THE PENAL CODE OF THE SOMALI DEMOCRATIC REPUBLIC

THE PENAL CODE OF THE SOMALI DEMOCRATIC REPUBLIC

With Cases, Commentary, and Examples by

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TO THE SOMALI PEOPLE

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PREFACE

This is the first complete book about the Somali Penal Code and one of the few books on any aspect of the legal system of the Somali Democratic Republic. It was written while I was in Somalia, under the auspices of the United States Peace Corps, as Legal Adviser to the Somali National Police Force and Legal Assistant to the Ministry of Justice and Religious Affairs. It is based upon personal experience, observations, case files, court decisions, and other material generally unavailable outside the Republic.

The book has two main purposes: First, it shows how a Western European law, the Italian Penal Code, operates when superimposed upon a country with different social and political conditions, and how Islamic and Somali customary legal principles, in turn, have influenced this Penal Code.

Second, the book provides a detailed study of the operation of the Penal Code and how it relates to other laws in force in the Republic, such as the Maritime Code, the Citizenship Law, the Public Order Law, the Military Penal Code, the Criminal Procedure Code, the Law on the Organization of the Judiciary, the Civil Service Law, and the Constitution of the Republic.

The Somali Penal Code is almost a word for word replica of the Italian Penal Code, which was drafted by a special commission under the Chairmanship of Professor Arturo Rocco. Known as the "Rocco Code," it became effective on July 1, 1931, and was modified subsequently to some extent to suit the Italian Fascist doctrine. After the Second World War these modifications were deleted, and the Penal Code in force in Italy today is essentially the Code as approved in 1930. It is this Code, which, with the changes explained in the Introduction, is the Code in force in Somalia now.

Since the Somali Penal Code is based on the Italian one, it was drafted, passed, and officially published in Italian. A semiofficial English-language translation was prepared by United Nations personnel for use among English-speaking Somalis, primarily in the northern regions. The translation is confusing, ungrammatical, and often incorrect. However, because of its semiofficial status as a translation of an existing law, I have retained

the wording of the translation but pointed out errors in translation and grammar in the explanatory sections.

Relevant reported cases are used to illustrate articles of the Code but where no such case law exists, I have adopted the technique of hypothetical examples. However, as these examples are based upon my experience as legal adviser to the police force, most of them are simplified police case histories.

For purposes of clarity I have broken down each article into composite elements and used an outline format. In interpreting the Articles of the Code, I have relied upon the following major Italian authorities on the Italian Penal Code: F. Antolisei, *Manuale di Diritto Penale*, 5th ed. (Milano, A. Giuffre, 1963), and E. F. Carabba, *Codice Penale* (Firenze, Ludus, 1963). In addition, Dr. Santiapichi's *Appunti di Diritto Penale della Somalia*, Parte Generale (Milano, A. Giuffre, 1961) has been most useful. The Supreme Court decisions were taken from Somali Law Reports (Hargeisa and Burao regions), 1964–65.

As a result of a change in the form of government in the fall of 1969, the Constitution of the Republic is in the process of being redrafted. However, this change has not affected most of the basic laws of the land such as the Sharia Law regulating marriage, divorce and inheritance, the civil law, and the Penal Code. Thus this book which is essentially a publication and explanation of the Penal Code is a current, valid text about the functioning of the criminal law in Somalia.

In writing this book, I have had the help of many people. I cannot list them all but I would especially like to express my appreciation to Dr. Haji N. A. Noor Muhammad, former Legal Adviser to the Presidency of the Council of Ministers and Vice President of the Supreme Court of the Republic for his valuable technical advice and encouragement; Major General Mohammed Abshir Mussa, former Commandant of the Somali National Police Force, for his cooperation and support; Brigadier General Abdullahi Farah Ali Holif for his deep friendship and understanding; Dr. Mohamoud Ghelle for his assistance and tolerance of my meager knowledge of Italian; and to Dr. Paolo Contini for his helpful suggestions.

Finally, I would like to thank all the officers and men of the Somali National Police Force. They have caused me to love a country not my own, and by their example shown me the virtues of character all men aspire to but few obtain.

Martin R. Ganzglass

North Bergen, New Jersey
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GLOSSARY

The following words and terms are used throughout the text:

agal: A portable nomadic home, composed of woven mats and curved supporting poles

AGIP: The acronym for the Italian gasoline company

baksheesh: The Arabic word for alms

bud: A stick carried by nomads to aid in herding camels

CID: The acronym for the Criminal Investigation Division, the detective branch of the police force

Darawishta: The field force of the police, a highly trained combat unit. The name comes from the word "dervish," the soldiers of the Somali national hero, Muhammed Abdille Hassan, who led the fight against the British at the turn of the century

dia: Blood money, or payment made to prevent retaliation by one group against another for death, injury, or insult caused by a member of the paying group

goa: A cloak or shawl, also used as a blanket

gudimo: A small hoe-like instrument

gurgi: A general term for house, including but not limited to *agals*

Illalos: A uniformed auxiliary force, outside of the police, usually charged with assisting the courts

mahawees: A saronglike garment worn by Somali men.

qaadi: A religious judge learned in Koranic law

qat: A non-habit-forming drug, grown mainly in the Ethiopian highlands and chewed as a stimulant

rer: A family grouping of close relatives

SEIS: The acronym for the electric power company in Mogadishu

shah: A commonly played game, consisting of a board drawn in the sand and stone markers

Sharia law: Another term for Koranic law

shifta: A robber or bandit

Sh. So.: The abbreviation for Somali shillings used throughout the text of the Penal Code

tobe: A word of Arabic derivation meaning cloak or shawl

tug: A ravine or river bed, usually dry except during the rainy season

INTRODUCTION

At the end of World War II, Italian Somaliland became a trust territory under the supervision of the United Nations with Italy as the administering power. Italy was charged with preparing the country for independence by 1960. The British, who retained control of British Somaliland, likewise prepared their colony for independence. British Somaliland became independent at the end of June, 1960, and Italian Somaliland obtained its independence on July 1, 1960. On that date, the two united to become the Somali Republic, with Mogadishu in former Italian Somaliland as the capital and Hargeisa in former British Somaliland as the northern administrative capital.

The Somali Republic comprises the horn of East Africa, hooking up into the Gulf of Aden. It is bounded on the east by the Indian Ocean, on the west by Ethiopia and French Somaliland, and on the south by Kenya. Generally, the northern part of the country is dry and brown, turning green briefly during the rainy season. The south is more tropical, having a humid climate and lusher vegetation. Whereas in the north the thorn tree is the typical vegetation, the south has banana and mango trees, coconut palms, and many colorful flowers.

The country has a population of about two and one half million people who share a common language, culture, and religion. These common bonds enabled the new country to surmount the problems arising from the diverse colonial history of its separate parts.

Unlike other Africans, all Somalis speak one language—Somali. There are no major tribal languages to cause problems of oral communication. The unwritten aspect of the language in turn gives rise to part of the common cultural heritage of all Somalis—oral poetry. Somali oral poetry is recited and memorized from generation to generation. Somali is a descriptive language, rich in figures of speech, and the poetry is alliterative in style to aid in memorization. The poems may be on any subject—politics, war, satire, history, or love. They have different rhythms depending on the topic. Almost all of the Somali heroes have been great poets, and the Somali national hero Sayid Muhammed Abdille Hassan, who fought the British for twenty years, is considered one of the greatest. Today most Somali children can recite the Sayid's poems about victories

over the British camel corps, about treacherous allies, steadfast friends, and hazardous treks across barren lands. The poetry thus serves to remind Somalis of their unity and strengthens the nationalism of the people.

In addition, eighty percent of the population are nomadic. Therefore the people share a homogeneous way of life, centered around the ceaseless search for water and grazing land for their animals. The plenty of the rainy seasons and the harshness of life during severe drought create common moods among the people. The rainy seasons are times for feasting, marriages, and social gatherings. The dry seasons result in their moving on to other places, dislocation, frustration, and violence. But while temporary differences may arise, the oneness of Somalis is even then emphasized by their common needs—water and pastures for their animals.

As part of their shared cultural heritage, Somalis can trace their lineage back to a common ancestor. Somalis can recite as many as thirty to forty names of their fathers, grandfathers, and great-grandfathers, going back to the person who is believed to have started their tribe or grouping. Thus they can determine their blood relationship by reciting their lineage.

As a people, compared to other Africans the Somalis are one. They have no tribes existing as semiautonomous nations with hereditary chiefs or rulers, as do most other African nations. Somali tribes are determined by blood lineage. The tribes have traditional areas of grazing, and it is during the dry seasons that feelings run high and tribal disputes occur. However, the very method of settling disputes emphasizes the common cultural heritage of the people. As nomads, Somalis place great significance upon camels as a source of wealth. In order to avoid widespread violence among tribes, they have evolved the system of blood money or *dia*. If a member of a tribe is injured or killed, the offending tribe may pay for the crime by giving a number of camels to the tribe of the victim. This prevents the outbreak of further violence in the form of revenge killings, which in turn would trigger further acts of revenge until both tribes would be engaged in full-scale warfare. The state participates actively in this traditional mode of settlement; one of the functions of the police is to seize and hold the camels from the offending tribe, to guarantee payment of the blood money and avoid further bloodshed.

Somali tribes are not ruled by hereditary chiefs. They are run by elders who are elected by tribal members. Somalis have been ruling themselves by these tribal councils for generations, thus practicing a form of democracy long before they were colonized by the British and Italians.

For a nomadic Somali the thorn tree in the center of a village on a barren plain—the tree of the elders or council tree—is as much a symbol of self-government and justice as the village green or town meeting hall was to the early settlers of New England.

Above all, Somalis are bound together by their religion. Somalia is a Moslem country. Every child learns passages from the Koran from religious men before attending regular school. Arabic is taught in most schools, and students may study subject matter in that language.

Despite the common language, culture, and religion, Somalia's colonial history initially created severe problems for the new nation. First, there was the problem of written language. Most of the civil servants in the north wrote English while those in the south used Italian. Thus all debates, draft laws, and official publications of the new government had to be printed in both English and Italian, and in some cases in Arabic.

Second, the northern region inherited the British system of common law while the south was under the Italian civil system. The basic difference between the systems is that common law proceeds from a general law that is broadly drafted to cover a type of situation and leaves it to judges who have broad powers of interpretation; whereas the civil law system proceeds from a comprehensive law, encompassing every conceivable situation, leaving the judge little or no power to interpret the law. Consequently judges trained in one system had to be taught to apply the law under the other. Moreover, the laws in force in the two regions were in most cases different.

In addition, both regions had their own systems of administration under differing civil service rules and regulations. Record keeping, seniority, rates of pay, retirement benefits—all were different in a country now under one government. Thus the legal systems of the two former colonies had to be combined into one administration and uniform laws of nationwide application enacted.

What happened in the area of criminal law demonstrates how the Somalis coped with the problems of integration. Shortly after independence a special commission was appointed to prepare uniform criminal legislation. At one of the first meetings, the commission agreed to use the Indian Criminal Procedure Code and the Italian Penal Code as the basis for new uniform legislation. Thus these two basic codes, modified to suit the Somali situation, became the laws currently in force in the Republic.

The Somali Penal Code, which was officially published on October 19, 1960, is almost a replica of the Italian Penal Code, which became effective on July 1, 1931. But several of the differences between the two codes are important. Italy has abolished the death penalty and imposed a minimum term of twenty-one years imprisonment for murder; Somalia has retained the death penalty. Italy has passed special legislation to deal with prostitution, which is not covered by its Penal Code; Somalia has no such special legislation, and prostitution is dealt with

as a crime covered by one article of the Code. Article 215 of the Somali Code makes it a crime to conduct propaganda "to destroy or impair the national sentiment"; the Italian counterpart of this article was declared unconstitutional by the Italian Constitutional Court, but this provision of the Somali Penal Code has not yet been constitutionally tested. Under the Italian Penal Code, a judge has the power to order a prisoner released during the day to work outside the prison; the Somali judge does not have this power.

While the Constitution of Somalia guarantees freedom of religion to all persons, Islam is the official religion, only Islam may be spread or propagandized in the Republic, and many Moslem legal principles have been incorporated into the Somali Penal Code. According to the Koran, a Moslem may not drink alcoholic beverages, hence several articles of the Code make it a crime to sell or use alcohol, both in places open to the public and in private homes as well. These articles apply not only to Somalis but to all Moslems within the jurisdiction of the Republic.

The provisions of the Code relating to marriage, the family, and parental responsibility have also been modified to conform to Koranic law. The crimes of incest and marriage to a close relative are determined by personal status between the parties as defined by the Koran. The Code also makes it an offense to "avoid the obligations relating to the exercise of parental authority." The Koran is the source for defining what these obligations are.

Somali customary law has also left its imprint on the Penal Code. The Somali lineage system is male oriented, and much of Somali customary law evolves around the role of the male as parent and patriarch of the family. Under the Italian Penal Code, a man convicted of certain crimes loses his paternal power over his children and his marital power over his wife; this provision has been omitted from the Somali Penal Code because of the strong role of the father in Somali family life. On the other hand, the Somali Penal Code contains an article decreasing the punishment where a child has been injured by a parent.

With regard to the practice of paying blood money, the Code provides for a reduction in punishment where full compensation has been paid before trial; a similar provision exists under the Italian Penal Code. The question of whether a person accused of murder should be prosecuted where the blood money has been paid has not yet been determined by Somali courts. With regard to lesser offenses, the payment of blood money has resulted in the dismissal of criminal charges in some cases.

Generally speaking, all codified law in Somalia originates from a foreign source. This is a natural result of Somali colonial history. However, laws are shaped by the people they apply to as well as the people

who administer them. Any law in Somalia is subject in varying degrees to the influence of Islamic and Somali customary law. What emerges is a truly integrated law, modified to some extent prior to enactment and adapted, as actually enforced, to fit the needs of the Somali people.

THE PENAL CODE OF THE SOMALI DEMOCRATIC REPUBLIC

THE SOMALI PENAL CODE

The Somali Penal Code applies to the entire Republic. It is divided into three main sections, called "Books."

Book I deals with offenses in general;

Book II deals with crimes; and

Book III deals with contraventions.

Each book is divided into parts, which in turn are subdivided into chapters, sections, and articles.

BOOK I OFFENSES IN GENERAL

The word "offenses" is a broad general term and includes both crimes and contraventions. Crimes and contraventions are explained later, but briefly a "crime" is a serious offense, such as murder, robbery, or rape. A "contravention" is a less serious offense, such as conducting a public performance without a license or possessing illegal weights and measures. (See Article 15.)

Book I deals with offenses in general. The articles contained in this book apply to both crimes and contraventions. The book involves general principles and is divided into seven parts, covering jurisdiction, elements of an offense, the offender and the injured party, punishments, application of punishments, execution of punishments, and security measures.

PART I GENERAL PROVISIONS

Article 1 Offenses and Punishment to Be Expressly Provided by Law

No one shall be punished for an act which is not expressly made an offense by law, nor with a punishment which is not prescribed therefor.

Explanation:

The first article of the Penal Code establishes the principle that a person cannot be punished for an act which is not made an offense according to the law. The rationale underlying this principle is that persons should be aware of what behavior is prohibited and what behavior is allowed. Unless an act is made an offense by the Penal Code, or by some other law such as the Public Order Law or the Traffic Code, such an act is not an offense and the person who committed it cannot be punished.

The article also provides that the punishment must be according to the provisions of the law and prescribed for that particular offense.

Example:

X, a Somali citizen living in Mogadishu, is arrested by a policeman for smoking a cigarette in public on Friday. The policeman making the arrest believed that it was an offense to smoke in public on the Sabbath. No such offense exists under the Penal Code or any other law of the Republic. X cannot be punished for the act of smoking in public on Fridays.

Article 2 Time at Which Penal Laws Take Effect

1. No one shall be punished for an act which, in accordance with the law in force at the time when it was committed, did not constitute an offense.

2. No one shall be punished for an act which, in accordance with a subsequent law, does not constitute an offense; and if he has already been convicted and sentenced, the execution and the penal consequences of such conviction and sentence shall terminate.

3. If the law in force at the time when an offense was committed and the subsequent law differ, that law shall be applied the provisions of which are more favorable to the accused, unless the conviction and sentence have become final.

4. In the case of exceptional or temporary laws, the provisions of the two preceding paragraphs shall not apply.

Explanation:

The main principle embodied in Article 2 of the Penal Code is that the penal law may not be applied retroactively. This is in keeping with the concept that the law must define what behavior is prohibited and what behavior is permissible. Article 42 of the Constitution of the Republic states:

> No person may be convicted for an act which was not punishable as an offense under the law in force at the time when it was committed; nor may a heavier punishment be imposed than the one applicable at that time.

Article 2 of the Penal Code simply restates this general principle.

The article also deals with the various aspects of retroactivity. Paragraph 1 of the article states that if a new law is passed making certain behavior an offense, nobody may be punished for behaving in the way now prohibited before the law came into force.

Paragraph 2 provides that if a person committed what was an offense under existing law, and a subsequent law states that such behavior is not now an offense, that person shall not be punished. The paragraph goes further and states that even if the person has already been convicted and sentenced under the old law, if the new law makes the act for which he has been convicted accepted behavior, then the sentence shall be terminated. This paragraph thus takes into consideration changing concepts of what is acceptable and unacceptable behavior. Persons convicted under old laws should be permitted the freedom allowed under new ones.

Paragraph 3 deals with the situation that exists when the old and the new laws differ. In such cases, the provisions of either law—whichever is more favorable to the defendant—shall apply, as long as his conviction and sentence have not become final. The paragraph covers the situation where the law may become more severe and what was considered a minor offense before may now be considered a major one. Since a defendant should not be punished according to the law which was not in force at the time he committed the act, he should be able to take advantage of the more lenient terms of the earlier law. And, likewise, if the new law is more lenient, he should be allowed to take advantage of the changes in society's concept of accepted behavior and benefit from the new provisions.

Paragraph 4 states the major exception to the concept of non-retroactivity of the penal law. In the case of exceptional or temporary laws, Paragraphs 2 and 3 of Article 2 do not apply. An exceptional or temporary law would be one necessitated by war, flood, famine, or epidemic. It is obvious that if a person who committed an offense under an exceptional or temporary law could not be punished when the law was repealed, or could take advantage of the more favorable provisions of the law in force before the temporary or exceptional law was issued, it would be very difficult to enforce law and order during the emergency period. Every potential offender would know that he could violate the exceptional or temporary laws and either take advantage of the old law's provisions or wait until the emergency had passed.

Note that the exception of Paragraph 4 does not include Paragraph 1, so that a person cannot be punished for actions legal when taken but made illegal by an exception or temporary law.

Examples:

1. X, a citizen of Somalia living in the north at the time of independence, criticizes the President of the Republic, claiming that he has taken public funds. Such statements do not constitute an offense under the Indian Penal Code, then in force in the Northern Regions. Immediately after X has made these statements, the new uniform Penal Code goes into effect. Under Article 220 of the Penal Code, X is guilty of offending the honor and dignity of the President of the Republic. According to Paragraph 1 of Article 2 of the Penal Code, he cannot be punished for his statements, because they did not constitute an offense according to the law in force (the Indian Penal Code) at the time he made them.

2. Y, a foreigner residing in Somalia, has been convicted of transporting bags of sugar, cloth, and charcoal from the British Somaliland Protectorate to the Italian Trust Territory of Somali without paying the customs export fees to the British Somaliland Protectorate government. He has been sentenced to serve three years. After independence, the customs barriers between the Northern and Southern Regions are abolished. Y is entitled to be released and to have his sentence terminated. The subsequent law, that is, the law of the newly independent Republic, does not make it a crime to transport goods between the north and south without paying custom duties.

3. Z, a citizen of Somalia residing in the north, has been arrested for defamation of a government official by writing an article in a newspaper. At the time of his arrest, the Indian Penal Code was in force. Before the trial, the new Penal Code takes effect. Under the Indian Penal Code, the accused is subject to a punishment of up to two years in prison and a fine. Under the new Penal Code, the punishment for defamation, where the defamation is committed by means of a newspaper article, may be increased up to three years (see Article 452[3], DEFAMATION). According to Paragraph 3, Z can receive the lesser sentence as prescribed by the Indian Penal Code.

4. Q, a Somali nomad living in the interior, is arrested under provisions of a special law passed to control an epidemic of hoof-and-mouth disease among cattle in the area. He is charged with violating the provisions of the law prohibiting travel outside the quarantined area. Prior to the passage of such an emergency law, it was not an offense to travel with diseased cattle from one area to another. Q is still guilty under the emergency law and may be punished. The repeal of the emergency law after the danger of epidemic has passed does not matter in determining punishment. Paragraph 4 specifically states that the provisions of Paragraphs 2 and 3 do not apply in the case of exceptional or temporary laws.

Article 3 Persons to Whom the Penal Law Is Applicable

1. Except as otherwise provided by municipal or international law, the Somali penal law shall be applicable to all, citizens or aliens, who are in the territory of the State.

2. The Somali penal law shall also be applicable to citizens or aliens who are outside the territory of the State, within the limits established by the said law or by international law.

Explanation:

Article 3 generally describes to whom the Somali penal law applies. The rule is that the Somali penal law applies to all citizens and aliens, who are either in the territory of Somalia or who are outside the country's territory but subject to the penal law nevertheless, according to the provisions of the penal law or international law. Article 4 defines the words "citizens and aliens" and describes what is meant by the territory of the Somali Republic.

Article 4 Somali Citizen; Territory of the State

1. For the purposes of penal law, Somali citizens shall include:
(a) persons belonging by origin or election to places subject to the sovereignty of the State, and
(b) stateless persons residing in the territory of the State.
2. For the purposes of penal law, the territory of the State shall include:
(a) the territory of the Republic, and
(b) every other place subject to the sovereignty of the State.
Somali ships and aircraft shall be deemed to be territory of the State wherever they are, except those which under international law are subject to a foreign law.

Explanation:

According to Paragraph 1 of this article, citizens of Somalia include those persons who belong to the Republic because of origin (born in the Republic or of Somali parents), and those who choose to be Somali citizens.

"Stateless persons" are those without a country to claim them as citizens. They are deemed Somali citizens for purposes of penal law if they reside in the Republic.

Note that Article 4 defines citizens only for purposes of penal law. There is a separate law on citizenship in the Republic—Law No. 9 of 12 February 1960, which defines citizenship in greater detail. As far as

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Somali ships and aircraft shall be deemed to be territory of the State wherever they are, except those which under international law are subject to a foreign law.

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According to Paragraph 1 of this article, citizens of Somalia include those persons who belong to the Republic because of origin (born in the Republic or of Somali parents), and those who choose to be Somali citizens.

"Stateless persons" are those without a country to claim them as citizens. They are deemed Somali citizens for purposes of penal law if they reside in the Republic.

Note that Article 4 defines citizens only for purposes of penal law. There is a separate law on citizenship in the Republic—Law No. 9 of 12 February 1960, which defines citizenship in greater detail. As far as

the penal law is concerned, the definitions embodied in Article 4, Paragraph 1, determine who are and who are not citizens in questions arising under the Penal Code.

Paragraph 2 defines, for purposes of penal law, the territory of the Somali state. The territory of the Republic obviously includes the actual boundaries of the nation.

Under international law, the territory of the state includes the air space above the national territory, and, if the nation borders on an ocean, part of the ocean along the nation's coast. The distance from the Somali coast that the government deems to be part of the territory of Somalia is contained in the Maritime Code, Decree Law No. 7 of 1 November 1966. Article 3 of that code states that the boundaries and sovereignty of the Republic shall extend for twelve nautical miles from the continental and insular coasts of the Republic.

The territory of the Republic also includes Somali ships and aircraft, wherever they may be. One exception to this rule is that if international law deems such ships or aircraft to be subject to the laws of another nation, then they shall not be subject to Somali law. An example would be a Somali ship in a foreign port.

Note also that the concept of Somali territory is flexible. If the Somali Republic were to increase in size, as a result of some international agreement or treaty, the Penal Code would automatically extend to the new territory acquired by the Republic. This is so because Paragraph 2 states that "the territory of the State" includes all territory subject to the sovereignty of the Somali Republic.

Example:

X, a foreigner residing in the port of Merca, steals money from the captain's quarters on board an Italian ship taking on bananas in the harbor. X is subject to the provisions of the Penal Code.

Under Article 3(2), the Penal Code applies to aliens who are in the territory of Somalia. According to Article 4(2), "the territory of the State" includes the territorial waters of the Republic. The Italian ship in the Merca harbor, being within the territorial waters of Somalia, is subject to the jurisdiction of the Somali penal law. X's crime, committed on board the ship, is subject to the Penal Code's provisions.

Article 5 Ignorance of Penal Law

No one may allege ignorance of the penal law as an excuse.

Explanation:

Article 5 states the general principle that persons are responsible for acting contrary to the penal law, even though they were not aware of the

specific provisions of the law. It would of course be impossible to inform every person subject to the provisions of the penal law of all of the provisions of that law. It is enough if the government publishes the laws in the prescribed manner. All persons are then deemed to have knowledge of such laws and are required to obey them.

Example:

X, a Somali citizen recently arrived from Tanzania, settles in the north. While there, he purchases a lion skin from a nomad. Under the Game Law in force in the north, it is illegal to possess lion skins unless they bear a stamp on the inside of the skin to show that they were legally killed. X is arrested for illegal possession of the lion skin. X claims that he just came from Tanzania and did not know that it was illegal to possess a skin without a stamp. X is still guilty of the offense under the Game Law because of the principle contained in Article 5—that ignorance of the law is no defense.

Article 6 Offenses Committed in the Territory of the State

1. Whoever commits an offense in the territory of the State shall be punished according to the Somali penal law.

2. An offense shall be deemed to be committed in the territory of the State where

(a) the act or omission constituting it occurred therein, in whole or in part, or where

(b) the consequences of the act or omission occurred therein.

Explanation:

All offenses committed within the territory of the Republic, by either citizens or foreigners, are subject to the jurisdiction of the Somali penal law.

Paragraph 2 defines what is meant by "an offense committed in the territory of the State." First, the entire offense does not have to be committed within the actual boundaries of the Republic. It is enough if part of the offense is committed within the Republic. Second, the Somali penal law will apply to the offense if only the results of the act or omission occurred in Somalia. Thus, for example, if a Somali citizen living on the Ethiopian side of the border town of Tug Wajaale fires his rifle across the *de facto* border, killing a Somali on the Somali side, the offender has committed a crime under the Somali Penal Code. The consequences of his act occurred in Somalia. Conversely, if a Somali on the Somali side of the *de facto* border fires his rifle across the boundary and kills a Somali on the Ethiopian side of Tug Wajaale, then he too is subject to the Somali Penal Code. His act, the firing of the rifle, occurred in Somalia.

The phrase "act or omission" refers to the manner in which an offense may be committed. It is used frequently throughout the Penal Code to cover all types of conduct which constitute an offense. An "act" is obviously some positive action. An "omission" is the failure to act where the person is required by law to do so. A person may be guilty of an offense under the Penal Code if he fails to perform a duty he is required by law to perform. For example, according to Article 450, anyone who finds an abandoned or lost child under the age of ten years must report this to the authorities. Failure to do so is an offense by "omission" and is punishable with imprisonment for up to three months or a fine of up to 3,000 Somali shillings.

The following example is an actual case heard and decided by the Supreme Court of the Somali Republic.

Example:

State v. *Abdi Dahir and 60 Others* (Criminal Appeal No. 10 of 1965, Somali Law Reports [Hargeisa and Burao Regions], 1964–65, p. 242).

The case arose out of tribal fighting among the Arap, Saad Musa, Eidagalla, and Gadabursi. Abdi Dahir and sixty others were charged with the offense of Affray under Article 444(2) of the Somali Penal Code. The affray took place in the Bali Gubadleh area of Somali on the morning of July 29, 1965, in the course of which many persons were killed and some sixty-six persons were injured. According to the police report, the fight took place about one mile inside the border of Ethopian occupied territory. The prosecution was based on the fact that, of the injured persons, one died in Bali Gubadleh and the other died in the Hargeisa Hospital. The Deputy Attorney General claimed that the Regional Court had jurisdiction because the deaths of these persons occurred on Somali territory. The President of the Regional Court of Hargeisa ruled, however, that the offense of affray finished when the battle ceased, and that deaths as a result of the battle could not be considered consequences of the crime of affray within the meaning of Article 6(2) of the Penal Code. The Deputy Attorney General filed an appeal with the Court of Appeal, Hargeisa.

The Court of Appeal affirmed the judgment of the Regional Court. The Deputy Attorney General then appealed to the Supreme Court. The Supreme Court stated that:

> Under the above provision [Article 6(2)] where the act or omission constituting the offense has been partly or wholly committed in the territory of the State, or where the consequences of the act or omission occurred in the territory of the State, the offense will be considered to have been committed in the territory of the State. (Somali Law Reports, p. 246.)

The Court went on to state that the police reports showed that the affray took place just across the *de facto* border but that two of the injured died in Somali territory. From these facts, the Court observed, the Regional Court could have framed charges under either Murder (Article 434) or Affray (Article 444[2]). If the charge was murder, then the death on the Somali side of the border would certainly give the Somali courts jurisdiction, because the death was a consequence of the fighting. As for the charge of affray, the Supreme Court held that there was no evidence on the record to show that the persons who died did not die soon after the affray, and thus their deaths would be an immediate consequence of that crime, occurring in Somali territory and giving the Regional Court jurisdiction. The Court said that there was a *prima facie* case made out by the police report showing that two persons had died in Somali territory as a consequence of an affray, and that therefore the Regional Court had jurisdiction, even though the actual affray took place outside the boundaries of the Republic. The court left it open for the Regional Court to decide, on the basis of evidence, whether the deaths were immediate consequences of the affray or not. If they were, then the Regional Court was instructed to continue with the trial. If they were not, then the Regional Court did not have jurisdiction under Article 6(2) and the case would have to be dismissed.

Article 7 Offenses Committed Abroad Punishable without Exception

Whoever
(1) commits any of the following offenses,
(2) in a foreign territory,
(3) shall be punished according to Somali law:
- **(a) crimes against the personality of the State;**
- **(b) crimes of counterfeiting the seal of the State or of using such counterfeited seal;**
- **(c) crimes of counterfeiting money which is legal tender in the territory of the State;**
- **(d) crimes committed by public officers in the service of the State by abusing their powers or violating their duties;**
- **(e) any other offense in respect of which Somali penal law is made applicable by law or international conventions.**

Explanation:

According to Article 7, anyone—that is, either a Somali citizen or a foreigner—who commits any of the offenses named in the article while in foreign territory is still subject to the laws of the Somali Republic. The

article, however, assumes that the foreigner or Somali citizen who committed such an offense abroad has returned to Somalia and been arrested.

The offenses listed in this article are considered serious ones that affect the Somali state. Therefore, even though they have been committed abroad, they are still punishable.

"Crimes against the personality of the State" are defined in Articles 184 to 239 of Part I of Book II of the Penal Code. The crimes of "counterfeiting the seal of the State and of the legal currency of Somalia" are described in Articles 348 and 360, respectively. "Crimes committed by public officers in the service of the State" are generally described in Articles 240 to 262.

Example:

X, an Adenese citizen counterfeits Somali five- and ten-shilling notes in Aden. He smuggles them into the Republic by boat. The police capture the crews of the boats and learn that X is the person in Aden responsible for the counterfeiting. Three weeks later, X travels to Mogadishu to sell cloth to Somali businessmen. He is arrested by the police.

X is subject to the articles of the Somali Penal Code making counterfeiting an offense. According to Article 7, although X is not a Somali citizen and the actual counterfeiting took place in a foreign territory (Aden), X is still subject to the penal laws of the Republic.

Article 8 Offenses Committed Abroad Punishable under Certain Conditions

1. Whoever,
(i) apart from the cases specified in Article 7,
(ii) commits, in a foreign territory,
(iii) a crime against the State, or
(iv) against a Somali citizen,
(v) shall be punished according to Somali law, provided that:
(a) the act or omission is considered an offense also by the law of the country in which it has been committed;
(b) the party injured has made a complaint, unless the offense is exclusively against the State;
(c) the offender is found in the territory of the State when the complaint is made or when the penal proceedings are initiated.

2. Whoever,
(i) apart from the cases specified in Article 7,
(ii) commits, in a foreign territory,
(iii) a crime which is not a political crime,
(iv) to the prejudice of a foreign state or an alien,

(v) shall be punished according to Somali law, provided that:
(a) the act or omission is considered an offense also by the law of the country in which it has been committed;
(b) the party injured has made a complaint;
(c) the offender is found in the territory of the State when the complaint is made;
(d) extradition is not granted or agreed to by the government of the state in which the offense was committed or by that of the state to which the offender belongs;
(e) the prosecution is authorized by the Minister of Grace and Justice.

3. For the purposes of penal law, any crime actuated, in whole or in part, by political motives shall be considered a political crime.

Explanation:

As shown above, Article 7 provides that whoever commits any of the crimes listed within that article in a foreign country shall still be punished according to Somali law. The implicit condition is that the person who committed the offense is within the territory of the Republic.

Article 8, in contrast to the previous article, establishes a series of conditions that must be met before an accused who has committed a crime in a foreign territory can be tried under Somali law. First, Article 8 applies to crimes *not* listed in Article 7. If the crime is one of those listed in that article, such as counterfeiting the seal of Somalia, then Article 8 does not apply. Second, Article 8 establishes two different sets of conditions.

Paragraph 1 of Article 8 establishes one set of conditions for crimes committed abroad *against the Somali state or against Somali citizens.* Paragraph 2 establishes another set of conditions for crimes committed abroad *against foreign states or against aliens.*

According to Paragraph 1 of Article 8, any person (either a Somali citizen or an alien) who commits a crime against Somalia or a Somali citizen in a foreign territory shall be punished according to Somali law if three main conditions are met. These conditions are contained in Subparagraphs a, b, and c of Paragraph 1 of the text above. First, the crime that he has committed must also be an offense under the laws of the foreign country. Second, if the crime is against a Somali citizen, that citizen must have made a complaint to the proper authorities. If the offense is against the Somali state, no such complaint is necessary. And, third, the person who committed the offense must be within the territory of the State at the time the complaint is made or when penal proceedings are initiated.

As stated above, Paragraph 2 applies when any person has committed a crime against a foreign state or an alien *and* if such offense is not a political one. The first two conditions required by Paragraph 1 (that the crime be an offense according to the laws of the foreign country where it was committed, and that the injured party has filed a complaint) are also required by Paragraph 2. The third requirement is somewhat different from Paragraph 1. The accused must be present in Somali territory at the time when the complaint is made and not at the time when criminal proceedings are initiated. Two additional conditions are necessary: extradition has not been granted, and the prosecution has been authorized by the Minister of Justice and Religious Affairs, formerly called the Minister of Grace and Justice. (Extradition is discussed more fully with regard to Article 11 of this Code.)

