

CONDOMINIUM DES NOUVELLES-HEBRIDES

NEW HEBRIDES CONDOMINIUM

ARRETE CONJOINT 12 de 1962

JOINT REGULATION 12 of 1962

JOINT REGULATION

No. 12 of 1962.

to establish a Code of Criminal Law binding on the natives of the New Hebrides.

This Regulation No. 12 of 1962 was published in Condominium Gazette No. 216 and is reprinted as amended by the following Joint Regulations:

- of 1963 Condominium Gazette No. 220
- of 1966 Condominium Gazette No. 243
- of 1967 Condominium Gazette No. 252
- of 1967 Condominium Gazette No. 252
- of 1967 Condominium Gazette No. 267 (French text)
- of 1968 Condominium Gazette No. 270
- of 1970 Condominium Gazette No. 295
- of 1971 Condominium Gazette No. 304
- of 1971 Condominium Gazette No. 308

THE NATIVE CRIMINAL CODE

made by the Resident Commissioners under the provisions of Articles 2 and 8 of the Anglo-French Protocol of 1914.

This Joint Regulation may be cited as "The Native Criminal Code." Short Title.

Joint Regulation No. 6 of 1927 and all amendments thereto, Joint Regulation No. 1 of 1928, and Section 1 of Joint Regulation No. 1 of 1943, are hereby repealed. Repeals.

From the date of coming into force of this Regulation any person charged before a Native Court under the provisions of paragraph 7 (B) of Article 8, or before the Joint Court under the provisions of paragraph 2 (B) of Article 12 of the Anglo-French Protocol of 1914, with having committed any offence specified in the Schedule hereto shall on conviction suffer any of the penalties provided therein. Penalties.

The Native Criminal Code applies only to a person of the original races of the Pacific who is not a citizen or subject or under the protection of either of the two signatory powers of the Anglo-French Protocol of 1914. Code only applies to Natives.

The Native Criminal Code applies to the whole area of the New Hebrides, including the Banks and Torres Islands. Application.

This Joint Regulation shall come into force on November 1, 1962. Commencement.

Made at Vila this Twenty-second day of September, 1962.

DELAUNEY

COLIN H. ALLAN

Resident Commissioner
for the French Republic.

Her Britannic Majesty's Acting
Resident Commissioner.

SCHEDULE

PART I

GENERAL PROVISIONS

1. "Proof of age". In any prosecution for an offence against the Code the Court may, if it thinks fit, and in the absence of other effective evidence as to age, determine the age of any person by his physical appearance alone.

Interpretation.

"Public servant" means employee of the Condominium, British or French Governments.

"Property" includes everything animate or inanimate capable of being the subject of ownership.

Words importing the masculine gender shall include females.

[References to "month" in relation to imprisonment shall be construed as meaning thirty days.

J.R. No. 23
of 1971.

References to "week" in relation to imprisonment shall be construed as meaning seven days.

References to "year" in relation to imprisonment shall be construed as meaning a calendar year.]

2. A person is not criminally responsible if at the time of the commission of the offence he is—

Criminal.

- (a) through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission, or
- (b) under thirteen years of age, or
- (c) acting in lawful defence of himself or of another person. Defence is not lawful if it is not proportional to the attack and is not made at the moment of attack, or
- (d) constrained by a force which he cannot resist.

3. Any person who attempts to commit an offence is guilty of that offence and is liable to the same punishment as is provided for that offence attempted.

Attempt to
commit
Offences.

4. Any person who knowingly instigates, aids or abets the commission of an offence is guilty of an offence and is liable to the

Aiding and
Abetting.

same punishment as is provided for the original offence, if no special punishment is otherwise provided.

5. (i) The following punishments may be imposed by a Court— Punishments.

- (a) fine,
- (b) imprisonment,
- (c) death.

(ii) The present text gives the maximum punishment which may be imposed for each offence. The punishment inflicted, being within such limitation, is a matter for the discretion of the Court. Punishments prescribed are maxima.

(iii) Where there are extenuating circumstances the Court shall have power—

- (a) where the punishment provided is death, in lieu thereof to sentence the offender to imprisonment;
- (b) where the punishment provided is imprisonment, in lieu thereof or as an alternative penalty to fine the offender;

J.R. No. 23 of 1971.

Provided that no such fine shall exceed a sum calculated at the rate of ten Australian dollars for every week of the maximum penalty of imprisonment to which the convicted person is liable.]

