

Lesotho

Penal Code Act, 2012

Act 6 of 2012

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Lesotho

Penal Code Act, 2012

Act 6 of 2012

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An Act to establish a code of criminal law.

Enacted by the Parliament of Lesotho

Part I – General principles

1. Citation and commencement

This Act may be cited as the Penal Code Act, 2010 (in this Act referred to as the "Code") and shall come into operation on the date of its publication in the *Gazette*.

2. Application

- (1) Except where expressly provided, nothing in this Code shall affect—
 - (a) the liability, trial or punishment of a person for an offence against any other written law in force in Lesotho other than this Code;
 - (b) the liability of a person to be tried or punished under any provisions of any law in force in Lesotho relating to the jurisdiction of the courts of Lesotho for an offence in respect of an act done beyond the ordinary jurisdiction of such courts;
 - (c) the power of any court to punish a person for civil contempt of such court;
 - (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 coming into operation of this Code; or
 - (e) any of the written laws for the time being in force for the governance of the police, security services and armed forces of Lesotho.
- (2) No person shall be tried, convicted or punished for an offence other than an offence specified in this Code or in any other written law or statute in force in Lesotho.
- (3) The existing jurisdiction of The Local and Central Courts in relation to customary law offences and punishment shall continue until such time as the Minister responsible for Justice, may decide otherwise.
- (4) Where a court in any trial considers that a charge is proved, but is of the opinion that, having regard to the character, age, health or mental condition of the accused and to the mitigating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge.
- (5) Subsection (4) shall not apply in respect of any offence for which but for the factors therein mentioned, a court would impose a custodial punishment of six months or more.

3. Interpretation

In this Code, unless the context otherwise requires—

"**adult**" means any person who has attained 18 years or acquired majority by virtue of marriage;

"**agent**" means any person who, pursuant to an agreement, acts on behalf of another in the conduct of that other person's affairs;

"**child**" means any person who has not attained the age of 18 years;

"**grievous bodily harm**" means any harm which amounts to serious harm, or seriously or permanently injures or is likely to injure health, or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense;

"**legal practitioner or advisor**" means any person admitted to the practise of law in Lesotho;

"**medical practitioner**" means any person who is registered in terms of the law regulating the admission of medical, dental and pharmaceutical professionals and qualified to practice medicine, dentistry or pharmacy;

"**member of the victim's household**" is any person normally residing in the same private dwelling as a victim and includes any domestic servant of the victim;

"**mental disorder**" means a condition which involves a temporary or permanent disruption of the mental state, excluding a condition which has an incidental effects;

"**noxious substance**" means any substance which, when administered, causes physical or mental harm, distress or annoyance to the person to whom it is administered;

"**possession**"—

- (a) "**be in possession of**" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession, control or custody of any other person, or having anything 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) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his, her or their custody, control or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

"**property**" includes movables and immovables, money, salary, debts, legacies and all deeds and instruments relating to or evidencing title or right;

"**private dwelling**" includes any building or structure used by any person for the purposes of residence, whether permanent or temporary, any accommodation lawfully occupied for residential purposes, whether shared with other persons or not, and any hospital ward;

"**public official**" includes any person in the employment of the Government of Lesotho or employment of any other organization exercising a public power or performing a public duty pursuant to law;

"**public place**" includes any road, building, conveyance or place to which the public has access, either upon condition of making any payment or not, and any building or place used for religious gatherings or public meetings;

"**sexual act**" means—

- (a) direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of one person and any other part of the body of another person;
- (b) exposure or display of the genital organs of one person to another person;
- (c) the insertion of any part of the body of a person or of any part of the body of an animal or any object into the vagina or penis or anus of another person; or

- (d) cunnilingus, fellatio or any other form of genital stimulation, but does not include contact, exposure, insertion or genital stimulation done by hand or any harmful object—
 - (i) for sound health practices or proper medical purposes;
 - (ii) for reasonably necessary body search by law enforcement agencies—
 - (A) done for lawful purposes without putting in jeopardy the health and safety of the arrestee, suspect or the person who is being searched; and
 - (B) not carried out abusively or for the purpose of humiliating or punishing an arrestee, suspect or the person who is being searched;

"statute" means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of the International Criminal Court on 17 July 1998 and ratified by Lesotho on 6 September 2000.

4. Territorial application

- (1) The jurisdiction of the courts of Lesotho for the purposes of this Code extends to every place within Lesotho.
- (2) When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if any such act had been done wholly within the jurisdiction.
- (3) A person who, while outside Lesotho, commits an act or makes an omission where such an act or omission forms part of an offence, of which the other elements occur or have effect within Lesotho or is an offence in respect of which Lesotho is enjoined to punish under international law, may, on coming into Lesotho, be tried and punished for such an offence as if the act or omission had been committed within Lesotho.
- (4) An offence committed by any citizen of Lesotho within the confines of a Lesotho diplomatic mission abroad shall be triable within Lesotho as if the offence had been committed within Lesotho.
- (5) A person who, while outside Lesotho, counselled another to do or omit to do in Lesotho an act or make an omission of such a nature that, if he or she had done the act or omission in Lesotho, he or she would have committed an offence, may be tried for an offence of the same kind, and is liable to the same punishment, as if he or she had done the act or made the omission in Lesotho.

5. Double jeopardy

A person cannot be tried or punished twice under the provisions of this Code for the same act or omission, except in the case where the act or omission is such that by means thereof he or she causes the death of another person, in which case he or she may be convicted of the offence of which he or she is guilty by reason of causing such death, notwithstanding that he or she has already been convicted of some other offence constituted by the act or omission.

Part II – General principles of criminal liability

6. Age of criminal responsibility

- (1) A person under the age of seven years is not criminally responsible for any act or omission.
- (2) A person above the age of seven years but below the age of fourteen years is not criminally responsible for any act or omission unless it is proved that at the time of doing the act or making the omission he or she understood the nature and implications of the conduct and, knowing that the conduct was wrong, he or she was capable of acting in accordance with that knowledge.

7. Omissions

- (1) No person shall be criminally liable for any omission to act unless he or she is under a legal duty to perform the act which he or she has omitted to do.
- (2) A legal duty to act exists where—
 - (a) a person is required to do something by any provision of the law; or
 - (b) a person owes a duty of protection or assistance to the person affected by the omission, this duty having come into existence as a result of a natural or assumed relationship between the parties or by virtue of the office occupied by one of them; or
 - (c) there has been an agreement giving rise to a duty to act.
- (3) A person who creates or is in control of a situation of danger and who fails to prevent harm to others resulting from such danger, commits an offence.
- (4) A person who sees another person in immediate danger of death or serious injury commits an offence if he or she omits to take reasonably practicable steps to rescue that person from such danger.
- (5) A person who, having direct knowledge of the commission of an offence involving the taking or endangering of human life, without reasonable excuse fails to disclose to a chief, police or other law enforcement agents as soon as reasonably practicable such information as he or she possesses, commits an offence.
- (6) The provisions of subsection (5) shall not apply to a legal practitioner or advisor or medical practitioner who acquires such knowledge in the course of professional duties.
- (7) A person who has knowledge of the fact that a criminal offence involving danger to human life is about to be committed or who witnesses the commission of such an offence and fails, without reasonable excuse, to take steps to summon a chief, police or other law enforcement agencies, commits an offence.

8. Involuntary acts

- (1) In this section, "involuntary act" means an act of which the actor at the time of the commission of the act is not conscious, or an act over which he or she has no control.
- (2) Except where expressly provided for in any other written law, a person shall not be criminally liable for any involuntary act.

9. Automatism

- (1) A person who acts in a state of unconsciousness, or whose consciousness is so impaired as to make him or her unable to control his or her actions, shall not be liable for any offence committed during such a state.
- (2) This defence shall not be available to any person who, knowing of the existence of the condition which gives rise to such conduct, nonetheless recklessly places himself or herself in circumstances where she or he is likely to cause harm to persons or property.
- (3) Where conduct referred to under subsection (1) is the result of a mental disorder, and where it appears to the court that there is a significant danger that the accused person is likely to cause harm to others, the court may acquit the accused person subject to the making of an order under section 172 of the Criminal Procedure and Evidence Act, 1981¹.

