

**SOLOMON ISLANDS**  
**LAW REFORM COMMISSION**



**Public Order Offences Consultation Paper**

**September 2019**



**THE LAW REFORM COMMISSION  
HONIARA, SOLOMON ISLANDS**

**PUBLIC ORDER OFFENCES**

**Consultation Paper**

**September 2019**

## Call for Submissions

The LRC invites your comments and submissions on this consultation paper. A submission is your views, opinions, or options about how the law should be changed. A submission can be written, such as a letter or email, or verbal, such as a telephone conversation or a face to face meeting. A submission can be short or long, it can be formal or simply dot points or notes.

## How to make a Submission

You can write a submission, send an email or fax, or ring up the LRC or come to our Office and speak with any of our staff. You can also come to consultation meetings conducted by us.

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A copy of this paper can be obtained from our Office. You can also access it from our website.

**The deadline for submissions for this project is July 31<sup>st</sup> 2021.**

Law Reform is a process of changing the law that requires public participation. Comments and submissions sent to the LRC will not be confidential unless you request that the information you provided be kept confidential.

## **Terms of Reference**

WHEREAS the Penal Code and the Criminal Procedure Code are in need of reform after many years of operation in Solomon Islands.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer the Law Reform Commission the following –

To enquire and report to me on –

The Review of the Penal Code and the Criminal Procedure Code;

Reforms necessary to reflect the current needs of the people of Solomon Islands.

Dated at Honiara 1<sup>st</sup> day of May 1995

NB: Explanation: The criminal law system in Solomon Islands has now been in operation for many years. Developments in new crimes, their nature and complexity have made it necessary to overhaul criminal law in general to keep it abreast with the modern needs of Solomon Islands.

## **The Law Reform Commission**

The Law Reform Commission (LRC) is a statutory body established under the *Law Reform Act 1994* [Cap 15]. The LRC is headed by the Chairman, appointed by the Judicial and Legal Service Commission on the recommendation of the Minister for Justice, and has four part-time Commissioners who are appointed by the Minister for Justice and Legal Affairs.

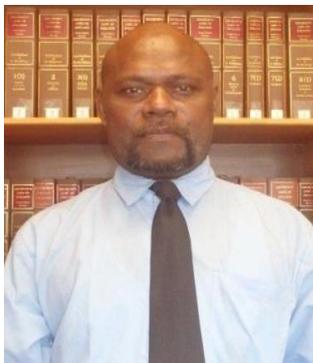
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**Chairman Frank Bollen Paulsen**



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**Commissioner Ishmael Kako**



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**Commissioner Ruth Liloqula**

## **Abbreviations**

ACT – Australian Capital Territory

ALRC – Australian Law Reform Commission

DPP – Director of Public Prosecutions

FJHC – High Court of Fiji

FJCA – Court of Appeal of Fiji

LRC – Law Reform Commission of Solomon Islands

NSW – New South Wales

PNG – Papua New Guinea

SBCA – Court of Appeal of Solomon Islands

SBHC – High Court of Solomon Islands

SBMC – Magistrate Court of Solomon Islands

UK – United Kingdom

VUCA – Court of Appeal of Vanuatu

VUMC – Magistrate Court of Vanuatu

WSSC – Supreme Court of Western Samoa

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## CHAPTER 1: INTRODUCTION

- 1.2 Public order offences are offences used to control behaviours of people in public places and to promote public safety. These offences involve acts that interfere with the operation of society and the ability of people to function efficiently. The behaviours have been labelled as criminal because they are contrary to shared norms, social values and customs,<sup>1</sup> as they cause disruption to the public.
- 1.3 This group of offences needs to be assessed to ensure the freedoms of speech, assembly, association and movement, as provided for in the *Constitution*,<sup>2</sup> are fairly balanced against the objective of public safety. This is so because these freedoms are not absolute. The freedom of expression and the freedom of assembly and association can be limited by laws made in the interest of public order, public safety, public morality and public health that are reasonably justifiable in a democratic society.<sup>3</sup> The right to freedom of movement can be limited by laws that impose restrictions on movement or residence that are reasonably required in the interest of defence, public safety or order, where those laws can also be reasonably justified in a democratic society.<sup>4</sup> These rights, and the way they can be limited, are particularly important when considering offences that deal with rioting, and behaviours such as begging and being drunk in public.
- 1.4 The *Penal Code* [Cap 26] (*Penal Code*) contains a range of offences aiming at protecting the safety and security of the public and the government. They include offences that deal with treason, unlawful assembly, riot, nuisance, unlawful society, behaviour in public such as begging, idle and disorderly, drunkenness and soliciting prostitutes. The *Penal Code* also contains public health offences that deal with issues such as rubbish, animals and causing pollution.
- 1.5 Since the *Penal Code* was introduced on the 1st of April 1963, provincial and local governments have been established in the Country. Provincial Assemblies have powers to make laws, ordinances, about waste disposal, rest and eating houses, vagrancy, public nuisances, markets, keeping of domestic animals, pollution of water and local licencing of professions, trade and businesses.<sup>5</sup> Until 1998 when it was suspended by the then Solomon Islands Alliance for Change (SIAC) Government,<sup>6</sup> the local councils as allowed by the *Local Government Act* [Cap 117] can make by-laws about waste disposal and cleaning, animals, public nuisances, control the movement

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<sup>1</sup> Larry J. Siegel, *Public Order Crimes* (7<sup>th</sup> ed, 2000), 423-469, <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=185192> (Accessed 9<sup>th</sup> June 2018).

<sup>2</sup> *Constitution*, Chapter II.

<sup>3</sup> *Constitution*, ss 12(2), 13(2).

<sup>4</sup> *Constitution*, s (14)(3).

<sup>5</sup> *Provincial Government Act 1997*, s 30 and Schedule 3.

<sup>6</sup> *The Provincial Government (Suspension of Area Councils) Order 1998*, Legal Notice No.34.

of beggars and vagrants in public spaces and public health.<sup>7</sup> The *Environmental Health Act and Environmental Health (Public Health Act) Regulations* also contain provisions about public nuisance, protection of water supply, protection of public sewers or drains and offences relating to sale of food.

- 1.6 This paper also extends to cover the sedition offences under the *Sedition Act* [Cap 32] as this section prohibits publications that would, among other things, bring hatred against the Government of Solomon Islands except, among others, to allow for correction in good faith of errors made by the Government.
- 1.7 The purposes of this Public Order Offences Consultation paper are to:
  - engage Solomon Islanders in the renewal of the law, that is educating them of the current laws on public order and raise issues for law reform; and
  - gather information on people’s view of the law on public order offences and possible changes they may think should be made to those existing offences.
- 1.8 This paper has 15 chapters focusing predominantly on the Public Order Offences in the *Penal Code* of Solomon Islands. These chapters will consider how the criminal law protects the society and how it deals with the offenders. The Public Order Offences against the society or public will be considered in accordance to the following chapters:
  1. Introduction
  2. Treason
  3. Sedition
  4. Unlawful Society and Spreading False Rumors
  5. Unlawful Assembly and Riot
  6. Unlawful Drilling
  7. Going Armed in Public
  8. Common Nuisance and other nuisance related offences
  9. Status Offences
  10. Obscene Articles
  11. Prostitution Offences
  12. Criminal Trespass
  13. Alcohol and Kwaso
  14. Affray
  15. Other offences against the State
- 1.9 The paper discusses the current law concerning these offences and also considers laws on public order offences from other jurisdictions. In addition, the paper raises

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<sup>7</sup> *Local Government Act* [Cap 117], ss 45,50 and Schedule.

issues and questions to seek feedback or comments from the public on possible changes to the law.

## CHAPTER 2: TREASON

### *Current law*

- 1.10 The *Penal Code* contains four (4) treason related offences as provided for in sections 48 to 51.<sup>8</sup>
- 1.11 Section 48 states that '[a]ny person who compasses, imagines, invents, devises or intends any act, matter or theory, ... whereof is treason under the law of England, ... expresses, utters or declares such compassing, imagining, inventing, devising or intending by publishing any printing or writing or by any overt act, or does any act which, if done in England, would be deemed to be treason according to the law of England ... , is guilty of the offence termed treason and shall be liable to imprisonment for life.'
- 1.12 Section 49 states that a person who instigates any foreigner to invade Solomon Islands with an armed force shall be guilty of treason, and shall be liable to imprisonment for life.
- 1.13 Section 50 of the *Penal Code* covers situations where a person becomes an assessor after the fact to treason (a person who helps or gives assistance to a person who commits treason), or who knows that a person intends to commit treason and does not inform the Prime Minister, or a Magistrate, or a police officer, or use other reasonable means to prevent treason from being committed. This offence also carries a maximum penalty of life imprisonment.<sup>9</sup>
- 1.14 Section 51 covers situations where a person intends to depose (overthrows) the Queen, or levy war against the Queen, or instigate a foreigner to invade 'Her Majesty's dominions'.<sup>10</sup>
- 1.15 These offences each carry a maximum penalty of life imprisonment.
- 1.16 The description of treason activities in sections 48 and 51 are complicated and have direct reference to the law of England. This is a hangover from the English law that the *Penal Code* has been adopted from.
- 1.17 Section 53 provides for two years' time limitations for prosecuting a person accused of committing treason. The prosecution must commence the proceeding for treason within two years of the alleged act of treason.

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<sup>8</sup> *Penal Code* [Cap 26], ss 48, 49, 50 and 51.

<sup>9</sup> *Penal Code* [Cap 26], s 50.

<sup>10</sup> *Penal Code* [Cap 26], s 51.

### *Laws of other jurisdictions*

- 1.18 Vanuatu has only one treason offence. Section 59 of its *Penal Code* [Cap 135] provides that any person 'owing allegiance to the Republic' can commit treason; and the physical acts or conducts constituting treason in Vanuatu can be committed within or outside of the Republic. A person is guilty of treason if he or she does any of the following: (a) levies war against the Republic; (b) assists an enemy at war with the Republic or an armed force in hostility with forces of Republic – whether or not a state of war exists between the Republic and any other country; (c) incites or assists any person to invade the Republic; (d) use force to overthrow the Government of the Republic, and (e) conspires with any person to carry out the conducts contained in subsections (a – d) above.
- 1.19 A person charged for treason in Vanuatu cannot be convicted of the offence on the evidence of one witness only. The evidence must be corroborated in some material particular by other evidence implicating the accused. The maximum penalty for treason in Vanuatu is life imprisonment. Other jurisdictions like Samoa and Tonga have similar provisions as in Vanuatu.
- 1.20 However, penalties vary according to each jurisdiction. For example, in Samoa, the penalty for treason is life imprisonment<sup>11</sup> whilst the penalty for treason in Tonga is death penalty or imprisonment for any period less than life imprisonment with the forfeiture of the convicts land and other properties to the Crown.<sup>12</sup>
- 1.21 The *Criminal Offences Act* of Tonga also contains an offence related to the primary offence of treason. It says that any person, who becomes aware of any intended treason and omits to give information about it to the Minister of Police, or to the Governor of the district, or the Government representative for the district, is liable to imprisonment for a period not exceeding 7 years.<sup>13</sup>
- 1.22 The *Criminal Code Act 1995* of the Commonwealth of Australia has one offence for treason where a person commits treason if he or she:
- (a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor-General or the Prime Minister; or
  - (b) causes harm to the Sovereign, the Governor-General or the Prime Minister resulting in the death of the Sovereign, the Governor-General or the Prime Minister;
- or

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<sup>11</sup> *Crimes Act 2013* (Samoa), s 40.

<sup>12</sup> *Criminal Offences Act* [Cap 18] (Tonga), s 44.

<sup>13</sup> *Criminal Offences Act* [Cap 18] (Tonga), s 45.

(c) causes harm to the Sovereign, the Governor-General or the Prime Minister, or imprisons or restrains the Sovereign, the Governor-General or the Prime Minister; or  
(d) levies war, or does any act preparatory to levying war, against the Commonwealth; or

(g) instigates a person who is not an Australian citizen to make an armed invasion of the Commonwealth or a Territory of the Commonwealth. Treason carries a maximum penalty of life imprisonment.<sup>14</sup>

1.23 *The Criminal Code Act 1995* also contains a treason related offence dealing with situations where a person receives or assists another person who, to his or her knowledge, has committed an offence against the persons mentioned in (a) – (c) with the intention of allowing him or her to escape punishment or apprehension; or knowing that another person intends to commit an offence against the persons in (a) – (c), does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence. This offence carries a maximum penalty of imprisonment for life.<sup>15</sup>

#### *Issues and questions for considerations*

1. Should the offences regarding treason in the *Penal Code* be reviewed and replaced with a new and simplified offence of treason?
2. Should the offence of treason include the use of force to overthrow Governments (national and provincial), and the use of force to change government policies and actions?
3. Should the offence of treason cover harm to the Governor-General, the Speaker of Parliament and the Prime Minister, or any other officers?
4. Should the commission of treason be confined to the citizens of Solomon Islands or should this apply to any person who commits treason?
5. Should the offence of treason extend to apply to situations where a Solomon Islands citizen commits that offence from outside of Solomon Islands?
6. What should be the appropriate penalty for the offence of treason?

#### *Policy reasons*

1.24 It is reasonable for Solomon Islands to defend itself by having an offence of treason for conduct that incites violence against important officers of the country.

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<sup>14</sup> *Criminal Code Act 1995* (Commonwealth), s 80.1(1).

<sup>15</sup> *Criminal Code Act 1995* (Commonwealth), s 80.1(2).

However, it could also be argued that the offence of treason is out of date and not appropriate for modern day Solomon Islands.

- 1.25 Conduct with intention to overthrow a corrupt government for a public good could be a sensible possible defence for the offence of treason.

## CHAPTER 3: SEDITION

### *Current law*

- 1.26 The criminal offence of sedition developed in England in the 17<sup>th</sup> and 18<sup>th</sup> centuries, emerging out of the laws against treason and libel, and was aimed at shielding the Crown (and its institutions and officers) from criticism that might lessen its standing and authority among its subjects.
- 1.27 The *Penal Code* does not contain the offence of sedition. However, the offence is provided for in the *Sedition Act* [Cap 32]. The Act defines sedition as any act done or words spoken or written and published which has or have a seditious tendency and is done or is spoken or written and published with a seditious intent.
- 1.28 A person may be said to have a seditious intent if he or she has any of the following intentions, and acts or words may be said to have seditious tendencies:
- (a) an intention or tendency to bring into hatred or contempt or to excite disaffection against:
    - (i) the person of Her Majesty,
    - (ii) Her heirs or successors, or
    - (iii) the Government of Solomon Islands as by law established; or to excite Her Majesty's subjects or inhabitants of Solomon Islands to attempt to procure the alteration, otherwise than by lawful means, of any matter in Solomon Islands as by law established; or to bring into hatred or contempt or to excite disaffection against the administration of justice in Solomon Islands; or to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Solomon Islands; or to promote feelings of ill-will and hostility between different classes of the population of Solomon Islands.<sup>16</sup>

- 1.29 Section 4 of the *Sedition Act*<sup>17</sup> further outlines that:

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<sup>16</sup> *Sedition Act* [Cap 32], s 3.

<sup>17</sup> *Sedition Act* [Cap 32], s 4.

(1) Any person who—

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

(b) utters any seditious words;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; (d) imports any seditious publication, unless he has no reason to believe that it is seditious;

shall be guilty of an offence and liable for a first offence to imprisonment for two years or to a fine of two hundred dollars or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and any seditious publication shall be forfeited to Her Majesty.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable for a first offence to imprisonment for one year or to a fine of one hundred dollars or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication shall be forfeited to Her Majesty.

#### *Laws of other jurisdictions*

1.30 The *Penal Code* [Cap 135] of the Republic of Vanuatu contains three (3) seditious related offences which are provided from sections 64 – 66. Section 64 states that a person can be charged for seditious conspiracy if he or she enters into any agreement with two or more persons to carry into execution any seditious intention. The penalty for this part of the offence is imprisonment for 2 years.

1.31 Section 65 provides for seditious statements which states that; (1) No person shall make or publish, or cause or permit to be made or published any statement expressing any seditious intention. (2) For the purposes of subsection (1), the expression "statement" includes words, writing, pictures, or any expression, representation or reproduction by any means whatever. This part of the offence carries a maximum penalty of 15 years imprisonment.

1.32 Section 66 provides for seditious publications and states that; (1) No person shall – (a) print, publish, sell, offer for sale, distribute or reproduce any seditious publication; (b) knowingly import any seditious publication; (c) knowingly have in his possession any seditious publication. (2) Every seditious publication shall be forfeited to the Republic. Penalty for this offence is 15 years imprisonment.

- 1.33 In Vanuatu, no prosecution shall be undertaken for an offence under section 64, 65 or 66 unless with the written consent of the Public Prosecutor is received within 6 months of the date on which the offence is alleged to have been committed.
- 1.34 In Fiji, section 67 of the *Crimes Decree 2009* provides for seditious offences which states that; (1) A person commits an indictable offence (being a summary offence) if the person – (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do any act with a seditious intention; (b) utters any seditious words; (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or (d) imports any seditious publication, unless he has no reason to believe that it is seditious. This part of the offence carries a penalty of 7 years imprisonment.
- 1.35 Furthermore, in subsection (2) it says that a person commits a summary offence if without lawful excuse the person has in his possession any seditious publication. This part of the offence carries a maximum penalty for 1 year and 2 penalty points.
- 1.36 Moreover, a person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.
- 1.37 In Papua New Guinea, the *Criminal Code Act 1974* contains one offence of sedition. Section 54 states that; (1) A person who– (a) conspires with any person to carry into execution a seditious enterprise; or (b) advisedly publishes any seditious words or writing, is, subject to subsection (2), guilty of a misdemeanour. This offence carries a maximum penalty of imprisonment for a term not exceeding three years.
- (2) If a person convicted of an offence against subsection (1) has been previously convicted of any such offence he is guilty of a crime. This offence carries a penalty of seven years imprisonment.
- (3) A prosecution for any of the offences against subsection (1) must be begun within six months after the offence is committed.
- 1.38 A person shall not be convicted of an offence against subsection (1) on the uncorroborated testimony of one witness.<sup>18</sup>
- 1.39 The Australian Commonwealth Government amended the *Criminal Code Act 1995* following the recommendations from the Australian Law Reform Commission (ALRC) on sedition. The amendment removed the use of sedition and changed the offence to intentionally ‘urging violence and advocating terrorism or genocide’<sup>19</sup> as

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<sup>18</sup> *Criminal Code Act 1974* (PNG), s 54.

<sup>19</sup> *Criminal Code Act 1995* (Commonwealth), subdivision C <https://www.legislation.gov.au/Details/C2017C00235>.

provided for in *Subdivision C*. Under that Subdivision, the first offence is called urging violence against the Constitution or Government. A person (the first person) commits an offence if the first person, with the intention that violence and force will occur, intentionally urges another person to overthrow the Constitution, the Government, including State governments, and the lawful authority of the Commonwealth Government, by force or violence.<sup>20</sup> Section 80.2A is on urging violence against groups. The offence is committed when the first person intentionally urge another person, or a group, to use force or violence against a targeted group (distinguished by race, nationality, national or ethnic origin or political opinion) with the intention that violence and force will occur and threaten the peace, order and good government of the Commonwealth. The penalty for the offence is 7 years imprisonment. Section 80.2B is urging violence against members of groups and offence carries the penalty of 7 years imprisonment as well. The law provides for acts done in good faith as a defence to these offences.<sup>21</sup>

### *Issues*

1. Should a provision relating to the law on sedition be consolidated into the *Penal Code* rather than having a separate Act?
2. Should the commission of sedition cover any criticism of the Government in writing or statement or should it only include sedition that urges violence?
3. Should the law on sedition cover online/internet/social media statements?
4. Should the commission of sedition be confined to the citizens of Solomon Islands or should this apply to everyone who commits the offence?
5. Should sedition law apply to the situation where it is committed within Solomon Islands and as well as outside of Solomon Islands?
6. What should be the appropriate penalty for the offence of sedition?

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<sup>20</sup> *Criminal Code Act 1995* (Commonwealth), s 80.2.

<sup>21</sup> *Criminal Code Act 1995* (Commonwealth), s 80.3.

### *Policy reasons*

- 1.40 Laws against sedition have been around for a very long time. The policy rationale is to constrain political dissent and punish speech that is critical of the established order.
- 1.41 It could be argued that they are unnecessary in the present time. This could akin to the reason that most of the worst activities against the State are already covered under other laws.
- 1.42 However, it could also be argued that the law against sedition is more relevant today as the invention of the internet allows information, including information urging violence, to be shared or disseminated very quickly. Finally, the drafting of a new sedition offence could be clarified and simplified to make it easier to prove than other existing similar offences.

