

PENAL CODE (AMENDMENT) ACT, 2018

No. 21



of 2018

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An Act to amend the Penal Code to, among others enhance penalties at Division II and sections 177 – 189 which are considered low and therefore not deterring, insert new provisions dealing with possession of human flesh, body parts or human remains and cannibalism, and align the Act with certain provisions of the Children’s Act.

Date of Assent: 29.06.2018

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

Short title and
commencement

1. This Act may be cited as the Penal Code (Amendment) Act, 2018, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Amendment of
section 2 of
Cap. 08:01

2. The Penal Code (hereinafter referred to as “the Act”) is amended in section 2 —

(a) by substituting for the definition of following words the following new definitions —

(i) ““goods” means corporeal or incorporeal movable or immovable property of any kind;

(ii) “member of the Services” means any member of the Botswana Police Service or any other law enforcement agency; and

(iii) “property” means money or any other movable, immovable, corporeal or incorporeal thing, whether located in Botswana or elsewhere, and includes any rights, securities and any interest in privileges and claims over that thing, as well as —

(a) any currency, whether or not the currency is legal tender in Botswana, and any bill, security, bond, negotiable instrument or any instrument capable of being negotiated which is payable to the bearer or endorsed “payable to the bearer”, whether expressed in Botswana currency or otherwise;

- (b) any balance held in Botswana currency or in any other currency in accounts with any bank which carries on business in Botswana or elsewhere;
- (c) any balance held in any currency with a bank outside Botswana;
- (d) any motor vehicle, ship, aircraft, boat, work of art, jewellery, precious metals or any other item of value;
- (e) any right or interest in property; and
- (f) any funds or other assets, including all property and any interest, dividend or income on or value accruing to or generated by such funds or assets”; and

(b) by inserting the following new definitions in their correct alphabetical order —

““funds” means assets of any kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets;

“law enforcement agency” means the —

- (i) Botswana Police Service,
- (ii) Directorate on Corruption and Economic Crime;

“private enterprise” means a voluntary organisation, non-governmental organisation, political party, charitable institution, society, association, company, partnership, club, trust or any other person or organisation which is not a public body; and

“public body” has the meaning assigned to it under the Corruption and Economic Crimes Act;”

Cap. 08:05

2A. The Act is amended in section 13 by substituting for subsection (3) the following new subsection —

Amendment of section 13

“(3) Any person under the age of 12 years is presumed to be incapable of having carnal knowledge.”.

3. Section 94 of the Act is amended by substituting for subsection (2), the following new subsection —

Amendment of section 94 of the Act

“(2) For purposes of this section a person discriminates against another if, on the grounds of colour, race, disability, nationality or creed, he treats such person less favourably or in a manner different to that in which he treats or would treat any other person.”.

4. The Act is amended by substituting for section 99, the following new section —

Amendment of section 99 of the Act

“Official 99. Any person who —

corruption

(a) being employed in —

- (i) a public body,
- (ii) a private enterprise, or
- (iii) any other organisation,

and being charged with the performance of any duty by virtue of such employment, corruptly solicits, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

- (b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to produce or attempt to produce, to, upon, or for any person employed in the public service, private enterprise or any other organisation, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years or to a fine not exceeding P500 000, or to both.”.

Amendment of
section 100 of
the Act

5. Section 100 of the Act is amended by substituting for that section, the following new section —

“Corruption

100. Any person who, being employed in a public body, private enterprise or any other organisation, takes or accepts from any person for the performance of his duty as such officer or employee, any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years or to a fine not exceeding P500 000, or to both.”.

Amendment of
section 101
of the Act

6. Section 101 of the Act is amended by substituting for the words “six months”, the words “10 years or to a fine not exceeding P500 000, or to both.”.