¹

Act [No. 9 of 1981](#)

10. Negligence or recklessness

A person who causes harm to the person or property of another or exposes others to a risk of injury or death through negligence or recklessness commits an offence.

11. Culpability

- (1) Liability for any act or consequence of any act shall be imposed only if a person intended to perform that act or intended the consequences which form the subject of the criminal charge.
- (2) A person intends to perform an act if he or she purposefully directs his or her will towards the performance of that act. A person intends the consequences of his or her act if—
 - (a) he or she acts knowing that the consequences will occur as a result of his or her action; or
 - (b) he or she acts while foreseeing that there is a real possibility of that consequence occurring and he or she is reckless as to whether or not the consequence occurs.
- (3) Where it is a requirement of an offence that the accused should have known of the existence of a particular circumstance, then awareness on the part of the accused of the possibility of the existence of that circumstance, together with recklessness as to whether it existed, shall satisfy the requirement of knowledge in that case.
- (4) A person is reckless in relation to a possible consequence if he or she knows that there is a substantial possibility that the consequence will occur and acts nonetheless, being indifferent as to whether or not the consequence occurs.
- (5) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is irrelevant so far as regards criminal liability.

12. Ignorance of the law

- (1) It shall be a defence for any person charged with an offence if he or she proves that at the time of the act or omission forming the basis of a criminal charge he or she could not reasonably have been expected to be aware of the fact that the conduct contravened the law.
- (2) The defence of ignorance of the law shall be proved by such person on the balance of probabilities.

13. Mistake

A person who does or omits to do an act under an honestly held, but mistaken belief in the existence of a state of affairs, is not criminally responsible for the act or omission to any greater extent than if the real state of affairs had been as he or she believed them to be.

14. Claim of right

A person shall not be guilty of an offence relating to property if his or her act or omission in relation to that property was accompanied by a reasonably held belief that he or she was exercising a claim of right.

15. Intoxication

- (1) For the purposes of this section, "intoxication" includes those states of mind produced by alcohol, drugs or any other intoxicating substance.
- (2) Except as provided in this section, intoxication shall not constitute a defence to any criminal charge.

- (3) Intoxication shall be a defence to any criminal charge if by reason of intoxication a person charged at the time of the act or omission did not know that such act or omission was wrong or did not know what he or she was doing, and—
 - (a) the state of intoxication was caused without his or her consent by the malicious or negligent act of another person; or
 - (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.
- (4) Where the defence under subsection (3) is established, then in a case falling under paragraph (a), the accused person shall be discharged, and in a case falling under paragraph (b), the provisions of section 172 of the Criminal Procedure and Evidence Act 1981 shall apply.
- (5) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed that intention, specific or otherwise, necessary for conviction of the offence charged.
- (6) A person commits an offence if he or she intentionally or negligently becomes intoxicated through the use of alcohol, drugs or other intoxicating substances and while in that intoxicated condition performs a punishable act.
- (7) It shall be irrelevant for purposes of conviction under subsection (6) that the person charged was so intoxicated as to be incapable of forming the intention necessary for conviction of any crime.

16. Sudden emergency

Subject to the express provisions of this Code relating to acts done under coercion, provocation or self defence, a person acting or omitting to act in a sudden or extraordinary emergency shall not be held criminally liable for acts and omissions done or made in such circumstances, if his or her acts or omissions were such as would have been done or made by a reasonable person.

17. Compulsion

A person who commits an offence as a result of a threat of immediate and serious bodily harm either to himself or herself or to a member of his or her immediate family shall not be liable if—

- (a) he or she had not intentionally or negligently placed himself or herself in circumstances where he or she should have foreseen the likelihood of he or she being subjected to such a threat; or
- (b) he or she is not a member, agent or servant of a criminal group;
- (c) the threat was not one which could at any time before the commission of the offence have been avoided; or
- (d) the threat was one which would have and did in fact induce the accused to commit the offence.

18. Superior orders

- (1) A person who is placed in authority over another person commits an offence if he or she issues orders that are clearly or manifestly illegal.
- (2) It shall not be a defence to a criminal charge that the offence specified in the charge was carried out by the accused person while acting under the clearly or manifestly illegal orders of a superior placed in authority over him or her.

19. Insanity

- (1) For the purposes of subsection (2), every person is presumed to be of sound mind and to have been of sound mind, until the contrary is proved.

- (2) No person shall be convicted of a criminal offence if he or she proves on the balance of probabilities that at the time of the commission of the offence he or she was suffering from mental disorder of such a nature that he or she was substantially unable to appreciate the wrongfulness of his or her actions or that he or she was unable to conduct himself or herself in accordance with the requirements of the law.
- (3) Where proof of mental disorder is established, the court shall return a verdict of insanity and order the detention of the person in terms of section 172 of the Criminal Procedure and Evidence Act 1981.

20. Self defence

- (1) No person shall be criminally responsible for the use of force in repelling an unlawful attack—
 - (a) upon himself or herself or another person if—
 - (i) it was not reasonable to avail himself or herself of any means of retreat of which he or she was aware; and
 - (ii) the degree of force used in repelling the attack was no greater than that which was reasonably necessary in the circumstances;
 - (b) upon his or her property or the property of another provided that the means he or she chooses and the degree of force he or she uses in so doing are reasonable in the circumstances.

21. Judicial immunity

Except as expressly provided by this Code, a judicial officer is not criminally responsible for any thing done or omitted to be done by him or her in good faith in the exercise of his or her judicial functions, although the act done is in excess of his or her judicial authority or although he or she is bound to do the act omitted to be done.

22. Attempts

- (1) If, with intent to commit a criminal offence, a person does an act which is more than merely preparatory to the commission of the offence, she or he commits the offence of an attempt to commit the offence.
- (2) Subsection (1) shall apply even where the facts are such that the commission of an offence is impossible.

23. Counseling, procuring etc

- (1) A person who counsels, procures or incites another to do any act or make any such omission of such a nature that if the act were done or the omission were made, an offence would thereby be committed, commits an offence.
- (2) A person counsels, procures or incites the commission of an offence if he or she recruits, advises or otherwise encourages another person to commit that offence.
- (3) A conviction under subsection (1) shall carry the same penal consequences as a conviction for the actual commission of the offence.

24. Aiding and abetting

- (1) Where an offence is committed, each of the following persons is liable and may be charged—
 - (a) a person who actually does the act or makes the omission which constitutes the offence;

- (b) a person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) a person who, with the intention of giving assistance, is present at the scene of the crime within such distance from the perpetrator as to be in a position to render immediate assistance to him or her to evade arrest or conceal the offence;
- (d) a person who counsels, procures or incites any other person to commit the offence.

25. Conspiracy

If a person agrees with another person or persons that a course of conduct shall be pursued or joins such agreement which, if carried out in accordance with their intentions, either—

- (a) will lead to the commission of any offence by one or more of the parties to the agreement; or
 - (b) would do so but for the existence of facts which render the commission of the offence impossible,
- he or she commits an offence of conspiracy to commit the offence or offences in question.

26. Shared intention or common purpose

- (1) Where two or more persons share a common intention or purpose to pursue an unlawful purpose together, and in the pursuit of such purpose an offence is committed, then each party to the common intention is deemed to have committed the offence.
- (2) There shall be no conviction in the circumstances under subsection (1) if it cannot be proved that the accused person could reasonably have been expected to have foreseen the commission of the offence.

27. Accessory after the fact

A person who assists another person who has completed the commission of an offence to escape arrest or apprehension commits the offence of being an accessory after the fact.