## CHAPTER 4: ULAWFUL SOCIETY AND SPREADING FALSE RUMOURS

### *Unlawful society*

#### *Current law*

- 1.43 Unlawful society is one of the public order offences under section 66 of the *Penal Code* that involves ten or more persons regardless of whether the society is known by any name or not. A society is an unlawful society -
- (i) if formed for any of the following purposes –
    - (a) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of Solomon Islands; or
    - (b) killing or injuring or inciting to the killing or injuring of any person; or
    - (c) destroying or injuring or inciting to the destruction or injuring of any property; or
    - (d) subverting or promoting the subversion of the Government or of its officials; or
    - (e) committing or inciting acts of violence or intimidation; or
    - (f) interfering with, or resisting, or inciting interference with or resistance to the administration of the law; or
    - (g) disturbing or inciting the disturbance of peace and order in any part of Solomon Islands; or
  - (ii) if declared by an order of the Governor-General to be a society dangerous to the good government of Solomon Islands.
- 1.44 Section 67 of the *Penal Code* provides for managing of unlawful society. The provision states that any person who manages or assists in the management of an unlawful society is guilty of a felony, and shall be liable to imprisonment for seven years.
- 1.45 Section 68 makes it unlawful to be a member of an unlawful society or allowing one's premise to be used as a meeting venue for members of unlawful society. These prohibited conducts carry a maximum of three years imprisonment.
- 1.46 The prosecution of offences under sections 67 and 68 can only be commenced with the consent of the Director of Public Prosecutions (DPP).
- 1.47 In the case of *Regina v Tadakusu*,<sup>22</sup> the accused was charged and pleaded guilty for being a member of an unlawful society contrary to section 68(a) of the *Penal Code*. The

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<sup>22</sup> [1999] SBHC 11; HC-CRC 239 of 1999 (10 November 1999).

accused was a member of the Guadalcanal Revolutionary Army (GLA), later known as Isatabu Freedom Fighters (IFF) during the Ethnic Tension. The group used violence and lawlessness to achieve its goals. The Court imposed a three years imprisonment sentence on the accused.

### *Laws of other jurisdictions*

In Tonga, any person who manages or assists in the management of an unlawful society commits an offence. The penalty is a maximum of seven years imprisonment.<sup>23</sup> Furthermore, any person who (a) is a member of an unlawful society; or (b) knowingly allows a meeting of an unlawful society or members of an unlawful society to be held in any house, building or place belonging to or occupied by him, or over which he has control, commits an offence and is liable to imprisonment for three years.<sup>24</sup> A prosecution under these sections can only be commenced with the consent of the Prime Minister.<sup>25</sup>

### *Issues*

1. Should the consent of the DPP to commence prosecution for sections 67 and 68 remain or should it be abolished?
2. Should the penalties for the sections 67 and 68 be increased?

### *Policy reasons for unlawful societies*

1.48 The policy rationale for preventing the convening of unlawful societies is to prevent groups forming with the purpose to undermine a public good or endanger peace, law and order and good government. Arguably, the law goes further and prevent groups from discussing public interests issues, or sparking large scale discussion of government policies in good faith.

### *Spreading false rumours*

#### *Current law*

1.49 The offence is covered under section 63 of the *Penal Code* and is committed when a person –

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<sup>23</sup> *Criminal Offences Act* [Cap 18] (Tonga), s 68.

<sup>24</sup> *Criminal Offences Act* [Cap 18] (Tonga), s 69.

<sup>25</sup> *Criminal Offences Act* [Cap 18] (Tonga), s 70.

- (a) maliciously fabricates or knowingly spreads abroad or publishes, whether by writing or by word of mouth or otherwise, any false news or false report tending to create or foster public alarm, public anxiety or disaffection or to produce public detriment; or
  - (b) acts or is acting in a manner prejudicial to the public safety or to the peace and good order of any part of Solomon Islands; or
  - (c) endeavours to disturb the public peace by exciting hatred or contempt of any class of persons.
- 1.50 A person committed such offence shall be guilty of a misdemeanour and shall be liable to imprisonment for one year or to a fine of two thousand dollars.<sup>26</sup>
- 1.51 The crime of fabricating or deliberately spreading false information contains three elements. First, the suspect should have the capacity for criminal liability. Second, he or she fabricates or spreads false information despite knowing it to be false. Third, the rumour thus spread should cause social damage, especially leading to "serious disruption of the social order" or "having caused serious consequences.
- 1.52 It is therefore an offence to publish or spread any false information which could create public fear, disaffection or detrimental to the public good.
- 1.53 Spreading false rumour also covers the situation where a person persistently acts in a manner that the safety or peace in any part in Solomon Islands is at stake. The *Penal Code* also extends spreading false rumour to encompass public disturbance that could result in hatred within society or within any class of persons.

### *Laws of other jurisdictions*

- 1.54 The Vanuatu provision on spreading false rumours is similar to that of Solomon Islands. Vanuatu's *Public Order Act* [Cap 84]<sup>27</sup> makes it an offence for a person to maliciously fabricate or knowingly spreads abroad, or publishes by writing or by word of mouth or otherwise, any false news or false report tending to create or foster public alarm, public anxiety or disaffection or to produce public detriment; or acts or is acting in a manner prejudicial to the public safety or to the peace and good order of any part of Vanuatu; or endeavours to disturb the public peace by inciting hatred or contempt of any class of persons.
- 1.55 The penalty for this offence of spreading false rumours in Vanuatu is a fine of VT5000 or 1 year imprisonment or both.<sup>28</sup>

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<sup>26</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>27</sup> *Public Order Act* [Cap 84] (Vanuatu), s 13.

<sup>28</sup> *Interpretation Act* [Cap 132] (Vanuatu), s 36 (3).

## *Issues*

1. Should Solomon Islands retain the offence of spreading false rumours?
2. If yes, should the element of actual harm to the social order from the rumours be retained?
3. If yes, what should be the penalty?

## *Policy reasons*

- 1.56 Generally, the law on false rumour aims to restrict false information being disseminated in society. It operates to ensure that verified accurate information is shared in the society, not rumours or incorrect or misleading information.
- 1.57 The law on false rumour also aims to keep the peace within the society and the country as a whole. This law is essentially important as it endeavours to keep the harmony and unity among people.
- 1.58 Currently, it is meant to prohibit people from deliberately fabricating or spreading rumours that can cause social chaos or disrupt normal life. The elements as they stand mean that false rumours can only be proven where their dissemination causes social damage.

## CHAPTER 5: UNLAWFUL ASSEMBLY AND RIOT

### *Current law*

- 1.59 The offences of unlawful assembly, riot and related offences are contained in sections 73 to 82 of the *Penal Code*.
- 1.60 The objective of criminal laws on unlawful assembly and riot offences is to protect the safety of the community and to ensure that the Constitutional rights of people to take part in peaceful meetings and protests are not unreasonably violated.<sup>29</sup>

### *Unlawful Assembly*

- 1.61 This offence of unlawful assembly occurs when three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purposes, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace.<sup>30</sup>
- 1.62 It is immaterial that the original assembling was lawful. If being assembled and they conduct themselves with a common purpose in such a manner as mentioned above then it is unlawful assembly.
- 1.63 Any person who takes part in an unlawful assembly is guilty of a misdemeanour, and shall be liable to imprisonment for one year.<sup>31</sup>

### *Laws of other jurisdictions*

- 1.64 In Vanuatu, the offence of unlawful assembly is committed where a group of three or more persons conduct themselves in such a manner as to cause nearby persons reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace.<sup>32</sup> The penalty for the offence is three years imprisonment.<sup>33</sup>
- 1.65 In PNG, the offence of unlawful assembly is committed when three or more persons, with intent to carry out some common purposes: assemble in such a manner; or being assembled, conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that they will tumultuously disturb the

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<sup>29</sup> Law Reform Commission, Solomon Islands, *Issues Paper 2008*, para 11:17, p144.

<sup>30</sup> *Penal Code* [Cap 26], s 73.

<sup>31</sup> *Penal Code* [Cap 26], s 74.

<sup>32</sup> *Penal Code* [Cap 135] (Vanuatu), s 68.

<sup>33</sup> *Penal Code* [Cap 135] (Vanuatu), s 69.

peace; or by the assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace. The offence is a misdemeanour and the penalty is a maximum penalty of one year imprisonment.<sup>34</sup>

### *Issues*

1. Does Solomon Islands still need a law against unlawful assembly?
2. If so, should the penalty be increased?

### *Policy reasons*

1.66 The laws against unlawful assembly purport to prevent groups collaborating to commit an offence or there is a threat that the group may commit an offence. This will benefit the police and law enforcement to be able to arrest people earlier before crime or violence escalates.

### *Riot*

#### *Current law*

- 1.67 Riot occurs when an unlawful assembly has begun to execute the purpose for which it is assembled by a breach of the peace and to the terror of the public. That assembly is called a riot, and the persons assembled are said to be riotously assembled.<sup>35</sup>
- 1.68 Any person who takes part in a riot shall be guilty of a misdemeanour.<sup>36</sup>
- 1.69 The *Penal Code* contains six separate offences on riot. These include (1) riot, (2) riot after proclamation, (3) preventing or obstructing the making of proclamation, (4) rioters demolishing building, etc., (5) rioters injuring buildings, machinery, etc. and (6) riotously interfering with aircraft, vehicle or vessel. The maximum penalties for these offences range from 2 years imprisonment or a fine (misdemeanour) to imprisonment for life.<sup>37</sup>

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<sup>34</sup> *Criminal Code Act 1974* (PNG), s 63.

<sup>35</sup> *Penal Code* [Cap 26], s 73.

<sup>36</sup> *Penal Code* [Cap 26], s 75.

<sup>37</sup> *Penal Code* [Cap 26], ss 75, 78 – 82.

## **Riot**

- 1.70 The offence of riot under section 75 of the *Penal Code* occurs when an unlawful assembly begins to carry out its common purpose by behaving in such manner or provoke others to commit a breach of the peace. A person is guilty of a misdemeanour if he takes part in a riot.
- 1.71 The phrase, 'breach of the peace', is not defined in the *Penal Code*<sup>38</sup> or the *Interpretation and General Provisions Act*.<sup>39</sup> The term 'misdemeanour' is defined by section 4 of the *Penal Code* to mean any offence which is not a felony. Generally, the law will specify that a particular offence is a misdemeanor and provides a maximum penalty for the offence. However, when the *Penal Code* does not specify any punishment for a misdemeanour the penalty for the offence is not more than 2 years imprisonment or a fine, or both imprisonment and fine.<sup>40</sup>

## **Rioting after proclamation**

- 1.72 This related riot offence is contained in section 78 of the *Penal Code*. It is committed where 12 or more people cause a riot after a Magistrate or a senior police officer (at or above the level of inspector) made a proclamation telling the group assembled to disperse.
- 1.73 Any person who takes part or continues to take part in the riot or assembly after a reasonable time has passed after the proclamation was made, is guilty of a felony and is liable to imprisonment for 5 years.<sup>41</sup> In addition, any person who prevents or obstructs the Magistrate or a senior police from making the proclamation is guilty of a felony and is liable to imprisonment for 10 years.<sup>42</sup>
- 1.74 Any person who has knowledge that the proclamation was being made and continues to take part in the riot or assembly is liable to imprisonment for 5 years.<sup>43</sup>

## **Rioters demolishing building, etc.; Rioters injuring buildings, machinery, etc., and**

### **Riotously interfering with aircraft, vehicle or vessel**

- 1.75 A range of offences apply where rioters destroy (demolish) a building or machinery,<sup>44</sup> damage (injure) a building or machinery<sup>45</sup> or, riotously interfere with an aircraft,

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<sup>38</sup> [Cap 26].

<sup>39</sup> [Cap 85].

<sup>40</sup> *Penal Code* [Cap 26], s 41.

<sup>41</sup> *Penal Code* [Cap 26], s 78.

<sup>42</sup> *Penal Code* [Cap 26], read s 76 together with s 79.

<sup>43</sup> *Penal Code* [Cap 26], s 79.

<sup>44</sup> *Penal Code* [Cap 26], s 80.

<sup>45</sup> *Penal Code* [Cap 26], s 81.

vehicle or vessel.<sup>46</sup> There is a significant difference between the maximum penalties for these offences. Hence, the offence of rioters destroying or demolishing a building or machinery has a maximum penalty of life imprisonment, while the offence where rioters damage a building or machinery carries a penalty of seven years imprisonment. The offence of riotously interfering with aircraft, vehicle or vessel is a misdemeanour.<sup>47</sup>

### *Laws of other jurisdictions*

1.76 In Vanuatu, a person can be convicted for the offence of rioting when an unlawful assembly that he or she has participated in has begun to execute for the purpose for which is so assembled and cause a breach of the peace and the terror to the public. The penalty for the offence is ten years imprisonment.<sup>48</sup>

### *Issues*

1. Should the rioting offences in the *Penal Code* be consolidated into a simplified single offence covering all levels of involvement in rioting?
2. Does Solomon Islands need a severe penalty against rioting?
3. Should a higher penalty be imposed on a person who causes injury to a police officer or any law enforcer who tries to control rioters?

### *Policy reasons*

1.77 The provisions against rioting are designed to criminalise involvement in large groups who are violent and undertake criminal behaviours. On one level, this provides the ability to criminalise behaviours that endangers the public. Potentially, it also can be used to criminalise any participant in any “good faith” protesting in public against Government decision making where some participants engage in criminal conducts.

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<sup>46</sup> *Penal Code* [Cap 26], s 82.

<sup>47</sup> Law Reform Commission, Solomon Islands, *Issues Paper 2008*, pg. 145.

<sup>48</sup> *Penal Code* [Cap 135] (Vanuatu), s 69.

## CHAPTER 6: UNLAWFUL DRILLING

### *Current Law*

- 1.78 Section 62 of the *Penal Code* provides for the offence of unlawful drilling. The offence is committed when a person who -
- a) Without the permission of the Governor-General trains or drills any other person to the use of arms or the practice of military exercises, movements or evolutions; or
  - b) is present at any meeting or assembly of persons, held without the permission of the Governor-General, for the purpose of training or drilling any other persons to the use of arms or the practice of military exercises, movements or evolutions,
- shall be guilty of a felony, and shall be liable to imprisonment for seven years.<sup>49</sup>
- 1.79 Section 62(2) provides that any person who, at any meeting or assembly held without the permission of the Governor-General, is trained or drilled to the use of arms, or the practice of military exercises, movements or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, shall be guilty of a misdemeanour.

### *Laws of other jurisdictions*

- 1.80 In PNG, the *Criminal Code Act 1974* provides that a person is guilty of unlawful drilling where:
- (a) without the prior permission of the Prime Minister trains or drills any other person to (i) the use of arms, including traditional arms; or (ii) the practice of military, para-military, or police force exercises, movements or evolutions; or
  - (b) at any meeting or assembly of persons, held without the prior permission of the Prime Minister, is present for the purpose of training or drilling any other persons to (i) the use of arms, including traditional arms; or (ii) the practice of military, para-military or police force exercises, movements or evolutions, is guilty of a crime. The penalty for this is a maximum penalty of seven years imprisonment.<sup>50</sup>
- 1.81 Furthermore, a person who (a) at a meeting or assembly held without the prior permission of the Prime Minister trains or drills, or is trained or drilled (i) to the use of arms, including traditional arms; or (ii) in the practice of military, para-military or police force exercises, movements or evolutions; or (b) is present at any such meeting or assembly for the purpose of training or drilling, or of being so trained or drilled, is

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<sup>49</sup> *Penal Code* [Cap 26], s 62(1).

<sup>50</sup> *The Criminal Code Act 1974* (PNG), s 53(1).

guilty of a misdemeanour. The penalty for this is a maximum penalty of two years imprisonment.<sup>51</sup>

### *Issues*

1. Should the penalty of unlawful drilling be increased to reflect the seriousness of the activity?
2. Should the power of the Governor General to authorise the use of guns to train in a manner similar to police or army also be exercised by other authorities such as the Police Commissioner?

### *Policy reasons*

- 1.82 The policy rationale for this offence relates to the necessity of control by a non-political independent authority, such as the Governor General, to permit the training on the use of weapons in the Solomon Islands. Control by this independent authority will prevent the risk of large scale violence recurring in the future.

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<sup>51</sup> The *Criminal Code Act 1974* (PNG), s 53(2).

## CHAPTER 7: GOING ARMED IN PUBLIC

### *Current Law*

- 1.83 Section 83 of the *Penal Code* prohibited the act of going armed in public without lawful occasion in a manner that would cause fear to other persons, and the arm may be forfeited. This is a misdemeanour offence.<sup>52</sup>

### *Cases*

- 1.84 In *Regina v Samuel Mane Junior*,<sup>53</sup> the defendant was found guilty of going armed in public when he was armed with a kitchen knife at a birthday party. He caused a disturbance with the kitchen knife and aggressively behaved amongst those who were present at the party. He was sentenced to four months imprisonment.<sup>54</sup>

### *Laws of other jurisdictions*

- 1.85 The *Criminal Code* of Queensland, section 69 has an offence for going armed in public. The offence is committed when any person who goes armed in public without lawful occasion in such a manner as to cause fear to another person. It is a misdemeanour, punishable for 2 years imprisonment.
- 1.86 The *Criminal Code* of PNG provides that a person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a misdemeanour. The penalty is an imprisonment for a term of two years.<sup>55</sup>

### *Issue*

1. Should we increase the penalty for Going Armed in Public?
2. Should this offence be simplified as going armed in any place as long as the conduct is frightening to other people in that area?

### *Policy reasons for the offence*

- 1.87 The policy rationale of this offence is to ensure people can feel safe and secure from potential violence whilst in public. The offence also operates to prevent the potential for violence to escalate quickly in public spaces.

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<sup>52</sup> General punishments for misdemeanours is stated under section 41 of the *Penal Code* which provides that the offender shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.

<sup>53</sup> [2016] SBMC 23.

<sup>54</sup> *Regina v Junior* [2016] SBMC 23.

<sup>55</sup> *Criminal Code* (PNG), s 70.

## CHAPTER 8: COMMON NUISANCE AND OTHER NUISANCE RELATED OFFENCES

### *Common Nuisance*

- 1.88 The *Penal Code* in sections 172 and 187 contains two common nuisance related offences.<sup>56</sup>
- 1.89 Section 172 provides that a person commits a common nuisance if he or she does an act that is not authorised by law or omits (or fail) to discharge a legal duty which will result in common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights and shall be liable to imprisonment for one year.<sup>57</sup>
- 1.90 Section 187 states that a person is liable to be punished for an offence of common nuisance if he or she, for the purpose of trade or otherwise, makes loud noises or produce offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights is liable to be punished as for a common nuisance.<sup>58</sup>
- 1.91 Common nuisance can also be called public nuisance but can be differentiated from private nuisance. Private nuisance is the unreasonable and substantial interference with the use and enjoyment of land. The essence of private nuisance is something that causes an unreasonable inconvenience to ones use and enjoyment of land. For example, barking dogs, overhanging trees and branches, loud music, bad smells and bright lights.<sup>59</sup> This concerns two different individuals and not the entire public.
- 1.92 In the case of *Regina v Balou*,<sup>60</sup> the Magistrate Court sentenced the defendant Ben Balou for the offence of common nuisance for three months imprisonment after considering all the mitigating factors. The defendant was causing nuisance by playing loud music and shouting which disturbed the nearby residence.

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<sup>56</sup> *Penal Code* [Cap 26], ss 172 & 187.

<sup>57</sup> *Penal Code* [Cap 26], s 172.

<sup>58</sup> *Penal Code* [Cap 26], s 187.

<sup>59</sup> International Torts 79, Private nuisance [https://en-au.oxbridgenotes.com/revision\\_notes/law-griffith-university-intentional-torts/samples/private-nuisance](https://en-au.oxbridgenotes.com/revision_notes/law-griffith-university-intentional-torts/samples/private-nuisance) (accessed 27<sup>th</sup> January 2017)

<sup>60</sup> [2015] SBMC 7; Criminal Case 417 of 2015 [http://sig-pacli.mof.gov.sb/cgi-bin/sinodisp/sb/cases/SBMC/2015/7.html?stem=&synonyms=&query=Regina%20v%20Balou%20\[2015\]%20SBMC%207](http://sig-pacli.mof.gov.sb/cgi-bin/sinodisp/sb/cases/SBMC/2015/7.html?stem=&synonyms=&query=Regina%20v%20Balou%20[2015]%20SBMC%207) (Accessed 31 January 2017).

