

Commencement: 01 March 2007

REPUBLIC OF VANUATU

**PENAL CODE (AMENDMENT) ACT
NO. 25 OF 2006**

Arrangement of Sections

- 1 Amendment
- 2 Commencement

REPUBLIC OF VANUATU

**PENAL CODE (AMENDMENT) ACT
NO. 25 OF 2006**

Assent: 12/12/2006

Commencement: 01/03/2007

An Act to amend the Penal Code Act [CAP 135].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Penal Code Act [CAP 135] is amended as set out in the Schedule.

2 Commencement

This Act commences on the date on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF THE PENAL CODE ACT [CAP 135]

1 Sections 36 to 58

Repeal the sections.

2 After Part 1

Insert

"PART 1A SENTENCING

36 PURPOSE OF THIS PART

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

37 COURT TO HAVE REGARD TO KEEPING OFFENDERS IN THE COMMUNITY

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

38 PROMOTION OF RECONCILIATION

- (1) Notwithstanding the provisions in this Act or any other Act, a court may in criminal proceedings, promote reconciliation and encourage and facilitate the settlement according to custom or otherwise, for an offence, on terms of payment of compensation or other terms approved by the court.
- (2) Nothing in this section limits the court's power to impose a penalty it deems appropriate for the relevant offence.

39 ACCOUNT TO BE TAKEN OF COMPENSATION PAYMENT

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

40 SENTENCE OF COMPENSATION

- (1) A court must consider and may impose a sentence of compensation in monetary terms or otherwise if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer:
 - (a) death, or injury; or
 - (b) loss of or damage to property; or
 - (c) emotional harm; or

- (d) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.
- (2) Despite subsection (1), a court must not impose a sentence of compensation in respect of emotional harm, or loss or damage consequential on emotional harm, unless the person who suffered the emotional harm is a person defined in subsection (14).
- (3) In determining:
- (a) whether a sentence of compensation is appropriate; or
 - (b) the amount or type of compensation to be made for any consequential loss or damage described in paragraph (1) (c),
- the court must take into account whether there is or may be, under the provisions of any enactment or rule of law, a right available to the person who suffered the loss or damage to bring proceedings or to make any application in relation to that loss or damage.
- (4) Subsection (3) applies whether or not the right to bring proceedings or make the application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired.
- (5) When determining the amount or type of compensation to be made, the court must take into account:
- (a) the offender's sources of income; or
 - (b) any offer, agreement, response, measure, or action made or taken between the offender and the victim.
- (6) The court must not impose as part of a sentence of compensation an obligation on the offender to perform any form of work or service for the person who suffered the harm, loss, or damage.
- (7) Where two or more persons are convicted of an offence, the compensation orders made against them should reflect the means of each individual, so that if one co-defendant is less wealthy than the others a lower compensation order should be imposed by the court.
- (8) Generally liability is joint and several. In cases where only one or some of the co-defendant(s) has or have resources, the court must make a compensation order for the whole sum against that one or those some of the offenders.

- (9) If the court wishes to impose a fine as well as a compensation order, preference should be given to the compensation order if it appears that the offender has insufficient means to pay both.
- (10) A compensation order may be made both for the offence or offences for which the offender is convicted and for any offence or offences taken into consideration.
- (11) If a court does not impose a sentence of compensation in a case where it is lawfully entitled to do so, it must give reasons for not doing so.
- (12) A sentence of compensation may be imposed, in relation to any particular offence, on its own or in addition to any other sentence.
- (13) A court may make a compensation order as the sole order on conviction.
- (14) For the purposes of this section, **victim** means:
 - (a) a person against whom an offence is committed by another person; or
 - (b) a person who, through, or by means of, an offence committed by another person, suffers physical injury, financial loss or loss or damage to property; or
 - (c) a parent or legal guardian of a child, or of a young person, who falls within the definitions in paragraph (a) or paragraph (b), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; or
 - (d) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or becomes incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.

41 COURT MAY ORDER COMPENSATION REPORT

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

- or damage and any consequential loss or damage;
- (b) in the case of emotional harm, the nature of that harm and the value of any consequential loss or damage;
 - (c) in the case of any loss or damage consequential on physical harm:
 - (ii) the nature and value of the loss or damage; and
 - (ii) the extent to which the person who suffered the loss or damage is likely to be covered by entitlements under any scheme;
 - (d) the financial capacity of the offender;
 - (e) the maximum amount or other form of compensation that the offender is likely to be able to pay or make under a sentence of compensation;
 - (f) the frequency and magnitude of any payments that should be required under a sentence of compensation, if provision for payment by instalments is thought desirable.
- (2) The court may decline to seek a report under subsection (1) and impose a sentence of compensation without further inquiry if:
- (a) the court is satisfied as to the amount or type of compensation that the offender should pay or make; or
 - (b) the type of information referred to in a compensation report is available through other means; or
 - (c) in all the circumstances the court considers that a report is unnecessary.
- (3) For the purposes of the preparation of a compensation report, a court may direct the offender to make a declaration as to his or her financial capacity. The declaration must contain information on all sources of income, assets, liabilities and expenses.

