

GOVERNMENT OF ZAMBIA

ACT

No. 17 of 2007

Date of Assent: 30th August, 2007

An Act to amend the Penal Code

[31st August, 2007]

ENACTED by the Parliament of Zambia.

1. This Act may be cited as the Penal Code (Amendment) Act, 2007, and shall be read as one with the Penal Code, in this Act referred to as the principal Act.

2. Section *thirty* of the principal Act is amended—

- (a) by the deletion of the full stop at the end of that section and the substitution therefor of a colon; and
- (b) by the insertion after the colon of the following new proviso:

Provided that, notwithstanding the proviso to subsection (1) of section *one hundred and seventy-five* of the Criminal Procedure Code, or any other written law, where a person is ordered to pay compensation for the commission of an offence under Division VIA, the Court may determine the amount of compensation to be awarded but the compensation shall not exceed the value of the property damaged or lost.

3. Section *three hundred and twenty-eight* of the principal Act is amended—

- (a) by the renumbering of the paragraph of that section as subsection (1);
- (b) by the deletion of the words “to imprisonment for life” and the substitution therefor of a comma and the words on conviction, to imprisonment for a term of not less than ten years and may be liable to imprisonment for life:

Provided that where the arson causes the death of any person the offender shall, on conviction, be liable to imprisonment for life; and

- (c) by the insertion immediately after subsection (1) of the following new subsection:

Enactment

Short title

Cap. 87

Amendment of section 30

Cap.88

Amendment of section 328

*Copies of this Act can be obtained from the Government Printer,
P.O. Box 30136, 10101 Lusaka. Price K2,000 each.*

(2) Subsection (2) of section *twenty-six* shall not apply to this section.

Repeal and
replacement of
section 335

4. The principal Act is amended by the repeal of section *three hundred and thirty-five* and the substitution therefor of the following new section:

Punishment
for malicious
damage in
general, etc

335.(1) Any person who wilfully and unlawfully destroys or damages any property commits an offence, which, unless otherwise stated, is a misdemeanour and is liable, on conviction, if no other punishment is provided, to imprisonment for two years:

Provided that where the destruction or damage caused to property is—

- (a) in excess of five million Kwacha, the offender commits a felony and is liable, on conviction, to imprisonment for a term of not less than five years and not exceeding twelve years; or
- (b) in excess of fifteen million Kwacha, the offender commits a felony and is liable, on conviction, to imprisonment for a term of not less than seven years and not exceeding twelve years.

(2) Any person who wilfully and unlawfully destroys—

- (a) a dwelling-house or a vessel, using any explosive substance, and if-
 - (i) any person is in the dwelling-house or vessel; or
 - (ii) the destruction or damage endangers the life of any person;

the offender commits a felony and is liable, on conviction, to imprisonment for a term of not less than ten years and may be liable to imprisonment for life:

Provided that where the explosion causes the death of any person the offender shall, on conviction, be liable to imprisonment for life;

- (b) a testamentary instrument, whether the testator is living or dead, or a register which is authorised or required by law to

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be kept for authenticating or recording the title to any property or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender commits a felony and is liable, on conviction, to imprisonment for fourteen years;

(c) a vessel in distress or wrecked, or stranded, or anything which belongs to such vessel, the offender commits a felony and is liable, on conviction, to imprisonment for seven years; or

(d) a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender commits a felony and is liable, on conviction, to imprisonment for seven years.

(3) Subsection (2) of section *twenty-six* shall not apply to this section.

5. The principal Act is amended by the repeal of section *three hundred and forty* and the substitution therefor of the following new section:

Repeal and replacement of section 340

340. Any person who—

Penalties for nuisance or trespass on railway works, etc

(a) commits any nuisance or trespass in or upon any land, buildings, or premises, acquired for or belonging to any railway works; or

(b) wilfully molests, hinders, or obstructs the officer in charge of any railway or the officer's assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway;

commits a misdemeanour and is liable, on conviction, to imprisonment for three months or to a fine of six hundred penalty units.