Note that Paragraph 2 applies only to offenses which are not political ones. Paragraph 3 defines what "political crimes" are for purposes of the penal law. Simply speaking, a "political crime" is any crime motivated by political reasons—either in whole or in part. A killing which is normally a murder may be a political crime if the motive was the assassination of a political figure. Therefore, according to Paragraph 2, Somali law will not apply to political crimes committed against foreign states or aliens.

Examples:

1. X, a Somali citizen, travels to Aden on business. While there, he is assaulted in the street, beaten, and robbed by Q, an Arab resident. X returns to Mogadishu. Later he learns that Q has come to Somalia looking for work. X files a complaint with the police, and Q is arrested.

According to Paragraph 1 of Article 8, Q may be tried according to Somali law for assaulting and robbing X in Aden. The case does not come within the crimes in Article 7. The article applies to any person who commits such an offense, and thus includes Q, who is an Arab, non-Somali citizen. Article 8 specifically applies to offenses committed abroad, as Q's assault and robbery of X was. And the three conditions required by Paragraph 1 have been met. The offenses of assault and robbery are obviously offenses under the penal laws of Aden. X has filed a complaint against Q in Somalia. Q, the offender, was in the Republic at the time the complaint was made.

2. Y, an Italian residing in Mogadishu as a non-resident alien, goes to Aden on business. While there, he is attacked and robbed by Z, an Arab living in Aden. Y returns to Mogadishu. He learns that Z has also come to Mogadishu in search of work. Y files a complaint with the police. Z is arrested, and the prosecutor obtains permission from the Minister of Justice and Religious Affairs to prosecute the case. Z is subject to the penal law of Somalia and may be tried.

According to Paragraph 2 of Article 8, all of the conditions have been met. As we have seen, the crimes of assault and robbery are offenses under Adenese penal law. Y, the injured party, has made a complaint, and Z was in Somalia at the time the complaint was made. As will be seen in the discussion of Article 11, extradition could not be granted, because Somalia does not have any extradition treaties with any countries. And, most important, authorization to prosecute was obtained from the Minister of Justice and Religious Affairs.

The general conditions contained in the body of Paragraph 2 have also been met. The offense has been committed against an alien, Y, and the crime committed by Z is not a political one.

Article 9 Cases in Which Criminal Proceedings Cannot Be Instituted

Apart from the cases specified in Article 7, criminal proceedings for a crime committed abroad cannot be instituted

(a) against a person who was finally acquitted abroad of the same crime, or

(b) against a person who, abroad, has been convicted of a crime and has served the sentence prescribed therefor.

Explanation:

If a person has already been tried and found not guilty, or if he has been found guilty, sentenced, and served his time in prison or paid the fine prescribed, then he cannot be tried within the Somali Republic for having committed that same crime abroad.

The exception to this general principle covers those offenses listed in Article 7. If a person has been tried abroad and convicted or acquitted for the crime of counterfeiting Somali currency, he may still be tried within the Somali Republic for the same crime, under the provisions of Somali penal law. The reason underlying this exception is that the offenses listed in Article 7 are extremely serious with regard to Somalia, and the Somali state has an interest in seeing that offenders are punished according to Somali law.

Example:

X, a Saudi Arabian laborer, attacks and robs Y, a Somali citizen in Saudi Arabia for the pilgrimage. X is arrested by the Saudi Arabian police and tried according to Saudi Arabian law. He is convicted and sentenced to three years in prison.

Three years later, after serving his sentence, X comes to Mogadishu. Y recognizes him and files a complaint with the Somali police, claiming that X attacked and robbed him three years ago in Jeddah. X is arrested.

According to Article 9, X cannot be tried for the assault and robbery

of Y. He has already been tried under Saudi Arabian law for the same offense, been convicted, and served his sentence.

Article 10 Recognition of Foreign Penal Judgments

1. A foreign penal judgment pronounced in respect of a crime may be recognized:

(a) to establish that the offender is a residivist, or

(b) to establish any other penal consequence of a conviction or

(c) to pronounce that the offender is a habitual or professional delinquent:

(d) where the conviction would involve an accessory penalty according to Somali law;

(e) where, according to Somali law, the person convicted or acquitted would be liable to security measures if he was in the territory of the State;

(f) where the foreign judgment orders restitution or compensation for damages; or

(g) where it has to be produced in a proceeding in the territory of the State for the purpose of obtaining restitution, compensation for damage, or any other purpose of a civil nature.

2. For any foreign judgment to be recognized,

(a) it must have been pronounced by the judicial authorities of a foreign state

(b) with which an extradition treaty is in force.

3. If no such treaty is in force, a judgment may still be recognized within the State if the Minister of Grace and Justice so requests. No such request shall be necessary if the recognition is sought for the purposes specified in letter d [Subparagraph f and g] of Paragraph 1.

Explanation:

As a general principle, foreign penal judgments are not recognized by other states. Article 10 establishes the rule that such foreign penal judgments may be recognized for certain purposes, described in Paragraph 1 of the article.

However, the major limitation of this article is contained in Paragraph 2, which states that Somalia can recognize foreign penal judgments of only those countries with which it has signed extradition treaties. Somalia, as noted above, has not signed any extradition treaties with any other nation. Therefore, it cannot recognize the foreign penal judgments of other countries, even for the limited purposes specified in Article 10(1).

Paragraph 3 does permit the recognition of foreign penal judgments even if Somalia does not have an extradition treaty with that country, if the Minister of Justice and Religious Affairs requests such recognition.

In all cases involving the recognition of foreign penal judgments for the purpose of showing that the foreign court has ordered the defendant to pay restitution or compensation for damages, or when the foreign judgment itself is necessary to show that a Somali court should order restitution or compensation, no request for recognition of the judgment by the Minister of Justice and Religious Affairs is necessary. Nor is it necessary that Somalia have signed an extradition treaty with the foreign state.

Example:

X, a Somali living in Tanzania, attacks Y, another Somali citizen, injuring him so severely that Y loses the sight of one eye. X is convicted under Tanzanian penal law and is sentenced to two years in prison. X serves his prison sentence and then comes to Somalia. Y is already living in Hargeisa at the time. Y demands that X's tribe pay the appropriate amount of *dia* to compensate him for the loss of his eye. The case is taken to court. The court may recognize the Tanzanian penal judgment to prove that X owes Y compensation for the loss of Y's eye. According to Paragraph 3, the court does not have to obtain the formal request of the Minister of Justice and Religious Affairs to recognize the judgment for this purpose. And it is irrelevant that Somalia does not have an extradition treaty with Tanzania.

Article 11 Extradition

1. Extradition may be granted

(a) only in the cases and in the manner established by law, and

(b) required by international conventions.

2. Extradition shall not be granted unless

(a) the act which gives rise to the demand for extradition

(b) is an offense under Somali law and the foreign law.

3. No person may be subjected to extradition for political offenses.

Explanation:

"Extradition" is the act of returning a fugitive by one country to another. Usually, extradition treaties exist between neighboring countries, in order to help the law-enforcement agencies in each country apprehend and punish criminals who have fled across international boundaries. Sometimes such arrangements are made informally, but usually extradition is based on international treaties. Article 19 of the Constitution of the Somali Republic requires that extradition be based on treaties. This principle is repeated in the first paragraph of Article 11 of the Somali Penal Code.

In addition, Paragraphs 2 and 3 establish other conditions which must be present before extradition can take place. First, the offense committed must be an offense under both Somali and foreign law. And, second, no person may be extradited for political offenses. This same principle is embodied in Paragraph 2 of Article 19 of the Constitution. As shown above, "political offenses" are defined for the purposes of penal law by Paragraph 3 of Article 8 of the Penal Code as those offenses motivated by political reasons.

At the present moment, Somalia does not have any extradition treaties with any country. Therefore, according to both the Constitution and the Penal Code, there cannot be any extradition of Somali offenders from foreign countries and vice versa. In the event that extradition treaties are signed in the future, then the conditions limiting such extradition contained in this article of the Penal Code will apply. The following example is based upon the hypothesis that Somalia has in fact signed an extradition treaty with Tanzania.

Example:

X, a Somali citizen, regularly smuggles cloth, cigarettes, and hashish from Tanzania to Somalia by boat. He is surprised by a police patrol. X abandons some of his cargo and flees in his boat to Tanzania. An extradition treaty exists between Somalia and Tanzania. The Somali police obtain an arrest warrant for X for smuggling and evasion of custom duties. X is then arrested in Dar-es-Salaam by Tanzanian police, and arrangements are made to transport X back to Somalia for trial.

The extradition of X from Tanzania to Somalia is legal under Article 11 of the Penal Code. An extradition treaty between the two countries exists. The offense of smuggling and evasion of custom duties is also an offense under Tanzanian law, and such an offense is not a political one for which extradition is prohibited.

Article 12 Computation and Expiration of Period

1. Where the penal law makes a legal effect dependent upon lapse of time, this shall be calculated by the ordinary calendar.

2. The initial day shall not be reckoned in the period.

Explanation:

This article is simply an administrative one, describing how a period of time shall be counted. Generally, the normal way of counting days according to the calendar shall be used, and the first day shall not be included in the calculations.

Example:

X is arrested on July 1, 1961. After trial, he is convicted and sentenced to two years in prison. He will be released on July 1, 1963. It does not matter whether there are 365 or 366 days in the years spent in prison.

Article 13 Matters Governed by More than One Penal Law or by More than One Provision of the Same Penal Law

Where

(a) the subject matter is governed by more than one penal law, or

(b) by more than one provision of the same law,

(c) the special law or the special provision shall prevail over the general law or the general provision,

(d) unless otherwise provided.

Explanation:

Frequently, different penal laws or even different provisions of the same penal law prohibit the same kind of conduct. This article determines which provision or which law governs the situation. The rule is that the special provision or the special law prevails over the general provision or the general law. This is so because it is assumed that the special law or provision was specifically drafted to cover the matter involved, and that the drafters were aware of the existence of the general provision or general law. On the other hand, the general law was designed to cover an entire field and not every special situation that might arise.

Example:

Articles 44 and 45 of the Public Order Law (Law No. 21 of 26 August 1963) require that all public performances designed for entertainment be held only after the proper authorization from the authorities has been obtained.

Article 46 of that law states that if a person holds a public-entertainment performance without such authorization, he shall be punished for a contravention with imprisonment up to six months and with a fine up to 3,000 Somali shillings.

Article 519 of the Penal Code makes it a contravention for a person to give public-entertainment performances without a license from the authorities. The penalty is a fine from 100 to 5,000 Somali shillings. Nothing is said about imprisonment.

According to Article 13, the provisions of the Public Order Law prevail over the provisions of the Penal Code. The Public Order Law is a special

law, designed to cover certain specified situations, including the regulation of public meetings, entertainment, and performance. The Penal Code is a general law, covering all aspects of penal conduct. Therefore, the penalties specified by the Public Order Law apply to the offense of giving a public performance for the purposes of entertainment without a license.

Article 14 Special Penal Laws

The provisions of this Code shall apply to matters governed by other penal laws in so far as the latter do not provide otherwise.

Explanation:

Besides the provisions of the preceding article, if the Penal Code and other penal laws cover the same general subject matter, the provisions of the Penal Code still apply, unless the other law specifically states that they do not. The reason for this is that the special law may not cover every possible situation that may arise, whereas, as long as the two do not directly conflict, as in the example under Article 13, the provisions of both laws may exist and operate together.

PART II OFFENSES

Chapter I Offenses Committed and Attempted

Article 15 Offenses: Distinction between Crimes and Contraventions

Offenses shall be divided into crimes and contraventions according to the different nature of the punishments respectively prescribed for them by this Code.

Explanation:

As stated above, all offenses are divided into crimes and contraventions. Crimes are the more serious offenses; contraventions are the less serious ones. According to this article, crimes are simply those offenses that are punished more severely than contraventions.

Example:

Robbery is a crime. The punishment according to Article 484 of the Code is imprisonment from three to ten years and a fine from 5,000 to 20,000 Somali shillings.

Cruelty to animals is a contravention (Article 562). The punishment is a fine up to 3,000 Somali shillings.

Article 16 Offenses Committed

Except as otherwise provided by the penal law, an offense shall be considered committed where

(a) the act or omission on the part of the offender

(b) has caused the harmful or dangerous event indicated in the penal law.

Explanation:

This article defines when an offense has actually been committed. It simply states that the offenses shall be deemed to have been committed when the offender's conduct has caused the result prohibited by the penal law. In other words, the offense occurs when the result of the prohibited conduct also occurs.

Example:

X, a Somali citizen, breaks into Y's store at night and takes flashlights, goods, and cloth. X is caught the next day by the police after Y has reported the property missing.

X has committed the offense of Theft (Article 480[1]). The Penal Code in that article prohibits the taking of another person's property for his own benefit. X, by breaking into Y's store and taking Y's property, has committed an act prohibited by the Penal Code. X's action has resulted in the prohibited conduct and therefore X has committed an offense.

Article 17 Crimes Attempted

A crime shall be considered attempted where

(a) the act or omission on the part of the offender

(b) unequivocally directed toward causing the event

(c) has not been entirely completed, or

(d) where the event has not resulted.

Explanation:

Note first that although Article 16 applies to all offenses, Article 17 applies only to crimes. All offenses, both crimes and contraventions, can be committed, but only crimes (*not* contraventions) can be attempted.

An attempt is an act done toward the commission of a crime. There must be an intention on the part of the offender to commit the crime. The acts done as part of the attempt indicate this intention. However, just any

action is not enough. The acts done by the offender must be of the type which are clearly directed toward causing the crime, and the offender must have gone far enough in his actions to indicate that he intended to commit a crime.

Examples:

1. X, a Somali citizen, has been dismissed from his job by the District Commissioner. X decides to take revenge by burning down the District Commissioner's office. He goes out in the middle of the night with two cans of petrol and pours them on the walls of the office building. He then takes out a box of matches, lights one, and is about to throw it on the petrol-soaked walls when a policeman comes down the street, sees X, stops him, and arrests him.

X is guilty of attempting to cause fire and destruction of a building, endangering public safety (Article 330). The act of setting fire to the building and destroying it has not been completed. But X has done several acts, all of which are clearly, or "unequivocally," directed toward causing the destruction of the building and starting a fire. He has obtained two cans of petrol. He has poured it on the walls of the building. He has taken out matches and lit one, and was ready to ignite the petrol. He has done everything he could to commit the crime except taking the final step of actually setting fire to the petrol. His intention to commit the crime is clear from his actions.

2. Y, a poor person living in Mogadishu, goes out on the street early in the morning. He puts a mat down on the ground in front of a hotel, sits down, arranges his *mahawees* and stick, and is just about to put out his hand and ask for alms when he is arrested by a policeman for attempted begging.

Y is not guilty of BEGGING (Article 523), because he has not asked anybody for *baksheesh*. Nor can he be guilty of attempted begging. Begging is a contravention under the Penal Code, and one cannot commit the offense of an attempted contravention.

Article 18 Desistance and Repenting and Acting upon Repentance

1. Where
(a) the offender
(b) voluntarily
(c) desists from the act,
(d) he shall not be liable to punishment for the acts before desisting,
(e) unless such acts themselves constitute an offense.
2. Where
(a) the offender,
(b) after completing the act,

(c) voluntarily
(d) prevents the event,
(e) he shall be liable to the punishment prescribed in respect of the attempted crime, reduced by one-third to one-half.

Explanation:

The principle underlying this article is that a person who voluntarily acts to prevent the offense from occurring should not be punished, and in fact should be encouraged so that others will also voluntarily desist in the future. According to Paragraph 1, if the offender stops the criminal activities, he will not be punished for the acts he has already performed, as long as they are not independent offenses under the penal law.

The second paragraph reduces the punishment where the offender has gone so far as to cause all the actions to be taken, but has prevented the actual harmful result from occurring.

Examples:

1. X intends to set fire to the District Commissioner's office in his town. He takes two cans of petrol with him at night and goes to the office. He pours the petrol out, and then decides that he shouldn't destroy the office. He picks up the empty cans of petrol and is walking away from the building when he is arrested by the police.

X has voluntarily abandoned the actions which would have caused a crime (the destruction of a building) to be committed. Under Article 18(1), he therefore is not liable for the acts he committed before he decided not to burn and destroy the house. Possession of petrol is not an offense in itself. If it were, X could be punished for such possession, regardless of the fact that he desisted from committing the crime of destroying and burning a building.

2. Y decides to kill Z by planting a time bomb in his house. Y gets the explosives, makes the bomb, hides it in Z's house, and then waits for the bomb to go off and kill Z. While he is waiting, Y changes his mind and decides that he doesn't want to kill Z. He goes into the house, tells Z all about the plan to kill him, takes the bomb out from the hiding place, and makes it harmless.

Y's punishment is reduced according to Paragraph 2, because although he completed the act of preparing to kill Z, he prevented the actual event —the death of Z by the explosion of the bomb—from occurring.

Article 19 Attempt to Commit an Impossible Offense

1. Attempt shall not be punishable where,
(a) owing to the unsuitability of the act, or

(b) the nonexistence of the object thereof,
(c) the event is impossible.
2. Where
(a) the act
(b) comprises the ingredients constituting a different offense,
(c) the punishment prescribed for the offense actually committed shall apply.
3. In cases referred to in the first paragraph, the judge may order that the accused person who is acquitted be subjected to security measures.

Explanation:

Attempts to commit impossible offenses are not punishable under the penal law. An impossible offense can be of two types: (1) where the act to commit the offense is unsuitable, or (2) where the object of the offense does not exist. An unsuitable act, for example, would be using an empty pistol, thinking it was loaded, to kill somebody. An example of nonexistence of the object of the offense would be a person's shooting a loaded pistol at the bed of his victim, but since the person is not in bed, the "murderer" has shot bullets into an empty bed. The law, however, recognizes that a person who commits an act as described above has criminal intent and is a danger to society, even though the actual commission of the offense is impossible. Therefore, Paragraph 3 provides that a judge has the discretion to order that the accused person be subjected to security measures (see Article 163). Thus, for example, a person who fires a pistol at an empty bed could be subjected to the security measure of police surveillance and made to report to a police station daily.

Paragraph 2 provides that if the act itself is a different offense, the Court may impose punishment for that offense, although the one attempted was impossible. For example, if a person enters the home of another to kill him, but his pistol is unloaded, he is still guilty of the offense of Violation of the Privacy of the Home (Article 470).

Example:

X, a Somali citizen, decides to kill Y. He goes to Y's house at night with a pistol for which he has no permit, and climbs in the window. He enters Y's bedroom and fires six shots into Y's bed. Y is not in bed, but is in the local tea shop nearby. X is arrested and charged with attempted murder.

X cannot be convicted of attempted murder. Under Paragraph 1 of this article, it was impossible to commit the offense of murder, because Y, the victim, was not there and X could not kill him by firing a pistol into an empty bed. However, because X has indicated that he possessed

the criminal intent of wanting to kill Y, the judge could in this case subject him to security measures in accordance with Paragraph 3. In addition, X has committed the offense of possessing a pistol without a permit and entering Y's house in violation of the privacy of the home. The judge, on the basis of the evidence in the case, convicts X of these two offenses and sentences him accordingly.

Chapter II Elements Constituting the Offense

SECTION I MATERIAL ELEMENTS OF OFFENSES

Article 20 Action and Effect: Relation of Cause and Effect

1. No one may be punished in respect of an act or omission deemed by the law to be an offense
(a) if the harmful or dangerous event upon which the existence of the offense depends
(b) is not the consequence of his act or omission.
2. Where
(a) there is a legal obligation to prevent an event,
(b) failure to prevent it shall be equivalent to causing it.

Explanation:

This article deals with the element of all offenses called "*causality.*" Causality is the relationship between the action of the offender and the result of such action. All offenses, to be punishable, must be the result of human conduct—either by an affirmative act or by an omission. The offense must be the consequence of the action by the offender. The difficulty comes in determining whether such causality exists.

Generally speaking, the simple test for causality is to ask whether the offense would have resulted but for the actions of the accused. If it can be said that if the accused had not acted as he did, then the event would not have occurred, causality between the action and the event then exists. However, if the event would have occurred anyway, even if the accused had not acted, then he cannot be said to have caused the event.

Paragraph 2 defines when an omission is said to have caused an event. If the person has a legal duty to prevent the event from occurring and he does not perform this duty, then, for purposes of the penal law, he shall be deemed to have caused the event.

Examples:

1. X wants to attack and injure Y. He hits Y several times about the head and chest with his stick. X is charged with Hurt (Article 440).

There can be no doubt that X caused the injuries to Y. But for X's attacking Y, Y would not have been injured. This is the most elementary example of the concept of causality. The "harmful or dangerous event" (the injury to Y) is a direct consequence of X's actions (his hitting Y).

2. Z intends to kill Q. He buys a rifle and some ammunition and announces that he is going to find Q and kill him. Q, knowing that Z is looking for him, arms himself and tells his friends that he is not afraid of Z. While in a town, Z sees Q in the street and calls out to him. Q, eager to challenge Z to a fight, rushes out into the street, is hit by a large truck, and dies immediately.

Z is not guilty of Q's death, even though he publicly declared his intention to kill Q. Z has not taken any action which resulted in the harmful event—Q's death. Q's death was a result of his being hit by a truck. It cannot be said that, but for Z's actions, Q would still be alive.

Article 21 Concurrence of Causes

1. The concurrence of
(a) pre-existing, or
(b) simultaneous, or
(c) supervening causes,
(d) even though independent of the act or omission of the offender, shall not exclude the relation of causality between the act or omission and the event.

2. Supervening causes shall exclude the relation of causality only when they have been by themselves sufficient to determine the event.

However, if the act or omission previously committed constitutes in itself an offense, the punishment prescribed therefor shall be applied.

3. The preceding provisions shall also apply when
(a) the pre-existing or simultaneous or supervening cause
(b) consists of the unlawful act of another person.

Explanation:

The Penal Code distinguishes among three different types of causes: pre-existing, simultaneous, and supervening causes. A *pre-existing* cause is one that existed before the event—for example, a fatal illness that a murdered person had. The illness is the pre-existing cause existing before the event—that is, his murder. A *simultaneous* cause is one that occurs at the same time as the event—for example, a wound or blow made by another person attacking the same victim at the same time. A *supervening* cause is one that exists after the event—for example, a wound made by a second assailant after the first person had already attacked and wounded the victim.

The rule prescribed by Paragraph 1 of this article is simply that all these types of causes—pre-existing, simultaneous, and supervening—do not affect the causal relationship between the act and the event, even if these causes occurred independently of the act of the defendant.

However, at some point a cause will affect the event and "break" the chain of causality between the offender and the action he is alleged to have caused. The difficulty is in determining when such "break" occurs. Paragraph 2 states that "supervening causes" affect the relationship of causality if such causes by themselves would have caused the event.

This article can best be explained by examples. However, the general rule is as follows: First, there must be a causal relationship between the action of the offender and the event that resulted. This is the principle contained in Article 20. Second, this causal relationship continues to exist, and thus makes the offender liable, despite events that exist before, during, or after the event caused by the offender. Third, the causal relationship is broken (and the offender is not liable unless his action is also an offense by itself) by supervening causes which by themselves are sufficient to cause the event.

Examples:

1. X plans to kill Y because Y has insulted him. One night, X sneaks into Y's house and stabs him to death. X is arrested by the police the following day. At the trial, X's lawyer claims that everybody in the town knew that Y had been very sick with tuberculosis and would have died within two months if X had not killed him. Therefore, the attorney argues, X should not be punished for killing a man who would have died soon anyway.

The fact that Y had tuberculosis, which would have killed him soon, is a *pre-existing* cause. According to the first paragraph of this article, this pre-existing cause is no excuse. The causal relationship between X's action (the stabbing), and the event (Y's death), still exists.

2. X plans to kill Y, as in the above example. He stabs Y but does not kill him. The police arrest X the following day, and a dresser comes to take care of Y's stab wound. The dresser does not properly clean the knife wound, which becomes infected. Y dies as a direct result of the infection, which poisons his blood. X is charged with murdering Y.

The failure of the dresser to properly clean the wound is a *supervening* cause which has occurred after the act—the stabbing of Y. According to Paragraph 2, such supervening causes "break" the relationship of causality if by themselves they would have caused the event—the death of Y. The normal causal relationship is that X, by stabbing Y, caused his death. But the death of Y was a result of the failure of the dresser to properly clean

the wound. Y died as a result of the infection, not the stab wound itself. Therefore, the action of the dresser is a supervening cause, "breaking" the chain of causality, and X is not liable for the death of Y. It cannot be said that, but for X's action, Y would not have died. Had the dresser been careful, or had there been proper medical care, Y would have lived. However, X's attack on Y and the stabbing is in itself a separate offense, and X is punishable for hurt or attempted murder, but not murder.

3. L decides to kill M for reasons of jealousy. N also decides to kill M, for tribal reasons, and is unaware of L's plan. L gets to M's house first and stabs M while he is asleep. Certain that M is dead, L leaves. N then comes to the house, and also stabs M. M then dies. The police, after a few days, catch and arrest both L and N. L and N then learn for the first time that the other had also tried to kill M. At the trial, each one claims that the other killed M, and his wound was not the cause of M's death. The medical testimony shows that either wound would have been fatal, and that M would have died shortly after being stabbed by either L or N.

Both L and N are guilty of murder. Paragraph 3 says that the provisions of the article apply even where the independent act is an unlawful one. For L, N's stabbing of M is a *supervening* cause—it occurred after the act of L stabbing M. According to Paragraph 2, such supervening causes do not affect the causal relationship of L's stabbing M unless such cause would have by itself caused M's death. The medical testimony shows that L's stab wound would have killed M anyway, so Paragraph 2 does not apply. Therefore, L is liable for the death of M and is guilty of murder.

With regard to N, L's stabbing of M is a *pre-existing* cause—that is, L's stab wound existed prior to N's stabbing of M. According to this article, pre-existing causes do not "break" the causal chain. L's stabbing of M is just like the example in which the victim has tuberculosis. N is still liable for the murder of M.

Article 22 Offenses Punishable Subject to Existence of a Condition

Where the law requires the existence of a condition in order to render an act punishable,

(a) the offender shall be responsible for the offense,

(b) even though the consequence which is a necessary condition for rendering the act punishable was not desired by him.

Explanation:

This article deals with the concept of objective responsibility. It is an exception to the principle embodied in the following article, that no one may be punished for an act or omission made an offense by law unless he has done it willfully and knowingly. According to Article 22, a person

can be punished for an offense even though he did not desire the consequence. This will occur in two general types of situations:

(1) preterintentional offenses (as explained in the following article), and

(2) offenses which automatically result from another offense.

Thus, the death of a person is a condition for the charge of murder. If a person strikes another, intending only to hit him in the face, but he knocks him to the ground, where the victim hits his head on a rock and dies, the offender is guilty of the death of the victim, even though he never intended to kill that person. The same is true where one offense automatically follows from another. The accused is liable for the offense that automatically follows, even though he did not intend it to happen.

Example:

X is a doctor in Mogadishu. He is approached by Y, a woman who is carrying an illegitimate child, and asked to perform an abortion. X consents, and asks a fee of five hundred Somali shillings. The woman pays the amount and comes to X's office one night for the operation. As a result of the operation, Y dies, despite X's efforts to save her. X is arrested and charged with committing an abortion and causing death in the process of abortion.

X did not desire the death of Y. He intended solely to commit an abortion. The condition for the offense of DEATH OF THE WOMAN (Article 421) is a consequence X did not want, but one necessary for the charge under this article. According to Article 22, X can be tried for this crime despite his intention.

SECTION II PSYCHOLOGICAL ELEMENT

Article 23 Psychological Element

1. No one may be punished for an act or omission deemed by law to be an offense unless he has done it

(a) knowingly, and

(b) willfully.

2. No one may be punished for an act of omission deemed by law to be a crime unless he has done it

(a) with criminal intent,

(b) except in cases of preterintentional crimes or

(c) crimes committed with culpa,

(d) which are expressly provided by law.

3. In regard to contraventions, a person shall be answerable for his act or omission

(a) done knowingly, and
(b) willfully,
(c) whether it be done with criminal intent, preterintentionally, or with culpa.

Explanation:

Section II deals with the second major element of the offense—that is, the psychological element or the state of mind of the offender. It is not enough that the offender has by his actions "caused" the offense, in the sense of Article 20. The offender must also have a certain state of mind as described in this article. The general rule is that the person must have committed the act deemed an offense both "knowingly and willfully." This is the principle embodied in Paragraph 1. The phrase "knowingly and willfully" means that the offender's mind was directed toward producing the event. It is sufficient if the offender wanted the event to occur. He does not have to want the event to occur at the precise moment that it does in fact occur.

The general rule as stated in Paragraph 1 applies to all offenses, both crimes and contraventions. Paragraph 2 deals with the intent necessary to be guilty of having committed a crime (not a contravention). With regard to crimes, additional psychological elements are required. The rule is that no one may be punished for a crime unless the person did the act with criminal intent. Criminal intent is the desire to do something defined as a crime by law. For example, if a person plans a murder and then kills the victim, he has the necessary criminal intent required by law. He has planned and desired some harmful or dangerous event which is defined as a crime. A person may also be punished for committing a crime even though he does not have the criminal intent required by this paragraph. The exception to the general rule permits punishment for a crime if the offender has committed the crime with *preterintentional intent* or with *culpa*. The word "preterintentional" means simply beyond the intent of the person. In other words, he has caused by a prohibited act or omission a more serious result than he wanted or even thought would happen. The word "culpa" means negligence, when, by not observing a law, regulation, order, or instruction, a person causes a result he did not want, because of imprudence, carelessness, or lack of skill, or non-observance of laws, regulations, orders, or instructions.

Paragraph 3 deals with the intent necessary to convict a person of a contravention. The general rule is that a person is subject to conviction if he did the act or omission knowingly and willfully. It does not matter whether the person committed a contravention with criminal intent, preterintentionally, or with culpa. In other words, the sole test for the

psychological element with regard to contraventions is whether the offender knew what he was doing and committed the contravention willfully.

Examples:

1. Q, a three-year-old boy, finds his father's rifle in a closet in the house. He takes it out and, while playing with it, pulls the trigger. The rifle is loaded, and the bullet hits Q's sister and kills her. Q's action of pulling the trigger caused the event—his sister's death. The causal relationship required by Article 20 exists. But Q did not intend to kill his sister. Nor, because of his age, can Q be held responsible for his actions. He did not go beyond the intent of an illegal act and preterintentionally kill his sister, nor did he do so negligently. Q, as a three-year-old boy, had no intentions at all, or knowledge or comprehension of what he was doing. So, although the causal relationship exists, the other element of an offense, the psychological element, is lacking, and Q is not guilty of committing a crime.

2. X, a nomad, comes to a waterhole. Y, a member of another tribe, is also there with his camels. X decides to kill Y because of tribal hatred. He takes out his knife and, when Y is not looking, stabs him in the back. X is guilty of murdering Y.

The causal element is present: X's action of stabbing Y resulted in Y's death. The psychological element is also present. X had the criminal intent to kill Y. He wanted to commit an act defined as a crime under the Penal Code, the murder of another person.

3. V and W are sitting together in a tea shop. V insults W, W then says something about V's tribe, V in turn insults W back, and the two men begin fighting. V strikes W in the face, and W, in falling backward, strikes his head against a stone and dies. V can be punished for the death of W.

V has committed the crime as a result of preterintentional intent. He did not intend to kill W. He merely intended to hurt him by hitting him in the face. But his action of hitting W was in itself illegal, and W's death was a result, although unforeseen, of V's illegal action. V can therefore be held responsible and convicted of a crime, although he did not have criminal intent and did not foresee that his action would result in W's death.

4. Z is driving his car down the Afgoi-Mogadishu road at night. It is raining, and Z is going 135 kilometers per hour. Because he is driving so fast at night, Z fails to see a man walking in the road, and he hits him with the car, killing him instantly. Z is guilty of causing the death of the man.

Z committed the crime with culpa—that is, negligently. He did not

have the criminal intent to kill the man on the road. In fact, he didn't even know him. Nor did he commit the act preterintentionally—that is, go beyond his intention. He acted illegally by negligently driving down the road at a fast speed during the nighttime. Therefore, the death of the man was a result of his negligent action, and Z is responsible criminally.

5. P, the owner of a tea shop, decides to run a game of dice every night in order to attract more customers. He offers the winner of the game fifteen Somali shillings and buys several pairs of dice and some extra tables. One night while the game is on, P is arrested by the police for CONDUCTING GAMES OF CHANCE in violation of Article 553 of the Penal Code. P is guilty of committing this contravention.

The only psychological element that must be present for the commission of a contravention is that the person "knowingly and willfully" committed the act. P did have such intention with regard to conducting the dice games.

Article 24 Offenses Committed with Criminal Intent, Preterintentionally, or with Culpa

1. A crime

(a) is with criminal intent where the harmful or dangerous event which is the result of the act or omission is foreseen and desired by the offender as a consequence of his act or omission, and where the law makes the crime dependent upon such event;

(b) is preterintentional, or beyond the intent, where the harmful or dangerous event arising from the act or omission is more serious than the one desired by the offender;

(c) is with culpa, or against the intent, where the event, even if foreseen, is not desired by the offender and occurs as a consequence of negligence, imprudence, lack of skill, or non-observance of laws, regulations, orders, or instructions.

2. The distinction between an offense committed with criminal intent and one committed with culpa, which is laid down in this article with respect of crime, shall also apply to contraventions where, by law, a legal consequence is made dependent upon such distinction.

Explanation:

This article defines the terms "criminal intent," "preterintentionally," and "culpa." These terms have been dealt with and explained in the preceding article.

Paragraph 2 states that the difference between crimes committed with criminal intent and those committed with culpa shall also apply to contraventions, if the law gives different legal consequences to such a distinction. Santiapichi describes the meaning of this paragraph as follows:

> A decree of Presidential amnesty can, for example, limit its effect to crimes committed through negligence: in such a case, it is obvious that in order to establish the scope of the application of the amnesty, one must have regard in cases of contraventions to the distinction between criminal intent and "culpa." (SANTIAPICHI, APPUNTI DI DIRITTO PENALE DELLA SOMALIA, p. 59.)

Article 25 Acts Erroneously Thought to Be Offenses

Whoever

(a) commits an act which does not constitute an offense,

(b) under the erroneous impression that it does constitute an offense,

shall not be punishable.