### *Laws of other jurisdictions*

1.93 New Zealand has termed common nuisance as *criminal nuisance* as stated under section 145 of the New Zealand *Crimes Act 1961*. It states:

(1) Everyone commits criminal nuisance who does any unlawful act or omits to discharge any legal duty, such act or omission being one which he or she knew would endanger the lives, safety, or health of the public, or the life, safety, or health of any individual.

(2) Everyone who commits criminal nuisance is liable to imprisonment for a term not exceeding 1 year.

1.94 Canada *Criminal Code* in section 180(1) provides for the offence of common nuisance. The offence is committed when: (i) a person engages the lives, safety or health of the public; or (ii) a person cause physical injury to any persons. A person found guilty of committing common nuisance in Canada commits an indictable offence and is liable to imprisonment for a term not exceeding two years.<sup>61</sup>

1.95 Canada *Criminal Code* defined common nuisance as when someone does an unlawful act or fails to discharge a legal duty and thereby: (a) endangers the lives, safety, health, property or comfort of the public; or (b) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.<sup>62</sup>

### *Issues*

1. Does Solomon Islands wish to retain the term common nuisance offence under the *Penal Code* or replace it with a new term such as criminal nuisance as in NZ or public nuisance as in Canada?
2. Should the offence of common nuisance include an act caused by an individual to another person?
3. What should be the appropriate penalty for the nuisance offence?
4. Should we include a revised definition of common nuisance to include an act which endangers the lives, safety, health, property or comfort of the public in the revised legislation?
5. Should we include the fault elements of common nuisance, such as intention,

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<sup>61</sup> *Criminal Code* (Canada), s 180(1).

<sup>62</sup> *Criminal Code* (Canada), s 180(2).

knowledge, recklessness or negligence?

6. If the offence is renamed criminal nuisance, should the offence covers private nuisance as well?

### *Policy reasons for the offence*

- 1.96 An offence covering public nuisance is necessary to protect the public from a person's behaviour where it interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public. Conduct, like an argument, with raised voices and swearing, playing loud music or causing inconvenience to other neighbours should be criminalised regardless of where it occurs.

### *Other Nuisance Related Offence*

#### *Current law*

#### *Shouting, etc., in town*

- 1.97 This offence covers circumstances where a person wantonly beats any drum, tom-tom or blows any horn, playing of loud musical instrument, sing or making loud noises in any town areas that reasonably disturbs the public after being warned. The penalty for the offence is one month imprisonment<sup>63</sup> or a fine of \$1000.<sup>64</sup>
- 1.98 The offence is only relevant to any area that has been declared by the Prime Minister as a town or any other area to which the provision of this section may be applied by the Prime Minister's order. This offence shall not apply to where a drum, bell, gong or tomtom is beaten to signify the time of the day or to summon a church congregation.<sup>65</sup>

#### *Laws in other jurisdictions*

- 1.99 Vanuatu, Tonga and Kiribati have similar provisions on shouting, etc in town except for the wording and the way the provisions were structured. In Vanuatu and Tonga the provisions are extended to cover a time for such disturbances to stop. For example, no one is allowed to sing, shout etc between the hours of 9 pm to 5 am in the next morning in Vanuatu,<sup>66</sup> whilst in Tonga playing or practising of any band instruments, or playing on special occasions outside the hours of 6am to 10pm can

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<sup>63</sup> *Penal Code* [Cap 26], s 180 (1).

<sup>64</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>65</sup> *Penal Code* [Cap 26], s 180(2)&(3).

<sup>66</sup> See *Control of Nocturnal Noise Act* [Cap 40] (Vanuatu), s 1.

only occur with the written permission of the Minister of Police or his representative.<sup>67</sup> In Kiribati the offence is extended to cover village areas.<sup>68</sup> In Vanuatu the penalty fine is VT5, 000,<sup>69</sup> the penalty in Tonga is 4 months imprisonment or \$100 fine<sup>70</sup> and in Kiribati the penalty is \$10 or 14 days imprisonment.<sup>71</sup>

1.100 In Papua New Guinea (PNG), the Summary Offences Report by the Law Reform Commission discussed that the creation of an offence of making too much noise at night is inappropriate for PNG. The report stated that lengthy dancing, singing and other celebrations were part of PNG culture and to impose such rules especially in village level is inappropriate. It was further discussed that in town areas people work 6 days per week and have set hours of sleeping so too much noises would be unpleasant for them. However, it was decided that such offence is not suitable for PNG because it is impossible to criminalize some types of offences at night and it is also not appropriate to criminalize all loud noises at night.<sup>72</sup>

### *Issues*

1. Should the criminal law on shouting etc., in town be made by Provincial Governments or the City Council? Should it be made in a form of by-law or regulation?
2. Should there be a specific time limit or restrictions to this offence?
3. Should this offence be extended to cover village areas? If so, should the term 'village' be defined?
4. Whether this offence be retained in the *Penal Code*?

### *Current laws*

#### *Polluting or Obstructing Water Courses*

1.101 Section 181 provides that it is an offence to pollute or obstruct any aqueduct, dam, sluice, pipe, pump, watercourse of fountain. Any person who commits this offence shall be liable to two months imprisonment,<sup>73</sup> and a fine of two thousand dollars.<sup>74</sup>

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<sup>67</sup> *Order in Public Act* [Cap 37] (Tonga), s 3 (g) (iii).

<sup>68</sup> *Penal Code* [Cap 67] (Kiribati), s 171.

<sup>69</sup> *Control of Nocturnal Noise Act* [Cap 40] (Vanuatu), s 1.

<sup>70</sup> *Order in Public Act* [Cap 37] (Tonga), s 3 (g) (iii).

<sup>71</sup> *Penal Code* [Cap 67] (Kiribati), s 171.

<sup>72</sup> Law Reform Commission, Papua New Guinea, *Summary Offences*, Report 1 [1975].

<sup>73</sup> *Penal Code* [Cap 26], s 181.

- 1.102 The *Environmental Health (Public Health Act) Regulations* also has similar provision on polluting water supply. It provides that any person who knows and wilfully defiles or pollutes any watercourse, stream, lake, pond, or reservoir is guilty of an offence. The penalty for the offence is a fine of forty dollars.<sup>75</sup> Section 49(2) prohibits any person from wilfully injures or unlawfully interferes with any pump, cock, valve, water pipe, cistern, reservoir or storage tank maintained wholly or partly by the Government or a local authority, shall be guilty of an offence and liable to a fine of forty dollars.<sup>76</sup>
- 1.103 The *Forest Resources and Timber Utilisation Act-Forest Resources and Timber Utilization (Prescribed Forms) Regulations*<sup>77</sup> under section 6 on water pollution also cover related offences however this provision applies to companies, employees or sub-contractors. The provision gives a clear instruction that oil, fuel, chemicals and other pollutants must not be stored close to rivers and watercourse. It further provides that no refuse, sewage, rubbish, oil, fuel or other pollutants may be discharged into any river, pond, and stream or water source by the Company or any of its employees or sub-contractors. In the event that there is any pollution, the Inspector appointed under the *River Water Act*<sup>78</sup> may require the Company to suspend all operations until the pollution has ceased and the damage has been rectified.<sup>79</sup>

### ***Laws in Other Jurisdictions***

- 1.104 In Papua New Guinea, polluting or obstructing watercourses are two separate offences under the Summary Offences Act. Section 36 makes it an offence to throw or drop any filth or rubbish or pollute any river, creek, canal, watercourse, well and waters storage.<sup>80</sup> The penalty for this offence is K2000.<sup>81</sup> The offence of obstructing watercourses in section 37 states that any person who obstructs or diverts from its channel any public sewer, public drain, creek or other watercourse without reasonable justification is guilty of an offence and shall be liable to a fine of K2000.<sup>82</sup> Moreover for the offence of obstructing watercourses, a member of a customary group or community can raise a defence under this offence if it is proven that he is a member of a customary group or community and that it is part of their tradition for

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<sup>74</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>75</sup> *Environmental Health (Public Health Act) Regulations*, s 49(1).

<sup>76</sup> *Environment Health (Public Health Act) Regulations*, s 49(2).

<sup>77</sup> *The Forest Resources and Timber Utilisation Act-Forest Resources and Timber Utilization (Prescribed Forms) Regulations*, Form 4, s 6.

<sup>78</sup> *River Waters Act*, s 3.

<sup>79</sup> *The Forest Resources and Timber Utilisation Act- Forest Resources and Timber Utilization (Prescribed Forms) Regulations*, Form 4, s 6.

<sup>80</sup> *Summary Offences Act 1977 (PNG)*, s 36.

<sup>81</sup> *Summary Offences (Amendment) Act 2018 (PNG)*, s 36.

<sup>82</sup>*Summary Offences Act 1977 (PNG)*, s 37.

members of that customary group or community to divert that creek or other watercourse for the purpose of catching fish.<sup>83</sup>

1.105 In Samoa's *Water Resource Management Act 2008* provides that it is an offence to discharge a pollutant into the water resource of Samoa and causes, suffers or permits any pollutant to be discharged into the water or does any act that is inconsistent with the management plan applying to water protection zone. The penalty is a fine of not more than 250 penalty units if committed by individuals, 500 penalty units if committed by a company and an imprisonment for a term not exceeding 1 year.<sup>84</sup>

1.106 The *Public Health Act* of Vanuatu section 48 provides that it is an offence to knowingly and wilfully defile or pollute any watercourse, stream, lake, pond or reservoir. The penalty is a fine of not exceeding VT1, 000,000 or an imprisonment for a term not exceeding 5 years or both.<sup>85</sup>

1.107 Section 64 of the *Public Health Act* also provides for similar offence with specific reference to discharging of raw sewage or untreated sewage. It is an offence to allow or permit someone to discharge any raw or untreated into any river, stream, creek, well, dam, reservoir, aquifer, groundwater or other watercourse. The penalty is similar to section 48 which is a fine not exceeding VT1, 000,000 or imprisonment for a term not exceeding 5 years.<sup>86</sup>

1.108 As discussed above, the penalty for this offence in Solomon Islands is low compared to Vanuatu and Papua New Guinea.

### *Issues*

1. Should this offence remain in the *Penal Code*? If so, should it be extended to cover any pollution anywhere, in general?
2. Should the penalty for this offence be increased?
3. Should the Environmental Health Act and the Environment Act address this type of conduct of polluting or obstructing watercourse?
4. Should the penalty for intentional, wilfully or reckless pollution be increased?

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<sup>83</sup>*Summary Offences Act 1977* (PNG), s 37.

<sup>84</sup> *Water Resource Management Act* (Samoa), s 42.

<sup>85</sup> *Public Health Act* (Vanuatu), s 64.

<sup>86</sup> *Public Health Act* (Vanuatu), s 64.

## *Posting Placards, etc... on Walls Without Consent of the Owner*

### *Current law*

1.109 The posting placards, etc., on walls without consent of the owner is an offence. This provision makes it an offence for any person to post or affix any placard or paper upon any wall, house or building using chalk or paint without the consent of the owner. The penalty is one month imprisonment<sup>87</sup> and a fine of \$1, 000.<sup>88</sup>

### *Laws in other jurisdictions*

1.110 In Fiji, the *Minor Offences Act* in section 17 provides for posting of placards or defacing of walls. The provision makes it an offence to unlawfully post or affix any placard or paper or material upon any wall, house or building without the consent of the owner. The penalty is a fine not exceeding twenty dollars.<sup>89</sup> The offence in Fiji is similar to Solomon Islands except that that the penalty fine is lower in Fiji.

1.111 In Papua New Guinea, the offence of posting bills on walls and writing on or defacing walls are two separate offences under the *Summary Offences Act*. Section 42(1) states any person who without lawful authority, in a public place, attaches any paper, bill, poster or placard to any building, wall, fence, tree, pole, structure, road or footpath is guilty of an offence.<sup>90</sup> The penalty is a fine not exceeding K1, 000 and imprisonment for not more than 3 months.<sup>91</sup> Section 42(2) further states that the court may order the person convicted to remove or pay for the removal of the paper, bill, poster or placard within a specified time to its former condition. A person who refuses or fails to comply with the court order is guilty of an offence and shall be liable to pay a fine not more than K1000 or to imprisonment for not more than 3 months.<sup>92</sup>

1.112 Section 43(1) states any person who in any public place writes on, soils or defaces or marks any building, wall, fence, tree, pole, structure, road or footpath is guilty of an offence.<sup>93</sup> The penalty for this offence is a fine not exceeding K2000 or imprisonment for not more than six months.<sup>94</sup> Section 43(2)(3) provides that the court may order the person convicted of this offence to remove or pay for the removal of the writing, dirt or marks within a period specified by the court and also to restore it to its former

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<sup>87</sup> *Penal Code* [Cap 26], s 182.

<sup>88</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>89</sup> *Minor Offences Act* (Fiji), s 17,

<sup>90</sup> *Summary Offences Act 1977* (PNG), s 42,

<sup>91</sup> *Summary Offences (Amendment) Act 2018* (PNG), s 42.

<sup>92</sup> *Summary Offences (Amendment) 2018* (PNG), s 42(2)(3).

<sup>93</sup> *Summary Offences Act 1977* (PNG), s 43,

<sup>94</sup> *Summary Offences (Amendment) Act 2018* (PNG), s 43(a).

condition. Failure to comply with court order is also an offence with a fine of not exceeding K2000 or imprisonment for six months.<sup>95</sup>

1.113 In Papua New Guinea, this offence is different from Solomon Islands as the *Summary Offences Act* makes this offence as two separate offences. The offence of writing on or defacing walls, etc. has a higher penalty. Also, there is a provision that makes failure to comply with the court order as an offence.

1.114 The *Summary Offences (Tagging and Graffiti Vandalism) Amendment Act 2008* of New Zealand refers to this offence as graffiti vandalism, tagging, defacing, etc. The provision states, if a person damages or defaces any building, structure, road, tree, property or other thing by writing, drawing, painting, spraying, or etching on it or marking it without lawful authority or without consent of the occupier or owner or other person in lawful control is liable to a community based sentence or a fine not exceeding \$2000 or both.<sup>96</sup> The offence in New Zealand has a very high maximum penalty fine and a community base sentence.

### *Issues*

1. Whether it is necessary to retain this offence in the *Penal Code*.
2. Whether there should be an increase in the penalty.
3. Whether this offence should be extended to cover the removal, repair and restoration of the damaged property.

### *Dangerous Dogs and Other Animals*

#### *Current Law*

1.115 It is an offence to permit any dog or animal to go at large without proper control knowing that the animal has injured any person or domestic animal. The penalty is one month imprisonment<sup>97</sup> and a fine of \$1000.<sup>98</sup>

1.116 It is also an offence where a dog or animal with a previous record of injuring any person or animal rushes in any public place or attacks any person or animal that results in injury or danger. In such case, the owner shall be guilty of an offence and be liable to 6 weeks imprisonment<sup>99</sup> and a fine of \$1,500.<sup>100</sup>

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<sup>95</sup>*Summary Offences (Amendment) Act 2018* (PNG), s 43(b).

<sup>96</sup> *Summary Offences (Tagging and Graffiti Vandalism) Amendment Act 2008* (New Zealand), s 2.

<sup>97</sup> *Penal Code* [Cap 26], s 183(3).

<sup>98</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>99</sup> *Penal Code* [Cap 26], s 183(2).

1.117 Section 183(3) also makes it an offence when someone incites or provokes a dog or other animal to attack, worry or frighten any person or animal. The penalty is 6 weeks imprisonment and a fine of \$5,000.<sup>101</sup>

### *Laws in other jurisdictions*

1.118 The *Control and Registration of Dogs Act* in Vanuatu has similar offence to Solomon Islands, however it has an additional provision where the owner of the dog is entitled to a defence if he or she proves that the dog was provoked by the complainant or any other person. The Penalty fine is an amount not exceeding VT25,000 and imprisonment for 3 months.<sup>102</sup>

1.119 The *Dogs Act* in Fiji also provides for dogs attacking a person or animal on public road with a penalty fine of \$100.<sup>103</sup> Moreover it also provides that the Magistrate may order the destruction of the dangerous dog with specific instruction that the dogs be killed in a less painful manner. Failure to comply with the order by the Magistrate is also an offence and a person can be liable to a fine not exceeding \$5 every day during which he or she fails to comply with the order.<sup>104</sup>

1.120 The *Animals Act 1952* of Papua New Guinea provides for the destruction of dogs with specific orders on how to kill a dog. It is an offence for failing to comply with the order. The penalty is a fine of K100.<sup>105</sup>

1.121 There is also a provision that deals with compensation for damage caused by dogs on a complainant. The court may order the owner of the dog to pay the complainant a sum not exceeding K100.00 as compensation for actual damaged suffered. Also, it is an offence to wilfully urge dogs to attack someone. This offence carries a maximum fine of K200 or imprisonment for a term not exceeding 3 weeks.<sup>106</sup>

### *Issues*

1. Whether the offence of dangerous dogs and other animals should be retained in the *Penal Code*.
2. Should there be a specific legislation to regulate and control offences on dogs and dangerous dogs?

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<sup>100</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>101</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>102</sup> *Control and Registration of Dogs Act*, s 11.

<sup>103</sup> *Dogs Act (Fiji)*, s 5.

<sup>104</sup> *Dogs Act (Fiji)*, s 3.

<sup>105</sup> *Animals Act (PNG)*, s 69.

<sup>106</sup> *Animals Act (PNG)*, s 71.

## ***Fouling Air***

1.122 The *Penal Code* in section 186 provides for the offence of fouling air. The offence applies to the situation where a person voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way. This is a misdemeanour.<sup>107</sup>

## ***The Environmental Health (Public Health Act) Regulations***

1.123 The *Environmental Health (Public Health Act) Regulations* also provides for this offence. The local authorities has the duty to take lawful, necessary and reasonable practicable measures for sanitary maintenance and sanitary condition and to take proceedings at law against any person causing or responsible for the continuance of any such nuisance or condition.<sup>108</sup> The local authority is empowered to issue an order for the removal of the nuisance or condition. Any person who fails to comply with the order shall be liable to a fine of forty dollars and the court will issue order for the removal of such nuisance or condition.<sup>109</sup>

## ***Laws from other Jurisdictions on this offence***

1.124 The *Fiji Crimes Decree 2009* provide for this offence. Section 386 states that a person commits an offence if he intentionally pollutes the atmosphere so as to make it noxious to the health of person in general dwelling place, business in neighbourhood or public way and is punishable to imprisonment for 2 years or fine of 20 penalty units or, both.<sup>110</sup>

1.125 *Tuvalu Penal Code* in section 179 states any person who voluntarily vitiates the atmosphere making it noxious to the health of person shall be guilty of misdemeanour.<sup>111</sup>

1.126 As discussed above the penalty for this offence in Fiji, Tuvalu and Solomon Islands is a misdemeanour. However the *Environmental Health Act (Public Health Act) Regulations* provides for the local authority to take lawful duty to ensure reasonable measures for maintaining clean any sanitary conditions and to take proceeding at law against any person causing or responsible for the continuance of any such nuisance or conditions.

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<sup>107</sup> *Penal Code* [Cap 26], s 186.

<sup>108</sup> *The Environmental Health (Public Health Act) Regulations*, s 23.

<sup>109</sup> *The Environmental Health (Public Health Act) Regulations*, s 27.

<sup>110</sup> *Crimes Decree 2009* (Fiji), s 386.

<sup>111</sup> *Penal Code* (Tuvalu), s 179.

## Questions

1. Should the offence of fouling air be retained or abolished?
2. If retained, what should be the penalty?

## Offensive Trades

### Current Law

- 1.127 The *Penal Code* in section 187 provides for the offence of offensive trades. It applies to where any person during the course of trade or otherwise makes loud or offensive or unwholesome smells that annoys any person in the exercise of their common right. The punishment for this offence is one year imprisonment.<sup>112</sup>
- 1.128 Section 32 of *The Environmental Health (Public Health Act) Regulations* provides for what constitutes an offensive trade as outlined in Schedule 2 of the Act and the power to change the schedule vests in the Minister.<sup>113</sup> It also provides for the restriction on the establishment of offensive trade, in order to establish an offensive trade there needs to be a written approval from the local authority and Director, failure to comply is an offence with a fine of \$200.<sup>114</sup>
- 1.129 This act does not allow offensive trades to occur in short term lease lands, including in the premises or any part of the premises that will cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of the adjoining lands.<sup>115</sup>

### Laws from other jurisdictions

- 1.130 The *Physical Planning Act* of Papua New Guinea provides that offensive trade means any trade, business, process or manufacture that is carried on in melting a house or in a building for boiling meat, offal or blood or for boiling or crushing bones. It also includes trades carried out in a way that may cause offensive effluvia; or which may lead to poisoning. Section 70 provides that the Minister may make declaration of offensive trade through notice in the National Gazette.<sup>116</sup>
- 1.131 The *Public Health Act* of Fiji gives authority to the Central Board of Health to give permission to carry on offensive trade. Section 90(2) states any person who establishes or carries on an offensive trade without the written consent of the Board is liable to pay a fine not exceeding \$100 and to a fine not exceeding \$10 for every day

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<sup>112</sup> *Penal Code* [Cap 26], s 187.