42 COMPENSATION REPORTS

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

to pay or make by way of compensation.

- (2) If an agreement is reached, the probation officer or other person must report the terms of the agreement to the court (in addition to any other matters on which the court has required a report).
- (3) If no agreement is reached, the probation officer or other person must:
 - (a) in respect of emotional harm, state in the report the respective positions of the offender and the person who suffered the harm, and that the matter is unresolved; and
 - (b) in respect of loss of, or damage to, property, either:
 - (i) determine the value of the loss or damage and the consequential loss or damage on the evidence available, and include that value in the report; or
 - (ii) state in the report that the matter is unresolved; and
 - (c) in respect of loss or damage consequential on emotional or physical harm, either:
 - (i) determine the value of the loss or damage on the evidence available, and include that value in the report; or
 - (ii) state in the report the respective positions of the offender and the person who suffered the loss or damage, and that the matter is unresolved.
- (4) Despite subsections (1), (2) and (3), the person who suffered the harm, loss, or damage is not obliged to meet with the offender or otherwise participate in the preparation of the report.
- (5) The person who prepared a report under this section must give a copy to the person who suffered the harm, loss, or damage unless the court orders otherwise.
- (6) Failure to give a copy of any report in accordance with subsection (5) does not affect the validity of the proceedings in a court or of any order made or sentence imposed by a court.

43 TAKING INTO ACCOUNT FINANCIAL CAPACITY OF OFFENDER

- (1) If the offender has insufficient means to pay the total value of the loss,

damage or harm, the court may sentence the offender to make:

- (a) compensation for any amount that is less than the value of the loss, damage or harm; or
 - (b) payment by instalments in respect of the loss, damage, or harm; or
 - (c) the relevant action referred to in paragraphs (a) and (b).
- (2) If the court imposes on an offender a sentence of compensation and a sentence of a fine, any payments received from the offender must be applied first in satisfaction of the amount due under the sentence of compensation.

44 CONDITIONS OF SENTENCE OF COMPENSATION

- (1) If a court sentences an offender to make compensation, the court must determine the conditions of the sentence in respect of the following matters:
- (a) the total amount or type of compensation to be paid or made by the offender;
 - (b) whether the amount or type of compensation is to be paid in the form of a lump sum payment or payment in instalments;
 - (c) if the amount or type of compensation is to be paid in the form of a lump sum payment, whether it is to be paid immediately or at some specified future date;
 - (d) if the amount or type of compensation is to be paid in instalments, the frequency and amounts of the instalments.
- (2) The court may not impose a condition that an amount or type of compensation to be paid or made in one lump sum must be paid immediately unless the court is satisfied that the offender has sufficient means to pay it immediately.
- (3) If a court sentences an offender to make compensation in a form, other than money, the court must determine whether it is to be made immediately or at some specified future date.

45 COPY OF CONDITIONS OF COMPENSATION TO BE GIVEN TO PERSON WHO SUFFERED HARM, LOSS, OR DAMAGE

- (1) A copy of the conditions of a sentence of compensation must be given to

the person who suffered the harm, loss or damage.

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

46 PAYMENT OF SUMS, OR COMPENSATION IN OTHER FORM TO BE MADE, TO A PERSON WHO SUFFERED HARM, LOSS, OR DAMAGE

- (1) Every:

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

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

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

47 MANNER IN WHICH AMOUNTS OF COMPENSATION ARE TO BE APPLIED IN CASES INVOLVING SAME OFFENCE

- (1) This section applies if a person (the liable person) is required to pay an amount of or make compensation to two or more persons in relation to the same offence (whether the requirement to pay the amount of or make compensation arose before or after the commencement of this section).
- (2) Any payments or compensation received from the liable person must be applied, as between the persons in whose favour the sentence of compensation was made, in the proportion that reflects the relative total or proportionate amounts or value ordered to be paid to each of them under the sentence.