Explanation:

A person may have the intention to commit an offense, and may actually commit an act he believes to be illegal but that in fact is not punishable by law. Regardless of the person's intent, the general principle of Article 1 applies: no one may be punished for an act which is not expressly made an offense by law. Therefore, it is irrelevant what the person thinks is illegal. The act must in fact be prohibited by law, or it cannot be an offense. Article 25 merely states this principle. It is included in the section dealing with the intent of the offender because it is another exception to the rule that a person intending to commit an offense possesses one of the material elements necessary to prove an offense. The offense must be defined by law.

Example:

X, a young Somali, is prohibited by his father from smoking. His father tells him that it is an offense to smoke in public on Fridays. X, angry with his father, decides to go to the nearest police station and smoke in public and get arrested, hoping to embarrass his father. X stands in front of a station, smokes a cigarette outside, and asks a policeman to arrest him for violating the law. The policeman arrests him for smoking in public on Fridays.

X is not guilty of an offense, even though he had the intention to violate a provision of what he thought the law was, and acted to violate that provision. No provision of the law prohibits smoking in public on Fridays. Therefore, X could not have committed an offense, regardless of his intention.

Article 26 Accident or Force Majeure

Whoever
(a) has committed an act
(b) through accident or
(c) *force majeure*
shall not be punishable.

Explanation:

As shown above, the general principle is that no one can be held responsible for the commission of an offense unless he committed an act knowingly and willfully. Therefore, any situation in which the person commits an act because of accident or circumstances beyond his control is outside knowing and willful action and the person cannot be held criminally responsible for such action.

An *accident* is a situation where the person could not have prevented the event from occurring no matter what he did. Carabba illustrates this point with the saying in Italian: "Accidents begin where fault ends" (CARABBA, CODICE PENALE, p. 90).

"*Force majeure*" is a French term meaning, in effect, a circumstance beyond the control of the person, constituting an irresistible force. The physical action of the person cannot be considered evidence of the will of the person, precisely because he was subject to an irresistible force; since his action was not evidence of his will, he cannot be punished for his act.

Examples:

1. X, a Somali living in Afgoi, is driving down the Afgoi-Mogadishu road at a reasonable speed. In front of him, a donkey cart loaded with grass is moving at a slow pace. X starts to pass the donkey cart and blows his horn to let Y, the boy on the cart, know that he is passing. The donkey at this moment falls, throwing Y off the cart into the path of X's car. X stops as quickly as he can, but hits Y and injures him.

X is not criminally liable for hitting Y. He was driving with all due care. No one, no matter how carefully he was driving, could have avoided hitting Y. Y was thrown in front of X's car by the fall of the donkey, an accidental event over which X had no control, or could have reasonably foreseen. He was neither negligent nor did he want to hit Y.

2. Z, a Somali boy, is walking near an army camp. A strong wind comes up and blows Z against and through the wire fence bounding the army camp. Z is arrested and charged with entering a military base without authorization.

Z cannot be held criminally responsible. His action, the entry into the army camp, was a result of *force majeure*—that is, circumstances beyond his control. He didn't want to enter the camp and had no intention of doing so. He was blown into the camp by the wind.

Article 27 Physical Compulsion

1. Whoever
(a) has committed an act,
(b) having been compelled to do so by others
(c) by means of physical violence,
(d) which he could not resist, or
(e) from which he could not in any way escape,
shall not be punishable.
2. The person who employed the violence shall be responsible for the act committed by the person constrained.

Explanation:

This article is another example of when the law deems that the person is not responsible for his actions and is therefore not punishable criminally. If a person is subjected to superior physical force and violence so that he must act in an illegal way, even if he does act illegally, he cannot be held responsible for such actions. But there is a severe limitation to this exception. The person being compelled by physical violence to act illegally must be unable to resist such violence and must have no chance of escape. If a person could have escaped and did not, then his defense—that he committed the act subject to physical violence—is not a defense to punishment.

Example:

X, a young boy, is returning from his uncle's house late at night. As he turns the corner of a dark street, he surprises two men trying to break into a store. Y, one of the men, takes out his knife and grabs X to prevent him from running away and bringing the police. Z, the other man, tries to break the lock to the door with an iron bar, but it is too strong for him. He asks Y to help him. Y says he cannot, because then he would have to let go of X, who would run away. Y then puts his knife at X's throat and tells him to help Z pull the iron bar and break the lock and the door. X, afraid of being killed, obeys. While X is helping Z, a policeman comes upon the three of them, disarms Y, and arrests all three for attempted theft. X's defense is that he was forced by the threat of immediate physical violence to help Y and Z.

X is innocent of the charge of attempted theft. He was forced by Y, at the point of a knife, to help Z break the door. He did not act out of his own free will, and he had no chance to escape, since Y was always holding or watching him. According to the second paragraph of the article, Y is responsible for the acts he forced X to do, but since he is already charged with attempted theft, that paragraph does not add anything to this criminal responsibility. Y would also be criminally liable for threatening X with unlawful violence, in violation of Article 468 of the Penal Code.

Article 28 Mistake of Fact

1. Nothing is an offense which is done by any person by reason of mistake of fact as to the act constituting the offense.

However, where the mistake is committed through culpa, and the fact constitutes a crime committed with culpa, punishment shall not be excluded.

2. Mistake of fact as to the act constituting a particular offense shall not exclude liability to punishment where the act constitutes a different offense.

3. Mistake of law, other than the penal law, shall exclude liability to punishment where the mistake of law has resulted in a mistake of fact as to the act constituting the offense.

Explanation:

Normally, a mistake of fact precludes punishment for an offense, because the person does not have the intent necessary to commit that offense. It is obvious that he cannot have such an intention if he thinks that what he is doing is not an offense because of a mistake as to what the facts are. However, if the mistake is a result of negligence, then the person, although he cannot be held criminally responsible for intending to commit the event, can be held criminally responsible for committing the act negligently.

Paragraph 2 refers to the situation in which the person makes a mistake as to the existence of a certain fact and commits an act which would be an offense even if the mistake of fact had not been made.

Paragraph 3 deals with a mistake of law, instead of a mistake of fact. The general rule is that ignorance of the law is no excuse for punishment for the offense (Article 5). This rule holds true. But if a person makes a mistake of any law other than the penal law, he may not be held criminally responsible where, as a result of his mistake, he thinks that he is acting lawfully. This is so because he lacks the intent necessary under Article 23 to commit an offense.

Examples:

1. X is a policeman living in police barracks. His friend and fellow policeman, Y, tells him that instead of paying X the thirty-five Somali shillings he owes him, he will give X two *tobes* which are lying on Y's bed. X goes into the barracks and takes two *tobes* off the bed which he thinks is Y's. In actual fact, the *tobes* belong to Z and it was his bed they were lying on. Z complains that X has stolen his *tobes*.

X could not be criminally responsible for taking Z's two *tobes*. He didn't have the intention to steal them. Instead, he thought they belonged to Y and, since Y had given them to him, he was entitled to take them. He made a mistake of fact as to the act which constituted an offense (the ownership of the *tobes*).

If X, however, negligently took the two *tobes* when he should have known that they belonged not to Y but to Z, then he would be guilty of having committed an offense due to negligence, if theft was a crime that could be committed negligently. But as will be seen in the discussion of Theft (see Article 480), theft can only be committed with criminal intent. Therefore, X cannot be punished, even though he should have known that the *tobes* did not belong to Y.

2. P, a Somali nomad, decides that he wants to marry Q, a Somali girl he has seen in the street. P does not know that she is already married to R. One day, P comes into town toward evening, sees Q on the street near a store, and abducts her into the interior. It is P's intention to marry Q and then get approval of the marriage from the elders of her tribe.

If Q were not married, P would be guilty of an offense under Article 401, Abduction for Purposes of Marriage. But Q is married and P has made a mistake of fact. This mistake, according to Paragraph 2, does not exclude criminal liability if the act (taking Q against her will) is an offense under another article of the Code. P is guilty of violating Article 460, Seizure of a Person. His mistake of fact as to Q's marital status does not excuse his action of seizing Q.

3. T, a Somali businessman, decides to open a theater in a town and put on shows of Somali music and poetry. T begins to build his theater, and pursuant to the provisions of the Public Order Law, obtains permission from the District Commissioner to put on a program of Somali music on the night of December 3rd (Public Order Law, Law No. 21 of 26 August 1963, Articles 44 and 45). By the night of December 3rd, the musicians that T wanted to perform have not come from Hargeisa, and T decides to show a movie instead. T believes that since he already has authorization to have Somali musicians perform for this night, he does not need a special authorization for showing a movie on the same night.

T shows the movie and is arrested the next day for showing movies without prior authorization from the competent authorities, in violation of Article 521 of the Penal Code.

T is criminally responsible for showing the movies without first having obtained permission from the authorities. T made a mistake of law under the Public Order Law that is also a penal law, which resulted in his violating the Penal Code. He assumed that he could show the movies without additional authorization, and he acted as if the movies were in fact authorized when according to law they were not. His mistake does not come within Paragraph 3, because the Public Order Law is a penal one. Therefore, he is liable for his act.

Article 29 Mistake Caused by Deceit of Another

The provisions of the preceding article shall also apply if
(a) the mistake of fact as to the act constituting the offense
(b) is caused by deceit
(c) committed by another person.

In this case, however, the person who has induced the deceived person to commit the act shall be liable for the same.

Explanation:

This article is the logical counterpart of Article 27, which provides that a person is not criminally responsible for actions that are induced by physical compulsion. In this case, the rule is that a person is not criminally responsible for actions induced by deceit. The person deceived cannot possibly be said to have willfully and knowingly committed an offense, since he was tricked into committing it.

Example:

X, a Somali citizen, is arrested for robbery. He is tried by the Regional Court and is sentenced to four years imprisonment, under Article 484(1). The regional judge orders that he be imprisoned in Mandera, near Hargeisa. While being taken there, X hits his police guard on the head, jumps out of a Land Rover, is shot in the leg, but escapes into the interior around the town of Erigavo. The police begin a search of the area, looking for X. X sneaks into town and meets Y, a merchant. X tells Y that he was shot in the leg while hunting and wants to get to the hospital in Burao. Y offers to let X ride in his Land Rover when he leaves for Burao the next day. About thirty-five kilometers outside of Erigavo, they are stopped by the police, who are searching vehicles to prevent X from escaping. They recognize X and arrest him, and also arrest Y for assisting X to escape, in violation of Article 306.

Y is not criminally responsible for violating Article 306. He was not knowingly aiding X to escape. He thought X had been injured while hunting, and was trying to get X to a doctor in Burao for treatment. He was deceived as to X's identity by X himself, who told him the story about being injured as a result of a hunting accident.

Article 30 Injury of Person Other than the One Against Whom the Injury Was Directed

1. Whenever,
(a) by reason of a mistake in the use of the means for carrying out an offense, or
(b) for any other reason,
(c) an injury is caused to a person other than the one against whom the injury was directed,
the offender shall be liable as if he had committed the offense against the person whom he desired to injure, without prejudice to the provisions of Article 43 regarding aggravating and extenuating circumstances.
2. Where,
(a) in addition to the other person,
(b) the person against whom the injury was directed
(c) is injured,
the offender shall be liable to the punishment prescribed in respect of the more serious offense, increased up to one-half.

Explanation:

Paragraph 1 applies to the situation in which the offender mistakenly commits the act against the wrong person. In a technical sense, the offender cannot be said to have wanted to commit the act against the person he actually injured. He knowingly and willfully wanted to injure someone else. But the offender cannot be allowed to go unpunished merely because he made a mistake and injured the wrong person. Therefore, the principle of this article is that the offender will be liable for injuring the wrong person, in the same way he would be liable if he had injured the person he wanted to hurt. The reference to aggravating and extenuating circumstances mentioned in Paragraph 1 is discussed under Article 43.

Paragraph 2 applies to the situation in which the offender injures not only the person he intended to harm but also another person by mistake. In this case, the punishment is greater than if he had injured only the person intended.

Examples:

1. X intends to beat Y for insulting him in public. X sees Y enter a house, and X takes his stick and hides by the door, planning to hit Y when he comes out the door. As a person comes out, X hits him on the head with his stick. The person falls to the ground and X sees that he has hit Z, a friend of X's.

X is guilty of committing HURT, even though he didn't want to injure his own friend. His intention to cause hurt to Y is taken as being transferred to the injury he did to Z.

2. Q intends to burn down B's house with B inside. He goes to B's house at night, thinking B is alone inside, and sets fire to it. But C was also inside, and both B and C are injured and the house destroyed. Q is criminally liable not only for the hurt caused to B, whom he wanted to injure, but also for the hurt caused to C, whom he didn't even know was there. He has injured C by mistake and is liable for such injury, even though, in the technical sense, he could not be said to have wanted to injure C.

In this example, if Q, by his action of setting fire to the house, had caused GRIEVOUS HURT to C and only HURT to B, the punishment prescribed for causing grievous hurt to C would be increased up to one-half, in the discretion of the judge. Thus, for example, if Q is sentenced to six years imprisonment for causing grievous hurt to C, his sentence can be increased up to another three years.

Article 31 Event Different from That Desired by the Offender

1. Apart from the cases referred to in the preceding articles,
(a) by reason of a mistake in the use of means for carrying out the offense, or for any other reason,
(b) an event is caused
(c) which is different from that desired,
the offender shall be liable for the event which was not desired, where the act constitutes a crime committed with culpa.

2. If the offender has also caused the desired event to occur, the provisions governing the concurrence of offenses shall apply.

Explanation:

This article deals with preterintentional acts—that is, acts beyond or different from the intention of the offender. The interpretation of Article 31 was recently considered by a panel of the Supreme Court of the Somali Republic in the case of *Musa Dualeh Ali* v. *State* (Criminal Appeal

No. 6 of 1965, SOMALI LAW REPORTS [Hargeisa and Burao Regions], 1964–65, pp. 227–32). In that case, the Supreme Court explained Article 31 as follows:

The principle underlying Article 31 is that where a person does an act and that act causes an event not desired by him, he will be liable for the event not desired by him, where the act constitutes a crime not committed with culpa. Where the act causes an event not desired as well as the event desired by him, then he will be liable for the event which was not desired where the act constitutes a crime committed with culpa and also for the event which was desired. Thus he will be punished for both offenses.

There are two exceptions to the general principle laid down in Article 31 S.P.C.

(1) If the preterintentional event is the death of a person, and if at the time of committing the offense which was the involuntary cause of death the offender intended to commit assault (Art. 439 S.P.C.) or cause hurt (Art. 440), he will not be liable for death caused by negligence and for the desired event in accordance with Article 31, but for homicide without the intention of causing death under Article 441, provided the intention of the offender was to cause assault or hurt.

But if the offender had intended to commit an offense other than assault (Art. 439) or hurt (Art. 440), the general principle has to be applied, and the offender will be liable for the preterintentional event as well as the event he desired (Art. 447).

(2) The second exception is where the preterintentional event (that is, the death of a person or any other event) is specifically considered by law as an aggravating circumstance in another offense; for example, a doctor who causes the abortion of a woman (with or without her consent) as well as her death (an event which was not desired by him) will be liable only for causing abortion with aggravating circumstance under Article 421 (SOMALI LAW REPORTS, p. 231).

In other words, the general rule is that the offender can be punished for committing two offenses—the one he intended and the event he did not intend but that occurred as a result of his criminal act. Then there are two exceptions. The first exception is that if the offender intended to commit assault or hurt, and instead he caused the death of his victim, he will not be liable for *both* assault (the intended event) and death caused by negligence (the unintended event) but only for HOMICIDE WITHOUT THE INTENTION OF CAUSING DEATH, in violation of Article 441 of the Penal Code. The second exception is that if the unintended event is an aggravating circumstance of the intended crime, then, again, the offender may not be punished for both the intended and unintended event but solely for the intended event with an aggravating circumstance.

The example of the death of the mother as a result of an abortion is a good one (see explanation under Article 421).

Instead of using a hypothetical example, let us examine the actual case the Supreme Court considered.

Example:

Musa Dualeh Ali v. *State*

Musa Dualeh Ali, a boy about fourteen years of age, attacked another boy. While he was sitting on top of the boy, with one hand on his throat and using the other to beat him, two nomads came upon the scene. Musa ran away and one of the nomads took care of the injured boy and the other chased after Musa. He was eventually caught and charged with Homicide without the Intention of Causing Death, in violation of Article 441 of the Penal Code (the boy he had been beating had died). Musa was convicted by the Trial Court and sentenced to four years in prison. He appealed his conviction.

The Court of Appeal in Hargeisa decided that he was guilty but that he had been convicted under the wrong article of the Penal Code. The Court ruled that he should have been convicted under Article 447 for causing death as a consequence of another crime (assault), and changed his sentence to twelve months in prison. The Court of Appeal was thus applying Article 31 to read that both the intended crime, the assault, and the unintended result, the death of the victim, should be punished. Therefore, it was the Court's opinion that Musa could be tried both for Assault (Article 439) and for Death Caused as a Consequence of Another Crime (Article 447).

The Attorney General appealed to the Supreme Court, contending that the conviction under Article 441 was correct and that Musa could not have been convicted under Article 447. The Supreme Court agreed with the Attorney General. As shown above, the Supreme Court stated that this case falls within the exception to Article 31 involving cases of assault. If the offender intended to commit assault, and his act resulted in the death of the victim, he cannot be tried for both Assault (Article 439) and Death Caused as a Consequence of Another Crime (Article 447) but only for Homicide without the Intention of Causing Death (Article 441).

Chapter III Circumstances Excluding Punishment

The preceding chapter dealt with the material and psychological elements of the offense, indicating what elements must be proven by the prosecution in order to make out the case against the accused. This chapter involves those circumstances which, if existing, prevent the accused from being convicted and punished. They are circumstances deemed by the law to permit the accused to act in a way which under other circumstances would have been an offense.

Article 32 Consent of the Injured Party

Whoever

(a) injures or places in jeopardy a right

(b) with the consent of the person who can legitimately dispose of it shall not be liable to punishment.

Explanation:

The general rule is that if a person consents to an act which results in his injury, the person who has caused the injury is not criminally liable. The consent must be freely given, and, more important, it must be given by someone who has both the right and the capacity to consent. Consent means a willingness or agreement before the act is committed, not afterward. Obviously, the person giving the consent must be capable of understanding what he is consenting to. He cannot be insane, or of such a young age that he lacks the understanding to know what he is consenting to. The Penal Code does not specifically state at what age a child is deemed to have the necessary understanding to meaningfully consent. However, in Article 59 the Code states that no child under the age of fourteen years shall be subject to criminal punishment for his acts. This article indicates the judgment of the law that, for purposes of committing offenses, a child under fourteen does not know what he is doing and therefore is not responsible for his actions. By logical extension, the age of fourteen should be the minimum age at which a minor can meaningfully consent to actions against him.

In addition, there are certain implicit conditions with regard to this article. No person, regardless of whether he is completely sane or not, can consent to have another take his life. Thus, there can be no consent to murder. Nor can one person consent to have harm committed to another person unless he has exclusive power over that person, as, for example, when a father consents to have his three-year-old daughter operated on by a doctor.

Example:

X is a boxer living in Mogadishu, and he is approached by a sports committee to box against Y. X agrees to this and is promised the sum of 100 Somali shillings for participating. During the boxing between X and Y, Y hits X so hard that X loses the sight of his right eye.

Y is not liable for causing grievous hurt to X, under Article 440 of the Penal Code, because X consented to the boxing match, and Y fought fairly and according to the rules.

Article 33 Exercise of a Right or Performance of a Duty

1. Nothing is an offense which
(a) is done in the exercise of a right, or
(b) in the performance of a duty imposed by law, or
(c) by lawful order of a public officer.

2. If an act constituting an offense is committed by order of a superior officer, the officer who has given the order shall be liable for the offense. The person who carried out the order shall also be liable for the offense, unless, owing to a justifiable mistake, he believed he was obeying a lawful order.

3. Whoever carries out an unlawful order shall not be punishable when the law does not allow him to question the legitimacy of the order.

Explanation:

The principle contained in this article is that if a person acts in the exercise of a right or a duty imposed by law, or by a lawful order of a public officer, he cannot be punished for the results of that action. But it is implicit that the right, duty, or order has not been exceeded or abused.

In every case of this type, it is first necessary to determine if a right, duty, or order existed. Then the judge must determine whether such right, duty, or order was exercised lawfully. If the action is a result of an unlawful right, duty, or order, the consequences of such action are subject to punishment, as is the case with any unlawful activity. If the action is a result of a lawful order by a public officer, it is necessary to ascertain that the person who acted had received such an order and was acting pursuant to it.

Paragraph 2 applies to the difficult situation where the person acting is subject to the command of a superior officer. According to this paragraph, the officer giving the command is criminally liable if the action is an offense. However, the person who carried out the order is also liable, unless he believed that he was acting pursuant to a lawful order, as the result of a justifiable mistake. It would seem at first that only if the subordinate were justifiably mistaken in assuming that the order was lawful would he avoid criminal liability himself. But Paragraph 3 prescribes the other main exception to the responsibility of subordinates, by stating that the person who carries out an unlawful order shall not be liable for his actions if the law does not allow him to question the correctness of the order.

Examples:

1. X, a policeman, is ordered by the District Court judge to take a signed search warrant and search the house of Y, a suspected smuggler. X goes to Y's house, shows him the search warrant, and requests Y to step aside and let him enter. Y refuses to do so, so X pushes Y aside and enters the house.

X is not guilty of Violation of the Privacy of the Home Committed by a Public Officer (Article 471). X has acted pursuant to a search warrant issued by a district judge in conformity with Article 53 of the Criminal Procedure Code. He is therefore acting pursuant to a lawful order (the search warrant) of a public officer (the District Court judge) and is within the terms of Paragraph 1 of the article.

2. Z, a policeman, is ordered by his superior officer to guard a school in which an official from the Ministry of Education is holding a meeting. A large crowd gathers and chants slogans against the Ministry official. Z's superior officer comes out and listens to these chants. He orders the crowd to leave or be quiet. As the crowd turns to go, B, a small boy in the crowd, yells out an abusive slogan against the government. The superior officer orders Z to shoot the boy for being disrespectful. Z fires, wounding the boy in the leg.

Z's superior officer is responsible for the wounding of the boy, because he gave an order which resulted in an offense (the injury to the boy). Z is also liable for the injury, because his superior officer's order was obviously unlawful, and Z could not have made a justifiable mistake in obeying it, thinking it to be lawful. Nor does Paragraph 3 help Z to avoid punishment, because nothing in the Military Penal Code (Law No. 2 of 24 December 1963) permits a subordinate to unquestioningly obey an order endangering human life which he knows to be illegal.

Article 34 Private Defense

Whoever
(a) has committed an act,
(b) having been compelled
(c) by the necessity of defending his own or another person's right
(d) against the actual danger of
(e) an unlawful injury,
shall not be punishable provided that the defense is proportionate to the injury.

Explanation:

The principle contained in this article is a further exception to the rule that a person is responsible criminally for harm caused to another. Article 34 embodies the principle of defense, which means that a person may not be held criminally responsible if he lawfully defends himself against harm caused by another. But there are several limitations to this right of private, or self, defense. First, he must be defending himself against the actual danger of an unlawful injury. This means that the danger to himself or another must actually exist. It cannot be imagined. If, for example, a crazy man imagines that another person is going to attack him, when actually the person is doing no such thing, then the use of force by the crazy person to "defend" himself does not come under this article. Note also that the danger must be of an unlawful injury. A member of the public cannot defend himself against a policeman lawfully using force to arrest him. In addition, the use of force must be proportionate to the injury threatened. Finally, although this right is called self-defense, it may be used to defend another person against the actual danger of unlawful injury.

Examples:

1. X is a Somali nomad. He comes upon Y, another nomad, who is beating Z with a *bud* about the head and chest. X yells at Y to stop, and hits him on the head with his *bud*, knocking him out. X then turns Y over to the police. Y files a complaint with CID, claiming that X assaulted him and caused him injury.

X is not guilty of causing injury to Y. He acted to defend Z from actual danger of an unlawful injury—the beating by Y. He tried to get Y to stop, and then hit him once with his *bud*. He did not use excessive force.

2. Q, a Somali citizen, is walking in a town when he sees his ten-year-old son, B, crying. B tells him that he was hit on the arm by the owner of a store for being in the way in front of the store. Q walks angrily to the store, grabs C, the owner, and knocks him to the ground, kicks him about the head, and hits him with a chair. C files a complaint with the police, and Q is charged with HURT, under Article 440. Q claims that he was acting under the right of private defense, according to Article 34.

Q cannot use Article 34 as an excuse for his actions. First, he was not acting to protect his son from any actual danger of unlawful injury. His son had already been hit by C. The boy was in no danger of getting beaten by C when Q met him in the street. Second, Q's use of force was not in proportion to the danger of injury to his son. Even if he had seen

C hit B once, there would have been no need to attack B and knock him to the ground, kick him, and hit him with a chair. It would have been enough if Q had stopped C from hitting B again. Q is guilty of causing hurt.

Article 35 Lawful Use of Arms

1. Subject to the provisions contained in the two preceding articles,
(a) a public officer shall not be punished if,
(b) for the purpose of performing a duty of his office,
(c) he employs or orders the employment of
(d) arms or other means of physical coercion,
(e) when he is compelled to do so by the absolute necessity of repelling violence or overcoming resistance to the authorities, or avoiding the escape of a person arrested or detained for an offense.
2. The provisions of the first paragraph shall apply to any person who,
(a) being lawfully requested by a public officer,
(b) affords him assistance.
3. Other cases in which the use of arms or other means of physical coercion is permitted shall be established by law.

Explanation:

Besides the exceptions and limitations contained in the articles concerning the EXERCISE OF A RIGHT OR PERFORMANCE OF A DUTY (Article 33) and PRIVATE DEFENSE (Article 34), a public officer also cannot be punished if his action comes within the terms of Article 35, the LAWFUL USE OF ARMS. Paragraph 1 defines when a public officer may lawfully use arms within the meaning of this article. First, the arms must be used for the purpose of performing a duty of his office. A policeman who uses his rifle to participate in a tribal fight cannot be said to be using his weapon for the purpose of performing a duty of his office. Second, and more important, the use of arms must be due to the *absolute necessity* of repelling violence or overcoming resistance to the authorities, or to avoid the escape of a person who has been lawfully arrested or detained. If, for example, a person has been unlawfully arrested, the use of arms to prevent his escape is not sanctioned by this article. The phrase "absolute necessity" means that there is no other way of overcoming the violence or resistance to the authorities. If another means of preventing a person from escaping or resisting the authorities could have been employed, then the use of arms is not justified. Note that this article applies not only to the use of arms but also to the use of other means of physical coercion. This would include tying or handcuffing a person.

Paragraph 2 extends the coverage of this article to those private persons

who have lawfully been requested to assist a public officer. If a policeman asks a member of the public to assist him in making an arrest, and the member of the public uses physical coercion under the limitations of this article, he too can claim the terms of this article as a defense against a charge by the person he used physical force on.

Paragraph 3 merely states that different laws shall make regulations and provisions for the use of arms. For example, the Military Penal Code has many provisions prescribing when the members of the armed forces may use weapons (see Decree Law No. 2 of 24 December 1963).

Example:

X, a farmer, complains to the police that Y has been letting his cattle come on X's land and destroy his crops. A sub-inspector and a sergeant accompany X to Y's house to see if the matter can be settled peacefully by discussion. Six members of Y's tribe are at his house when X and the two policemen arrive. X tells Y that he has complained to the police about Y's cattle destroying his crops. Y gets angry and says that his cattle can go anywhere they want and neither X nor the police are going to stop them. The sub-inspector decides that nothing can be done at this time and, since Y has six of his tribesmen around, advises X to leave. As they are leaving, Y then begins to beat and kick X. The sub-inspector orders them to stop. They do not. He and the sergeant then fire their rifles over the heads of Y and his tribesmen. Three of them continue to beat X, and the other four, armed with *buds* and knives, start coming toward the two policemen. The sub-inspector orders the sergeant to fire at the men. He and the sergeant do so and wound four. The other three stop beating X and run into the bush. The sub-inspector takes the four wounded men and X to the dresser in town and then files his report. Y and his six tribesmen are charged with causing HURT. The four wounded men in turn charge the sub-inspector and the sergeant with HURT for shooting them.

The sub-inspector and the sergeant are not criminally liable for shooting Y and his tribesmen. They were compelled to use their weapons by the absolute necessity of repelling violence against themselves and overcoming resistance to the authorities, in that they had asked the seven men to stop beating X and the men had not complied. They first tried to use other methods, such as asking the men to stop and then firing over their heads. It was only when the men did not stop beating X and started to attack the police that the sub-inspector gave the order to fire.

Article 36 State of Necessity

1. Whoever
(a) has committed an act,

(b) having been compelled by
(c) the necessity of saving himself or others
(d) from actual danger of serious bodily injury,
(e) and where such danger has not been voluntarily caused by him or could not otherwise be avoided,

shall not be punishable, provided that:

(f) the act is proportionate to the danger, and
(g) the person is not legally bound to expose himself to such danger.

2. The provisions of the first paragraph shall also apply if the state of necessity is caused by the threats of others. In this case, however, the person who has compelled another to commit an act shall be liable for the act committed by the other person.

Explanation:

A state of necessity exists when a situation arises which requires a person to act in such a way as to save himself or another from serious bodily injury. The crucial requirement is that he himself did not cause the situation which required him to act to save somebody from injury, and that the injury could not otherwise be avoided. For example, if a person driving very fast on a dark street at night swerves his car to avoid hitting a child and instead hits an old woman, he cannot claim that he was compelled by the necessity of saving the child to swerve the car and hit the woman. He was responsible for the danger to the child in the first place because he was driving too fast on a dark street.

In addition, the first paragraph imposes two other conditions. The first is that the act the person committed or was compelled to commit was proportionate to the danger involved, and, second, that the person was not required by law to expose himself to such danger. Note also that the danger involved must be one of serious bodily injury, to either the person committing the act or to someone else. If, for example, a father, convinced that his son was gravely ill and had to see a doctor immediately, kidnapped a doctor from the hospital, the illegal act of kidnapping the doctor would not be proportionate to the danger of the child dying from the illness, and would not exclude the father from being punished. But if, instead, the father stole a bicycle so that he could bring his son as quickly as possible to the doctor, the offense of taking the bicycle would be excused by the urgent necessity of getting the child to the hospital before he died. The father could not be punished for THEFT, under Article 482, if he of course had the intention to return the bicycle when the reason for his taking it was past.

Paragraph 2 applies to acts committed as a result of threats by other persons.

Example:

X is driving down the Mogadishu-Afgoi road late at night. He is driving carefully and slowly. As he drives around a bend in the road, he sees a truck coming at him very fast in his lane. At the last minute, X swerves his own car, hitting and severely injuring an old man sleeping by the side of the road. X is charged with causing HURT to the old man.

X can correctly claim that he was compelled to swerve off the road and hit the old man by the state of necessity caused by the need to avoid being hit by the truck which was coming at him in his own lane. In order to save his own life, he swerved the car. The driver of the truck, owing to his careless actions, is responsible for the injury of the old man, because he caused X to drive his car off the road.

Article 37 Excess Committed with Culpa

Where,
(a) in committing any of the acts referred to in Articles 33, 34, 35, and 36,
(b) the limits imposed by necessity
(c) are exceeded with culpa,
(d) and where the act constitutes a crime committed with culpa,
the provisions relating to crimes committed with culpa shall apply.

Explanation:

This article applies where a person acts within any of the terms of Articles 33, 34, 35, or 36 but with excess committed with culpa. This means that if in exercising a right or performing a duty (Article 33), using force to defend oneself or another (Article 34), lawfully using arms (Article 35), or acting out of a state of necessity (Article 36), the person exceeds the limitations of the action permitted by any one of these articles, but exceeds it negligently, he is subject to punishment for the offense of committing that action with negligence.

Example:

X, a Somali citizen, is attacked in the street by Y, a person everyone in town knows to be crazy. Y raises his stick and shouts at X. X, instead of simply taking the stick away from Y or knocking the man to the ground, picks Y up and throws him against a wall of a building. Y's skull is broken and he dies. X is charged with HOMICIDE WITHOUT THE INTENTION OF CAUSING DEATH, in violation of Article 441.

X's defense is that he acted according to Article 34—he was defending himself from the actual danger of unlawful injury, and he didn't want to

kill Y. However, Article 441 applies only as a result of an assault or hurt. X was acting lawfully in defending himself against Y. He cannot be charged with HOMICIDE WITHOUT THE INTENTION OF CAUSING DEATH. But he acted with excessive force, and killed Y negligently—that is, with culpa. Therefore, since X's action of killing Y exceeded the limit imposed by Article 34, and it is a crime that can be committed with culpa, X may be convicted of violating Article 445, DEATH CAUSED BY NEGLIGENCE.

Article 38 Presumed Circumstances Excluding Punishment

Where
(a) a person
(b) mistakenly considers that there exist circumstances excluding the punishment,
(c) these shall be taken into account in his favor.
However, where
(d) the mistake is caused by culpa and
(e) where the act constitutes a crime committed with culpa,
(f) liability to punishment shall not be excluded.

Explanation:

The accused's state of mind in this situation will necessarily be different from that of a person intending to commit an offense if the accused thinks that because of certain circumstances he cannot be punished if he commits the act. In such a case, these circumstances, according to Article 38, shall be taken into account in his favor. But if the accused presumes these circumstances to exist as the result of his own negligence, and the offense itself is one committed with culpa, then he is still liable to punishment.

Example:

X, a policeman, is assigned to riot-control duty with four other policemen outside the District Commissioner's office. A sub-inspector is in charge of the five men. A crowd of about three hundred people march down the street chanting slogans, and start milling around in front of the building. A few of the members of the crowd shout to attack the District Commissioner's office, and many people in the back begin to push the crowd forward. At this point, X hears a voice yell from behind him, ordering the policemen to fire into the crowd. X, thinking this is an order of the sub-inspector in command, fires and hits C. None of the other policemen fire. In fact, the sub-inspector has given no such order; an agitator from the crowd had yelled it out. The sub-inspector orders X to stop firing, and after a while the crowd disperses. C dies in the hospital. X is

charged with DEATH CAUSED BY NEGLIGENCE, in violation of Article 445.