Amendment of
section 104 of
the Act

7. Section 104 of the Act is amended —

- (a) by substituting for subsection (1) the following new subsection —

“(1) Any person who, being employed in a public body or any private enterprise, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of any other person or entity is guilty of an offence.”; and

- (b) in subsection (2) by substituting for the words “three years”, the words “10 years or to a fine not exceeding P500 000, or to both”.

8. Section 108 of the Act is amended —

- (a) in paragraph (a) by substituting for the words “the public service”, the words “a public body or any private enterprise”; and
- (b) by substituting for the words “three years”, the words “10 years or to a fine not exceeding P500 000, or to both”.

Amendment of
section 108 of
the Act

9. Section 141 of the Act is amended by substituting for that section, the following new section —

Amendment of
section 141 of
the Act

“Definition of rape 141. Any person who has unlawful carnal knowledge of another person, or who causes the penetration of a sexual organ or instrument, of whatever nature, into the person of another, or who causes the penetration of another person’s sexual organ into his or her person, without the consent of such other person, or with such person’s consent if the consent is obtained by force or means of threats or intimidation of any kind, by fear of bodily harm, or by means of false pretences as to the nature of the act, or, in the case of a married person, by personating that person’s spouse, is guilty of the offence termed rape.”.

10. Section 142 of the Act is amended —

Amendment of
section 142 of
the Act

- (a) in subsection (1) by deleting subparagraph (i); and
- (b) by deleting subsection (5).

11. Section 145 of the Act is amended by substituting for that section, the following new section —

Amendment of
section 145 of
the Act

“Abduction of person under 18 years 145. Any person who unlawfully takes a person under the age of 18 years out of the custody or protection of that person’s father or mother or other person having the lawful care or charge of that person, and against the will of such father or mother or other person, is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.”.

12. Section 146 of the Act is amended by substituting for subsection (2), the following new subsection —

Amendment of
section 146 of
the Act

“(2) It shall be no defence to a charge for an indecent assault on a person under the age of 18 years to prove that the person so assaulted consented to the act of indecency unless it appears to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the person assaulted was of or above the age of 18 years.”.

13. Section 147 of the Act is amended by —

Amendment of
section 147 of
the Act

- (a) substituting for the words “16 years” wherever they appear in that section, the words “18 years”; and
- (b) by substituting for subsection (5), the following new subsection —
 - (5) It shall be a sufficient defence to any charge under this section if it appears to the court before whom the charge is brought that the person so charged is —
 - (i) less than two years older than the person so defiled,
 - (ii) not in a position of trust or authority towards the person so defiled,
 - (iii) not a person with whom the person so defiled is in relationship of dependency, and
 - (iv) not in a relationship with the person so defiled that is exploitative of the person so defiled.

14. Section 151 of the Act is amended by substituting for the words “16 years” wherever they appear in that section, the words “18 years”.

Amendment of
section 151 of
the Act

15. Section 152 of the Act is amended by substituting for the words “12 years” wherever they appear in that section, the words “18 years”.

Amendment of
section 152 of
the Act

Amendment of
section 154 of
the Act

16. Section 154 of the Act is amended by substituting for the words “16 years” wherever they appear in that section, the words “18 years”.

Deletion of
section 166
of the Act

17. Section 166 of the Act is hereby deleted.

Amendment of
section 168
of the Act

18. Section 168 of the Act is amended by substituting for subsection (1), the following new subsection —

“(1) Any person who knowingly has carnal knowledge of another person knowing that person to be his or her grandchild, child, stepchild, brother, sister, parent or step-parent, is guilty of an offence and is liable to imprisonment for a term not exceeding five years:

Provided that if it is alleged in the indictment or summons and proved that the person of whom carnal knowledge was had is under the age of 18 years, the offender shall be liable to imprisonment for a minimum period of 10 years or for life.”.

Amendment of
section 175 of
the Act

19. Section 175 of the Act is amended by substituting for the words “16 years” wherever they appear in that section, the words “18 years”.

Amendment of
section 176 of
the Act

20. Section 176 of the Act is amended in subsection (1) by substituting for that subsection, the following subsection —

“(1) Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the offence termed a common nuisance and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding two years, or to both.”.