28. Offences by companies

- (1) Where a person acting on behalf of a company or body corporate commits an offence, the company or body corporate may be charged with the offence if—
 - (a) that offence is one created by statute with an express or implicit intention of creating liability on the part of a company for the acts of its employees or officers; or
 - (b) the person who commits the act is a person charged with the direction of the affairs of that company or body corporate.
- (2) Where a body corporate commits an offence under subsection (1), the punishment shall be a fine or imprisonment as may be provided for under the relevant statute.

Part III – Offences against the person

29. Consent

- (1) The consent of a person to the causing of his or her own death or to the infliction upon himself or herself of serious physical injury does not affect the criminal responsibility of any person by whom such death or serious physical injury is caused.
- (2) It shall be a defence for a person charged with causing death or serious injury to show that the victim consented to the infliction of physical force for a purpose recognised as lawful.

- (3) Any person who uses an excess of force for a lawful purpose shall be criminally responsible for that excess.

30. Assault

- (1) A person who intentionally applies unlawful force to the person of another commits the offence of assault.
- (2) A spouse who intentionally applies unlawful force to another, commits the offence of assault.

31. Aggravated assault

- (1) A person who assaults another in circumstances where one or more of the factors contained in subsection (2) are present commits the offence of aggravated assault.
- (2) The factors referred to in subsection (1) are—
 - (a) the intentional causing of serious bodily injury or any form of lasting physical disablement;
 - (b) the use of any form of instrument or substance, explosive or otherwise, with the intention of inflicting serious physical injury;
 - (c) the commission of assault with intent to commit another criminal offence;
 - (d) the assault of a judicial officer, lawyer, police officer or any other officer of the law in the execution of duty;
 - (e) the assault of a person on account of an act done by that person in the execution of a legal duty;
 - (f) the assault of a person who by virtue of age, physical or mental condition is vulnerable;
 - (g) the commission of assault in circumstances where the accused was at the time of the assault in a position of authority over the victim;
 - (h) the assault takes place in the private dwelling of the victim and is committed by a person other than a member of the victim's household.
- (3) No conviction for aggravated assault shall be made unless the accused is shown to have known that the relevant aggravating factor was present.

32. Lawful physical force

No offence is committed by a person who applies reasonable physical force to another when this is necessary—

- (a) for the furtherance of public justice;
- (b) for the execution of lawful orders;
- (c) for the prevention of crime;
- (d) for the apprehension of criminal suspects;
- (e) for the defence of person or property; or
- (f) for the lawful and reasonable chastisement of children.

33. Risking injury or death

A person who intentionally and unlawfully subjects another or others to a risk of injury or death commits an offence.

34. Threats

- (1) A person who communicates to another an unlawful threat of death or physical harm, either directly or indirectly, by gesture or words written or spoken, commits an offence.
- (2) It shall be a defence to a charge under subsection (1) that the threat in question would not have caused fear or apprehension in any reasonable person.

35. Poisoning

A person who unlawfully and with intent to injure another causes any poison or noxious substances to be administered to or consumed by the other person commits an offence.

36. Suicide

No offence is committed by a person who attempts to take his or her own life.

37. Counseling and assisting suicide

Subject to any written law, a person who—

- (a) counsels another to kill himself or herself and thereby causes that person to take or attempt to take his or her own life; or
 - (b) assists another in the taking of his or her own life,
- commits an offence.

38. Culpable homicide resulting from suicide pact

- (1) For the purposes of 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 is to take his or her own life.
- (2) Nothing done by a person who enters into a suicide pact shall be treated as done by him or her in pursuance of the pact unless it is done while he or she has the settled intention of dying in pursuance of the pact.
- (3) A person who kills another in a suicide pact commits an offence of culpable homicide.

39. Causation in homicide

- (1) Homicide is causing the end of the life of another person.
- (2) A person is deemed to have caused the end of the life of another person if the court is satisfied that—
 - (a) his or her conduct was substantially productive of the death of that person; and
 - (b) there is no substantial legal cause intervening between the original conduct and the death of that person.

40. Murder and extenuating circumstances

- (1) Any person who performs any unlawful act or omission with the intention of causing the death of another person, commits the offence of murder if such death results from his or her act or omission.
- (2) The punishment on conviction for murder shall be a sentence of death.

- (3) Notwithstanding subsection (2), the court shall in the conviction for murder impose a lesser sentence where it is satisfied that—
 - (a) the convicted person was under the age of eighteen years at the time of the commission of the offence;
 - (b) the convicted person is pregnant at the time of sentence; or
 - (c) the offence was committed in the presence of extenuating circumstances.
- (4) In deciding whether or not there are extenuating circumstances the court shall take into consideration the standards of behaviour of an ordinary person of the class of the community to which the convicted person belongs.

41. Culpable homicide

- (1) A person commits the offence of culpable homicide if he or she causes death of another person through a criminally negligent act or omission.
- (2) An act or omission shall be deemed to be criminally negligent if it involves a risk of serious harm to another, and the risk would have been apparent to a reasonable person.

42. Provocation in murder and assault

- (1) For the purposes of this section—

"provocation" includes, any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person or in the presence of an ordinary person to another person who is under his or her immediate care or to whom he or she stands in a conjugal, parental, filial or fraternal relations to deprive him or her of the power of self-control and to induce him or her to assault the person by whom the act or insult is done or offered;

"ordinary person" means an ordinary person of the class of the community to which the accused belongs.
- (2) A person who—
 - (a) unlawfully and intentionally kills another under circumstances which, but for the provisions of this section, would constitute murder; and
 - (b) does the act which causes death in the heat of passion caused by sudden provocation as defined in subsection (1) and before there is time for the person to have reasserted his or her self-control, commits the offence of culpable homicide only.
- (3) The provisions of this section shall not apply unless the court is satisfied that the act which causes the death bears a reasonable relationship to the provocation.
- (4) Where such an act or insult is done or offered by one person to another or, in the presence of another, to a person who is under the immediate care of that other or to whom the latter stands in any such relation as aforesaid, the former is said to give the latter provocation for an assault.
- (5) A person who knowingly incites another to act towards him or her in what would otherwise be a provocative manner shall not be held to have acted under provocation.

43. Infanticide

Where a female person by any unlawful act or omission causes the death of a child to whom she gave birth within the previous six months, she will be presumed to have acted under the effects of childbirth, unless it can be shown to the contrary, and she shall not be convicted of murder but may be convicted of infanticide.

44. Concealment of childbirth

A person who disposes of the dead body of a new-born child with intent to conceal the fact of its birth, whether the child died before, during, or after birth, commits an offence.

45. Abortion

- (1) A person who does any act bringing about the premature termination of pregnancy in a female person with the intention of procuring a miscarriage, commits the offence of abortion.
- (2) It shall be a defence to a charge under this section that the act intended to terminate pregnancy was performed by a registered medical practitioner—
 - (a) in order to prevent significant harm to the health of the pregnant female person, and the person performing the act has obtained a written opinion from another registered medical practitioner to the effect that the termination of pregnancy is necessary to avoid significant harm to the health of the pregnant female person;
 - (b) in order to prevent the birth of a child who will be seriously physically or mentally handicapped, and the person performing the act has obtained in advance from another registered medical practitioner a certificate to the effect that the termination of the pregnancy is necessary to avoid the birth of a seriously physically or mentally handicapped child; or
 - (c) in order to terminate the pregnancy of a female person who is pregnant as a result of incestuous relationship or victim of rape.

46. Abduction

- (1) A person who unlawfully takes or entices a child or any person of unsound mind out of the custody of the lawful guardian of such person, with or without the consent of such guardian, for the purpose of marriage, sexual intercourse, or commercial and labour exploitation, commits the offence of abduction.
- (2) A guardian who consents to the enticement or taking of any child or person of unsound mind out of his or her custody for the purpose of marriage, sexual intercourse or commercial and labour exploitation, commits the offence of constructive abduction.

