisonment for ten years, or to a fine of ninety thousand dollars.
- (4) A person bribes a foreign public official if the person
- (a) directly or through a third party, offers, promises or gives any financial or other advantage
 - (i) to the foreign public official; or
 - (ii) to another person at the request of the foreign public official or with assent or acquiescence of the foreign public official; and
 - (b) the foreign public official is neither permitted nor required by the written law applicable to him to be influenced in his capacity as a foreign public official by the offer, promise or gift.
- (5) A reference in this section to influencing a foreign public official in his capacity as a foreign public official is a reference to influencing a foreign public official in the performance of his functions as such an official, including
- (a) any omission to exercise those functions; and
 - (b) any use of his position as such an official, even if not within his authority.
- (6) For the purposes of subsection (4)(b), the written law applicable to a foreign public official is
- (a) where the performance of the functions of the foreign public official which the person intends to influence would be subject to the law of Country X, the law of Country X;
 - (b) where paragraph (a) does not apply and the foreign public official is an official or agent of a public international organization, the applicable written rules of that organization;
 - (c) where paragraphs (a) and (b) do not apply, the law of the country in relation to which the foreign public official is a foreign public official so far as that law is contained in

- (i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or
- (ii) any judicial decision which is so applicable and is evidenced in published written sources.

(7) For the purposes of this section, a trade or profession is a business.

481. Offences relating to bribery: territorial application.

(1) An offence is committed under section 475, 476 or 480 in Country X if any act or omission which forms part of the offence takes place in that part of Country X.

(2) Subsection (3) applies if

- (a) no act or omission which forms part of an offence under section 475, 476 or 480 takes place in Country X;
- (b) a person's acts or omissions done or made outside Country X would form part of such an offence if done or made in Country X; and
- (c) that person has a close connection with Country X.

(3) In such a case

- (a) the acts or omissions form part of the offence referred to in subsection (2)(a); and
- (b) proceedings for the offence may be taken at any place in Country X.

(4) For the purposes of subsection (2)(c) a person has a close connection with Country X if, and only if, the person was one of the following at the time the acts or omissions concerned were done or made

- (a) a citizen of Country X;
- (b) an individual ordinarily resident in Country X;
- (c) a body incorporated under the law of any part of Country X;
- (d) a partnership in Country X.

482. Defence for certain bribery offences etc.

(1) In this section

“best interest of the State” means

- (a) for the protection of life or to prevent destruction of property owned by the State in Country X; or
- (b) to protect the economy of Country X;

“relevant bribery offence” means

- (a) an offence under section 475 which would not also be an offence under section 480;
- (b) an offence under section 476;
- (c) an offence committed by aiding, abetting, counselling or procuring the commission of an offence falling within paragraph (a) or (b);
- (d) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence falling within paragraph (a) or (b); or
- (e) an offence under sections 614 - 616 in relation to an offence falling within paragraph (a) or (b)

(2) It is a defence for a person charged with a relevant bribery offence to prove that the person’s conduct was necessary for the best interests of the State

(3) For the purposes of this section, the circumstances in which a person’s conduct is necessary for a purpose falling within subsection (2) are to be treated as including any circumstances in which the person’s conduct

- (a) would otherwise be an offence under section 476; and
- (b) involves conduct by another person which, but for subsection (1)(a) or (b), would be an offence under section 476.

483. Offences under sections 475, 476 or 480 by bodies corporate etc.

(1) In this section

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

“senior officer” means

- (a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate; and
- (b) in relation to a partnership, a partner in the partnership.

(2) Where an offence under section 475, 476 or 480 is committed by a body corporate or a partnership the offence is proved to have been committed with the consent or connivance of

- (a) a senior officer of the body corporate or partnership; or
- (b) a person purporting to act in such a capacity;

the senior officer or person as well as the body corporate or partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

484. Restrictions on prosecution

No person shall be prosecuted for an offence against sections 475, 476 or 480 without the consent of the Director of Public Prosecutions, who before giving leave may make such inquiries as he thinks fit.

Extortion by Public Officials or Jurors

485. Violence to deter official or for recourse to public officer.

A person who uses any violence with intent to deter any other person from acting in any official capacity, or from having recourse to any public officer, or on account of his having so acted or had recourse to any public officer commits an offence and is liable on conviction on indictment to imprisonment for seven years.

486. Violence or deceit to hinder or obstruct public officer.

A person who assaults, molests, obstructs or resists, or aids and abets or incites any other person to assault, molest, obstruct or resist any public officer or the person acting in the aid of such officer, while the officer is acting or proceeding to act in the execution of any public office or duty, or in the execution of any warrant or legal process commits an offence and is liable

- (a) on conviction on indictment to imprisonment for seven years; or
- (b) on summary conviction to imprisonment for two years.

487. Oppression by public officer or juror.

A public officer or juror who intentionally commits any excess or abuse of his authority, to the injury of the public or of any person commits the offence of wilful oppression in respect of the discharge of the duties of his office, and is liable on conviction on indictment to imprisonment for five years.

488. Pretending to be public officer or juror.

A person who pretends to be or acts as a public officer or juror, when the person is not lawfully authorized to act as such officer or juror commits an offence and is liable on conviction on indictment to imprisonment for five years, unless he shows

- (a) that he pretended to be or acted as such officer or juror under a mistake of law or of fact; or
- (b) in the case of a person acting as a public officer, that he so acted in good faith for the public benefit.

489. False statements or oaths for obtaining or acting in office.

A person who, in order that he may obtain or be qualified to act in any public office, makes, signs, publishes, or uses any declaration, statement, or oath required by law in such case, or any certificate or testimonial as to his conduct or as to any other matter which is material for the purposes of his obtaining of such office, or for his qualification to act in such office, if he does so knowing that such declaration, statement, oath, certificate, or testimonial is false in any material particular commits an offence and is liable on conviction on indictment to imprisonment for five years.

Jury Intimidation

490. Jury Intimidation

A person is liable to imprisonment on conviction on indictment to 7 years imprisonment who—

- (a) influences or attempts to influence, by threats or bribes or other corrupt means, a member of a jury in his or her conduct as such (whether in a cause or matter tried or to be tried in Country X or in an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or
- (b) accepts any bribe or other corrupt consideration on account of his or her conduct as a member of a jury (whether in a cause or matter tried or to be tried in Country X or in an

overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or

- (c) wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice in Country X or the course of justice in an overseas jurisdiction.

Absconding

491. Absconding by defendant released on bail.

(1) If a defendant who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.

(2) If a defendant who has been released on bail in criminal proceedings, and fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.

(3) It shall be for the defendant to prove that he had reasonable cause for his failure to surrender to custody.

(4) A failure to give to a defendant granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that defendant's failure to surrender to custody.

(5) An offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.

(6) Where a magistrates' court convicts a person of an offence under subsection (1) or (2) above the court may, if it thinks—

- (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict, or
- (b) in a case where it commits that person for trial to the High Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) or (2) above by the court before which he is tried for the other offence,

commit him in custody or on bail to the High Court for sentence.

(7) A person who is convicted summarily of an offence under subsection (1) or (2) above and is not committed to the High Court for sentence shall be liable to imprisonment

for one year or to a fine of five thousand dollars or to both and a person who is so committed for sentence or is dealt with as for such a contempt shall be liable to imprisonment for a term of 2 years or to a fine or to both.

(8) In any proceedings for an offence under subsection (1) or (2) above a document purporting to be a copy of the part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender to custody.

(9) For the purposes of subsection (8) above—

- (a) “the prescribed record” means the record of the decision of the court, officer or police officer to grant bail;
- (b) the copy of the prescribed record is duly certified if it is certified by the appropriate officer of the court or, as the case may be, by the police officer who took the decision or a police officer designated for the purpose by the officer in charge of the police station from which the person to whom the record relates was released;
- (c) “the appropriate officer” of the court is—
 - (i) in the case of a magistrates’ court, the Chief Magistrate;
 - (ii) in the case of the High Court, such officer as may be designated for the purpose in accordance with arrangements made by the Chief Justice

PART XIX

SUMMARY OFFENCES

Summary Assaults

492. Assault on summary convictions.

A person who unlawfully assaults any other person commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

Possession of Offensive Weapons

493. Carrying cutlass, sword or machete otherwise than in a sheath.

A person who without reasonable excuse, proof of which lies on him, carries with him in any public place in any city, town or village any cutlass, sword, machete or bayonet, unless it is carried in a sheath or other covering commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

Minor False Claims

494. False claims.

(1) A person who with intent to defraud or deceive by any means or in any way or manner makes any false claim to money or other property whatsoever or to any interest in such money or property commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) A person who

- (a) makes, gives or uses any certificate or testimonial of health, sickness, character, qualification, or competency, knowing that such certificate or testimonial is false in any material particular;
- (b) defrauds or deceives any other person by means of any false weight or measure or by any false use of any weight or measure;
- (c) transfers to any other person, or accepts from any other person, any ticket or pass for travelling in any vessel or on any railway or conveyance, knowing that such ticket or pass is not transferable;
- (d) knowingly makes any false return or statement of any matter in respect of which he or she is required to make a return or statement for the purpose of any tax, rate or assessment of such tax or rate,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year

(3) A person who defrauds or deceives any other person by any false claim commits an offence and is liable on conviction on indictment to imprisonment for five years, and if the fraud is committed in respect of a notified plant or notified plant product, to imprisonment for six months.

Minor forgery offences

495. Mutilating currency note.

A person who without lawful authority or excuse, the proof of which lies on him, mutilates, cuts, tears or perforates with holes any currency note whether by writing, printing, drawing or stamping on it, or by attaching or affixing anything in the nature or form of an advertisement commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

496. Having possession of more than five pieces of false foreign notes, etc.

A person who, without lawful authority or excuse, the proof of which lies on him, has in his custody or possession any greater number of pieces than five pieces of false or counterfeit note resembling, or apparently intended to resemble or pass for, any note of any foreign State, or country, or any kind of note not being a legal note, but resembling, or apparently intended to resemble or pass for, any such note, or any other note made of less value than the note of any foreign State, or country commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars for each false and counterfeit note found in his custody or possession, and in addition, the Magistrate shall order the forfeiture and destruction of the false or counterfeit note.

Unlawful possession

497. Unlawful possession of cattle.

If any cattle, or the carcass, head, skin, or any part, is found in the possession or on the premises of any person, and if the person does not satisfy a court that he came lawfully by the cattle, or carcass, head, skin, or other part or that he had no knowledge of it he is liable on summary conviction to a fine not exceeding one thousand dollars.

498. Unlawful possession of fence, etc.

If the whole or any part of any fence, or iron or wooden post, pale, rail, wire, stile or gate is found in the possession or on the premises of any person, and that person does not satisfy a court that he lawfully came by it or that he had no knowledge of it, the person is liable on summary conviction to a fine not exceeding one thousand dollars, and on each subsequent conviction of the same offence, to imprisonment for one year.

499. Unlawful possession of plant or plant product.

If the whole or any part of any plant or plant product is found in the possession or on the premises of any person, and if the person does not satisfy a court that he came lawfully by, or that he had no knowledge of it, the person is liable on summary conviction to

a fine not exceeding one thousand dollars, and, on each subsequent conviction of the same offence to imprisonment for one year.

500. Person taking possession of lost thing to deliver it to owner or to lawful authority.

(1) A person who takes possession of anything which appears to be of some value, and to have been lost by another person, shall, within forty-eight hours or so soon as may be reasonably practicable, after taking possession of it, deliver it to its owner, if known, or a Magistrate or police officer or any other person authorized by law to receive such thing commits an offence and is liable on summary conviction to imprisonment for three months.

(2) Nothing in this section relieves any person of any liability to punishment for the offence of theft and handling if his actions amount to any such offence.

(3) The police shall restore the lost property to its owner, if known.

(4) Unless otherwise provided by regulations made by the Cabinet, if no application is made by the real owner for the recovery of the property within the three months after its delivery to the police, the property may be sold by the police and the proceeds of the sale is paid into the Consolidated Fund for public uses of the government.

(5) Unless otherwise provided by regulations made by the Cabinet, the finder of lost property who deals with it in accordance with the provisions of this section, is entitled to a reward not exceeding one-eighth part of the assessed value of such property or of the proceeds of the sale of such property.

501. Offering or exposing for sale property from vessels wrecked or in distress.

(1) Where any person offers or exposes for sale anything which has been unlawfully taken, or is reasonably suspected so to have been taken, from any vessel in distress, wrecked, stranded or cast on shore, in every such case any person to whom the thing is offered for sale, or any officer of customs or police officer, may lawfully seize the thing and shall with all convenient speed convey it or give notice of such seizure to a justice of the peace or a Magistrate.

(2) Where any person who has offered or exposed any such thing for sale is summoned to appear before the court and does not appear, or if the person appears, does not satisfy the court that he lawfully came by such thing, the court shall order that the thing be delivered immediately to or for the use of its rightful owner upon payment by him of such reasonable reward as the court may determine to the person who seized the thing.

(3) A person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, and on each subsequent conviction of any such offence, to imprisonment for one year.

502. Unlawful possession of property stolen elsewhere.

A person who, having obtained elsewhere than in Country X any property by any act, which, if done in Country X, would amount to stealing, brings such property into or has such property in Country X commits an offence and is liable on summary conviction to imprisonment for six months.

503. Unlawful possession of property suspected to have been stolen.

(1) A person who has in his possession or conveys in any manner anything which is reasonably suspected to have been stolen or unlawfully obtained, and who does not give an account to the satisfaction of the court, as to how he came by it commits an offence and is liable on summary conviction to imprisonment for two years.

(2) Where a person charged with an offence under subsection (1) refuses or is unable to satisfy the court that his possession of the thing is lawful it shall be deemed to be *prima facie* evidence of his guilt and the court may convict him accordingly.

(3) Where a person charged with an offence under section (1) declares

(a) that he received the thing from another person; or

(b) that he was employed as a carrier, agent, or servant, or to convey the thing for some other person,

the court may cause every such person, and also if necessary, every former or pretended purchaser, or the person from whom the person charged came by the thing to be brought before the court and examine witnesses upon oath concerning the thing.

(4) Where it appears to the court that any person who had possession of anything, has reasonable cause to believe the thing has been stolen or unlawfully obtained, the person shall be deemed to have had possession of the thing at the time when, and place where, the thing was found and seized, and is liable on summary conviction to imprisonment for one year.

(5) The possession of a carrier or agent, shall be deemed to be the possession of the person who employed the carrier or agent, to convey such thing, and that person is liable on summary conviction to imprisonment for eighteen months.

(6) If the value of the thing –

(a) exceeds three thousand dollars; or

(b) is stolen from a person with a tourist visa as an entry requirement to Country X pursuant to the [Relevant] Act; or

(c) is stolen from a vessel,

the Magistrate may deal with the charge as indictable and the person is liable on conviction on indictment to imprisonment for five years.

Animal stealing

504. Stealing animal not cattle.

A person who steals any animal not being cattle, which is of some value and which is in actual confinement commits an offence and is liable on summary conviction to imprisonment for one year.

505. Stealing cattle or part of it.

(1) A person who steals any cattle, carcass, skin or any part of any cattle commits an offence and is liable on summary conviction to imprisonment for one year, and the court may, on a second and subsequent conviction of the person, sentence him to imprisonment for three years.

(2) A police officer may seize and detain any vehicle used for the conveyance of any cattle, carcass, skin or any part of it which he has reasonable cause to suspect has been stolen or unlawfully obtained.

(3) Where a person has been convicted of an offence under subsection (1) or of the offence of dishonest receiving or unlawful possession with respect to any cattle, carcass, skin or part of it a Magistrate may order any vehicle detained under subsection (2) which he finds to have been used to convey such cattle, carcass or part of it, to be sold by public auction conducted by a police officer and the proceeds paid into the Treasury.

Making Demands with Threats

506. Interpretation for sections 507 and 508.

For the purposes of sections 507 and 508 “threat” does not include a threat of criminal assault or harm to the person threatened.

507. Demand with threats intending to steal.

A person who, with threats, demands from any other person, either for himself or for any other person, anything capable of being stolen with intent to steal it commits an offence and is liable on summary conviction to imprisonment for six months.

508. Demand with threat of making complaint for summary offence.

A person who demands a sum of money or other reward from another person by threatening, directly or indirectly, to make a complaint against that person or some other person, before a Magistrate for any summary offence when there exist no grounds for such complaint, or as an inducement to forbear to make such complaint commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

Stealing under five hundred dollars

509. Stealing thing not exceeding five hundred dollars in value.

A person who steals anything, the value of which does not exceed five hundred dollars, and the stealing is not accompanied by burglary, or does not amount to robbery commits an offence and is liable on summary conviction to imprisonment for six months.

Property Offences by Fire

510. Bonfire or fireworks in public place.

A person who

- (a) in any public place makes any bonfire, or sets fire to or throws when lighted any fireworks;
- (b) in any town without lawful and necessary reason, the proof of which lies on the person, discharges, throws or sets fire to, any fireworks in any house, building, yard, or place, or allows any such act to be done,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

511. Precautions required of person about to set fire to trees, etc.

(1) For the purpose of preventing loss, damage and injury, every person who intends to set fire, or to cause fire to be set, to any tree, bush, brushwood, rubbish, guinea or other grass, trash, or cane-piece, shall give notice to all neighbours possessing or in charge of property which might be damaged or destroyed by the fire, if carelessly or improperly used, and take proper precautions to prevent any damage or destruction to the property of his neighbours.