6. The principal Act is amended by the insertion immediately after section *three hundred and forty one* of the following new Division:

Insertion of new Division VIA

DIVISION VI A

VANDALISM TO PUBLIC AND PRIVATE PROPERTY

CHAPTER XXXIVA

PUNISHMENT FOR VANDALISM

Interpretation	341A. In this Division, unless the context otherwise requires
Cap. 444	“ aerodrome ” has the meaning assigned to it under section <i>two</i> of the Aviation Act;
Cap. 444	“ aircraft ” has the meaning assigned to it under section <i>two</i> of the Aviation Act;
Act No. 13 of 2004	“ computer ” has the meaning assigned to it under section <i>two</i> of the Computer Misuse and Crimes Act, 2004;
	“ necessary service ” includes—
	(a) any service relating to the generation, supply or distribution of electricity;
	(b) any fire brigade or fire service;
	(c) any sewage, rubbish disposal or other sanitation service;
	(d) any health, hospital or ambulance service;
	(e) any service relating to the supply or distribution of water;
	(f) any service relating to the production, supply, delivery or distribution of fuel;
	(g) mining;
	(h) any communications service;
	(i) any road, railway, bridge, dam, ferry, pontoon, harbour, dock or canal; and
	(j) any service relating to the aviation of aircraft;
Cap. 453	“ railway ” has the meaning assigned to it under section <i>three</i> of the Railways Act;
Act No. 12 of 2002	“ road ” has the meaning assigned to it under section <i>two</i> of the Public Roads Act, 2002;
Act No. 28 of 1997	“ sanitation service ” has the meaning assigned to it under section <i>two</i> of the Water Supply and Sanitation Act, 1997;
	“ sewage ” has the meaning assigned to it under section <i>two</i> of the Water Supply and Sanitation Act, 1997;
	“ traffic signa l ” has the meaning assigned to it under section <i>two</i> of the Public Roads Act, 2002;

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“ traffic sign ” has the meaning assigned to it under section two of the Public Roads Act, 2002; and

Act No. 28 of 1997

“ vandalise ” means wilfully or maliciously destroying, damaging, defacing, disabling, or in any way disrupting the functioning of or impairing public or private property and in the case of a computer includes, but is not limited to, acts such as the interference with, interruption or obstruction of the lawful use of a computer by means of a computer virus or otherwise and the causing of a direct or indirect degradation, failure, or other impairment of function of a computerised system or any part thereof by means of a computer virus or otherwise.

Act No. 12 of 2002

Act No. 12 of 2002

341B. The High Court shall have jurisdiction to try offences under this Division.

Jurisdiction of High Court

341C. Subsection (2) of section twenty-six shall not apply to this Division

Non-application of section 26(2) of Penal Code Cap.87

341D. (1) Any person who for any purpose vandalises any public or private property essential for or incidental to the provision of a necessary service commits a felony.

Vandalism of public or private property essential for or incidental to provision of necessary service

(2) Where the property referred to in subsection (1) is—

(a) a cable, overhead line, power line, electricity pole, pylon, transformer, pole mounted substation, substation, generating station or other property essential for or incidental to the connection, installation, generation, supply or distribution or other use of electricity, notwithstanding the Electricity Act or any other written law, the offender is liable, on conviction—

Cap. 433

(i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or

(ii) where the vandalism causes the death of any person, to imprisonment for life;

(b) a vehicle, fire engine, appliance, apparatus, a fire brigade or other property essential for or incidental to the provision of a fire service, the offender is liable, on conviction—