X is guilty as charged. His defense is that he thought he was acting pursuant to a lawful order of his sub-inspector and thus cannot be punished under Article 33. But his case comes within the terms of Article 38–PRESUMED CIRCUMSTANCES EXCLUDING PUNISHMENT. He presumed that the sub-inspector had given the order, when in fact he had not. Since X has presumed that he was acting pursuant to a lawful order, a fact which if true would have excluded punishment, he normally would not be punished even though the fact was not true. But in this case X negligently made the mistake of thinking that the sub-inspector had given the order. The other four policemen did not assume that the sub-inspector had given such a command. X should have known the voice of his officer and withheld his fire. Therefore, since he made the mistake of assuming the fact of a lawful order negligently, he is liable for punishment for any crime committed with negligence. And that is what he is charged with–DEATH CAUSED BY NEGLIGENCE.

CHAPTER IV THE CIRCUMSTANCES OF THE OFFENSE

Under the Italian penal system, the circumstances surrounding the commission of an offense determine the extent to which the accused may be punished. Certain circumstances are deemed to be of the type which increases the penalty–that is, makes the commission of the offense worse. Others, while not excusing the commission of the offense, make the offense less harmful from society's viewpoint. This chapter also makes an important distinction between objective and subjective circumstances, as explained in the comments accompanying Article 41.

Article 39 Ordinary Aggravating Circumstances

The following shall be aggravating circumstances of an offense, where
(1) they are not constitutive elements thereof, nor
(2) special aggravating circumstances:
- **(a) having acted for abject or futile motives;**
- **(b) having committed the offense in order to commit or conceal another offense, or to obtain or secure for oneself or another the benefit or impunity from another offense;**
- **(c) in the case of crimes committed with culpa, having acted in spite of having foreseen the event;**
- **(d) having used inhuman means or having acted cruelly toward persons;**
- **(e) having taken advantage of such circumstances of time, place, or person as to hinder public or private defense;**

- **(f) where the offender has committed the offense during the time when he was willfully evading the execution of an arrest warrant or an order of imprisonment issued for a previous offense;**
- **(g) in the case of crimes against property, having caused serious damage to the property of the party injured;**
- **(h) having aggravated or attempted to aggravate the consequence of the crime committed;**
- **(i) having committed the act with abuse of power or in violation of the duties inherent in a public office or a public service;**
- **(j) having committed the act against a public officer or a person entrusted with a public service, or against a diplomatic or consular agent of a foreign state in the course of or by reason of the performance of their functions or service;**
- **(k) having committed the act with abuse of authority or of domestic relationship or with abuse of one's position in an office, or in connection with performance of work, dwelling together, or extending or receiving hospitality.**

Explanation:

The first paragraph of this article states that an aggravating circumstance of an offense is one which is not a constitutive element or a special aggravating circumstance of another offense. The phrase "constitutive element" means part of the definition of an offense. For example, Article 435 defines the crime of INFANTICIDE FOR REASON OF HONOR as killing a newborn baby to protect the honor of one of the parents. A constitutive element of this offense is the killing of a newborn baby, the baby being helpless to defend itself from violence and attack. Under Article 39, to take advantage of the condition of the person in committing the crime is an aggravating circumstance (Paragraph e), but since killing a baby is a constitutive element of the offense under Article 435, it cannot also be an aggravating circumstance to be considered when the accused is prosecuted for committing that offense.

Likewise, if a circumstance is a special aggravating circumstance of the offense, it cannot be treated as an aggravating circumstance within the meaning of Article 39. For example, the crime of HURT is defined in Article 440 as causing hurt to another from which physical or mental illness results. The punishment is imprisonment from three months to three years (Article 440[1]). But if the injury is more serious, then the penalty is increased. If the offender has injured the victim so that the victim has lost an arm or a leg, then the punishment is imprisonment from six to twelve years and the hurt is deemed grievous (Article 440[3]). Thus, the special aggravating circumstance under Article 440 is causing such a

grave injury that the victim loses a limb. But this could also be an aggravating circumstance under Article 39, Paragraph d, if the loss of the limb is considered as acting cruelly toward persons. According to Article 39, since the loss of a limb is a special aggravating circumstance of the offense of hurt, it cannot be deemed to be an aggravating circumstance within the meaning of Article 39 for the prosecution for committing hurt.

In all other cases, the circumstances described in Article 39 are deemed to be aggravating ones—that is, those that make the commission of the crime worse in the eyes of society, and therefore worthy of increased penalties.

Examples:

(a) Abject or futile motives. The law takes into consideration especially bad motives in the commission of a crime. A *futile* motive is one that has absolutely no relation to the gravity of the offense, whereas an *abject* motive is one that indicates a depraved mind. A person who is hired to kill a small child by someone who wants the child murdered is acting for an abject motive.

(b) Commission or concealment of another offense. It is an aggravating circumstance to commit an offense in order to commit or conceal another offense or to obtain the benefit or impunity of another offense. If, for example, X enters the house of Y at night in order to kill Y in his sleep, he has committed the crime of Violation of Domicile (Article 470), with the aggravating circumstance of committing this offense in order to commit another offense—the killing of Y. And it will be an aggravating circumstance to Article 440 within the meaning of Article 39(b) even if the killing of Y never actually occurs.

It is also an aggravating circumstance under this paragraph to commit the crime in order to conceal another offense. If X kills Y and then, to conceal the murder, ties a weight around the body and drops it in the ocean, he is guilty not only of murder but of Concealment of Dead Bodies, in violation of Article 318. He has committed the crime of concealment of Y's body in order to conceal the commission of the murder of Y. In the trial for the violation of Article 318, the fact that X committed the crime in order to conceal a previously committed murder will be taken into account as an aggravating circumstance.

(c) Commission with culpa, having foreseen the event. If the accused has committed a crime negligently, having foreseen the probable results of his action, he has committed an offense with an aggravating circumstance. Note also that the crime itself must be one for committing an offense negligently.

Z, a Somali businessman, owns a contracting firm. He contracts to help with the construction of a port, including the work involving dynamiting part of the area to prepare it for construction. He decides to transport the dynamite in the back of one of his trucks, driving through the town during a normal working morning. Z knows that many people are in town around 10 A.M. and that several slight car accidents have occurred, any one of which would have been sufficient to explode the dynamite. Z loads the dynamite on a truck. X, one of his drivers, is driving the truck through the town when it is hit by a Land Rover. The dynamite explodes, killing X and two people nearby. Z is charged with Causing Death by Negligence (Article 445), by assigning his driver to take explosives through the town during a busy time of the day. The fact that Z acted negligently, having foreseen the probability of an explosion, is an aggravating circumstance for this offense.

(d) Inhuman means or cruelty. Acting cruelly toward a person or using inhuman means in the commission of an offense is an aggravating circumstance, warranting increased punishment. It is generally shown by an action which has little or no relationship to the object of committing the offense, and indicates, by itself, a specific depraved mind or lack of human feeling.

Inflicting prolonged or horrible suffering on a person by burning his eyes out to obtain information from him would be an example of acting cruelly or inhumanly toward a person.

(e) Taking advantage of time, place, or person. If an accused acts in such a way that the victim cannot take advantage of police assistance, or use self-defense, the accused has committed a crime with an aggravating circumstance under this paragraph. Generally, to commit a theft in the middle of the night would be an aggravating circumstance taking advantage of the time, because the nighttime hides the offender's illegal activities from the police and enables him to take advantage of darkness. Entering a house and stealing from a sleeping person is an example of taking advantage of a person to commit an offense. And, similarly, to steal from a mosque, where nobody would expect it or be looking for a thief, is to take advantage of place.

(f) Committing an offense while a fugitive from justice. It is an aggravating circumstance for a person to commit an offense during the time he is willfully evading the execution of an arrest warrant, or an order of imprisonment. For example, if Y, wanted on suspicion of murder, where an arrest warrant has already been issued by the judicial authorities, breaks into a store to steal food, he has committed the crime of Theft (Article 480) with an aggravating circumstance. Y has committed theft while willfully evading a lawful arrest warrant for murder. Therefore, in

the trial for theft, the penalty will be increased for the aggravating circumstance of committing the crime during the time he was evading arrest. Note that this circumstance affects the sentence for theft, not the sentence for murder.

(g) Causing serious damage to property. This aggravating circumstance applies only to crimes against property. If, in the commission of such an offense, the accused has caused serious damage to the property of the owner, then he is subject to an increased penalty, as this is deemed to be an aggravating circumstance under Paragraph g of Article 39.

(h) Aggravating or attempting to aggravate the consequences of the crime committed. It is obvious that it should be an aggravating circumstance if the offender not only commits the crime but then attempts or actually does make the consequences of the crime worse. X, a newspaper editor of a paper in Mogadishu, normally has five hundred issues of the paper printed. However, for an issue in which the editor publishes a defamatory article about an important government official, he orders a thousand copies printed and distributes some of them in the Northern Regions, where they have never been distributed before. The consequence of the crime of DEFAMATION (see Article 452) is damage to the reputation of the person defamed. By increasing the circulation of this particular issue of the newspaper, the editor has aggravated the consequences. Thus, when he is tried for defamation, the punishment can be increased for committing an aggravating circumstance under Paragraph h.

(i) Abuse of power or in violation of duties. This aggravating circumstance consists of having committed the offense by abuse of power or in violation of duties inherent in a public office or a public service. Abuse of power is the use of power beyond the limits provided for by law. Violation of duties is the use of one's power contrary to the duties inherent in the office.

(j) Committing an offense against a public officer. This paragraph applies to the offender who commits an offense against a public officer, or a person entrusted with a public service, or against a diplomatic or consular agent. The offense must be committed against any one of these people in the course of or by reason of the performance of their functions or service. For example, X attempts to kill B, a judge who sentenced X's brother to prison. X has attempted a crime against a public officer, a judge, by reason of the performance of the judge's function—sentencing X's brother to prison.

(k) Abuse of authority or domestic relationship. If a person commits an offense as a result of abusing his authority or a domestic relationship, or abusing his position of office, or in connection with the performance of work, dwelling together, or extending or receiving hospitality, he has committed an offense with an aggravating circumstance under the provisions of Paragraph k.

Examples of the abuse of authority are a father abusing his power over his children, a teacher over his students, or an employer over his employees.

The phrase "domestic relationship" refers not only to a family but also to servants and those living under the same roof.

"Position in office" means either a private or a public office.

An example of extending or receiving hospitality is as follows: X invites Y over to his house for tea and manages to steal Y's wallet from his pants. X has committed the crime of theft, with the aggravating circumstance of committing the theft from a guest to whom he had extended hospitality.

Or X employs a local girl to clean his house, cook, and do the washing. She lives in a separate room in X's house. One night, X attacks the girl and commits the crime of CARNAL VIOLENCE (see Article 398). He has committed this crime with the aggravating circumstance under this paragraph, because the girl was either in a working relationship with X or within the meaning of the phrase "domestic relationship."

Article 40 Ordinary Extenuating Circumstances

1. The following shall be extenuating circumstances of an offense where
(i) they are not constitutive elements thereof, nor
(ii) special extenuating circumstances:
   (a) having acted for motives having a particular moral or social value;
   (b) having acted in a state of anger caused by an unlawful act of another;
   (c) having acted under the influence of a mob, except in cases of meetings or assemblies forbidden by law or by the authorities, where the offender is not a habitual or professional offender;
   (d) having, in the case of crimes against property, caused negligible damage to the property of the party injured;
   (e) where, in addition to the act or omission of offender, an act committed with criminal intent by the party injured has contributed in causing the event;
   (f) where, before trial, the offender has fully paid compensation for the damage, or where possible has effected restitution; or having, before the trial and apart from the case referred to in

the last paragraph of Article 18, spontaneously and effectively taken measures to eliminate or reduce the injurious or dangerous consequences of the offense;

(g) any other circumstance that the judge considers to be such as to justify a lessening of the punishment.

2. The extenuating circumstances referred to in letter g of Paragraph 1 shall be considered as one circumstance which may coexist with one or more of the other circumstances previously indicated.

Explanation:

Extenuating circumstances are those which society deems to warrant a decrease in the punishment of an offense. It is the logical counterpart of the preceding article. Like that article, this one excludes from the category of extenuating circumstances those circumstances which are constitutive elements of the offense or classified by the Penal Code as special extenuating circumstances. These terms mean the same thing as they did in the first sentence of Article 39. For example, in the definition of the crime Homicide and Hurt for Reasons of Honor (see Article 443), if a person causes the death of a person caught in the act of sexual intercourse with the accused's sister, wife, or daughter, killing the victim in the sudden heat of rage, the circumstance of acting in the sudden heat of rage is an extenuating circumstance which is part of the crime of Homicide for Reasons of Honor. Therefore, when the case is tried, the defense counsel cannot also claim the benefits of the extenuating circumstance described in Paragraph b of having acted in a state of anger caused by an unlawful act of another.

Examples:

(a) Motive of a particular moral or social value. This paragraph does not describe what particular moral or social values are. To have done so would have been unwise, since moral and social values change, and the Penal Code would have to be amended to take these changes into account. Instead, the judge, in each case, is free to determine what the prevailing social and moral values are and whether the defendant acted for any of these values in committing the offense. If the defendant has acted for reasons of honor in committing an offense where honor is not a constitutive element, as it is in Article 443, that would fall within the meaning of Paragraph a.

(b) Acting in a state of anger caused by an unlawful act. It is an extenuating circumstance if a person, as a result of an unlawful act of another, acts in a state of anger and thereby commits a crime. But his action must

be in response to an unlawful act of another—it is not enough that the accused simply acted out of anger. He cannot claim the extenuating circumstance under this paragraph if he acted out of anger at the lawful act of another. If, for example, X and Y have a dispute which is settled by the tribal elders in Y's favor, X could be angry that Y won and he lost. But merely because he was angry, he could not attack Y, cause him injury, and then claim that his anger at Y's winning was an extenuating circumstance. He must be provoked by an unlawful action of another person. The unlawful action does not have to be a crime—it can be a contravention, or a violation of another law—but it must be unlawful.

Q meets his son in the street, who tells him that he was beaten by C, a store owner in the town. Q goes to C's store, grabs him, and beats him up. Q is arrested and charged with causing hurt to C. Q is guilty as charged, but he can claim the extenuating circumstance of having acted in a state of anger caused by the unlawful act of C's beating his son.

Note the difference between this case and the one of use of force to defend oneself or another in Article 34. In this case, the offense by C, of beating up Q's son, is already completed. Q is not defending his son any longer. He is revenging his son's injury by beating C. In the case of defense, the person uses force to protect himself or another from an offense which is in the process of being committed.

(c) Acting under the influence of a mob. This paragraph applies to offenses committed by persons participating in a mob. Generally speaking, a member of a crowd or mob can be influenced by the actions of the other members, and be carried along to participate, although he doesn't really want to or wouldn't have acted in such a way if he were on his own. Therefore, the law prescribes that the punishment for a person acting under the influence of a mob shall be lighter. But there are important limitations. First, the meeting or assembly which gives rise to mob action must be a lawful one. If a person participates in an unlawful meeting and then, under the influence of a mob, commits an offense, he cannot claim the advantages of the extenuating circumstance of this paragraph. A meeting of ten persons in one's home is a meeting within the meaning of this paragraph. An assembly is a larger group, meeting without any specific purpose. An unlawful meeting or assembly is one prohibited by law, specifically the Public Order Law (Law No. 21 of 26 August 1963), or by the Public Order authorities.

The second major exception to this paragraph is that if the offender is a person classified as a habitual or professional offender under the Penal Code (see Articles 64 and 67), he cannot claim the advantages of this extenuating circumstance. Habitual or professional offenders are deemed by law to be persons who have a long history of committing crime. There-

fore, they are more likely to have been active agitators in a mob situation, rather than merely innocents carried along by everyone else.

An example of an extenuating circumstance under this paragraph is: X attends an assembly of a political party outside Parliament in Mogadishu. The speaker claims that foreigners are stealing money from Somalia, and urges the audience to attack foreign businesses. Somebody in the crowd yells, "Let's attack the AGIP station!" and the mob begins running toward it. X goes along and participates in the general pushing and shoving of people. Stones are thrown and a few windows are broken before the police arrive. X is caught and arrested as part of the mob. Since the assembly of the political party was a lawful one, having been authorized by the Regional Governor beforehand, X can claim that he was just acting under the influence of the mob and should be punished more lightly when charged with ATTEMPTING TO ENDANGER THE PUBLIC SAFETY, in violation of Article 332.

(d) Causing negligible damage. In cases of crimes against property, if the offender caused only negligible damage to the property, it is considered an extenuating circumstance under Article 40. A crime against property would be either directly against the property itself, such as DAMAGE TO PROPERTY (Article 491) or involving the taking of property from a person, such as THEFT (Article 480).

This paragraph is the counterpart of Paragraph g of Article 39, which provides that serious damage to property is an aggravating circumstance.

(e) Act committed with criminal intent by the injured party. If the injured party has committed an act with criminal intent, the offender's punishment shall be less than if the injured party had not contributed to causing the event.

An example of this paragraph is as follows: Y is a store owner. He has about three hundred cartons of contraband cigarettes in his shop that he hopes to sell. He is told by a friend that the police are going to come that night and confiscate the cigarettes. Y has no time to hide them and is afraid of getting caught by the police. Z suggests that they set fire to the store and destroy the evidence of contraband cigarettes. Y and Z pour benzene on the store and ignite it. Y leaves to get more benzene, and Z stays to watch the fire. The police arrive and arrest Z for setting fire to Y's store. Y is the injured party, since it was his store. But Z can claim that, besides his own part in the crime, Y had the criminal intent to destroy the store and actually participated. Therefore, Z's punishment should be less under Paragraph e of Article 40.

(f) Payment of compensation for damage prior to trial. The rule embodied in this paragraph is that if the accused has paid compensation for the damage caused or has effected restitution before trial, this shall

be taken into account as an extenuating circumstance at the trial. The reason for treating this as an extenuating circumstance is obvious. If a person has attempted to make amends for his crime, it is indicative of a change of mind which should be encouraged and rewarded.

An example of such a case would be where X sets fire to Q's house and destroyed by the fire. The fact that X has paid this full compensation to value of the house and enables Q to build a new one to replace the one destroyed by the fire. The fact that X has paid this full compensation to Q will be taken into account in determining X's punishment at the trial.

This paragraph, however, raises interesting problems with regard to conditions in Somalia. Obviously, in Italy, where the Code was meant to apply, there is no such thing as *dia* or *dia*-paying groups. However, in Somalia *dia* is normally paid when one person is killed or injured by another, regardless of the criminal charges involved. Does this paragraph apply in the case where a victim's tribe has been paid *dia* prior to the trial of the accused killer, and should that lessen the killer's punishment? At least in crimes arising out of tribal warfare, the answer should be yes. The courts have not yet passed on this question.

Another problem is that this paragraph states that the *offender* must be the one to pay the compensation. But generally it is the *dia*-paying group in Somalia that pays, not the individual. Does this mean that if F insults B and is criminally charged with insult, and F's tribe pays B's tribe for the insult, F will be sentenced as if such compensation had not been paid? It would probably be more reasonable for judges to expand the concept of "offender" to include payment by the offender's *dia*-paying group, in light of the well-established practice in Somalia.

(g) Any other circumstances the judge considers to be extenuating. This paragraph gives the judge broad discretion in determining, beyond the circumstances described in the other paragraphs of this article, whether the accused should be punished less severely. This power is discretionary. The reason for giving the judge this power is that the Penal Code cannot predict all of the circumstances which would be of the type to decrease the punishment of the accused. If, for example, the accused was very poor and hungry and committed the crime of stealing food, then his hunger and poverty should be taken into consideration in sentencing him for theft. Certainly he is not the same kind of person as the one who earns his money by stealing from houses. The judge ought to have some discretion to deal with each case.

The second paragraph of Article 40 provides that circumstances that the judge determines to be extenuating ones, according to Paragraph ii of the first paragraph, shall be considered to be like the circumstances mentioned specifically in the article. Generally, this paragraph means that

the extenuating circumstances considered by the judge must be different from the one specified, but can be considered to have the same effect as if they were specifically written into the Code.

Article 41 Objective and Subjective Circumstances

For the purposes of the penal law:

(a) *objective circumstances* are those which relate to the

(i) nature, kind, means, object, time, place, and

(ii) any other factor relating to the act, the gravity of the injury or the danger, or the personal conditions or qualities of the party injured;

(b) *subjective circumstances* are those which relate to the

(i) extent of the criminal intent or the degree of culpa, or

(ii) the personal conditions or qualities of the offender, or

(iii) the relationship between the offender and the party injured.

Explanation:

This article is really self-explanatory, since the terms are described in the text itself. The article distinguishes between objective and subjective circumstances of the offense. Generally, objective circumstances are elements of conduct and of the event itself, while subjective circumstances are those elements which bear on guilt, such as negligence or preterintentional intent. Subjective circumstances thus deal with the intensity of the crime. A premeditated crime is deemed to be one of greater criminal intent than one committed in the heat of anger.

Article 42 Circumstances Not Known or Mistakenly Presumed

1. Except as otherwise provided by law, the aggravating or extenuating circumstances shall be taken into account respectively, against or in favor of the offender, even though they are not known to him, or are mistakenly believed by him to be nonexistent.

2. If the person mistakenly considers that there exist aggravating or extenuating circumstances, these shall not be taken into account against him or in his favor.

Explanation:

This article establishes the general rule that aggravating or extenuating circumstances will be taken into account by the judge in sentencing, although the offender did not know such circumstances existed or believed by mistake that they did not exist.

On the other hand, if the offender mistakenly believes that aggravating or extenuating circumstances exist, when in reality they do not, the nonexistent aggravating or extenuating circumstances shall *not* be taken into account.

In other words, the rule of this article is that if the aggravating or extenuating circumstances actually exist, and the offender did not know about them, they should be considered by the judge. If the aggravating or extenuating circumstances do not actually exist, but the offender thought they did, they are not considered. The judge must look to see what the actual situation is with regard to the existence of aggravating or extenuating circumstances, and ignore the state of mind of the offender as to the existence or nonexistence of such circumstances.

Example:

X, an Adenese merchant, hides all his money in the hollowed-out leg of his bed. The total amount of the money hidden there is 200,000 Somali shillings. One night, Y and Z, two thieves, break into X's house while he is gone and take his tables, chairs, and bed. They load X's furniture onto a truck and drive away. They are seen by the police, who chase them. Y and Z drive the truck up to the *tug* and throw the furniture into the water to avoid getting caught with the stolen property. They are arrested and charged with theft. At the trial, X testifies that he had 200,000 Somali shillings hidden in one of the legs of the bed. The prosecutor claims that the destruction of the bed by Y and Z is an aggravating circumstance under Article 39(g), because they caused serious damage to X's property by destroying this large amount of money. Y and Z claim that they didn't know the money was in the leg of the bed, so this could not be an aggravating circumstance under Article 39.

Y and Z are chargeable with committing theft with the aggravating circumstance of having caused serious damage to property. Article 42(1) states that they are responsible for aggravating circumstances, even if such circumstances are unknown to them.

Article 43 Evaluation of Circumstances of Mistake Regarding the Victim of the Offense

1. In the case of mistake as to the party injured, the aggravating circumstances in respect of the condition or qualities of the party injured, or the relationship between the latter and the offender, shall not be taken into account against the offender. Mistakenly presumed extenuating circumstances regarding the aforesaid condition, qualities, or relationship shall, on the contrary, be taken into account in his favor.

2. The provisions of this article shall not apply in case of circumstances concerning the age or other condition, or physical or mental qualities, of the party injured.

Explanation:

This article establishes an exception to the rule laid down by Article 42. With regard to mistakes concerning the person who has been injured, aggravating circumstances, even if they do not exist, shall be taken into account. In other words, according to the first paragraph, where the mistake is made with respect to the person injured, the judge must look at the state of mind of the offender, regardless of whether or not such aggravating or extenuating circumstances actually existed in fact.

The rule in this article, however, applies only to conditions, qualities, or relationships between the victim and the offender. Paragraph 2 further limits the application of Paragraph 1. It provides that a mistake as to the identity of a person, involving mistakes as to age, other conditions, or physical or mental qualities of the party injured, must be considered if such conditions are aggravating circumstances and cannot be considered if they are extenuating circumstances. In other words, Paragraph 1 does not apply to conditions of age or other conditions, or physical or mental qualities. Paragraph 2 does not limit the relationship to the victim and the offender.

An example of a relationship between the offender and the victim would be a parent to his child, an employer to his employee, or a situation where some wrong had been done to another person giving rise to a causal relationship for the offense. An example of qualities other than the physical or mental qualities excluded by Paragraph 2 would be the occupation of the victim as a public officer. With regard to conditions, Paragraph 2 seems to exclude all conditions by specifying age "or *other* conditions."

Examples:

1. X is told by a friend that Y has insulted X's wife. X goes to a tea shop, angrily grabs a man he thinks to be Y, and knocks him to the ground. The man is really Z, an innocent person who doesn't even know X. X is charged with causing hurt to Z.

X can plead that his sentence should be reduced because of the extenuating circumstance of having acted in a state of anger caused by the unlawful act of Y (insulting X's wife). X mistakenly assumed that Z was Y. Otherwise, he would not have struck Z at all. Therefore, in calculating his punishment, the judge may consider the fact that X made this mistake as to identity, and count the extenuating circumstance of acting against a person who had done an unlawful act, even though the extenuating circumstance did not exist in regard to Z.

2. P is told by a friend that Q has insulted his wife. P goes to a tea shop and angrily demands to know where Q is sitting. A person in the shop mistakenly tells P that Q is the blind man sitting in the corner. P walks up to the man, who, because he is blind, cannot see P. P grabs him and beats him senseless. P is charged with causing hurt to the blind man.

At the trial, the prosecutor claims that P, by attacking a blind person, took advantage of the condition of the person, which is an aggravating circumstance under Article 39(e). P claims that he made a mistake as to the identity of Q and didn't mean to attack the blind man, and therefore the aggravating circumstance should not count against him.

According to Paragraph 2 of Article 43, in cases of mistaken identity, aggravating circumstances do count against the accused when they involve the condition or physical or mental qualities of the party injured. Being blind is a physical quality. Therefore, the fact that P mistakenly attacked a blind man instead of the man who insulted his wife counts against him and may be considered by the judge in setting the sentence.

Chapter V Concurrence of Offenses

Article 44 More than One Breach of One or Various Provisions of Law by One or More Acts

Whoever,
(a) by a single act or omission,
(b) violates various provisions of law, or
(c) commits more than one breach of the same provision of law,
shall be punished for the various offenses provided for by law.

In such a case, the punishment imposed in the same judgment shall be added together, subject to the maximum limits fixed by law.

Explanation:

This article covers two types of situations:
(1) where the accused, by the commission of one act, violates more than one provision of the Penal Code; and
(2) where the accused commits more than one breach of the same provision of the law.

In both situations, the accused is subject to punishment for the commission of each violation.

Note the difference between the situation mentioned above under Category 2 and a continuing offense as defined in the following article. In a continuing offense, the prosecution must prove that the accused had the same criminal intent. In Article 44, the accused can commit the different

breaches of the same provision of the law with different criminal intent. Thus, if a person steals a radio from a shop in Mogadishu, and two weeks later steals a radio from a shop in another town, he has committed violations of the same provision of the law—Article 480, simple THEFT—with different criminal intent. In such a case, he is punishable for each theft.

In sum, Article 44 applies to a situation in which a single act violates more than one provision of the Code, or where more than one act violates the same provision of the Code.

However, note the explanation of Article 31, concerning the case of *Musa Dualeh Ali* v. *State*. In that case, the Supreme Court pointed out that where death results unintentionally as a result of assault or hurt, then the accused shall be tried only for a violation of Article 441, HOMICIDE WITHOUT THE INTENTION OF CAUSING DEATH, and not ASSAULT and DEATH CAUSED AS A CONSEQUENCE OF ANOTHER CRIME.

Example:

Q, a Somali citizen, is jealous of B's wealth. He decides to burn B's house in the middle of the night. Unknown to Q, B is sleeping in the house at the time. Q sets fire to the house, which is destroyed, but B is also injured in the fire. Q is arrested and charged with causing DAMAGE TO PROPERTY, in violation of Article 491, and HURT CAUSED AS A CONSEQUENCE OF ANOTHER CRIME, in violation of Article 447.

By the same act, the setting fire to B's house, Q has committed two separate violations of the Penal Code. Article 44 simply requires that the penalties for each violation be counted, and when the judge sentences Q, he adds the two penalties together.

Article 45 Continuing Offense

Whoever,
(a) by more than one act or omission
(b) done with the same criminal intent,
(c) commits,
(d) at the same time or at different times,
(e) more than one breach of the same provision of law,
(f) of the same or of different gravity,
shall be guilty of continuing offense.

In such a case, the punishment shall be that imposed in respect of the most serious of the breaches committed, increased up to threefold.

Explanation:

A continuing offense is punished more seriously than a simple offense. Whereas Article 44 applies to the violation of more than one article of the Penal Code by a single act, Article 45 applies where more than one act violates the same provision of the Penal Code. Note that a continuing offense can be committed at the same time or over a period of time, as long as it is done with the same criminal intent.

Example:

X, a newspaper editor in Mogadishu, wants to defame the reputation of a police major he doesn't like. One Friday, he prints a story in his newspaper, accusing the major of renting a house belonging to him to the police force for a large sum of money. The major files a complaint with CID, Mogadishu, requesting that criminal proceedings for defamation be instituted. The next Friday, the same editor publishes a story stating that the major was in the British police force in Kenya during the colonial period, and that he killed many Kenyan nationalists. The major files another complaint with CID, alleging that this story is also defamatory. The third Friday, the newspaper publishes a story that the major is in the pay of a foreign country and is supplying it with military information. The major files a third charge, alleging that this story is also defamatory. The editor is tried for violating Article 452(3) of the Penal Code, DEFAMATION.

X has committed a continuing offense. By publishing these stories in three different issues of the newspaper, he has by three different acts, all with the same criminal intent, committed, at different times, more than one breach of the same provision of the Penal Code, namely Article 452(3). The punishment for a single act of defamation is up to three years imprisonment. Therefore, since this is a continuing offense, the judge may sentence the editor to a total of nine years in prison.

Article 46 Complex Offense

1. The provisions of the two preceding articles shall not apply when
(a) the law considers as constituent elements, or
(b) as aggravating circumstances of a single offense,
acts which by themselves would constitute an offense.

2. Whenever the law, in fixing the punishment for a complex offense, refers to the punishments prescribed in respect of the separate offenses which constitute it, the maximum limits fixed by Articles 133 and 134 shall not be exceeded.

Explanation:

A complex offense is neither a multiple offense caused by a single act (Article 44) nor a continuing offense (Article 45). It is an offense which

consists of many violations if tried separately, but the many violations are considered by the law to be merely parts of one offense. Instead of convicting a person for violations of the different articles of the Code, the offender is convicted of committing a crime which includes the elements which make up these other violations.

In the explanations of the articles dealing with aggravating and extenuating circumstances (see Articles 39 and 40), constituent elements and special aggravating circumstances were discussed. A complex offense is one embodying special aggravating circumstances or constituent elements which are considered part of the offense in general.

Example:

X is a common thief. He enters Y's house and steals some clothes and money. He is arrested and brought to trial.

X logically could be tried with having committed two different offenses under the Penal Code:

(1) THEFT, in violation of Article 481, and
(2) VIOLATION OF THE PRIVACY OF THE HOME, in violation of Article 470.

The crime of VIOLATION OF THE PRIVACY OF THE HOME consists in entering into the living place of another person without his consent. The crime of THEFT, as defined by Article 481(1a), consists also in entering into a private home. The entry into the home is a special aggravating circumstance under Article 481(1a). X, therefore, must be tried only for THEFT, with one aggravating circumstance. He cannot be tried for the two separate violations, because his offense is a complex one under Article 46. Thus, we see that Article 46 is an exception to the rule of Article 44, where a person by one act commits violations of more than one provision of the Code.

PART III THE OFFENDER AND THE PARTY INJURED

CHAPTER I THE OFFENDER

SECTION I LIABILITY

Section I deals with the physical and mental characteristics of the offender in so far as these characteristics affect the state of mind and the ability of the offender to understand what he is doing.

Article 47 Capacity of Understanding and of Volition

1. No one may be punished for an act constituting an offense if,
(a) at the time when he committed it,
(b) he was not liable.
2. Whoever possesses the capacity of understanding and of volition shall be liable.

Explanation:

Article 47 establishes the general rule that no person may be punished for any act constituting an offense if he did not have the capacity to understand what he was doing and want or will the act to happen. The important limitation on this rule is that the person must have had such capacity of understanding and volition at the time he committed the offense. It is not enough if, after he has committed the act without understanding what he was doing at the time, he then understands what he has done. The capacity of understanding and volition must occur at the same time as the act constituting the offense.

Example:

X, a Somali citizen, has an illness which makes his muscles twitch. He frequently has spasms or attacks in which he cannot control his arms or legs at all. One day, when he is walking in the marketplace, he is seized by one of these fits. His right arm suddenly moves and he strikes B, a woman standing in the crowd. X then falls to the ground and continues to have a fit, which passes after a while.

X cannot be charged with assault or hurt to B. He did the act—striking B—and he understood what he was doing, but he didn't want or will the action to happen. He had no control over his muscle movements, and could not have prevented his arm from striking B. Since he lacked volition at the time he committed the act, he cannot be held responsible for an act which constitutes an offense under normal circumstances.

Article 48 Rendering a Person Incapable for the Purpose of Causing the Commission of an Offense

Whoever
(a) renders a person
(b) incapable of
(c) understanding or of exercising volition,
(d) for the purpose of making him commit an offense,
shall be responsible for the offense committed by the incapacitated person.

Explanation:

Article 48 is in keeping with the general rule that a person cannot be held responsible for acts constituting a criminal offense if he does not have the capacity of understanding and volition at the time he committed the act. This type of situation will rarely arise beyond the conditions explained in the following articles.

The rule established by this article is that if a person uses another person for the purpose of committing an offense, by making that person unable to understand or exercise volition, then the user, the person who has made the actor incapable, is liable for the commission of the offense.

Example:

Z, a foreigner, comes to Mogadishu with a magic show and performs in the town. After one of these performances, he invites Q, a Somali citizen, to meet him in back of the theater. There, Z hypnotizes Q and orders him to steal from a store nearby. Q is caught in the act by the police. Q claims he didn't know what he was doing, and the last thing he remembers is talking to Z behind the theater. Z is also arrested.

Under Article 48, Q is not responsible for the crime of theft. He had no idea of what he was doing, he lacked both the volition and the capacity to understand that he was stealing at the time he committed the act. Z, on the other hand, by hypnotizing him, is guilty of the acts he ordered Q to do, and therefore is punished for theft.