(iv) where a person is sentenced to a fine the Court may direct that in default of payment of the fine on demand, the offender shall suffer imprisonment for a term calculated at the rate of one day's imprisonment for every one Australian dollar of the fine but shall in no case exceed one month, such imprisonment shall be in addition to any other imprisonment to which he may have been sentenced, and shall not preclude the collection of a fine if the collection is possible.]

Imprisonment in default.

J.R. No. 23 of 1971.

(v) (a) where a court by or before which a person is convicted of an offence is of opinion having regard to the circumstances including the nature of the offence and the character of the offender that it is inexpedient to inflict punishment, the Court may make an order discharging him absolutely, or, if the Court thinks fit, may, after proceeding to sentence, order a delay in the execution of such sentence, subject to the condition that the convicted person commit no other offence provided for in this Code during such period, not exceeding three years from the date of the order, as may be specified therein;

[Absolute discharge and suspended sentence.]

J.R. No. 2 of 1967.

(b) At the termination of the period specified in the order the sentence shall be regarded as cancelled and of no effect, provided that the convicted person has not been convicted for another offence in this Code;

(c) Where a person, subject to an order, as specified in paragraph (a) of sub-section (v) of Section 5 above, is convicted for another offence provided for in this Code the two sentences shall be enforced separately.

- (d) When making any order in accordance with provisions of this sub-section the President of the Court shall explain the terms of such order in ordinary language in order to ensure that the convicted person clearly understands them.]

PART II

OFFENCES AGAINST THE PERSON

- 6. The unintentional causing of damage to the body of another, through recklessness or negligence, or non-observance of any regulation, is an offence punishable as follows—
 - (a) if the damage so caused is purely temporary: imprisonment for three months;
 - (b) if the damage so caused is permanent: imprisonment for two years;
 - (c) if the damage so caused results in death: imprisonment for five years.

Unintentional harm to the body.

- 7. Intentional assault on the body of another is an offence punishable as follows—
 - (a) if no physical damage is caused: imprisonment for three months;
 - (b) if damage of a temporary nature is caused: imprisonment for one year;
 - (c) if damage of a permanent nature is caused: imprisonment for five years;
 - (d) if the damage caused results in death, although the offender did not intend to cause such death: imprisonment for ten years.

Intentional assault.

8. Where any person is convicted of an offence against section 6 which is punishable under paragraph (a) or paragraph (b) or an offence against section 7 which is punishable under paragraph (a), paragraph (b) or paragraph (c) thereof, the Court in its discretion, in addition to any other punishment it may order him to pay compensation to any person suffering physical harm or damage to property as a result of such offence and direct by its order that in default of paying such compensation] in a period specified in such order, the offender shall suffer imprisonment, which shall not exceed a term calculated at the rate of one week's imprisonment for every ten Australian dollars of the amount of compensation. The offender shall continue to be liable to pay such compensation, notwithstanding the execution of the sentence of imprisonment.]

[Power of Court to order compensation in certain cases of offences against the person.]

J.R. No. 14 of 1971.

J.R. No. 23 of 1971.

8. Any person who intentionally causes the death of another person by unlawful act or omission is guilty of homicide, which offence is punishable as follows—

Homicide.

- (a) if the homicide is not premeditated:
imprisonment for twenty years;
- (b) if the homicide is premeditated:
death.

9. Any woman who intentionally procures her own miscarriage, or any person who intentionally procures the miscarriage of a woman, commits an offence punishable by imprisonment for three years.

Abortion.

10. Any person who unlawfully arrests, detains or confines a person against his will commits an offence punishable with imprisonment for three years.

False imprisonment.

11. Any person who wilfully removes a child aged less than seven years from the custody of the person having legal authority over such child against the wish of such person, or who knowingly takes or detains a child thus removed commits an offence punishable by imprisonment for two years.

Child stealing.

PART III

OFFENCE AGAINST MORALITY

Any male person who removes an unmarried female between the ages of fourteen and sixteen from the custody or protection of her parents or of her legal guardian, against the will of her parents or guardian, is guilty of abduction and commits an offence punishable with imprisonment for one year. Provided that proceedings shall only be instituted in respect of this offence on the consent of the parents or guardian concerned.

Abduction.

Any person who by his behaviour publicly outrages modesty commits an offence punishable with imprisonment for one year.