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

48 MANNER IN WHICH AMOUNTS OR OTHER FORMS OF COMPENSATION MUST BE APPLIED IN CASES INVOLVING DIFFERENT OFFENCES

- (1) This section applies:

- (a) if a person (the liable person) is required to pay an amount of or make compensation to a person or persons in relation to an offence; and
 - (b) if the liable person is later required to pay an amount of or make compensation to another person or other persons in relation to another offence; and
 - (c) if both the amounts or other form of compensation referred to in paragraphs (a) and (b) have not been paid or made in full; and
 - (d) whether the requirements to pay the amounts or other form of compensation referred to in paragraphs (a) and (b) arose before or after the commencement of this section.
- (2) For the purpose of subsection (1) it does not matter whether or not the offence referred to in paragraph (1) (b) is of the same kind as the offence referred to in paragraph (1) (a).
- (3) Any payments received from the liable person must, in respect of one or more sentences of compensation imposed on the same day in respect of different offences committed by the liable person, be applied:
- (a) as between the persons in whose favour the sentences of compensation were made; and
 - (b) in the proportion that reflects the relative total or proportionate amounts or value ordered to be paid or made to each of them under the sentences.
- (4) Any payments or goods received from the liable person must, in respect of sentences of compensation imposed on the liable person on different days, be applied first in satisfaction of the amount or type of compensation that is payable to the person or persons in whose favour the sentence of compensation was made first.
- (5) After the amount of compensation or goods referred to in subsection (4) has been paid or made in full, any further payments or goods received from the liable person must next be applied to the person or persons in whose favour the sentence of compensation was next made.
- (6) This section applies subject to any contrary direction by a court.

49 NO STATE LIABILITY FOR ERROR, ETC, IN ENFORCING OF SENTENCES OF COMPENSATION

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

50 COMMENCEMENT OF SENTENCE

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

51 CALCULATION OF SENTENCE

- (1) The calculation for a sentence of imprisonment:
 - (a) expressed in days - each day means 24 hours;
 - (b) for one month – means 1 calendar month;
 - (c) expressed in months or years – means by calendar date.
- (2) Subject to subsections (3), (4) and (5), the duration of a sentence of imprisonment is to include and run from:
 - (a) the day on which the offender was taken into custody under that sentence; or
 - (b) in the case of concurrent sentences passed on different dates, the day on which the offender was first taken into custody under any such sentence.
- (3) In the case of the escape of a prisoner, the period in which he or she is unlawfully at liberty is not to be counted in the duration of the sentence.
- (4) If the offender has been in custody pending trial or appeal, the duration of such custody is to be wholly deducted from the computation of a sentence of imprisonment.
- (5) If the offender, after having been in custody pending trial or appeal, is sentenced to a fine only, the court may relieve him or her wholly or in part of payment of the fine.

52 CONCURRENT SENTENCES – THE RULE

- (1) If a person is convicted on more than one charge of an offence tried jointly, the respective sentences of imprisonment imposed for such

offences are deemed to be concurrent sentences, unless the court otherwise orders.

- (2) A court may impose a sentence of supervision and community work for the same offence or number of offences when sentencing an offender and in such case the sentences imposed must be served concurrently.
- (3) Except for an order for restitution of property under section 58ZD, a community based sentence must not be imposed in addition to a term of imprisonment.
- (4) If a person is convicted on more than one such charge tried separately, any sentence later passed for an offence committed prior to the earlier trial shall be deemed to run concurrently with any earlier sentence, unless the court otherwise orders.

53 CONSECUTIVE SENTENCES

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

54 IMPRISONMENT OF MINORS

- (1) A person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate.
- (2) If a person under the age of 16 years of age is sentenced to imprisonment the Court must give its reasons for doing so.

55 POWER OF COURT TO DISCHARGE OFFENDER WITHOUT CONVICTION OR SENTENCE

- (1) If a person is accused of an offence, any court, after inquiry made into the circumstances of the case, may in its discretion discharge that person without convicting him or her, unless by any enactment applicable to the offence a minimum penalty is expressly provided for.
- (2) A discharge under this section shall be considered to be an acquittal.
- (3) The Court discharging any person under this section, may, if it is satisfied that the charge is proved against him or her, make any Order for:
 - (a) the payment of costs; or
 - (b) the payment of damages; or

- (c) the payment of compensation; or
- (d) the restitution of any property,

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

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

56 POWER OF COURT TO ORDER OFFENDER TO COME UP FOR SENTENCE IF CALLED UPON

- (1) Any court by or before which any person is convicted of any offence, or before which any person appears for sentence, may, having regard to the circumstances, including the nature of the offence and the character of the offender instead of passing sentence, order the offender to appear for sentence if called upon to do so, on such conditions as the court thinks fit.
- (2) The making of an order under this section shall not limit or affect the power of the court, under any enactment applicable to the offence, to make any order for the payment of costs, damages, or compensation, or for the restitution of any property, notwithstanding that the offender is not sentenced on conviction, and the provisions of every such enactment shall apply accordingly.
- (3) Any person in respect of whom an order is made under this section may be called upon to appear for sentence within any period specified by the court in the order, being a period not exceeding 3 years from the date of the conviction, or, if no period is so specified, within 1 year from the date of the conviction.
- (4) Where any person is brought up for sentence under this section, any judicial officer having jurisdiction to deal with offences of the same kind, whether or not he is the judicial officer before whom the case was initially heard, may, after inquiry into the circumstances of the case and the conduct of the offender since the order was made, proceed to sentence the person.

