

THE PENAL CODE (AMENDMENT) ACT, 1968

No. 26



of 1968

AN ACT TO AMEND THE PENAL CODE

Date of Assent: 6.3.68.

Date of Commencement: 10.3.68.

ENACTED by the Parliament of Botswana

Short Title

1. This Act may be cited as the Penal Code (Amendment) Act, 1968.

Amendment of Section 5 of Law No. 2 of 1964

2. Section 5 of the Penal Code is amended —

- (a) by the deletion of the definition of “member of the Forces” and the substitution of —

““member of the Forces” means any police officer or any member of the armed forces of Botswana;”;

(b) by the insertion of the following definition —

““peace officer” has the meaning assigned thereto in the Criminal Procedure and Evidence Proclamation (Cap. 18);”;

(c) by the deletion of the definition of “person employed in the public service” and the substitution of —

““person employed in the public service” means any person holding any of the following offices or performing the duty thereof, whether as a deputy or otherwise, namely—

- (a) any public office; or
- (b) any office to which a person is appointed or nominated by or under any written law;
- (c) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either of the two last preceding paragraphs of this definition; or
- (d) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any written law;

and the said term further includes—

- (i) any member of a commission of enquiry appointed under or in pursuance of any written law;
- (ii) any person employed to execute any process of a court;
- (iii) any member of the Forces;
- (iv) any person in the employment of the Government;
- (v) any person acting as a minister of religion of whatsoever denomination in so far as he performs functions in respect of the notification of intending marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;
- (vi) any person in the employment of a local authority;
- (vii) any person in the employment of the Government of a country other than Botswana, or of the United Nations or any agency thereof, who exercises functions of his office in Botswana.”.

Amendment of Section 26 of Law No. 2 of 1964

3. Section 26 of the Penal Code is amended by the deletion of paragraph (f).

Repeal of Sections 32 and 33 of Law No. 2 of 1964

4. Sections 32 and 33 of the Penal Code are repealed.

Amendment of Section 89 of Law No. 2 of 1964

5. Section 89 of the principal law is amended by the deletion of sub-section (2) and the substitution of —

“(2) In this section, “public gathering” means any meeting, gathering or concourse, whether in a public place or otherwise, which the public or any section of the public or more than fifteen persons are permitted to attend or do attend, whether on payment or otherwise, and includes a procession to or from a public place.”

Insertion of New Sections 89A and 89B in Law No. 2 of 1964.

6. The Penal Code is amended by the insertion of the following new sections—

“Insults Relating to Botswana

89A. Any person who does any act or utters any words or publishes any writing with intent to insult or to bring into contempt or ridicule —

- (a) the Arms or Ensigns Armorial of Botswana;
- (b) the National Flag of Botswana;
- (c) the Standard of the President of Botswana;
- (d) the National Anthem of Botswana;

is guilty of an offence and liable to a fine of R500.

Expressions of Hatred, etc. of Persons Because of Race, etc.

89B. (1) Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin, colour or creed is guilty of an offence and liable to a fine of R500.

(2) No prosecution for an offence under this section shall be instituted without the written consent of the Attorney-General.

Abusive, Obscene or Insulting Language re President and Others

89C. (1) Any person who in a public place or at a public gathering uses abusive, obscene or insulting language in relation to the President, any other member of the National Assembly or any public officer is guilty of an offence and liable to a fine of R500.

(2) In this section, “public gathering” has the same meaning as in section 89.”

Replacement of Section 317 of Law No. 2 of 1964

7. Section 317 of the Penal Code is repealed and replaced as follows —

"Person Suspected of Carrying or Conveying Stolen Property

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

Passed by the National Assembly this day, the 17th January, 1968.

G.T. MATENGE,
Clerk of the National Assembly.