Article 49 Voluntarily Produced Incapacity of Understanding or Volition

Whoever
(a) makes himself
(b) incapable of understanding or of exercising volition
(c) for the purpose of committing an offense, or
(d) to provide himself with an excuse,
shall be liable for the offense committed, and the punishment shall be increased.

Explanation:

As stated in the preceding article, if a person has been rendered incapable of understanding or of exercising volition by another, then he is not liable for the commission of the offense. The person who makes him incapable is. But, in the case where the person committing the offense has himself caused his own incapacity, then not only is he responsible for

the offense but the punishment is increased. This is logical because, having willfully and with understanding brought about his own incapacity, the person should be responsible for the acts which follow, knowing that they will follow when he takes the first step to render himself incapable.

Note that this article also applies to the situation where the offender makes himself incapable for the purpose of establishing an excuse for the commission of the act.

Example:

X, a guard at the Somali National Bank in Mogadishu, plans to rob the bank with Y, a friend of his. X gives his friend the keys and the plans of the bank. That night, when Y comes to the bank, X takes a drug which makes him very tired, and thus he sleeps while Y robs the bank. The next morning, when the theft of money is discovered, X is questioned and states that he didn't see anything, because he fell asleep by accident. The police eventually capture Y and recover the money.

X cannot claim as a defense that he is not an accomplice to the robbing of the bank because he was asleep at the time it happened and therefore didn't know what was going on. X voluntarily induced his condition of sleep by taking a drug so that he would have an excuse for not knowing that Y was robbing the bank at that particular moment. Therefore, the fact that X induced his condition himself for this excuse means that he is still liable to punishment.

Article 50 Total Mental Deficiency

Whoever,
(a) at the moment when he committed the act,
(b) was by reason of infirmity
(c) in a state of mind such as to preclude capacity of understanding and of volition,
shall not be liable.

Explanation:

This article applies to those persons who are insane at the time the act constituting an offense was committed. As a general rule, if a person is insane to the extent that he does not understand what he is doing and is not able to freely will or want the act to happen, he cannot be punished for the commission of the act. This is in keeping with the general principle embodied in Article 47. However, the problem of defining when a person is insane and so cannot be punished is a very difficult one. Under Anglo-Saxon law, and thus under the Indian Penal Code recently in force

in the Northern Regions, the rule was what is known as the "M'Naughton Rule." That rule is as follows:

> . . . That to establish a defense on the ground of insanity it must be clearly proved that at the time of committing the act, the party accused was labouring under such a defect of reason from disease of mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.

This rule was changed by the adoption of the Somali Penal Code, which of course is based on the Italian Penal Code, for the entire Republic. The Supreme Court, in the case of *Jama Kaireh Abdi* v. *State* (Criminal Appeal No. 4 of 1965), had occasion to interpret the meaning of Article 50 regarding the rule of insanity in the Republic. In that case, the Court stated that the test for Somalia is:

> . . . whether, at the time of the commission of the offence, the accused by reason of infirmity was in such a state of mind as to preclude the capacity of understanding and volition. (Somali Law Reports [Hargeisa and Burao Regions], 1964–65, p. 218.)

The Court stated that evidence of insanity can be shown by reference to (1) the family history of the accused; (2) his personal history at the time of and prior to the offense; and (3) in the surroundings of the offense itself. Therefore, the Court reasoned that ascertaining whether or not a person is totally insane "is a complicated procedure and has to be conducted by an expert who has specialized in that field."

In this particular case, the medical examination of the accused had been inadequate, and the Court ordered that he be sent to the Forlanini Mental Hospital, in Mogadishu, for observation and examination. The Court ordered that the medical opinion of an expert should be taken by the Court before the accused was tried, and, if convicted, before any sentence was passed.

From this decision, it is clear that judges must require competent medical testimony in cases involving the defense of mental deficiency under Article 50 of the Penal Code, and ensure that the accused is properly and completely examined by an expert prior to trial.

According to Carabba, Article 80 of the Italian Penal Code, which is the counterpart of Article 50 of the Somali Code, requires that the judge consider the mental deficiency in relation to the gravity of the crime. A kleptomaniac—that is, a person who by reason of mental infirmity is compelled to steal things, both valuable and non-valuable—can use this infirmity as a defense against a charge of theft. But if he commits murder, the fact that he is a kleptomaniac has little bearing on his state of mind in killing another person (see Carabba, Codice Penal, p. 164).

Example:

Jama Kaireh Abdi v. *State*, Criminal Appeal No. 4 of 1965 (Somali Law Reports [Hargeisa and Burao Regions], 1964–65, p. 210).

Jama Kaireh Abdi was the maternal uncle of the deceased. He lived in the same *rer* with Domo Kaireh Abdi, the mother of the victim. On July 5, 1964, Domo was out milking the sheep and goats. Her son was lying asleep in the compound, and Jama Kaireh Abdi was saying his prayers near him. Jama Kaireh then took a *gudimo* and began hitting his sleeping nephew about the head and throat. Two men who lived in the same *rer* came up, and one ran for the police while the other, with help, tied up Jama Kaireh Abdi and took him to the nearby village of Adow Yurura.

Jama Kaireh Abdi stated that he didn't remember killing anybody, that he had no quarrel with the deceased and no reason for killing him. He said that sometimes he suffered from fits, which caused him to lie down on the ground and struggle about. He also said that he thought that the men were taking him for tea in Adow Yurura and that they had tied him up because they were afraid that he would take revenge on the person who had killed his nephew.

As stated above, the Supreme Court reversed his conviction for murder, and ordered him sent to the mental hospital in Mogadishu for examination, on the ground that the medical examination by the doctor in Burao was not complete or adequate.

Article 51 Partial Mental Deficiency

Whoever,
(a) at the moment when he committed the act,
(b) was, by reason of infirmity,
(c) in a state of mind such as largely to diminish, without precluding,
(d) his capacity of understanding or of volition,
shall be liable for the offense committed, but the punishment shall be reduced.

Explanation:

The general rule embodied in Article 47 is that if a person has the capacity of understanding and of volition, then he is liable for his acts. Article 50 provides that if, at the time when the accused committed an act, he did not have the capacity of understanding and of volition, as a result of total mental deficiency, then he shall not be responsible for his acts. Article 51 deals with the situation where the accused had the capacity of understanding and of volition at the time he committed the act, but

it was substantially impaired or reduced as a result of a partial mental deficiency. In such a case, the accused is responsible for his act, because he had the capacity of understanding and of volition, but the punishment is reduced, because his understanding and volition were also reduced by partial mental deficiency.

Example:

X lives in Mogadishu. He is harmlessly crazy, and his sister takes care of him and tries to keep him off the street and away from other people. One night, X believes that his sister and her family are starving. He decides that he must go out and steal food for her and the family. He goes out in the middle of the night, and steals tires off a small Fiat parked on the street, thinking that the tires are food. X is caught and tried for the theft of car tires.

X possessed the capacity of understanding and volition required by the Penal Code to hold a person responsible for his acts. He wanted to steal, he knew stealing was bad, but he thought he had to do it to get food for his sister. However, his capacity for understanding and volition were reduced by partial mental deficiency, which led him to believe that car tires were food. His sentence should be reduced according to the provision of Article 51.

Article 52 Conditions of Emotion or Passion

Liability shall not be precluded or lessened by conditions of emotion or passion.

Explanation:

Conditions of emotion or passion affect the state of mind of the offender, but they do not affect his capacity of understanding or of volition. The phrase "conditions of emotion or passion" refers to the common emotions that all people have. These are different from a state of anger, permitted as an extenuating circumstance under Article 40(b), or committing homicide for reasons of honor in the sudden heat of rage in violation of Article 443. Article 52 prohibits a person from defending his actions on the grounds that he acted out of emotion or passion. The law does not consider normal emotions or passions a valid reason for reducing the sentence or excusing responsibility for the person's acts.

Example:

X, a Somali citizen, has a reputation in his town for being very short-tempered. He is known to take offense at the slightest thing, and he is very quick to anger. One day, X is walking to a tea shop. Two of his camels have just died of a disease, and he is worried that other camels in his herd will also get sick. As he comes into the tea shop, he hears Y talking about how healthy his camels are, and how he will be rich in another year or so. X, thinking that Y is making fun of him because of his diseased camels, walks up to Y and knocks him to the ground. X is arrested for assault and causing hurt. At the trial, X claims that everyone knows he is quick-tempered and easy to anger, that this condition of his should be taken into account, and that therefore he is not responsible for his actions.

According to Article 52, this is no defense. Some people are more quick-tempered than others. This is normal emotional state and is no excuse for criminal activity. X had the capacity for both understanding and volition when he knocked Y to the ground.

Article 53 Drunkenness Due to Accident or Force Majeure

1. Whoever,
(a) at the moment when he committed an act,
(b) had not the capacity of understanding or of volition,
(c) owing to total drunkenness
(d) arising from accident or *force majeure*,
shall not be liable.

2. If the drunkenness was not total, but was nevertheless such as largely to lessen liability, without precluding it, the punishment shall be reduced.

Explanation:

There are several articles concerned with drunkenness in the Penal Code. Although this is not a great problem in Somalia, the articles are part of the Code and therefore must be explained.

Drunkenness affects the mind of the individual, so that he does not know what he is doing. Generally, if a person lacks the capacity of understanding or of volition, he is not responsible for his acts. This rule applies to the condition of alcoholic intoxication, or drunkenness, only if the drunkenness was accidental or was caused by *force majeure*. The term *force majeure* was explained with regard to Article 26 and is defined as circumstances beyond the control of the individual. Therefore, if total drunkenness was caused by accident or *force majeure*, so that the offender did not have the capacity of understanding or of volition when he committed the act, then he shall not be responsible for such actions.

If the drunkenness was not total but substantially impaired the offender's ability of understanding and volition, then the punishment shall be reduced.

Example:

X, a Somali citizen, becomes very sick. He goes to a doctor, who gives him some medicine, and instructs him to take only one spoonful every three hours. The medicine contains alcohol, but not enough to make anybody drunk if taken in the quantities ordered by the doctor. X misunderstands the doctor's instructions, and takes three spoonfuls every hour. By the end of the fourth hour, X is totally drunk. He gets up from his bed, leaves his house, and staggers to a nearby tea shop. There, in a state of drunkenness, he strikes Y and breaks two tables belonging to Z, the owner of the shop. X is arrested and placed in jail. When he recovers, he doesn't remember anything of what happened.

X is not guilty of assaulting Y and destroying Z's tables. He cannot be held criminally responsible, because he was totally drunk by accident and unable to have the understanding or volition with regard to his actions.

Article 54 Voluntary or Culpable Drunkenness

Drunkenness not arising from accidents or from *force majeure* shall not preclude or lessen liability.

Explanation:

As stated above, liability for acts committed at the time of total drunkenness are excused only if the person becomes drunk accidentally or by *force majeure*. Otherwise, a person is liable for acts committed while drunk. The theory behind this rule is that although the person may lack capacity of understanding or of volition at the time he commits an act while drunk, he definitely had that capacity of understanding and volition when he started drinking. Therefore, since he had the proper state of mind to be held criminally liable when he commenced to drink, he can be held responsible for all of his actions committed while drunk. He desired and wanted to drink and understood what he was doing at the time.

Example:

X, a foreigner living in Mogadishu, frequently drinks beer at home. One night, after drinking ten bottles, he staggers out of the house and, while passing a local tea shop, attacks Y for no reason and beats him. X is arrested and charged with causing hurt to Y.

X is guilty of such charge. He did not become drunk by accident or *force majeure*. He became drunk voluntarily.

Article 55 Habitual Drunkenness

1. Where the offense is
(a) committed in a state of drunkenness
(b) by a habitual drunkard,
the punishment shall be increased.

2. For the purposes of the penal law, a person who is:
(a) addicted to the use of alcoholic beverages, and
(b) frequently in a state of drunkenness,
shall be deemed to be a habitual drunkard.

Explanation:

The second paragraph describes what is meant according to the law by a habitual drunkard. The word "addicted" means a person who is compelled to drink—that is, he is no longer able to stop even if he wanted to. Note that a person must be both addicted to and frequently in a state of drunkenness to be classified as a habitual drunkard.

The article states that the punishment for the offense shall be increased where it has been committed by a habitual drunkard in a state of drunkenness. This is because the accused is deemed to be worse than the normal offender because of his consistent anti-social behavior of drunkenness. If a habitual drunkard commits a crime while sober or not drunk, the punishment cannot be increased merely because he is a habitual drunkard. He must have also committed the crime while in the state of intoxication.

Example:

X, a foreigner living in Mogadishu, has been arrested several times before for committing crimes while drunk. He is known in the city as a drunkard, and is frequently seen drinking at all times of the day. One night, X is arrested for committing a theft. At the trial, the prosecution requests that the punishment be increased because the crime was committed while X was in a state of drunkenness and X is a habitual drunkard.

The Court, on the basis of the facts given above, could find that X is frequently drunk. But to prove habitual drunkenness, it must be shown that the person is also addicted to the use of alcoholic beverages. Besides the testimony of the people of the town, who have always seen him with a bottle, medical testimony would be necessary to show that X was unable to stop drinking by himself.

Article 56 Drunkenness Caused by Narcotic Drugs

The provisions of the preceding articles shall also apply when the act has been committed under the influence of narcotic drugs.

Explanation:

This article establishes the rule that acts caused under the influence of narcotics shall be treated the same way as acts caused under the influence of alcohol. Therefore, the terms of Articles 53 through 55 apply to a person who has committed an offense under the influence of narcotic drugs. If a person becomes incapacitated as a result of taking drugs by accident or *force majeure*, he is not responsible criminally for his actions. If he voluntarily took drugs and committed an offense, then he is responsible. If he is a habitual drug taker, then the penalty shall be increased. Note that the provision with regard to increasing the penalty for habitual drunkenness or drug addiction is not discretionary (Article 55[1]). The judge must increase the punishment.

Article 57 Chronic Intoxication from Alcohol or Narcotic Drugs

In the case of
(a) acts committed while in a state of chronic intoxication
(b) induced by alcohol or narcotic drugs,
the provisions contained in Articles 50 and 51 shall apply.

Explanation:

Chronic intoxication caused by alcohol or drugs is different from the intoxication mentioned in Articles 53, 54, and 55. That kind of drunkenness is temporary; it goes away when the effects of the alcohol or drugs disappear. For example, chronic intoxication by alcohol causes severe damage to the liver. Some drugs may affect vision, hearing, or the ability to think or speak.

Therefore, in cases of chronic intoxication by alcohol or narcotic drugs, the provisions relating to total or partial mental deficiency shall apply. This means that if a person commits an offense by reason of an infirmity caused by chronic intoxication by alcohol or narcotic drugs, and this infirmity precluded his capacity to understand or to will the action to happen, then he is not liable for committing the offense. In other words, chronic intoxication will be treated like insanity, according to Articles 50 and 51 (see examples under those articles, which are equally applicable to Article 57).

Article 58 Deaf and Dumb Conditions

1. A deaf and dumb person who,
(a) at the time when he committed an act,
(b) had not the capacity of understanding or of volition,

(c) by reason of his infirmity,
shall not be liable.

2. If the capacity of understanding or of volition was largely diminished, but not entirely nonexistent, the punishment shall be reduced.

Explanation:

If a deaf and dumb person commits an offense, but at the time he did so he did not have the capacity of understanding or of volition, as a result of being deaf and dumb, then he shall not be liable. Note that if such a person commits an offense and he lacks the capacity of understanding or of volition, but not because of being deaf and dumb, then another provision of the Penal Code may apply, but Article 58 does not. Note also that the person must be both deaf and dumb.

It is for the judge, in each individual case, to determine whether the deaf and dumb person who committed the offense lacked the capacity of understanding or volition as a result of his condition at the time the offense was committed. Some deaf and dumb persons will have the same capacity as normal persons, others will have impaired intelligence as a result.

The second paragraph merely follows the rule established in Articles 51 and 53. Where the capacity of understanding or volition is only partially impaired, then the punishment shall be reduced.

Article 59 Persons under Fourteen Years of Age

Whoever,
(a) at the time he committed an act,
(b) had not attained fourteen years of age,
shall not be liable.

Explanation:

This article establishes the arbitrary rule that persons below the age of fourteen shall be deemed to lack the capacity of understanding or volition required by Article 47 to hold a person liable for his acts. The rule contained in this article permits of no exceptions. This means that if a twelve-year-old boy commits an offense, fully knowing and understanding what he was doing, he cannot be held criminally liable for his acts, because he was under fourteen. The offender must not have reached fourteen at the time he committed the act.

Example:

Z, a boy of about thirteen and a half, commits a theft in his town. He is caught and arrested. While in jail awaiting trial, he becomes fourteen. At the trial, he requests to be released because he is too young.

Z cannot be held criminally responsible for his acts. He committed the offense when he was thirteen and a half, and it does not matter that he was fourteen at the time of the trial or that he understood and knew what he was doing at the time he committed the offense.

Article 60 Persons under Eighteen Years of Age

1. Whoever,
(a) at the time he committed an act,
(b) had attained fourteen years of age,
(c) but not eighteen years,
shall be liable if
(d) he had the capacity of understanding and volition;
but the punishment shall be reduced.
2. When
(a) imprisonment imposed is less than five years, or
(b) in cases of pecuniary punishment,
conviction shall not entail any accessory penalties.
In cases of more serious punishment, conviction shall only entail interdiction from public office for a period not exceeding five years.

Explanation:

The liability of persons between the ages of fourteen and eighteen is different from that for those under fourteen. There are, in effect, three categories:

(1) Under fourteen: The Penal Code states that children under fourteen are not capable of understanding or of having volition and therefore cannot be held responsible.
(2) Between fourteen and eighteen: The Penal Code holds these children liable only if it is shown that they had the capacity of understanding and volition.
(3) Over eighteen: The person is assumed to have the capacity of understanding and volition unless one of the articles in Section 1 of this chapter applies, such as total mental deficiency.

Article 60 deals with those offenders between the ages of fourteen and eighteen. The offender must be fourteen at the time of committing the offense, but under eighteen. If he is younger or older, then other articles apply. Once the age is determined, the prosecutor must show that the offender actually had the capacity of understanding and volition necessary to be held responsible. If the accused did not have such capacity, he would not be held responsible, even if he fell within the age limits prescribed.

In the case of *Musa Dualeh Ali* v. *State*, discussed in Article 31, the Supreme Court had to decide the scope of Article 60. In that case, Musa Dualeh Ali, a boy of fourteen and a half, had killed another boy and was charged with violating Article 447, Death Caused as a Consequence of Another Crime. The defense counsel contended that the prosecutor had not shown the Court that the accused was capable of understanding and of intending his act, as required by Article 60.

The Supreme Court stated that the rule of Article 60 is:

> . . . in a case where an accused person had attained fourteen and not eighteen years at the time he committed the act constituting the crime, it is essential that, before he is convicted, it should be proved that he has the capacity of understanding and of volition. If there is no such proof, the conviction will be null and void in view of the provisions of Article 60(1) of the Somali Penal Code.

The Court then went on to describe how such capacity can be proved. It said:

> Two methods could be adopted in order to ascertain whether the person concerned has the capacity of understanding and of volition. First, the Court may, before the trial begins, put questions to the accused to test his capacity of understanding and of volition and enter a finding whether or not the accused has the capacity of understanding or of volition. This should be the normal procedure to follow. On the other hand, the Court may enter such a finding, taking into consideration the statements by the accused during the trial from which it may be possible to assess the accused's capacity of understanding or volition.
>
> In the absence of a finding under the above two methods, there should be evidence in the case from which it could be deduced that the accused has the capacity of understanding and of volition. (Somali Law Reports [Hargeisa and Burao Regions], 1964–65, p. 229.)

The Court went on to state that to avoid miscarriages of justice in the future, the lower courts should use one of the two methods described above. Since the lower court had not made such a finding, the Supreme Court examined the records of the case and concluded that the accused was an intelligent boy and had full capacity of volition and understanding.

The second paragraph describes the various reductions to be made in the punishment if an offender between the ages of fourteen and eighteen is convicted.

Example:

X, a fifteen-year-old boy is caught stealing money from a house. He is arrested and charged with theft. The boy is brought before the District

Court judge. The judge, pursuant to the ruling of the Supreme Court in the case of *Musa Dualeh Ali* v. *State,* questions the boy about his life, his schooling, his knowledge of the Koran, the names of his family, his *rer,* and the town. The purpose of this questioning is to determine whether the boy is intelligent and alert, and knows what an average fifteen-year-old boy should know. The judge concludes on the basis of the boy's statements that he had full capacity for understanding and volition, and orders him to stand trial for theft.

SECTION II RECIDIVISTS, HABITUAL AND PROFESSIONAL OFFENDERS

Article 61 Recidivism

1. A recidivist means
(a) a person who, after conviction for an offense,
(b) commits another offense.
2. Recidivism shall be an aggravated offense:
(a) where the second offense is of the same character;
(b) where the second offense is committed within five years from the preceding conviction;
(c) where the second offense is committed while or after serving the sentence, or during the time when the convicted person voluntarily evades serving the sentence;
(d) where there are more than one prior convictions.

Explanation:

This section deals with the three categories of offenders under the Penal Code. Generally speaking, the offenders under the Penal Code are classified in these categories for the purpose of assessing punishment. The National Assembly, in passing the Penal Code, has determined that a person who has made a life out of crime and consistently committed offenses against society should be punished more severely than a person who has committed his first offense. Therefore, the Code divides offenders up into:

(a) recidivists,
(b) habitual offenders, and
(c) professional offenders.

The punishment and penalties are greatest for professional offenders, less for habitual offenders, and still less for recidivists.

Article 61 deals with the category of recidivists. According to Paragraph 1, a recidivist is simply a person who has been convicted of an offense

and then committed another offense. The offenses may be different—for example, a theft and defamation. But the commission of the second offense must take place after the conviction for the first offense. If a person commits the offense of burning down X's house, and by accident kills X because X was inside the building, that person cannot be classified as a recidivist for his action, even though two different crimes have resulted from his act, DAMAGE TO PROPERTY (Article 491) and DEATH CAUSED AS A CONSEQUENCE OF ANOTHER CRIME (Article 447). This is because the conviction for either offense will not have occurred prior to the commission of the other offense.

Paragraph 2 defines when recidivism will be considered an aggravating circumstance. If any of the conditions in Subparagraphs a through d are met, then the penalty for recidivism shall be increased according to the provisions of Article 124. Generally, the punishment for merely being a recidivist, under Paragraph 1, is increased up to one-sixth the sentence determined by the judge; the punishment for being a recidivist with one of the conditions of Subparagraphs a through d of Paragraph 2 is increased up to one-third.

The conditions included in those subparagraphs describe when the law considers recidivism to be especially harmful. If a person has committed a crime and then commits the same type of crime following conviction for the first one, it shows that the judicial process and imprisonment have not persuaded him to cease committing this type of crime. Therefore, if the penalty is increased for the second offense of the same type, it will serve as an added deterrent to committing a crime in the future. Similarly, the commission of the second offense is especially serious if he has committed it within five years of his earlier conviction (Subparagraph b), because this shows that his first sentence has had no effect on his attitude toward crime.

Example:

X, a newspaper editor in Mogadishu, defames a government official in his newspaper. He is convicted under Article 452(3) and sentenced to six months in prison. After serving his term, X is released and starts printing his newspaper again. In one issue, he defames another government official, and criminal charges are brought against him. He is convicted.

Under Article 61, Paragraph 1, X is a recidivist, because he has committed another offense following the conviction for his first one. His second defamation also comes within the terms of Paragraph 2, because it is of the same character as the first offense—both being defamation (Subparagraph a)—and it has been committed within five years of the

earlier conviction (Subparagraph b). Therefore, under either of these subparagraphs, X can be classified as a recidivist who has committed an aggravated offense, and, according to Article 124, the punishment for the second defamation may be increased up to one-third. If X is sentenced to three years in prison for his second defamation, the judge may increase the sentence up to one year (one-third of three years), for a total sentence of four years.

Article 62 Discretion of the Judge in Cases of Recidivism

For purposes of recidivism, except in cases of convictions for offenses of the same kind,

(a) the judge shall have the discretion
(b) not to take into account
(c) a previous conviction for a crime or a contravention
(d) when convicting for a contravention or a crime, or
(e) not to take into account
(f) crimes committed with criminal intent, or preterintentional or unpremeditated crimes, or contraventions,
(g) when convicting respectively for contraventions or unpremeditated or preterintentional crimes or crimes committed with criminal intent.

The judge shall have the same discretion in cases of conviction for contraventions where the offender has been previously convicted for a contravention.

Explanation:

This article describes the discretion a judge may exercise in determining sentences when dealing with cases involving recidivists. The judge does not have the discretion described in this article where the recidivist has committed an offense of the same kind as the offense he was formerly convicted for.

Generally, the article gives the judge the power to disregard prior convictions for crimes committed with criminal intent or preterintentional intent, or unpremeditated crimes. And the same discretionary power extends to contraventions. This means that if the judge does not consider the prior conviction, the sentence will not be increased. Therefore, the exercise of discretion should be based on the judge's determination that the offender did not commit the second offense because the first punishment was not enough to compel him to abandon his life of crime, but for other reasons. It is impossible to detail all of the situations in which a judge would use his discretion under this article, but the following example will indicate in general when such discretion should be exercised.

Example:

X, a resident of a small town, steals flashlights, cloth, and cigarettes from a store. He is caught and tried. The judge sentences him to one year in prison, because it is his first offense. X is released from prison after one year, and returns to the town. He gets married and is living a normal, law-abiding life. One day, X is in a tea shop and hears Y insult X's wife. X attacks Y, knocking him to the ground, and beats him severely. X is arrested and charged with HURT, under Article 440.

The judge in the trial for hurt may or may not take into consideration X's prior conviction for theft. In this case, since X's attack on Y is unrelated to the crime of theft, and was somewhat justified by Y's insulting X's wife, the judge could ignore the prior conviction. Therefore, X's penalty for hurt would not be increased as a result of his prior conviction.

Note that if X had committed a second theft after returning home, the judge would not have discretion, under Article 62, to ignore the first conviction.

Article 63 Offenses of the Same Kind

For the purposes of the penal law, offenses shall be deemed to be of the same kind where they entail a violation of the same provision of law.

Offenses of the same kind shall also be those which, although governed by different provisions of this Code or by different laws, nevertheless, owing to the nature of the acts constituting them or of the motives thereof, present common fundamental characteristics.

Explanation:

Paragraph 2 of Article 61 makes recidivism an aggravated offense if the second offense is of the same character as the first (Subparagraph a). Article 63 defines when offenses are deemed to be of the same kind for purposes not only of Article 61 but for the penal law in general.

This article defines three situations where offenses will be deemed to be of the same kind:

(a) where it is a violation of the same provision of the law;
(b) where there are common fundamental characteristics in the nature of the acts, even though they do not violate the same provision or the same law;
(c) where there are common fundamental characteristics in the motives, even though they do not violate the same provision or the same law.

It is obvious that violations of the same provision of the law will be considered offenses of the same kind. If a person commits two different and separate thefts, then he will be guilty of having committed two

crimes of the same kind. The other two situations require common fundamental characteristics, either in motives or in the nature of the acts themselves. Note that the violations do not have to be of the same provision or, for that matter, even of the same law. An easy test to determine if offenses have common fundamental characteristics is to see if they are included in the same chapter or section of the Penal Code. Thus, for example, crimes committed under Chapter I, Part IX, Book II, entitled CRIMES OF SEXUAL VIOLENCE (Articles 398 to 401), would have the same motives or common fundamental characteristics with regard to the nature of the acts committed. The same would be true for crimes under Chapter I, Part XIII, Book II, CRIMES AGAINST PROPERTY BY MEANS OF VIOLENCE. THEFT (Articles 480 and 481), ROBBERY (Article 484), EXTORTION (Article 485), DAMAGE TO PROPERTY (Article 491), and KILLING OR INJURING OF ANIMALS (Article 494) all involve crimes against the property of another person by means of violence or threats of violence. The nature of the acts involved in committing the crime—violence or the threat of violence—are the same. The general motives are the same—destruction or the taking of property.

Article 64 Habitual Delinquency Presumed by Law

1. Whoever,
(a) after having been sentenced to imprisonment for terms exceeding five years in the aggregate
(b) for three crimes of the same kind,
(c) not committed with culpa,
(d) and committed within a period of ten years,
(e) and not simultaneously,
is convicted of another crime
(f) of the same kind,
(g) not committed with culpa,
(h) committed within ten years after the latest of the previous crimes, shall be declared a habitual offender.

2. The period during which a convicted person is subject to detention as a result of conviction and sentence, or as a result of security measures, shall not be included for the purpose of calculating the ten-year period referred to in the previous paragraph.

Explanation:

This article defines the second category of offenders under the Penal Code—the habitual offender. An offender may be presumed under the law to be habitual, as provided for in this article, or he may be declared a habitual offender by the judge under Article 65.

Under this article, a person is considered a habitual offender if he has committed three crimes of the same kind and been sentenced to at least a total of five years for the convictions under these crimes. In addition, the three crimes must have been committed within a period of ten years as separate crimes, not simultaneously. The definition excludes crime committed with culpa, meaning negligence, because this indicates that a person did not commit a crime because of criminal intent but, rather, as a result of lack of care.

If the above conditions are satisfied, and the person commits another crime (his fourth) of the same kind, without culpa, within ten years of the last of the three crimes described above, then that person shall be declared a habitual offender.

Note that the requirement that an offender commit three crimes before being declared a habitual offender is a minimum—not an absolute, fixed figure. He could have committed four or five crimes of the same type and not yet have been declared a habitual offender under the law. Note also that Paragraph 2 of Article 64 states that, in calculating whether an offender has committed another crime within ten years of the first three, any period of detention for security measures, or detention in prison as a result of a sentence and conviction, shall not be calculated in that ten-year period. This means that a person is forbidden by the article from committing a crime within ten years of getting out of jail after his last conviction.

Example:

X, a Somali citizen, is convicted of a theft in 1960. He is sentenced to one year in jail. He is released in 1961, and shortly thereafter is again caught stealing. This time he is sentenced to two years in prison. Upon his release in 1963, he commits a robbery of a small store and is again caught. He is sentenced to three years in prison. He is released in 1966. Shortly afterward, X is arrested for causing DAMAGE TO PROPERTY, in violation of Article 491, by burning down a store in Mogadishu. At his trial, the prosecution requests that X be declared a habitual offender according to the presumption required by law under Article 64.

X is a habitual offender. He has committed at least three crimes of the same kind—two thefts and one robbery (see Article 63, OFFENSES OF THE SAME KIND). He has been sentenced to at least a total of five years for all three of these crimes (X has in fact been sentenced for six years: one for the first theft, two for the second one, and three for the robbery). None of the crimes were committed with culpa, and all were committed within a period of ten years. X has now committed a fourth crime—DAMAGE TO PROPERTY. It is the same kind as the other three—theft and robbery. And he has committed the damage to property within ten years of his convic-

tion for the robbery. The ten-year period would run from 1966, when he was released from prison, until 1976.

Article 65 Habitual Delinquency Declared by the Judge

Apart from the case referred to in the preceding article, a person shall be declared a habitual offender where,

(a) after having been convicted of two crimes,
(b) not committed with culpa,
(c) he is again convicted of a crime,
(d) not committed with culpa, and
(e) where the judge, taking into account the nature and gravity of the offenses, the time within which they were committed, the conduct and manner of life of the offender, and the other circumstances referred to in Article 110, is of the opinion that the offender is addicted to crime.

Explanation:

This article gives the judge discretion to declare offenders to be habitual offenders, even though the terms of Article 64 have not been meet. If the conditions of Article 64 are met, the judge *must* declare the person to be a habitual offender. If the conditions of Article 65 are met, the judge may, in his discretion, declare the person to be a habitual offender.

The major distinction between this article and the preceding one is that the crime which the offender has been convicted of and the final crime he is accused of do *not* have to be of the same kind. In addition, the offender has to be convicted of only two prior crimes, instead of three. It is up to the judge to determine whether the person is addicted to a life of crime. In reaching this decision, the judge should consider certain conditions specified by the article; he should evaluate the conduct and manner of life of the accused, the time within which he has committed the crimes, and the gravity of the offenses. All these factors, and others specified elsewhere, provide him with a fairly complete picture of whether the offender has become a habitual offender or not.

Example:

X, a Somali citizen, has been arrested and sentenced twice before for theft. Upon his release, he commits a robbery, beating the owner of a store with a *bud*, and stabbing a night guard who tried to stop him when he fled the store. X is caught and charged with robbery, assault, and hurt.

The judge, in considering X's case, takes note of X's two prior convictions, the fact that this robbery occurred shortly after he was released and

that it was a more serious offense than the two thefts, that X used force, and not only beat the store owner but stabbed another person. The judge, in his discretion under Article 65, declares X to be a habitual offender.

Article 66 Habitual Contraveners

Whoever,

(a) having been sentenced to imprisonment
(b) in respect of three contraventions
(c) of the same kind,
(d) receives a sentence for another contravention of the same kind,

shall be declared to be a habitual contravener where the judge, taking into account

(e) the nature and gravity of the offenses,
(f) the time within which they were committed,
(g) the conduct and manner of life of the offender, and
(h) the other circumstances referred to in Article 110,

is of the opinion that the offender is addicted to offenses.

Explanation:

Articles 64 and 65 deal with habitual offenders with respect to the commission of crimes. Article 66 is the counterpart of those two articles with respect to contraventions. The judge has the same type of discretion to declare a person to be a habitual contravener as he does to declare a person a habitual offender. There is no article in which a person can be found to be a habitual contravener according to a presumption of law. Since the conditions for Article 66 are similar to those of Article 65, except for the important distinction that Article 66 involves contraventions and not crimes, the general comment and example for Article 65 are applicable.

Article 67 Professional Offenders

Whoever,

(a) having committed acts for which he should be declared a habitual offender,
(b) is convicted for another offense,
(c) shall be declared to be a professional offender or contravener where,
(d) having regard to the nature of the offenses,
(e) the conduct and manner of life of the offender,
(f) and the other circumstances referred to in Article 110,

there is reason to believe that he is habitually living, even though partially, on the proceeds of offenses.

Explanation:

A professional offender is the third and most serious category of offender. Note that this article applies to both offenses and contraventions. The judge has discretion to declare, on the same grounds specified in Articles 65 and 66, that a person is a professional offender or contravener. But, unlike in those two preceding articles, the judge must make the decision that the offender is habitually living, even partially, on the proceeds of offenses. This is different from the finding he must make in Articles 65 and 66 that the offender is addicted to offenses or crimes.