(2) A person who sets fire, or causes fire to be set, to any tree, bush, brushwood, rubbish, guinea or other grass, trash, or cane-piece, for any purpose, whether any damage or injury is occasioned to any property of any other person, without notice given and

proper precautions taken under this section is liable on summary conviction to a fine not exceeding one thousand dollars.

512. Burning land within two miles of town or settlement without notice or permission.

A person who

- (a) without notice given and permission first obtained under section 511, at any time sets fire or causes fire to be set to any tree, bush, brushwood, rubbish, guinea, or other grass, trash or cane piece, for the purpose of clearing it or for any other purpose whereby any damage or injury is caused to the property of another person;
- (b) at any time, within two miles of any city or town or village or settlement, sets fire or causes fire to be set without having given notice and first obtained permission under section 511, and whether or not the fire causes damage or injury to the property of another person,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

513. Entering plantation with light, without consent, to hunt or for other purposes.

A person who enters upon any plantation or estate with any lighted torch, flambeau, or other thing, for the purpose of hunting crabs or any bird or beast, or for any other purpose, without the consent of the owner or occupier of such plantation or estate commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

514. Fire in town or vicinity.

A person who

- (a) in any part of any town or any place immediately adjacent to it, lights, or causes to be lighted, any fire;
- (b) carries any lighted torch, candle, or other lighted thing, or any fire, through such area or place referred to in paragraph (a) unless secured in a lantern or some other safe thing in which it may be conveyed;
- (c) makes, or causes to be made any fire in the yard or other part of any house or premises, except the kitchen, whereby the town, or place immediately adjacent to it or any house or premises in the

same or in the immediate vicinity or of such town, house or premises or adjacent to it, may be endangered,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

515. Interfering with public lamp.

A person who wantonly extinguishes the light of, or destroys or damages or interferes with any lamp or other light in any public way or public place commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

516. Giving, selling, or offering for sale poisonous grain or seed except for agriculture.

(1) A person who

(a) sells, or offers or exposes for sale, or gives away, or causes or procures another person to sell or offer for sale or give away, or knowingly is a party to the sale or offering or exposing for sale or giving away of any grain or seed which has been rendered poisonous except for bona fide use in agriculture; or

(b) knowingly puts or places, or causes or procures another person to put or place or knowingly is a party to the putting or placing, in or upon any land or building any poison, or any fluid or edible matter, not being sown seed or grain, which has been rendered poisonous,

commits an offence and is liable, on summary conviction, to a fine not exceeding one thousand dollars.

(2) In any proceedings in respect of an offence under subsection (1)(b) it shall be a defence that the poison was placed by the person for the purpose of destroying rats, mice, or other small vermin, and that he took all reasonable precautions to prevent access to it of dogs, cats, fowls, or other domestic animals.

517. Detention of animal or vehicle for veterinary treatment.

(1) Where a person having charge of a vehicle or an animal is arrested by a police officer for an offence under this Code, the police officer may take charge of the vehicle or animal, and to deposit it in some place of safe custody until the termination of the proceedings or until the court directs that the vehicle or animal be delivered to the person charged or to its owner.

(2) Where the person charged is convicted, any reasonable costs including veterinary treatment where such treatment is required, incurred in respect of the detention of

the animal are recoverable from the owner as a civil debt, or if the court so orders by such process, including imprisonment in default of payment, according to the scale of imprisonment in default of payment of a penalty or fine as the court may direct.

(3) Where the owner himself is convicted, such reasonable costs incurred in respect of the detention and veterinary treatment of the animal, shall be treated as part of the costs of the case.

Damage to Public or Private Property

518. Damage to fence etc.

A person who intentionally or recklessly destroys or damages any fence or part of any fence or any iron or wooden post, pale, rail or wire used as a fence, or any tile or gate or any part of it commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

519. Damage to cultivated plant.

A person who intentionally and recklessly causes damage to any cultivated plant growing in any public or private garden, building, or any other public or private place commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

520. Damage to tree in park, garden or elsewhere.

A person who intentionally or recklessly causes damage to any tree growing in any public or private park, garden, or pleasure ground, or to any tree growing in any other place commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, or to imprisonment for one year.

521. Damage to plant product.

A person who intentionally or recklessly causes damage to any plant product, whether in any building, vessel, yard, stock, or in any other place commits an offence and is liable on summary conviction to imprisonment for six months.

522. Damage to statue, monument or work of art.

A person who intentionally or recklessly causes damage to anything kept for the purpose of art, literature, science, or curiosity, in any public or private museum, gallery, or collection, or to any statue or monument in any place commits an offence and is liable on summary conviction to imprisonment for one year.

523. Damage to telecommunication.

A person who intentionally or recklessly causes damage to, or obstructs the working of any pole, wire, apparatus used for the purposes of any telecommunication commits an offence and is liable on summary conviction to imprisonment for one year.

524. Damage to toll-bar.

A person who intentionally or recklessly destroys, removes, or causes material damage to any toll-bar or barrier lawfully maintained for the purposes of the collection of any public or private toll commits an offence and is liable on summary conviction to imprisonment for two years.

525. Damage of no pecuniary value.

A person who intentionally or recklessly in any way damages, spoils, or destroys anything belonging to or in the possession of any other person or to which any other person has the right of possession, in spite of the fact that such thing is not of any pecuniary or saleable value, or of any value whatsoever except to the person to whom it belongs, or who has possession or the right of possession of it commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars, although no pecuniary damage to any such thing may have been committed by the person.

526. Damage to land, animal or thing, not specially provided for.

A person who intentionally or recklessly causes damage to any land, or to any animal or thing, in any case not specially provided for in this Part commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

Trespass

527. Conviction for trespass on charge of stealing or other dishonest appropriation.

(1) Whenever a person is charged with stealing or other dishonest appropriation of property, the court or jury may acquit him and instead, convict him of unlawful trespass.

(2) A person convicted under subsection (1) is liable, in the case of a court of summary jurisdiction to a fine not exceeding one thousand dollars, and in the case of the High Court to imprisonment for twelve months or to a fine at the discretion of the Court.

528. Detention of property not exceeding five hundred dollars.

(1) On a complaint made by any person claiming to be entitled to any property or possession of any goods or chattels which are detained by any other person, the value of which does not exceed five hundred dollars, or which is not a document of title or any or instrument relating to such property the value of which exceeds five hundred dollars, a Magistrate may inquire into the title to the property or to the right of possession of the goods or chattels.

(2) If upon a demand for the goods or chattels made by the complainant it appears to the Magistrate

- (a) that the goods or chattels have been detained without just cause by the person against whom the complaint has been made; or
- (b) that the person detaining the goods or chattels has a lien on, or a right to detain, the goods or chattels by way of security for the payment of money, or the performance of any act, by the owner;

the Magistrate may order the goods or chattels to be delivered to the owner or to the person entitled to the possession of the goods or chattels either absolutely or upon tender of such amount as may appear to a Magistrate to be due from the owner or the person entitled to the possession of such goods or chattels, or upon the performance, or upon the tender and refusal of the performance, of the act for the performance, of which the goods or chattels may have been detained as security, or if such act cannot be performed, then upon tender of compensation for non-performance.

(3) A person who refuses or neglects to deliver up the goods or chattels in compliance with an order under this section shall pay as compensation to the aggrieved person the full value of the goods or chattels.

(4) An order shall not bar a person from recovering the goods or chattels so delivered by legal action from the person to whose possession the goods or chattels come by virtue of the order, provided the action is commenced within six months after the order has been made.

529. Detention or disposal of goods by employees.

An artificer, a workman, journeyman, apprentice, employee, labourer, or other person who unlawfully disposes of or retains in his possession, without the consent of the person by whom he may be hired, retained or employed, any goods or chattels, committed to his care or charge commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars and to pay as compensation to the aggrieved person the value of the goods or chattels which have been so disposed of or have been damaged.

530. Taking or attempting to take cattle to ride, drive or otherwise use without consent.

A person who intentionally and unlawfully catches, takes, or drives, or attempts to catch, take or drive away any cattle from or out of any pasture, enclosure, stable or other place

- (a) for the purpose of riding any such animal, or of using it in the carrying of any load or burden or in the drawing of any cart or carriage;
- (b) for the purpose of setting it loose or of driving it about; or
- (c) for any other unlawful and mischievous purpose;

without the consent of the owner or of the person entrusted with the charge of such animal, and without having any probable claim of title, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

531. Taking on person or load by driver or conductor of vehicle without consent.

A person who, being the driver or conductor of any vehicle, without the consent of the owner or the agent of the owner

- (a) takes up or allows the person to ride on it; or
- (b) permits to be conveyed on it any load;

upon the complaint of the owner or the agent of the owner commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

532. Using or interfering with animal, boat, vehicle, etc. without authority.

A person who without lawful authority or excuse, the proof of which lies on him, uses or interferes with, or in any other way, commits any wrong or trespass in respect of, to, or upon any animal, boat, vehicle or other thing whatsoever commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars although damage may not have been caused by the offence.

533. Posting bills, defacing buildings without consent, etc.

A person who without the consent of an owner or occupier

- (a) affixes any posting-bill or other paper to or on any building, wall, fence, pillar, post, or pale;

- (b) writes upon, soils, defaces, or marks any such building, wall, fence, pillar, post, or pale with chalk or paint, or in any other way or with any other material,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

534. Soliciting alms in premises.

A person who, without lawful authority or excuse, the proof of which lies on him, enters in any premises, or intrudes in any premises when he has been lawfully ordered to depart, and uses any solicitation, means or device to induce the bestowal of alms upon him commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

535. Throwing things from premises into other premises.

A person who throws, or being the owner or occupier of any house or building permits to be thrown, from any part of such house or other building, any rubbish, water, matter or thing whatsoever into, in or on the premises of another person commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

536. Interpretation for sections 537 to 538.

For the purposes of sections 537 to 538

“authorized officer” includes a school principal, teacher, doctor, nurse, administrator, or supervisor of public health facility or crown lands officer;

“land” includes building or other erection;

“owner” and “occupier” respectively include any tenant or lessee, and the attorney or agent of any owner or occupier.

537. Insulting, annoying or threatening entry.

(1) A person who

- (a) unlawfully enters in an insulting, annoying or threatening manner upon any land belonging to or in the possession of any other person;
- (b) unlawfully enters upon any such land after having been forbidden to do so;

- (c) unlawfully enters and remains on any such land after having been required to depart;
- (d) having lawfully entered upon any such land, misconducts himself by behaving in an insulting, annoying or threatening manner; or
- (e) having lawfully entered on any such land, remains after having been lawfully required to depart;

on the complaint of the owner or occupier of such land commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) A person who without lawful authority or excuse enters upon

- (a) Crown lands; or
- (b) a school land or building;
- (c) a health centre, clinic, hospital or other public building; or
- (d) a part of a public building to which members of the public are not allowed,

on the complaint of an authorized officer commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

538. Removal and punishment of squatter.

(1) If any person enters upon and uses or occupies any land, not exceeding ninety-six dollars in annual value, belonging to or in the possession of any other person, without leave of the owner or occupier or without lawful authority for so doing, a Magistrate of the district in which the land is situate, on the complaint of the owner or occupier, may summon before him the person using or occupying the land to show cause why an order should not be made for his removal.

(2) If, on the hearing of the complaint, it is proved to the satisfaction of the Magistrate, that the person has entered upon and used or occupied the land without leave or lawful authority, the Magistrate may make an order for the removal of the person by force if necessary, from the land, and also the removal of structure, animal or thing whatsoever which he may have placed or have on the land.

(3) The Magistrate may in addition, impose on the person a fine not exceeding five hundred dollars, and may order that the whole, or any portion of the fine, if paid or recovered, be paid to the owner or occupier of the land.

(4) The Court may make an order for compensation for buildings, growing crops, or other things not exceeding five thousand dollars to be paid to a person ordered to

give up possession, unless the proprietor allows the removal of any such structure, animal or other thing in which case the Court shall fix a reasonable time for the removal.

(5) The Court may give such directions in the matter as it considers just and necessary.

(6) This section applies in the case of a person remaining on any land even after lawful entry where his right to do so has been determined by law, or by notice to quit the land or otherwise.

(7) Nothing in this section excludes the right of any person to take civil proceedings in respect of any trespass, squatting, entry upon, use, or occupation of any land, provided that if an order made under this section is carried out or obeyed, no civil proceedings are maintainable in respect of the same matter or cause of action.

539. Right of way along customary path to village or settlement unaffected.

(1) Nothing in this Code shall affect the right of any person to pass in an orderly and quiet manner through and along the customary path leading from any public way to any village or settlement adjacent to such public way.

(2) Subsection (1) shall not affect the title of any person in any such path.

Nuisance

540. Notice to abate nuisance due to animal, plant or thing.

(1) In this section

“owner of animal” includes the person in possession or in charge of the animal;

“owner of premises” includes

(a) a person in actual occupation, or possession of any premises, or the representative of the person; or

(b) where there is no such person, the proprietor of any premises, or the representative of the proprietor.

(2) Where any animal, or thing, in any place either of itself or by reason of the place where, or manner in which, it is kept, is a source of nuisance to a person, that person may, by notice in writing to the owner of such animal, or thing, or to the owner of the premises on which such animal or thing is kept, require that such nuisance be abated, either by the removal of such animal, or thing or otherwise.

(3) Where any plant overhangs any premises, the owner of such premises, may, by notice in writing to the owner of the premises on which such plant is, require him to cut down such plant, or part of it.

(4) If any notice given under this section is not complied with, within five days after it has been given, an aggrieved person may lodge a complaint before a Magistrate, who shall investigate the complaint and make such order as he sees fit.

(5) Where a person named in such order, fails to comply with the order within the time specified in the order, the person commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars for every week that the offence continues.

541. Carrying on of noxious trade, and other interferences with public rights.

(1) In this section “business” includes not only any trade, manufacture, work, business, or occupation carried on for gain, but also any continued or frequent repetition of any act or series of acts of any kind.

(2) A person who, without lawful authority or excuse, the proof of which lies on him -

(a) so carries on any noxious, offensive, or noisy business at any place, or causes or permits any noxious or offensive matter to be collected or continue at any place, or so keeps any animals at any place, as to impair or endanger the health of the public inhabiting or using the neighbourhood of the place, or as to cause material damage to their lands, crops, cattle, or goods, or as to cause material interruption to them in their lawful business or occupations, or as to materially affect the value of their property; or

(b) so makes, keeps, or uses any explosive matter, or any collection of water, or any other dangerous or destructive thing, or any building, excavation, open pit, or other structure, work, or place, or so keeps any animal or permits it to be at large, as to cause danger of harm or damage to the persons or property of the public,

commits an offence and is liable to a fine, and is, upon conviction for a continuance or repetition of any such offence, be liable to imprisonment for six months.

(3) A nuisance shall not be excused on the ground that it causes some convenience or advantage.

542. Throwing stone or other missile.

A person who

- (a) throws or discharges any stone or other missile so as to cause annoyance, damage, or danger to any person in any place;
- (b) throws or discharges any stone or missile in any public place,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

543. Fouling public water.

(1) A person who

- (a) contaminates or fouls the water of any public well, tank, spring, or reservoir;
- (b) causes any obstruction to the public use of any navigable water, well, spring, or reservoir, so as to deprive the public of the benefit of it,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for two years, and where the offence continues or is repeated, to a fine not exceeding five thousand dollars or imprisonment for four years.

(2) A nuisance shall not be excused on the ground that it causes some convenience or advantage.

544. Non-construction, maintenance or obstruction, of public way.

(1) A person who without lawful authority or excuse, the proof of which lies on him

- (a) being under a legal duty to provide for the construction, maintenance, or repair of any public way, fails to perform such duty;
- (b) causes any obstruction to the public use of any public way so as to deprive the public of the benefit of it,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, or to imprisonment for one year, and where the offence continues or is repeated to a fine not exceeding two thousand dollars or imprisonment for two years.

(2) A person is not liable for obstructing the public use of any public way by reason only of his or her being a party to any meeting or assembly in, or on, or near any public way unless the purpose of such assembly is or includes the obstruction of the public by force or threats or show of force.

545. Animal treating, cleaning, feeding, etc, car washing and repairing in public places.

- (1) A person who
- (a) cleans, dresses, exercises, trains, or breaks any animal in any public way or public place;
 - (b) in any public way or public place, to the annoyance of any person, feeds, fodders, shoes, or bleeds any animal, except in the case of accident;
 - (c) without lawful authority, the proof of which lies on him in any town, parish, or district offers or exposes for show, hire, or sale any animal, except in a market-place or other convenient place lawfully designated for that purpose;
 - (d) in any street, road or open space to which the public have access in any town, parish or district or within one mile of the boundaries of it
 - (i) carries out a business of repairing to vehicles; or
 - (ii) habitually occupies himself with repairing, assembling or dismantling any vehicles or any parts of a vehicle,

commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

(2) In subsection (1) (d) “open space” means land open to the public but does not include any land specially set aside by notice displayed on it by any Town Authority or District Board or the proper authority for the purpose of washing, repairing, assembling or dismantling vehicles.