57 PROVISION FOR SUSPENSION OF SENTENCES OF IMPRISONMENT

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

conditions:

- (a) if the court which has convicted a person of an offence considers that:
 - (i) in view of the circumstances; and
 - (ii) in particular the nature of the crime; and
 - (iii) the character of the offender,

it is not appropriate to make him or her suffer an immediate imprisonment, it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her, on the condition that the person sentenced commits no further offence against any Act, Regulation, Rule or Order within a period fixed by the court, which must not exceed 3 years; and
- (b) if, at the end of such period, the person the execution of whose sentence has been suspended in accordance with this section has not been convicted of any further offence against any Act, Regulation, Rule or Order, the sentence is deemed to have expired; and
- (c) if, before the end of such period, the person the execution of whose sentence has been suspended in accordance with this section is further convicted of any offence against any Act, Regulation, Rule or Order, the court shall order that the suspended sentence shall take effect for the period specified in the order made under paragraph (1) (a) of this section unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the circumstances of any further offending, in no case concurrently with any subsequent sentence.
- (d) Where a court decides under paragraph (1) (c) that a suspended sentence is not to take effect for the period specified in the order, then, subject to this Act, the court must either:
 - (i) order that the suspended sentence:
 - (ia) take effect with the substitution of a lesser term of imprisonment; or
 - (ib) be cancelled and replaced any non-custodial sentence that could have been imposed on the

offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed; or

(ic) be cancelled; or

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

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

58 POWER OF COURT TO SUSPEND SENTENCE IN PART

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

58A POWER TO IMPOSE SUBSTITUTED OR ALTERNATIVE PENALTY OF COMMUNITY WORK TO FINE

- (1) If in any Act, Regulation, Rule or Order, a penalty of a fine is provided for any offence without any alternative penalty, the court may in its discretion impose a sentence of community work in lieu of or as an alternative penalty, which sentence must not exceed a term calculated at the rate of 8 hours community work for every VT1000 of the fine. The term of community work must not exceed 300 hours.
- (2) Sections 58P to 58Y apply to this section.

58B POWER TO IMPOSE SUBSTITUTED OR ALTERNATIVE PENALTY OF FINE, SUPERVISION OR COMMUNITY WORK TO IMPRISONMENT

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

58C FINES

- (1) In sentencing a person to pay a fine, a court may make one or more of the following orders:
 - (a) that after enquiry as to his or her means, the fine be paid within such period as it may specify or that it be paid by instalments;
 - (b) that the whole or part of the fine be paid as compensation to the victim;
 - (c) that the fine to be paid as compensation to the victim be paid in kind or goods provided that in the case of default in making compensation in the kind or goods approved by the court within the time specified by the court, the monetary value of the fine is to become immediately payable and the enforcement provisions of this Act shall apply.
- (2) If a person sentenced to pay a fine defaults in the payment of the fine, the Court may Order that:
 - (a) the offender undertake a term of community work in lieu calculated at the rate of 8 hours community work for every VT1000 of the fine; and
 - (b) such community work is to be in addition to any other sentence of community work to which he or she may have been sentenced; and
 - (c) the completion of such term of community work in default of payment of the fine shall abate the whole liability to pay such a fine.
- (3) If a person is ordered to undertake community work under subsection (2) the person shall be subject to sections 58P to 58Z, of this Act.
- (4) If a person ordered to undertake community work under subsection (2) defaults in that community work, then the Court may direct by its sentence that in default of that community work the offender is to serve a term of imprisonment, which must not exceed 6 months.
- (5) In the case where a person has been ordered to pay a fine by instalments and has made default in payment of any one or more of such instalments:
 - (a) the sentence of community work in default of payment should not be executed until the date for payment of the fine or instalment has expired; or

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

58D ENFORCEMENT PROVISIONS WHERE FINES OR COSTS REMAIN UNPAID

- (1) If a person fails to pay a fine or a cost ordered by a court by the date set by the court, the Registrar of the Supreme Court or the Magistrates Court may:
 - (a) refer the matter to the relevant Magistrate or Judge of the Supreme Court with a report on the circumstances of the case; or
 - (b) refer the matter to the relevant court, which if necessary, may issue a warrant for the person's arrest.
- (2) The relevant Magistrate or Judge of the Supreme Court may, after considering the report of the Registrar of the Supreme Court or Magistrates Court, and the financial position of the defendant:
 - (a) direct that more time be given to the defendant to pay the fine or cost on such conditions as may be directed by the relevant Magistrate or Judge; or
 - (b) direct that the person undertake community work as per the provisions of subsection 58C(2) of this Act.