Article 68 Effects of Extinction of Offense or Punishment

1. For the purposes of recidivism and declaring a person to be a habitual or professional offender,

(a) account shall also be taken of convictions

(b) in respect of which the offense or punishment has been extinguished.

2. The above provision shall not apply where the penal effects of the conviction are also extinguished.

Explanation:

The purpose of declaring a person a recidivist or a habitual or professional offender is to increase the punishment of a person deemed by law to be especially dangerous to society because of his tendencies to commit many offenses. Therefore, even though a person has been pardoned, for example, the fact that he committed the offense in the first place still has relevance in determining, when he commits another offense, whether or not he is a danger to society. Paragraph 1 merely states that in such a case, even where the punishment itself has been extinguished, the fact that the person committed the offense shall be considered in determining whether or not he is a recidivist, a habitual, or a professional offender.

Paragraph 2 provides that the offense shall not be considered where the penal effects of the conviction are also extinguished—that is, when the existence of the crime as well as the punishment is wiped out.

Examples:

1. X has been arrested and sentenced twice for theft. During his term of imprisonment for the second theft, he is pardoned as a result of a presidential amnesty. Upon being released, he commits a robbery, beating a store owner, and stabbing a night guard who tries to stop him from escaping. At his trial, the judge declares X to be a habitual offender within the provisions of Article 65.

The fact that X has been amnestied for his second conviction of theft does not matter in determining whether or not he is a habitual offender. His conviction for that theft may be counted in determining that he has committed two offenses prior to the robbery.

2. Q, a resident of Hargeisa, marries B, and the two live as man and wife. Q has three more wives, each living in a different town. B wants to visit her family in Aden, and Q sends her by boat from Somalia. He then meets C, another girl, and marries her, without telling the *qaadi* that he already has four wives. Q therefore has five wives, which is illegal. He is tried and convicted under Article 425, Illegal Marriage, and sentenced to a year in jail. After Q has served two months in prison, it is discovered that his first wife, B, drowned when the boat was wrecked by a monsoon. Therefore, at the time Q married C, he had only three living wives, and he could not be guilty of marrying five women, even though he had the criminal intent to do so. Q is released from prison.

Since the penal effects of the conviction have been extinguished—that is, Q has not committed a crime at all, because B was dead at the time of his marriage to C—the fact that Q was convicted cannot be considered in determining whether Q could be declared a recidivist, a habitual, or a professional offender, if later in his life he commits other crimes.

Article 69 Conviction for Different Offenses in One Judgment

The provisions relating to the declaration that a person is a habitual or professional offender shall also apply where a conviction for different offenses is pronounced in one judgment.

Explanation:

Whether a person is a habitual or professional offender depends upon the number of crimes he has committed and been convicted for, not upon the number of judgments against him. Both Articles 64 and 65 talk about convictions for crimes, not judgments. Therefore, if an accused is convicted of two different crimes in one trial resulting in one judgment, for purposes of Article 64 and 65 it is still counted as two separate convictions.

Article 70 Effects of Declarations Relating to Habitual and Professional Offenders

1. In addition to the increase in punishment prescribed for recidivism and any other consequences prescribed by other provisions of law,

(a) a declaration that a person is a habitual or professional offender

(b) shall entail the application of security measures.

2. A declaration that a person is a habitual or professional offender may be made at any time, even after the sentence has been carried out;

but where it is pronounced after the sentence, the subsequent conduct of the offender shall not be taken into account and the punishment imposed shall not be altered.

3. A declaration that a person is a habitual or professional offender shall be extinguished as a result of rehabilitation.

Explanation:

The definitions of habitual or professional offenders include a person who is a recidivist. As stated above, the punishment for recidivists is greater than the punishment for non-recidivists. Paragraph 1 provides that besides the increases in punishment for recidivism, a person who is a professional or a habitual offender shall be subjected to security measures. Security measures are discussed in Articles 172 to 181. They can be either of a detentive nature, such as commitment to a hospital or lunatic asylum, or of a non-detentive nature, such as police surveillance. Note that although the judge has discretion as to which security measures to apply, he must apply some security measures under Article 70 if a person has been declared either a habitual or a professional offender.

Paragraph 2 states that a person may be declared a habitual or a professional offender even after the sentence has been pronounced and carried out. This means that after a person has served his time in prison, the judge has the power to declare him a professional or a habitual offender upon his release, and this in turn would subject him to security measures.

Paragraph 3 states that if a person has been rehabilitated, then the declaration that that person is a professional or a habitual offender is extinguished. Rehabilitation is described in Articles 152 to 155. Briefly, it is a statement that the offender has by his good conduct for a period of time shown himself to be a law-abiding member of the society again.

Example:

X, in Example 1 under Article 68, is brought before the judge to be sentenced for having committed a robbery and causing hurt. The judge sentences him to thirteen years in prison and orders that he be placed under police surveillance pursuant to Article 178, having first declared him to be a professional offender. Under this sentence, X will be subject to police surveillance upon his release from prison.

SECTION III MORE THAN ONE PERSON PARTICIPATING IN AN OFFENSE

Article 71 Punishment for Those Who Participate in an Offense

Where
(a) more than one person participates

(b) in the same offense,
(c) each of them
shall be liable to the punishment prescribed therefor, except as otherwise provided in the following articles.

Explanation:

This section deals with the situation where more than one person commits an offense. The general rule, as described in Article 71, is that each person participating in the offense is subject to the punishment established for that offense.

Example:

X and Y decide to steal from a store. Both go to a store one night. X breaks the window and climbs inside. Y follows. They take cloth and lanterns, and while leaving the store are caught by the police.

The punishment for simple THEFT under Article 480(1) is imprisonment up to three years and a fine of from 300 to 5,000 Somali shillings. According to Article 71, both X and Y are subject to this punishment.

Article 72 Causing a Person Not Liable or Not Punishable to Commit an Offense

Whoever
(a) has caused a person
(b) who is not liable or not punishable,
(c) on account of a personal condition or capacity,
(d) to commit an offense
shall be liable for the offense committed by that person; and the punishment shall be increased.

Explanation:

This article applies only to the situation where one person has caused another person, who is not liable or punishable on account of his personal condition or capacity, to commit an offense. It does not apply where the person who commits the offense is liable or punishable.

Example:

X is a thirteen-year-old boy living in a town. His uncle, Y, tells him to steal goods from a local store at night, so that Y can sell them. The boy does so, but he is caught. X tells the police that he was stealing because his uncle told him to do so.

Under Article 59, X cannot be punished, because, being under fourteen years of age at the time he committed the offense, he cannot be held crimi-

nally responsible. Y, his uncle, has caused him to commit the offense, and therefore Y is liable for the punishment for theft, as if he himself had committed the crime, and his punishment must be increased.

Article 73 Aggravating Circumstances

1. The punishment to be imposed for the offense committed shall be increased:

(a) where more than five persons participate in committing an offense, except as otherwise provided by law;

(b) in the case of persons who, even apart from the cases referred to in Subparagraphs c and d below, have promoted or organized participation in the offense, or have directed the action of the persons who participated in that offense;

(c) in the case of persons who, in the exercise of their authority, direction, or supervision, have caused persons subject to them to commit the offense;

(d) in the case of persons who, apart from the case referred to in the preceding article, have caused a person under eighteen years of age, or one in a state of mental infirmity or deficiency, to commit the offense.

2. The increases in punishment prescribed in letters a, b, and c of the previous paragraph shall apply even where any one of the persons participating in the act is not liable or punishable.

Explanation:

This article describes what are deemed to be aggravating circumstances in situations where more than one person commits an offense. If any of the circumstances described in Subparagraphs a, b, c, or d of Paragraph 1 occur, then the punishment for the commission of that offense shall be increased.

Subparagraph a simply states that it is an aggravating circumstance if more than five persons participate in committing the offense. This means five or more persons. The exception to this is "except as otherwise provided by law." This means that if participation by more than five persons is made a specific aggravating circumstance to the commission of an offense, it will not be considered an aggravating circumstance under Article 73. This follows from the general rule, established in Article 39, that special aggravating circumstances are not aggravating circumstances in the normal sense. The basis of the rule is to avoid punishing a person twice for the same aggravating circumstance. The law, by increasing the punishment for that circumstance once, has taken into consideration the desirability of penalizing for this anti-social behavior.

Subparagraph b makes it an aggravating circumstance if the person has promoted or organized participation in the offense, or directed the actions of the persons participating. Promotion of the offense means to initiate the idea of the criminal enterprise; organizing the offense means to get people to participate in the commission of it; and direction of the action means to assign positions and duties to the participants, instruct them in the plan of action, and provide them with the means for performing their functions.

Subparagraph c refers to the situation where a person in a position of authority over another causes him to commit the offense. An example of this would be a father who, by reason of his parental authority, compels two of his sons to assist in the commission of a crime.

Subparagraph d applies to those situations, apart from the conditions in Subparagraphs a, b, and c, where the person has caused someone under eighteen years of age, or one suffering from mental infirmity or deficiency, to commit an offense.

Paragraph 2 provides that even if the person participating in the offense could not be held liable or punishable, for the purpose of determining whether another person has committed an offense with an aggravating circumstances under Subparagraphs a, b, or c of Article 73, his participation will be counted.

Examples:

1. X and five other persons participate in robbing a trade truck traveling between two towns. They are caught by the police and brought to trial, being charged with ROBBERY under Article 484(3). Paragraph 3a of Article 484 provides that the punishment for robbery shall be increased from one-third to one-half if the violence or threats of violence during a robbery are committed with arms by more than one person acting together. This is a special aggravating circumstance defined in the crime itself.

Therefore, the fact that six people participated in an armed robbery of the trade truck is not an aggravating circumstance under Article 73, because it comes within the phrase "except as otherwise provided by law."

2. Y, a Somali businessman, owns a trucking company. He employs several drivers and loaders. He has received goods from Aden and wants to get them out of customs without paying the duty. Y orders Z, one of his drivers, and two other employees to go down to the port in a truck, pick up the goods, bribe the customs official, and return with the goods to Y's warehouse. Z and the two other employees successfully bribe

the port officer and, while they are driving away, are apprehended by the police.

Y is subject to an increased penalty for having committed an aggravating circumstance under Subparagraph c of Article 73. He has exercised his authority and supervisory powers over Z and his two other employees to cause them to commit the offense.

3. Q, B, C, and D plan to steal from a government storehouse. They employ E, a thirteen-year-old boy, to watch for the police or night guards and warn them if they are coming. Q is the one who organized the offense, having got B, C, D, and E to participate, instructed each one in what he was supposed to do, and provided the plans. They are caught by the police shortly after having completed the crime. All are charged with THEFT.

It is an aggravating circumstance under Article 481(1e) if the theft is committed by more than three persons. Thus, Q, B, C, and D are all subject to the increased penalty. E cannot be held liable, since he was under fourteen at the time he committed the offense.

Under Article 73, Subparagraph a does not apply, since the fact that more than three participated is a special aggravating circumstance under Article 481. But Q is subject to an increased penalty, because he promoted, organized, and directed the action of the persons involved in the commission of the offense, in violation of Subparagraph b. It would be enough to establish a violation under Subparagraph b if he had only planned, or directed, or organized the crime, but Q has committed all three actions.

Article 74 Participation in Crimes Committed with Culpa

1. In the case of a crime committed with culpa,
(a) where the event has been caused
(b) by the participation of more than one person,
each of them shall be liable to the punishment prescribed for the said crime.

2. The punishment shall be increased
(a) in the case of a person who has caused others to participate in the crime,
(b) where the conditions laid down in Article 72 and in letters c and d of Paragraph 1 of the previous article are present.

Explanation:

Note that, whereas the preceding articles of this section apply to offenses, meaning crimes and contraventions, this article applies only to

crimes. There is no such thing as a contravention committed with culpa, or negligence.

Paragraph 1 simply makes each person participating in a crime committed with culpa liable to the punishment for that crime.

Paragraph 2 states that the punishment shall be increased if a person has caused others to participate in the crime, in so far as the conditions of Article 72 and Subparagraphs c and d of Paragraph 1 of Article 73 are met. This means that a person causing another to commit a crime is liable to increased punishment if the person he caused to act was a person who is not liable or not punishable on account of a personal condition or capacity (Article 72), or under his authority, direction, or supervision (Article 73[1c]), or under eighteen years of age, or in a state of mental infirmity or deficiency (Article 73[1d]).

Example:

X, the owner of a car, is being driven between Afgoi and Mogadishu. He is sitting next to his driver, Y. X tells Y to drive faster because he is in a hurry. Y drives faster, and comes around a curve too quickly to see an old woman crossing the road. The car hits the woman, who is killed.

Both X and Y are subject to being charged with violating Article 445, DEATH CAUSED BY NEGLIGENCE, and both are subject to the penalties for that offense. In addition, X is subject to the increased penalties provided for in Paragraph 2 of Article 74 for having caused the participation of Y in the offense by reason of his authority over Y.

Article 75 Extenuating Circumstances

1. Where the judge is of the opinion that
(a) the aid lent by any of the persons who participated in the offense,
(b) as laid down in Articles 71 and 74,
(c) has played a minor part in the preparation or the execution of the offense,
he may reduce the punishment.

2. The previous provision shall not apply in the cases referred to in Article 73.

3. The punishment may likewise be reduced in the case of
(a) a person who has been caused to commit the offense, or
(b) to participate therein,
(c) where the conditions laid down in letters c and d of the first paragraph of Article 73 are present.

Explanation:

This article gives the judge discretion to reduce the penalty for participation in the commission of offenses. Paragraph 1 gives the judge this

discretion in cases where the person has participated in the offense (Article 71) or where he has participated in a crime committed with culpa (Article 74).

Paragraph 2 specifically prohibits the judge from exercising such discretion in cases where Article 73 requires an increased punishment for aggravating circumstances.

Paragraph 3 allows the judge to exercise his discretion in reducing the penalty where a person has been caused to commit the offense because he was under the authority, direction, or supervision of another, or he was suffering from mental infirmity or deficiency.

Examples:

X, a Somali citizen, decides to steal from a store one night. He persuades Y, a friend of his, to help him by watching for a night guard or the police and signaling him if they are coming. He promises that Y will not have to do anything else. After X has broken in and taken the goods and X and Y are leaving, they are caught by the police. Both are charged with THEFT, under Article 480.

According to Article 71, both X and Y are subject to the penalty prescribed in Article 480. However, the judge, using the discretionary power granted him under Article 75, decides, according to the first paragraph, that Y's part in the commission of the offense was slight. Therefore, he reduces Y's sentence for theft.

Article 76 Agreement to Commit an Offense: Instigation

1. Except as otherwise provided for by law,
(a) where two or more persons agree to commit an offense,
(b) and it is not committed,
none of them shall be punished for the mere act of making the agreement.

However, in the case of agreement to commit a crime, the judge may apply security measures.

2. The same provisions shall apply in the case of instigation to commit an offense, where the instigation has been favorably received, but the offense has not been committed.

3. Where the instigation was directed to the commission of a crime, and was not favorably received, the instigator may be subjected to security measures.

Explanation:

This article applies to offenses which have not been committed, but where the participants have agreed to commit them. The general rule, contained in Paragraph 1, is that the mere agreement to commit the offense does not require punishment. The judge, in cases of agreement to commit crimes (as distinguished from agreement to commit contraventions), may, in his discretion, apply security measures (see Articles 172 and 182).

Even if the participants have agreed to commit the offense, if the offense has not been committed, the participants cannot be punished for the act of agreement.

According to Paragraph 3, if the person who instigated the commission of the crime is unable to persuade others to participate in it, the judge may, in his discretion, subject that person to security measures, even though the crime has not yet been committed.

Example:

X, Y, and Z live in Mogadishu. They decide to steal some machinery from the warehouse of an oil company. They all meet at X's house to plan the crime. The police, informed by someone in town that X, Y, and Z are planning a crime, go to X's house and arrest them.

X, Y, and Z cannot be charged with any crime. The offense has not yet been committed. They have not gone far enough in their plans for the crime of attempted theft to have been committed (see Article 17). However, they do come within the provision of Article 76(1). Since they have shown a willingness to commit a crime, the judge decides to subject them to police surveillance, under Article 178. This means that X, Y, and Z will be watched in the future and subject to police supervision to prevent them from planning and carrying out other crimes.

Article 77 Offense Different from That Intended by Any of the Persons Participating

1. Where
(a) the offense committed is different from that which was intended
(b) by any one of those who participated in it,
that person shall also be liable where the event is the consequence of his act or omission.

2. Where
(a) the offense committed
(b) is more serious than that intended,
the punishment shall be reduced as regards the person who desired the lesser offense.

Explanation:

This article applies to the intent of the participants in the same offense. The general rule is that a person must knowingly and willfully want the

offense to occur, and commit that offense. The exceptions to this rule are cases of crimes committed with culpa or preterintentional acts, and where the offense is committed by mistake against the wrong person.

Article 77 is in keeping with these exceptions and the basic rule. If a person commits an offense different from the one he wanted to commit, or any member of the group of offenders wanted to commit, he shall be liable only for that different offense, if it is the consequence of his act or omission. Paragraph 2 states that if the offense committed is actually more serious than the offense intended, the punishment shall be reduced with regard to the persons who thought the offense would be the lesser one.

Examples:

1. X, Y, and Z plan to steal radios from a shop in Mogadishu. All three agree not to carry any weapons. X, unknown to the other two, takes a pistol with him. They go to the radio shop and break in through a side window. They find Q, a night guard, asleep in the store, and all of the radios locked up in metal display cases. The three see that they cannot get the radios out of the cases, and Y and Z want to leave. X, instead, draws his pistol, wakes up Q, and forces him to open the cases with his keys. X, Y, and Z then load the radios in the car and flee. They are caught the next day by the police. All three are charged with committing Robbery under Article 484, with the aggravating circumstances of use of arms and by more than one person acting together, under Paragraph 3 of that article. Y and Z claim that they didn't intend to commit robbery, but only theft, and for that purpose they hadn't taken any weapons with them and thought that X also hadn't taken a weapon.

According to Paragraph 1 of Article 77, Y and Z are not liable for the crime of robbery, but only for theft. The offense of robbery was different from that intended by Y and Z, and the robbery was not a result of their acts but of X's. X himself is liable for the offense of robbery.

2. G and B decide to abduct K, a wealthy businessman, and hold him until his relatives pay for his life with the sum of 100,000 Somali shillings. They go to K's house, intending to seize him. B draws a gun and orders K to come with them, but K hesitates. B, intending to fire into the air to scare K, instead shoots him in the stomach, and K dies. G and B are caught by the police and charged with Death Caused as a Consequence of Another Crime (Article 447).

Both G and B are guilty of this offense. But G desired the lesser offense —that of seizing K and holding him until his relatives paid for him. Therefore, G is punishable for violating Article 447 and for attempted Seizure (Article 460), but his punishment with regard to Article 447 shall be reduced, according to Paragraph 2 of Article 77. On the other hand, B is punishable for violating Articles 447 and 460, but his punishment is not reduced. He is responsible for the death of K, according to Paragraph 1 of Article 77, because it was his act that caused the event of K's death.

Article 78 Change in the Nature of the Offense in Respect of Any of the Persons Participating

Where,
(a) owing to the person, conditions, or qualities of the offender,
(b) or to the relationship between the offender and the party injured,
(c) the nature of the offense is altered in respect of any of the participants,
the others shall also be liable for the same offense.
However,
(a) where the offense is more serious,
(b) the judge may reduce the punishment
(c) for those in respect of whom the aforesaid conditions, qualities, or relationship do not exist.

Explanation:

The general rule prescribed by this article is that if one of the participants, because of personal conditions, qualities, or relationship to the injured party, is liable for a different offense, then all of the participants are liable for that offense. The judge, however, has the discretionary power to reduce the sentence with regard to those participants who do not have the conditions, qualities, or special relationship to the injured party, if the offense is more serious.

Example:

X, a private citizen living in Mogadishu, is a good friend of Y, an official of the Somali National Bank. X and Y want to go into business and open up a small factory outside Mogadishu. They are certain that the factory will make a lot of money and they will be rich. But they need money to build the factory and buy machinery. X and Y discuss the problem, and X finally persuades Y to take the money from the bank. Y does so, but the loss is discovered and Y is arrested. He tells the police that X persuaded him to take the money and helped him to remove it from the bank.

If X had taken the money from the bank, he would be guilty of Theft. But because Y and X took the money, Y is guilty of Peculation, in violation of Article 241, because he was an employee of the bank. Y's special relationship to the bank as an employee changes the nature of the offense.

According to Article 78, both X and Y are liable for the offense of PECULATION, even though X is not an employee of the bank and is not a "person entrusted with a public service" within the meaning of Article 240. But with respect to X, the judge may reduce his sentence, because peculation is a more serious offense than theft.

Article 79 Evaluation of Aggravating or Extenuating Circumstances

1. Objective circumstances which
(a) increase or reduce the punishment,
(b) even though they are not known by all those who participate in the offense,
shall be taken into account against them or in their favor.
2. Subjective circumstances which
(a) are not inherent in the person of the offender, and
(b) which increase the punishment as regards any of the persons who participate in the offense,
shall operate also against the others, even though unknown to them when they have aided in the commission of the offense.
3. Any other circumstance which increases or reduces the punishment shall only be taken into account in respect of the person to whom it applies.

Explanation:

Article 41 describes objective and subjective circumstances for purposes of the penal law. The reason for this distinction becomes evident in considering Article 79. Objective circumstances, whether they are aggravating or extenuating, apply to all participants in the offense, whether they are known to all of them or not. Subjective aggravating circumstances which apply to one of the participants shall apply to all of them, even if such circumstances are not known to the other participants.

Example:

X and Y plan to rob Z's house. X knows that Y will not help in the crime if he thinks Z will be in the house. Therefore, he tells Y that at the time they will rob the house, Z will be visiting his father in another town. Actually, X knows that Z will be home but asleep. X and Y break into Z's house and begin to take clothes and other property. They go into Z's bedroom, and Y, seeing Z asleep there, drops something on the floor. As Z, hearing the noise, starts to wake up, X runs up and hits him on the side of the head, knocking him unconscious. X and Y then take as much as they can, and run. They are caught the next day and charged with THEFT and HURT.

According to Article 39(e), it is an aggravating circumstance to take advantage of time, place, or person so as to hinder private or public defense. By committing a theft in Z's house when he was asleep, X and Y were taking advantage of such time and place. According to Article 41(a), time and place are objective circumstances.

Therefore, under Article 79(1), both X and Y are subject to increased punishment for the additional aggravating circumstance of taking advantage of time and place. Note that Y is liable even though he didn't know that Z was sleeping in the house at the time.

Article 80 Evaluation of Circumstances Excluding Punishment

1. Subjective circumstances
(a) which exclude punishment
(b) as regards any of the persons who have participated in the offense shall only be effective in respect of the persons to whom they apply.
2. Objective circumstances which exclude punishment shall be effective in respect of all persons who have participated in the offense.

Explanation:

Subjective circumstances which are individual or personal by nature, and exclude punishment, apply only to the persons involved, and not to all the participants in the offense. An example of a subjective circumstance would be private defense of a father on behalf of his son against a third person.

Objective circumstances, on the other hand, if they exclude punishment, apply to all the participants in the offense. Note that the same is true for objective aggravating and extenuating circumstances under Article 79(1). Therefore, objective circumstances, such as the place of the offense, exclude punishment for all offenders. If the crime has been committed outside the territory of the Republic, within the meaning of Article 2, and is not the type of offense punishable under Articles 7 or 8 within the Republic, then the offenders cannot be punished. The objective circumstance of place excludes punishment for all of them.

CHAPTER II THE PARTY INJURED BY THE OFFENSE

Article 81 Right of Making Complaint

Except for offenses in respect of which proceedings are initiated by the State, any offense shall be punishable upon the complaint of the party injured.

Explanation:

This chapter deals with the injured parties and the procedure of making a criminal complaint concerning the offense committed. As a general rule, the injured party must make a complaint for criminal proceedings to be initiated. Certain crimes, however, are committed not against the individual but against the state. For example, POLITICAL OR MILITARY ESPIONAGE (Article 200) is a crime against the state of Somalia, not against any one person. Therefore, it is for the state, as represented by the Attorney General's Office, to bring the complaint and to initiate criminal proceedings.

Article 81 simply provides that any offense, other than those where the state initiates proceedings, shall be punishable upon the filing of a complaint by the injured party. This article must be read with Article 21 of the Criminal Procedure Code, which states that an individual may file a complaint in order to institute criminal proceedings for injuries arising out of all offenses other than those where the proceedings are initiated by the state. Therefore, an individual does not have to file a complaint, according to Article 21 of the Procedure Code, but if he does, then criminal proceedings have to be initiated, according to Article 81 of the Penal Code.

Generally, each crime as defined in the Penal Code states whether a private individual, by complaint, can initiate criminal proceedings. If the article does not state anything, then it is for the state to initiate such proceedings.

Example:

X is defamed by Y, a newspaper editor. According to Article 452(1), a person defaming another "shall be punished, on the complaint of the party injured." X files a complaint with CID, requesting that they investigate the matter and initiate criminal proceedings.

Article 82 Exercise of the Right in the Case of Persons under Disability

1. Where
(a) the party injured is under fourteen years of age, or
(b) is under a disability by reason of mental infirmity,
the right of making the complaint may be exercised by his legal representative.
2. In case of
(a) absence or

(b) disability of the legal representative, or
(c) where the legal representative has conflicting interests with those of the party injured,
the right of making the complaint may be exercised by a special representative.

Explanation:

Article 82 applies to the situation where the person injured is unable to make the complaint himself, according to the concepts of responsibility under the Penal Code. This will cover the situation where the injured party is under fourteen years of age, or is suffering from a disability as a result of mental infirmity—in other words, is weak-minded or insane. In such cases, the complaint may be filed by the legal representative of the injured party.

Paragraph 2 provides that if the legal representative is absent from the area, or is himself under a disability, or has conflicting interests with the party injured, then the right of making the complaint may be exercised by a special representative.

Example:

X, a thirteen-year-old boy living in a town, is assaulted by Y. X wants to complain against Y but, being under fourteen, cannot do so by himself. X's father is in the interior. Therefore, X's uncle files a complaint on behalf of the boy, stating that he is the special representative for X in the absence of his father, the normal legal representative of X.

Article 83 Complaint Where More than One Person Is Injured

1. An offense committed against more than one person shall be punishable even though the complaint is made by only one of the parties injured.
2. The complaint shall operate as of right against all those who have participated in the commission of the offense.

Explanation:

In cases where the offense has been committed against more than one person, any one of the persons injured may complain and thus initiate criminal proceedings against the offender. It does not matter if others of the injured group do not want to prosecute.

Paragraph 2 provides that the complaint shall also apply to all those who have committed the offense, even though the complaint names only some of the participants.

Example:

X, a Somali citizen, insults B, Z, and D, all members of the same tribe, by describing their *rer* in derogatory terms. B wants to file a complaint against X, Z doesn't care, and D is against it. B files a complaint with CID, claiming that X on a certain date insulted B, Z, and D with regard to their *rer*, in violation of Article 451(2c) of the Penal Code.

CID can initiate criminal proceedings against X on the basis of B's complaint.

Article 84 Time Limit for Complaint

Except as otherwise provided by law,
(a) the right of making a complaint
(b) may not be exercised after the lapse of one month
(c) from the date when the act constituting the offense was brought to the notice of the party injured.

Explanation:

Article 84 prescribes the period of time during which complaints may be brought. If they are not brought within this time, then criminal proceedings for that offense cannot be initiated. The time limit is thirty days from the date the injured party found out about the offense.

Example:

X, a Somali government official working in Hargeisa, is defamed by a newspaper printed in Mogadishu on October 20, 1967. X does not know about the story in the newspaper. On November 1, a copy of the newspaper reaches Hargeisa. X reads it on November 2. X has 30 days from November 2 to file a complaint for defamation in violation of Article 452.

Article 85 Renunciation of the Right to Make a Complaint

1. The right of making a complaint may not be exercised where it has been expressly or impliedly renounced by the person who has the right to exercise it. The right shall be impliedly renounced where the person who has the right to make the complaint has performed acts incompatible with the intention to exercise the right.

2. The renunciation shall extend automatically to all the persons who have participated in the commission of the offense. However, it shall not have any effect with respect to any other party injured who has a right to make a complaint.

Explanation:

Although a person has a right to make a complaint, if he expressly or impliedly renounces that right he cannot then file such a complaint in the future. Note that only the person who has the right to make the complaint has the right to renounce it. Another person cannot renounce it for him. Paragraph 1 defines what is meant by an "implied renunciation." This occurs when the person, by his own acts, shows that he does not have the intention to exercise his right to file a complaint.

Paragraph 2 states that the renunciation applies to all persons who committed the offense, but that it does not bind any other injured party, other than the one who renounces his right to file a complaint.

Example:

X insults B, C, and D, in violation of Article 451. B publicly states that he won't file a complaint, but that the next time X insults him, he will kill him. C is seen the next day with X, talking and acting friendly toward him, and in general indicating that he didn't take the insult seriously. D neither says anything nor is seen with X.

B has specifically renounced his right to file a complaint, and even though the thirty-day time limit permitted by Article 84 has not yet expired, B cannot file a complaint. C, by his actions, has impliedly renounced his right to file a complaint, since he is still friendly with X and doesn't seem to have taken the insult as grounds for breaking up their friendship. D may file a complaint within thirty days. He is not prevented by B's express renunciation or C's implied renunciation.

Article 86 Withdrawal of the Complaint

Except as otherwise provided by law, a complaint may be withdrawn expressly before judgment is pronounced by the Court of first instance. Where there are more than one complainants, the withdrawal by one of them shall not operate as a withdrawal with respect to the others.

Explanation:

Complaints may be withdrawn at any time up to the pronouncing of judgment by the trial court. The effect of such withdrawal, of course, is to terminate the criminal proceedings, since the complaint is considered a necessary element for trial of the accused. Note that if final judgment has been given by the trial court, the complaint cannot be withdrawn by the injured person when the case is on appeal. Since the

filing and withdrawal of complaints are personal, the withdrawal by one of the injured parties does not affect the other parties.

Example:

X insults Y and Z, in violation of Article 451. Both Y and Z file complaints, and a trial is started. X's tribe then agrees to pay Y's tribe for the insult, and Y withdraws his complaint.

The criminal process with regard to Y is finished. However, Z has not withdrawn his complaint, and Y's withdrawal does not affect him. X may still be tried for insulting Z.

Article 87 Acceptance of Withdrawal of the Complaint

1. Withdrawal of the complaint shall have no effect where the person against whom the complaint is made rejects it expressly.

2. A withdrawal in favor of only one of the persons who have participated in the commission of an offense shall extend to all of them, but shall have no effect in respect of anyone who rejects it.

3. The provisions of Article 82 shall apply as regards capacity for accepting withdrawal.

Explanation:

Although the injured party may want to withdraw the complaint, it is up to the party accused of committing the offense to accept or reject such withdrawal. If the accused feels that he is innocent and wants to prove his innocence in court, then he can reject the injured party's offer of withdrawal and continue with the case.

Paragraph 2 provides that a withdrawal with regard to one of the accused applies to all of them, but each individual offender has the right to accept or reject such withdrawal.

Paragraph 3 simply states that for determining whether or not one of the accused is capable of accepting or rejecting the withdrawal, the provisions of Article 82 shall apply. This means that if an accused is suffering from a disability by reason of mental infirmity, his legal representative, or special representative, can decide to accept or reject the withdrawal for him.

Example:

Q files a complaint against B, C, and D for assault, in violation of Article 439. Q then decides, after the trial has begun, to withdraw the complaint with regard to B only.

According to Paragraph 2 of Article 87, Q's withdrawal with respect to B only extends also to C and D. B and C accept the withdrawal, and the prosecution of the case with regard to them is dropped. D, however, feels that he has been unjustly accused, and wants to go to trial to prove his innocence. Therefore, he rejects Q's offer of withdrawal.

Article 88 Conditions Regarding Withdrawal, Acceptance, or Rejection

Withdrawal of a complaint or acceptance or rejection thereof shall not be made subject to any terms or conditions.

Explanation:

No specific terms or conditions can be attached to the withdrawal of a complaint or with regard to acceptance or rejection of it. Thus, for example, if X files a complaint against Y, Y cannot offer to pay him a sum of money to get X to withdraw the complaint.

Article 89 Complex Offenses

In the cases provided for in Article 46,
(a) proceeding for complex offenses
(b) shall be initiated by the State
(c) where for any of the offenses which are constitutive elements or aggravating circumstances thereof
(d) proceedings must be initiated by the State.

Explanation:

Complex offenses are explained in Article 46. In the example under that article, the crime of THEFT with the aggravating circumstance of entering a person's dwelling home was described. THEFT is a crime under Article 480 and, under Article 481(1a), entry into a private home for purposes of theft is an aggravating circumstance of that crime. But, as was observed, unauthorized entry into a private home is also a crime under Article 470, VIOLATION OF THE PRIVACY OF THE HOME. Generally, theft is a crime where proceedings must be instituted by the state. However, violation of the privacy of the home is punishable upon the complaint of the injured party (Article 470[3]).

Article 89 applies to cases such as that above, where as part of the complex offense one of the aggravating circumstances (in this case, the entry into a private home) is punishable on the complaint of the injured party, and the complex offense itself (the theft) is punishable on the initiation of proceedings by the state. In such cases, Article 89 provides that proceedings must be initiated by the state and not the private party. In other words, the complex offense is treated as if it were a simple offense where the state must initiate proceedings.

PART IV PUNISHMENT

Chapter I Kinds of Punishments in General

Article 90 Principal Punishments

1. The principal punishments prescribed for crimes shall be:
(a) death;
(b) imprisonment for life;
(c) imprisonment;
(d) fine (*multa*).
2. The principal punishments prescribed for contraventions shall be:
(a) imprisonment;
(b) fine (*ammenda*).

Explanation:

Article 90 simply lists the different kinds of punishments provided for by the Penal Code. These are the principal punishments for crimes and contraventions. According to Article 1 of the Code, no person may be punished by a punishment which is not prescribed for the offense. Thus, for example, the punishment of imprisonment for life cannot be applied to an offender for a contravention.

In the Italian language, there are two different words for fine: one, "*multa*," means a fine for a crime, and the other, "*ammenda*," means a fine for a contravention. In English, there is only one word: "fine." Therefore, it is useful to preserve the distinction in usage of the Italian. In the discussion of offenses later on in Book I, "fine" if used in connection with a crime means *multa*, and "fine" if used in connection with a contravention means *ammenda*.