Gross indecency.

Any person who commits an unnatural offence with any other person under the age of eighteen years commits an offence punishable—

Unnatural offence.

if such other person is under thirteen years of age, with imprisonment for five years;

if such other person is aged between thirteen and eighteen years, with imprisonment for two years.

15. (i) Any person who [commits an act of indecency with] other person under the age of thirteen years is guilty of an offence punishable with imprisonment for [five] years.
 (ii) Any person who indecently and forcibly assaults any other person not under the age of thirteen years shall be guilty of an offence punishable with imprisonment for [three] years.

Indecent assault.
 J.R. No. 3 of 1967.
 J.R. No. 14 of 1971.
 J.R. No. 14 of 1971.

16. [(i) Any person, who, being validly married according to provisions of the Joint Control of Marriages Joint Regulation 12 of 1966, has extra-marital sexual intercourse commits the offence of adultery.]

Adultery.
 J.R. No. 29 of 1966.

(ii) No proceedings shall be instituted under this section upon the complaint of the wronged spouse. Proceedings may be instituted at the will of the wronged spouse, against either the adulterer, the other party to the adultery, or both parties to the adultery.

(iii) Any person guilty of an offence under this section shall be liable to imprisonment for three months.

Provided that if the adultery has been followed at the date of conviction by abandonment of the conjugal home by the guilty person, the sentence of imprisonment may be increased to six months.

17. Any person who has sexual intercourse with a person with whom sexual intercourse is forbidden by native custom by reason of consanguinity, knowing such consanguinity to exist, is guilty of an offence and shall be liable to imprisonment for five years.

Incest.

18. Any person who has unlawful carnal knowledge of a woman without her consent, or with her consent if the consent is obtained by force or intimidation, is guilty of rape and liable to imprisonment for ten years.

Rape.

19. Any person who has carnal knowledge of a girl under the age of fifteen years commits an offence punishable—

Carnal knowledge of a minor.

- (i) if the girl is thirteen or more years of age, with imprisonment for two years;
- (ii) if the girl is under thirteen years of age, with imprisonment for seven years.

20. Any person who procures any women to have unlawful sexual connection with any other person or persons, or who permits the use of a house for immoral purposes, commits an offence punishable with imprisonment for six months.

Procuration.

PART IV

OFFENCE AGAINST THE PROPERTY OF ANOTHER

1. The fraudulent taking of any movable property belonging to another without claim of right, with the intent permanently to

Theft.

...tive the owner of it, is theft and is an offence punishable as follows—

- (a) in the case of simple theft—
 - (i) in the case of the value of the property not exceeding the value of £Stg. 100 or its equivalent in francs at the current rate of exchange by imprisonment for one year; and
 - (ii) in any other case by imprisonment for two years.]
- (b) in the case of theft from a building, accompanied by breaking and entering: imprisonment for five years;
- (c) in the case of theft accompanied by violence or menaces: imprisonment for seven years.

J.R. No. 11 of 1968.

22. The taking to one's own use of property of another person which has been entrusted to one's care or given for a particular and limited use, is fraudulent conversion and is an offence punishable by imprisonment for two years.

Fraudulent conversion.

23. Any person who by any false pretence or trick and with intent to defraud, obtains the possession of any property from any other person without claim of right commits an offence punishable by imprisonment for two years.

False pretences.

23A. Any person who by menaces or threats of violence, accusation or other detriment whatever, whether by the person uttering the menace or threat or by another person, and directed to the person to whom the menace or threat is uttered or to any other person, obtains or attempts to obtain payment of any money or the recovery of any property from any other person commits an offence punishable by imprisonment for two years.]

Demanding money etc., with menaces.

J.R. No. 15 of 1970.

Any person who receives or retains any property knowing or having reason to believe the same to have been stolen, fraudulently obtained or obtained by false pretences, commits an offence punishable by imprisonment for two years.

Receiving Stolen property.

Any person who unlawfully and without colour of right and with no intention of retaining permanently, takes or converts to his own use or the use of any other person any property commits an offence punishable by imprisonment for three months.

Unlawful use of others' property.

(1) Any person who wilfully and unlawfully destroys or damages any property to his knowledge belonging to another person commits an offence punishable—

Malicious damage to property. J.R. No. 29 of 1966.

in the case of the damage not exceeding in value £25 or its equivalent in francs at the current rate of exchange by imprisonment for one year; and

(b) in any other case by imprisonment for five years.