58E PRE-SENTENCE REPORTS

- (1) A probation officer is to provide to the court, whenever required by the court, a written pre-sentence report on the character and personal history of any person convicted of any offence punishable by imprisonment or any other matters raised under subsection 38(1), with a view to assisting the court in determining the most suitable method of dealing with his or her case.
- (2) The probation officer may in any such report advise the court whether the offender would be likely to respond satisfactorily to a sentence of supervision or community work and whether any conditions of supervision should be imposed or to recommend another sentence.
- (3) If a court requires a pre-sentence report the court may remand the offender for such time as may be necessary to enable the report to be prepared and submitted to the court.
- (4) During the period of any remand the court may remand the offender on

bail or in custody as the court deems appropriate.

58F SENTENCE OF SUPERVISION

- (1) A court may sentence an offender to supervision if:
 - (a) the offender is convicted of an offence punishable by imprisonment; or
 - (b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community based sentence may be imposed on conviction.
- (2) The sentence may be for a period of not less than six months and not more than two years as the court thinks fit.

58G POWER OF COURT TO MAKE SUSPENDED SENTENCE A SUPERVISION ORDER

Where a court imposes a suspended sentence of more than six months' imprisonment, it may also impose a supervision order. The supervision must be for a period not exceeding the operational period of the suspended sentence.

58H GUIDANCE ON USE OF SENTENCE OF SUPERVISION

- (1) A court may impose a sentence of supervision only if the court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender back into the community.
- (2) If a court imposes a sentence of supervision in respect of each of 2 or more offences (whether on the same occasion or different occasions), the sentences must be served concurrently.

58I IMPOSITION OF CONDITIONS ON SENTENCE OF SUPERVISION

An offender who is sentenced to supervision is subject to:

- (a) the standard conditions in section 58J; and
- (b) any special conditions imposed by the court under section 58K.

58J STANDARD CONDITIONS OF SENTENCE OF SUPERVISION

- (1) If an offender is sentenced to supervision the following standard

conditions apply:

- (a) the offender must report in person to a probation officer as soon as practicable and not later than 72 hours after the sentence is imposed; and
 - (b) the offender must report to a probation officer as and when required to do so by a probation officer and must notify the officer of his or her residential location; and
 - (c) the offender must not move to a new residential location without the prior written consent of a probation officer; and
 - (d) the offender must take part in a rehabilitative and reintegrative needs assessment and/or programme if and when directed to do so by a probation officer.
- (2) The conditions of paragraphs (1)(c), and (d) do not apply if, and to the extent that, they are inconsistent with any special conditions imposed by the court.

58K SPECIAL CONDITIONS OF SENTENCE OF SUPERVISION

- (1) If an offender is sentenced to supervision the court may impose such special condition or conditions related to the rehabilitation or integration of an offender as the court thinks necessary.
- (2) A court must not impose a condition under this section that the offender pay any fine, reparation, or any other sum ordered to be paid on conviction, or that the offender perform any service than he or she could have been required to perform if he or she had been sentenced to community work.
- (3) For the avoidance of doubt, the court may impose conditions that the offender live and work at a particular place.

58L OFFENCES RELATED TO BREACH OF CONDITIONS OF SUPERVISION

An offender commits an offence if he or she-

- (a) fails, without reasonable excuse, to comply with any condition of a sentence of supervision; or
- (b) fails, without reasonable excuse, to report when required to do so under paragraph 58J(1)(b),

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

58M VARIATION OR CANCELLATION OF SENTENCE OF SUPERVISION

- (1) An offender who is subject to a sentence of supervision, or a probation officer, may apply in accordance with section 58ZA for an Order under subsection (3) on the grounds that:
 - (a) the offender is unable to comply, or has failed to comply, with any of the conditions of the sentence; or
 - (b) any programme to which the offender is subject is no longer available or suitable for the offender; or
 - (c) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence:
 - (i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of conditions, or the imposition of additional conditions; or
 - (ii) the continuation of the sentence is no longer necessary in the interest of the community or the offender.
- (2) A probation officer may apply for an Order under subsection (3) if an offender who is subject to a sentence of supervision is convicted of an offence punishable by imprisonment.
- (3) On application under subsection (1) or subsection (2), the court may, if it is satisfied that the grounds on which the application is based have been established:
 - (a) remit, suspend, or vary conditions imposed by the court or impose additional conditions; or
 - (b) cancel the sentence; or
 - (c) cancel the sentence and substitute any other sentence (including another sentence of supervision) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

- (4) In determining a substitute sentence under paragraph (3)(c), the court must take into account the portion of the original sentence that remains unserved at the time of the Order.
- (5) If the court cancels a sentence under this section, the sentence expires on the date that the Order is made or on any other date that the court may specify.
- (6) If an application is made under this section for the remission, suspension, or variation of any condition imposed by the court, a probation officer may suspend the condition until the application has been heard and disposed of.
- (7) If, after an offender is sentenced to supervision, the offender is subsequently sentenced on another charge to a term of imprisonment, the sentence of supervision shall be cancelled from the date that the offender commences his or her sentence of imprisonment.