<sup>113</sup> *The Environmental Health (Public Health Act) Regulations*, Schedule 2.

<sup>114</sup> *The Environmental Health (Public Health Act) Regulations*, ss 32-33.

<sup>115</sup> *Land Registration Act 1981 (PNG)*, Schedule 3.

<sup>116</sup> *Physical Planning Act (PNG)*, s 3.

on which trade is carried. The Central Board of Health is also the Board that is responsible to make regulations for conditions subject to which and the areas within which those trades may be carried on to prevent or diminish offensiveness of the trade and to protect public health.<sup>117</sup> In Fiji this offence is punishable by way of fine.

1.132 In Samoa, the offence of offensive trade is covered under nuisances in section 22 of the *Health Ordinance Act*. Section 22(j) states a nuisance is taken to be created in any of the following cases; where an offensive trade is so carried on as to be dangerous to health or unnecessarily offensive. The penalty is a fine not exceeding one penalty unit, and if the person convicted can lawfully abate such nuisance that person is liable to a further fine of not more than one-half of one penalty unit for a day or part of the day during which the nuisance continues.<sup>118</sup>

1.133 The *Health Act 1956* of New Zealand gives power to the local authority or medical officer to give a written consent to the establishment of the offensive trade. The act also specifies that offensive trade can only occur within 8 kilometres of any part of the boundary of the district of any local authority. The penalty for the offence is a fine not exceeding \$1,000 and during its continuous occurrence of the offence an additional fine not exceeding \$100 shall be paid.<sup>119</sup>

### *Issues*

1. What should be the appropriate penalty?
2. Whether this offence should be retained in the *Penal Code*.
3. Whether this offence be dealt with under the *Environmental Health Act*?

### *Offences in Public Ways*

#### *Slaughtering Animal*

##### *Current law*

1.134 Section 178(a) makes it an offence for any person to slaughter any animal in any public ways except for those that have been involved in accident, public safety or other reasonable cause that may have led to them being killed on the spot. The penalty for the offence is \$10.00 fine or one month imprisonment.<sup>120</sup>

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<sup>117</sup> *Public Health Act* (Fiji), ss 90-91.

<sup>118</sup> *Health Ordinance* (Samoa), s 22.

<sup>119</sup> *Health Act 1956* (New Zealand), s 54.

<sup>120</sup> *Penal Code* [Cap 26], s178(a).

1.135 The *Roads Act* in section 26(c) provides for the same offence when committed on public roads. The penalty is a fine of \$80 or two months imprisonment.<sup>121</sup>

### *Laws from other jurisdictions*

1.136 The *Minor Offences Act* of Fiji in section 9 provides that any person who slaughters any horse, cattle, pig, sheep or goat on any public road except where there has been an accident or which is in the interest of public safety is guilty of an offence and shall be liable to a fine not more than \$20 or imprisonment for not more than one month.<sup>122</sup>

### *Issue*

Should we retain this offence in the *Penal Code*?

### *Driving Cattle*

1.137 Section 178(b) makes it an offence for any person who in any public way leads or drives any cattle without proper and sufficient assistance. The penalty for the offence is one month imprisonment or a fine of \$10.00.<sup>123</sup>

1.138 The offence of driving animals without proper assistance on public roads is also provided in the *Roads Act*. The penalty is \$80 with 2 months imprisonment.<sup>124</sup>

### *Laws in other jurisdictions*

1.139 Similar offence is provided under the *Crimes Decree 2009* of Fiji, section 268 (d) has an offence under reckless or negligent acts that states that any person who omits to take precautions against any likely danger from any animal in his or her possession commits a summary offence. This offence carries a maximum penalty of two years' imprisonment.<sup>125</sup>

### *Issue*

1. Should we retain this offence? Or we have this offence in any other law, such as an animal control law?
2. Is the penalty adequate for this offence?

<sup>121</sup> *Roads Act* [Cap 129], s 26(c).

<sup>122</sup> *Minor Offences Act* (Fiji), s 9.

<sup>123</sup> *Penal Code* [Cap 26], s 178(b).

<sup>124</sup> *Roads Act* [Cap 129], s 26(b).

<sup>125</sup> *Crimes Decree 2009* (Fiji), s 268(d).

### ***Exposing Goods for Sale***

1.140 Section 178(c) criminalizes any person who exposes any goods whatsoever for sale in any public way. The penalty for the offence is one month imprisonment and a fine of \$10.00.<sup>126</sup>

1.141 The *Roads Act* also covers obstructing of free passage on public road by exposing goods or merchandise of any description. The penalty for the offence is a fine of \$80 or two months imprisonment.<sup>127</sup>

### ***Laws of other jurisdictions***

1.142 The *Metrology Act 2015* of Samoa provides for exposing of goods for sale relating to authorised units for trade, and failure to comply with the authorised units for sale is an offence punishable to a fine not exceeding 30 penalty units or imprisonment for not more than 3 years.<sup>128</sup>

### ***Issues***

1. Should this offence be retained in the *Penal Code*?
2. Should the penalty be increased?

### ***Hanging out Clothes, etc***

1.143 The *Penal Code* in section 178(d) makes it an offence for a person to hang or place any clothes on any line or cord projecting over a public way or wall, fence, paling abutting upon a public way. This offence carries a maximum penalty of \$10.00 or one month imprisonment or both.<sup>129</sup>

### ***Laws of other jurisdictions***

1.144 Papua New Guinea also has a law prohibiting the hanging out of clothes. This offence is provided for under the *Police Offences Act 1912-1974* was abolished by *the Summary Offences in 1975* considering that it is irrelevant to the society today.<sup>130</sup>

1.145 A similar offence is in Kiribati with a penalty fine of \$10 or one month imprisonment.<sup>131</sup>

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<sup>126</sup> *Penal Code* [Cap 26], s178(c).

<sup>127</sup> *Roads Act* [Cap 129], s 23(e).

<sup>128</sup> *Metrology Act 2015* (Samoa), s 4.

<sup>129</sup> *Penal Code* [Cap 26], s 178(d).

<sup>130</sup> Law Reform Commission of Papua New Guinea, *Report on Summary Offences* (Report No.1) September 1975.

<sup>131</sup> *Penal Code* [67] (Kiribati), s 169(d).

## *Issues*

1. Is this offence still relevant in modern day Solomon Islands?
2. If so, what should be the appropriate penalty?

## *Extinguishing Lamps, Ringing Bells and Knocking at Doors*

### *Current Law*

1.146 Section 178(e) criminalizes any person who wantonly extinguishes the light of or destroys or causes damage to any street-lamp or disturbs any inhabitant by pulling or ringing door-bell or knocking at any door. This offence attracts the penalty of one month imprisonment or a fine of \$10.00.<sup>132</sup>

### *Laws in other jurisdictions*

1.147 In Papua New Guinea, this offence is covered under unlawfully disturbing of householders. It is an offence to ring any door bell, buzzer or similar device at any part of the building. The offence is punishable to a term not more than one year imprisonment or a fine not more than K100.<sup>133</sup>

1.148 Section 46 of *Summary Offences Act 1977* of PNG also covers where a person damages, obscures, remove or interfere with any lamp at any public place for the purpose of street lighting and safety of public members. This offence carries a maximum penalty fine of K50. The offence is extended to cover where a person convicted must pay the amount to replace or restore the lamp or lighting to its former condition, failure to comply with the order is another offence punishable for a maximum penalty fine of K100.<sup>134</sup>

## *Issues*

1. Whether there should be an additional provision that deals with failure to repay or replace the damaged street-lamp.
2. Whether the penalty should be increased.

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<sup>132</sup> *Penal Code* [Cap 26], s 178(e).

<sup>133</sup> *Summary Offences Act 1977 (PNG)*, s 26.

<sup>134</sup> *Summary Offences Act 1977 (PNG)*, s 46.

## ***Damaging Signboard***

### ***Current Law***

1.149 It is an offence, *Penal Code* section 187(f), to wantonly pull down, destroy, damage or deface any sign or signboards. The penalty is a maximum penalty of one month imprisonment and a fine of \$10.00.<sup>135</sup>

### ***Laws in other Jurisdictions***

1.150 Papua New Guinea has the similar offence that states it is an offence to interfere with, disfigure, destroy or remove any street sign or any part of a street sign without lawful authority. The penalty is a maximum fine of K2000 or 6 months imprisonment. Furthermore, the provision also provides that the Court may order the person convicted to repair or restore or pay for the repair or restoration of the street sign within a period of time. Failure to comply is also an offence with a penalty fine of not more than K 2000 or 6 months imprisonment.<sup>136</sup>

1.151 Fiji also has similar offence under the *Minor Offences Act* with a penalty fine of \$50 or 5 months imprisonment.<sup>137</sup>

### ***Issues***

1. Whether this offence be retained in the *Penal Code*.
2. Whether the penalty should be increased.
3. Whether this offence be extended to cover the repair and restoration of the damaged signboard.

## ***Placing Stones, Timber etc. in Public Way***

### ***Current Law***

1.152 It is an offence in section 178(g) to place stones, timber or other materials in a public way without lawful authority, except for building materials so enclosed to prevent injury to passengers. The penalty is one month imprisonment or a fine of \$10.00.<sup>138</sup>

1.153 Section 23(d) of the *Roads Act* has similar offence relating to hauling or trailing timber, stone or other things on public road. The offence is punishable for two months imprisonment or a fine of \$80.<sup>139</sup>

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<sup>135</sup> *Penal Code* [Cap 26], s 178(f).

<sup>136</sup> *Summary Offences (Amendment) Act 2018* (PNG), s 43.

<sup>137</sup> *Minor Offences Act* (Fiji), s11.

<sup>138</sup> *Penal Code* [Cap 26], s 178(g).

## *Issues*

1. Whether this offence be retained in the *Penal Code* or the provisions in the *Road Act* are sufficient.
2. What should be the appropriate penalty?

## *Throwing Rubbish etc from Houses*

### *Current Law*

1.154 It is also an offence for any person or owner or occupier of any house to throw rubbish or permits rubbish, water, matter of whatsoever to be thrown from any part of the building or house to any public way. The penalty is a fine of \$10.00 or imprisonment for one month.<sup>140</sup>

1.155 The offence in the *Penal Code* is general and is not restricted to road alone, it covers public way which includes any highway, market place, square, street, bridge or other way which is lawfully used by the public. The issue for those offences is the low penalty.

### *Laws from other Jurisdictions*

1.156 Similar offence is found in the *Penal Code* of Kiribati with a penalty fine of \$10 and one month imprisonment.<sup>141</sup>

1.157 In Papua New Guinea, The Law Reform Report on Summary Offences recommended that the anti-litter and anti-rubbish dumping rules be left to the councils. The urban and semi-urban councils should be the one dealing with rubbish.<sup>142</sup>

## *Issue*

Whether this offence be retained in the *Penal Code* or leave the issue to the city or town councils to deal with as a littering issue?

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<sup>139</sup> *Roads Act* [129], s 23(d).

<sup>140</sup> *Penal Code* [Cap 26], s 178(h).

<sup>141</sup> *Penal Code* [Cap 67] (Kiribati), s 169(h).

<sup>142</sup> Law Reform Commission, Papua New Guinea, *Summary Offences*, Report 1 [1975].

## *Throwing Away Rubbish on Footpath*

### *Current Law*

1.158 It is an offence to throw or lay any dirt, ashes or nightsoil or any carrion, offal, trees, bush, brushwood, decayed vegetables or rubbish into or upon any public way without lawful authority. The offence is punishable to a fine of \$10.00 or one month imprisonment.<sup>143</sup>

1.159 The *Roads Act* also made reference to throwing of rubbish on public road; the offence carries a penalty fine of \$80 or two months imprisonment.<sup>144</sup>

### *Laws of other Jurisdictions*

1.160 Similar offence is found in the *Penal Code* of Kiribati with a penalty fine of \$10 or one month imprisonment.<sup>145</sup>

1.161 In Papua New Guinea, the recommendation to remove the anti-litter and rubbish dumping was made by the Law Reform Commission on Summary Offences Report. It stated that it is the responsibility of the Urban-councils to set up anti-litter and rubbish dumping rules.<sup>146</sup>

### *Issues*

1. Whether this offence should be retained in the *Penal Code* or should it be removed and captured under the *Roads Act*.
2. Should the penalty be raised?

## *Dangerous Dogs at Large Unmuzzled*

### *Current Law*

1.162 It is a criminal offence to allow a dangerous or ferocious dog to go at large in any public place without being muzzled. The offence is punishable to a fine of \$10.00<sup>147</sup> or one month imprisonment.<sup>148</sup>

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<sup>143</sup> *Penal Code* [Cap 26], s 178(f).

<sup>144</sup> *Roads Act* [Cap 129], s 26(e) .

<sup>145</sup> *Penal Code* [Cap 67] (Kiribati), s 169 (i).

<sup>146</sup> Law Reform Commission, Papua New Guinea, *Summary Offences*, Report 1 [1975].

<sup>147</sup> *Penal Code* [Cap 26], s 178(f).

<sup>148</sup> *Penal Code* [Cap 26], s 178(iii).

### *Laws in other jurisdictions*

1.163 In Fiji this offence is provided for in the *Dogs Act*. Section 4 of that Act penalizes the owner of dangerous dog who know the dog is dangerous or have injured any person or any animal without being properly unmuzzled shall be guilty of an offence. The penalty is a fine not more than \$100.<sup>149</sup>

1.164 In *Kumar v State*,<sup>150</sup> the accused being the owner of two dogs which he knew to be dangerous let it at large without being properly muzzled. A five year old child was playing inside their compound when the two dogs entered and had bitten the child. The injuries caused were lacerations and a large gaping wound on the scalp. The accused entered a guilty plea in the Magistrate court of Nadi for the offence of failure to muzzle dangerous dog and dogs attacking person contrary to sections 4 and 5 of the *Dogs Act*. However, this was appealed by the accused requesting for a discharge of the charge. The court ordered the \$200 if already paid be refunded to him.<sup>151</sup>

1.165 In New Zealand, the Act specifically explains the liability of the owners of dogs that are dangerous and that if at large and harms another person or animal when unmuzzled in public will be prosecuted to a fine of \$3000.00 and that the court will have to give order for the destruction of the dog.<sup>152</sup>

1.166 The *Dogs Act* of Tuvalu also provides for dangerous dogs that are unmuzzled. The penalty is a conviction to a fine of \$100.<sup>153</sup>

### *Issues*

1. Whether this offence be retained in the *Penal Code*.
2. Whether this offence be extended to cover stray dogs? It is now common to see a lot of stray dogs roaming around the streets in Honiara and other public places around our country.

### *Mad Dogs*

#### *Current Law*

1.167 It is an offence for a person being the owner of a mad dog to let the dog go at large in a rabid state in any public place.<sup>154</sup> The penalty is one month imprisonment or \$10.00 fine.<sup>155</sup>

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<sup>149</sup> *Dogs Act 1971* (Fiji), s 4.

<sup>150</sup> [2018] FJHC 58: HAA89.2017(12 February 2018).

<sup>151</sup> *Kumar v State* [2018] FJHC 58: HAA89.2017(12 February 2018).

<sup>152</sup> *Dogs Control Act 1996* (New Zealand), s 62.

<sup>153</sup> *Dogs Act 2008* (Tuvalu), s 5.

### *Laws in Other Jurisdictions*

1.168 The offence relating to mad dogs is also found in Kiribati. The penalty for the offence in Kiribati is \$10 and one month imprisonment.<sup>156</sup>

### *Issues*

1. Whether this offence is still relevant.
2. Whether the difference between dangerous dogs and mad dogs be retained.

### *Blasting Rocks etc*

#### *Current Law*

1.169 It is a criminal act to blast any rock, stone or timber in any public place without the permission of the Provincial Secretary or the Senior Police Officer for the province. The penalty for this offence is a fine of \$10.00 or one month imprisonment.<sup>157</sup>

#### *Laws in other jurisdictions*

1.170 Kiribati has similar offence as Solomon Islands with penalty of \$10 fine or one month imprisonment.<sup>158</sup>

### *Issues*

1. Whether this offence is relevant to Solomon Islands situation today.
2. Whether this offence be retained in the *Penal Code*.

### *Indecency and Obscenity*

#### *Current Laws*

1.171 Indecency and obscenity is provided for under section 178(m) of the *Penal Code*. It covers situations where a person writes or draws any indecent word or

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<sup>154</sup> *Penal Code* [Cap 26], s 178(iii).

<sup>155</sup> *Penal Code* [Cap 26], s 178(i).

<sup>156</sup> *Penal Code* [Cap 67] (Kiribati) s 169(j).

<sup>157</sup> *Penal Code* [Cap 26], s 178(l).

<sup>158</sup> *Penal Code* [Cap 67] (Kiribati) s 169(l).

representation or uses any profane, indecent or obscene language. This offence attracts a penalty of one month imprisonment or a \$10.00 fine.<sup>159</sup>

### *Laws in other Jurisdictions*

1.172 The State of Queensland has a similar offence in its *Summary Offences Act* that covers situations where a person uses offensive, obscene, indecent or abusive language. It also include where a person uses threatening language. This offence carries a maximum penalty of 10 penalty units or six months imprisonment.<sup>160</sup>

1.173 In Vanuatu, indecency and obscenity are two separate offences: gross indecency and obscene publication. Gross indecency occurs where a person in a public place behaves in an outrage manner. The penalty is one year imprisonment.<sup>161</sup> The offence of obscene publication covers actions such as manufacturing, hold for sale, distribution, lease, displaying, importing or exporting, display or expose to public, sell or hire, offer any person for reward any printed matter, writing, drawing, sign, engraving, printing, photograph, film, sound recording, emblem or other object or representative that is obscene in nature. The penalty is 2 years imprisonment.<sup>162</sup>

1.174 In Papua New Guinea, the *Summary Offences Act 1977* makes indecent writing and indecent drawings two separate offences. The *Summary Offences Amendment 2018* still maintains the two offences however changed the penalties. The penalty for indecent writing is K2000.00 and K2000.00 for indecent drawing with a term not exceeding 6 months.<sup>163</sup>

### *Issues*

1. Should the offence of Indecency and obscenity be separated into two different offences?
2. What should be the appropriate penalty?

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<sup>159</sup> *Penal Code* [Cap 26], s178 (m).

<sup>160</sup> *Summary Offences Act 2005* (Queensland), s 6(3)(a).

<sup>161</sup> *Penal Code* (Vanuatu), s 100.

<sup>162</sup> *Penal Code* (Vanuatu), s 147.

<sup>163</sup> *Summary Offences (Amendment) Act 2018* (PNG), ss 23 -24.

## *Threatening or Abusive Behaviour*

### *Current Law*

1.175 This *Penal Code* in section 178(n) criminalizes any person to use threatening or abusive or insulting words or behaviour with the intention to provoke a breach of the peace. The penalty for this offence is one month imprisonment or a fine of \$10.00.<sup>164</sup>

### *Laws of other Jurisdictions*

1.176 In the *Public Order Act* of Fiji and Vanuatu this offence is called disturbance in public places. However the legislation in both jurisdictions has an additional provision that makes reference to police officers giving warnings or directions to disperse and failure to obey the directions of the police in an offence. In Fiji the penalty is a conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$100.00 or both.<sup>165</sup> Vanuatu has actually set a high penalty of VT300, 000 or a 3 years' imprisonment for the similar offence.<sup>166</sup>

1.177 The *Penal Code* of Vanuatu also has a provision that relates to abusive or threatening language in public places, this offence carries a maximum penalty of 3 years imprisonment.<sup>167</sup> In the case of *Public Prosecutor v Ishmael*,<sup>168</sup> in the Magistrate Court of Vanuatu, the defendant was charged with one count of abusive or threatening language contrary to section 121 of the *Penal Code*. The defendant was the boarding master of Ulei Secondary school on Efate. He sent out a student from school but instead the student stayed and influenced other students to do other activities during school hours. This made the defendant angry and told the students to leave immediately or else he will slap them. The court warns him not to repeat the offence again and was ordered to pay prosecution fee in the sum of VT2, 000 within 7 days.<sup>169</sup>

1.178 The *Police Act* of Fiji also has a similar offence that relates to riotous, indecent, disorderly or insulting behaviour in any police station, police office or cell or any part of the police compound to which the public have access. The penalty is imprisonment for a period on exceeding three months.<sup>170</sup>

1.179 In Queensland, this particular offence is provided under public nuisance in the *Summary Offences Act*. It covers a person who behaves disorderly, in an offensive way, threatening or violent way. This offence occurs where those behaviours interferes or is likely to interfere with the peaceful passage or enjoyment of a public place by

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<sup>164</sup> *Penal Code* [Cap 26], s 178(n).