Act No. 28 of
1997

- (i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or
 - (ii) where the vandalism causes the death of any person, to imprisonment for life;
- (c) any machinery, equipment, plant or other structure essential for or incidental to
- (i) the collection, conveyance, storage, purification or disposal of sewage;
 - (ii) the disposal of rubbish; or
 - (iii) the provision of any other sanitation service; notwithstanding the Water Supply and Sanitation Act, 1997, or any other written law, the offender is liable, on conviction, to imprisonment for a term of not less than ten years and not exceeding twenty-five years;
- (d) any instrument, apparatus, machinery, equipment or other property essential for or incidental to the protection or sustenance of life or for the protection of public health or for the provision of health services, the offender is liable, on conviction—
- (i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or
 - (ii) where the vandalism causes the death of any person, to imprisonment for life;
- (e) a water pipe, water tank, water pump, water reservoir, water plant or other structure essential for or incidental to the purification, filtration, distillation, storage, distribution or supply of water, notwithstanding the Water Supply and 1997 Sanitation Act, 1997, or any other written law, the offender is liable, on conviction, to imprisonment for a term of not less than ten years and not exceeding twenty-five years;
- (f) a fuel pump, fuel tanker, pipeline, ship, vessel, vehicle, storage shed, building or place in which petroleum is stored or carried, a refinery, feed stock reserve or any other structure essential for or incidental to the storage, refinery, conveyance, distribution or supply of fuel, the offender is liable, on conviction—
- (i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or

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- (ii) where the vandalism causes the death of any person, to imprisonment for life;
- (g) any machine, appliance, apparatus, building, erection, bridge, road, shaft or passage of a mine, rope, chain, tackle, well or bore for water, dam, bank, wall or floodgate of a millpond or pool or any other work or way appertaining to or used with a mine the offender is liable, on conviction—
 - (i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or
 - (ii) where the vandalism causes the death of any person, to imprisonment for life;
- (h) a cable, wire, public telephone, telecommunications apparatus, telecommunications installations or other communications apparatus or communications installations installed, erected or operated by a telecommunications or communications service provider for the purpose of operating or sustaining a telecommunications or communications system or providing a telecommunications or communications service, notwithstanding the Telecommunications Act, the Radiocommunications Act or any other written law, the offender is liable, on conviction—
 - (i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or
 - (ii) where the vandalism causes the death of any person, to imprisonment for life.
- (i) a railway, or any work connected with a railway, notwithstanding the Railways Act or any other written law, the offender is liable, on conviction—
 - (i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or
 - (ii) where the vandalism causes the death of any person, to imprisonment for life;
- (j) a road, bridge, ferry, pontoon, harbour, dock or canal, notwithstanding the Public Roads Act, 2002, or any other written law, the offender is liable, on conviction—

Cap. 469

Cap. 169

Cap. 453

Act No. 12 of 2002

- (i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or
- (ii) where the vandalism causes the death of any person, to imprisonment for life; or

Cap. 444,
Cap. 445

(k) an aircraft, aerodrome, navigation facility or any other instrument, apparatus, equipment, machinery or other property essential for or incidental to safe aviation, notwithstanding the Aviation Act, the Safety of Civil Aviation Act or any other written law, the offender is liable, on conviction—

- (i) to imprisonment for a term of not less than fifteen years and not exceeding twenty-five years; or
- (ii) where that vandalism causes the death of any person, to imprisonment for life.

Vandalism of
public
buildings,
infrastructure,
etc

341E. Any person who vandalises—

- (a) a church, synagogue, mosque or other building, structure or place used for religious worship or other religious purpose;
- (b) a cemetery, mortuary or other facility used for the purpose of burial or memorializing the dead;
- (c) a school, educational facility or community center; or
- (d) any personal property contained in any infrastructure, facility, building, structure or place described in paragraphs (a), (b) or (c); commits a felony and is liable to imprisonment for a term of not less than ten years and not exceeding twenty-five years.

Vandalism of
computer or
computerised
system Act
No. 13 of
2004

341F. Notwithstanding the provisions of the Computer Misuse and Crimes Act, 2004, any person who for any purpose vandalises a computer or a computerised system commits a felony and is liable, on conviction, to imprisonment for a term of not less than ten years and not exceeding fifteen years:

Provided that where a computer is vandalised and such computer contains programs or data which the offender knew or ought reasonably to have known is necessary for or used directly in connection with

- (a) the security, defence or international relations of the State;

- (b) the existence or identity of a confidential source of information relating to the enforcement of criminal law;
- (c) the provision of necessary services or other public services;
- (d) the provision of banking and financial services;
- (e) the storage of confidential Government information; or
- (f) the protection of public safety, including systems related to essential emergency services such as police and civil defence; the offender is liable to imprisonment for a term of not less than fifteen years and not exceeding twenty-five years.