546. Prohibition of articles and advertisements on and defacement of certain structures, etc.

- (1) In this section “occupier”,

(b) in relation to a door, gate, window or tree, means the occupier of the structure or other land on which the door, gate, window or tree, as the case may be, is situated; and

(c) in relation to a pole or post, means the owner of the pole or post.

(2) Where any structure or other land, door, gate, window, tree, pole or post is in a public place or in or fronts a public place, a person who is not the owner, occupier or person in charge who

(a) exhibits or causes to be exhibited any article or advertisement; or

(b) carries out or causes to be carried out any defacement by writing or other marks including graffiti;

unless he is authorized so to do by the owner, occupier or person in charge or by or under any enactment commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(3) Without prejudice to the liability of any other person under subsection (2), where there is a contravention of that subsection

(a) in the case of an advertisement relating to a meeting or other event, the person who is promoting or arranging the meeting or event; and

(b) in the case of any other advertisement, the person on whose behalf the advertisement is exhibited;

shall be deemed also to have committed an offence under that subsection.

(4) In a prosecution for an offence under this section, it is not necessary for the prosecution to show and it is assumed until the contrary is shown by the person, that the person was not the owner, occupier or person in charge of the structure or other land, door, gate, window, tree, pole or post and was not authorized as referred to in subsection (1).

(5) A court may, if it is satisfied that

(a) the article or advertisement concerned was not exhibited; or

(b) the defacement concerned was not carried out, by or with the consent of the person mentioned in subsection (1);

direct that the whole part of the expenditure reasonably incurred in the removal or cleanup of the article or advertisement or defacement, is met by the person convicted.

(6) This section shall not apply to an advertisement

- (a) exempted under any enactment or advertising a public meeting; or
- (b) relating to an election under any enactment.

(7) A court convicting a person under this section may, in addition to the penalty under subsection (5), order the person to perform community service involving the cleaning up of defaced structures.

547. Throwing etc. of materials in public way or public place.

A person who, in any public way or public place, throws or lays any coals, stones, slates, shells, lime, bricks, timber, building iron or other materials, other than building materials or rubbish which are occasioned by any building works and which are so placed or enclosed as to prevent any danger or injury to any inhabitant or passerby commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

548. Offensive, annoying or injurious deposit in town.

(1) A person who, in any town or district deposits in any place any offensive matter, to the injury or annoyance of any person in the town or district commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) This section is without prejudice to the provisions of any enactment relating to such matters and, where there is an inconsistency between the provisions of this section and that enactment, the provisions of that enactment prevails.

549. Offensive matter running into street or public place.

A person who causes or permits the emission of any offensive matter from any slaughter-house, butcher's shop, stall, or dunghill, into any street or public place commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

550. Throwing or laying matter or thing in public place.

(1) A person who throws or lays any dirt, litter, ashes, or night soil, or any carrion, fish, offal, rubbish or matter or thing of any other kind, on any public way or public place commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) This section is without prejudice to the provisions of any enactment relating to such matters and, where there is an inconsistency between the provisions of this section and that enactment, the provisions of that enactment prevails.

551. Projections over or along footway in town or district.

A person who places any blind, shade, covering, awning, or other projection over or along any footway in any town or district, which is not more than six feet 6 inches, in height at least in every part of it commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

552. Things for sale projecting into or over footway in town or district.

A person who, places, hangs up, or exposes for sale in any town or district any goods, wares, merchandise, matter, or thing whatsoever, so that the same project or projects into or over any footway, or beyond the line of any house, shop or building at which the same is or are so exposed so as to obstruct or inconvenience the passage of any person over or along any footway commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

553. Cleaning of footway and watercourse in town or district.

(1) An occupier of any house or other tenement situate in any town or district or in any place immediately adjacent to it, who does not keep sufficiently swept and cleaned all footways and watercourses belonging and adjoining to the premises occupied by him commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) Where any such house or other tenement is unoccupied, its owner is deemed for purposes of subsection (1) to be the occupier of such house or tenement.

554. Nuisance to public work.

(1) A person who without lawful authority or excuse, the proof of which lies on him

- (a) being under a legal duty to provide for the construction, maintenance, or repair of any public works, fails to perform such duty;
- (b) causes any obstruction to the public use of any public works, so as to deprive the public of the benefit of it,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

(2) A nuisance under this section shall not be excused on the ground that it causes some convenience or advantage.

(3) A person is not liable for obstructing the public use of any public works by reason only of his or her being a party to any meeting or assembly in, or upon, or near any public works, unless the purposes of such assembly are or include the obstruction of the public by force or threats or show of force.

555. Selling, etc., of unwholesome food.

(1) A person who sells, or prepares or offers for sale, as being fit for consumption as food or drink, anything which he knows or has reason to believe to be in such a condition as to be likely to be noxious to health commits an offence and is liable on summary conviction to imprisonment for two years.

(2) A person who

- (a) sells, or offers or exposes for sale, any unwholesome meat, poultry, fish, provisions or drink of any kind; or
- (b) keeps any unwholesome meat, poultry, fish, provisions or drink of any kind in any market, store, shop, dwelling-house, building, or place,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, or to imprisonment for two years.

(3) An officer of a town or district or police officer may, on seeing any unwholesome meat, poultry, fish, provisions, or drink, of any kind, to seize or cause it to be seized and brought before a Magistrate, who shall cause it to be immediately destroyed at the expense of the person selling, or exposing or offering it for sale, or keeping it.

(4) In any proceedings under this section, the proof that the article was not sold, offered or exposed for sale or kept contrary to law, lies on the person charged.

Burial

556. Failure to bury corpse.

(1) A person who is under a duty to cause a dead body of any person to be buried, and is able to do so, fails to perform such duty commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) For the purposes of subsection (1), such a duty is incumbent on the husband, wife, father, mother, whether the deceased was legitimate or illegitimate, or heir, tutor or curator of the deceased, or any guardian of a deceased child, or any householder on whose premises the body lies in default of any other person whose duty it is to bury or defray the burial expenses of the deceased.

(3) Where the deceased is an illegitimate child below the age of eighteen years, the court may also make an order against the reputed father of the deceased requiring him to bury the deceased if it is satisfied that the evidence proves that he is the reputed father, unless the person satisfies the court that a court of competent jurisdiction has adjudged that he is not the reputed father of the deceased.

(4) An order shall not be made against any person whom the Court considers is, without any fault of his, too poor to defray the expenses of the burial, or if the Court is of opinion that the burial expenses should not be defrayed by the person in the circumstances.

(5) A person who is convicted under this section may in lieu of, or in addition to any other penalty or punishment to which he may be liable, be adjudged by the court to pay to the complainant, or to a relieving officer or to such other person as the court may direct, the cost of burial of any such dead body.

(6) Any sum so adjudged may be recovered by such process, including imprisonment in default of payment, according to the scale of imprisonment in default of payment of a fine as the court may direct.

(7) Nothing in this section affects the civil liability of any person in respect of any burial expenses, except that a person who has satisfied any burial expenses for which he is liable must not again be proceeded against in respect of the same claim.

557. Hindering burial of dead body, etc.

A person who unlawfully hinders the burial of the dead body of any person, or without lawful authority in that behalf disinters, dissects, or harms the dead body of any person or, being under a duty to cause the dead body of any person to be buried, fails to perform the duty commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for two years.

558. Mock burial.

(1) A person who buries or attempts to bury or is concerned in burying in any cemetery or place any coffin or receptacle which purports to contain the dead, and in which there is no corpse commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) Subsection (1) shall not apply to a mock burial which is part of a drama or other public performance or spectacle.

559. Disinterring, dissecting or tampering with corpse.

A person who without lawful authority in that behalf, disinters, dissects, or tampers with the dead body of any person commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for two years.

Indecency

560. Indecent gesture, act or nuisance.

- (1) A person who, in any public place, or in view of any public place
 - (a) uses any indecent or obscene gesture; or
 - (b) commits an indecent act or nuisance whatsoever,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

- (2) A person who publicly and wilfully commits any lewd and obscene act commits an offence and is liable on summary conviction to imprisonment for two years.

561. Naked or indecently clothed in public.

A person who in any public place, or in any other place open to public view

- (a) is naked or not sufficiently or decently clothed;
- (b) having the custody of any child above the age of five years permits such child to be naked;
- (c) being the guardian of any child above the age of five years allows such child to be insufficiently or indecently clothed,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

562. Indecent exposure in public.

A person who wilfully and indecently exposes his genital organs

- (a) in any public place or within view of the public; or
- (b) in any place with intent to insult any other person,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

563. Indecent books, pictures, shows, etc., in public.

(1) In this section

“photograph” includes data stored on computer disc or by other electronic means which is capable of conversion into a photograph;

“video recording” means any recording on any medium from which a moving image may by any means be produced and includes the accompanying sound track.

(2) A person who knowingly

(a) exposes to view in any public place, any obscene picture, photograph, video recording, drawing, or model or any other object tending to corrupt morals; or

(b) exhibits any indecent show or performance in any public place,

commits an offence and is liable on summary conviction to imprisonment for six months.

(3) It shall be a defence to a charge of any of the offences in this section to prove that it was for the public benefit that the act complained of should be done.

(4) Whether the doing of any such act is or is not for the public benefit is a question of fact.

564. Obscene or profane writing on walls etc. open to public view.

A person who writes or draws any profane, indecent or obscene word, figure, or representation

(a) upon any wall, door, window, shutter, pale or other place open to public view; or

(b) upon any paper or other material, and exposes the paper or other material to public view,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

565. Sending or delivering obscene writing or print.

A person who sends or delivers to any other person any obscene writing, print, engraving, picture, or other representation commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

566. Singing obscenely or profanely in public place.

A person who in any public place or to the hearing of the public sings any profane, indecent or obscene song or ballad commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

567. Using abusive or indecent language in public place.

A person who in any public place, or to the hearing of the public uses any abusive, indecent or obscene language, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

Obstructing and Abusing Magistrate

568. Molesting Magistrate or justice or person employed by such.

A person who

- (a) obstructs, prevents, or in any way disturbs or molests any Magistrate or justice of the peace, or any person employed by him, in the execution of his duties under this Code or under any other enactment; or
- (b) uses any threatening, abusive, or insulting language or sends any threatening message or letter, to any Magistrate or justice of the peace, in respect of his duties;

on being convicted before any Magistrate, not being the Magistrate so obstructed, prevented, disturbed, molested, threatened, or insulted commits an offence and is liable on conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for five years or on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

Compounding Summary Offence

569. Complainant compounding, delaying or withdrawing summary charge without leave.

A person who makes any complaint for any summary offence alleged to have been committed by some other person and afterwards, directly or indirectly receives, without

the permission of the Court by which the complaint was to be heard and determined, any sum of money or other reward for compounding, delaying, or withdrawing the complaint commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for two years.

False Report to Police

570. False reporting.

A person who

- (a) makes a report to the Police about the alleged commission of a crime which he has reasonable cause to believe is false; or
- (b) knowingly makes to the Police a false report tending to show that a crime has been committed or to give rise to apprehension for the safety of any person or property or tending to show that he has information material to any police inquiry,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

PART XX

OFFENCE AGAINST PUBLIC PEACE

571. Accosting or following persons.

A person who, in any public place, without lawful authority or excuse, the proof of which lies on him or her, accosts, accompanies, or follows about, any other person, in a manner likely to constitute harassment or cause alarm or distress to that other person commits an offence and is liable on summary conviction

- (a) for the first offence, to a fine not exceeding one thousand dollars or in default of payment to imprisonment for one year;
- (b) for the second and subsequent offences to imprisonment for two years.

572. Arrest of mentally disturbed persons.

(1) A police officer may arrest without warrant, any mentally disturbed person whom he finds in any place where the police officer has reason to believe that the mentally disturbed person poses a danger to himself or members of the public.

(2) A person arrested under subsection (1) shall be detained at an institution for the treatment of mentally disturbed persons under the care of a medical practitioner, who may release the person when, in the opinion of the medical practitioner, that person no longer poses a danger to himself or members of the public.

573. Following etc., vehicle without consent.

A person who, follows, runs beside, or holds on to, or rides on any part of any vehicle, whether carrying passengers or not, unless the person proves that he had lawful permission so to do commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

574. False advertisement of birth, marriage, divorce or death.

A person who, with intent to insult or annoy any other person, knowingly publishes or causes to be published in any newspaper any false notice or advertisement of any birth, marriage, divorce or death commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

575. False signature to petition, prospectus, or testimonial.

A person who signs the name of another person to any petition, prospectus, or testimonial for which he knows he has no authority to do so commits an offence and is liable on summary conviction to imprisonment for three years.

576. Disturbing peace by fighting.

A person who, by fighting disturbs the public peace commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

577. Fighting in public place.

A person who

- (a) unlawfully fights with another person in any public place; or
- (b) aids and abets an unlawful fight in any public place,

commits an offence and is liable on summary conviction to imprisonment for three months, in addition to any other punishment to which he may otherwise be liable.

578. Loitering etc. in or about shop and not leaving quietly on request.

A person who loiters, carouses, or does any such like act in or about any shop, public place or public premises, and does not quietly leave or move away when asked to do

so by any police officer or by the owner of such shop or his agent or by the person in charge of the public place or public premises commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

579. Habitual loiterer.

A person who, having been thrice convicted under this Code for loitering, is, within one year from the first conviction, found loitering in any shop, public place or public premises commits an offence and is liable on summary conviction to imprisonment for two years.

580. Mask wearing in public.

(1) A person who, in any public way or public place, wears any mask commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

(2) A person who, in any public way or public place, wears any mask with intent to commit a crime commits an offence and is liable on summary conviction to imprisonment for one year.

(3) Subsection (1) shall not apply to a person wearing a mask in a public place

- (a) during carnival, a drama or other public performance or spectacle;
- (b) for medical reasons.

Drunken, Riotous and Disorderly Conduct

581. Drunk and disorderly in public.

A person who, in any public place

- (a) is drunk and behaves in or disorderly manner;
- (b) is drunk while in charge in any public way of any motor vehicle, carriage, cart, or other vehicle, or of any horse, cattle, or other animal requiring control; or
- (c) is drunk when in possession of a loaded firearm,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

582. Arrest of drunken person in public place, etc.

(1) A police officer may take into custody, without a warrant, any person whom he finds drunk in any public way or public place, or on the premises of any other person, to the annoyance or disturbance of any person or of any person of the house or premises of the person.

(2) A person who is found drunk is liable on summary conviction to a fine not exceeding one thousand dollars.

583. Habitual drunkenness.

A person who, having been thrice convicted under the provisions of any law for having been drunk and behaving violently or indecently, is, within one year from the first conviction, found drunk in any public place, is liable on summary conviction to imprisonment for three months as an habitual drunkard.

584. Permitting drunkenness, etc., in place of public resort.

(1) An owner or occupier, or an employee of any owner or occupier, of any house, shop, room, or other place of public resort where provisions, liquors, or refreshments of any kind are sold or consumed commits an offence if he knowingly permits drunkenness, gambling, or any other disorderly conduct in such premises, or knowingly permits known prostitutes or convicted criminals, rogues, vagabonds or incorrigible rogues to meet together or remain in such premises commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) Where a person is charged with permitting drunkenness in contravention of this section, and it is proved that a person was found drunk on his premises, the person shall prove that he or his employee took all reasonable steps to prevent drunkenness on the premises.

585. Drunk or disorderly in liquor shop or place of public resort and not leaving on request.

(1) A person who is drunk, riotous, quarrelsome or disorderly in any shop, house, premises, or place licensed for the sale of intoxicating liquors by retail, or kept for public refreshment, resort, and entertainment, and refuses or fails to leave such shop, house, premises, or place when requested to do so by the owner, manager or occupier or his agent or employee, or by any police officer commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) A police officer shall when required on the demand of an owner, manager, occupier, agent, or employee, assist in expelling from any shop, house, premises or place, any drunken, riotous, quarrelsome or disorderly person.

586. Unlawful entry into a band.

(1) In this section

“approved identification mark” means any badge, label or mark issued by the promoters or organizers of a public festival or approved by the promoters or organisers for the purpose of preventing unlawful entry into a band;

“authorized person” means

- (a) a member of the Police Force; or
- (b) any person authorized by the promoters or organizers of a public festival;

“band” means an organized group of persons assembled together in a band assembly area or proceeding together along a designated route in furtherance of the group’s participation in a public festival, whether or not in costume;

“band assembly area” means any area designated by the promoter or organizer of a public festival as an assembly area for bands taking part in the festival;

“designated route” means the route determined by the promoter or organizer of a public festival as the route to be followed by persons participating in the festival.

(2) At any public festival a person who

- (a) is not a member of a band; or
- (b) is not an authorized person,

enters the band without the permission of an authorized person while the band is in a band assembly area or on a designated route commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year or to both.

(3) A person who

- (a) unlawfully enters a band in contravention of subsection (2) after having been forbidden to do so by an authorized person;

- (b) uses threatening or abusive words or engages in threatening or disorderly behaviour likely to cause harassment or alarm or distress to any member of the band for the purpose of securing entry into the band for himself or for any other person; or
- (c) fails or refuses to leave the band after he has been directed to do so by an authorized person,

commits an offence, and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year or to both.