47. Unlawful detention

- (1) A person who unlawfully by force, threats, deception or any other unlawful means deprives another person of his or her freedom of movement, commits the offence of unlawful detention.
- (2) A person who unlawfully detains another with the intention of causing that person serious bodily harm or death, or with the intention of securing payment or any other advantage for the release of the unlawfully detained person commits an offence.

48. Indecency with children

- (1) An adult who commits an indecent act with or directed against a child, or who solicits or entices such a child to the commission of such acts, commits an offence.
- (2) For the purposes of this section, the consent of the child to the act of indecency is irrelevant.
- (3) An adult who knowingly commits an indecent act in the presence of a child capable of witnessing such an act, commits an offence.

49. Unlawful sexual intercourse with children

- (1) An adult who has sexual intercourse with a child commits an offence, and the consent of the child is irrelevant.
- (2) It shall be a defence for a person charged with this offence to prove that he or she had reasonable grounds to believe, and did so believe, that the child had attained an age of eighteen years.

50. Sexual molestation of minors

An adult who has sexual act with a child under the age of twelve years, whether or not such child consents, commits the offence of sexual molestation.

51. Indecent assault

- (1) A person who, without the consent of another person, touches that person in an indecent manner, commits the offence of indecent assault.
- (2) A touching may be deemed indecent if, according to the standards of reasonable members of the community, it demonstrates a sexual intention or motive.

52. Unlawful sexual act

- (1) A person who has unlawful sexual act with another person, or causes another person to commit an unlawful sexual act, commits an offence.
- (2) A sexual act is unlawful if committed under the following circumstances—
 - (a) there is an application of force, whether explicit or implicit, direct or indirect, physical or psychological against any person or animal;
 - (b) there are threats, whether verbal or through conduct, of the application of physical force to the complainant or to a person other than the complainant;
 - (c) there are threats, whether verbal or through conduct, to cause harm other than bodily harm, or mental harassment to, or public humiliation or disgrace of, or to use extortion against, the complainant or any person other than the complainant;
 - (d) the complainant is below the age of 12 years;
 - (e) the complainant is unlawfully detained;
 - (f) the complainant is affected by—
 - (i) physical disability, mental incapacity, sensory disability, medical disability, intellectual disability, or other disability, whether permanent or temporary; or
 - (ii) intoxicating liquor or any drug or other substance which mentally or physically incapacitates the complainant; or
 - (iii) sleep, to such an extent that he or she is rendered incapable of understanding the nature of the sexual actor deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;
 - (g) the complainant submits to or commits the sexual act by reason of having been induced, whether verbally or through conduct, by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed is some other person;

- (h) as a result of the fraudulent misrepresentation of some fact by or any fraudulent conduct on the part of the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator;
 - (i) a perpetrator, knowing or having reasonable grounds to believe that he or she is infected with a sexually transmissible disease, the human immuno-deficiency virus or other life-threatening disease, does not, before committing the sexual act, disclose to the complainant that he or she is so infected.
- (3) A person does not consent to sexual intercourse if—
- (a) his or her submission has been obtained by force or by threats of whatever nature;
 - (b) his or her submission has been obtained by a fraudulent representation by the accused that he or she is her husband or wife;
 - (c) the person having sexual intercourse with him or her has made a fraudulent representation to him or her as to the nature of the act of intercourse, and the affected person has acted on this misrepresentation; or
 - (d) he or she is asleep or otherwise unconscious at the time at which the sexual intercourse takes place, and the accused has no reasonable grounds for assuming that he or she would on awakening or gaining consciousness consent to the fact that intercourse has taken place;
 - (e) he or she is under the age of eighteen years; or
 - (f) he or she is so intoxicated at the time at which sexual intercourse takes place as to be incapable of giving or withholding consent;
 - (g) the accused person, with the intention of overcoming his or her resistance, has administered to him or her any substance, the nature of which is concealed from him or her, which has the effect of rendering him or her incapable of expressing his or her lack of consent to the act of sexual intercourse; or
 - (h) he or she withholds consent from an act of sexual intercourse with a person to whom he or she is currently married, and one of the following conditions is satisfied—
 - (i) he or she is sick;
 - (ii) the husband or wife uses abusive language, violence or threats in order to have sexual intercourse;
 - (iii) he or she has obtained a judicial order of restraint in respect of the husband or wife; or
 - (iv) he or she has been separated from the husband or wife by judicial order.

53. Incest

- (1) For the purposes of this section, "brother" and "sister" include half-brother and half-sister respectively, and the provisions of this section shall apply whether the relationship between the parties involved is or is not traced through a valid marriage.
- (2) A person who has sexual intercourse with another person who is, to his or her knowledge, his or her granddaughter or grandson, his or her grandmother or grandfather, daughter or son, sister or brother, or mother or father commits an offence.
- (3) It shall not be a defence to a charge under this section that the person permitted the intercourse to take place because of his or her dependence on the relative involved or because of fear of such a relative.
- (4) A person who has sexual intercourse with another person who is, to his or her knowledge, his or her adopted child, fostered child or step child, commits an offence.

54. Bestiality

- (1) In this section, "animal" includes a bird.
- (2) A person who has sexual contact with an animal commits an offence.

55. Prostitution

- (1) In this section, "prostitute" means a person who engages in sexual activity for payment.
- (2) A person who incites, instigates or engages or procures another to engage, either in Lesotho or elsewhere, in prostitution, commits an offence.
- (3) A person who persistently importunes others in a public place with the intention of engaging in sexual intercourse or with the intention of facilitating their sexual intercourse with another person commits an offence.
- (4) A person who lives or habitually associates with a prostitute or is proved to have exercised control, direction or influence over the movement of the prostitute, in such a manner as to show aiding or compelling prostitution for commercial gain, commits an offence.
- (5) A person who detains another person against his or her will in premises which are used for prostitution or in any other place with the intent that such person should engage in sexual intercourse with another person, commits an offence.

56. Public indecency

- (1) A person who creates or takes part in any indecent spectacle or performance, or who does in public or in private any indecent act which is calculated to offend any reasonable member of the public, commits an offence.
- (2) person who commits any act prohibited in subsection (1) but does so only because he or she has been threatened in any way by the person with whom he or she commits the act or by others or being a child, does the act in ignorance of its unlawfulness, does not commit an offence.

Part IV – Offences against property**57. Theft**

- (1) Theft is the unlawful and intentional appropriation of property belonging to another.
- (2) A person steals property and thereby commits the offence of theft if—
 - (a) he or she unlawfully takes property belonging to another with the intention of permanently depriving the owner of that property;
 - (b) he or she unlawfully takes property from a person who is in lawful possession of that property with the intention of permanently depriving the possessor of the possession of the property; or
 - (c) he or she unlawfully takes property from the owner or possessor of that property with the intention of subsequently returning that property to the owner or possessor in a condition substantially different from that in which it was at the time of the taking.
- (3) The taking of property shall not be unlawful if—
 - (a) the owner consents to the taking of the property;
 - (b) the person taking the property believes that the owner would consent to the taking of the property if he or she were aware of the taking; or

- (c) the person taking the property reasonably believes that he or she has a legal right to take the property.
- (4) A person shall be regarded as taking property from its owner or possessor if he or she has performed any act which has the effect of depriving the owner of the control of that property.
- (5) A person who, in any premises where merchandise is offered for sale to the public, conceals on his or her person or elsewhere any goods offered for sale within those premises, performs an act which has the effect of depriving the owner of control of that property.

58. Wrongful application of funds

- (1) A person who is lawfully in possession of money belonging to another and who wrongfully applies that money to his or her own use, or wrongfully applies it to a use other than that for which he or she understood the owner to have entrusted it to his or her possession, commits the offence of theft.
- (2) A person who receives the money of another person with whom, in respect of the payment of that money, he or she stands in a creditor-debtor relationship does not commit theft if he or she uses that money for his or her own or other purposes.

59. Aggravated theft

A person commits aggravated theft if the property he or she steals is—

- (a) in postal transit at the time of the stealing;
- (b) the property of a public office; or
- (c) the property of the State and has come into his or her possession in the course of his or her employment as an employee of the State.