58N SENTENCE OF COMMUNITY WORK

- (1) A court may sentence an offender to community work:
 - (a) if the offender is convicted of an offence punishable by imprisonment; or
 - (b) if the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.
- (2) The sentence may be for the number of hours, being not less than 40 or more than 400 that the court thinks fit.

58O CONCURRENT AND CUMULATIVE SENTENCES OF COMMUNITY WORK

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

58P LENGTH OF SENTENCE OF COMMUNITY WORK

- (1) If the court imposes a sentence of community work:
 - (a) for 200 hours or less – that sentence must be served within 12 months of the date that it commences.

- (b) for more than 200 hours - that sentence must be served within 24 months of the date that it commences.
- (2) Any work done by an offender under a sentence of community work must be treated as having been done under that sentence and under any and each other concurrent sentence of community work that the offender was subject to at the time the work was done.
- (3) A sentence of community work does not terminate until the hours of community work that the offender has been ordered to undertake have been completed.

58Q REPORTING REQUIREMENT OF OFFENDER

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

- (a) as soon as practicable, and not later than 72 hours, after the sentence is imposed; and
- (b) as directed at any other time during the sentence for the purpose of monitoring the sentence.

58R CHANGE OF RESIDENTIAL LOCATION OF OFFENDER

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

58S PLACEMENT OF OFFENDER FOR COMMUNITY WORK

- (1) As soon as practicable after a sentence of community work is imposed, and at any other time during the sentence if the probation officer thinks fit, a probation officer must determine what type of work and when the community work will be done by the offender.
- (2) For the purposes of subsection (1), the probation officer must take into account:
 - (a) the circumstances of the offence that was committed by the offender; and
 - (b) ways in which the offender could benefit from the type of work in terms of learning work habits or skills; and
 - (c) the offender's character and personal history; and

- (d) the offender's physical and mental capabilities; and
- (e) whether there is any person or agency within a reasonable distance of the offender's place of residence that has sufficient suitable work available for the offender; and
- (f) any other relevant circumstances.

58T COMMUNITY WORK

- (1) The type of work that an offender may be required to perform for the purposes of a sentence of community work is:
 - (a) work at or for any hospital or church or for any charitable, educational, cultural, or recreational institution or organisation; or
 - (b) at or for any other institution or organisation for old, infirm, or disabled persons, or at the home of any old, infirm, or disabled person; or
 - (c) on any land which is under the control or direction of the State, a village council or any public body.
- (2) An offender is not to be directed for the purposes of a sentence of community work to do any work if, in doing so, the offender would take the place of any person who would otherwise be employed in doing that work in the ordinary course of that person's paid employment.

58U REQUIREMENTS FOR COMMUNITY WORK

- (1) For the purposes of this section:

sponsor means the person or agency for whom the community work is to be done and who is authorised by the probation officer to supervise the community work.
- (2) The days and times at which the offender does the community work must be fixed by an agreement between a probation officer and the sponsor and must be notified in writing to the offender by the probation officer.
- (3) It is not necessary for all the periods of work to be of the same duration, but no period may be longer than 10 hours and no offender may be required to do more than 40 hours of community work per week.
- (4) The times at which the offender is required to report, and the periods

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

58V SUPERVISION OF COMMUNITY WORK

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

58W EXCEPTIONS FOR REPORTING REQUIREMENT

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

58X VARIATION OR CANCELLATION OF SENTENCE OF COMMUNITY WORK

- (1) An offender who is subject to a sentence of community work, or a probation officer, may apply in accordance with section 58ZA for an order under subsection (3) of this section on the grounds that-:
 - (a) there has been a change of circumstances since the sentence was imposed that would justify the variation or cancellation of the sentence; or
 - (b) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence, the continuation of the sentence is no longer necessary in the interests of the community or the offender.
- (2) A probation officer may apply in accordance with section 58ZA for an order under subsection (3):
 - (a) if an offender who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or
 - (b) on the grounds that the offender has behaved in a manner described in any of paragraphs 58Z(1)(a) to (j).