Amendment of
section 177 of
the Act

21. The Act is amended by substituting for section 177, the following new section —

“Chain letters
177. (1) Any person who sends or causes to be sent any chain letter or send or receive any money or money’s worth in connection with any chain letter is guilty of an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding five years, or to both.

(2) For purposes of this section “chain letter” means a document, including an electronic document, addressed by one person to another person suggesting to the person to whom it is addressed —

- (a) that he should send a document having the same purport to a number of other persons; and
- (b) that he should remit to a person or to an address specified in the first mentioned document money or money’s worth.”.

Amendment of
section 178 of
the Act

22. Section 178 of the Act is amended —

- (a) in subsection (1) by substituting for the word “P200” appearing therein, the words “P4 000, or to both”; and

(b) by substituting for subsection (4), the following new subsection —

“(4) A court may, on the application of the Director of Public Prosecution or his or her representative, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of such obscene matter or thing.”.

23. The Act is amended by substituting for section 179, the following new section —

“Idle and
disorderly
persons

179. Any person who —

- (a) being a common prostitute, behaves in a disorderly or indecent manner in any public place;
 - (b) wanders or places himself in any public place for the purpose of begging or gathering alms, or causes or procures or engages any child to do so;
 - (c) plays at any game of chance for money or money’s worth in any public place;
 - (d) publicly conducts himself in a manner likely to cause a breach of the peace;
 - (e) without lawful excuse does any indecent act;
 - (f) in any public place solicits for immoral purposes; and
 - (g) wanders about and endeavours by the exposure of wounds or deformation to obtain or gather alms,
- is guilty of an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding one year, or to both and on a second conviction to imprisonment for a term not exceeding 18 months and on any subsequent conviction thereof to a term of imprisonment not exceeding two years.”.

Amendment of
section 179 of
the Act

24. Section 180 of the Act is amended —

- (a) by substituting for the word “P50” appearing therein, the word “P1 000”; and
- (b) by substituting for the words “three months” appearing therein, the words “one year”.

Amendment of
section 180 of
the Act

25. Section 181 of the Act is amended —

- (a) in subsection (1) by —
 - (i) substituting for the word “P10” appearing therein, the word “P300”, and
 - (ii) substituting for the word “P20” appearing therein, the word “P600”; and
- (b) in subsection (2) by —
 - (i) substituting for the word “P50” appearing therein, the word “P1 000”, and
 - (ii) substituting for the words “three months” appearing therein, the words “one year”.

Amendment of
section 181 of
the Act

Amendment of
section 183 of
the Act

26. Section 183 of the Act is amended —

- (a) in subsection (2) —
 - (i) by substituting for the words “one month” appearing therein, the words “three years”, and
 - (ii) by substituting for the word “P60” appearing therein, the word “P6 000”; and
- (b) in subsection (3) —
 - (i) by substituting for the words “six months” appearing therein, the words “18 months”, and
 - (ii) by substituting for the word “P200” appearing therein, the word “P2 000”.

Amendment of
section 184 of
the Act

27. Section 184 of the Act is amended by inserting immediately after the word “offence”, the words “and shall be liable to a minimum term of four years’ imprisonment or to a maximum term not exceeding 10 years imprisonment”.

Amendment of
section 185 of
the Act

28. Section 185 of the Act is amended by inserting immediately after the word “offence”, the words “and shall be liable to a minimum term of four years’ imprisonment or to a maximum term not exceeding 10 years imprisonment”.

Amendment of
section 186 of
the Act

29. Section 186 of the Act is amended by inserting immediately after the word “offence”, the words “and shall be liable to a minimum term of four years’ imprisonment or to a maximum term not exceeding 10 years imprisonment, or to a fine not exceeding P100 000, or to both”.