60. Things capable of being stolen

- (1) Any moveable corporeal thing which is the property of any person is capable of being stolen.
- (2) Any right or title to money is capable of being stolen.
- (3) Any immovable corporeal thing is capable of being stolen when that thing or part of it becomes movable.
- (4) A wild animal is not capable of being stolen until such time as that wild animal is placed in confinement or is otherwise subjected to control by a person who intends to make that animal his or her property.
- (5) A wild animal which has effectively escaped from the control of a person ceases to be capable of being stolen.
- (6) Electricity, any other harnessed form of energy and water are capable of being stolen.

61. Unauthorised use

- (1) A person who, in the absence of any belief on his or her part that he or she has the consent of the owner of property or would have such consent if the owner were aware of the taking, takes and uses property belonging to another without any intention to permanently deprive the owner of the property, commits an offence.
- (2) It shall not be a defence to a charge of an offence under this section if the person using the property intended to restore it to its owner.

62. Misuse of property of another

- (1) A person who, having lawful possession of property belonging to another person, or having access thereto, uses such property in a way in which he or she has no reason to believe the owner would consent, commits an offence.
- (2) A person who either lawfully or unlawfully gains access to a computer or electronic storage device owned by another, commits an offence if he or she—
 - (a) extracts from the computer or electronic storage device information which he or she has no reasonable cause to believe the owner of the computer or storage device would allow him or her to extract; or
 - (a) not having the consent of the owner of the computer or storage device, and having no reasonable grounds to believe that such consent would be given, he or she interferes with such computer or storage device or information contained therein, with the intention of securing an advantage for himself or herself or causing damage to the electronic data or programmes.

[Please note: numbering as in original.]

63. Stock theft

- (1) The words "stock" or "produce" have the same meaning as in the Stock Theft Act².
- (2) A person who enters any enclosure or any kraal with intent to steal any stock which is in or upon such enclosure or kraal, commits an offence.
- (3) A person found in possession or if not in possession is proved to have been in possession of stock or produce in circumstances where it is reasonably believed or proved that the possession was unlawful, commits an offence.
- (4) It shall be a defence to a charge under subsection (3) if the person in possession of the stock or produce is able to provide satisfactory explanation of such possession.
- (5) A person who knowingly disposes of or who assists in the disposal of stock or produce that has been stolen or that has been received with knowledge that it has been stolen, commits an offence.

64. Robbery

A person who unlawfully uses or threatens to use violence to any person in order to steal or obtain property, or retain stolen property or to prevent or overcome resistance to its being recovered commits the offence of robbery.

65. Housebreaking

- (1) For the purposes of this section, "premises" means any structure or part of the structure the normal use of which might be for human habitation or the storage of property and which can be entered by any person.
- (2) A person commits the offence of housebreaking if, with the intention to commit a crime, he or she displaces or breaks any part of the structure of a house or other premises and thereby inserts into the building any part of his or her body or any instrument intended by him or her to exercise control over any object within the building.

- (3) A person who commits the offence of housebreaking with the intention of committing an offence punishable with death or with imprisonment for more than six months may be convicted of the offence of aggravated housebreaking.
- (4) A person who gains uninvited entry into premises while carrying a weapon upon his or her person, may be convicted of the offence of aggravated unlawful entry into premises.
- (5) A person who is found in possession of housebreaking tools in such circumstances as to suggest an intention upon his or her part to commit an offence of housebreaking commits an offence.
- (6) A person who enters any premises without permission with the intention to commit a crime unknown to the prosecutor commits an offence.

66. Criminal trespass

A person who gains uninvited entry into premises and refuses to leave when requested to do so, commits an offence of criminal trespass.

67. Receiving stolen property

- (1) A person who unlawfully takes possession or control of property, knowing such property to be stolen or otherwise unlawfully obtained, or believing that there is a strong possibility that it has been stolen or otherwise unlawfully obtained, commits an offence.
- (2) A person who receives property which has been stolen and who does not, at the time of receiving the goods, have reasonable grounds for believing that the property is lawfully in the possession of the person from whom he or she receives the property, commits an offence.
- (3) A person who is found by a police officer, chief or any other person to be carrying or otherwise transporting anything which the police officer, chief or any other person has reasonable cause to believe to have been stolen or otherwise unlawfully obtained may be charged with being in possession of, conveying, or having control over the property which is suspected of being stolen or otherwise unlawfully obtained and shall, if unable to give a court a satisfactory account as to how he or she came into possession of such property, be found guilty of an offence with which he or she is charged.
- (4) A person who is found in possession of Government property which is clearly marked as such, and who cannot give a satisfactory explanation as to how he or she came into possession of such property, commits an offence.

68. Fraud

- (1) A person who deliberately makes to another person a false representation, or conceals from another a fact which in the circumstances he or she has a duty to reveal, with the intention that such a person should act upon the representation to his or her detriment, and thereby causes him or her so to act, commits the offence of fraud.
- (2) Where the representer fails to cause the representee to act upon the misrepresentation, the offence of attempted fraud is committed.

69. Extortion

A person who uses a threat to another person with the intention of obtaining for himself or herself some advantage, whether of a proprietary nature or otherwise, to which he or she knows himself or herself not to be lawfully entitled, commits the offence of extortion.

70. Forgery

- (1) A person who makes a false document with the intention of defrauding any other person to his or her detriment commits the offence of forgery.
- (2) A person makes a false document if he or she—
 - (a) makes a document purporting to be what it is not; or
 - (b) alters any document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document.
- (3) A person who, without lawful authority, makes any document purporting to be a judicial or Lesotho Government document or document of any country, or any stamp, currency note, or coin purporting to be a stamp, currency note or coin issued by any government official, commits the offence of forgery of official material.
- (4) A person who, without lawful authority or excuse, the proof of which lies on him or her, has in his or her possession any equipment or supplies the exclusive purpose of which is the forging of such official or government material as is included in this section commits an offence.
- (5) A person who knowingly passes or communicates to another a forged document with the intention of defrauding any person or body, commits an offence.
- (6) A person who knowingly and without lawful authority passes to another person or body any forged document, commits an offence.
- (7) Any person who—
 - (a) without lawful excuse, the proof whereof shall lie upon him or her, makes or has knowingly in his or her possession any die, instrument or document capable of making the impression of any postal or revenue stamp;
 - (b) fraudulently cuts, tears or removes from any material any stamp used for revenue purposes with intent that another use shall be made of such stamp or any part thereof; or
 - (c) fraudulently interferes with such a stamp with intent that another use shall be made of such a stamp, commits an offence.

71. False statements

A person who makes a false statement to any person having control of any official government register or register of a public body or private body dealing with members of the public, with intent that false information should be included in such a register, commits an offence.

72. Unlawful damage to property

A person who, without lawful excuse, does any act with the intention of damaging property, even if singly or jointly owned or possessed, commits the offence of unlawful damage to property.

73. Arson

A person who, without lawful excuse, sets fire to immovable property even if singly or jointly owned or possessed, with the intention of causing damage to that property, commits an offence.

Part V – Offences against administration and public order

74. Treason

- (1) A person who, owing allegiance to the Kingdom of Lesotho, is a citizen of Lesotho or a bearer of a Lesotho passport, unlawfully does any act with the intention of overthrowing or coercing the government of Lesotho commits the offence of treason.
- (2) The overt act which shall constitute treason includes—
 - (a) preparing or endeavouring to overthrow the Government of Lesotho;
 - (b) preparing or endeavouring to procure by force the alteration of any laws or policies of the Government of Lesotho;
 - (c) preparing or endeavouring to carry out by force any enterprise which usurps the executive, legislative or judicial power of the State in any matter;
 - (d) during time of war or state of emergency doing any act intended to give assistance to any state engaged in hostile or belligerent actions towards the Kingdom of Lesotho;
 - (e) instigating or assisting any person to invade Lesotho with an armed force.
- (3) A person referred to in subsection (1) may be tried and punished for an offence under this section for an act done outside Lesotho, even if the entire act is done outside Lesotho.
- (4) A person referred to in subsection (1) who incites, conspires or attempts to commit treason or knowingly assists any person who has committed treason commits the offence of treason.