- (3) On an application under subsection (1) or subsection (2), the court may, if it is satisfied that the grounds on which the application is based have been established:
- (a) vary the sentence by reducing the number of hours of work to be done; or
 - (b) cancel the sentence; or
 - (c) cancel the sentence and substitute any other sentence (including another sentence of community work) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.
- (4) In determining another sentence under paragraph (3)(c), the court must take into account the portion of the original sentence that the offender has not served at the time of the order.
- (5) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.
- (6) If, after an offender is sentenced to community work, the offender is subsequently sentenced on another charge to a term of imprisonment, the sentence of community work must be cancelled from the date that the offender commences his or her sentence of imprisonment.

58Y EXTENSION OF PERIOD OF COMMUNITY WORK

- (1) An offender who is subject to a sentence of community work, or a probation officer, may apply in accordance with section 58ZA for an extension of the period which the work must be done, on the grounds that the offender had a reasonable excuse for his or her failure to complete the required hours of community work.
- (2) On an application under subsection (1), the court may, if it is satisfied that the grounds in subsection (1) have been established, extend the period within which the community work must be done to another date that the court thinks fit.

58Z OFFENCES RELATING TO BREACH OF SENTENCE OF COMMUNITY WORK

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

- (a) fails, without reasonable excuse, to report to a probation officer in accordance with section 58Q; or
- (b) fails, without reasonable excuse, to notify a probation officer of any new residential location in accordance with section 58R; or
- (c) fails, without reasonable excuse, to- do any work satisfactorily in accordance with the sentence; or
- (d) fails to comply with the terms of any agreement entered into under subsection 58U(2); or
- (e) fails, without reasonable excuse, to complete the required number of hours of work within the period required under section 58P or within any extended period granted under section 58Y; or
- (f) accepts remuneration, whether by way of gift or otherwise, for any work that the offender is required to do for the purposes of the sentence; or
- (g) fails, without reasonable excuse, to report or to remain at any place as required by or under this Part; or
- (h) fails, without reasonable excuse, to obey any directions lawfully given regarding the manner in which his or her time must be spent while under the supervision of a probation officer under section 58V; or
- (i) refuses to work, or fails to work in the manner reasonably required of the offender, or neglects or intentionally mismanages his or her work, while under the supervision of a probation officer under section 58V; or
- (j) behaves in an offensive, threatening, insolent, insulting disorderly, or indecent manner while under the supervision of a probation officer under section 58V,

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

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

Penalty: Imprisonment for a period not exceeding 3 months or a fine not

exceeding VT10, 000.

58ZA JURISDICTION AND PROCEDURE

- (1) Subject to subsection (2) every application made under section 58M or section 58Y must be made- to the Court which imposed the sentence on the offender.
- (2) If the sentence was handed down by:
 - (a) the Court of Appeal - the application is to be referred back to the Supreme Court; or
 - (b) the Supreme Court on appeal from a Magistrates Court - the application is to be referred back to the Magistrates Court.
- (3) A copy of the application must, either before or as soon as practicable after the application is lodged in the office of the court, be served:-
 - (a) on the offender, if the offender is not the applicant; or
 - (b) on the Director of the Department of Correctional Services, if a probation officer is not the applicant.
- (4) If an application under section 58M or section 58Y has been lodged in a court, a probation officer or a member of the police may, for the purpose of having the offender brought before the court apply to the relevant court for the issue of a warrant to arrest the offender.
- (5) A warrant issued under subsection (4) is to be executed only by a member of the police.

58ZB APPEAL IN RESPECT OF SUBSTITUTED SENTENCE

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

58ZC CONFISCATION OF PROPERTY

- (1) On conviction of any person for a criminal offence, the court may order the confiscation of any property of the offender which was used as a means of committing the offence or which represents the proceeds of the offence.
- (2) Subsection (1) applies to any ship, boat, aircraft or motor vehicle used by

the offender to travel to or away from the place where the offence was committed.

58ZD RESTITUTION OF PROPERTY

- (1) When convicting a person for a criminal offence and where the person has unlawfully obtained possession of any property of another person, the court may order:
 - (a) the restitution of such property; or
 - (b) the restitution of the value of such property,by the offender to the person lawfully entitled to possession of the property.
- (2) In addition to subsection (1), the court may direct that if the offender defaults in making the restitution within a period specified in an order, the offender is liable to be sentenced to imprisonment, for a period not exceeding a term calculated at the rate of 1 week imprisonment for every VT1,000 of the value of the property concerned.
- (3) The period of imprisonment under subsection (2) must not exceed 6 months.
- (4) The offender is to continue to be liable to make restitution of such property notwithstanding the execution of the sentence of imprisonment.

58ZE CONFINEMENT OF ALCOHOL OR DRUG ADDICTED PERSONS OR MENTALLY ILL PERSONS

- (1) If a person who is addicted to alcohol or drugs or is suffering from a mental illness is convicted of any criminal offence which arises out of such addiction or mental illness and the court is of the opinion that his or her liberty is a danger to the public or himself, the court may order his or her confinement in a specified health institution.
- (2) The confinement must not exceed 2 years in the case of an adult for alcohol or drug addiction or 5 years in the case of a mentally ill person.
- (3) The confinement may be earlier terminated in accordance with the provisions of section 58ZF.