Amendment of
section 187 of
the Act

30. Section 187 of the Act is amended by inserting immediately after the word “offence”, the words “and shall be liable to a fine not exceeding P100 000, or to a minimum term of four years’ imprisonment or to a maximum term not exceeding 10 years imprisonment, or to both”.

Amendment of
section 188 of
the Act

31. Section 188 of the Act is amended by inserting immediately after the word “offence”, the words “and shall be liable to a fine not exceeding P100 000, or to a minimum term of four years’ imprisonment or to a maximum term not exceeding 10 years imprisonment, or to both”.

Amendment of
section 189 of
the Act

32. Section 189 of the Act is amended by inserting immediately after the word “offence”, the words “and shall be liable to a fine not exceeding P500 000, or to a minimum term of four years’ imprisonment or to a maximum term not exceeding 10 years imprisonment, or to both”.

Insertion of
section 191A
in the Act

33. The Act is amended by inserting immediately after section 191, the following new section —

“Hostage-
taking

191A. (1) A person who takes, forcibly seizes or detains another person as a hostage and threatens to kill, injure or continue to detain such hostage in order to compel any other person to do or abstain from doing any act as an explicit or implied condition for the release of the hostage commits an offence termed hostage-taking and shall be liable to imprisonment for 23 years.

(2) Where during the commission of an offence under subsection (1), a firearm is used or the offence is committed to benefit any criminal organisation, the person who commits the offence shall be liable to imprisonment for life.

34. The Act is amended by inserting immediately after section 201, the following new section —

“Possession of human flesh, body parts or human remains

201A. A person found in unlawful possession of any human flesh, body parts or human remains commits an offence and shall be sentenced to a minimum term of 10 years’ imprisonment or to a maximum term of 30 years’ imprisonment.”.

Insertion of section 201A in the Act

35. The Act is amended by inserting immediately after section 201, the following new section —

“Cannibalism

201B. (1) A person who wilfully ingests the flesh or blood of a human being commits an offence termed cannibalism and shall be sentenced to a minimum term of five years’ imprisonment or to a maximum term of 14 years’ imprisonment.

(2) It shall be a defence to a charge under this section where the accused proves to the satisfaction of the court that the action taken under subsection (1) was taken under extreme life threatening conditions as the only apparent means of survival.”.

Insertion of section 201B in the Act

36. Section 203 of the Act is amended by substituting for subsection (2), the following new subsection —

“(2) Where a court in convicting a person of murder is of the opinion that there are extenuating circumstances, the court shall impose a minimum term of 15 years’ imprisonment and not a death sentence.”.

Amendment of section 203 of the Act

37. The Act is amended by substituting for section 217, the following new section —

“Attempt to murder

217. Any person who —

(a) attempts unlawfully to cause the death of another; or

(b) with intent unlawfully to cause the death of another 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,

is guilty of an offence and is liable to a minimum term of 10 years’ imprisonment or to a maximum term of imprisonment for life.”.

Amendment of section 217 of the Act

38. The Act is amended by substituting for section 250, the following new section —

“Definition of kidnapping

250. Any person who conveys any person within or beyond the limits of Botswana without the consent of that person, or some person legally authorised to consent on behalf of that person, is said to kidnap that person.”.

Amendment of section 250 of the Act

Amendment of
section 251 of
the Act

39. The Act is amended by substituting for section 251, the following new section —

“Definition of
kidnapping
from lawful
guardianship

251. Any person who takes or entices any person under the age of 18 years, or any person of unsound mind, out of the keeping of the lawful guardian of such person under the age of 18 years or person of unsound mind, without the consent of that person’s guardian, is said to kidnap such person under the age of 18 years or person of unsound mind from lawful guardianship.”

Amendment of
section 253 of
the Act

40. The Act is amended by substituting for section 253, the following new section —

“Punishment
for kidnapping

253. A person who kidnaps any person is guilty of an offence and is liable to imprisonment for 25 years.”

Amendment of
section 260 of
the Act

41. The Act is amended by substituting for section 260, the following new section —

“Detaining
person as
slave

260. A person who illegally detains or restrains any another person against such other person’s will is guilty of an offence and liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding 25 years or to both.”