587. Offences relating to designated sporting events.

(1) In this section “designated sporting event” means a sporting event, or a sporting event of a particular description, designated by an order under subsection (7).

(2) A person who, at a designated sporting event, throws, without lawful authority or reasonable excuse, a missile of a kind that is capable of causing injury

- (a) at or towards any area in which spectators or other persons are or may be present; or
- (b) at or towards the playing area or any area adjacent to the playing area to which spectators are not generally admitted,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for two years.

(3) A person who at a designated sporting event, without lawful authority or reasonable excuse, proof of which lies on him, goes on to

- (a) the playing area; or
- (b) any area adjacent to the playing area to which spectators are not generally admitted,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for two years.

(4) A person who, in contravention of a prohibition by the organisers of a designated sporting event, has in his possession a bottle or other article made of glass

- (a) while entering or trying to enter the premises where the event is being held; or
- (b) during the event while being a spectator,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for two years.

(5) Where any police officer has reasonable cause to suspect that a person has concealed in his possession a bottle or other article made of glass in contravention of subsection (3), he may search that person and take whatever action is necessary in accordance with this Code.

(6) A person who, without the authority of the organizers of a designated sporting event, sells, offers to sell, or expose for sale, a ticket for that event

(a) in the course of trade or business, or

(b) in any public or other place,

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for six months.

(7) The Minister responsible for sport may by order designate a sporting event, or a sporting event of a particular description, for the purposes of this section.

(8) Where a person is convicted of an offence under this section, the court may make an order prohibiting that person from entering any premises for the purpose of attending one or more designated sporting events.

(9) The court shall make an order under subsection (8) if it is satisfied that there are reasonable grounds to believe that making the order will help to prevent violence or disorder at or in connection with designated sporting events.

(10) A reference in this section to things done at a designated sporting event includes anything done at the ground where the sporting event is scheduled to take place at a particular time

(a) within the period beginning four hours before the time at which the event is advertised to start and ending two hours after the end of the event; or

(b) where the event is advertised to start at a particular time on a particular day but does not take place on that day, within the period beginning four hours before and ending two hours after the advertised starting time of the event.

588. Interference with tools, etc., to coerce.

A person who, for the purpose of compelling any other person

- (a) to conduct himself in a particular manner with respect to his business or employment; or
- (b) to do any act, or to abstain from doing any lawful act of any kind;

injures, removes, or conceals any tools, materials, or other things used by him in his business or employment, or uses any violence to him or to any other person commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

Unlawful Assembly

589. Assembling in public place for unlawful purpose and not dispersing on request.

A person who assembles with other persons in any public way or public place or in any open space or ground in the immediate neighbourhood of such public way or public place

- (a) for any idle, lewd, vicious, or disorderly purpose; or
- (b) for a purpose other than in the regular performance or pursuit of any lawful occupation or purpose;

so as to cause the annoyance or obstruction of any passer-by or other user of such public way or public place or of any person residing in the neighbourhood, and does not disperse or move away when required to do so by any police officer, or person residing in or near such public way or public place, or by any passer-by or other user of such public way or public place commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

590. Disturbance at habitual meeting place.

(1) An owner, occupier, or person in charge of premises or place in which persons habitually assemble or meet for any purpose and every person present and taking part in such meeting or assembly who if their conduct on any occasion is such as to disturb the inhabitants of the neighbourhood commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) If in any proceeding under this section, it is proved to the satisfaction of the court that the person was present at such meeting, or assembly, the onus of proving that he did not act in contravention of this section lies on him.

(3) A person who complains of disturbance generally in respect of any such premises or other place may apply for a summons to be issued to the owner, occupier, or

person in charge of any such premises or place to show cause why the Court should not make such order in respect of the complaint as it considers proper.

(4) The court, after investigation of the complaint, may make an order requiring any person to enter into recognisance, or such order as it considers proper requiring the person to put an end to or prevent the recurrence of the disturbance complained of, and any person who fails to obey such order, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

Noise Abatement

591. Sounding or playing instrument near house after request to stop, or leave.

A person who, in any public way or place, sounds or plays upon any musical instrument near any house after being required to desist or depart by any peace officer, or by a person residing in or near such public place commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

592. Loudspeakers, etc. musical instruments.

(1) A person who, without reasonable excuse, proof of which lies on him

- (a) in any public place;
- (b) in or in connection with any business, or other place to which the public is admitted;
- (c) in any premises; or
- (d) in any vehicle,

by operating or allowing to be operated any musical instrument, speaker or amplifier causes, or allows to be made any loud and continuous sound or noise commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for six months.

(2) A person who, without reasonable excuse, proof of which lies on him by setting off or causing to be set off any alarm, or other similar device, makes or causes to be made any loud and continuous noise to the annoyance of the person living in or within the neighbourhood commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(3) Subsection (2) shall not apply to any ambulance, fire engine, police vehicle used in the execution of a public duty.

(4) For the purposes of subsections (1) and (2), a police officer may enter into such place or vehicle and seize and carry away any musical instruments, appliances or equipment or alarm or other similar device and these may be forfeited.

(5) Proceedings shall not be taken against any person for any offence under this section in respect of premises used as a public dance hall where the prior permission of the Commissioner of Police for the use of any such instrument described in this section has been obtained but such permission shall not be granted in respect of any dance hall between the hours from 2:00 a.m. and noon of the same day.

(6) The Commissioner of Police may designate such police officers as he may think fit in the districts for the purpose of granting permits under this section.

(7) A person shall not operate a loudspeaker except in accordance with the regulations providing for the modulation of loudspeakers.

593. Restriction of operation of loudspeakers.

(1) A person who operates a loudspeaker in any street or at any public or political meeting unless he has been issued a permit under section 596 to do so commits an offence and is liable on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for one year.

(2) Subsection (1) shall not apply to the operation of a loudspeaker

- (a) used for police, fire brigade or ambulance purposes or by local authorities within their areas;
- (b) used for communicating with persons on a vessel for the purposes of directing the movement of that or any other vessel;
- (c) if the loudspeaker forms part of a public telephone system;
- (d) if the loudspeaker
 - (i) is in or fixed to a vehicle; and
 - (ii) is operated solely for the entertainment of, or for communicating with, the driver of, or a passenger on the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic or road users; and
 - (iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity;

- (e) used by a travelling showman, for the purposes of a pleasure fair;
- (f) used in case of an emergency.

(3) Subsection (1)(b) shall not apply to the operation of any loudspeaker between the hours of 9:00 a.m. and 10:00 p.m. on the same day if the loudspeaker is

- (a) fixed to a vehicle which is used for the conveyance of a perishable commodity for human consumption; and
- (b) operated solely for informing members of the public (otherwise than by means of words) that the commodity is on sale from the vehicle; and
- (c) so operated as not to give reasonable cause for annoyance to persons in the vicinity.

(4) A person who operates a loudspeaker in contravention of subsection (3) is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for three months.

(5) Proceedings for an offence under this section may be taken before any Magistrate although the offence is committed outside the jurisdiction of his district or partly within the jurisdiction of his district and partly within the jurisdiction of another district.

(6) This section shall not apply to any body, organization, person, or persons specified in the Fourth Schedule as well as any committee, representative or representatives of that body, or organization whose members consist of or include all members of the body or organization.

(7) Cabinet may by order amend, vary or alter the Fourth Schedule.

594. Interpretation for sections 595 to 598.

For the purposes of sections 595 to 598

“election” means an election of a member or members to serve in the House of Assembly or town authority;

“electioneering period” means

- (a) in the case of the election of a member or members to serve in the House of Assembly, the period between the issue of the writ and polling day;
- (b) in the case of the election of a member or members to serve on the local authority fifteen days before the date set for the taking of a poll;

“electoral district” means an electoral district as defined by an order of the Governor-General;

“loudspeaker” includes a megaphone and other device for amplifying sound;

“meeting” means any assembly or gathering of persons held for the purpose of the transaction of matters of public interest or for the discussion of such matters or for the purpose of the expression of views upon such matters;

“permit” means a permit granted under section 596;

“political meeting” means a meeting held for the purpose of furthering or criticizing the aims, objects, actions, or policies or programme of any political party or for the purpose of supporting the intended candidature of any individual;

“polling day” means the day fixed for holding the poll at an election;

“public meeting” includes any meeting in a public place and any meeting which the public or any section thereof is permitted to attend, whether on payment or otherwise;

“public place” includes any public way, building, place or conveyance, to which for the time being the public are entitled to have access whether on payment or otherwise;

“street” includes any highway, boulevard, market place, park, square, Court, bridge, footway, and any other road which is lawfully used by the public;

“writ” means the writ for an election.

595. Notice to be given.

(1) A person shall not operate or permit to be operated any loudspeaker for the purpose of

(a) advertising any entertainment, trade, business; or

(b) making announcement and the holding of any public or political meeting, during any period, not being an electioneering period;

unless he or she first gives notice to the principal police station in the District.

(2) The notice shall be given

- (a) in the case of advertising any entertainment, trade or business, within twenty-four hours in advance of the intended advertisement, and must state the nature of the intended advertisement;
- (b) in the case of the announcement and holding of a public or political meeting not during an electioneering period, within twenty-four hours in advance of the holding of the meeting and with respect to a public meeting must state the nature of such meeting.

(3) Proceedings for an offence under this section may be taken before any Magistrate although the offence is committed outside the jurisdiction of his district or partly within the jurisdiction of his district and partly within the jurisdiction of another district.

596. Commissioner of Police to issue permit.

(1) The Commissioner of Police shall issue a permit in the form set out in the Fifth Schedule and on such conditions as to route as he may consider fit, for advertising any entertainment, trade or business or the announcement of any public or political meeting by loudspeaker.

(2) Any advertisement or announcement under subsection (1) shall take place between the hours of noon and 1:00 p.m. or 4:00 p.m. and 6:00 p.m. on the day permitted.

(3) Notwithstanding subsection (1) a permit is not required for the announcement of a political meeting during an electioneering period.

(4) A person who fails to comply with the conditions of any permit issued under subsection (1) or contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

(5) Proceedings for an offence under this section may be taken before any Magistrate although the offence is committed outside the jurisdiction of his district or partly within the jurisdiction of his district and partly within the jurisdiction of another district.

597. Hours of holding public and political meetings.

(1) The operation of any loudspeaker at any public or political meeting or rally

- (a) if it is not during an electioneering period, is permitted only between the hours of 7:00 p.m. and 11:00 p.m.; or
- (b) if it is during an electioneering period, is permitted only between 7:00 p.m. and 12:00 p.m.

(2) A person who person who is convicted under subsection (1) is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

(3) Proceedings for an offence under this section may be taken before any Magistrate although the offence is committed outside the jurisdiction of his district or partly within the jurisdiction of his district and partly within the jurisdiction of another district.

Vagrancy

598. Vagrant or idle or disorderly person.

A person who

- (a) wanders around, or places himself in any public way or public place, to solicit alms, or causes, procures, or encourages any child to do so;
- (b) enters, or is seen, or is found on or within any land or premises whether enclosed or not, without the leave of the owner, occupier, or person in charge of the land or premises, and does not give a good account of himself, or satisfy the Court that he has a right to be on the land or premises;
- (c) is an inmate of a disorderly house, brothel, or house of ill-repute, or house for the resort of prostitutes, or a keeper of a disorderly house, or house for the resort of prostitutes;
- (d) is in the habit of frequenting such houses or places and does not give a satisfactory account of himself;
- (e) being able by labour or other lawful means to maintain himself, or his wife or child, or her child, where such wife or child is without other means of support, refuses or neglects so to do;
- (f) not having any visible means of maintaining himself, lives without employment;
- (g) being a common prostitute or night walker, wanders in public streets or highways, lanes or places of public meeting or gathering of people or other public place and does not give a satisfactory account of herself;
- (h) having no profession or calling by which to maintain himself for the most part supports himself by crime;

is a vagrant or idle or disorderly person commits an offence and is liable on summary conviction to imprisonment for one month.

599. Rogue and vagabond.

A person who as a rogue or vagabond

- (a) solicits or endeavours to solicit alms or charitable contributions for himself or any other person, under any false or fraudulent pretence;
- (b) is convicted on more than one occasion of being a vagrant or idle or disorderly person;
- (c) is convicted on more than one occasion of an offence;
- (d) is convicted on more than one occasion of loitering about or importuning any passer-by for the purposes of prostitution;
- (e) exposes in any public place or within view of any public place any defamatory or insulting writing or object;
- (f) is found in or about any market, wharf, or jetty, or in or about any vessel, for any unlawful purpose;
- (g) is found in any verandah, gallery, outhouse, passage, gateway, dwelling-house, warehouse, store, stable, or other building, in any yard, garden or other enclosed place or land, for any unlawful purpose;
- (h) while being arrested as a vagrant or idle or disorderly person, violently resists the police officer or any other person arresting him, and is subsequently convicted of the offence for which he was being arrested;
- (i) has in his custody or possession any pick lock, key, crowbar, jack, bit, or other implement, with intent unlawfully to break into any building;
- (j) is armed with or has upon him any gun, pistol, or other firearm, or cutlass, sword, knife, razor, bludgeon, or other deadly or dangerous weapon or instrument, with intent to commit any unlawful act;
- (k) has in his custody or possession any such implement or weapon or instrument referred to in paragraphs (i) and (j) and does not give a satisfactory account of himself,

commits an offence and is liable on summary conviction to imprisonment for six months.

600. Incorrigible rogue.

A person who as an incorrigible rogue

- (a) commits an offence under this Code for which he is liable to be dealt with as a rogue and vagabond, the person having been previously convicted as such;
- (b) while being arrested as a rogue and vagabond, violently resists the police officer or any other person arresting him, and is subsequently convicted of the offence for which he was arrested,

commits an offence and is liable on summary conviction to imprisonment for one year.

601. Warrant for arrest of vagrant, rogue and vagabond or incorrigible rogue.

A Magistrate may, on an application accompanied by an affidavit by a police officer, issue a warrant authorizing any police officer to enter at any time such building or place and to arrest and bring the person before him, to be dealt with according to law if he is satisfied that any person reasonably suspected to be a vagrant or an idle or a disorderly person, or a rogue and vagabond, or an incorrigible rogue is, or is reasonably suspected to be harboured or concealed in any building or place,.

Public Worship Offences

602. Irreverence near place of worship during service, or cemetery during burial.

A person who

- (a) behaves irreverently near any church, chapel, or other building for religious worship during divine service;
- (b) behaves irreverently or indecently in or near any public burial ground during the burial of a dead body,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

603. Disturbing person in place of worship.

A person who

- (a) disturbs or molests any other person in any place of divine worship, whether during divine service or at any other time;
- (b) behaves in a riotous, indecent, disorderly, or insulting manner in any place of divine worship, whether during divine service or at any other time,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

604. Disturbing minister, etc, at celebration in public.

A person who disturbs or molests any minister of religion while celebrating any religious rite or office in any public way or public place, or any other person aiding, assisting, or attending at the celebration of such rite or office commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for one year.

Illegal Fishing nets

605. Offences relating to the use of fishing nets.

- (1) In this section

“ballahoo net” means a net constructed and used exclusively for the purpose of catching the fish;

“cast net” means a circular net constructed of small mesh and used exclusively for catching bait;

“fishing-net” includes

- (a) any kind of fishing-net;
- (b) any seine of which the meshes in the centre or bunt is less than one inch square or the meshes in the arms is less than two inches square;
- (c) any ballahoo net which is more than eighteen feet in width, or which must contain or consist of meshes of a smaller size than half-an-inch square,
- (d) any other kind of fishing-net the mesh of which is less than one inch square; excepting cast nets, which may contain or consist of meshes of any size;

“seine” means a seine net, constructed with arms.

- (2) A person who
 - (a) casts, draws or hauls or otherwise uses in any part of the sea around this state any fishing-net which in length or width is larger than, or the meshes of which are smaller than, the size from time to time prescribed by the Governor-General;
 - (b) whilst using a ballahoo net in the sea, draws or hauls the same from the water up to the shore or to any wharf or jetty or up into or on any vessel lying at the time within fifty feet of the shore; or
 - (c) makes use of any false-bottom cod or pouch or puts any fishing-net of any kind, even though of legal size or mesh, upon or behind another fishing net, in order to catch the small fry or breed of fish which would have passed through the meshes of any single fishing-net of legal size or mesh,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars to imprisonment for three months.

(3) A police officer may inspect and measure any fishing-net which he sees in any part of Country X whether or not the fishing-net has been seen in actual use.

(4) A police officer referred to under subsection (3) may, if upon inspection he is of opinion that the construction of a fishing-net contravenes this section, cause the fishing-net to be conveyed to the nearest convenient place where the fishing-net may be measured.

(5) If on inspection or measurement it is found that the construction of the fishing-net contravenes this section, it shall be seized and taken before a Magistrate who, upon being satisfied of such contravention, shall declare the fishing-net forfeited and the Magistrate may declare and order such forfeiture notwithstanding that a person has not been charged, in relation to or in connection with the fishing-net, with having committed an offence under this section or against any regulations made under section 489.

