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EXTRAORDINARY

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CONTENTS

Page

The following Supplement is published with this issue of the Gazette —
Supplement B — Penal Code (Amendment) Bill, 1986 — Bill No. 21 of 1986 B.137—140

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Bill No. 21 of 1986

PENAL CODE (AMENDMENT) BILL, 1986

(Published on 24th October, 1986)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The object of the Bill is to effect a few amendments to the Penal Code (Cap. 08:01).

3. Due to inflation it is generally felt that the fines, specified in section 31 (2) in default of payment of which special terms of imprisonment have been prescribed, are rather low.

4. Clause 2 of the Bill therefore proposes to amend section 31 (2) to increase the fines specified therein.

5. It is an offence under section 40A of the Penal Code to be found wearing the uniform of the armed forces of any foreign country but it is not an offence to be found in possession of such uniform. There appears to be no justification for this distinction.

6. Clause 3 therefore proposes to amend section 40A to make it an offence for anybody, without lawful authority, to have in his possession the uniform of the armed forces of any foreign country.

7. Section 64 of the Penal Code which deals with piracy provides that the law relating to that offence which is for the time being in force in England shall apply in this country. In England piracy is both a common law and statutory offence. The statutory provisions relating to piracy are contained in a number of old English statutes which are not easily available in this country. Apart from the difficulty of having access to such statutory provisions, it is also considered inappropriate that an independent republican country like ours should be made to apply a law of another country for the time being in force in that country.

8. It is, therefore, proposed to amend the Penal Code by providing substantive provisions as regards the offence of piracy.

9. Consequently clause 4 restates the law of piracy as is currently in force in this country.

10. Under the existing provisions of section 322 of the Penal Code, it is an offence for anybody to be found carrying or conveying anything which is reasonably suspected of having been stolen or unlawfully obtained and he is unable to give satisfactory account as to how he came by it. The section however does not appear to cover the case of a person found in possession of property which is reasonably suspected of having been stolen or unlawfully obtained.

11. Clause 5 of the Bill therefore proposes to amend section 322 to make it an offence for a person found in possession of property which is reasonably suspected of having been stolen if he is unable to give satisfactory explanation as to how he came by it.

P.H.K. KEDIKILWE,
*Minister of Presidential Affairs
and Public Administration.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 31 of Cap. 08:01
3. Amendment of section 40A of principal Act
4. Repeal of section 64 of principal Act
5. Amendment of section 322 of principal Act

A BILL

— entitled —

An Act to amend the Penal Code

*Date of Assent:**Date of Commencement:*

ENACTED by the Parliament of Botswana

Short title 1. This Act may be cited as the Penal Code (Amendment) Act, 1986.

Amendment of section 31 of Cap. 08:01 2. Section 31 of the Penal Code (in this Act referred to as "the principal Act") is hereby amended in subsection (2) thereof by substituting for the scale of penalties specified therein the following new scale —

<i>"Amount</i>	<i>Maximum Period</i>
Not exceeding P10	14 days
Exceeding P10 but not exceeding P20	one month
Exceeding P20 but not exceeding P100	three months
Exceeding P100 but not exceeding P400	four months
Exceeding P400	six months".

Amendment of section 40A of principal Act 3. Section 40A of the principal Act is hereby amended by substituting for that section the following new section —

"Certain persons deemed to threaten security or sovereignty of Botswana 40A. (1) For the purposes of sections 36 and 39 a person shall be deemed to threaten the security or sovereignty of Botswana if —

- (a) without lawful authority he is found, in possession of or, wearing the uniform of the armed forces of any foreign country;
- (b) without lawful authority, he is found in possession of any arms or ammunition prohibited under section 23 of the Arms and Ammunition Act, or of any explosive or bomb;
- (c) without lawful authority, he is found in company with any person specified in paragraph (a) or (b).

(2) A person shall not be prosecuted for an offence under this section without the written consent of the Attorney-General."

4. Section 64 of the principal Act is hereby repealed and the following new sections are substituted therefor —

Repeal of
section 64
of
principal Act

"Piracy **64.** (1) A person commits an act of piracy if being —

(a) the owner or master of a ship, he sails the seas in her without authorization from the government of any country with the object of committing depredations upon property or acts of violence against persons or if, from or by means of the ship, he commits any such act of depredation or violence;

(b) a member of the crew or a passenger of a ship, he conspires with any other person to rise against her master and officers or to seize the ship or if, in common with any other person, he engages in any act of hostility against her master and officers.

(2) A master or seaman commits an act of piracy if he betrays his trust, runs away with his ship or goods belonging to her or yields them up voluntarily to any person contrary to his duty or conspires or combines with or attempts to corrupt any master, officer or seaman to yield up or run away with any ship or goods or makes or endeavours to make a revolt in the ship.

(3) A person belonging to a ship commits an act of piracy if, upon meeting a ship at sea or in any port, harbour or haven, he forcibly boards or enters her and, though he does not seize or carry off the ship, throws overboard or destroys any part of the goods belonging to her.

Punishment
of piracy **64A.** (1) A person who commits an act of piracy shall be guilty of an offence and on conviction thereof shall be liable to imprisonment for life or any lesser term.

(2) A person who, with intent to commit or at the time of or immediately before or immediately after committing an act of piracy in respect of any ship, assaults, with intent to murder, any person being on board, or belonging to, the ship or injures any such person or unlawfully does any act by which the life of any such person may be endangered shall be guilty of an offence and upon conviction shall be liable to suffer death.

Jurisdiction
over piracy **64B.** (1) The High Court has jurisdiction to try —
(a) an act of piracy wherever committed, if committed on board a Botswana ship;

- (b) an act of piracy committed within the territorial waters of the Republic;
- (c) an act of piracy committed by a citizen of Botswana on the high seas or in a foreign port or harbour or in foreign territorial tidal waters.
- (2) For the purpose of establishing jurisdiction an act of piracy may be regarded as having been committed where any part of the act was committed."

Amendment
of
section 322
of principal
Act

5. Section 322 of the principal Act is hereby amended by substituting for that section, the following new section —

"Person
suspected
of
possessing,
carrying
or
conveying
stolen
property

322. Any person who is found by a peace officer to be in possession of, or carrying or conveying in any manner, anything which is reasonably suspected of having been stolen or unlawfully obtained and he is unable to give a satisfactory account as to how he came by it is guilty of an offence."

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