341G. Any person who vandalises any traffic sign or traffic signal commits a felony and is liable, on conviction, to imprisonment for a term of not less than ten years and not exceeding twenty-five years:

Vandalism of traffic signs and traffic signals

Provided that where the vandalism causes the death of any person, the offender shall, on conviction, be liable to imprisonment for life.

341H. (1) Any person who vandalises any light, beacon, buoy, mark or other sign or signal erected or set up for the purpose of navigating a water way or for the guidance of persons engaged in navigation of a water way, commits a felony and is liable, on conviction, to imprisonment for a term of not less than ten years and not exceeding twenty-five years:

Vandalism of navigation signs and signals on water way

(2) In this section water way includes a river, canal, a brook, stream, an artificially constructed water channel or other route for travel by water.

341I. (1) Where an offence is committed by an institution and it is proved that the offence—

Offence by body corporate, etc

- (a) was committed with the consent or connivance of an officer of the institution; or
 - (b) was attributable to neglect on the part of an officer of the institution;
- the officer and the institution shall be guilty of the offence.

(2) In this section—

- (a) in the case of an institution which is a body corporate, "officer" includes---

- (i) a director, manager or Secretary;
 - (ii) a person purporting to act as a director, manager or Secretary;
 - (iii) if the affairs of the body are managed by its members, a member; and
 - (iv) any other person concerned in the management of the body corporate;
- (b) in the case of an institution which is a partnership, "officer" means a partner; and
- (c) in the case of an institution which is an incorporated association other than a partnership, "officer" means a person concerned in the management or control of the association.

(3) Where an institution is fined in terms of subsection (1), that institution shall be liable, where the offence for which sentence is passed is in respect of—

- (a) vandalism of public or private property essential or incidental to the provision of a necessary service, to a fine of five hundred thousand penalty units and in the case of a second or subsequent offence, to a fine of five hundred and fifty thousand penalty units;
- (b) vandalism of public buildings, infrastructure or other property, in the case of a first offence, to a fine of three hundred thousand penalty units and in the case of a second or subsequent offence, to a fine of three hundred and fifty thousand penalty units;
- (c) vandalism of a computerised system, to a fine of four hundred thousand penalty units;
- (d) vandalism of road signs and road signals, to a fine of two hundred thousand penalty units; and
- (e) vandalism of navigation signs and signals, to a fine of two hundred thousand penalty units.

Attempts to
vandalise
property

341J. Any person who attempts to commit an offence under this Division, commits a felony, and is liable, on conviction, to imprisonment for eight years.

Aiding,
abetting,
soliciting, etc.

341K. Any person who aids, abets, counsels, procures, incites or solicits the commission of an offence under this Division, commits a felony and is liable, on conviction, to the same penalties as if that person had been convicted of the offence.

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341L. Except as provided under section *three hundred and forty one*, any person who, in any manner, threatens to vandalise any property commits a felony and is liable, on conviction, to imprisonment for five years.

Threats to Vandalise

341M. Any person who commits an offence under this Division commits a cognizable offence.

Cognizable offences

341N. (1) When any person is convicted of an offence under this Division, the Court shall, in addition to any penalty which may be imposed, order the forfeiture, without compensation of—

Forfeiture

(a) any property which has passed in connection with the commission of the offence, or, if such property cannot be forfeited or cannot be found, any such sum as the Court shall assess as the value of the property; or

(b) any implement, tool, motor vehicle or other conveyance with which the offence was committed, or which was used in, or for the purpose of, or in relation to, or in connection with, the commission of the offence.

(2) Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same provisions as in the case of the payment of a fine.