(6) Where a fishing-net is seized and no person, at the time of the seizure, is found in possession of the fishing-net, the order for its forfeiture shall not be declared by the Magistrate until the expiration of one calendar month after its seizure, or until, before the expiration of such month, the owner or other person entitled to the possession of the fishing-net comes forward to claim the fishing-net and has been given an opportunity of proving why it should not be forfeited.

(7) The Magistrate shall cause every fishing-net forfeited under this section to be delivered to the police for the purpose of being destroyed, and a non-commissioned

officer in charge of the police station where any such fishing-net is delivered shall immediately destroy the fishing-net.

(8) In any proceedings brought against any person on a charge of having committed an offence against this section or brought for the purpose of securing the forfeiture of a net under this section, the burden of proving that such person should not be convicted of such offence or that such forfeiture should not be ordered is on the person or upon the owner or person entitled to the possession of the net.

Trading on Sunday, etc.

606. Prohibition of selling of goods on Sunday and other specified days.

(1) A person who sells or causes or procures to be sold, or exposes for sale, any goods, or other articles on any Sunday, Christmas Day, or Good Friday commits an offence and is, in respect of each act of sale or exposure for sale, liable on summary conviction to a fine not exceeding one thousand dollars.

(2) Subsection (1) shall not apply to

- (a) the sale of any drugs or medicines;
- (b) the sale of ice;
- (c) the sale of fresh fish, butchers' meat or fresh fruit, not later than noon;
- (d) the sale of bread or milk;
- (e) the sale of cooked food in hotels, inn or taverns; and
- (f) the sale of any article required for the burial of a dead body, or in case of illness of any person or animal, where the seller has reasonable grounds for believing the article to be required for either of those purposes; the reasonableness to be determined by the Magistrate before whom the complaint is heard.

Practising Obeah, etc.

607. Practising obeah or other superstitious usages.

(1) A person who practices obeah, or by any occult means or by any assumption of supernatural power or knowledge intimidates or attempts to intimidate any person, or obtains or endeavours to obtain anything from any person, or pretends to discover any lost or stolen thing or the person who stole the thing, or to inflict any disease, loss,

damage or personal injury upon any person, or to restore any person to health commits an offence and is liable on summary conviction to imprisonment for three months.

(2) A person who imports, prints, publishes, sells or offers or keeps for sale any book, paper, writing or print, which in the opinion of the court has a tendency to propagate or encourage a belief in the efficacy of the practice of obeah commits an offence and is liable on summary conviction to imprisonment for three months.

(3) If it is made to appear, upon the oath of any credible witness, that there is reasonable cause to suspect that any person is in possession of any article or thing used, or intended to be used, by him in the practice of obeah or such other practice, a Justice of the Peace may, by warrant cause any place belonging to or under the control of the person to be searched, either in the day or in the night, and, if any such article or thing is found in any place so searched, to cause it to be seized and brought before him to be secured for the purpose of being produced in evidence in any case in which it may be required.

(4) Where any an article or thing is found under subsection (3), the person in whose possession the article or thing is found shall be deemed to be a person practicing obeah at the time at which the article or thing was so found unless and until the contrary is proved.

(5) If, on hearing of any case before any court, the court has reasonable cause to suspect that the accused person or any witness in the case then in court has concealed an instrument of obeah, the court may direct the police immediately to search the accused person without a written warrant, and if any instrument of obeah is found upon him, he is liable on summary conviction to a fine not exceeding one thousand dollars.

PART XXI

INCHOATE OFFENCES

Abetment and Conspiracy

608. Abetment of crime, and trial and punishment of abettor.

(1) A person who directly or indirectly, instigates, commands, counsels, procures, solicits, or in any manner purposely aids, facilitates, encourages, or promotes, whether by his act or presence or otherwise, the commission of a crime by any other person, whether known or unknown, certain or uncertain, and of abetting the other person in respect of that crime commits an offence.

(2) A person who abets a crime shall be deemed to have committed that crime if the crime is actually committed in pursuance or during the continuance of the abetment.

(3) A person who abets a crime, if the crime is not actually committed, is liable

(a) if the commission of the crime is prevented by reason only of accident, or of circumstances or events independent of the will of the abettor, the abettor, where the crime abetted was murder, is liable to imprisonment for life, or where the crime abetted was any crime other than murder, is punishable in the same manner as if the crime had been actually committed in pursuance of the abetment;

(b) in any other case the abettor, if the crime which he abetted was an indictable offence, shall be deemed to have committed the indictable offence, or, if such crime was a summary offence, shall be deemed to have committed the summary offence.

(4) A person who abets a crime is punishable on indictment or on summary conviction, according as he would be punishable for committing that crime.

(5) An abettor may be tried before, with, or after a person abetted, and although the person abetted is dead or is otherwise not amenable to justice.

(6) An abettor may be tried before, with, or after any other abettor, whether he and such other abettor abetted each other in respect of the crime or not, and whether they abetted the same or different parts of the crime.

(7) An abettor has the benefit of any matter of exemption, justification, or extenuation to which he or she is entitled under this Code, notwithstanding that the person abetted or any other abettor is not entitled to the like benefit.

(8) A person who within the jurisdiction of the courts, abets the doing of an act beyond the jurisdiction of the courts, if done within the jurisdiction, would be a crime, is punishable as if he had abetted that crime.

609. Cases where one crime is abetted and a different crime is committed.

(1) Where a person abets a particular crime, or abets a crime against or in respect of a particular person or thing, and the person abetted actually commits a different crime, or commits the crime against or in respect of a different person or thing, or in a manner different from that which was intended by the abettor

(a) if it appears that the crime actually committed was not a probable consequence of the endeavour to commit, nor was substantially the same as the crime which the abettor intended to abet, nor was within the scope of the abetment, the abettor is punishable for his abetment of the crime which he intended to abet in the manner provided by this Part with respect to the abetment of crimes which are not actually committed; and

- (b) in any other case, the abettor shall be deemed to have abetted the crime which was actually committed, and is liable to be punished under this Part.

(2) If a person abets a riot or unlawful assembly, with the knowledge that unlawful violence is intended or is likely to be used, he commits the offence of abetting violence of any kind or degree which is committed by any other person in executing the purposes of the riot or assembly, although he did not expressly intend to abet violence of that kind or degree.

610. Prevention of crime.

A person who, knowing that a person intends to commit or is committing a crime, fails to use all reasonable means to prevent the commission or completion of the crime commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

611. Conspiracy.

(1) If two or more persons agree to act together with a common purpose in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them commits conspiracy to commit that crime.

(2) It is immaterial if the crime was not actually committed due to the existence of circumstances which rendered the commission of the crime impossible.

(3) Where a person aids and abets the commission of a crime by another person and that other person in any manner assents to the abetment, each of them commits the offence of conspiracy to commit such crime even though it is not part of their purpose that the person aiding and abetting the other should take any part in or towards the preparation for, or the commission of, such crime.

(4) A person within the jurisdiction of the courts commits conspiracy by agreeing with another person who is beyond the jurisdiction for the commission or abetment of any crime to be committed by them or either of them, or by any other person, either within or beyond the jurisdiction.

(5) In this section as to a crime to be committed beyond the jurisdiction, "crime" means any act which, if done within the jurisdiction, would be a crime under this Code or under any other enactment.

(6) If two or more persons commit conspiracy for the commission or abetment of any crime, each of them is, in case the crime is committed, punished as for that crime according to the provisions of this Code, or is, in case the crime is not committed, punished as if he had abetted that crime.

(7) Where a party to the agreement commits any act beyond or acts on his own beyond what has been agreed by the parties, the other parties are not liable for the consequences of that unauthorized act.

(8) Any court having jurisdiction to try a person for a crime has jurisdiction to try a person charged with conspiracy to commit or abet that crime.

Attempts to Commit Crimes

612. Attempt to commit crime.

(1) A person commits the offence of attempting to commit an offence if the person, with intent to commit an offence a person does an act which is more than merely preparatory to the commission of the offence.

(2) A person may be convicted of attempting to commit an offence even though the facts are such that the commission of the offence is impossible.

(3) Where but for this section a the intention of a person would not otherwise be regarded as having amounted to an intent to commit an offence, if however the facts of the case had been as he believed them to be, his intention would be so regarded then for the purposes of subsection (1), he is regarded as having had an intention to commit that offence.

(4) A person who is convicted of attempting to commit an offence, he is liable to the punishment to which he would have been liable if the offence had been committed.

(5) Where an act amounts to an offence under any provisions of this Code and at the same time constitutes an attempt to commit some other offence a person who commits an attempt to commit that offence, is liable to be punished under that provision or under this section.

(6) Any provision of this Code with respect to intent, exemption, justification, or extenuation, or any other matter in the case of any act, shall apply with such modifications as are necessary, to the case of an attempt to do that act.

613. Preparation for committing crime.

A person who prepares or supplies, or has in his possession, custody, or control, or in the possession, custody, or control of any other person on his behalf, any instruments, materials, or means, with the intention that such instruments, materials, or means, may be used by him or by any other person, in committing any offence which is likely to endanger life, forgery, crime relating to money, or indictable offence punishable by imprisonment for ten years commits an offence and is liable to punishment in like manner as if he had attempted to commit that crime; and any such instruments, materials, or means shall be forfeited and applied as the court directs.

Encouraging or assisting

614. Intentionally encouraging or assisting an offence.

(1) A person commits an offence if that person

- (a) does an act capable of encouraging or assisting the commission of an offence; and
- (b) intends to encourage or assist its commission.

(2) A person is not to be taken to have intended to encourage or assist the commission of an offence under subsection (1) merely because such encouragement or assistance was a foreseeable consequence of his act.

615. Encouraging or assisting an offence believing it will be committed.

A person commits an offence if that person

- (a) does an act capable of encouraging or assisting the commission of an offence; and
- (b) believes
 - (i) that the offence will be committed; and
 - (ii) that his act will encourage or assist its commission.

616. Encouraging or assisting offences believing one or more will be committed.

(1) A person commits an offence if that person

- (a) does an act capable of encouraging or assisting the commission of one or more of a number of offences; and
- (b) believes
 - (i) that one or more of those offences will be committed but has no belief as to which; and
 - (ii) that his act will encourage or assist the commission of one or more of them.

(2) It is immaterial for the purposes of subsection (1)(b)(ii) whether the person has any belief as to which offence will be encouraged or assisted.

(3) If a person is charged with an offence under subsection (1) the indictment shall specify the offences alleged to be the number of offences under paragraph (a) of that subsection but nothing in paragraph (a) of subsection (1) requires all the offences potentially comprised in that number to be specified.

(4) In relation to an offence under this section, a reference in this Part to the offences specified in the indictment is to the offences specified under subsection (3).

617. Proving an offence under sections 614 to 616.

(1) Sections 614 to 616 are to be read in accordance with this section.

(2) If it is alleged under section 614(1)(b) that a person (D) intended to encourage or assist the commission of an offence, it is sufficient to prove that he intended to encourage or assist the doing of an act which would amount to the commission of that offence.

(3) If it is alleged under section 615(b) that a person (D) believed that an offence would be committed and that his act would encourage or assist its commission, it is sufficient to prove that he believed -

(a) that an act would be done which would amount to the commission of that offence; and

(b) that his act would encourage or assist the doing of that act.

(4) If it is alleged under section 616(1)(b) that a person (D) believed that one or more of a number of offences would be committed and that his act would encourage or assist the commission of one or more of them, it is sufficient to prove that he believed

(a) that one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and

(b) that his act would encourage or assist the doing of one or more of those acts.

(5) In proving for the purposes of this section whether an act is one which, if done, would amount to the commission of an offence

(a) if the offence is one requiring proof of fault, it must be proved that

(i) D believed that, were the act to be done, it would be done with that fault;

(ii) D was reckless as to whether or not it would be done with that fault; or

- (iii) D's state of mind was such that, were he to do it, it would be done with that fault; and
 - (b) if the offence is one requiring proof of particular circumstances or consequences (or both), it must be proved that
 - (i) D believed that, were the act to be done, it would be done in those circumstances or with those consequences; or
 - (ii) D was reckless as to whether or not it would be done in those circumstances or with those consequences.
- (6) For the purposes of subsection (5)(a)(iii), D is to be assumed to be able to do the act in question.
- (7) In the case of an offence under section 614
 - (a) subsection (5)(b)(i) is to be read as if the reference to "D believed" were a reference to "D intended or believed"; but
 - (b) D is not to be taken to have intended that an act would be done in particular circumstances or with particular consequences merely because its being done in those circumstances or with those consequences was a foreseeable consequence of his act of encouragement or assistance.
- (8) Reference in this section to the doing of an act includes reference to
 - (a) a failure to act;
 - (b) the continuation of an act that has already begun;
 - (c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence).
- (9) In sections 618 and 619 (unless otherwise provided) a reference to the anticipated offence is
 - (a) in relation to an offence under section 614, a reference to the offence mentioned in subsection (2); and
 - (b) in relation to an offence under section 615, a reference to the offence mentioned in subsection (3).

618. Proving an offence under section 616.

(1) This section makes further provision about the application of section 617 to an offence under section 616.

(2) It is sufficient to prove the matters mentioned in section 617(5) by reference to one offence only.

(3) The offence or offences by reference to which those matters are proved must be one of the offences specified in the indictment.

(4) Subsection (3) does not affect any enactment or rule of law under which a person charged with one offence may be convicted of another and is subject to section 624.

619. Supplemental provisions.

(1) A person may commit an offence under this Part whether or not any offence capable of being encouraged or assisted by his act is committed.

(2) If a person's act is capable of encouraging or assisting the commission of a number of offences

(a) section 614 applies separately in relation to each offence that he intends to encourage or assist to be committed; and

(b) section 615 applies separately in relation to each offence that he believes will be encouraged or assisted to be committed.

(3) A person may, in relation to the same act, commit an offence under more than one provision of this Part.

(4) In deciding whether

(a) for the purposes of section 614, an act is capable of encouraging or assisting the commission of an offence; or

(b) for the purposes of section 615, an act is capable of encouraging or assisting the commission of one or more of a number of offences;

offences under this Part and listed offences are to be disregarded.

(5) In subsection (4) "listed offence" means an offence listed in Part 1, 2 or 3 of Sixth Schedule.

(6) The Attorney General may by order amend the Sixth Schedule.

(7) For the purposes of sections 615(b)(i) and 616(1)(b)(i) it is sufficient for the person concerned to believe that the offence (or one or more of the offences) will be committed if certain conditions are met.

Reasonableness defence

620. Defence of acting reasonably.

- (1) A person is not guilty of an offence under this Part if he proves
 - (a) that he knew certain circumstances existed; and
 - (b) that it was reasonable for him to act as he did in those circumstances.
- (2) A person is not guilty of an offence under this Part if he proves
 - (a) that he believed certain circumstances to exist;
 - (b) that his belief was reasonable; and
 - (c) that it was reasonable for him to act as he did in the circumstances as he believed them to be.
- (3) Factors to be considered in determining whether it was reasonable for a person to act as he did include
 - (a) the seriousness of the anticipated offence (or, in the case of an offence under section 616, the offences specified in the indictment);
 - (b) any purpose for which he claims to have been acting;
 - (c) any authority by which he claims to have been acting.

Limitation on liability

621. Prosecution of offences triable by reason of First Schedule.

No proceedings for an offence triable by reason of any provision of the First Schedule may be instituted in Country X, except by, or with the consent of, the Director of Public Prosecutions.

622. Persons who may be perpetrators or encouragers etc.

- (1) In proceedings for an offence under this Part (“the inchoate offence”) the

person may be convicted if

- (a) it is proved that he must have committed the inchoate offence or the anticipated offence; but
- (b) it is not proved which of those offences he committed.

(2) For the purposes of this section, a person is not to be treated as having committed the anticipated offence merely because he aided, abetted, counselled or procured its commission.

(3) In relation to an offence under section 616, a reference in this section to the anticipated offence is to be read as a reference to an offence specified in the indictment.

623. Alternative verdicts and guilty pleas.

(1) If in proceedings on indictment for an offence under section 614 or 615 a person is not found guilty of that offence by reference to the specified offence, he may be found guilty of that offence by reference to an alternative offence.

(2) If in proceedings for an offence under section 616 a person is not found guilty of that offence by reference to any specified offence, he may be found guilty of that offence by reference to one or more alternative offences.

(3) If in proceedings for an offence under section 616 a person is found guilty of the offence by reference to one or more specified offences, he may also be found guilty of it by reference to one or more other alternative offences.

(4) For the purposes of this section, an offence is an alternative offence if

- (a) it is an offence of which, on a trial on indictment for the specified offence, a person may be found guilty; or
- (b) it is an indictable offence, or one to which the power to include count for common assault etc. in indictment applies, and the condition in subsection (5) is satisfied.

(5) The condition is that the allegations in the indictment charging the person with the offence under this Part amount to or include (expressly or by implication) an allegation of that offence by reference to it.

(6) Subsection (4)(b) does not apply if the specified offence, or any of the specified offences, is murder or treason.

(7) In the application of subsection (5) to proceedings for an offence under section 614, the allegations in the indictment are to be taken to include an allegation of that offence by reference to the offence of attempting to commit the specified offence.