58ZF REVIEW OF CONFINEMENT

- (1) In the case of every person confined in any manner other than by

imprisonment, supervision or community work under the provisions of this Act, a full report on his or her condition and the necessity to continue to detain him or her, must be sent to the Supreme Court by the authority concerned at intervals not exceeding 12 months.

- (2) Notwithstanding the provisions of subsection (1), the Supreme Court may, upon receiving any representation or complaint from any person, call for such a report at any time.
- (3) A Supreme Court may make a decision on the necessity to continue to detain any such person upon the report itself or may request further information or evidence, including the personal attendance before it of any person, as it shall consider necessary or desirable. The same Court may, if it thinks fit, visit the place of confinement for the purpose of inspecting the same or interviewing any person.
- (4) The Supreme Court has the power, on making a decision in any case that the person detained should be released from confinement, to make such orders or give such directions for his or her release as may be appropriate in the circumstances.
- (5) An order or direction made under subsection (4) is binding on the authority concerned, who must report to the court without delay upon the making of the order.

58ZG REHABILITATION

- (1) Rehabilitation by lapse of time omits a conviction for any criminal offence.
- (2) A rehabilitation may not apply without discharge of any expense due to the treasury and any order for the payment of money made in criminal proceedings nor affect the right of the treasury to any such sums already collected.

58ZH LAPSE OF TIME

- (1) An offender who has not received any further sentence of imprisonment for any criminal offence shall be as of right, rehabilitated by the expiry of the following periods:
 - (a) a sentence of a fine or a single sentence of imprisonment for up to 6 months – 5 years;
 - (b) a single sentence of imprisonment for up to 2 years – 7 years;

- (c) a single sentence of imprisonment for up to 5 years – 10 years;
 - (d) more than 1 sentence of imprisonment for an aggregate period of 1 year or less – 10 years;
 - (e) more than 1 sentence of imprisonment for aggregate period of 1 year but not more than 2 years – 15 years.
- (2) The periods subscribed in subsection (1) are in force:
- (a) in the case of a sentence of a fine - from the date of payment of the fine; and
 - (b) in any case of imprisonment - from the date of expiry of the sentence."

3 After section 89

Insert

"89A SEXUAL INTERCOURSE

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

- (a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- (b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- (c) the introduction of any part of the penis of a person into the mouth of another person; or
- (d) the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or
- (e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or
- (f) the causing, or permitting of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who

caused or permitted the activity."

4 Section 90 (heading)

Delete the heading, substitute:

"SEXUAL INTERCOURSE WITHOUT CONSENT".

5 After subparagraph 90(b)(v)

Insert

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

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

6 At the end of section 90

Delete all the words "rape. The offence is complete upon penetration.", substitute "sexual intercourse without consent".

7 Section 91 (heading)

Delete "rape", substitute "sexual intercourse without consent".

8 Section 91

Delete "rape", substitute "sexual intercourse without consent".

9 Section 92

Repeal the section, substitute

"92 ABDUCTION

A person must not intend to cause another person to have sexual intercourse, either with him or her with any other person, take that person away or detain that person against that person's will.

Penalty: Imprisonment for 10 years."

10 Subsection 94(2)

After "he" (wherever occurring), insert "or she".

11 Section 97A (heading)

Delete "ASSAULT", substitute "INTERCOURSE".

12 Subsection 97A(4)

Delete "girl", substitute "child".

13 Section 98

Repeal the section, substitute

"98 ACT OF INDECENCY WITHOUT CONSENT

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

- (a) without that person's consent; or
- (b) with that person's consent if the consent is obtained:
 - (i) by force; or
 - (ii) by means of threats of intimidation of any kind; or
 - (iii) by fear of bodily harm; or
 - (iv) by means of false representations as to the nature of the act; or
 - (v) in the case of a married person, by impersonating that person's husband or wife; or
 - (vi) by the effects of alcohol or drugs; or
 - (vii) because of the physical or mental incapacity of that person.

Penalty: Imprisonment for 7 years."

14 After section 98

Insert

"98A ACT OF INDECENCY WITH A YOUNG PERSON

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

Penalty: Imprisonment for 10 years."

15 Section 99

Repeal the section.

16 After section 101D

Insert

**"101E ALTERNATIVE VERDICTS FOR OFFENCES AGAINST
MORALITY**

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

- (a) convicted of the offence of committing an act of indecency without consent under section 98; or
- (b) convicted of the offence of committing an act of indecency with a young person under section 98A."