(2) [—————]]

J.R. No. 11
of 1968.

27. Any person who wilfully and unlawfully sets fire to any thing to his knowledge belonging to another commits an offence punishable by imprisonment for ten years.

Arson.

[27A. Where any person is convicted of an offence under the provisions of this part of the Schedule to the Principal Regulation a Court may order him to make restitution of the property involved in the said offence, if the said property can be identified as being in the possession of the accused, or to pay compensation to the person suffering loss as a result of the offence aforesaid] [and may direct the offender to order that in default of making restitution or paying compensation, as the case may be, within a period specified in such order the offender shall suffer imprisonment]. [, which shall not exceed a term calculated at the rate of one week's imprisonment for every ten Australian dollars of the value of the property or the amount of the compensation, as the case may be. The offender shall continue to be liable to make restitution of such property or to pay compensation, as the case may be, notwithstanding the execution of the sentence of imprisonment.]

J.R. No. 11
of 1968.

J.R. No. 15
of 1970.

J.R. No. 23
of 1971.

PART V

OFFENCES AGAINST PUBLIC ORDER

28. Any person who in a public place uses threatening or abusive words or threatening gestures is guilty of an offence punishable by imprisonment for three months.

Abusive or
threatening
language.

29. Any person who by spoken or written words, gestures or any other method maliciously exposes any other person alive or dead to public hatred, contempt or ridicule, or otherwise harms that other person's reputation, commits an offence punishable by imprisonment for three months.

Defamation.

30. Any person who in any judicial proceeding, or for the purpose of instituting any judicial proceedings knowingly gives false evidence, or any person who is sworn or appointed as interpreter in any judicial proceedings who knowingly interprets falsely, is guilty of an offence punishable by imprisonment for two years.

Perjury.

31. Any person who gives, agrees to give or offers any gift or consideration to a public servant as an inducement for doing or forbearing to do, any act in relation to the public servant's duties, is guilty of an offence punishable by imprisonment for one year.

Corruption
of public
servants.

32. Any person who is a public servant who accepts, agrees to accept or attempts to obtain any gift or consideration from any person as an inducement for doing, or forbearing to do, any act in

Corrupt
practice
by public
servants.

relation to his duties is guilty of an offence punishable by imprisonment for one year.

33. Any person who fails to assist a Police Officer in the due execution of his duties when called upon to do so, commits an offence punishable by imprisonment for three months.

Failure to assist a police officer.

34. Any person who shall knowingly take part in an assembly of three or more persons for purposes forbidden by law, or with intent to carry out any common purpose in such a manner as to endanger the public peace, commits an offence punishable by imprisonment for six months.

Unlawful assembly.

PART VI

MISCELLANEOUS OFFENCES

35. Any person who by his wilful act or omission causes unnecessary suffering to an animal commits an offence punishable by imprisonment for three months.

Cruelty to animals.

36. Any person who practises witchcraft or sorcery to the detriment of any person commits an offence punishable by imprisonment for two years.

Witchcraft.

37. Any person who falsely represents himself to be a person holding office or exercising authority under the Condominium or the British and French Government or performs without title any official duty, any such person commits an offence punishable by imprisonment for six months.

Unlawful assumption of authority.

38. Any person who is found in a state of manifest drunkenness in any place to which the public has access, whether on payment or otherwise, commits an offence punishable by imprisonment for one week in the case of a first offence and for one month in the case of a second or subsequent offence committed within a period of one year from the date of the first offence.]

Drunkenness in a public place.

J.R. No. 13 of 1963.

39. (1) Any person who in any place other than within the limits of Vila or Santo and within two kilometres of the said limits is guilty of an offence by reason of the noise created by him—

Nocturnal noise.

- (a) by night disturbs the peace; or
(b) at any other time wilfully annoys or disturbs the public in an offensive manner commits an offence punishable by one week's imprisonment.

Amended J.R. No. 29 of 1966.

(2) For the purposes of this Section of the Regulation the expression "night" shall mean the interval between eight o'clock in the evening and five o'clock in the morning of the next succeeding day.]

Vila, the 22nd September 1962.

DELAUNEY

COLIN H. ALLAN

Resident Commissioner
for the French Republic.

Her Britannic Majesty's Acting
Resident Commissioner.