(8) Section 619 (4) applies to an offence which is an alternative offence in relation to a specified offence as it applies to that specified offence.

(9) In this section

- (a) in relation to a person charged with an offence under section 614 or 615, “the specified offence” means the offence specified in the indictment as the one alleged to be the anticipated offence;
- (b) in relation to a person charged with an offence under section 616, “specified offence” means an offence specified in the indictment (within the meaning of subsection (4) of that section), and related expressions are to be read accordingly.

(10) A person arraigned on an indictment for an offence under this Part may plead guilty to an offence of which he could be found guilty under this section on that indictment.

(11) This section applies to an indictment containing more than one count as if each count were a separate indictment.

PART XXII

UNLAWFUL GANGS

624. Instructing a person who participates in an unlawful gang to commit an offence

(1) Any person who knowingly instructs, directly or indirectly, a person who participates in or actively contributes to unlawful gang activity to commit an offence is guilty of an offence of the same kind, and is liable to the same punishment (including an additional element under section 625) as if he himself had committed that offence.

(2) In a prosecution for an offence under subsection (1), it shall not be necessary to prove that —

- (a) an offence other than the offence under subsection (1) was actually committed;
- (b) the person instructed a particular person to commit an offence; or

- (c) the person knew the identity of all of the persons who constitute the unlawful gang.

(3) Section 625 (unlawful gang and unlawful gang activity-interpretation) applies for the purposes of this section.

625. Unlawful gang and unlawful gang activity - interpretation

- (1) For the purpose of this Part —

“unlawful gang” means a group, however organised, that—

- (a) is composed of three or more persons; and
- (b) has as one of its purposes or activities the facilitation or commission of one or more offences, that, if committed, would likely result in the direct or indirect receipt of a material benefit (including a financial benefit), by the group or by one of the persons who constitute the group;

“unlawful gang activity” means unlawful criminal acts committed by—

- (a) an unlawful gang; or
- (b) a person participating in or actively contributing to the activity of an unlawful gang.

- (2) In determining whether a person participates in or actively contributes to unlawful gang activity, the court may consider if the person—

- (a) uses a name, word, symbol, or other representation that identifies, or is associated with, an unlawful gang;
- (b) frequently associates with any of the persons who constitute an unlawful gang;
- (c) receives any benefit from an unlawful gang; or
- (d) frequently engages in activities at the instruction of any of the persons who constitute an unlawful gang.

626. Unlawful gang activity - increased sentence

- (1) Where a person is being sentenced for an offence which (whether wholly or partly) falls within the definition of unlawful gang activity, the court shall—

- (a) first determine the sentence (“the basic sentence”) in accordance with established principles but without regard to this section; then
 - (b) where the basic sentence includes a term of imprisonment or a fine, increase the sentence by adding an additional element determined in accordance with subsection (2).
- (2) The additional element shall be—
- (a) a term of imprisonment of at least three years but not more than five years, where the basic sentence includes a term of imprisonment of seven years or more; or
 - (b) a term of imprisonment of at least one year but not more than three years, where the basic sentence includes a term of imprisonment for less than seven years; or
 - (c) a fine of at least \$1,000 but not more than \$10,000, where the basic sentence includes a fine.
- (3) The court shall not add an additional element under this section where the basic sentence is one of imprisonment for life.
- (4) All profits, proceeds, and instrumentalities of unlawful gang activity and all property used or intended or attempted to be used to facilitate the unlawful gang activity of any unlawful gang or of any unlawful gang member are subject to seizure and forfeiture under the provisions of this Code

PART XXIII

OFFENCES RELATING TO THE POSSESSION AND USE OF EXPLOSIVES

627. Preparation to commit offences with explosives etc

(1) Any person who makes or knowingly has in his possession any explosive substance, or any dangerous or noxious engine, instrument or thing whatsoever, with intent by means thereof to commit, or for the purpose of enabling any other person by means thereof to commit, any indictable offence, is liable on conviction on indictment to imprisonment for five years.

(2) A person may be arrested without warrant by a police officer.

628. Endangering life etc by explosives

(1) Any person who, by the explosion of any explosive substance, wilfully and unlawfully destroys or damages—

- (a) any building or vessel with intent to cause the death of any person, or whereby the life of any person is endangered; or
- (b) any dwelling-house or vessel, any person being therein,

is liable on conviction on indictment to imprisonment for a term not exceeding twenty years on indictment.

629. Causing bodily injury by explosion

Any person who, by the unlawful and wilful explosion of any explosive substance, burns, maims, disfigures, disables, or does any grievous bodily harm to, any person, is liable on conviction on indictment to imprisonment for seven years.

630. Placing explosive substance with intent to harm

Any person who unlawfully, and with intent to do any harm to another person, puts any explosive substance in any place whatsoever, is liable on conviction on indictment to imprisonment for seven years.

631. Placing explosive substance with intent to destroy or damage property

Any person who unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatsoever, is liable on conviction on indictment to imprisonment for ten years.

632. Making and possession of petrol bombs etc

Any person who makes, or has in his possession, any apparatus, instrument, article or thing which—

- (a) contains any inflammable liquid or substance; or
- (b) is constructed or adapted for use in conjunction with any such liquid or substance so as to cause injury or loss of life to any person or damage to any property,

under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession for a lawful object is, unless he can show that he made it or had it in his possession for a lawful object, guilty of an offence and is liable on summary conviction to imprisonment for two years and on conviction on indictment to imprisonment for five years.

633. Use of petrol bombs etc

Any person who, with intent to cause the destruction of or damage to property of

another or in which another has an interest, or to cause personal injury to another, or to give another reasonable cause to fear any destruction of property or personal injury or, being reckless in regard to causing any such destruction, damage, injury or fear, throws, places, attaches or otherwise makes use of any such apparatus, instrument, article or thing as is mentioned in section 540 is guilty of an offence and is liable on summary conviction to imprisonment for one year and on conviction on indictment to imprisonment for ten years.

PART XXIV

PIRACY

634. Definition of piracy in general

(1) In this Part “pirate” includes any person who on the high seas commits otherwise than as an act of war and under the authority of some Foreign State any act with respect to a ship, or any goods or merchandise belonging to a ship, or laden upon it, which, if the act were committed on land, would constitute robbery contrary to section 312, and any person who, having on the high seas obtained possession of a ship by means of any such act, retains possession thereof.

(2) The act of any such person is called “piracy”.

635. Further definition of pirates

(1) Any person who does any of the following acts is also deemed to be a pirate and his act is also called piracy, that is to say,—

(a) forcibly enters a Country X ship and throws overboard or destroys any part of the goods or merchandise belonging to the ship or laden upon it; or

(b) being on board a Country X ship —

(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 upon it; or

(ii) voluntarily yields up the ship or any such thing as last mentioned 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, the master or any officer of the 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; 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
- (c) on board a Country X ship in any part of the world —
 - (i) knowingly trades with a pirate in any manner whatsoever; or
 - (ii) knowingly furnishes a pirate with ammunition, provisions or stores of any kind; or
 - (iii) knowingly fits out a ship or vessel with a design to trade with, or supply or correspond with, a pirate; or
 - (iv) knowingly conspires or corresponds with a pirate

636. Punishment of piracy

Any person who, within the territorial jurisdiction of Country X, commits piracy, is liable on conviction on indictment to imprisonment for life.

637. Attempted piracy with personal violence

Any person who, within the territorial jurisdiction of Country X, does any of the following acts with intent to commit the offence of piracy with respect to a ship—

- (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,

is liable on conviction on indictment to imprisonment for life.

638. Aiding pirates

Any person who consults or conspires with, or who 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 liable on conviction on indictment to imprisonment for life.

PART XXV

RESTRAINING ORDER

639. Court Sentencing

(1) For the purposes of this Part –

“intimidation” of a person means:

- (a) conduct amounting to harassment or molestation of the person, or
- (b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, or
- (c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.

For the purpose of determining whether a person's conduct amounts to intimidation, a court may have regard to any pattern of violence in the defendant's behaviour.

"stalking" includes the following of a person about or the watching or frequenting of the vicinity of, or an approach to, a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.

For the purpose of determining whether a person's conduct amounts to stalking, a court may have regard to any pattern of violence in the person's behaviour.

"domestic relationship" means if a defendant:

- (a) is or has been married to the other person, or
- (b) is or has been a de facto partner of that other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household as the other person, or

- (e) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person.

(2) A court sentencing or otherwise dealing with a defendant convicted of any of the following offences may (as well as sentencing him or dealing with him in any other way) make an order under this section:

- (a) an offence contrary to this Code under or mentioned in section 128, 129, 138, 141, 142, 143, 144, 145, 146, 147, 154, 155, 156, 158 or 492; or
- (b) Conspiracy to murder contrary to section 130; or
- (c) an offence of attempting to commit an offence referred to in paragraph (a)

(3) The order for the purposes of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which—

- (a) amounts to intimidation, or
- (b) stalking.

(4) The order may have effect for a specified period or until further order.

(5) In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be or has been admissible in proceedings for a civil injunction.

(6) The Director of Public Prosecutions, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(7) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (6).

(8) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.

(9) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for five years, or a fine, or both; or
- (b) on summary conviction, to imprisonment for one year, or a fine of \$5,000 or both.

(10) A court dealing with a person for an offence under subsection (9) may vary or discharge the order in question by a further order.

640. Restraining orders on acquittal

(1) A court before which a person (“the defendant”) is acquitted of an offence referred to in section 639 (2) may, if it considers it necessary to do so to protect a person from intimidation or stalking by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (3) to (5) of section 639 apply to an order under this section as they apply to an order under that one.

(3) Where an appeal against conviction for an offence listed in section 639 (2) is allowed the matter may be may remitted to the court that acquitted the defendant to consider whether to proceed under this section.

(4) A person made subject to an order under this section has the same right of appeal against the order as if he had been convicted of the offence in question before the court which made the order.

(5) The Director of Public Prosecutions, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(6) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (6).

(7) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.

(8) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for five years, or a fine, or both; or

(b) on summary conviction, to imprisonment for one year, or a fine of five thousand dollars or both.

(9) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.

PART XXVI

MISCELLANEOUS

641. Dispersal of groups and removal of persons under 17 to their place of residence

(1) For the purposes of this section “anti-social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as the person

(2) This section applies where a police officer not below the rank of inspector has reasonable grounds for suspecting that in a locality where anti-social behaviour is a significant and persistent problem—

- (a) any member of the public has been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons in a public place in that locality; or
- (b) the presence or behaviour of a group of two or more persons in any public place in the relevant locality has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed.

(3) The police officer referred to under subsection (2) may in pursuance of subsection (2), give an authorisation that the powers conferred on a police officer under subsections (7) to (9) are to be exercisable for a period not exceeding two weeks, specified in the authorisation.

(4) If an inspector gives an authorisation under subsection (3), he must as soon as practicable, inform or cause a police officer of or above the rank of superintendent to be informed.

(5) If it appears to a police officer of or above the rank of superintendent that it is expedient to do so, having regard to offences which have or are reasonably suspected to have been committed or are reasonably suspected to be likely to be committed in connection with any activity falling within the authorisation, the police officer may direct that the authorisation shall continue in force for a further period not exceeding one month or be reduced.

(6) A direction given under subsection (5) shall be in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

(7) In pursuance of subsection (3) and subject to subsection (8), a police officer may give any of the following directions—

- (a) a direction requiring the persons in the group to disperse (either immediately or by such time as the officer may specify and in such way as the officer may specify);
- (b) a direction requiring any of those persons whose place of residence is not within the relevant locality to leave the relevant locality or any part of the relevant locality (either immediately or by such time as the officer may specify and in such way as the officer may specify); and
- (c) a direction prohibiting any of those persons whose place of residence is not within the relevant locality from returning to the relevant locality or any part of the relevant locality for such period (not exceeding two weeks) from the day of the giving of the direction as he may specify.

(8) A direction under subsection (7) may not be given in respect of a group of persons who are taking part in a lawful public procession or lawful industrial action

(9) If, between the hours of 9:00pm and 6:00am, a police officer finds a person in any public place in the relevant locality who he has reasonable grounds to believe—

- (a) is under the age of 17; and
- (b) is not under the effective control of a parent or a responsible person aged 18 or over,

he may remove the person to the person's place of residence unless the officer has reasonable grounds for believing that the person would, if removed to that place, be likely to suffer significant harm.

(10) In this section any reference to the presence or behaviour of a group of persons is to be read as including a reference to the presence or behaviour of any one or more of the persons in the group.

642. Authorisations under section 641: supplemental provisions

- (1) An authorisation under section 641 (3) must—
 - (a) be in writing;
 - (b) be signed by the officer giving it; and
 - (c) specify—
 - (i) the relevant locality;

- (ii) the grounds on which the authorisation is given; and
- (iii) the period during which the powers conferred by section 641 (7) to (9) are exercisable.

(2) Publicity must be given to an authorisation given under section 641 (3) and the extension or reduction of an authorisation given under section 641 (5) by either or both of the following methods—

- (a) publishing an authorisation notice in a newspaper with wide circulation;
- (b) posting an authorisation notice in a conspicuous place or places within the relevant locality.

(3) “authorisation notice” is a notice which—

- (a) states the authorisation has been given;
- (b) specifies the relevant locality; and
- (c) specifies the period during which the powers conferred by section 641 (7) to (9) are exercisable.

(4) Subsection (2) must be complied with before the beginning of the period mentioned in subsection (3)(c).

(5) An authorisation may be withdrawn by—

- (a) the officer who gave it; or
- (b) any other officer whose rank is higher than that of the officer mentioned in paragraph (a).

(6) The withdrawal of an authorisation does not affect the exercise of any power pursuant to that authorisation in respect of a matter which occurred prior to its withdrawal.

(7) The giving or withdrawal of an authorisation does not prevent the giving of a further authorisation in respect of a locality which includes the whole or any part of the relevant locality to which the earlier authorisation relates.

(8) In this section “authorisation” means an authorisation under section 636 (3).

643. Powers under section 641: supplemental

(1) A direction under section 641 (7) —

- (a) may be given orally;
- (b) may be given to an individual or to two or more persons together;
and
- (c) may be withdrawn or varied by the person who gave it.

(2) A person who refuses to comply with a direction given to him by a police officer under section 641 (7) or resists removal by a police officer under section 641 (9), commits an offence and is liable on summary conviction to three months imprisonment or to a fine of three thousand dollars or both.

(3) A police officer may arrest without warrant any person he reasonably suspects has committed an offence under subsection (2).

(4) The powers conferred under section 642 are in addition to and not in derogation of any power otherwise conferred.

644. Offences by corporations.

(1) Where a body corporate is guilty of an offence under this Code and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

645. Immunity notice.

(1) The Director of Public Prosecutions may issue an immunity notice in the form set out as Form 1 in the Eighth Schedule if he is satisfied that there are reasonable grounds to believe that for the purposes of an investigation or prosecution of any offence it is appropriate to offer any person immunity from prosecution.

(2) Where a person is given an immunity notice, proceedings for an offence of a description specified in the notice shall not be brought against that person except in circumstances specified in the notice.

(3) An immunity notice shall cease to have effect in relation to the person to whom it is issued if the person fails to comply with any conditions specified in the notice.

646. Restricted use undertaking.

(1) The Director of Public Prosecutions may issue a restricted use undertaking in the form set out as Form 2 in the Eighth Schedule if he is satisfied there are reasonable grounds to believe that for the purposes of an investigation or prosecution of any offence it is appropriate to offer any person an undertaking that information of any description will not be used against the person in any proceedings.

(2) Where a person is given a restricted use undertaking, the information described in the undertaking must not be used against that person in any proceedings to which this section applies except in the circumstances specified in the undertaking.

(3) A restricted use undertaking shall cease to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the undertaking.

647. Reduction in sentence for assistance by defendant.

(1) Where a defendant who pleads guilty is either convicted of an offence in proceedings in the High Court or is committed to the High Court for sentence, and has, pursuant to a written agreement made with the Director of Public Prosecutions, assisted or offered to assist the investigator or Director of Public Prosecutions in relation to that or any other offence, in determining the sentence the court may take into account the extent and nature of the assistance given or offered.

(2) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, the court shall state in open court

- (a) that it has passed a lesser sentence than it would otherwise have passed;
and
- (b) what the greater sentence would have been.

(3) Subsection (2) shall not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court shall give written notice of the matters specified in subsection (2)(a) and (b) to both the Director of Public Prosecutions and the accused person.

(4) Nothing in any enactment which

- (a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any defendant, whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances; or
- (b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which

determines or has the effect of determining the minimum period of imprisonment which the accused person must serve, whether or not the enactment also permits the court to fix a lesser period in particular circumstances;

affects the power of a court to act under subsection (2).

(5) If, in determining the sentence the court takes into account the extent and nature of the assistance given or offered referred to in subsection (1), that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining

- (a) the sentence; or
- (b) in the case of a sentence which is fixed by law, any minimum period of imprisonment which an accused person must serve.

648. Review of sentence from assistance by defendant.

(1) Where the High Court has passed a sentence on a person in respect of an offence and the defendant receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the Director of Public Prosecutions or investigator of an offence

- (a) but he knowingly fails to any extent to give assistance in accordance with the agreement; and
- (b) having given the assistance in accordance with the agreement, in pursuance of another written agreement gives or offers to give further assistance;
- (c) he subsequently gives or offers to give assistance to the Director of Public Prosecutions or investigator of an offence.

the Director of Public Prosecutions may at any time refer the case back to the court by which the sentence was passed if the defendant is still serving his sentence and the Director of Public Prosecutions thinks it is in the interests of justice to do so.