Article 91 Denomination of the Principal Punishments

1. The terms
(a) "detentive punishments" or
(b) "punishments restrictive of personal liberty"
shall include imprisonment for life, imprisonment for crimes, and imprisonment for contraventions.
2. The term "pecuniary punishments" shall include fine for crimes and fine for contraventions.

Explanation:

This article is a definitional one for purposes of the Penal Code. The terms defined in Paragraphs 1 and 2 have the meanings stated in all other articles of the Code.

Article 92 Accessory Penalties

1. The accessory penalties for crimes shall be:
(a) interdiction from public offices;
(b) interdiction from a profession or trade;
(c) legal interdiction.
2. The accessory penalty for contraventions shall be suspension of the right to practice a profession or trade.
3. The penal law shall specify the cases in which accessory penalties prescribed for crimes shall also apply to contraventions.

Explanation:

There are two broad types of punishments under the Penal Code: the principal punishments listed in Article 90, and the accessory penalties described in Article 92. Generally speaking, accessory penalties are those imposed in addition to any one of the principal punishments.

The accessory penalties are specifically described in the various articles of Chapter III (see Articles 101–8). Therefore, they will not be discussed here. However, it should be noted that, in general, accessory penalties are divided into two categories, one for crimes and the other for contraventions. The accessory penalties for crimes are more serious and are contained in Paragraph 1. The sole accessory penalty for contraventions is suspension of the right to practice a profession or trade. Paragraph 3 states that provisions of the penal law shall specifically provide where accessory penalties for crimes shall apply to contraventions.

Article 93 Application of Principal Punishments and Accessory Penalties

The principal punishments shall be imposed by the judge on conviction. Accessory penalties shall follow by operation of law as the consequence of conviction.

Explanation:

Principal punishments—that is, those listed in Article 90—are imposed by the judge upon conviction, at the end of the trial. The accessory penalties automatically follow as a result of conviction.

Example:

X is accused of Peculation, in violation of Article 241. He is tried and convicted. The judge sentences him to three years in prison. As a result of X's conviction for this crime, he is, as a matter of law, subject to the accessory penalty of interdiction from public office, according to Para-

graph 2 of Article 241. This means that he cannot hold public office again. The application of the accessory penalty is due to X's conviction, and is not a matter of discretion for the judge or administrative officer. It is a matter of law.

Chapter II Principal Punishments

Article 94 Punishment of Death

The punishment of death shall be carried out by shooting inside a penitentiary, or in any other place prescribed by the Minister of Grace and Justice.

Explanation:

This article simply states how the death penalty shall be carried out and where. This is the only way in which the death penalty can be legally imposed in the Republic. Note that the Minister of Justice and Religious Affairs (formerly the Minister of Grace and Justice) can designate places other than the penitentiary where a criminal may be executed, but he may not designate a different form of execution.

Article 95 Imprisonment for Life

The punishment of imprisonment for life shall be served in an establishment provided for the purpose, with compulsory labor.

Explanation:

Imprisonment for life is accompanied by compulsory labor, meaning that the prisoner must engage in labor provided for him by the prison authorities. Life imprisonment can be in any place provided for the purpose of imprisonment, and thus is not limited to the two main prisons, in Hargeisa and Mogadishu.

Article 96 Imprisonment for Crimes

The punishment of imprisonment for a crime may extend from five days to twenty-four years and shall be served in an establishment provided for the purpose, with compulsory labor.

Explanation:

This article applies to imprisonment for crimes as distinguished from imprisonment for contraventions. It sets the general minimum and maximum limits to such imprisonment, and a judge may not sentence a person

to imprisonment for less than five days or more than twenty-four years for the basic crime. These minimum and maximum terms do not, of course, include consideration of aggravating and extenuating circumstances. Imprisonment for crimes is accompanied by compulsory labor.

Article 97 Fine for Crimes

1. The punishment of fine for a crime shall consist in the payment to the State of a sum of not less than Sh. So. 10 and not more than Sh. So. 50,000.

2. For crimes inspired by motives of gain, even though the punishment prescribed by law is imprisonment only, the judge may impose in addition a fine ranging from Sh. So. 10 to Sh. So. 20,000.

3. Where the fine prescribed by law appears to be ineffective by reason of the financial position of the offender, the judge shall have discretion to increase it up to three times the amount.

Explanation:

Paragraph 1 establishes the limits for a fine in convictions for crimes. These limits do not take into account any increases or decreases which may be made either as a result of a specific provision of the Penal Code or because of aggravating or extenuating circumstances.

Paragraph 2 gives the judge discretion to impose, in addition to the punishment of imprisonment, a fine within the limits specified, if the crime has been committed for motives of gain. This is not limited solely to crimes against property, but applies to any crime whereby the offender sought to increase his own finances or property.

Paragraph 3 is very important, because it gives the judge discretion to increase the fine imposed up to three times the amount in cases where he feels that the fine imposed by the relevant article of the Code is not effective as a punishment because of the financial position of the offender.

Examples:

1. X and Y are in business together, running a small but profitable store. They have agreed that if anything happens to either of them, the other will run the business and take the share of the missing partner. X wants the entire business for himself, so that he can become rich. He sends an anonymous complaint to the regional judge and to CID, stating that Y has been smuggling cigarettes and rifles across the border from Kenya into Somalia. X knows that Y has done no such thing and is innocent. Y is arrested, but is never charged with the offense, because there is no evidence against him. X is discovered to have been the person who sent the false accusation. X is charged with violating Article 287, False

ACCUSATION, by accusing Y of smuggling when he knew Y to be innocent. At X's trial, X states that he made the accusation because he wanted Y to go to prison, so that he could have the business for himself.

The punishment for FALSE ACCUSATION is imprisonment from two to six years (Article 287[1]). However, according to Article 97(2), the judge has the discretion, where the crime has been committed for motives of gain and where the punishment prescribed is only imprisonment, to impose a fine from 10 to 20,000 Somali shillings. The judge therefore sentences X to two years in prison and a fine of 2,000 Somali shillings.

2. Z, a wealthy Somali businessman, owns a newspaper in Mogadishu. He is also the editor of the newspaper. In one issue, he defames a high government official, in violation of Article 452(3) of the Penal Code. The government official files a complaint, and Z is brought to trial. He is convicted. According to Article 452(3), the penalty for DEFAMATION is imprisonment from six months to three years, or a fine of not less than 4,000 Somali shillings.

Since Article 452(3) prescribes only a minimum fine (not less than 4,000 Somali shillings), the judge may increase the fine up to 50,000 Somali shillings under Paragraph 1 of Article 97. However, the judge is convinced that Z, being an extremely wealthy man, could pay 50,000 shillings very easily. Therefore, the judge exercises his discretion under Article 97(3) and orders Z to pay a fine of 100,000 shillings. He has this power because Article 97(3) provides that the judge may increase the fine up to three times the amount (three times 50,000), where the fine appears to be ineffective because of the financial condition of the convicted person.

Article 98 Imprisonment for Contraventions

1. The punishment of imprisonment for a contravention may extend from five days to three years, and it shall be served in an establishment provided for the purpose, or in special sections of establishments provided for serving imprisonment for crimes, with compulsory labor.

2. A person sentenced to imprisonment may be employed at work different from that normally provided in the establishment, regard being had to his aptitude and previous occupations.

Explanation:

For contraventions, a person may be imprisoned within the limits of five days to three years. This also does not take into consideration increases or decreases for aggravating or extenuating circumstances. Such imprisonment shall be either in a place established for imprisonment for contraventions—in other words, a low-security prison—or in a special section of a prison where those convicted of crimes are being kept. Although imprisonment for contraventions requires the prisoner to work at compulsory labor, Paragraph 2 gives the prison authorities the discretion to employ him at work not normally provided at the prison but more like the type of work he formerly did, when he was free. Thus, for example, if the normal prison labor is carpentry work, and the prisoner was a tailor before being convicted for a contravention, the prison authorities could have him work as a tailor in the prison.

Article 99 Fine for Contraventions

1. The punishment of fine for a contravention shall consist in the payment to the State of a sum of money not less than Sh. So. 2 and not more than Sh. So. 10,000.

2. Where the fine prescribed by law appears to be ineffective by reason of the financial position of the offender, the judge shall have discretion to increase it up to three times the amount.

Explanation:

Article 99, dealing with fines for contraventions, is similar to Article 97, dealing with fines for crimes. Paragraph 2 gives the judge the same discretionary power to increase the fine up to three times the amount, where the judge, in his discretion, decides that the fine imposed is ineffective because of the financial condition of the offender. Note that there is no discretionary power to impose a fine for contraventions committed for motives of gain, as provided for in the case of crimes in Article 97(2).

Article 100 Fixed and Proportional Pecuniary Punishments

1. The cases in which pecuniary punishments are fixed and those in which they are proportional shall be prescribed by law.

2. Proportional pecuniary punishments shall have no maximum limit.

Explanation:

Generally, the provisions of the Penal Code fix the pecuniary punishments for the offense committed. Thus, for example, the punishment for INSULT is imprisonment up to one year *or* a fine up to 1,000 shillings. Other provisions make the fine proportional to the damage to the property or the value of the property taken, or injury caused.

Paragraph 2 states that in the case of proportional pecuniary punishments, no maximum limits shall apply. This means that the maximums

provided for in Article 97 and 99 do not apply to those cases where the law prescribes a fine proportional to the injury or damage caused by the offense.

Chapter III Accessory Penalties

Article 101 Interdiction from Public Offices

1. Interdiction from public offices may be permanent or temporary.

2. Except as otherwise described by law, permanent interdiction from public offices shall deprive the convicted person of:

(a) the right to vote or to be elected, and every other political right;

(b) any public office, any non-obligatory assignment in the public service, and the related right to be regarded as a public officer or a person entrusted with a public service;

(c) the office of guardian or legal representative, even temporary, and any other office pertaining to guardianship or to the position of legal representative;

(d) academic positions, titles, decorations, or other public honors;

(e) stipends, pensions, and allowances borne by the State or other public body;

(f) any honor inherent in any of the offices, services, titles, capacities, distinctions, and decorations referred to in the foregoing subparagraph;

(g) the capacity to assume or acquire any right, office, service, function, title, distinction, decoration, and honor referred to in the preceding subparagraphs.

3. Temporary interdiction shall deprive the convicted person of:

(a) the capacity to acquire, exercise, or enjoy,

(b) during the period of interdiction,

(c) the aforesaid rights, offices, services, qualities, titles, and honors.

The duration of such temporary interdiction shall be not less than one year nor more than five years.

4. The cases in which interdiction from public offices is limited to a particular office or particular offices shall be prescribed by law.

Explanation:

Interdiction from public offices is an accessory penalty imposed generally for the commission of crimes that show that the offender is unfit for holding public office.

Interdiction may be of two types, either temporary or permanent. Both forms of interdiction result in the deprivation of the same rights, but temporary interdiction is limited in time from one to five years.

The rights, offices, services, qualities, titles, and honors that one is deprived of are self-explanatory. Note that since interdiction is an accessory penalty, it applies by operation of law as the result of a conviction (see Article 93). It is therefore automatic, and the judge does not have any discretion to order that interdiction from public offices not be applied.

Example:

X, an official of the Ministry of Finance, takes 45,000 Somali shillings from the government funds in his care. He is apprehended and charged with Peculation, in violation of Article 241. There are no extenuating circumstances concerning the commission of his crime. X is sentenced by the judge to four years in prison and a 5,000-shilling fine.

According to Paragraph 2 of Article 241, defining Peculation, X, upon conviction, is perpetually interdicted from public office. This means that X is deprived of the rights, offices, services, qualities, titles, and honors described in Paragraph 2 of Article 101.

Article 102 Cases in Which a Sentence Entails Interdiction from Public Offices

1. A sentence of:

(a) imprisonment for life and

(b) one of imprisonment for a crime for a term of not less than five years

shall entail the permanent interdiction of the convicted person from public offices.

A sentence of:

imprisonment for a crime for a term of not less than three years

shall entail his interdiction from public offices for a period of five years.

2. A declaration that a person is:

(a) a habitual or

(b) a professional offender

shall entail permanent interdiction from public offices.

Explanation:

Some articles of the Penal Code specifically state that the accused, if convicted, shall be interdicted from public offices, either permanently or temporarily. For example, Article 241(2), dealing with Peculation, states that any person convicted under the article "shall be perpetually interdicted from public office." However, many articles do not mention interdiction at all. Article 102 establishes the general rules as to when interdiction from public office applies. Such application is automatic and

is determined by the length of the sentence imposed. All sentences of imprisonment for life, and for imprisonment for more than a term of five years, require the application of permanent interdiction from public office. If imprisonment is for three years or more (up to five years), interdiction shall be for a period of five years. After that five-year period, the convicted person may hold public office, and be entitled to any of the other rights, honors, and services provided for in Article 101.

In addition, if a person is declared to be a habitual or a professional offender, he is subject to permanent interdiction from public office.

Example:

X is convicted of THEFT and sentenced to three years in prison. Article 480, concerning THEFT, makes no mention of interdiction from public office. In such a case, Article 102 applies, and according to Paragraph 1, a person sentenced to imprisonment for three years or more shall be subjected to interdiction from public office for a period of five years.

Article 103 Interdiction from Profession or Trade

Interdiction from a profession or trade shall
(a) deprive the convicted person of
(b) the capacity of exercising,
(c) during the period of interdiction,
(d) a profession, craft, industry, commerce, or trade
(e) in respect of which any special permission, certificate, authorization, or license is required, and
(f) shall entail the revocation of any such
(g) permission, certificate, authorization, or license.
The duration of such interdiction shall be not less than one month nor more than five years except in the cases expressly provided by law.

Explanation:

Interdiction from a profession or trade follows as a result of conviction for a crime, not a contravention (see Article 92). And such interdiction applies not to all professions or trades but only to those where, in order to practice, a person needs a special permit, certificate, authorization, or license. All other professions or trades cannot be interdicted, since they do not come within the terms of the article. Some professions that are within the provisions of the article are lawyers, doctors, pharmacists, dentists, architects, engineers, and veterinarians. Any trade that requires an authorization or license from the administrative authorities would also be within the terms of the article.

The accessory penalty of interdiction from a profession or trade is only

temporary; that is, such interdiction may be for a period of one month to five years, but no more unless it is expressly provided for. The judge has the discretion to set the period of such interdiction.

Article 104 Conviction for Crimes Committed with Abuse of a Public Office or of a Profession or Trade; Interdiction

Every conviction in respect of:
(a) crimes committed with abuse of powers, or
(b) in violation of the duties attached to a public office, or
(c) a public service, or
(d) any of the offices specified in Paragraph 2(c) of Article 101, or
(e) with abuse of any profession, craft, industry, commerce, or trade, or
(f) in violation of the duties attached thereto,
shall entail temporary interdiction from public offices, or from the profession, craft, industry, commerce, or trade.

Explanation:

Article 104 describes the instances when interdiction from a profession or trade, as provided for in the preceding article, will be imposed. The Penal Code requires that such interdiction be applied in the cases of those crimes involving an offense concerning a business, trade, profession, commerce, industry, public service, or public office. In other words, if a person commits a crime which shows that he has used his office or position for criminal purposes, the law imposes the penalty of prohibiting him from practicing or engaging in any business activity or public service for a period of time.

Note also that Article 104 adds that a person convicted of such crimes may be interdicted from public office temporarily, or interdicted from practicing a trade or profession. This means that if the crime falls outside the definition of when interdiction from public office shall be imposed, according to Article 102 but within the provisions of Article 104, the judge has discretion to order either the temporary interdiction from public office or a profession or trade. But the judge must impose one or the other.

Example:

X, a lawyer in Mogadishu, is consulted by Y, who is suing Z in a civil case, for possession of a house belonging to Y and Z's father. Y complains to X that the case has not been heard for two years, and that the judge seems to be favoring Z. X states that he knows the judge, and that if Y will pay X 3,000 shillings, he will use his influence with the judge to get

a judgment favorable to Y. Y pays him the money. X, who really doesn't have any influence with the judge, keeps the money and says nothing to him. Y, realizing that X was lying, brings a criminal complaint against him. X is charged with violating Article 301, ADVOCATE PRETENDING TO HAVE INFLUENCE. He is convicted and sentenced to two years in prison, and a fine of 10,000 Somali shillings.

Under the provision of Article 104, the judge must also determine whether X should be interdicted from public office temporarily, or be subject to interdiction from practicing his profession. The crime X has been convicted of is an abuse of his profession and within Article 104.

Article 105 Legal Interdiction

1. Whoever is sentenced to imprisonment for life shall be under legal interdiction.

2. Whoever is sentenced to imprisonment for a crime for a term not less than five years shall be under legal interdiction for the duration of the punishment.

3. For the purposes of disposing and administering property and acting as agent in connection therewith, the provisions of civil law regarding interdiction shall apply to legal interdiction.

Explanation:

Legal interdiction follows automatically from the conviction for a crime where the term of imprisonment is greater than five years. There are two kinds of legal interdiction—permanent and temporary. Permanent legal interdiction applies only in the case of life imprisonment. Temporary legal interdiction applies for the duration of the punishment.

Legal interdiction means the loss of the ability to administer, dispose of, and in general care for property. The actual rights and privileges that a person under legal interdiction retains are contained in the Italian Civil Code, in force in the Southern Regions, and the Indian Civil Code, in force in the north. Paragraph 3 of this article leaves to the civil law this determination of such rights and privileges.

In the Italian version of Article 105 of the Penal Code, a person convicted of a crime subject to legal interdiction also loses his paternal power over his children and his marital power over his wife (see CARABBA, CODICE PENALE, p. 60). This has been omitted from the Somali Penal Code.

Note also that the accessory penalty of legal interdiction, if temporary, runs for the duration of the punishment. This means the number of years prescribed in the sentence, as distinguished from the number of years actually served. In other words, if a person is sentenced to imprisonment

for twenty-five years but is pardoned after serving only seven, he is still under legal interdiction for another eighteen years.

Article 106 Sentence for Crimes Committed with Culpa

1. The provisions of Article 102 and the third paragraph of the preceding article shall not apply in the case of a sentence for a crime committed with culpa.

2. The provisions of Article 104 shall not apply in the case of a sentence for a crime committed with culpa, where the punishment imposed is less than three years imprisonment, or where only a pecuniary punishment is imposed.

Explanation:

Article 106 deals with crimes committed with culpa—that is, with negligence. Paragraph 1 provides that interdiction from public office (Article 102) and the provisions of the civil law with regard to the disposing and administering of property by a person under legal interdiction shall not apply to a person convicted of committing a crime with culpa.

Paragraph 2 provides that temporary interdiction from public office or interdiction from a profession or trade shall not be imposed, despite the terms of Article 104, if the crime was committed with culpa and the punishment imposed is less than three years or where only a fine is imposed as the penalty. If punishment for a crime committed with culpa is greater than three years, or both a term of imprisonment and a fine are imposed, then Article 104 does apply and the convicted person must be subjected to either temporary interdiction from public office or interdiction from a profession or trade.

If the crime committed does not involve negligence, then this article has no application.

Example:

X, a Somali citizen, is driving in his car from Afgoi to Mogadishu. He hits a boy with his car, killing him instantly. X is charged with DEATH CAUSED BY NEGLIGENCE (Article 445), convicted, and sentenced to four years in prison.

Article 106 must be consulted, because X has committed a crime with negligence. According to the first paragraph, interdiction from public office under Article 102 and the civil law regarding property for those under legal interdiction according to Article 105(3) do not apply.

Paragraph 2 of Article 106 would apply, because X has been sentenced to prison for a term of more than three years. But that paragraph merely

states that Article 104 will apply to such persons. Turning to Article 104, we see that it deals only with those convicted of crimes with abuse of a public office or profession or trade. X, by negligently driving, has not committed a crime of this type. So Article 104 is not applicable to him, even though Article 106(2) states that it could apply if he had committed such a crime.

Article 107 Suspension from the Exercise of a Profession or Trade

1. Suspension from the exercise of a profession or a trade shall deprive the person convicted of:

(a) the capacity to exercise,
(b) for a period of not less than fifteen days and not more than two years,
(c) a profession, craft, industry, commerce, or trade
(d) in respect of which a special permission, certificate, authorization, or license is required.

2. A sentence in respect of a contravention committed with

(a) abuse of the profession, craft, industry, commerce, or trade, or
(b) in violation of the duties attached thereto,
(c) where the punishment imposed is not less than imprisonment for one year,

shall entail suspension from the exercise of such profession or trade.

Explanation:

Article 107 applies to the penalty of Suspension from the Exercise of a Profession or Trade. This is different from Interdiction from a Profession or Trade contained in Article 103. Interdiction is for the commission of a crime. Suspension is for the commission of a contravention. It is the only accessory penalty provided for contraventions. Paragraph 2 states that it shall be applied where the conviction for a contravention involves the abuse of a profession, craft, industry, commerce, or trade and the punishment imposed is for more than one year. The judge has discretion to determine the length of such suspension, but he must impose the penalty of suspension. Note also that suspension cannot be imposed in all professions, crafts, etc., but, like interdiction from a profession or trade, only in those businesses where a special permission, certificate, authorization, or license is required.

Article 108 Legal Status of Person Sentenced to Death

The legal status of a person sentenced to death shall be the same as that of a person sentenced to imprisonment for life.

Explanation:

The legal status of a person sentenced to life imprisonment is described in Article 105, Legal Interdiction. Such a person cannot, generally speaking, dispose of property, administer it, or exercise the normal powers of ownership, although the specific powers and rights that he is deprived of are described in the civil law. This is also the status of a person sentenced to death, prior to his execution.

Chapter IV Application and Modification of Punishment

SECTION I GENERAL PROVISIONS

Article 109 Discretionary Powers of the Judge in Imposing Punishment: Limits

1. Within the limits fixed by law, the judge shall apply the punishment in his discretion. He shall state the grounds for justifying the use of such discretionary power.

2. In increasing or reducing the punishment, the judge shall not exceed the limits for each kind of punishment, except in cases expressly provided by law.

3. Where

(a) the judge pronounces a sentence of imprisonment for a period not exceeding one year,
(b) whether or not the sentence includes a pecuniary punishment,
(c) against an offender who has not been previously convicted
(d) of a crime committed with criminal intent,
(e) he may, upon request of the offender,
(f) and taking into account the circumstances referred to in Article 110,
(g) order the conversion of the imprisonment into the equivalent pecuniary punishment,
(h) calculated in accordance with Article 112.

4. The benefit referred to in the preceding paragraph shall be subject to the condition that the offender,

(a) within the time prescribed by the judge,
(b) pays the amount due by reason of the conversion,
(c) and fulfills any civil obligation to make restitution or compensation to the party injured.

Explanation:

In general, the judge has discretion to set the punishment, but within the limits imposed by the law. Thus, for example, if the accused is convicted of the offense of EXTORTION (Article 485), he must be sentenced to imprisonment from three to ten years *and* pay a fine of from 5,000 to 20,000 Somali shillings. These limits are prescribed by the Penal Code, and the judge must obey them. But within these limits, the judge may prescribe the sentence. In the above example, he could sentence the guilty person to three years and a 20,000-shilling fine. He could not sentence him to *either* a fine or imprisonment, nor could he go above or below the limits prescribed. Paragraph 1 of Article 109 also requires the judge to give his reasons for imposing the sentence he did. A judge thus cannot arbitrarily select a punishment within the limits. He must justify the exercise of his discretion, which will be subject to review by a higher court.

Paragraph 2 states that the judge cannot exceed the limits fixed by law for each kind of punishment, except where the law expressly provides. This refers to the reduction of punishments for extenuating circumstances and the increases for aggravating circumstances. As will be seen later, even these increases and decreases have limits which must be observed.

Generally, as shown in the above example, the article defining the crime or contravention will itself set the limits, both maximum and minimum, for the punishment. But frequently the article establishes only a minimum or a maximum, not both. For example, Article 480(1), THEFT, states that the punishment for simple theft shall be "imprisonment up to three years *and* with a fine of 300 to 5,000 Somali shillings." Clearly, the judge can impose a sentence of imprisonment for a term of less than three years, but how much less? The judge must look at Articles 96, 97, 98, and 99, which set the minimum and maximum penalties for crimes and contraventions in terms of imprisonment and fine. These articles apply where, as in the case of THEFT under Article 480(1), no mention is made of one of the limits. By looking at Article 96, IMPRISONMENT FOR CRIMES, a judge can see that the minimum term of imprisonment for the commission of a crime is five days. The maximum for THEFT is established by Article 480 itself, which provides for three years in the cases coming within Paragraph 1 of that article. Therefore, the judge, in our example, could sentence the prisoner to one year in jail and a fine of 500 shillings.

Paragraph 3 of Article 109 grants a very limited and carefully prescribed discretion to the judge to convert a sentence of imprisonment into the payment of a fine, according to the rate established in Article 112.

But the judge can exercise this discretion only in cases where:

(1) the sentence of imprisonment is not greater than one year;
(2) the offender has not been convicted before of a crime committed with criminal intent;
(3) the offender has himself requested that the punishment be converted into a fine; and
(4) the judge feels that the circumstances of the offense, the character of the offender, and the other factors described in Article 110 warrant the conversion into a fine.

This power is discretionary. The judge does not have to convert a sentence of imprisonment into a fine, even if all the requirements (except the fourth) are met. Note that if the person has been convicted of a contravention, or of a crime with culpa, he is still eligible to receive the punishment of a fine instead of imprisonment. It is only if he has already been convicted of a crime committed with criminal intent that he cannot come within the provision of this article.

Paragraph 4 imposes a further limitation on the judge's exercise of discretion to convert a sentence of imprisonment into a fine. The offender must pay the fine due within the time required by the judge, and discharge any civil obligation, such as compensation or restitution, to the injured party. Otherwise, he may not be released, and the judge may not convert the sentence into a fine. If the judge has done so and these conditions are not fulfilled—say, if the offender does not pay the fine on time—then the prison sentence applies and the offender must serve his sentence in jail.

Example:

X is a resident of Mogadishu. He lives with his family and has no job. One night, he steals food from a store to feed his family. He has no prior criminal record. He is caught, and charged with simple theft, under Article 480(1). The judge sentences him to ten days in jail and a fine of 300 shillings. The judge can sentence him to ten days under the provisions of Article 96, since no minimum is established by Article 480.

X then requests the judge to convert the ten days imprisonment into a fine under Article 109, according to the rate established by Article 112. The judge looks at the provisions of Article 109, Paragraph 3, and sees that X is not a person who has been convicted of a prior crime with criminal intent, that the term of imprisonment is under one year, and that the offender has requested the conversion. The judge then examines the provisions of Article 110 to see whether X deserves to receive the benefit of the conversion. The offense of stealing food is not serious, X could not be said to have real criminal intent, because his motive was good—to

provide food for his family—X has never committed a crime before, his life has generally been admirable, and he is a family man and not a lone individual likely to cause trouble. Considering all these factors, the judge decides to convert the ten-day sentence into a fine. He then calculates the conversion according to Article 112, which states that the conversion is 25 Somali shillings for each day (ten days times 25 shillings), or 250 shillings. The judge sentences X to pay 250 shillings plus the minimum fine for theft, 300 shillings, or a total of 550 shillings. He gives X one week to pay the money. After one week, X returns to court and pays 550 shillings, which he has managed to raise. He also pays the store owner the value of the food he took, fulfilling any civil obligation he may have, according to Paragraph 4.

Article 110 Gravity of the Offense: Evaluation for the Purpose of Punishment

1. In the exercise of the discretionary powers referred to in the preceding article, the judge shall take into account the gravity of the offense, as inferred from:

(a) the nature, character, means, object, time, place, and any other circumstance of the act;

(b) the gravity of the injury or of the danger caused to the party injured by the offense;

(c) the intensity of criminal intent, or the degree of culpa.

2. The judge shall likewise take into account the offender's criminal capacity, as inferred from:

(a) the motives to commit delinquency and the character of the offender;

(b) the criminal record of the offender and, in general, the conduct and life of the offender prior to the offense;

(c) the conduct at the time of, or subsequent to, the offense;

(d) the individual, domestic, and social conditions of life of the offender.

Explanation:

Article 110 establishes the criteria for determining the penalty that should be imposed by the judge in the exercise of his discretion. In every article where the judge has the power to impose minimum and maximum penalties within the limits prescribed by law, he should consider the criteria described in Article 110.

The article considers two major criteria:

(a) the gravity of the act, and

(b) the character of the offender, which bears on the danger of his committing other crimes against society.

In judging the gravity of the act, the judge should consider the circumstances surrounding the act itself, when it was committed, how, what weapons or means were used, the nature of the injury caused, damage to property, the harm caused to the injured party, and the intensity of the criminal intent or the degree of culpa.

In judging the offender, the judge should consider his motives for committing the offense, his character, his past criminal record, the way he lives, his friends, reputation, family, whether he is employed, how he treats his family, his conduct after the offense before he was apprehended, and in general his attitude toward society.

The major aim in assessing all of these factors is to determine whether the offender is the type of person who is likely to commit other crimes, cause more harm to individuals and damage to property, and in sum be a danger to society. Or is he the type of person who has committed a crime because he was compelled to do so by circumstances, who cannot be said to be a criminal type, and who therefore should receive a lighter sentence, or have the sentence converted into a pecuniary punishment?

An example of some of the factors to be considered and how they should be evaluated is given under the preceding article.

Article 111 Calculation of Punishment

1. Punishment for a period of time shall be applied by days, months, and years.

2. In sentences to punishments for a period of time, no account shall be taken of fractions of a day, and in sentences to pecuniary punishments, of fractions of a Somali shilling.

Explanation:

Article 111 simply describes how periods and fines shall be calculated. In both cases, the judge does not have to calculate fractions, either of days or of parts of Somali shillings. Therefore, it is impossible to sentence a person to twenty-three and a half days in prison; the sentence must be either twenty-three or twenty-four days.

Article 112 Equivalence between Different Punishments

Where it is necessary to establish equivalence between pecuniary and detentive punishment, calculation shall be made on the basis of 25 Somali shillings, or fraction thereof, of pecuniary punishment for one day of detentive punishment.

Explanation:

As seen in the discussion concerning Article 110, conversion from a sentence of imprisonment to a fine can be made in some cases according

to the judge's discretion. Article 112 simply establishes the rate of conversion at 25 shillings for each day of imprisonment. Thus, if a person is sentenced to twenty days in jail, and the judge decides that under Article 110 such punishment may be converted into a fine, the offender must pay 500 shillings–that is, twenty days times 25 shillings per day.

There is some confusion over the words "or fraction thereof," since Article 111 states that punishments shall not be in fractions of days or shillings. The Italian equivalent of Article 112 of the Penal Code states:

Quando, per qualsiasi effetto giuridico, si deve eseguire un ragguaglio fra pene pecuniarie e pene detentive, il computo ha luogo calcolando cinquemila lire, *o frazione di cinquemila lire*, di pena pecuniaria, per un giorno di pena detentiva. (See CARABBA, CODICE PENALE, p. 200.)

Thus, in the Italian counterpart of Article 112, the phrase "fraction thereof" is really "fraction of 5,000 lire," and the correct transposition in the Somali Code should be "*fraction of Sh. So. 25.*" Therefore, Article 112 is not talking about a fine in fractions of Somali shillings, which would be contrary to the provisions of Article 111(2), but about a fraction of the 25 shillings used to calculate the conversion into a pecuniary punishment. The only logical explanation of this phrase is that, under certain circumstances, it may be necessary to calculate the conversion of a fraction of 25 shillings per day of punishment, but not in terms of dividing up the actual number of days to be served into fractions (see example under Article 113).

Article 113 Conversion of Pecuniary Punishment

1. Punishments of a fine for a crime or for a contravention,
(a) which are not carried out
(b) owing to the insolvency of the person sentenced,
shall be converted respectively into imprisonment for not more than three years and imprisonment for not more than two years. In such cases, the minimum limit of the said detentive punishments may be less than that prescribed in Articles 96 and 98.
2. The person sentenced may
(a) at any time
(b) bring the substituted punishment to an end
(c) by paying the fine reduced by the sum of money corresponding to the duration of the detentive punishment already served.

Explanation:

Article 113 is the counterpart of Article 110. Whereas Article 110 deals with converting imprisonment into a fine, Article 113 deals with converting a fine into imprisonment. The conversion rate is the one established by

Article 112. Article 113 applies only in situations where the convicted person cannot pay his fine due to insolvency. In such a case, the fine may be converted into a prison sentence, within the limits prescribed by Paragraph 1. Thus, even if a fine for a crime is converted, the convicted person cannot serve more than three years, although by the actual conversion rate the term of imprisonment should be over three years. On the other hand, if, as a result of conversion, the number of days to be served is below the minimum prescribed by Articles 96 and 98 (less than five days), such a sentence can still be served, because the minimum periods do not apply to imprisonment as a result of conversion.

If at any time following imprisonment as a result of insolvency and inability to pay the prescribed fine, the prisoner can pay the amount of money owed, minus the amount for the number of days served, he can obtain his release.

Example:

X, a resident of Mogadishu, owns a banana plantation. He has water-drilling equipment but no drill bits for drilling into the ground. Y offers to sell X drill bits. X asks him where he got them, knowing that there are none for sale in the country. Y states that he stole them from an oil company's warehouse in Mogadishu, and that if X doesn't want to buy them, Y can easily find someone else to sell them to. X buys them from Y. Two months later, the police arrest Y and find out that he has sold the stolen bits to X. X is also arrested, and charged with RECEIVING stolen property in violation of Article 504. Upon conviction, X is sentenced to pay a fine of 10,000 shillings. X claims that he doesn't have the money to pay this fine. Under the terms of Article 113, the fine is then converted into a term of imprisonment at the rate of 25 shillings for every day of imprisonment, to a sentence of four hundred days, or one year and thirty-five days. X is sent to prison to serve this period.

After he has served thirty days, his friends raise 10,000 shillings to pay his fine. X has already served thirty days, or the equivalent of 750 shillings. Therefore, he only has to pay a fine of 10,000 shillings minus 750, or a total of 9,250 shillings. His friends go to the judge at ten o'clock one morning, and by noon the judge has accepted the money, signed the necessary papers, and ordered X's release. However, the day of X's release must either count as a day of punishment or be paid at the rate of 25 shillings. The judge decides that since X is being released after having served half a day, his friends must pay only twelve and a half shillings for the day of his release; X himself is paying for half the day by serving it in prison. This also illustrates the phrase in Article 112, "fraction thereof."

Article 114 Detention before Sentence

1. The period of detention undergone before the judgment has become final shall be deducted from the total period of detentive punishment or from the amount of the pecuniary punishment imposed.

2. For the purposes of deduction, detention prior to sentence shall be considered as imprisonment for a crime or for a contravention.