75. Failure to prevent or report treasonable conduct

A person who, knowing that another person intends or other persons intend to commit treason, does not give information thereof with all reasonable dispatch to the Government or law enforcement agencies or who does not use other reasonable endeavours to prevent the commission of treason commits an offence.

76. Seditious

- (1) A person who, with a number of other people, comes together in an unlawful gathering with the intention of defying or subverting the authority of the Government of Lesotho, but without the intention to overthrow or coerce the Government of Lesotho, commits an offence of sedition.
- (2) A person who—
 - (a) does or attempts to do or makes any preparation to do, or conspires with any person to do, any act with seditious intention;
 - (b) utters any seditious words;
 - (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
 - (d) knowingly imports any seditious publication, commits an offence.
- (3) A person who, without lawful excuse, has in his or her possession any seditious publication, commits an offence.
- (4) No prosecution for an offence under this section shall be initiated except within six months of the commission of the offence.
- (5) A seditious intention is an intention—
 - (a) to bring into hatred or contempt or to excite disaffection against the person of His Majesty or the Government of Lesotho as by law established;

- (b) to incite the people and residents of Lesotho to attempt to procure the alteration, otherwise than by lawful means, of any law in Lesotho;
 - (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Lesotho;
 - (d) to cause discontent or disaffection amongst the people and residents of Lesotho; or
 - (e) to promote feelings of ill-will and hostility between different classes of the population of Lesotho.
- (6) An act, speech or publication is not seditious if its effect is to—
- (a) show that the Government has been misguided in or mistaken in any of its measures;
 - (b) point out errors or defects in the Government or Constitution of Lesotho as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
 - (c) identify and criticise with a view to their discussion or removal of any matters which are producing or have a tendency to produce feelings of ill-will, hostility and enmity between different classes of the population of Lesotho.
- (7) In determining whether the intention with which an act was done, any words were spoken, or a document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally flow from his or her conduct at the time and under the circumstances in which he or she so conducted himself or herself.
- (8) For the purposes of this section—
- (a) "publication" includes all written matter and everything whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable or suggesting words or ideas, and every copy or reproduction of any publication;
 - (b) "seditious publication" means any publication having a seditious intent;
 - (c) "seditious words" means any words having a seditious intent.

77. Respect for national flag and anthem

A person who does any act in relation to the national flag and anthem which shows disrespect, contempt or irreverence, commits an offence.

78. Expression of hatred or contempt

A person who utters any words or publishes any writing expressing hatred, ridicule or contempt for any person or group of persons, wholly or mainly, because of the person's or group of persons' race, ethnic affiliations, gender, disability or colour, commits of an offence.

79. Offences against the Royal Family

- (1) For the purpose of this section, "Royal Family" means the King, the King's nuclear family and the Regent.
- (2) A person who knowingly commits any act calculated to violate the dignity or injure the reputation of the Royal Family commits an offence.
- (3) It shall be a defence to a charge under this section that the act was a genuine response to provocative acts emanating from any member of the Royal Family.

80. Bribery

- (1) A person who offers a bribe to any person in the employment of the Government of Lesotho, public company, public institution, public office, or to any person occupying any Government office, and any person being in such employment or occupying such office who accepts a bribe, commits an offence.
- (2) A person shall be held to offer a bribe if he or she offers to another person any gift or consideration with the intention of extracting or obtaining from that person some specific or indeterminate action or inaction by him or her in relation to his or her official duties.
- (3) A person shall be held to accept a bribe if he or she agrees to take any gift or consideration in return for some specific or indeterminate action or inaction by him or her in an official or public capacity, knowing that the gift or consideration has been given for such action or inaction or realising that there is a substantial risk that it might have been given for this purpose.
- (4) Where it is proved that any gift or consideration has been given to or received by a person in the employment of the Government of Lesotho, public company, public institution or occupying a public office by or from a person holding or seeking to obtain an advantage from the Government, public company or public institution in an area of activity in respect of which the recipient of the gift or consideration has influence, the gift or consideration may be deemed to amount to a bribe unless the contrary is proved on the balance of probabilities.

81. Corruption of agents and employees

A person who—

- (a) corruptly gives or agrees to give or offers any gift or consideration to any agent or employee as an inducement or reward for doing or not doing or having done or not done any act in relation to his or her principal's or employee's or employer's affairs or business;
- (b) being an agent or employee corruptly accepts or obtains or agrees to accept or attempts to obtain from any person, either for himself or herself or for another, any gift or consideration as an inducement or reward for doing or not doing or for having done or not done any act in relation to his or her principal's or employer's affairs or business, or for showing or not showing favour or disfavour to any person in relation to his or her principal's or employer's affairs or business; or
- (c) knowingly gives to any agent or employee or, being an agent or employee, knowingly uses, with intent to deceive, his or her principal, any receipt, account or other document in which the principal or employer is interested and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge, is intended to mislead the principal or employer, commits an offence.

82. Insider trading

- (1) A person who uses confidential information which he or she has obtained in his or her position as an employee, agent, or professional adviser of another in order to secure for himself or herself or another some improper commercial advantage in any transaction, commits an offence.
- (2) For the purposes of this section, an improper commercial advantage is any financial gain which would not have been obtained if the person securing the advantage did not possess information which is not known to any other party involved in the transaction.
- (3) It shall be a defence under this section that at the time the confidential information was used, its confidential nature had disappeared or the user thereof was no longer an employee, agent or professional adviser of the complainant.

83. Going armed in public

A person who goes armed in public without lawful excuse and in such a manner as to cause terror to any other person commits an offence.

84. Breach of the peace

A person who, in a public place, uses obscene, abusive, threatening or insulting words or behaviour or otherwise conducts himself with intent to provoke a breach of the peace or in such a manner that a breach of the peace is committed or likely to be committed, commits an offence.

85. Provoking public violence

A person who, in any place acts or conducts himself or herself in such a manner or speaks or publishes such words from which there is a real likelihood that the natural and probable consequence of his or her act, conduct or speech or publication will under the circumstances lead to the commission of public violence by members of the public generally or by persons in whose presence the act or conduct takes place or to whom the speech or publication is addressed, commits an offence.

86. Perjury

- (1) A person who in any judicial proceedings or before any officially constituted public enquiry, intentionally makes a false statement related to any matter material to the course of the judicial proceeding or enquiry commits the offence of perjury.
- (2) A person who induces another person to commit perjury commits an offence.
- (3) A person who, with intent to deceive in any judicial proceeding or any officially-constituted public enquiry fabricates evidence or knowingly makes use of such fabricated evidence, commits an offence.
- (4) A person who swears falsely or makes a false affirmation or declaration before any person authorised to take an oath or declaration upon a matter of public concern under such circumstances that if such affirmation or declaration had been made before a judicial proceeding would amount to perjury commits an offence.

87. Obstruction of course of justice and officially constituted public enquiries

- (1) A person who wilfully fails to obey a court order or bring the administration of justice into disrepute, commits an offence.
- (2) A person who makes any statement or performs any act with the intention of defeating or interfering with the course of justice, commits an offence.
- (3) A person who in the course of judicial proceedings fails, without lawful excuse, to comply with the requirements of those judicial proceedings commits an offence.
- (4) A person who applies or threatens to apply any sanction against any witness or prospective witness because such witness has given evidence or is likely to be required to give evidence before judicial proceedings or an officially constituted public enquiry, commits an offence.
- (5) A person who makes an approach to any witness or prospective witness in judicial proceedings or officially constituted public enquiry with the intention that such witness should alter his or her testimony or refrain from giving testimony, commits an offence.
- (6) A person who dismisses a servant or employee because he or she has given evidence or refused to give evidence on behalf of a certain party to judicial proceedings or at an officially instituted public enquiry, commits an offence.