(2) A case referred under subsection (1) shall, if possible, be heard by the Judge who passed the sentence to which the referral relates.

(3) Where the court is satisfied that a defendant who falls within subsection (1)(a) knowingly failed to give the assistance, the court may substitute for the sentence to which the referral relates such greater sentence, not exceeding that which it would have passed but for the agreement to give assistance, as it thinks fit.

- (4) In the case of a defendant who falls within subsection (1)(b) or (c) the court may
- (a) take into account the extent and nature of the assistance given or offered;
 - (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks fit.

(5) Any part of the sentence to which the referral relates which the defendant has already served must be taken into account in determining when a greater or lesser sentence imposed pursuant to subsection (3) or (4) has been served.

(6) A person in respect of whom a reference is made under this section and the Director of Public Prosecutions may with the leave of the court, appeal to the Court of Appeal against the decision of the High Court.

649. Exclusion of public.

(1) In any proceedings relating to a reference made under section 647 and any other proceedings arising in consequence of such proceedings the court in which the proceedings will be or are being heard may make such order as it thinks fit to

- (a) exclude from the proceedings a defendant referred to in section 647 (1);
- (b) give such directions as it thinks fit prohibiting the publication of any matter relating to the proceedings, including the fact that the reference has been made.

(2) An order under subsection (1) may be made only to the extent that the court thinks that it is

- (a) necessary to do so to protect the safety of any person; and
- (b) in the interests of justice.

(3) The following persons shall not be excluded from the proceedings

- (a) a member or officer of the court;
- (b) a party to the proceedings;
- (c) attorney-at-law for a party to the proceedings;
- (d) a person otherwise directly concerned with the proceedings.

(4) This section shall not affect any other power which the court has by virtue of any rule of law or other enactment

- (a) to exclude any person from proceedings; or
- (b) to restrict the publication of any matter relating to proceedings.

650. Arrest, etc., where consent of Director of Public Prosecutions is necessary

Where in this Code, or in any other written law, it is provided that no prosecution shall be commenced, instituted or take place except by or with the consent of the Director of Public Prosecutions or any other person or authority, such provision shall not be deemed to prevent the arrest, or the issue of a warrant for the arrest of, a person for such an offence or the remand in custody or on bail of a person charged with such an offence, pending the decision of the Director of Public Prosecutions or such other person or authority on such matter.

651. Alternative convictions

Without prejudice to the provisions of any other enactment or other provisions of this Code, where a person is charged with an offence set out in the first column of the Ninth Schedule if the court finds that he is not guilty of the offence charged but that, on the evidence before it, he is guilty of an offence under another section of this Code which is set out in the second column of the Ninth Schedule, he may be convicted of that offence although he was not charged with it.

652. Restrictions under the common law

Where any act or omission constitutes an offence under this Code and also under common law, proceedings in respect of that offence shall be brought under the relevant provisions of this Code and not under common law and the common law offence in any case shall, in respect of its application in Country X, be deemed to have been abolished.

653. Abolition of distinction between felonies and misdemeanours

(1) All distinctions between felonies and misdemeanours are hereby abolished.

(2) Subject to the provisions of this Code and any enactment which previously makes a distinction between felony and misdemeanor. The law and practice in relation thereto shall be the same as the law and practice applicable to misdemeanours immediately before the date of commencement of this Code.

[654. Family Court

(1) Notwithstanding the provisions of the [Criminal Procedure Code] and of this Code or any other law, as from the commencement of the [Family Court Act 1992], the following matters shall fall under the sole jurisdiction of the Family Court -

- (a) summary trials of all sexual offences under Part VIII
- (b) preliminary inquiries in relation to sexual offences as defined in Part VIII;
- (c) preliminary inquiries of all offences tried on indictment where the defendant or any one of several defendants charged jointly is under the age of eighteen years.

(2) The words “magistrate” and “court” in relation to trial of offence at subsection (1) (a), (1) (b) or (1) (c) shall where they appear to be construed to mean “a judicial officer of the Family Court” and the “Family Court” respectively

655. Transitional

(1) The provisions of this Code, save as otherwise provided, shall have effect only in relation to offences wholly or partly committed on or after the coming into operation of this Code.

(2) No repeal or amendment by this Code of any law creating offences or relating to the procedure or evidence or to the jurisdiction or powers of any court or to the effect of a conviction shall affect the operation of the law in relation to offences committed before the commencement of this Code or to proceedings for any such offence.

(3) Where it is not certain whether an offence was committed before or after the commencement of this Code, it shall be charged under this Code; and if it shall subsequently appear that the offence was committed before the commencement of this Code such fact shall not prevent or invalidate a conviction unless the facts as found by the court do not constitute an offence other than under this Code.

656. Cesser of application of 25 Ed. 3 Stat 5 c. 2: 11 Hen. 7 c. 1: 1 Anne Stat. 2 c. 21

(1) Subject to the provisions of subsection (2), the Treason Acts 1351, 1495 and 1702 and any other Act of Parliament at Westminster relating to Treason shall no longer apply to Country X as part of the law of Country X.

(2) Nothing in subsection (1) or section 655 shall affect the liability of any person to be tried for an act of high treason, treason or misprision of treason committed before the commencement of this Code and such act may be tried and punished in accordance with the provision of such Acts as they applied before the coming into force of this Code.

657. Regulations.

(1) The Minister may make Regulations prescribing all matters which are

required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Code.

(2) Notwithstanding subsection (1)

- (a) Cabinet may make regulations for the purpose of giving effect to the provisions of sections 591 to 598;
- (b) the Governor General may make regulations to distinguish between and have regard to the various kinds of fishing nets and to the particular purposes or uses for or to which the fishing nets are constructed or put.

658.

Repeal.

The following enactments are repealed [where relevant]

- (a)

DRAFT

FIRST SCHEDULE

(Section 8 and 623)

EXTRA-TERRITORIALITY

1. (1) This paragraph applies if

- (a) any relevant behaviour of the person takes place wholly or partly in Country X;
- (b) the person knows or believes that what he anticipates might take place wholly or partly in a place outside Country X; and
- (c) either
 - (i) the anticipated offence is one that would be triable under the law of Country X if it were committed in that place; or
 - (ii) if there are relevant conditions, it would be so triable if it were committed there by a person who satisfies the conditions.

(2) In this paragraph “relevant condition” means a condition that

- (a) determines (wholly or in part) whether an offence committed outside Country X is nonetheless triable under the law of Country X; and
- (b) relates to the citizenship, nationality or residence of the person who commits it.

2. (1) This paragraph applies if

- (a) paragraph 1 does not apply;
- (b) any relevant behaviour of the person’s takes place wholly or partly in Country X;
- (c) the person knows or believes that what he anticipates might take place wholly or partly in a place outside Country X; and
- (d) what the person anticipates would amount to an offence under the law in force in that place.

(2) The condition in sub-paragraph (1)(d) is to be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice

- (a) stating that on the facts as alleged the condition is not in their opinion satisfied;
- (b) showing their grounds for that opinion; and
- (c) requiring the prosecution to show that it is satisfied.

(3) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without prior service of a notice under sub-paragraph (2).

(4) In the High Court, the question whether the condition is satisfied is to be decided by the Judge alone.

(5) An act punishable under the law in force in any place outside Country X constitutes an offence under that law for the purposes of this paragraph, however it is described in that law.

3. (1) This paragraph applies if

- (a) any relevant behaviour of the person's takes place wholly outside Country X;
- (b) the person knows or believes that what he anticipates might take place wholly or partly in a place outside Country X; and
- (c) the person could be tried under the law of Country X if he committed the anticipated offence in that place.

(2) For the purposes of sub-paragraph (1)(c), the person is to be assumed to be able to commit the anticipated offence.

4. In relation to an offence under section 617, a reference in this Schedule to the anticipated offence is to be read as a reference to any of the offences specified in the indictment.

SECOND SCHEDULE

(Section 251 (6))

SEXUAL OFFENCES TO WHICH SECTION 251 APPLIES

1. In relation to Country X, the following are sexual offences to which section 251 applies
 - (a) an offence under sections 167 to 177;
 - (b) an offence under sections 163 to 167, 178 to 197, 214 to 216 and 277 where the victim of the offence was under sixteen at the time of the offence;
 - (c) an offence under section 238 or 239 where the intended offence was an offence against a person under sixteen;
 - (d) an offence under section 206.
2. A reference in paragraph 1 to an offence includes
 - (a) a reference to an attempt, conspiracy or incitement to commit that offence; and
 - (b) a reference to aiding and abetting, counselling or procuring the commission of that offence.

THIRD SCHEDULE

(Section 259 (9))

COUNTRY X POLICE FORCE

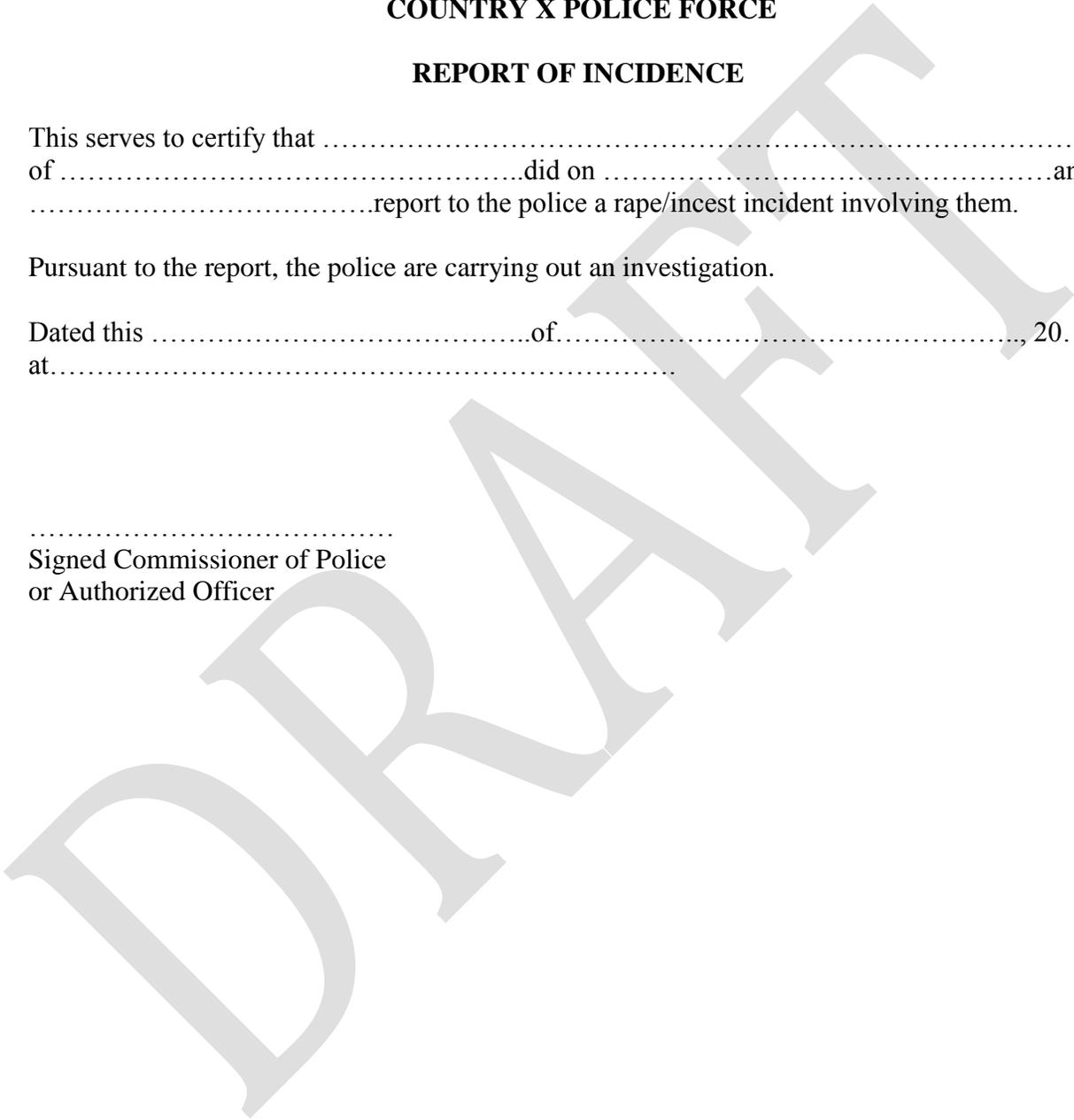
REPORT OF INCIDENT

This serves to certify that
ofdid onand at
.....report to the police a rape/incest incident involving them.

Pursuant to the report, the police are carrying out an investigation.

Dated thisof20.....
at.....

.....
Signed Commissioner of Police
or Authorized Officer



FOURTH SCHEDULE

(Section 593 (6))

EXEMPTED BODIES

Religious Organisations

DRAFT

FIFTH SCHEDULE

(Section 596)

PERMIT TO OPERATE A LOUDSPEAKER

Permission is hereby granted to
ofto operate a loudspeaker in theof
.....on theunder mentioned conditions—

1. Name of Applicant

2. On whose behalf.....

3. Date of operation.....

4. Hours of operation.....

5. Purpose

6. Route (if applicable)
.....
.....

7. Other conditions.

Dated this day of ,

.....
Commissioner of Police

SIXTH SCHEDULE

(Section 619 (5))

LISTED OFFENCES

1. Solicitation etc. of murder.
2. Inciting any offence under the [Relevant Drug Misuse] Act.
3. Inciting others to commit offences in relation to public meetings.
4. Inciting a person to commit an offence of perjury.
5. Assisting a prisoner to escape or rescue.
6. Assisting persons who have committed an offence.
7. Accepting or agreeing to accept consideration for not disclosing information about an offence.
8. Conspiracy.
9. Attempting to commit an offence.
10. Inciting commission of offences in relation to public order.
11. Public incitement of hatred.
12. Inciting a person to commit an offence.

SEVENTH SCHEDULE

(Section 74 (1))

TABLE — PART I

SCALE OF INCREASED PUNISHMENTS FOR REPETITION OF CRIME

<i>Nature of Conviction</i>	<i>Nature of previous Convictions</i>	<i>Punishment to be substituted for the punishment mentioned in this Code</i>
Summary conviction for crime.	Summary conviction for a similar crime.	Imprisonment for twice the maximum of imprisonment which might otherwise be inflicted.
Conviction or indictment for crime punishable by imprisonment for five years or more year.	Conviction on indictment for a crime punishable for five years or more	Imprisonment for one year in addition to the punishment mentioned in this Code.
Conviction on indictment for crime punishable by imprisonment for ten years or more.	Conviction on indictment for a crime punishable by imprisonment for ten years or more	Imprisonment for two years in addition to the punishment mentioned in this Code.

NOTE TO PART I OF THIS TABLE

- (1) In this Table, and in the notes below, expressions referring to any crime include attempts to commit and abetments of such crime.
- (2) Where a person has, in any part Country X beyond the jurisdiction of the Courts, been convicted of felony committed or commenced before the commencement of this Code, such conviction has the same effect as if it had taken place under this Code.
- (3) Any crime which is punishable under a Part of this Code is similar to every other crime punishable under the same Part.

PART II

(Section 74 (2))

PERIODS WITHIN WHICH A CONVICTION MAY BE GIVEN IN EVIDENCE

<i>Nature of conviction</i>	<i>Within what period after the Execution of the Sentence the Conviction may be given in evidence</i>
Any summary conviction.	A period of one year.
A conviction upon indictment for any crime for which a sentence of imprisonment three years or more has not been passed.	A period of three years, exclusive of any term of imprisonment suffered after the commencement of the period under any other conviction.
A conviction upon indictment for any crime for which a sentence of imprisonment with three years or more has been passed.	A period of ten years, exclusive of any term of imprisonment after the commencement of the period under any other conviction.

EIGHTH SCHEDULE

(Section 645)

Form 1

Immunity Notice

This Immunity from Prosecution Notice is entered into pursuant to the provisions of section 645 of the Criminal Code (the Code).

I, (name of Director of Public Prosecutions hereby give written notice that the Crown will not pursue criminal proceedings against [name of person] of [address] for any of the following offences committed in the circumstances described by [name of person] in the course of [an] interview[s] given on [insert date(s)] :

Offence

Offence

Immunity from prosecution under this notice is confined to the offence[s] set out above and on the basis of the account given by [name of person] in the interview(s) specifically mentioned in this notice. It does not extend to offences or conduct not disclosed whether orally or in writing by the said [name of person] to the Director of Public Prosecutions prior to the giving of this notice/before entering into this agreement. Nor does it extend to offences that the witness may commit after this notice is signed.

The grant of immunity from prosecution is made and remains conditional on [name of person] satisfying and continuing to satisfy each of the conditions set out below.

[Name of person] must admit participation in the offence(s) described above.

[Name of person] must provide the investigator with all facts, statements, documents, evidence or any other items ('Information') available to him/her relating to the said offence(s) and the existence and activities of all others involved.