<sup>165</sup> *Public Order Act* [Cap 20] (Fiji), s 14(a).

<sup>166</sup> *Public Order Act* [Cap 28] (Vanuatu), s 12 and Schedule.

<sup>167</sup> *Penal Code* (Vanuatu), s 121.

<sup>168</sup> [2018] VUMC 4; Criminal Case 1666 of 2018 (4 September 2018).

<sup>169</sup> *Public Prosecutor v Ismael* [2018] VUMC 4 <http://www.paclii.org/vu/cases/VUMC/2018/4.html>.

<sup>170</sup> *Police Act* [Cap 85] (Fiji), s 47.

members of the public. The penalty for this offence is 10 penalty units and six months imprisonment.<sup>171</sup>

1.180 From the discussion above, Vanuatu has two legislations dealing with this similar offence, the *Public Order Act* has a penalty fine of VT300, 000 or 3 years imprisonment<sup>172</sup> and the offence in the *Penal Code* carried a maximum penalty of three years imprisonment.<sup>173</sup> In Fiji, the *Public Order Act* carries a maximum penalty for a term not more than three months or \$100 imprisonment.<sup>174</sup>

### *Issues*

1. Should the penalty for this offence be increased?
2. Whether this offence be retained in the *Penal Code*.
3. Whether there is a legislation that deals with this type of offence.

### *Carrying Meat without Covering*

#### *Current Law*

1.181 This offence is provided for in section 178(o) of the *Penal Code*. This offence occurs where a person in any public place carries any meat or causes to be carried by any butcher's meat without proper and sufficient covering. The offence carries the penalty of one month imprisonment or a fine of \$10.00.<sup>175</sup>

#### *Laws in other jurisdictions*

1.182 In Kiribati, the offence of carrying meat without covering carries a fine of \$10 or one month imprisonment.<sup>176</sup>

#### *Issue*

Whether this offence be retained in the *Penal Code*.

<sup>171</sup> *Summary Offences Act 2005* (Queensland), s 6(3).

<sup>172</sup> *Public Order Act* (Vanuatu), s 12 and Schedule, s 18.

<sup>173</sup> *Penal Code* (Vanuatu), s 121.

<sup>174</sup> *Public Order Act* (Fiji), s 14.

<sup>175</sup> *Penal Code* [Cap 26], s 178(o).

<sup>176</sup> *Penal Code* (Kiribati) s 169 (o).

## *Playing Games in Public Ways*

### *Current Laws*

1.183 It is an offence to play any game or fly any kite or throw a stone or other missile or wilfully or negligently makes any noise or cattle or to injure any passenger or cattle or to injure any property.<sup>177</sup> The offence carries the penalty of one month imprisonment or a fine of \$10.00.<sup>178</sup>

### *Laws in other jurisdictions*

1.184 Section 26 of the *Summary Offences Act* of Papua New Guinea also provides for disturbance by throwing of stones, sticks or other missiles in any part of the building. The penalty is a fine not more than K2000 or 6 months imprisonment.<sup>179</sup> This particular offence applies to buildings.

1.185 Kiribati has similar offence with a penalty of \$10 and one month imprisonment.<sup>180</sup>

### *Issues*

1. Whether this offence be retained in the *Penal Code*.
2. Whether this offence is still relevant in our society today.

## *Careless Driving*

### *Current Law*

1.186 This offence occurs where a person in any public place drives or conducts any cattle, carriage or other vehicle in a careless, violent or furious manner or employs someone who is incompetent to drive or conduct any carriage or other vehicle or permits any horse or other animal to be driven in any carriage or vehicle unless it is properly harnessed.<sup>181</sup> The penalty for this offence is one month imprisonment or \$10.00 fine.<sup>182</sup>

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<sup>177</sup> *Penal Code* [Cap 26], s 178(p).

<sup>178</sup> *Penal Code* [Cap 26], s 178(p).

<sup>179</sup> *Summary Offences (Amendment) Act 2018* (PNG), s 26.

<sup>180</sup> *Penal Code* (Kiribati), s169 (p).

<sup>181</sup> *Penal Code* [Cap 26], s 178(q).

<sup>182</sup> *Penal Code* [Cap 26], s 178(q).

### *Laws in other jurisdictions*

- 1.187 In Papua New Guinea they have an offence of negligent driving in a public street, however does not include driving of cattle. This offence carries a maximum fine of K3000.00 and an imprisonment term of 12 months.<sup>183</sup>
- 1.188 In Tonga, this offence is provided under the *Traffic Act 1988*, this law prohibits a person from riding, driving or causes to have ridden, driven or propelled any animal or vehicle on a road carelessly or recklessly at a speed or in a manner which is dangerous to the public or property. The penalty is a fine not exceeding \$100 or to imprisonment for not more than one year or both.<sup>184</sup>
- 1.189 In Vanuatu, the offence of careless driving only applies to driving motor vehicles without due care and attention or without reasonable consideration for other road users. The penalty fine for this offence in Vanuatu is high, with VT 50,000 or 6 months imprisonment.<sup>185</sup>
- 1.190 In Fiji, the *Minor Offences Act* under section 16 provides that any person who is on a public road drives or causes the movement of any vehicle, other than a motor vehicle or a bicycle in a careless manner is guilty of an offence. The penalty is a fine not more than \$40 and imprisonment of not exceeding 2 months.<sup>186</sup>

### *Issues*

1. Whether the offence related to conducting of cattle or carriage relevant for us to use at this time.
2. Whether this offence be retained in the Penal Code.

### *Cattle or Vehicles Obstructing Public Way*

#### *Current Laws*

- 1.191 This offence criminalizes any person who permits any cattle to go at large or leaves any horse drawn or vehicle in any public way without some person in charge and as a result obstructs the passage of any public way or neglects or refuses to remove such obstruction when requested to do so by any police officer or private person. The offence has a penalty of one month imprisonment or a fine of \$10.00.<sup>187</sup>

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<sup>183</sup> *Summary Offences (Amendment) 2018* (PNG), s 57.

<sup>184</sup> *Traffic Act 1988* (Tonga), s 37(m).

<sup>185</sup> *Road Traffic (Control) Act* [Cap 29] (Vanuatu), s 14.

<sup>186</sup> *Minor Offences Act* (Fiji), s 16.

<sup>187</sup> *Penal Code* [Cap 26], s 187(r).

1.192 The offence of careless and inconsiderate driving is also provided under the *Traffic Act* [Cap 131]. Section 40(1) stated that if a person drives a motor vehicle without due care and attention or without reasonable consideration for other persons using road is guilty of an offence and shall be liable to \$5000.00 fine or 6 months imprisonment, in cases where there is a second or subsequent conviction, she/she shall be liable to a fine of \$7000.00 or 6 months imprisonment.<sup>188</sup>

### ***Laws in other jurisdictions***

1.193 In Tonga, the *Order in Public Places Act* has to separate provisions that provides for the offence. Section 3(a) state, any person who permits any cattle to be at large in any public way or tethers or causes to be tethered any cattle in any public way is guilty of an offence and shall be liable to imprisonment for a term of 4 months or a fine not exceeding \$100.<sup>189</sup>

1.194 The offence of obstruction is by means of any cattle, or by standing or loitering, or in any other manner, obstructs the passage of any public way or neglects or refuses to clear any obstruction so caused when requested to do so by any police officer or private person. The penalty is a fine not exceeding \$100 and in default of payment to imprisonment for any term not exceeding 4 months.<sup>190</sup>

1.195 In Samoa, this offence is provided for in the *Police Offences Ordinance* under section 3(y) and (z). Any person who permits a horse, sheep, sheep, pig, goat, or cattle to wander or be at large in a public place or to trespass upon any land without lawful justification they obstruct a public place or creates a source of danger commits a public nuisance is guilty of the offence. The Penalty is a fine of up to 2 penalty units.<sup>191</sup>

### ***Issue***

Whether this offence should be retained in the *Penal Code*.

### ***Obstructing Free Passage of a Public Way***

#### ***Current law***

1.196 It is an offence to obstruct a free passage in any public way or wilfully prevent any person passing or by negligence or misbehaviour prevents or interrupts the free

<sup>188</sup> *Traffic Act* [Cap 131], s 40 and *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>189</sup> *Order in Public Places Act* (Tonga), s 3(a).

<sup>190</sup> *Order in Public Places Act* (Tonga), s 3(c).

<sup>191</sup> *Police Offences Ordinances* (Samoa), s 3.

passage by motor vehicle, bicycle, wagon, carriage, cart, horse, mule or beast of burden.<sup>192</sup> The penalty is one month imprisonment or a fine of \$10.00.

1.197 A similar offence is found under section 23(e) of the *Roads Act* that provides for obstructing free passage; however the offence is on exposing goods or merchandise so it's different from the offence in the *Penal Code*.<sup>193</sup>

### ***Laws in other jurisdictions***

1.198 The *Public Order Act* of Vanuatu also has a general provision that deals with obstruction or keeping order in any public place. The penalty is a sum of VT300, 000 fine or imprisonment for 3 years.<sup>194</sup>

1.199 A similar provision in Fiji, section 12 of the *Minor Offences Act* state, a person without lawful excuse obstructs the free passage of any public road, or who wilfully prevents any person from passing him on a public road or by negligence or misbehaviour prevents or interferes with the free passage on any public road of any person. The penalty is a fine of \$40 or imprisonment for two months.<sup>195</sup>

### ***Issues***

1. Should this offence be retained?
2. What should be the appropriate penalty?

### ***Obstruction, Annoyance or Danger***

#### ***Current Law***

1.200 It is an offence to leave things on public way, it is also an offence to place blinds, shades etc., on public ways and lastly, it is an offence to carry naked light in any public way. The offence attracts a penalty of one month imprisonment or a fine of \$10.00,<sup>196</sup> except for carrying naked lights which attracts a fine of \$1,000.00.<sup>197</sup>

#### ***Laws of other jurisdictions***

1.201 In Fiji, the *Minor Offences Act* under section 18 provides for danger or obstruction as an offence. The provision states that any person by doing an act or by omitting to take reasonable care of any property in his possession or under his charge causes danger,

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<sup>192</sup> *Penal Code* [Cap 178], s 178.

<sup>193</sup> *Roads Act* [Cap 129], s 23(e).

<sup>194</sup> *Public Order Act* (Vanuatu), s 12(b).

<sup>195</sup> *Minor Offences Act* (Fiji), s 12.

<sup>196</sup> *Penal Code* [Cap 26], s 178(t).

<sup>197</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

obstruction or injury to any person on any public road is guilty of an offence. The penalty is a fine of \$40.<sup>198</sup>

*Issues*

1. Should we retain this offence?
2. Should the penalty be increased, decreased or remain the same?

*Other Nuisance offences and Section 178 offences generally*

1.202 As discussed above, section 178 of the *Penal Code* houses minor offences of nuisance.

*Issues*

1. The other nuisance related offences in Section 178(a) to (t) of the *Penal Code* are quite minor in nature. Could all these provisions be captured under a broad offence of public nuisance?
2. Alternatively, should these offences be covered by City level (Honiara City Council) ordinances?

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<sup>198</sup> *Minor Offences Act (Fiji)*, s 18.

## CHAPTER 9: STATUS OFFENCES

### *Idle and disorderly persons*

#### *Current Law*

- 1.203 The *Penal Code*<sup>199</sup> provides for status offence under sections 175 and 176. These provisions criminalize idle and disorderly behaviours and rogues and vagabonds.
- 1.204 Being idle and disorderly is an offence under section 175.<sup>200</sup> It applies to situations where a person who with no visible means of support or insufficient lawful means to give good account of his means of support to the satisfaction of a magistrate. It also applies to persons wandering abroad or placing him in any street to beg or encouraging a child to do such act.
- 1.205 The law on idle and disorderly further applies to person with any common prostitute behaviour and behaving in a disorderly or indecent manner in any public place or any person who is drunk and disorderly in public or behaves in a riotous or disorderly manner. It extends to cover situations where a person does any indecent act in public, solicits for immoral purposes and wandering about and endeavouring by the exposure of wounds or deformation to obtain or gather alms.<sup>201</sup>
- 1.206 The penalty for idle and disorderly is two months imprisonment or a fine of \$600.<sup>202</sup> In the event of conviction, the Magistrate may in addition to or in lieu of any other penalty, by order direct the convicted person be conveyed to his province of origin or any province in which the person ordinarily resident and that he resides there for a period not more than 3 years as may be specified in the order. In the event where the person fails to comply with such order, he or she shall be guilty of idle and disorderly offence and shall be liable to imprisonment for six months.

#### *Laws of other jurisdictions*

- 1.207 The Vanuatu law on idle and disorderly persons is similar to that of the Solomon Islands as it also criminalises the behaviour where a person behaves indecently in any public place for the purpose of prostitution, drunk and disorderly or behaves in a riotous or disorderly way or commits any indecent act in a public place, solicit for immoral purposes in any public place including the police station premises. It carries a penalty of 3 months imprisonment.<sup>203</sup>

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<sup>199</sup> See *Penal Code* [Cap 26], s 175 & 176.

<sup>200</sup> See *Penal Code* [Cap 26], s 175.

<sup>201</sup> *Penal Code* [Cap 26], s 175.

<sup>202</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>203</sup> *Penal Code* (Vanuatu), s 148.

1.208 In Australia, it is not a crime to be idle and disorderly within the meaning of the *Penal Code*. Some States have harsh laws to deal with homeless persons, such as in New South Wales where legislation gives the power to the police to move people who are in declared parks or public spaces where there is a “public safety issue.”<sup>204</sup>

### *Issues*

1. Should these homeless offences be removed from the *Penal Code* to allow the criminal law to deal with serious offences?
2. If these offences remain, should the penalties be increased?
3. If the offence remains, should it be clarified to exclude people who suffer hardship, such as natural disasters, illness and mental illness?

### *Rogues and Vagabonds*

1.209 The *Penal Code*<sup>205</sup> provides for persons being rogues and vagabonds such as persons convicted as an idle and disorderly, gatherer or collector of alms or endeavouring to procure charitable contributions, loitering in public wilfully exposing his person in public. The offence of rogues and vagabonds carries a maximum penalty of three months’ imprisonment for first offence and one year imprisonment for every subsequent offence.

1.210 Section 176 of the *Penal Code* provides that, the following persons –

- (a) any person convicted of an offence under the last preceding section after having been previously convicted as an idle and disorderly person;
- (b) any person going about as gatherer or collector of alms, or endeavouring, to procure charitable contributions of any kind or nature, under any false or fraudulent pretence;
- (c) any person found wandering or loitering in or upon or near any premises or in any public way or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose; and
- (d) any person wilfully and obscenely exposing his person in any public place or within view thereof, are deemed to be rogues and vagabonds and are guilty of a misdemeanour, and shall be liable for the first offence to imprisonment for three months, and for every subsequent offences to imprisonment for one year.

1.211 In the event of any conviction, the Magistrate may, in addition to or in lieu of any other penalty, by order direct that the person convicted be conveyed to his place or

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<sup>204</sup> *Sydney Public Reserves (Public Safety) Act 2017*.

<sup>205</sup> *Penal Code* [Cap 26], s 176.

province of origin in Solomon Islands or the place or province in Solomon Islands in which such person is ordinarily resident and that he resides there for such period not exceeding three years as may be specified in the order, and where any such order is made additional to a sentence of imprisonment, the order shall take effect forthwith upon the termination of such sentence. A breach to the order is an offence and shall be liable to imprisonment for six months.<sup>206</sup>

### *Laws of other jurisdictions*

1.212 In PNG, the law on having no visible means of support or insufficient lawful means, under section 4 (1) (a) of the *Vagrancy Act* and section 69 of the *Police Offences Act* was repealed by the *Summary Offences Act 1977*. This follows recommendations made by the Papua New Guinea Law Reform Commission in 1975.<sup>207</sup> The reasons for the recommendation to repeal were -

- the vagrancy law does not stop village people from coming into towns as experienced;
- many of the vagrants are not criminals or commit no offence other than being without work. And the sentences are very short and some come out from jail better equipped to be criminals than before they went in, and become embittered against the Justice System.
- a waste of government resources which should be used on useful projects that will aim at reducing the unemployment rate.
- it would be unfair to those who have spent their lifetime living in urban areas.
- the culture or the communal way of life which has sanctions and obligations built into it.
- the criminal law is not an appropriate means to deal with these social and economic problems, but the government to consider other solutions such as improve the rural life, encourage small businesses etc.<sup>208</sup>

1.213 In Fiji, the *Minor Offences Act 1971* provides that any person who (a) begs, gathers or obtains alms in any public place; or (b) causes or procures or encourages any child to beg or gather or obtain alms; or (c) goes about as a gatherer or collector of alms or endeavours to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; or (d) causes annoyance by pestering or importuning any person in a public place, is guilty of an offence and the penalty is a maximum of three months imprisonment. The *Minor Offences Act* also has provisions dealing with prostitution, indecency, loitering and graffiti with different penalties.

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<sup>206</sup> See *Penal Code* [Cap 26], s 176.

<sup>207</sup> Law Reform Commission of Papua New Guinea Report on Summary Offences (Report No. 1) September 1975 <http://www.paclii.org/pg/lawreform/PGLawRComm/1975/2.html> (Accessed 20 June 2019).

<sup>208</sup> Law Reform Commission of Papua New Guinea Report on Summary Offences (Report No. 1) September 1975 <http://www.paclii.org/pg/lawreform/PGLawRComm/1975/2.html> (Accessed 20 June 2019).

## *Issues*

1. Whether this offence should be kept under the criminal law. Or repealed and placed in the country's regulation or bylaws? Or consolidated with other offences in a Minor Offences Act, such as in Fiji?
2. If the offence is retained, should a defence of an emergency of situation leading to the begging be included? For example, natural disaster and illness.
3. Whether a Magistrate should continue to be able to direct that a person be conveyed to his or her Province of origin for up to three years.
4. Whether the criminal law is an appropriate means to deal with such social and economic problems in the society, such as mental illness and social disadvantage.
5. Looking at the context of Solomon Islands, what implications would this have on the country given its current economic status and high level of social issues?

## *Policy reasons for the offences*

- 1.214 Criminalising being homeless or begging is based on the policy of protecting public safety, in that the public should not be harassed by persons asking for money or being subject to fraudulent begging.
- 1.215 However, the policy justification should be balanced against a person's right to defend their situation that led to their begging and also to survive as a human right. Contributing social factors leading to begging can include recovery from natural disasters, illness including mental illness, housing loss and unemployment. Public nuisance offences could apply to prevent the public being harassed by anyone who is homeless or begging. It therefore could be argued that it is better to deter people from becoming homeless in the first place rather than criminalising homelessness.

## CHAPTER 10: OBSCENE ARTICLES

### *Current Law*

#### *Traffic in obscene publications*

1.216 The *Penal Code*, in section 173, prohibits traffic in obscene publications. The section stops any person for the purpose of trade, distribution, or public exhibition from making or producing or having in his or her possession any obscene writings, drawings, prints, paintings, pictures, posters, emblems, photographs, cinematograph films or other obscene objects or other objects tending to corrupt morals. The section also prohibits any person for the purpose of trade, distribution or public exhibition from importing or exporting the obscene articles or putting the articles in circulation. The section further stops any person from trading with the articles either in public or private. In addition, the section prohibits any person from advertising or make known by any means for the purpose of assisting the circulation of the materials. And finally, the section prevents any person from publicly exhibiting any indecent show or performance tending to corrupt morals. The penalty for these prohibited conducts is two years imprisonment or a fine of \$5,000.00. In addition, the Court may order the destruction of the obscene article.