88. Disrespect for judicial proceedings

A person who, within the premises in which judicial proceedings or an officially constituted public enquiry is being conducted within the precincts of the same, shows disrespect in speech or conduct to or with reference to such proceedings or any person before whom such proceedings are being conducted, commits an offence.

89. Escape from lawful custody

A person who escapes from lawful custody or who assists another to escape from lawful custody, commits an offence.

90. Bringing judges etc. into disrepute

A person who makes or publishes any statement which he or she knows or has reasonable grounds to suspect is untrue and is calculated to bring any judicial officer or court into disrepute, commits an offence.

91. Offences relating to drugs

- (1) For the purposes of this Code, "an illegal drug" means any drug or plant listed in any law regulating the manufacture, possession, sale or distribution of drug.
- (2) A person who, without lawful authority or lawful excuse, has in his or her possession an illegal drug, commits the offence of possession of an illegal drug.
- (3) A person is deemed to be in possession of an illegal drug only if—
 - (a) knowing of its nature or knowing that it is an illegal drug, he or she knows the drug to be on his or her person or otherwise under his or her actual or potential control;
 - (b) he or she has concealed the drug in a place to which he or she has or may be expected to have access; or
 - (c) he or she has passed or entrusted the drug to another with the intention that the other person should hold the drug on his or her behalf.
- (4) A person shall not be deemed to be in possession of an illegal drug if he or she has abandoned the drug and has not done so in order to avoid imminent arrest.
- (5) A person who, without lawful authority or excuse—
 - (a) has in his or her possession any illegal drug with intent to supply the drug to another;
 - (b) knowingly supplies to another person an illegal drug;
 - (c) with the intention of supplying another with an illegal drug does any act calculated to secure the importation into Lesotho or the export from Lesotho of an illegal drug;
 - (d) with the intention of supplying another with an illegal drug does any act calculated to facilitate the process of the unlawful importation into any other country of an illegal drug; or
 - (e) either in Lesotho or in any other country does an act calculated to transfer or conceal the proceeds of a transaction concerning the provision of an illegal drug which is unlawful in terms of the corresponding legislation of any other country, commits the offence of dealing in illegal drugs.
- (6) For the purposes of charges under subsection (5) (a) to (d), a person may be deemed, unless the contrary is proved on the balance of probabilities, to have the intention of supplying another with an illegal drug if the quantity of the drug found in his or her possession, or the quantity of the drug involved in a transaction, actual or anticipated, exceeds that which might reasonably be judged as sufficient for the short-term personal consumption of a person consuming such a drug.

- (7) A person who, without lawful authority, cultivates any plant specified in any law regulating the manufacture, possession, sale or distribution of drugs commits the offence of cultivating an illegal plant.
- (8) A person charged with an offence under sub-section (7), being the person in actual possession or actual control of land upon which an illegal plant is growing, may be deemed, unless the contrary is proved on a balance of probabilities, to be cultivating the plant, if he or she could reasonably be expected to have been aware of the existence of that plant and of its nature.

Part VI – Genocide, crimes against humanity and war crimes

92. Jurisdiction in respect of offences under this Part

- (1) For the purposes of this Part, "Court" means the High Court.
- (2) The Court shall have jurisdiction in respect of offences under this Part whether committed by a Lesotho citizen or a citizen of another state against a Lesotho citizen or a citizen of another state outside Lesotho.
- (3) In exercising its jurisdiction under subsection (2), the Court shall be governed by the provisions of the Statute or any other law giving effect to the provisions of the Statute applicable in Lesotho.

93. Genocide

A person commits an offence of genocide if by his or her act or omission he or she commits any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious group or any other identifiable group—

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

94. Crimes against humanity

- (1) A person commits an offence of a crime against humanity if he or she engages in the following acts as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack—
 - (a) murder;
 - (b) extermination;
 - (c) enslavement;
 - (d) deportation or forcible transfer of population;
 - (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) torture;
 - (g) rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual or comparable gravity;

- (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) enforced disappearance of persons;
 - (j) the crime of apartheid;
 - (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health of another person.
- (2) For the purpose of subsection (1)—
- (a) "attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in subsection (1) against any civilian population, pursuant to or in furtherance of a State or organization policy to commit such attack;
 - (b) "extermination" includes the intentional infliction of conditions of life, among other things, the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) "enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) "deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) "forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intention of affecting the ethnic composition of any population or carrying out other grave violations of international law;
 - (g) "persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) "the crime of apartheid" means inhumane acts of a character similar to those referred to in subsection (1) committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

95. War crime

- (1) A person commits a war crime if he or she engages in acts involving the following—
- (a) grave breaches of the Geneva Convention of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention—
 - (i) willful killing;

- (ii) torture or inhuman treatment, including biological experiments;
 - (iii) willfully causing great suffering, or serious injury to body or health;
 - (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
 - (vi) willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) unlawful deportation or transfer or unlawful confinement;
 - (viii) taking of hostages;
- (b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts—
- (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) intentionally directing attacks against civilian objects, that is, objects which are not military objects;
 - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - (v) attacking or bombarding, by whatever means, towns, villages, dwelling or buildings which are undefended and which are not military objects;
 - (vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) making improper use of a flag of truce or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - (viii) the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objects;
 - (x) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

- (xiii) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xiv) compelling the nationals of the hostile party to take part in the operation of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xv) pillaging a town or place, even when taken by assault;
 - (xvi) employing poison or poisoned weapons;
 - (xvii) employing asphyxiating poisonous or other gases, and all analogous liquids, materials or devices;
 - (xviii) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xix) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to the Statute;
 - (xx) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in [section 95](#) (2), enforced sterilization, any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxii) utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxiv) intentionally using starvation of civilians as a method of warfare, depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxv) conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;
- (c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause—
- (i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) taking of hostages;
 - (iv) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable;

- (d) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts—
 - (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) pillaging a town or place, even when taken by assault;
 - (vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in [section 95 \(2\)](#), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) killing or wounding treacherously a combatant adversary;
 - (x) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (2) Subsection (1)(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (3) Subsection (1)(d) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
- (4) Nothing in subsection (1)(c) and (d) shall affect the responsibility of the Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Part VII – Acts of terrorism and related offences

96. Offence of terrorism

Any person who does or threatens or omits to do anything that is reasonably necessary to prevent an act which—

- (a) may seriously damage a country or an international organization;
- (b) is intended or can reasonably be regarded as having been intended to—
 - (i) seriously intimidate a population;
 - (ii) unduly compel the Government or an international organization to perform or abstain from performing any act;
 - (iii) seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or
 - (iv) otherwise influence the government, or international organisation; and
- (c) involves or causes—
 - (i) attacks upon a person's life which may cause death;
 - (ii) attacks upon the physical integrity of a person;
 - (iii) kidnapping a person;
 - (iv) extensive destruction to the Government or public facility, a transport system, an infrastructure facility including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
 - (v) the seizure of an aircraft, a ship or other means of public or goods transport;
 - (vi) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of biological and chemical weapons;
 - (vii) the release of dangerous substance, or coming of fires, explosives or floods, the effect of which is to endanger human life;
 - (viii) interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger life, commits an offence of terrorism.

97. Harboursing terrorists

Any person who harbours, or conceals, or causes to be harboured or concealed, any person whom he knew to have committed, or to have been convicted of, an act of terrorism, or against whom he or she knew that a warrant of arrest or imprisonment for such an act had been issued, commits an offence.

98. Information about acts of terrorism

- (1) Subject to subsections (2) and (3), where a person has information which he knows or believes might be of material assistance—
 - (a) in preventing the commission by another person of an offence of terrorism; or
 - (b) in securing the apprehension, prosecution or conviction of another person for an offence under this part, and the person fails to disclose the information to a police officer at any police station as soon as reasonably practicable, that person commits an offence.