[Name of person] shall maintain continuous and complete cooperation throughout the investigation of the said offence(s) and until the conclusion of any criminal proceedings arising as a result of the investigation. Such cooperation includes but is not limited to [Name of person]:

1. voluntarily and without prompting, providing the investigators with all Information that becomes known to him/her or available to him/her relating to the said offence(s), in addition to any such Information already provided;
2. providing promptly, and without the prosecutor using powers under [section 645 of the Code], all Information available to him/her wherever located, requested by the

investigator in relation to the said offence(s), to the extent that it has not already been provided;

3. giving truthful evidence in any court proceedings arising from the investigation of the said offence(s).

(Include only if offender prosecuted for other matters.) Failure to comply with the terms of this agreement may also result in any sentence of the court that [name of person] has received in relation [specify offence and date of sentence if applicable] being referred back to the court for review.

This immunity notice will cease to have effect if [name of person] fails to any extent to comply with any of the conditions specified in the notice. In particular, if the Director of Public Prosecutions determines that the conditions set out in this notice have not been fully complied with, or that [name of person] knowingly or recklessly provided Information that is false or misleading in a material particular to the investigator or prosecutor, or conspired with or procured another so to do, the specified prosecutor may revoke the grant of immunity from prosecution. On revocation, the grant of immunity will cease to have effect and any Information provided by [name of person] may be used against him/her in criminal proceedings.

Irrespective of whether, the Director of Public Prosecutions has revoked the grant of immunity, all Information provided to the investigator by [name of person] shall remain in the possession of the Director of Public Prosecutions.

This notice sets out all of the terms and conditions on which the grant of immunity from prosecution to [name of person] for the said offence(s). It supersedes all prior understandings, if any, from whatever source whether oral or written, relating to the said offence(s).

The signatories below acknowledge acceptance of the terms and conditions set out above which shall only take effect when both parties have signed this letter in duplicate, one original to be retained by each party.

Signed by the person

Signed by the Director of Public Prosecutions

Dated this day of

Dated this day of

Form 2

(Section 646)

Restricted Use Undertaking

This Restricted Use Undertaking is entered into pursuant to the provisions of Section 646 of the Criminal Code (the Code).

I the Director of Public Prosecutions hereby give notice that nothing said by [name of person] of [address] to officers of the [details of police], nor any written statement signed by him/her and given to such officers, nor any documents or other evidence produced by him/her and given to any such officers, nor any oral or other evidence given by him/her, all in connection with [details of the offence under investigation], will be used as evidence in any subsequent criminal proceedings against the said [name of person] [or proceedings under the [Relevant Proceeds of Crime Act] (*include only if it is expressly intended that the undertaking will have this double effect; and delete last sentence*) arising out of the [details of the investigation], save as set out below. However nothing agreed herein shall be taken to preclude or prejudice the commencement of any proceedings under the Relevant Proceeds of Crime Act] or the use of such material in proceedings under that Act.

This restricted use undertaking is granted and remains conditional on [name of person] satisfying and continuing to satisfy each of the conditions set out below.

[Name of person] must fully admit his/her participation in the matters under investigation and described above.

[Name of person] must provide the investigator with all facts, statements, documents, evidence or any other items ('Information') available to him/her relating to the said investigation and the existence and activities of all others involved.

[Name of person] shall maintain continuous and complete cooperation throughout the investigation of the said matters and until the conclusion of any criminal proceedings arising as a result of the investigation. Such cooperation includes but is not limited to [name of person]:

1. voluntarily and without prompting, providing the investigators with all information that becomes known to him/her or available to him/her relating to the said investigation, in addition to any such information already provided;
2. providing promptly, and without the prosecutor using powers under the Code, all information available to him/her wherever located, requested by the investigator in relation to the said investigation, to the extent that it has not already been provided;
3. giving truthful evidence in any court proceedings arising from the investigation of the said investigation.

(Include only if offender prosecuted for other matters.) Failure to comply with the terms of this agreement may also result in any sentence of the court that [name of person] has received in relation [specify offence and date of sentence if applicable] being referred back to the court for review.

This notice will cease to have effect if [name of person] fails to any extent to comply with any of the conditions specified in the notice. In particular, if the Director of Public Prosecutions determines that the conditions set out in this notice have not been fully complied with, or that [name of person] knowingly or recklessly provided Information that is false or misleading in a material particular to the investigator or prosecutor, or conspired with or procured another so to do, the Director of Public Prosecutions may revoke the restricted use undertaking. On revocation, the restricted use undertaking will cease to have effect and any Information provided by [name of person] may be used against him/her in criminal proceedings and/or recovery actions under the [Relevant Proceeds of Crime Act].

Nothing in this undertaking affects the right of the Director of Public Prosecutions to make use of any information provided by [name of the witness] in order to discover or acquire derivative information or documents from a source other than [name of the person].

Similarly, nothing in this undertaking affects the use that the Director of Public Prosecutions may make of any information or document obtained from a source other than [name of the person], notwithstanding that the form or content of that information or document may be similar or identical to that provided by [name of the person] or that any information or document provided by [name of the person] led directly or indirectly to the discovery or acquisition of the information or document obtained from the other source. Such material may be used to prosecute [name of person] for an offence(s) arising from the said investigation.

Irrespective of whether, the Director of Public Prosecutions has revoked the restricted use undertaking all Information provided to the investigator by [name of person] shall remain in the possession of the investigator

This notice sets out all of the terms and conditions on which the restricted use undertaking from prosecution to [name of witness] in respect of the [description of inquiry]. It supersedes all prior understandings, if any, from whatever source whether oral or written, relating to the said offence(s).

The signatories below acknowledge acceptance of the terms and conditions set out above which shall only take effect when both parties have signed this letter in duplicate, one original to be retained by each party.

Signed by the person

Signed by the Director of Public
Prosecutions

NINTH SCHEDULE

(Section 651)

<i>First Column</i>		<i>Second Column</i>	
<i>Offence Charged</i>	<i>Section of Code</i>	<i>Alternative conviction of other offence</i>	<i>Section of Code or other law</i>
Burglary	s. 313	Theft Intentionally or recklessly causing damage to property	s. 302 s. 394
Sexual Assault	s. 165	Assault	s. 155
Infanticide	s. 138	Child destruction Concealing birth	s. 139 s. 140
Intentionally or recklessly causing dangerous harm	s. 143	Intentionally or recklessly causing grievous harm Intentionally or recklessly causing wound Intentionally or recklessly causing harm Assault	s. 142 s. 146 s. 141 s. 155
Child destruction	s. 140	Causing termination of a pregnancy	s. 259 (3)
Manslaughter	s. 134	Abetment of Suicide	s. 136
(Where use of vehicle involved)	s. 49	Causing death by dangerous driving	[Relevant] Act
Premeditated murder	s. 48 s. 124	Reckless driving	s. 126 s. 134
Murder	s. 126	Murder Manslaughter Abetment of suicide Infanticide Child destruction Concealment of birth	s. 136 s. 139 s. 140 s. 265 s. 134 s. 136
		Manslaughter Abetment of suicide Infanticide	s. 139 s. 140 s. 265

<p>Rape</p>	<p>s. 163</p>	<p>Child destruction Concealment of birth</p> <p>Assault by penetration Sexual assault Causing a person to engage in sexual activity Rape of a child under 13 Assault of a child under 13 by penetration Sexual assault of a child under 13 Sexual activity with a child Sexual activity with a child by abuse of position of trust Sexual activity with a family member Sexual activity with a person with a mental disorder impeding choice Sexual activity with a person with a mental disorder by a care worker</p>	<p>s. 164 s. 165 s. 166</p> <p>s. 167 s. 168</p> <p>s. 169 s. 171 s. 178</p> <p>s. 185</p> <p>s. 190</p> <p>s. 198</p> <p>s. 330</p>
<p>Theft</p>		<p>Handling stolen goods</p>	

Dated this day of

Dated this day of

Speaker

Passed by the National Assembly this

day of

, 20[].

Clerk of the House of Assembly

OBJECTS AND REASONS

1. The object of this draft Code (the Bill) is to consolidate the criminal law so that it meets the current needs of Country X. The Bill removes outdated laws and the use of archaic language and updates the criminal law.
2. The Bill contains twenty six Parts that make provision for Preliminary matters; Criminal Responsibility; Defences; Parties; Sentencing; Causation and Intention; Offences Against the Person; Sexual Offences; Abortion and Causing Harm to Children; Marriage Offences; Criminal Libel; Cybercrime; Female Genital Mutiliation; Offences against Property; Damage to Property; Intellectual Property offences; Offences against Public Order; Offences against the Administration of Justice; Summary offences; Offences against Public Peace; Inchoate Offences; Unlawful Gangs; Offences relating to the Possession and Use of Explosives; Piracy; Restraining Orders and Miscellaneous matters.
3. Part I of the Bill has eight clauses which deal with the short title and commencement; interpretation; definition of certain terms, etc; construction and jurisdiction.
4. Part II of the Bill deals with criminal responsibility, namely: Ignorance of mistake of fact or law; accident; motive; extraordinary emergencies; sanity; intoxication; age of criminal responsibility; acts done in execution of the law; criminal responsibility of husband and wife; and offences by partners and members of companies (Clauses 9 – 26)
5. Part III defines applicable defences, namely: Consent (Clauses 27 – 30); justifiable force and harm (Clauses 31 – 47); automatism (Clause 48); and duress (Clause 49)
6. Part IV (Clauses 53 – 56) defines parties to offences, namely: principals; offences committed in the prosecution of the common purpose; and accessories after the fact.
7. Part V deals with the general principles of sentencing (Clauses 57 – 66); procedure and evidence when sentencing (Clauses 67 – 79); fines, compensation and costs (Clauses 80 – 84); suspended sentences (Clause 85); dangerous persons (Clause 86); drug treatment programmes (Clause 87); discharge (Clause 88); probation orders (Clauses 89 – 95); community service orders (Clauses 96 – 99); restitution (Clause 100); forfeiture (Clauses 101 – 103), including an application to dispose of instrumentalities before conviction (Clause 103); and Parole (Clauses 104 – 106).
8. Part VI defines causation (Clauses 107 – 109); liability for attempts, negligence or recklessness (Clause 110); intent (Clause 111); transferred intention (Clause 112); negligence (Clause 113); and recklessness (Clause 114).
9. Offences against the person are set out in Part VII of the Bill and entail general provisions relating to homicide (Clauses 115 – 122); premeditated murder (Clause 124); murder (Clauses 125 – 133); manslaughter (Clauses 134 – 135); suicide (Clauses 136 –

137; administration of a noxious matter (Clause 138); infanticide (clause 139); child destruction (Clause 140); harm (Clauses 141 – 154); threat of death (Clause 155); assault Clauses 156 – 161).

10. Part VIII sets out sexual offences, namely: Rape (Clause 163); assault by penetration (Clause 164); sexual assault (to replace indecent assault – Clause 165); causing a person to engage in sexual activity without consent (Clause 166); rape and other offences against children under thirteen (Clauses 167 – 170); child sex offences (Clauses 171 – 177); abuse of position of trust (Clauses 178 – 184); familial child sex offences (Clauses 185 – 189); offences against persons with a mental disorder impeding choice (Clauses 190 – 193); inducements etc. to persons with a mental disorder (Clauses 194 – 197); offences by care workers (Clauses 198 – 204); indecent photographs of children (Clauses 205 – 211); abuse of children through prostitution and pornography (Clauses 212 – 216); exploitation of prostitution (Clauses 217 – 219); prostitution (Clauses 220 – 232); sexual trafficking (Clauses 233 – 236); preparatory offences (Clauses 237 239); sex with an adult relative (Clauses 240 – 241); other offences including gross indecency (Clause 247), voyeurism (Clause 243), sexual penetration with a corpse (Clause 245 and intercourse with an animal (Clause 244). This part also defines jurisdiction (Clause 251) and consent (Clause 253 – 255). If convicted of an offence in this part there will be a requirement to register as a sex offender (Clauses 257 -258) for the protection of society.
11. Part IX provides for termination of pregnancy (Clause 259) and the following childbirth offences: Causing harm to child at birth (Clause 260); child abandonment (Clause 261); child substitution (Clause 264); concealment of body of child (Clause 265); and child pornography (Clause 266).
12. Part X provides for offences relating to marriage (Clauses 267 – 268) and bigamy (Clauses 269 – 276).
13. Part XI provides for defamation offences and reflects the position in the Criminal Code (2009 revision).
14. Part XII provides for cybercrime offences, namely Illegal access (Clause 288); interfering with data (Clause 289); interfering with an information system (Clause 290); illegal interception of data (Clause 291); illegal devices (Clause 292); child pornography (Clause 293); cyber-stalking (Clause 294); and cyber fraud (Clause 295)
15. Part XIII prohibits female genital mutilation and provides for extra-territorial offences.
16. The offences against property created in Part XIV of the Bill provides for theft (Clauses 302 – 308); fraudulent breach of trust (Clauses 309 – 311); robbery/burglary (Clauses 312 – 316); fraud and blackmail (Clauses 317 – 329); stolen goods (Clause 330); housebreaking implements (Clause 331); forgery (Clauses 332 – 335); false claims (Clause 336); noteage offences (Clauses 337 – 358); possessing false document (Clause 359); bankruptcy fraud (Clauses 366 - 379; and extortion (Clause 380). Clauses 381 387

define jurisdiction for offences in this Part. It is important to note that the actus reus requirement for fraud is far less; the credit/debit status of any bank accounts debited is irrelevant to the fraud offences. All that is in issue is the Defendant's right to use the account; It is not necessary to prove or demonstrate any consequences of fraud (though they will clearly be material to sentence, compensation and confiscation); issues where the property obtained had not belonged to another will not arise; and the offences do not require an intent permanently to deprive.

17. Under Part XV of the Bill offences relating to damage to property, such as arson (Clauses 388 – 393), criminal damage to property (Clauses 394 – 399) and
18. Offences against intellectual property are included in Part XVI intellectual property (Clauses 400-404).
19. The provisions in Part VXII of the Bill pertain to offences against public order and are as follows: treason (Clauses 405 – 413); sale of pornographic material (Clause 414); public election (Clauses 415 – 422); rioting; affray and violent and disorderly offences (Clauses 423 – 430); genocide and racial hatred (Clauses 431 – 432); unlawful disturbance (Clauses 433 – 436); offences relating to prisons (Clauses 437 – 438); and offences relating to trade (Clause 439).
20. The offences against the administration of justice in Part XVIII of the Bill encompass unlawful oaths (Clause 440); compounding offences (Clauses 441 – 444); interference with witnesses (Clauses 445 – 447); intimidation of judicial officers and inquests (Clauses 448 -450). Provisions on contempt; perjury; escape; breach of trust and other frauds; bribery of those in public and private sector; extortion by public officials or jurors, jury intimidation and absconding on bail are set out here as well (Clauses 451 - 491).
21. Summary offences are highlighted in Part XIX of the Bill. They are: summary assaults; possession of offensive weapons; minor false claims; minor forgery offences; unlawful possession; animal stealing; making demands with threats; stealing under five hundred dollars; property offences by fire; damage to public or private property; trespass; nuisance; burial; indecency; obstructing and abusing Magistrate; compounding summary offences; and false report to Police (Clauses 492 – 570). Section 503 (6) provides for a matter to proceed on indictment where the offence of unlawful possession is committed against a tourist or a vessel or the thing stolen exceeds three thousand dollars in value.
22. The offences in Part XX of the Bill deals with offences against public peace which are also summary offences. These offences comprise drunken, riotous and disorderly conduct; unlawful entry into a band and offences relating to sporting events; unlawful assembly; unlawful noise; vagrancy; public worship offences; illegal fishing nets; prohibition on trading on Sunday, etc.; and prohibition on practicing obeah or other superstitious usages (Clauses 571 - 607).

23. Inchoate offences, such as abetment and conspiracy; attempts to commit crimes and encouraging and assisting are set out in Part XXI of the Bill (Clauses 608 - 623). There is no reference to incitement within the present Criminal Code. Clauses 614 - 616, provide for three inchoate offences of intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed. These offences replace the common law offence of incitement. They allow people who assist another to commit an offence to be prosecuted regardless of whether the underlying substantive offence is actually committed or attempted.
24. Part XXII provide for the interpretation of unlawful gang activity (Clause 625) and increased sentences who commit an offence as part of unlawful gang related activity (Clause 626).
25. Part XXIII provides for offences relating to the possession and use of explosives such as the making of petrol bombs (Clause 632) and the use of petrol bombs (Clause 633).
26. Part XXIV provides the definition of piracy (Clause 634, 635) and offences of piracy (Clauses 636 – 637).
27. Part XXV allows for restraining orders after conviction and also acquittal. These clauses are specifically drafted to protect victims of offences within a domestic relationship.
28. Part XXVI of the Bill has miscellaneous provisions consisting of dispersal powers for groups and related offences (Clauses 641 – 643); immunity notices (Clause 645); restricted use undertakings (Clause 646); reduction in sentence for assisting defendant (Clause 647); alternative convictions (Clause 651); restrictions under the common law (Clause 652); provisions re the Family Court (Clause 654); transitional provisions (Clause 655); regulations (Clause 657); and repeal (Clause 658).