1.217 Section 174 of the *Penal Code* is on the possession of the obscene articles. The section prohibits any person from having in his or her possession, any obscene video tape or photograph (whether an original, or reproduction or copy) in circumstances which raise a reasonable presumption that such obscene video tape or photograph was imported into Solomon Islands, shall in the absence of reasonable excuse, be treated as being in possession of such video tape or photograph, as the case may be, for the purposes mentioned in section 173 and in contravention of the provisions of the *Customs and Excise Act*.

1.218 Further, section 178 (m) of the *Penal Code* states that any person who in any public place writes or draws any indecent word or representation or uses any profane, indecent or obscene language or is otherwise guilty of any obscene or indecent conduct is guilty of an offence, and shall be liable for a fine of ten dollars or one month imprisonment.

1.219 The *Penal Code (Amendment) (Sexual Offences) Act 2016* made it an offence to possess, distribute, make available for access, produce, sell or offer or advertise for distribution, sale, import or export child exploitation material. The maximum penalty is ten years imprisonment.<sup>209</sup>

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<sup>209</sup> *Penal Code (Amendment) (Sexual Offences) Act 2016*, s 144.

## Cases

- 1.220 In *Maclaine v Regina*,<sup>210</sup> an appeal from a decision of the High Court made on 10 February 2014 was heard, on an application to remove a criminal case from the Honiara Magistrate's Court to another Magistrate's Court or to the High Court and permanently to stay the proceedings. This was because the presiding magistrate was alleged to request \$50,000.00 from the accused so that the magistrate can acquit him of the charges.
- 1.221 The appellant Quentin Hugh Maclaine is from Australia and came to Solomon Islands on a visitor's visa in September 2013. On 24 September 2013, he was charged with eight counts of indecent exposure to females and one count of importing prohibited or restricted goods namely indecent or obscene articles.
- 1.222 The Court of Appeal dismissed the applicant for the permanent stay of proceedings and order that the case be transferred to the High Court for hearing de novo.

## Laws of other jurisdictions

- 1.223 In PNG, under the *Summary Offences Act 1977*,<sup>211</sup> a person who (a) has in his possession; or (b) makes; or (c) produces; or (d) performs in the making or production of; or (e) exhibits; or (f) sells, an article or articles that (g) is or are blasphemous or indecent; or (h) grossly offends or grossly offend against accepted standards of decency, is guilty of an offence. The penalty is a fine not exceeding 2,000 Kina or a maximum prison term of one year.
- 1.224 In Fiji, it is an offence only to traffic in obscene publications, with a penalty of imprisonment for five years.<sup>212</sup>

## Issues

1. Should the *Penal Code* have an offence that captures the production of obscene materials?
2. Should the *Penal Code* criminalise the distribution and exchange of obscene material via digital devices or distribution through emails or publication on the internet?
3. Should the offences in the *Penal Code* on obscene material include material that depicts extreme violence or torture?
4. Should the *Penal Code* have a defence to offences regarding production of obscene

<sup>210</sup> [2014] SBCA 3; SICOA-CAC 10 of 2014 (9 May 2014).

<sup>211</sup> *Summary Offences (Amendment) Act 1986* (PNG), s 3, added s 25A.

<sup>212</sup> *Crimes Decree 2009* (Fiji), s 377.

material?

5. Should the penalty for possession of obscene article be increased?
6. Should the Penal Code consolidate s 173, s174 & 178 (m) as a stand – alone offence?

*Policy Reasons*

1.225 The policy rationale for laws against pornography is to uphold the values of the community. It is also to protect minors' involvement or entrapment in these activities. There is also an argument that pornography increases sexual or immoral based crimes in the community.

## CHAPTER 11: PROSTITUTION OFFENCES

### *Authority of Courts as to custody of girls*

#### *Current law*

1.226 The *Penal Code* provides for the authority of courts to appoint a person to have custody of girls. Section 152 states that if on the trial of any offences under sections 136 to 143, 145 and 151 of the *Penal Code*<sup>213</sup> and it is proved to the satisfaction of the court that the seduction, prostitution or unlawful detention of any female under the age of eighteen years has been caused by the parents or guardian, the court will divest the parental authority over and appoint any other person to be the guardian of such minor until she has attained eighteen years or any age below this as the court may direct. The court from time to time may rescind or vary such order by the appointment of any other person or persons as such guardian or in any other respect.<sup>214</sup>

1.227 The *Constitution* discourages any law that is discriminatory in nature. Section 5 states that no law shall make any provision that is discriminatory either of itself or in its effect.<sup>215</sup> The current provision as relates to females only, arguably, deemed discriminatory and could conflict with the Constitutional provision.

#### *Laws of other jurisdictions*

1.228 The *Fiji Crimes Decree 2009* also provide for the similar authority. Section 229 states that the court may divest the parental authority of a minor and appoint any other person to be the guardian of such minor.<sup>216</sup>

1.229 The Papua New Guinea (PNG) *Criminal Code Act 1974* also provide for similar authority. Section 621 provides that when on trial if the court is satisfied that the seduction, prostitution or incest of a girl under the age of 18 years has been caused, encouraged or favoured by her parents. The court may divest such parental authority over and appoint another person to be her guardian until she reaches 18 years or any age below 18 years that the court directs.<sup>217</sup>

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<sup>213</sup> Except for section 151 of the *Penal Code*, all other sections were amended and the corresponding amendments are in the *Penal Code (Amendment) (Sexual Offences) Act 2016*.

<sup>214</sup> *Penal Code* [Cap 26], s 152.

<sup>215</sup> *Constitution*, s 5.

<sup>216</sup> The provision captures minors' age 21 years or below.

<sup>217</sup> *Criminal Code Act 1974* (PNG), s 621.

## Issues

1. Should the authority of the court to divest parental authority over and appoint another person to be the guardian of a minor cover both female and male by using gender neutral language?
2. Should the offence apply to both males and females?

### *Living on the Earnings of Prostitution or aiding prostitution*

1.230 The *Penal Code* provides for this offence in section 153. The section stipulates that any person who knowingly lives wholly or in part on the earning of prostitution; or in any public place persistently solicits for immoral purposes; or for the purpose of gain control or influences over the movements of a prostitute in such a manner he or she is aiding, abetting or compelling her prostitution with any other person or generally commits an offence and is guilty of a misdemeanour.<sup>218</sup>

1.231 Under this provision it is an offence when a person is making a living out of prostitution. In other words, the *Penal Code* punishes persons who are living on the earnings of prostitution but does not punish the prostitutes. However, section 175(c) of the *Penal Code* criminalises any common prostitute behaving in a disorderly or indecent manner in any public place.<sup>219</sup> In addition, section 175(f) prohibits any person while in a public place from soliciting for immoral purposes. The penalty for these criminal conducts under section 175 is two months imprisonment or a fine of \$600.00.<sup>220</sup>

### *Laws of other jurisdictions*

1.232 The *Fiji Crimes Decree 2009* provides for this offence. Section 230 states a person commits a summary offence if he or she knowingly lives wholly or in part on the

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<sup>218</sup> *Penal Code* [Cap 26], s 153 - For the purposes of subsection (1)(a) of this section, a person who is proved to be living with or to be habitually in the company of a prostitute shall, unless that person satisfies the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

<sup>219</sup> This is a prohibited conduct for the offence of idle and disorderly persons. The term 'public place' is defined in the *Penal Code* – section 4 to include any public way, building, place or conveyance to which the public is entitled or permitted to have access to either with or without condition of payment. It is also include any building or place which is used for any public or religious meetings or an open court.

<sup>220</sup> *Penalties Miscellaneous Amendments Act 2009*, s 8.

earnings of prostitution or in any public place persistently solicits or offers a person for immoral purposes. The offence is punishable for 6 months imprisonment.<sup>221</sup>

1.233 In the PNG *Criminal Code Act 1974* section 229 states any person who knowingly receives any financial or other reward, favour or compensation from child prostitution is guilty of a crime and is punishable to imprisonment for a term not exceeding 15 years.<sup>222</sup>

1.234 The *Samoa Crimes Act 2013* also provides for this offence. Section 74 states a person is liable to imprisonment for a term not exceeding 10 years; who knowingly lives wholly or in part on the earnings of the prostitution of another person; or solicits for any prostitute, whether or not the person receives any payment, reward or valuable consideration for so doing.<sup>223</sup>

1.235 Sex workers are regulated at the State level in Australia. There is no uniform legal approach to sex work or regulation of brothels in Australia. The various legal models used reflect a spectrum of underlying perspectives, ranging from the view that sex work inherently exploits and harms sex workers, to the view that sex work should be viewed as a legitimate form of employment. It is not illegal in Australia to make a living from prostitution. However in some States, brothels and coordinated sex work are criminalised.

### *Issues*

1. Should all prostitution continue to be criminalised?
2. Is the penalty for living on earnings of a prostitute or prostitution adequate?
3. A person aiding or abetting a person for prostitution may wholly or partly benefit from such arrangement. Who is the offender and who is the victim?
4. Should the *Penal Code* covers prostitution encouraged in hotels, motels and massage parlours?

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<sup>221</sup> *Crimes Decree 2009* (Fiji), s 230 - Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting or compelling his or her prostitution with any other person (or generally), he or she shall unless the court is satisfied to the contrary, be deemed to be knowingly living on the earnings of prostitution.

<sup>222</sup> *Criminal Code Act 1974*.

<sup>223</sup> *Crimes Act 2013* (Samoa).

### *Suspicious premises*

- 1.236 Section 154 states if it is made known to a Magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or a girl for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the Magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.<sup>224</sup>
- 1.237 The *Police Act 2013* in section 57 (3) stipulates that if the police officer is reasonably satisfied that a reason for entry exists, the police officer may do any of the following: detain a person for a search, or to prevent acts of violence or damage to property; search anyone detained for anything that may be, or has been, used to cause the violence, injury or damage; and search the premises for any person who may be a victim of violence or at risk of being injured or for anything that may be, has been or might be used to cause violence, injury or damage.<sup>225</sup>
- 1.238 According to the Radio New Zealand online, the Commissioner for Royal Solomon Islands Police Force (RSIPF) Matthew Varley stated that any information about vehicles, hotels or rooms suspected of being used to facilitate prostitution is useful to the police whose Transnational Crime Unit is investigating the underground trade. Soliciting and brothel keeping are illegal in Solomon Islands but there is evidence such establishments exists some of which are being promoted as massage parlours.<sup>226</sup>

### *Laws from other jurisdictions*

- 1.239 The Fiji *Crimes Decree 2009* also provides for this offence. Section 232 states if it is made known to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used for purposes of prostitution, and that any person residing in or frequenting the house; is living wholly or in part on the earnings of the prostitute; or is exercising control, direction or influence over the movements of the prostitute; the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.<sup>227</sup>
- 1.240 The Papua New Guinea *Criminal Code (Sexual Offences and Crimes Against Children) Act 2002* section 2290 states any person who is an owner, lessor, manager, tenant or occupier of property who; knowingly allows child prostitution to take place on that

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<sup>224</sup> *Penal Code* [Cap 26], s 153.

<sup>225</sup> *Police Act 2013*, s 57 (3).

<sup>226</sup> Radio New Zealand. Solomons Police seek public's help to bust prostitution rings. <https://www.msn.com/en-xl/australasia/top-stories/solomons-police-see-publics-help-to-bust-prostitution-rings/ar-BBQZ4xw>. (Accessed 5 February 2019).

<sup>227</sup> *Crimes Decree 2009* (Fiji).

property; or within a reasonable time of gaining information that an act of child prostitution has taken place on that property, fails to report such occurrence to the police, is guilty of a crime punishable for a term not exceeding 15 years imprisonment.<sup>228</sup>

### *Issue*

1. Should the Penal Code or Police Act provide direct authority for police officers to search and arrest people suspecting to allow their premises, vehicles, boats, etc, for prostitution?

### *Brothel*

- 1.241 Operating a brothel is illegal in Solomon Islands. Any person who permits his or her premises or part of the premises to shelter prostitution and its related activities commits an offence.
- 1.242 The *Penal Code* in section 155 provides that any person who keeps or manages or assist in the management of a brothel; or being a tenant, lessee or occupier of any premises knowingly permits such premises or any part of it to be used as a brother or for the purpose of habitual prostitution; or being a lessor or landlord of any premises or the agent of such lessor or landlord lets the same or any part of the premises with the knowledge that such premises or some part of it to be used as a brothel is wilfully a party to the continued use of such premises or any part thereof as a brothel commits an offence and shall be guilty of a misdemeanour.<sup>229</sup>

### *Laws from other jurisdictions*

- 1.243 The *Fiji Crimes Decree 2009* also provide for this similar offence. Section 233 states a person commits an offence if he or she; keeps or manages or knowingly permits the premises or part of it to be used for prostitution. It also an offence under this section when a person wilfully a party to the continued use of such premises as a brothel and it is punishable to 5 years imprisonment or a fine of 100 penalty units, or both.<sup>230</sup>
- 1.244 The *PNG Summary Offences Act 1977* provide for similar offence. Section 56 states a person who; keeps, manages or acts or assists in the management of a brothel; or knowingly supplies, or assists in the supply of money for the maintenance and support of a brothel, is guilty of an offence and is punishable to a fine not exceeding

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<sup>228</sup> *Criminal Code (Sexual Offences and Crimes Against Children) Act 2002.*

<sup>229</sup> *Penal Code* [Cap 26], s 155.

<sup>230</sup> *Crimes Decree 2009 (Fiji)*, s 233.

K800.00 or imprisonment for a term not exceeding two years.<sup>231</sup> The Act further provides that a person who acts or behaves in such a manner as would lead a reasonable person to believe that he is the person in charge of, or having the care or management of, a brothel, shall be deemed to keep the brothel.<sup>232</sup>

1.245 In PNG the provision on brothel includes the act of supplying or assist in the supply of money for the maintenance and support of the brothel. Further, in PNG and Solomon Islands such offence is a misdemeanour; however in Fiji it carries a penalty of 5 years imprisonment.

1.246 In Australia, the regulation of brothels is different across the States. In New South Wales, brothels, like any other business, are regulated through environmental planning instruments under the *Environmental Planning and Assessment Act 1979*. The occupational health and safety requirements are overseen by SafeWork NSW and public health laws administered by NSW Health. However, in other States, such as South Australia, it is an offence to keep or manage a brothel, or assist in keeping or managing a brothel, or receiving money paid in a brothel in respect of prostitution.<sup>233</sup>

### *Issues*

1. Should operating a brothel continue to be a crime in the Solomon Islands?
2. Should the penalty for keeping and managing brothel be increased?
3. Should the *Penal Code* provide separate penalties for keeping brothel and managing brothel?
4. Should the offence be retained or abolished?

### *Policy reasons*

1.247 Criminalising brothels is based on the policy rationale to ensure the quality of life for local communities and to safeguard against corruption and organised crime; address social factors which contribute to involvement in the sex industry; ensuring a healthy society; and promoting safety.

1.248 On the other hand, a policy position of decriminalising brothels is based on the policy rationale for improving the health and safety of sex workers and also that the Government does not have a role to legislate to control the moral values of the community.

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<sup>231</sup> *Summary Offence Act 1977* (PNG), s 56.

<sup>232</sup> *Summary Offence Act 1997* (PNG), s 56.

<sup>233</sup> *Summary Offences Act 1953* (South Australia), s 28.

## CHAPTER 12: CRIMINAL TRESPASS

### *Criminal trespass*

#### *Current law*

1.249 Criminal trespass is provided for under section 189(1) & (2) in the *Penal Code*. The section states:

*(1) Any person who*

*(a) enters into a property possessed by another with intent to commit an offence or to intimidate or annoy any person lawfully in possession of such property;*

*(b) having lawfully entered into such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit any offence; or*

*(c) unlawfully persists in coming or remaining upon such property after being warned not to come thereon or to depart therefrom,*

*is guilty of a misdemeanour, and shall be liable to imprisonment for three months.*

1.250 The offender shall be liable to one year imprisonment if the offence is committed in any building, tent or vessel used as a human dwelling, or any building used as a place of worship, or as a place for the custody of property.

1.251 Section 189(2) provides for a situation where any person enters a dwelling-house, or any verandah or passage attached thereto, or any yard, garden or other land adjacent to or within the curtilage of such dwelling-house by night without any lawful excuse is guilty of a misdemeanor, punishable for one year imprisonment.

1.252 This criminal trespass offence prohibited any person from going onto another's property or remains on the same with the intention to commit an offence, to intimidate or annoy any person lawfully in possession of such property.

1.253 Criminal trespass also covers the situation where a person persistently goes onto a property of another after being warned not to, or after being told to leave the property. A person convicted of criminal trespass is guilty of a misdemeanour and may be imprisoned for a maximum period of three months or one year where the property being trespassed is a dwelling building, tent or vessel or any building used as a place of worship or custody of property.<sup>234</sup>

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<sup>234</sup>*Penal Code* [Cap 26], s 189.

- 1.254 The *Penal Code* also extends criminal trespass to encompass intrusion of a dwelling house, veranda or attached passage, garden or any land adjacent to the same; punishable by one year imprisonment.
- 1.255 In the case of *Lanemua v Reginam*,<sup>235</sup> Paul Lanemua was convicted by the Court at first instance for the offence of criminal trespass pursuant to section 189(1) and (2) of the Code. The accused unlawfully entered a dwelling house and sexually assaulted the occupant. The occupant (“complainant”) was not the owner of the dwelling house. He later appealed to the High Court arguing that the complainant was not the owner of the dwelling house. The High Court held that section 189(2) of the *Penal Code* did not require that the dwelling house be occupied by the lawful owner. Honourable Justice Palmer stated that an owner may leave the home unoccupied for long periods of time or in the care and occupation by relatives or friends. The fact that a stranger or a person comes into the dwelling house in such circumstances can still amount to an offence if the element of ‘lawful excuse’ is lacking.<sup>236</sup> The Court ruled that the complainant and her children were in lawful possession at the time of the incident and that anyone else who entered the dwelling house without lawful excuse was a trespasser for the purposes of section 189(2) of the *Penal Code*.

#### *Laws of other jurisdictions*

- 1.256 In Samoa, the *Police Offences Ordinance 1961* in section 7 has the offence of wilful trespass. The offence prohibited any person to wilfully trespass on land or premises in occupation of another person. The offence does not require a mental element of intention to commit an offence. In the case of *Police v Sefo*,<sup>237</sup> the accused entered the premises of the victim without permission. The accused later attacked the victim causing injury to the victim. Although the accused was guilty of several other criminal offences, the charge of wilful trespass was independent of any intention to commit of the accused to commit an offence. On the fact that the accused had entered the property of the victim (who had not allowed such interference) was sufficient. The Supreme Court of Western Samoa merely held that, inter alia, the accused was guilty of wilful trespass. For the charge of wilful trespass alone, the accused was convicted and sentenced to three months imprisonment.
- 1.257 In Australia, criminal trespass is dealt with at the State level. Under the *Summary Offences Act* a person must not enter into, or remain in someone’s house or yard, or business premises without their permission, unless they have a lawful reason to be there. The penalty for this offence is up to one year imprisonment.<sup>238</sup>

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<sup>235</sup> [1992] SBHC 6; CRC 027 of 1992.

<sup>236</sup> *Lanemua v Reginam* [1992] SBHC 6; CRC 027 of 1992.

<sup>237</sup> *Police v Sefo* [2015] WSSC 195.

<sup>238</sup> *Summary Offences Act 2005 (Queensland)*, s 11.

1.258 In Fiji, the *Crimes Decrees 2009* has the similar offence to that of Solomon Islands.<sup>239</sup>

### *Issues*

1. Should the penalties for all criminal trespass offences be increased?
2. Should the element of “without lawful excuse” be sufficient for the revised criminal trespass offence?
3. Should the use of the term night under section 189(2) be abolished?
4. Should the term lawful occupation be used also with lawful possession?
5. Should intention to annoy, intimidate or to commit an offence be retained with this offence or abolished?

### *Policy reasons*

1.259 The policy rationale for criminal trespass is based on ensuring people to have the right to privacy on their own property and also to prevent unlawful entry into private property with the intention to commit an offence. It also concerns the right for someone to be directed to leave a property by the owner and if they fail to do so, their presence becomes unlawful.

1.260 Any entry at night without lawful excuse is also a criminal trespass. The policy intent is to prevent unlawful entry at night time in broader circumstances, rather than only where the person intends to commit an offence. This is to ensure people feel they and their family are safe at night time.

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<sup>239</sup> *Crimes Decrees 2009* (Fiji), 387.