Amendment of
section 263 of
the Act

42. Section 263 of the Act is amended —

(a) in subsection (1) by substituting for that subsection, the following new subsection —

“(1) Every incorporeal or corporeal inanimate thing which is the property of any person, and which is movable, is capable of being stolen.”; and

(b) by inserting immediately after subsection (6), the following new subsections —

“(7) Every print, photo, or image of confidential information or trade secret which is the property of any person, is capable of being stolen.

(8) Any payment of money which is erroneously made to a person who is not entitled to receive it is capable of being stolen.”

Amendment of
section 270 of
the Act

43. Section 270 of the Act is amended by substituting for subsection (2), the following new subsection —

“(2) If a man and his wife are married in community of property, either spouse shall not, during the subsistence of the community, be deemed to steal from the joint estate; and while the spouses are living together, the provisions of subsection (1) shall have effect as if the property of the joint estate was the separate property of either spouse.”

44. Section 274 of the Act is hereby deleted.

Deletion of
section 274
of the Act

Amendment of
marginal note
to section 296
of the Act

45. The marginal note to section 296 of the Act is amended by substituting for that marginal note, the following new marginal note —

“Extortion”.

46. Section 305 of the Act is amended by substituting for the words “woman or girl” wherever they appear, the word “person”.

Amendment of
section 305 of
the Act

47. The Act is amended by substituting for section 315, the following new section —

Amendment of
section 315 of
the Act

“False
declaration 315. Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport or national identity card, whether for himself or any other person, is guilty of an offence and liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 5 years, or to both.”.

48. The Act is amended by inserting immediately after section 342, the following new section —

Insertion of
section 342A
in the Act

“Fraud 342A. Any person who with intent to defraud, unlawfully makes a misrepresentation which causes prejudice, financial or otherwise, to any other person is guilty of an offence and shall be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding P100 000, or to both.”.

49. Section 347 of the Act is amended by substituting for paragraph (a), the following new paragraph —

Amendment of
section 347 of
the Act

“(a) forges any stamp, whether impressed or adhesive;”.

50. The Act is amended by substituting for section 362, the following new section —

Amendment of
section 362 of
the Act

“Making or
having in
possession
paper or
implements for
forgery 362. (1) Any person who, without lawful authority or excuse, the proof of which shall lie on him —

(a) makes, uses, or knowingly has in his custody or possession any paper intended to resemble and pass as a special paper such as is provided and used for making any bank note or currency note;

(b) makes, uses, or knowingly has in his custody or possession any frame, mould, or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines, or devices peculiar to and used in or on any such paper;

(c) engraves or in any other way makes upon any plate, wood, stone, or other material, any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to and used in or on any bank note or currency note;

(d) uses or knowingly has in his custody or possession any plate, wood, stone, or other material, upon which any such words, figures, letters, marks, lines or devices have been engraved or in any other way made as aforesaid; or

(e) uses or knowingly has in his custody or possession any paper upon which such words, figures, letters, marks, lines or devices have been printed or in any other way made as aforesaid, is guilty of an offence, and is liable to imprisonment for a term not exceeding seven years.

(2) For purposes of this section, “instrument” means a computer, computer system or computer data storage medium as defined in terms of the Cybercrime and Computer Related Crimes Act.”.

Cap. 08:06

Deletion of
section 375 of
the Act

51. Section 375 of the Act is hereby deleted.

Deletion of
section 376
of the Act

52. Section 376 of the Act is hereby deleted.

Amendment of
section 385 of
the Act

53. Section 385 is amended by substituting for the words “five years”, the words “10 years or to a fine not exceeding P500 000, or to both.”.

PASSED by the National Assembly this 12th day of April, 2018.

BARBARAN. DITHAPO,
Clerk of the National Assembly.