- (2) It shall be a defence for a person charged under subsection (1) to prove that he or she has reasonable excuse for not making the disclosure.
- (3) Subsection (1) does not require disclosure by a law practitioner of any information, or a belief or suspicion based on any information, which he or she obtained in privileged circumstances.
- (4) For the purpose of subsection (3), information is obtained by a law practitioner in privileged circumstances where it is disclosed to him or her—
 - (a) by his or her client in connection with the provision of legal advice, not being a disclosure with a view to furthering a criminal purpose;
 - (b) by any person for the purpose of actual or contemplated legal proceedings, and not with a view to furthering a criminal purpose.

99. Obstruction of terrorist investigation

- (1) Any person who—
 - (a) discloses to another anything which is likely to prejudice a terrorist investigation;
 - (b) interferes with material which is likely to be relevant to a terrorist investigation, commits an offence.
- (2) It shall be a defence for a person charged with an offence under subsection (1) to prove—
 - (a) that he or she did not know and had no reasonable cause to suspect that the disclosure was likely to affect a terrorist investigation; or
 - (b) that he or she had a reasonable excuse for the disclosure or interference.
- (3) Subsection (1) does not apply to a disclosure which is made by a law practitioner—
 - (a) to his or her client in connection with the provision of legal advice, not being a disclosure with a view to furthering a criminal purpose;
 - (b) to any person for the purpose of actual or contemplated legal proceedings, and not with a view to furthering a criminal purpose.

100. Hostages

- (1) In this section, "third party" means a State, an international organization, a natural or juridical person or a group of persons.
- (2) Any person who—
 - (a) seizes or detains; or
 - (b) threatens to kill, injure or continue to detain another person in order to compel a third party to do or abstain from doing any act, as an explicit or implicit condition for the release of the hostage, commits an offence.

Part VIII – Defamation and *crimen injuria*

101. Definition of defamatory matter

"Defamatory matter" means matter likely to injure the reputation of any person by exposing him or her to hatred, contempt of ridicule, or likely to damage the person in his or her profession or trade by an injury to his or her reputation, and it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom the matter is published is living or dead.

102. Definition of publication

- (1) A person publishes a defamatory matter if he or she causes the print, writing, painting, effigy or other means by which the defamatory matters is conveyed to be dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, so that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.
- (2) It is not necessary for defamation 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 defamation itself or from any extrinsic circumstances, or partly by the one and other means.

103. Definition of unlawful publication

Any publication of defamatory matter concerning a person is unlawful within the meaning of this Part, unless—

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds set out in this Part.

104. Defamation

A person who, by print, writing, painting or effigy, or by any means otherwise than solely by gesture, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, commits an offence of defamation.

Part IX – Offences related to marriage

105. Cases in which publication of defamatory matter is conditionally privileged

A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under a legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, and the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the cases namely—

- (a) if the matter is published is in fact a fair report of anything said, done or shown in a civil or proceeding before any court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral or blasphemous, the publication thereof shall not be privileged;
- (b) if the matter is 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 it was or would have been privileged under section dealing with cases in which publication of a defamatory matter is absolutely privileged;
- (c) 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 or her personal character so far it appears in such conduct;
- (d) if the matter is an expression in good faith as to the conduct of any person as disclosed by evidence
- (e) if the matter is published concerning a person subject to military discipline for the time being, and relates to his or her conduct as a person subject to such discipline, and is

published by some person having authority over him or his in respect of such, and to some person having authority over him or her in respect of such conduct;

- (f) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge, magistrate, commissioner, advocate, assessor, witness or party thereto;
 - (g) if the matter published is in fact a fair report of anything said, done or published in the Cabinet of Ministers or in Parliament; or
 - (h) if the person publishing the matter is legally bound to publish it.
- (2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Chapter whether the matter is true or false, and whether it is or is not known or believed to be false, and whether it is or is not published in good faith, but nothing in this section shall exempt any person from any liability to punishment under any other Chapter of this Code or under any other written law in force within Lesotho.

[Please note: numbering as in original.]

106. Explanation as to good faith

A publication of defamatory matter shall be deemed not to have been made in good faith by a person, within the meaning of section dealing with cases in which publication of defamatory matter is conditionally privileged, if it is made to appear either—

- (a) that the matter was untrue, and that he or she did not believe it to be true, or
- (b) that the matter was untrue, and that he or she published it without having taken reasonable care to ascertain whether it was true or false; or
- (c) that, in publishing the matter, he or she acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was protection of the private right or interest in respect of which the claims to be privileged.

107. Bigamy

A person who unlawfully and intentionally enters what purports to be a lawful marriage ceremony with any person while lawfully married to another commits an offence of bigamy unless—

- (a) the previous marriage is under customary law and the person is marrying another wife under customary law;
- (b) the previous marriage has been dissolved or annulled by a competent court of law;
- (c) the husband or wife has been continually absent from the person for a period of 7 years and has not been heard of by that person as being alive for that period.

108. Marriage with dishonest or fraudulent intent

A person who dishonestly or with fraudulent intention goes through a ceremony of marriage knowing that he or she is not lawfully married commits an offence.

Part X – Penalties

109. Penalties

- (1) Upon convicting a person for an offence provided for in this Code, the court may impose such penalty in the manner provided for in this section.

- (2) Upon conviction for an offence under any of the sections set out in the Schedule, a court may sentence the convicted person to a penalty in terms of a fine level of the Schedule up to the maximum penalty prescribed.
- (3) Where no penalty is provided for in the Schedule, the court may impose, on a person convicted for an offence provided for in this Code, such penalty as provided for by any other law, and where no such penalty is provided for in any other law the court shall impose a penalty that it thinks fit, taking into consideration the gravity of the offence and the Sentencing Guidelines issued by the Chief Justice under the Criminal Procedure and Evidence Act, 1981.
- (4) Where an imprisonment penalty is listed, then it shall not be open to a court to impose a fine in lieu of the penalty listed or to suspend the sentence.
- (5) The Minister responsible for justice may, by notice published in the *Gazette*, amend the Schedule.

Schedule

Penalties

Fine levels

Level 1:	a fine up to M1000.00;
Level 2:	a fine between M1000.00 and M5000.00;
Level 3:	a fine between M5000.00 and M10,000.00;
Level 4:	a fine between M10,000.00 and M15,000.00;
Level 5:	fine between M15,000.00 and M20,000.00.
Section:	
31.	Assault: a fine under level 3 or imprisonment up to 1 year or both;
32.	Aggravated Assault: a fine under level 4 or imprisonment up to 8 years or both;
39.	Culpable homicide resulting from Suicide Pact: Imprisonment up to 5 years;
42.	Culpable Homicide: a fine under level 5 or life imprisonment;
46.	Abortion: a fine under level 3 or imprisonment up to 3 years;
47.	Abduction: a fine under level 3 or imprisonment up to 3 years;
52.	Indecent Assault: a fine under level 3 imprisonment up to 3 years
57.	Public Indecency: a fine under level 2 imprisonment up to 1 year or both;

58.	Theft: a fine under level 4 or imprisonment up to 10 years or both;
65.	Robbery: imprisonment up to 18 years;
66.	House-breaking: a fine under level 2 or imprisonment up to 6 years;
68.	Receiving Stolen Property: a fine under level 4 or imprisonment up to 5 years or both;
69.	Fraud: imprisonment up to 20 years;
70.	Extortion: imprisonment up to 15 years;
74.	Arson: a fine under level 5 or imprisonment up to 15 years or both;
75.	High treason: imprisonment up to 20 years or death by hanging;
76.	Failure to prevent or report a treasonable conduct: imprisonment up to 5 years;
81.	Bribery: imprisonment up to 20 years;
88.	Obstructing the course of Justice and officially constituted public enquiry: a fine under level 3 or imprisonment up to 3 years or both;
90.	Escape from lawful custody: imprisonment up to 5 years.