## CHAPTER 13: ALCOHOL AND KWASO

- 1.261 Alcohol contributes to violence and criminal activities. This is because excessive drinking has the ability to lower inhibitions, impair a person's judgement and increase the risk of aggressive behaviours.<sup>240</sup> Alcohol-related violence and anti-social behaviour are on the rise throughout the country and it is a problem that must be addressed decisively.
- 1.262 The *Liquor Act*,<sup>241</sup> prohibits the unlawful production of alcohol (kwaso included).<sup>242</sup> The offence has the penalty of a fine of \$30,000.00<sup>243</sup> or to imprisonment for three years or to both.<sup>244</sup>
- 1.263 The *Liquor Act* further prohibits the consumption of alcohol in public places<sup>245</sup> with a fine of \$2000.<sup>246</sup> Consuming alcohol in vehicles is also prohibited and the penalty is a fine of \$10,000.00<sup>247</sup> or to imprisonment for twelve months or to both.<sup>248</sup>
- 1.264 In relation to venues, any person (licensee) who continues to permit drunkards and disorder persons to continue assemble within his premises is guilty of an offence and shall be liable to a fine of \$1,500.00 or shall be disqualified for holding a licence for a period of two years.<sup>249</sup> Any person who supplies liquor to any already drunk person (intoxicated) is guilty of an offence, and shall be liable to a fine of \$250.00 and for a second or subsequent offence, to a fine of \$3,000.00.<sup>250</sup>
- 1.265 It is also an offence under the *Liquor Act* for any licence holder to allow any drunkenness or riotous behaviour within their licenced premises.<sup>251</sup> The penalty for this offence is a fine of \$1,500.00 to \$5,000.00.<sup>252</sup>
- 1.266 The law further prohibits anyone who sells, supplies or implicates alcohol to any person under the age of twenty one years.<sup>253</sup> Penalties for these offences range from a fine of \$2000.00 to \$10,000.00.<sup>254</sup>

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<sup>240</sup> Alcohol Rehab Guide, *Alcohol Related Crime*,  
<https://www.alcoholrehabguide.org/alcohol/crimes/> (Access: 14 February 2019)

<sup>241</sup> [Cap 144],.

<sup>242</sup> [Cap 144], s 50.

<sup>243</sup> *Penalties Miscellaneous Amendments Act 2009*.

<sup>244</sup> *Liquor Act* [Cap 144], s 50.

<sup>245</sup> *Liquor Act* [Cap 144], s 65.

<sup>246</sup> *Penalties Miscellaneous Amendments Act 2009*.

<sup>247</sup> *Penalties Miscellaneous Amendments Act 2009*.

<sup>248</sup> *Liquor Act* [Cap 144], s 66.

<sup>249</sup> *Liquor Act* [Cap 144], s 67. *Penalties Miscellaneous Amendments Act 2009*.

<sup>250</sup> *Liquor Act* [Cap 144], s 68. *Penalties Miscellaneous Amendments Act 2009*.

<sup>251</sup> *Liquor Act* [Cap 144], s 69.

<sup>252</sup> *Liquor Act* [Cap 144], s 72 (1)(2)(3)(4). *Penalties Miscellaneous Amendments Act 2009*.

<sup>253</sup> *Liquor Act* [Cap 144], s 72.

<sup>254</sup> *Penalties Miscellaneous Amendments Act 2009*.

- 1.267 Section 175 of the *Penal Code* provides for the offence of idle and disorderly persons. It is prohibited for any person to be behaving disorderly, indecent or in any riotous manner in any public place.<sup>255</sup> This offence carries a penalty of 2 years imprisonment or a fine of \$600.<sup>256</sup>
- 1.268 Section 176 of the *Penal Code* provides for the offence of Rogues and Vagabonds. It is prohibited for any person to wander or loiter in any public area at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose. Also it is prohibited for any person to expose his or her private part in any public place. This offence carries a penalty of 3 months to one year imprisonment.<sup>257</sup>
- 1.269 Section 178 provides for the offences in public ways. Under these offences it is prohibited to do the following:
- i. Damaging signboard;<sup>258</sup>
  - ii. Write or draws any indecent word or representation or uses of profanity;<sup>259</sup>
  - iii. Uses threatening or abusive or insulting words and behaviour to breach the peace.<sup>260</sup>
- 1.270 The above stated offences under section 178 have penalties of 10 dollars fine or imprisonment for one month.<sup>261</sup>
- 1.271 Section 179 of the *Penal Code* stipulates the offence of drunk and incapable. This offence criminalises the conduct of drunk and incapable in a public place. This offence carries the penalty of a fine of twenty dollars or such person may be arrested without warrant by any police officer.
- 1.272 Section 180 of the Code provides for the offence of shouting in public. It is an offence for any person in any town area to shout, beats any drum (percussion), and plays loud music or any instrument or make unseemly noise after being warned to desist/discontinue from doing such. This offence carries a penalty of \$1,000.00<sup>262</sup> or a month imprisonment.

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<sup>255</sup> *Penal Code* [Cap 26], s 175.

<sup>256</sup> *Penalties Miscellaneous Amendments Act 2009*.

<sup>257</sup> *Penal Code* [Cap 26], s 176.

<sup>258</sup> *Penal Code* [Cap 26], s 178(f).

<sup>259</sup> *Penal Code* [Cap 26], s 178(m).

<sup>260</sup> *Penal Code* [Cap 26], s 178(n).

<sup>261</sup> *Penal Code* [Cap 26], s178.

<sup>262</sup> *Penalties Miscellaneous Amendments Act 2009*.

### *Laws in other jurisdictions*

- 1.273 Papua New Guinea imposed penalties ranging from 1000 kina<sup>263</sup> to 5000 kina<sup>264</sup> for the offences of making stills to manufacture of liquor and unlicensed distillation.
- 1.274 Vanuatu has a fine of 25,000 vatu to 50,000 Vatu or a term of imprisonment not exceeding 1 month or both such fine and imprisonment for the offence of consuming liquor in certain public places.<sup>265</sup>
- 1.275 Western Australia has a range of penalties varying from monetary fines of \$1100 to \$1600 and custodial penalties ranging from 3 months imprisonment to 12 months depending on the nature of the offence for the consumption of alcohol in vehicles.<sup>266</sup>
- 1.276 Tonga has a fine of \$500 whilst in Vanuatu the offence carries a fine of 25,000 Vatu to 50,000 Vatu or a term not exceeding 1 month or both such fines and imprisonment for the offence of a disorderly person continuing to be on a licensed premise.<sup>267</sup>
- 1.277 Tonga has a fine of \$500 whilst in Vanuatu the penalties are a fine of 25,000 – 50,000 vatu or a term of 1 month imprisonment for the offence of supplying liquor to intoxicated persons. PNG has a penalty of 1000 kina fine for this particular offence.<sup>268</sup>
- 1.278 In Vanuatu for any person under the age of 18 years to consume alcohol is an offence and they are liable for a fine of VT 10,000. Further, anyone who sells or supplies alcohol to any person under 18 years of age shall be liable to penalty of VT 25,000 or by a term of imprisonment not exceeding 3 months, or by both such fine and imprisonment.<sup>269</sup>
- 1.279 The Vanuatu law on the offence of idle and disorderly is similar to that of Solomon Islands. It criminalises the behaviour where a person behaves indecently in any public place for the purpose of prostitution, drunk and disorderly. However the penalty is much lower as it carries a maximum of 3 months.<sup>270</sup> In Papua New Guinea, the offence of *Drunk and Disorderly* is covered under the *Summary Offences Act 1997*. This particular legislation has a drastic amendment in 2018 which saw a 100% increase in many of its offences. More precisely Drunk and Disorderly offence has an increase from a fine not exceeding K100.00 or imprisonment for a term not exceeding three months to a fine of not exceeding K1,000.00 or imprisonment for a term not exceeding six months.

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<sup>263</sup> *Distillation Act 1955* (PNG), s 3.

<sup>264</sup> *Distillation Act 1955* (PNG), s 6.

<sup>265</sup> *Liquor Licencing Act* (Vanuatu), s 16(4).

<sup>266</sup> Western Australia Police Force, Traffic, *Drink driving penalties*, [Road Traffic Act 1974]

<https://www.police.wa.gov.au/Traffic/Offences/Drink-driving/Drink-driving-penalties> (Accessed 2 August 2019).

<sup>267</sup> *Liquor Licencing Act* (Vanuatu), s 16(1).

<sup>268</sup> *Liquor Licencing Act* (Vanuatu), s 16(1).

<sup>269</sup> *Liquor Licencing Act* (Vanuatu), s 17(1)(2).

<sup>270</sup> *Penal Code* (Vanuatu), s 148.

1.280 PNG decriminalises Rogues and Vagabonds due to social issues arising out of the society which makes this particular offence a threat in relation to their national humanity context.<sup>271</sup> In the United Kingdom, there is number of new public order offences covering acts that were deemed at the time to be likely to cause moral outrage.<sup>272</sup> It contained a provision for the prosecution of "every Person wilfully exposing to view, in any Street... or public Place, any obscene Print, Picture, or other indecent Exhibition". This Act currently criminalises many public order offences including rouges and vagabonds.

1.281 PNG has the offence of "*Defacing, etc street signs*" is an offence under their *Summary Offences (Amendment) Act*. The offence carries a penalty of a fine not exceeding K2, 000.00 or imprisonment for term not exceeding six months.

1.282 PNG's *Summary Offences (Amendment) Act 2018* carries a penalty of a fine not exceeding K2, 000.00 or imprisonment for a term not exceeding six months for the offence of indecency. Further, PNG has the offence of "*Provoking a breach of The Peace*" in the *Summary (Amendment) Offences Act*. It is an offence when a person (a) uses threatening, offensive or insulting behaviour; or (b) uses threatening, abusive or insulting words; or (c) makes threatening, abusive or insulting gestures, with intent to provoke a breach of the peace or by which a breach of the peace is likely to take place is guilty of an offence. The offence carries the penalty of a fine not exceeding K3, 000.00 or imprisonment for a term not exceeding 12 months.

1.283 Few Australian States' still have the offence of drunk and incapable. However, these incapable individuals firstly are taken for medical attention before any legal actions.<sup>273</sup> Such individuals are to be thoroughly reviewed in order to ascertain whether they are medically fit to move about freely before they can be charged. Moreover, police officers are required to take the drunken person into custody if the officers are satisfied that there is no other reasonable alternative for the person's care and protection.<sup>274</sup> In Papua New Guinea, the offence of Drunkenness under the *Summary Offences Act 1997* also has a drastic increase after the amendment of the legislation. The penalty for this offence is a fine not exceeding K1, 000.00 or imprisonment for a term not exceeding six months.<sup>275</sup>

1.284 Other jurisdictions have removed the offence of shouting in a public place to the offence of disturbing the peace. The prohibited conducts under the offence are:

- i. Fighting or challenging someone to fight in a public place;

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<sup>271</sup> *Vagrancy Act* (PNG).

<sup>272</sup> *Vagrancy Act 1838* (UK).

<sup>273</sup> *Intoxicated People (Care and Protection) Act 1994* (ACT), s 10.

<sup>274</sup> *Intoxicated People (Care and Protection) Act 1994* (ACT), s 4.

<sup>275</sup> *Summary Offences (Amendments) Act 2018* (PNG).

- ii. Using offensive words in a public place likely to incite violence;
- iii. Shouting in a public place intending to incite violence or unlawful activity;
- iv. Bullying a student on or near school grounds;
- v. Knocking loudly on hotel doors of sleeping guests with the purpose of annoying them;
- vi. Holding an unlawful public assembly;
- vii. Shouting profanities out of a car window in front of a person's home over an extended period of time;
- viii. Allowing excessive dog barking in a residential area; and
- ix. Intentionally playing loud music during the night that continues, even after a fair warning.<sup>276</sup>

1.285 For instance in Canada and Australia, there are few provisions in their legislation that specifically deals with this type of provision. The offence in Canada is known as “causing disturbance, indecent exhibition, loitering, etc.” The provision is under the Disorderly conduct clause.<sup>277</sup> The law prohibits anyone to cause disturbance in a public place, being drunk, impeding/molesting others, loiters, disturb the peace and quiet of occupants by discharging firearms or other disorderly conduct, etc. The penalty for this is a summary conviction.<sup>278</sup> A summary offence conviction is the Canadian equivalent of a misdemeanour.<sup>279</sup> The *Criminal Code* of Canada specifies that, unless another punishment is provided for by law, the maximum penalty for a summary conviction offence is a sentence of 6 months of imprisonment, a fine of \$5000 or both.<sup>280</sup> Furthermore, in Queensland, Australia, it has the similar offence known as “Dealing with Breaches of the Peace” under their Police Powers and Responsibilities Act 2000. The law empowers a police officer to intervene where there is or likely to be a breach of peace happening during the course of their work.<sup>281</sup> In addition, any person who obstructs or assaults any police officer during the course of their work commits an offence and is liable for a penalty of 40 to 60 penalty units or imprisonment of 6 to 12 months.<sup>282</sup>

1.286 The provision functions as an umbrella provision that governs and controls a whole range of related peace disturbing acts including shouting in public provisions that are more logical in today’s setting.

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<sup>276</sup> FindLaw, *Disturbing the Peace*,

<https://criminal.findlaw.com/criminal-charges/disturbing-the-peace.html> (Accessed 9<sup>th</sup> May 2019)

<sup>277</sup> *Criminal Code* (Canada), s 175.

<sup>278</sup> *Criminal Code* (Canada), s 175.

<sup>279</sup> Pardons Canada, Summary Convictions In Canada, *Misdemeanours & Felonies*,

<https://www.pardons.org/summary-convictions-canada/> (Accessed:05 August 2019)

<sup>280</sup> *Criminal Code* (Canada), s 787.

<sup>281</sup> *Police Powers and Responsibilities Act 2000* (Queensland), s 50.

<sup>282</sup> *Police Powers and Responsibilities Act 2000* (Queensland), s 790.

## Issues

1. Is the current court's discretion to impose penalties on kwaso producers a sufficient deterrent mechanism to control kwaso as shown in the mentioned cases?
2. Is community assistance a better solution for combating the production of kwaso?
3. Should we increase the penalties of the *Liquor Act* relating to Public order offences?
4. Should the *Liquor Act* provisions be updated and expanded?
5. Should we charge both the producers and the consumers of kwaso for a criminal offence?
6. Should we include fruit fermentation for alcoholic purposes into the *Liquor Act*?
7. Are the current penalties in the *Penal Code* relevant and adequate?
8. Should we include Alcohol related kwaso offences under the Public order offences?
9. Should we legalise kwaso in a way that it is more conducive to the society as practiced in other states?

## Policy reasons

1.287 It is troubling that many of the criminal activities, especially public order offences that occur in Solomon Islands are reportedly caused by people who are under the influence of alcohol, especially kwaso. People tend to make stupid, illogical and malicious judgments and decisions while being intoxicated with these substances. Alcohol plays a large role in criminal activities and violence. Excessive drinking has the ability to lower inhibitions, impair a person's judgement and increase the risk of aggressive behaviours. Because of this, alcohol-related violence and crime rates are on the rise throughout the country.<sup>283</sup>

1.288 A number of individuals that serve time in jail have committed alcohol-related crimes. Offenses range from minor to serious and include property crime, public-order offenses, driving while intoxicated, assault and homicide.

1.289 Alcohol-related crime creates huge problems throughout the country.<sup>284</sup> Findings of a survey by the Regional Assistance Mission to Solomon Islands on causes of conflict in the community and other issues shows an overwhelming majority of those interviewed said conflict in the community is caused by alcohol, kwaso (or homebrew) and drugs.<sup>285</sup> These crimes associated to kwaso are committed either to

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<sup>283</sup> Alcohol Rehab Guide, *Alcohol Related Crime*,

<https://www.alcoholrehabguide.org/alcohol/crimes/> (Accessed 14 February 2019)

<sup>284</sup> Radio New Zealand, Solomon's police say alcohol-related crime serious problem, 17 July 2013  
Access at: <https://www.radionz.co.nz/> .

<sup>285</sup> Ibid.

obtain alcohol (kwaso) or under its influence and these occurrences are especially prevalent among people between the ages of 15 and 29.<sup>286</sup>

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<sup>286</sup> Radio New Zealand, Solomon's police say alcohol-related crime serious problem, 17 July 2013  
Access at: <https://www.radionz.co.nz/> .

## CHAPTER 14: AFFRAY

### *Current law*

1.290 The law on Affray as appears in other jurisdictions is committed when two or more persons are involved in a fight within a public place which causes fear to other people present in that public area. However, section 87 of the *Penal Code* confines the offence only to any person taking part in a fight in a public place is guilty of the offence of affray and shall be liable to imprisonment for one year.<sup>287</sup>

1.291 The law on affray is targeted at unlawful fighting, violence or a display of force by at least one person against one or more people. This meaning of affray makes it a charge that gets typically laid in situations where a person is involved in a fight or brawl in a public place.<sup>288</sup>

### *Cases*

1.292 In the case of *Tobo v Commissioner of Police*,<sup>289</sup> the accused was charged amongst other offences with Affray. The accused was on her way home when she decided to make her way to her niece's place to get her belongings. On her way there, the co-accused came and attacked her. Whilst caught up in this altercation she had to defend herself by fighting back. The Court of Appeal ruled that the accused could only be guilty of the offence if she took part in a fight in a public place in such circumstance that her conduct was unlawful.

### *Laws in other jurisdictions*

1.293 In PNG, the offence is in the *Criminal Code*, with a similar penalty of misdemeanour.<sup>290</sup> However, the offence is also provided for in the *Summary Offences (Amendment) Act* that carries a higher penalty.

1. *Causing a fight* – a fine not exceeding K4, 000.00 or imprisonment for a term not exceeding two years.<sup>291</sup>
2. *Inciting to fight* - a fine not exceeding K4, 000.00 or imprisonment for a term not exceeding two years.<sup>292</sup>
3. *Fighting* - a fine not exceeding K4, 000.00 or imprisonment for a term not exceeding two years.<sup>293</sup>

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<sup>287</sup> See *Penal Code* [Cap 26], s 87.

<sup>288</sup> Doogue George Defence Lawyers, Affray, <https://www.criminal-lawyers.com.au/offences/affray>

<sup>289</sup> [1993] SBCA 6; CA-CRAC 1 of 1993 (14 September 1993).

<sup>290</sup> *Criminal Code* (PNG), s 73.

<sup>291</sup> *Summary Offences (Amendment) Act 2018 (PNG)*, s 7.

<sup>292</sup> *Summary Offences (Amendment) Act 2018 (PNG)*, s 8.

<sup>293</sup> *Summary Offences (Amendment) Act 2018 (PNG)*, s 9.

1.294 These penalties were recently revised into the amended legislation in 2018 which saw a drastic increase in penalties of many offences under the *Summary Offences Act*. This amendment is the country's step towards trying to control the rampant menaces within the country.

1.295 Prosecutors and law enforcers have a varying offence list to choose from depending on the nature of the offence type. Whether to use affray provision on a very minor altercation or to use these 3 provisions on other much severe confrontation, it is up to them to decide.

1.296 In Australia, the offence of Affray carries a penalty of 10 years imprisonment.<sup>294</sup> Moreover, the nature of the violence involved is considered, hence if 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of charging them for affray<sup>295</sup>. Moreover, use of words cannot be considered as threat under their provision and the offence of "Affray" can be committed in private as well as in public places.<sup>296</sup>

### *Issues*

1. Whether this offence is still relevant in the *Penal Code*?
2. If yes, should the current provisions on Affray be updated? For example, should the offence of affray only apply where the police come across the incident or a third party reports the incident?
3. Should there be additional element (as in other jurisdictions) be added to the current provisions, such as the crime needing to include:
  - a. a fight,
  - b. in a public place,
  - c. that causes fear to bystanders?
4. Should there be a definition for the term "Fight"?
5. Should the offence also apply to a fight in a private place that causes fear to others?

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<sup>294</sup> *Crimes Act 1900* (NSW), s 93C.

<sup>295</sup> *Crimes Act 1900* (NSW), s 93C.

<sup>296</sup> *Crimes Act 1900* (NSW), s 93C.

6. Should someone be convicted of “Affray” even if there are no injuries?
7. Is the current penalty for affray adequate?

*Policy reasons*

- 1.297 This offence criminalises the act of fight or altercation in a public place that causes terror or fear to any bystander. This offence safeguards public tranquillity which is important for the protection of modern society. The current provision of Affray in the *Penal Code* only mentions of a person taking part in the fight in a public place but it does not have the element of “causing terror or fear to any bystander” as it is found in other jurisdictions. For instance, the above case of *Tobo v Commissioner of Police*, the facts only shows that the two parties involved in the fight but it did not state that their fight and confrontation caused terror to any bystander present at that time close by. This missing element is essential as it is the missing link that fully defines the affray law as shown in the other jurisdictions.
- 1.298 Australian jurisdictions have highlighted that the “fight” requires not only to happen in public places but may also be committed in private places as long as the element of causing fear to any bystander is satisfied.

## CHAPTER 15: OTHER OFFENCES AGAINST THE STATE

### *Incite to mutiny*

#### *Current law*

1.299 Incite to mutiny is an offence under section 54 of the *Penal Code* and it carries the maximum penalty of life imprisonment. The offence prohibited any person from attempting to incite any member serving in Her Majesty's Forces by Sea or Land to deviate from their duty or allegiance to Her Majesty. The prohibited conducts include inciting the any member of her Majesty's force to commit mutiny or any traitorous act against her Majesty.

#### *Laws from other jurisdictions*

1.300 The Papua New Guinea (PNG) *Criminal Code* provides for this offence. Section 41 states any person who advisedly attempts to seduce any person serving in the Defence Force by sea, land or air from his duty and allegiance, to incite any such person to commit an act of mutiny or any traitorous or mutinous act, to incite any such persons to make or endeavour to make a mutinous assembly, is guilty of a crime punishable for life imprisonment.<sup>297</sup>

1.301 In the case of *State v Wafia*,<sup>298</sup> in the National Court of PNG, Simon Konga, a civilian discharged from the army had assisted in breaking in of the armoury at the Moem Defence Force Barracks. He had, driven a defence force heavy troop carrier without authority. He attended the meetings of the mutinous soldiers and made threatening comments. He further accompanied the mutinous soldiers to the provincial Police Commander for the purpose of demanding the release of an arrested soldier. The arrested soldier is also one of the leaders of the mutineers.<sup>299</sup>

1.302 The judge sentenced Simon Konga to 20 years imprisonment, considering the breaking of the armoury placed weapons at the disposal of the mutineers, thus emboldening them to oust from the barracks and house arrest officers.<sup>300</sup>

1.303 The Fiji *Crimes Decree 2009* also provides for this offence. Section 72 states a person commits an offence if he or she attempts to seduce any person serving in the military forces of Fiji or any police officer from his or her duty and allegiance to Fiji; or incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or

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<sup>297</sup> *Criminal Code* (PNG), s 41.

<sup>298</sup> *Sate v Wafia* [2004] PNGNC 223.

<sup>299</sup> *State v Wafia* [2004] PNGNC 223.

<sup>300</sup> *State v Wafia* [2004] PNGNC 223.

incite any such persons to make or endeavour to make a mutinous assembly is guilty of a crime punishable for 15 years imprisonment.<sup>301</sup>

1.304 In the High Court case of Fiji *State v Takiveikata*,<sup>302</sup> Ratu Inoke incites Shane Stevens who was a senior military officer to remove the Commander of the REMF by taking over the military barracks. He team up a group of soldiers and turned against their own Commander. They got into a cross-fire exchange between the loyalist and the rebellion soldiers at the military barracks which results in eight killed and eight were hospitalised and two civilians were injured. Ratu Inoke was tried in court and was sentenced to 8 years imprisonment. The judge imposed the penalty after considering the circumstances of the case where deaths and injuries were the results of the mutinous act.

1.305 The Vanuatu *Penal Code* in section 60 states that no person owing allegiance to the Republic shall within or outside the Republic, for any traitorous or mutinous purpose, endeavour at any time to seduce any person serving in the forces of the Republic or any member of the police force from his duty and allegiance to the Republic; incite any such person to commit an act of mutiny or an act of treason. The penalty is life imprisonment.<sup>303</sup>

### *Issues*

1. Is this offence still needed in the *Penal Code*?
2. Is the penalty for attempt inciting to mutiny adequate?

### *Aiding Soldier or Policemen in act of mutiny*

1.306 Aiding soldier or policemen in an act of mutiny is an offence. It takes the form of money, words uttered or some form of assistance that aided any member of Her Majesty's military, naval, air force and police force to disobey any order or deviant from his or her duty or allegiance to their superior. Any person who commits such offence shall be guilty of a misdemeanour.<sup>304</sup>

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<sup>301</sup> *Crimes Decree 2009* (Fiji), s 72.

<sup>302</sup> *State v Takiveikata* [2011] FJHC 134.

<sup>303</sup> *Penal Code* (Vanuatu), s 60.

<sup>304</sup> *Penal Code* [Cap 26], 55.

1.307 Section 55 of the *Penal Code* states that any person who aids, abets, or is accessory to any act of mutiny by; or incites to sedition or to disobedience to any lawful order given by a superior officer, any non-commissioned officer or private of Her Majesty's naval, military, or air forces or any police officer, shall be guilty of a misdemeanour.<sup>305</sup>

### *Laws from other jurisdictions*

1.308 The *Fiji Crimes Decree 2009* section 73 states a person commits a summary offence if he or she aids or incite any person serving in the military of Fiji or any police officer to mutiny to commit mutinous act, to disobey from any lawful authority given by a superior officer or to commit any mutinous assembly, and is punishable to 5 years imprisonment.<sup>306</sup>

1.309 In the case of *Takiveikata v State*,<sup>307</sup> the Court of Appeal of Fiji held that Ratu Inoke aided a non-commissioned officer of the Fiji Military Forces namely Manoa Bonofasio in an act of mutiny. He provides him with mobile phone equipment for coordination of the said attempted takeover. The matter went to court and the judge in the lower court sentenced him to 18 months imprisonment. However he appealed the decision to the Court of Appeal and the Court quashed the sentence and ordered a new trial.

### *Issues*

1. Should we retain this offence in the *Penal Code*?
2. Should the penalty for aiding soldier or policemen in act of mutiny be increased to 5 years imprisonment?

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<sup>305</sup> *Penal Code* [Cap 26], s 41 - When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.

<sup>306</sup> *Crimes Decree 2009* (Fiji), s 73.

<sup>307</sup> [2007] FJCA 45.

### *Inducing soldiers or police officials to desert*

1.310 It is an offence to induce any soldier or policemen to desert from his or her lawful duties or allegiance to Her Majesty. Any person who induces or aids any person serving in Her Majesty Forces to desert or believes such person is a deserter and harbours such person is guilty of a crime punishable for six months imprisonment.<sup>308</sup>

### *Laws from other jurisdictions*

1.311 Vanuatu and Fiji has the same offence. However, the penalty is different where the offence carries imprisonment term not exceeding 3 years in Vanuatu<sup>309</sup> and imprisonment for 5 years in Fiji.<sup>310</sup>

1.312 In the PNG *Defence Act*, section 56, it provides for life imprisonment or lesser term for any person serving in the defence force who deserts from his or her lawful duty or the service.<sup>311</sup>

1.313 In Samoa *Police Service Act 2009* section 45 states any member of the Police Force who deserts the service without the permission of the Commissioner of the Police, is liable to pay a fine not exceeding 1 penalty unit and is required to pay his or her arrears, at the time of desertion.<sup>312</sup>

1.314 In Solomon Islands there is no provision in the *Penal Code* that punishes any person serving in Her Majesty's forces, military, air force, or police force that deserts from his or her lawful duties or the service without the permission or informing the superior. However, the *Police Act 2013* provides for disciplinary offences. Section 118 states a police officer shall be guilty of a major disciplinary offence if the officer, without lawful excuse, fails to carry out any lawful order, fails to appear for duty or leaves his or her post without authorisation.<sup>313</sup> The Commissioner or Disciplinary Tribunal will conduct inquiry and determine the proceedings.<sup>314</sup> The penalty for any officer who is found guilty of a disciplinary offence shall be set by the Commissioner or Director of Professional Standards and Internal Investigations Unit.

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<sup>308</sup> *Penal Code* [Cap 26], s 65.

<sup>309</sup> *Police Act 1980* (Vanuatu), s 48.

<sup>310</sup> *Crimes Decree 2009* (Fiji), s 74.

<sup>311</sup> *Defense Act* (PNG), s 56.

<sup>312</sup> *Police Act 2009* (Samoa), s 56.

<sup>313</sup> *Police Act 2013*, s 118.

<sup>314</sup> *Police Act 2013*, s 138.

## Issues

1. Should the offence be retained in the *Penal Code*?
2. Should the penalty for the offence of inducing soldiers or police officers to desert duties be increased?

### *Aiding prisoner of war to escape*

1.315 It is an offence to aid a prisoner of war who was held in any prison or confinement to escape his prison or confinement or if he is at large at his parole or elsewhere to escape Solomon Islands. Any person who commits such offence is guilty of a felony and is liable to imprisonment for life.<sup>315</sup> Further if any person who negligently and unlawfully permits the escape of such prisoner is guilty of a misdemeanour.<sup>316</sup>

### *Laws from other jurisdictions*

1.316 It is an offence in the *Criminal Code Act* of Papua New Guinea (PNG) to aid a prisoner of war to escape. Section 42 states a person who aids an alien enemy of the Queen and Head of State who is a prisoner of war in PNG, whether he is confined in a prison or elsewhere or is suffered to be at large on his parole to escape from his prison or place of confinement; and if he is at large on his parole to escape from PNG.

1.317 Further, it also covers situation where any person owing allegiance to the Queen and Head of State, after any such prisoner had escaped by sea from any part of Her Majesty's dominion, knowingly and advisedly aid him, on the high seas within the territorial waters of Papua New Guinea, in his escape to or towards any place, is guilty of a crime punishable to life imprisonment.

1.318 A similar provision in Fiji, section 75 of the *Crimes Decree 2009* states a person commits an offence if he or she aids a prisoner of war in Fiji to escape from prison or place of confinement or if the prisoner of war is at large on parole, to escape from Fiji is punishable to 5 years imprisonment.<sup>317</sup>

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<sup>315</sup> *Penal Code* [Cap 26], s 57(a).

<sup>316</sup> *Penal Code* [Cap 26], s 57(b).

<sup>317</sup> *Crimes Decree 2009* (Fiji), s74.

A person commits a summary offence if he or she aids an alien enemy, being prisoner of war in Fiji, to escape prison or a place of confinement or, if the prisoner of war is at large on parole, to escape from Fiji.

## *Issues*

1. Is the offence still relevant to Solomon Islands?
2. If yes, what should be the penalty?

### *Unlawful oaths to commit murder*

1.319 The law on unlawful oaths to commit murder covers situations where a person oversees any oath or engagement in that nature in order to bind the person who takes it to commit the offence of murder. It also covers situation where a person is present and agrees for such oath to be taken by the other person in order to commit murder.<sup>318</sup> Section 59 of the *Penal Code* states that any person who –

- (a) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit murder; or
- (b) takes any such oath or engagement, not being compelled to do so,

shall be guilty of a felony, and shall be liable to imprisonment for life.<sup>319</sup>

1.320 The law further applies to the situation where a person takes the oath or any engagement in such nature voluntarily without any force.

1.321 This is a serious offence because the person involved in such engagement for the purpose of committing a grave offence, murder.

### *Other unlawful oaths to commit offences*

1.322 Section 60 of the *Penal Code* provides for the offence of unlawful oaths to commit other offences. The offence covers situations where a person oversees any oath or engagement in that nature to bind the person taking it to act in certain unlawful ways or purposes such as engagement in any mutinous or seditious enterprise, to commit other offences, public disturbance, to be part of any group or association for such purpose, to obey a leader or commander of an unlawful group or association, to withheld information or evidence, to withheld the discloser or finding out of any

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<sup>318</sup> *Penal Code* [Cap 26], s 59.

<sup>319</sup> *Penal Code* [Cap 26], s 59.

unlawful group or committee, taking of oath or engagement of such nature without force or being compelled to do so.<sup>320</sup> The penalty for this offence is seven years imprisonment.

1.324 The *Penal Code* in section 61 provides to what extent the defence of compulsion can be relied upon. It states that a person who takes any such oaths or engagements as are mentioned in section 59 and section 60 of the *Penal Code* cannot set up as a defence that he was compelled to do so unless within 14 days after taking it or if he is prevented by actual force or sickness, he declares by information on oath before a Magistrate or to his commanding officer, the whole of the matter, including the person by whom and in whose presence, and the place where and the time when, the oath or engagement was administered or taken.

### *Laws from other jurisdictions*

1.325 The Vanuatu, Fiji and PNG provisions on unlawful oaths to commit murder or capital offences are similar to that of the Solomon Islands, regardless of the way in which these provisions were structured in the different jurisdiction.<sup>321</sup> The seriousness of this offence of unlawful oaths to commit murder or capital offences is reflected in the higher penalty of maximum life imprisonment that it carries in Fiji, PNG and the Solomon Islands. In Vanuatu, the penalty is a fine of VT5000 or 1 year imprisonment or both.<sup>322</sup>

1.326 Also, in Vanuatu, Fiji and PNG the respective laws provide for the defence of compulsion as similar to the Solomon Islands, especially in cases where the person was compelled to take or engaged in such unlawful oath.<sup>323</sup>

1.327 In the case of *Sokomanu v Public Prosecutor*,<sup>324</sup> six politicians including the President of Vanuatu whom were charged with five (5) counts, two (2) of which involves the administering of unlawful oaths to five other accused in order to commit other offences, and being present and consented to the administering of unlawful oath to commit other offences to the said five (5) accused between the 16<sup>th</sup> and 18<sup>th</sup> of December 1988.

1.328 The six accused acted on the advice of the President of Vanuatu at that time and took oaths and portfolios as part of the interim government being set up to operate after Parliament was dissolved for General elections in early 1989. The High court in this case convicted three (3) accused on the counts including the administering of

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<sup>320</sup> *Penal Code* [Cap 26], s 60.

<sup>321</sup> See *Public Order Act* (Vanuatu), s 5; *Public Order Act* (Fiji), s 5; *Criminal Code Act 1974* (PNG), s 47.

<sup>322</sup> See *Interpretation Act* (Vanuatu), s 36 (3).

<sup>323</sup> *Public Order Act* (Vanuatu), s 5(4); *Public Order Act* (Fiji), s 7; *Criminal Code Act* (PNG), s 49; *Penal Code* [Cap 26], s 61.

<sup>324</sup> [1989] VUCA 3; [1980-1994] Van LR 440 (14 April 1989).

unlawful oaths and being present and consented to the administering of unlawful oaths.

1.329 The case was appealed to the Court of Appeal on grounds including the misdirection of the Assessors by the learned trial Judge on the standard and degree of proof required to prove the charges against all Appellants. The Court of Appeal then set aside other verdicts including the verdicts relating to the taking of the oaths. The Court held that the verdicts for taking of unlawful oaths, seditious conspiracy and incitement to mutiny were unsafe and unsatisfactory.

### *Issues*

1. Are the offences on unlawful oath to commit murder or other offences still relevant to Solomon Islands?
2. If so, what should be the appropriate penalties?
3. Should the offences be included under the homicide offences?

### *Policy reason*

1.330 The offence of making an unlawful oath to commit murder or commit other offences is based on the policy reason to deter people from using the authority of oath to commit such serious offences.

### *Defamation of foreign princes*

1.331 Defamation on foreign princes is an offence contrary to section 64 of the *Penal Code*. It is an offence to defame a foreign princes or dignitaries. Such defamation occurs where the media in their course of publications may utter words or articles that are defamatory in nature to foreign princes or dignitaries.

1.332 Section 64 of the *Penal Code* states any person who, without sufficient justification or excuse in the case of defamation of a private person publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary, and; with intent to disturb peace and friendship between Solomon Islands and the country to which such prince, potentate, ambassador or dignitary belongs, shall be guilty of a misdemeanour.<sup>325</sup>

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<sup>325</sup> *Penal Code* [Cap 26], s 64.

### *Laws from other jurisdictions*

1.333 Section 55 of the Papua New Guinea *Criminal Code Act 1974* states any person without justification publishes anything intended to be read, or any visible representation tending to cause hatred to any foreign princes or dignitaries is guilty of a misdemeanour. The penalty is imprisonment for a term not exceeding two years.

1.334 In Vanuatu, the *Telecommunication Act*, section 15 states neither the Government nor any telecommunication officer shall be liable to any proceedings by reason of having in good faith transmitted or conveyed or taken part in transmitting or conveying by means of telecommunication any libellous matter.<sup>326</sup>

### *Issues*

1. Should defamation on foreign princes be retained or abolished as it is not relevant to modern day Solomon Islands?
2. Should the penalty for defamation of foreign princes be increased?

### *Wearing of uniform without authority prohibited*

1.335 Section 184 of the *Penal Code* makes it an offence to wear any uniform of her Majesty's force without the permission from the Secretary to the Cabinet. Any person who commits such offence shall be liable to imprisonment for one month or to a fine of \$1,000.00.<sup>327</sup> Nothing in this section shall prevent any person from wearing any uniform or dress in the events to stage play, music hall or circus performance or in the course of any bona fide military representation.<sup>328</sup>

1.336 It is also an offence to wear such uniform in a manner that is likely to bring contempt on that uniform or employs any other person to wear such uniform. Any person who commits such offence is guilty of a misdemeanour, and shall be liable to imprisonment for two months or to a fine of \$2,000.00.<sup>329</sup>

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<sup>326</sup> *Telecommunication Act* (Vanuatu), s 15.

<sup>327</sup> *Penal Code* [Cap 26], s 184(1) and *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>328</sup> *Penal Code* [Cap 26], s 184 (1).

<sup>329</sup> *Penal Code* [Cap 26], s 184 (2) & *Penalties Miscellaneous Amendments Act 2009*, s 8.

- 1.337 Any person without permission from the Secretary to the Cabinet imports to sells or has in possession for sale any such uniform as aforesaid is guilty of a misdemeanour and shall be liable to imprisonment for six months, or to a fine of \$5,000.00.<sup>330</sup>
- 1.338 The *Police Act 2013* also provide for similar provision. Section 196 states any person who is not a police officer who pretends to be a police officer by words, conduct or demeanour; or uses the name, designation or description of a police officer; or uses a police uniform, police property, vehicle or vessel or any item that resembles police property, in circumstances likely to lead a person to believe that the person is a police officer commits an offence and is liable on conviction to a maximum penalty of 30,000 penalty units or 3 years imprisonment or both.<sup>331</sup>
- 1.339 Under the provision in the *Penal Code*, a person commits an offence if he wears, or sells any uniform of her Majesty's forces without the authority from the Secretary to the Cabinet.
- 1.340 Further in the *Police Act*, it is also an offence to pretends to be a police officer by uses of a police uniform, vehicle or vessels or any item that resembles police.

#### *Laws from other jurisdictions*

- 1.341 It is an offence to wear the uniform of a disciplined service or police force of Fiji or any forces in other commonwealth country, and the penalty is imprisonment for one month or fine of 5 penalty units or both.<sup>332</sup>
- 1.342 Unlawfully wearing of such uniform or dress having the appearance of or other distinctive marks of any such uniform in circumstances or in a manner as to be likely to bring contempt on that uniform is an offence punishable for 5 months imprisonment or a fine of 5 penalty units or both.<sup>333</sup>
- 1.343 It is an offence to sell or import such uniform or any part of it without service or written permission from the Secretary to the Cabinet. The penalty is imprisonment for 6 months or to fine of 10 penalty units or both.<sup>334</sup>
- 1.344 The *Police Act* of Papua New Guinea in section 138 states a person who is not a member of the force wears, unlawfully wears colourable imitation of the force is guilty of an offence punishable for a fine not exceeding K500.00 or imprisonment for a term not exceeding three months.
- 1.345 Further, section 139 states, any person who unlawfully sells or supply, employs or induce non-member of the force to wear such uniform commits an offence punishable

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<sup>330</sup> *Penal Code* [Cap 26], s 184 (3) & *Penalties Miscellaneous Amendments Act 2009*, s 8.

<sup>331</sup> *Police Act 2013*.

<sup>332</sup> *Crimes Decree 2009* (Fiji), s 382(1).

<sup>333</sup> *Crimes Degree 2009*, s 382 (2).

<sup>334</sup> *Crimes Degree 2009*, s 382 (3).

for a fine not exceeding K1, 000.00 or imprisonment for a term not exceeding six months.

***Issues***

1. Should the penalties for wearing of uniform without authority be increased?
2. Should we follow the penalty in the *Penal Code* or similar provision provided for in the *Police Act 2013*?
3. Should we repeal this offence as it is already appropriately covered in the *Police Act 2013*?