Explanation:

Article 114 requires that the period of imprisonment prior to the judgment's becoming final be deducted from the total period of imprisonment or converted and deducted from the fine imposed. The phrase "the judgment has become final" means the period of time up to and including the final appeal in the case. Thus, the time served by a person following sentence by the lower court, until the Supreme Court on appeal decides that he was correctly found guilty by the lower court, counts in calculating the sentence to be served.

Paragraph 2 provides that the period during which the accused is held in jail pending trial and sentencing also counts as time served in prison for purposes of deduction from the final sentence.

Example:

X is arrested for ROBBERY under Article 484. Bail is not allowed for persons accused of that crime, and X is held in jail for fifteen days. On the sixteenth day, he is brought to trial, convicted, and sentenced to three years in prison. X's lawyer appeals the decision to the Court of Appeals, which hears the case thirty days after the sentencing by the Regional Court and affirms the conviction. X's lawyer does not appeal to the Supreme Court.

Under the provisions of Article 114, the fifteen days X served prior to his trial and the thirty days before the Court of Appeals' decision must be deducted from his three-year sentence, since they count as time served in prison. Therefore, X must serve two years and 320 days instead of a full three years.

Article 115 Punishment and Detention prior to Sentence in Respect of Offenses Committed Abroad

Where
(a) a person tried abroad
(b) is again tried in the territory of the State,
(c) the punishment served abroad and the nature thereof shall be taken into account; and

where
(d) detention prior to sentence took place abroad,
(e) the provisions of the preceding article shall apply.

Explanation:

This article applies to the infrequent situation where a person has been tried abroad and convicted, and has served his sentence, and then is tried again in Somalia and sentenced to imprisonment. In such cases, the judge must consider the nature and type of punishment served abroad in determining what sentence to impose in Somalia, and if the person has served in prison prior to sentencing, that period should be deducted from the total amount sentenced by the Somalia court.

In other words, the period actually served as a sentence abroad is considered in Somalia, but not deducted from the period of the sentence in Somalia. The period served abroad prior to receiving a sentence abroad is deducted from the sentence in Somalia, just as a period served in Somalia prior to sentencing is deducted.

Note that nothing is said in Article 115 about detention prior to the judgment's becoming final, as is stated in Paragraph 1 of Article 114.

Example:

X, a Somali citizen living in Aden, counterfeits Somali five- and ten-shilling notes. These notes are smuggled into Somalia by boat. The smugglers are caught, and tried in Somalia. X is caught by the Adenese police, and tried in Aden. He is convicted of counterfeiting under the Adenese Penal Code and is sentenced to imprisonment for three years. He serves his time in an Adenese jail, and then, upon his release, comes to Somalia. He is then arrested by the Somali police and charged with counterfeiting the currency of the state in violation of Article 348 of the Penal Code. He is convicted. The judge takes into consideration that X has already served three years for the same offense in Aden, and therefore sentences X to serve three years (the minimum penalty) in Somalia. The judge notes that X was held for thirty days prior to sentencing in Aden and thirty days prior to sentencing in Somalia. Therefore, X has to serve only two years and 305 days, instead of the full three years.

Note that under Article 7 the crime of counterfeiting Somali currency, even though committed abroad, is punishable within the Republic.

Article 116 Calculation of Accessory Penalties

In calculating temporary accessory penalties, no account shall be taken of

(a) the time during which the convicted person serves detentive punishment, or

(b) is subjected to detentive security measures, nor of
(c) the time during which he voluntarily evaded the execution of the punishment or security measures.

Explanation:

This article applies only to temporary accessory penalties. The temporary accessory penalties are temporary interdiction from public office (Article 101[3]), temporary interdiction from a profession or trade (Article 103), and suspension from the exercise of a profession or trade (Article 107).

Article 116 simply states that with regard to these accessory penalties, there is no need to take into account any of the time served in detentive punishment—that is, imprisonment—or detentive security measures or the time of evading imprisonment or such security measures. In other words, no time shall be deducted from the time the accessory penalty for any of the above reasons is to apply. Such temporary accessory penalties apply after the sentence has been served, including the time for detentive security measures.

SECTION II APPLICATION AND MODIFICATION OF PUNISHMENT WHERE THERE OCCURS MORE THAN ONE AGGRAVATING OR EXTENUATING CIRCUMSTANCE AND IN CASE OF ATTEMPTED CRIME

Article 117 Increase or Reduction of Punishment

1. Where the law provides that
(a) the punishment be
(b) increased or reduced
(c) within specific limits,
(d) the increase or reduction shall apply to the total punishment which the judge would impose on the offender
(e) if the circumstances which cause its increase or reduction did not exist.
2. Where
(a) more than one aggravating circumstance or more than one extenuating circumstance occur,
(b) the increase or reduction of punishment shall apply to the total punishment resulting from the aforesaid increase or reduction.
3. Whenever,
(a) for any circumstance, the law prescribes a punishment of a different nature,

(b) or fixes its measure differently from the ordinary punishment for the offense,
(c) the increase or reduction for the other circumstances shall not apply to the ordinary punishment for the offense, but to the punishment fixed for the aforesaid circumstances.
4. Where
(a) there occurs more than one aggravating circumstance
(b) among those mentioned in the third paragraph of this article,
(c) only the punishment prescribed for the most serious circumstance shall be applied; but the judge may increase it.
5. Where
(a) there occurs more than one extenuating circumstance
(b) among those mentioned in the third paragraph of this article,
(c) only the least serious punishment for the aforesaid circumstances shall be applied; but the judge may reduce it.

Explanation:

Section II deals with the calculation of punishments when there are aggravating or extenuating circumstances as part of the offense committed, or when the offense is an attempted crime.

Article 117 deals with the rules for increases and reductions in punishment in general. The English translation is rather confusing and unclear. To clarify matters, it will be better to give examples after each individual paragraph of the explanation, rather than at the end of the section.

Paragraph 1 applies to the situation where the law, with relation to aggravating or extenuating circumstances, prescribes an increase or reduction of punishment within certain fixed limits. In such cases, where there are aggravating or extenuating circumstances, the judge must first determine the penalty for the article, and then add or deduct the amount from that total.

Example:

X, a newspaper editor in Mogadishu, defames a high government official. The official files a complaint, and X is arrested and tried for defamation. At the trial, evidence is introduced to show that X printed a thousand more copies of this issue than he normally does, and sent six hundred copies to the Northern Regions, which he normally does not do. This evidence shows that X attempted to aggravate or did aggravate the consequence of the crime—defamation—which is an aggravating circumstance under Article 39(h).

The maximum penalty for defamation under Article 452(3) is three years imprisonment. X has committed this crime with one aggravating

circumstance. Following the rule laid down in Article 117(1), the judge first determines the penalty for the crime. In this case, he decides to sentence X to the maximum of three years in prison. Then he must determine the punishment for the aggravating circumstance. As will be shown below, in the discussion concerning Article 118, the punishment may be increased up to one-third if there is a single aggravating circumstance. One-third of three years is one year, and the judge thus sentences X to a total of four years in prison. Note that according to the provision of Paragraph 1, the increase is based on the basic punishment.

Paragraph 2 prescribes the rule for calculating the punishment where more than one aggravating or extenuating circumstance exists. In such a case, the judge must first calculate the basic punishment, and then the increase for one aggravating circumstance. Then the punishment for the second aggravating circumstance is calculated on the basis of the sum of the basic punishment plus the increase for the first aggravating circumstance.

Example:

Y, a Somali citizen, plans to steal 150 cartons of cigarettes that he knows Z is keeping in his store. Y waits until Z is asleep one night, breaks into the store, and takes the cartons, putting them in a large sack. He then walks out of the town in order to bury them in a hiding place. He is spotted by the police, who chase him, and Y, in order to get rid of the evidence, throws the cigarettes into a *tug*. Y is caught, and charged with theft. At his trial, evidence is introduced to show that he destroyed the cigarettes he had stolen by throwing them into the *tug*.

The punishment for simple THEFT, under Article 480(1), is imprisonment up to three years and a fine from 300 to 5,000 shillings. But Y has committed a theft with two aggravating circumstances under Article 39. He has taken advantage of the circumstance of time by stealing at night to hinder public and private defense (Paragraph e), and he has caused serious damage to property of the party injured, by throwing the cigarettes into the *tug* (Paragraph g).

According to the provisions of Paragraph 2 of Article 117, the judge must first determine the basic punishment. In this case, the judge sentences Y to imprisonment for three years and a fine of 3,000 shillings. With regard to the first aggravating circumstance, the judge then increases the term of imprisonment by one-third, to a total of four years. Then, in assessing the penalty for the second aggravating circumstance, he decides to increase the penalty by one-third again. But this time the one-third is calculated on four years (the basic punishment plus the

increase for the first aggravating circumstance), and not just one-third of three years (the basic punishment). One-third of four years is one year and four months. The total prison penalty then is the basic punishment (three years), increased by one-third for the first aggravating circumstance (one year), increased again by one-third for the second aggravating circumstance (one year and four months), or five years and four months. As we shall see in the discussion of Article 120, the total punishment for an offense where more than one aggravating circumstance exists cannot be greater than three times the maximum penalty. In this case, that would be three times three years, or a total of nine years. Thus, the sentence in this case is within the maximum limits fixed by Article 120 and valid.

Paragraph 3 applies only to situations where "the law prescribes a punishment of a different nature" or "fixes its measure differently from the ordinary punishment for the offense." These two situations refer to cases where the offender commits the offense and there are circumstances attached to the crime which are part of the offense. For example, if a person in committing a theft enters a private house used for living, he has committed not only a theft but a theft with an aggravating circumstance as defined by Article 481, which specifically deals with aggravating circumstances for theft. In this case, that article prescribes a heavier punishment for the theft committed with this aggravating circumstance than for the simple theft. This is a situation where the law for a circumstance fixes the measure of punishment "differently from the ordinary punishment for the offense." The phrase "a punishment of a different nature" refers to the situation where the law would provide a term of imprisonment if the crime is committed under certain circumstances instead of a fine, which is the ordinary punishment for the offense. For example, Article 468 defines the crime of THREAT. The normal punishment for a threat, as stated in Paragraph 1 of that article, is a fine up to 500 shillings. But if the threat is serious, a special circumstance, then the penalty is imprisonment for up to one year. Since the type of punishment is different if this special circumstance exists, this situation comes within the terms of Paragraph 3.

To summarize, then, if the law prescribes for any circumstance

(a) a punishment of a different nature from the punishment for the ordinary offense (such as imprisonment instead of a fine); or

(b) fixes the measure of punishment differently from the ordinary punishment (such as increasing the penalty)

then the rule of Paragraph 3 applies.

The rule is simple: The increase or reduction for aggravating or extenu-

ating circumstances applies to the increased penalty in light of the special circumstances, not to the penalty for the ordinary offense. An illustration will clarify the matter.

Example:

Q, a Somali citizen, has recently been released from prison after having been convicted of theft. Soon after returning to his town, Q breaks into a warehouse to steal goods stored there. He is armed with a pistol. While he is loading a Land Rover with the goods, he is surprised by the police, and arrested. Q has committed THEFT under Article 480 with the aggravating circumstance, under Article 481, of committing a theft while carrying arms, even though he didn't use the pistol. In addition, Q is a recidivist, under Article 61, because he has committed a theft following his conviction for a prior theft. Thus, the judge in determining punishment must consider three elements:

(1) the basic crime of theft,
(2) the aggravating circumstance of committing a theft while armed, and
(3) Q's recidivism.

The case comes within Article 117, Paragraph 3, because it involves a circumstance (theft while armed) for which the law fixes the measure of punishment for the offense differently than for the ordinary crime. That is, the punishment under Article 481 for a theft committed with arms is greater than the punishment under Article 480 for an ordinary theft.

According to Article 481, the punishment for theft committed with arms is imprisonment from one to six years and a fine from 1,000 to 10,000 Somali shillings. The judge in this case sentences Q to serve four years and pay a fine of 6,000 shillings. As will be seen in the discussion of Article 124, the punishment for recidivism is an increase up to one-third where the offender is a recidivist and has committed the same kind of offense. In this case, Q has committed another offense, making him a recidivist, and he has committed the same kind of crime—theft—twice, and therefore is liable to have his punishment increased up to one-third.

The rule of Paragraph 3 is that the increase for the aggravating circumstance of recidivism applies to the greater punishment for the commission of the offense with the special circumstance (theft committed with arms), rather than to the punishment for the lesser offense (simple theft). In other words, if the judge were going to increase Q's sentence by one-third, he would take one-third of the sentence for AGGRAVATED THEFT (Article 481)—one to six years—rather than one-third of the sentence for simple theft—fifteen days to three years (Article 480). Thus, in this case the judge could sentence Q to one-third of four years (one year and four months), or a total of five years and four months, and a fine of 6,000 shillings.

Paragraphs 4 and 5 are the same, except that Paragraph 4 deals with aggravating circumstances and Paragraph 5 deals with extenuating circumstances. Both paragraphs involve situations where there are two or more special circumstances for which:

(a) the law prescribes a punishment of a different nature, or
(b) fixes its measure differently from the ordinary punishment for the offense.

In such situations, the judge must apply only the penalty for the most serious circumstance, but he can increase or decrease the punishments.

Example:

Z, a nomad living near Hargeisa, meets B, a nomad of another tribe, at a waterhole. The two men begin to quarrel over who should use the waterhole first. Z attacks B with his *bud*, severely beating him about the head and chest. Z waters his camels and leaves. B eventually is found and taken to the hospital in Hargeisa, where he is treated. The head injuries cause him to remain in bed for fifty-three days, and he loses the sight of his right eye. Z is arrested, and tried for causing HURT, in violation of Article 440.

There are two special circumstances for which the law fixes a measure of punishment different from the punishment for ordinary hurt. Ordinary hurt is punishable by imprisonment from three months to three years. If the offender has caused hurt which prevents a person from attending to his ordinary work for a period of over forty days, the punishment is imprisonment from three to seven years. Z has caused B to remain in a hospital for fifty-three days, a special circumstance punished by a different measure than for ordinary hurt. And the offender has caused the loss of the sense of sight, which is punishable by imprisonment from six to twelve years.

The judge, in assessing the penalty, takes into consideration only the more serious of the special circumstances—that is, the fact that Z caused B to lose the sight of his right eye, not the fact that B spent fifty-three days in the hospital. The judge can therefore sentence Z to imprisonment from six to twelve years (Article 440[3]), and increase the penalty.

Article 118 Increase of Punishment in the Case of a Single Aggravating Circumstance

Where there occurs
(a) only one aggravating circumstance,
(b) and the increase of punishment is not fixed by law,

the punishment which should be imposed for the offense committed shall be increased up to one-third.

However, the punishment of imprisonment for a crime to be applied by reason of the increase shall not exceed thirty years.

Explanation:

This article establishes the general rule for the punishment for aggravating circumstances, described in Article 39. It applies only if there is one aggravating circumstance occurring in connection with the offense and if the increase for that aggravating circumstance is not fixed by law. As we have seen, some aggravating circumstances are included in the definition of the crime, and the penalty is increased when they occur. For example, if a person commits simple HURT (Article 440), he is punished with imprisonment from three months to three years, but if the hurt is very grievous and the victim loses an arm (an aggravated circumstance of the crime of HURT), then the punishment is increased and the penalty may be imprisonment from six to twelve years.

The rule is that if there is only one aggravating circumstance and the increase for that circumstance is not fixed by law, the judge shall increase the penalty up to one-third. This means that the judge must by law increase the penalty for such an aggravating circumstance, but that he has the discretion to increase it up to one-third of the penalty for the basic crime.

The second paragraph of the article provides that the increased penalty for the aggravating circumstance and the penalty for the basic crime cannot exceed a total of thirty years.

Example:

X, a Somali citizen, enters a store at night when the guard is asleep and steals some clothes and other merchandise. He is caught, and charged with simple THEFT, in violation of Article 480. He has not committed the crime with any of the circumstances that make it an aggravated theft under the terms of Article 481. However, he has committed the theft by taking advantage of the circumstances of time and place so as to hinder both public and private defense by stealing from the store at the time the guard was asleep. This is an aggravating circumstance under Article 39(e). X therefore has committed a theft with one aggravating circumstance.

The punishment for THEFT under Article 480 is imprisonment for up to three years and a fine of from 300 to 5,000 shillings. The judge sentences X to one year in prison and a fine of 500 shillings. Then, according to Article 118, he decides to increase the penalty by the full one-third

allowed for the aggravating circumstance. One-third of a year is four months. Therefore, the total punishment for X is imprisonment for one year and four months and a fine of 500 shillings.

Article 119 Reduction of Punishment in the Case of a Single Extenuating Circumstance

Where there occurs
(1) only one extenuating circumstance,
(2) and the reduction of punishment is not fixed by law,
(a) imprisonment for life or imprisonment from twenty to thirty years shall be substituted for punishment of death;
(b) imprisonment from twenty to twenty-four years shall be substituted for imprisonment for life;
(c) other punishments shall be reduced by not more than one-third.

Explanation:

This article is the counterpart of the preceding one. It differs in that the judge's discretion with regard to certain punishment is limited. The general conditions are the same as in the case of aggravating circumstances; there must be only one extenuating circumstance and the reduction for that circumstance must not be fixed by law. However, with regard to the death penalty and life imprisonment, the judge must impose the reductions specified in the article. For example, if there is one extenuating circumstance where the death penalty has been imposed, the judge must impose either life imprisonment or imprisonment from twenty to thirty years. He cannot impose any other sentence for the reduction of the penalty in the case of a death sentence. Likewise, he must follow the limits laid down for reducing the sentence in case of life imprisonment. In that case, the judge can only sentence the convicted person to serve between twenty and twenty-four years, no more and no less. With regard to all other penalties, the judge has discretion to reduce the penalty by not more than one-third, and in this respect it is like his discretion for increasing the penalty up to one-third in cases of aggravating circumstances.

Example:

X, a Somali citizen, hears that his son, Y, has been beaten by Z, a man in the town who has a reputation for being bad-tempered. X finds Z in the street, attacks him, and beats him with a stick. X is arrested, and charged with causing HURT to Z, in violation of Article 440. He has not committed an aggravated hurt within the meaning of Article 440(2) and (3). X

claims that he acted because he was angry with Z for beating his son. This is an extenuating circumstance under Article 40(b). Note that it is not private defense, which would make X not liable, because under Article 34 X could act only out of necessity to protect his son from actual danger. In this case, X's son was not in any danger; he had already been beaten, but illegally, by Z.

The judge sentences X to the minimum term of imprisonment under Article 440—three months. Then he decides to reduce X's sentence by the full one-third for the extenuating circumstance. X's total sentence is thus two months in prison.

Article 120 Limits of Increase of Punishment Where There Occurs More than One Aggravating Circumstance

Where there occurs
(1) more than one aggravating circumstance,
(2) the punishment to be applied in consequence of the increases
(3) shall not exceed three times the maximum fixed by law for the offense,
(4) except in the case of the circumstances referred to in the third paragraph of Article 117, and
(5) shall not for any reason be greater than
(a) thirty years, in the case of imprisonment for a crime;
(b) five years, in the case of imprisonment for a contravention;
(c) Sh. So. 100,000 or 20,000, respectively, in the case of fine for a crime or a contravention; or Sh. So. 300,000 or 60,000, respectively, if the judge avails himself of the power specified in the third paragraph of Article 97 and second paragraph of Article 99.

Explanation:

This article applies to the situation where there is more than one aggravating circumstance. The purpose of the article is to impose limitations on the total punishment that can be imposed as a result of the penalty for the basic crime as well as the aggravating circumstances. The general rule is that the punishment can be increased only up to three times the maximum punishment fixed for the basic crime. Thus, for example, if the maximum punishment for a crime is imprisonment for three years, the maximum punishment that can be imposed, regardless of how many aggravating circumstances there are, is nine years.

The exception to this general rule is for cases which come under Paragraph 3 of Article 117. In such cases, the penalty can be greater than three times the maximum fixed by law for the basic crime, but the penalty

cannot exceed the set limits of Article 120. Thus, in no circumstances can imprisonment for a crime exceed thirty years, or five years in the case of contraventions. Limits are also set with regard to fines, but note that the limits are higher when the judge exercises his discretionary power under Articles 97 or 99 to increase the fine where he deems it to be ineffective owing to the financial position of the accused.

Example:

X is a Somali nomad. He has always hated Y, whom he regards as his enemy. One day, X sees Y at a waterhole, all alone. X sneaks up behind Y and smashes him on the head with his *bud*. He continues to beat him severely, and when Y is unconscious and bloody, he drags him behind a bush and ties him down, putting a gag in his mouth so that he can't cry out. X then leaves, hoping that no one who comes to the waterhole will find Y. However, a small boy, while watering the camels, wanders around the waterhole looking for stones to throw, and finds Y. The boy gets help, and Y is brought to a hospital. But he has been so severely beaten that he loses the sight of both eyes and the hearing in one ear. In addition, his face is permanently disfigured. X is arrested, and charged with causing very grievous hurt, in violation of Article 440(3). The prosecution also claims that X committed the offense with two aggravating circumstances:

(1) he took advantage of circumstances of place to surprise Y, an aggravating circumstance under Article 39(e); and
(2) by tying Y up and hiding him, X hoped to aggravate the consequence of his crime and increase the injury to Y by preventing him from obtaining medical care quickly. This is an aggravating circumstance under Article 39(h).

Therefore, the judge must consider these two aggravating circumstances and the very grievous injury. The basic penalty for hurt is imprisonment from three months to three years (Article 440[1]). The penalty for causing very grievous hurt is imprisonment from six to twelve years (Article 440). This is a circumstance for which the law fixes a measurement of punishment different from the ordinary punishment. It is therefore the kind of situation described in Article 117(3). If this circumstance was not present in the case, the maximum penalty the judge could impose for the two aggravating circumstances mentioned above would be nine years (that is, three years for the basic crime of hurt multiplied by three). But since the special circumstance of causing very grievous hurt is present, the only limitation on the judge's power to increase the sentence for that circumstance and the two other aggravating circumstances is that imprisonment for a crime cannot exceed thirty years.

In this case, the judge sentences X to ten years for causing very

grievous hurt. Then, for the two additional aggravating circumstances, he decides to increase the penalty another ten years, and sentences X to a total of twenty years in prison. This is within the thirty years allowed as a maximum term of imprisonment for the commission of any crime.

Article 121 Limits of Reduction of Punishment Where There Occurs More than One Extenuating Circumstance

1. Where there occurs
- **(i) more than one extenuating circumstance,**
- **(ii) the punishment to be applied in consequence of the reductions**
- **(iii) shall not be less than:**
  - **(a) fifteen years imprisonment where the law prescribes punishment of death in respect of the crime;**
  - **(b) ten years imprisonment where the law prescribes imprisonment for life in respect of the crime.**

2. The other punishments shall be reduced. In such case, except in the circumstances referred to in the third paragraph of Article 117, the punishment shall not be less than one-quarter.

Explanation:

This article is similar to the preceding one in that it establishes the maximum limits, but for reduction of the penalty. It applies only where more than one extenuating circumstance has occurred with regard to the commission of the offense. If the penalty for the offense is death, and more than one extenuating circumstance exists, the judge cannot reduce the penalty to less than fifteen years. If the penalty for the offense is life imprisonment, the judge cannot reduce the penalty to less than ten years imprisonment. In all other cases, the punishment cannot be reduced to less than one-quarter of the penalty for the basic crime. Thus, for example, if the maximum penalty for a crime is twelve years in prison, the judge cannot reduce the penalty where more than one extenuating circumstance exists to less than three years. Note that the article does not provide for a reduction "no greater than one-quarter" (which would mean that the twelve years could be reduced by only three years), but for a reduction to the level of one-quarter of the maximum punishment.

The same exception to these limits of reduction with regard to Paragraph 2 of this article applies to situations coming within Paragraph 3 of Article 117.

Since this article is similar to the preceding one, there is no need for a separate example.

Article 122 Limits to Concurrence of Circumstances

Except as provided in Article 13, where
- **(a) an aggravating circumstance includes another aggravating circumstance, or**
- **(b) an extenuating circumstance includes another extenuating circumstance,**
- **(c) only the aggravating or extenuating circumstance which**
- **(d) entails, respectively, the greater increase or the greater reduction of punishment**

shall be taken into account against or in favor of the offender.

If
- **(a) the aggravating or extenuating circumstances**
- **(b) entail the same increase or the same reduction of punishment,**

one single increase or one single reduction of punishment shall be imposed.

Explanation:

This article applies to those cases where one aggravating circumstance includes another such circumstance, or an extenuating circumstance includes another extenuating circumstance. In other words, the article deals with the situation where there is an aggravating or extenuating circumstance which incorporates another such circumstance by being greater or more serious. In such case, the offender shall be punished only with the penalty attached to the greater aggravating circumstance, or his penalty shall be reduced only by the amount attached to the greater extenuating circumstance.

The rule of this article does not apply to situations arising under Article 13—that is, those cases where the act violates more than one penal law.

For an example of this article, see Article 389.

Article 123 Concurrence of Aggravating and Extenuating Circumstances

1. Where
- **(a) aggravating and extenuating circumstances**
- **(b) occur together, and**
- **(c) the former are held to predominate,**
- **(d) no account shall be taken of the reductions of punishment prescribed in respect of the extenuating circumstances,**

and only the increases of punishment prescribed in respect of the aggravating circumstances shall be applied.

2. Where
(a) the extenuating circumstances are held to predominate over the aggravating circumstances,
(b) no account shall be taken of the increases in punishment prescribed in respect of the latter,
and only the reductions of punishment prescribed in respect of the extenuating circumstances shall be applied.

3. Where
(a) the judge holds that
(b) there is equivalence between the aggravating and extenuating circumstances,
the punishment which would have been imposed if there had not occurred any of the said circumstances shall be applied.

4. The foregoing provisions
(a) shall not apply
(b) in the case of circumstances relating to liability, or
(c) to recidivism,
(d) and of any other circumstances in respect of which the law prescribes a punishment of a different nature or fixes the measure of the punishment differently from the ordinary punishment for the offense.

Explanation:

This article deals with the situation where both aggravating and extenuating circumstance occur in the same case. According to the previous articles, one would expect the judge to apply the normal rules for both sets of circumstances in calculating the punishment, adding to the sentence for the aggravating circumstances and deducting from the sentence for the extenuating circumstances. This is not the case. The rule established by this article is that the judge must make the determination which circumstances predominate—that is, whether the extenuating or the aggravating circumstances are greater. Once he has made this judgment, if the aggravating circumstances predominate, then, according to Paragraph 1, the judge must increase the penalty for the aggravating circumstances, and not count the extenuating circumstances at all. On the other hand, if the extenuating circumstances predominate, then the judge must reduce the penalty without taking into account any of the aggravating circumstances that may have occurred. This rule is embodied in Paragraph 2.

The judge is also free to decide that neither aggravating nor extenuating circumstances predominate, but that both are equally balanced. In such a case, according to Paragraph 3, he must sentence the offender as if

no circumstances, either aggravating or extenuating, had occurred. But in doing so, the judge must indicate in his judgment which finding he made, and the reasons for calculating the sentence.

Paragraph 4 establishes the exceptions to this article. The method of first determining whether the aggravating or the extenuating circumstances predominate, or are equal, and then assessing the sentence does not apply in certain classes of cases. First of all, the article has nothing to do with determining whether a person is guilty or not. A man can commit a theft in which both aggravating and extenuating circumstances are equal, but he is still guilty of THEFT. Article 123 deals only with the calculation of his sentence. Second, if a person is a recidivist under Article 61, this fact will count against him in the sentencing, even if the extenuating circumstances outweigh the aggravating ones. And, third, the article does not apply in cases where the law prescribes a punishment of a different nature for the circumstance than for the basic crime (imprisonment instead of fine) or fixes the measure of punishment differently from the ordinary punishment for the offense (a greater number of years of imprisonment).

Examples:

1. X, a Somali citizen, lives with his family. His younger son becomes very sick and X does not have the money to buy medicine. He therefore decides to steal money from someone to be able to pay for the drugs necessary to improve his son's health. One night, he goes out to a store, breaks in, and steals 340 shillings. While he is leaving, he is surprised by a night guard, and hits him over the head with a *bud*. X is afraid that the night guard will recognize him when he becomes conscious, so he takes the guard out into the bush, blindfolds him, and leaves him tied to a tree. Two days later, X is arrested, and he tells the police where he tied the night guard. The police go to the tree and find the guard almost dead from exposure and lack of food and drink. X is charged, among other offenses, with THEFT, in violation of Article 480.

At the trial, the following facts are brought out. X committed the theft for motives having a good social value—that is, he stole money to buy medicine to enable his son to get well. This is an extenuating circumstance under Article 40(1a). X hit the night guard to conceal his offense, which is an aggravating circumstance under Article 39(b). And in tying the night guard to a tree, he attempted to aggravate the consequence of the crime committed by preventing the guard from revealing the theft. Under Article 123, Paragraph 1, the judge determines that the aggravating circumstances predominate over the extenuating circumstance. The judge in assessing the sentence must increase the penalty for the two

aggravating circumstances. He cannot reduce the penalty for the one extenuating circumstance or consider that circumstance.

2. Assume the same facts, except that X, after stealing the money, is surprised by the night guard and hits him with his *bud*. He then runs home, and the next morning buys the medicine for his son. X is arrested later in the day, on the complaint of the night guard, and charged with THEFT.

At the trial, it is shown that there is one extenuating circumstance—X's motive for stealing—and one aggravating circumstance—attacking the night guard to commit or conceal the offense. The judge determines that these two circumstances equal each other, according to Paragraph 3 of the article. He therefore does not count the existence of either circumstance in calculating the punishment for theft, and treats the case as if neither circumstance had occurred. In setting the penalty, the judge thus looks only to Article 480, THEFT, and can sentence the offender from a minimum of five days (Article 96) to three years (Article 480).

Article 124 Increased Punishment for Recidivism

1. In the case of recidivism, the punishment shall be increased up to one-sixth.

2. In the cases of recidivism,

(a) where any one of the conditions referred to in Subparagraphs a, b, c, and d of Paragraph 2 of Article 61 occurs,

(b) the punishment shall be increased up to one-third.

3. In cases of recidivism,

(a) where more than one of the conditions referred to in Paragraph 2 of Article 61 occurs,

(b) the punishment shall be increased from one- to two-thirds.

Explanation:

This article deals with the increased punishment for recidivism which was defined in Article 61. As a general rule, the punishment for the offense shall be increased up to one-sixth of the sentence if the offender is a recidivist. If any one of the conditions described in Paragraph 2 of Article 61 occurs, then the sentence for the offense shall be increased up to one-third. The penalty is increased because a person is deemed by law to be a worse recidivist, or a more dangerous criminal, if he commits an offense again under any of the conditions mentioned in that paragraph. And if the person commits a crime as a recidivist and more than one of the conditions referred to in Paragraph 2 of Article 61 occurs, then the penalty shall be increased from one-third to two-thirds.

Note that the judge does not have discretion with regard to imposing an increased punishment for recidivism. If a person is a recidivist, the judge must increase the sentence. He does, however, have discretion in determining by how much to increase the sentence. Thus, if two of the conditions of Paragraph 2 of Article 61 are present, the judge may increase the sentence anywhere from one-third to two-thirds.

Examples:

1. X, a resident of Mogadishu, is arrested and convicted for causing hurt to Y. He serves one year in prison, and then is released. Three months later, he commits a theft, and is arrested.

According to the definition of Article 61, X is a recidivist. Therefore, under Article 124, Paragraph 1, the punishment with regard to the theft must be increased by the judge by up to one-sixth the amount. If the judge decides to sentence X to one year for the theft, he can increase the sentence by two months for recidivism.

2. Z, a resident of Mogadishu, owns a local newspaper. He defames a government official, in violation of Article 452(3), and is convicted and sentenced to pay a fine of 10,000 shillings. Two weeks after paying the fine, Z defames another government official in another issue of his newspaper. He is tried and convicted again of defamation.

Z is a recidivist within the meaning of Article 61. He has also committed the second defamation with two conditions of Paragraph 2 of Article 61: he has committed the same kind of offense (Paragraph 2[a]), and he has committed it within five years of the first conviction for defamation (Paragraph 2[b]). Therefore, according to the provisions of Article 124, Paragraph 3, the judge must increase the sentence for defamation by one-third to two-thirds. If the judge sentences Z to three years in prison, he can add another two years to the sentence.

Article 125 Punishment for Attempted Crime

Whoever is guilty of attempted crime shall be punished:

(a) with imprisonment from twenty to thirty years, where the law prescribes the punishment of death in respect of the crime;

(b) with imprisonment for not less than twelve years, where the law prescribes the punishment of imprisonment for life;

(c) in all other cases, with the punishment prescribed in respect of the crime, reduced by one-third to two-thirds.

Explanation:

This article simply lists the penalties for conviction for attempted crimes. The definition of attempted crimes is contained in Article 17.

Generally, since attempts are less serious crimes than the completed event, the punishment is less.

With regard to most crimes, which would be covered by Paragraph c, although it is not clearly stated, presumably the judge will first have to determine what sentence he would have given the offender if the crime had been committed, and then reduce the penalty by one-third to two-thirds for the attempt.

Example:

X is caught and tried for attempted theft, in violation of Article 480. The penalty for theft is imprisonment for from five days (Article 96) to three years and a fine of from 300 to 5,000 shillings. The judge determines that he would have sentenced X to pay a fine of 300 shillings and serve six months in prison. Therefore, because X is being tried for attempted theft, his sentence can be reduced from one-third to two-thirds. The judge decides to reduce it by two-thirds, and sentences X to serve two months in prison and to pay a fine of 100 shillings.

SECTION III APPLICATION AND MODIFICATION OF PUNISHMENT IN CASE OF CONCURRENCE OF OFFENSES

Article 126 Conviction for More than One Offense by a Single Judgment

Where,
(a) by a single judgment,
(b) an offender is convicted of more than one offense,
(c) the provisions of the following articles shall apply.

Explanation:

This article applies to situations where the offender is convicted of more than one offense by a single judgment. This can occur when the offender has:

(a) by a single act committed more than one violation of the same provision of the law (Example: X throws a bomb to kill Y, and kills Y and Z);
(b) by a single act committed more than one violation of different provisions of the law (Example: X kills Y and hides Y's body by throwing it into the ocean. X has committed MURDER (Article 434) and CONCEALMENT OF DEAD BODIES (Article 318);
(c) by several acts committed violations of the same provision of the law (Example: X commits three different and separate thefts);

(d) by several acts committed violations of different provisions of the law (Example: X commits a robbery on one day, a murder on another).

All of these situations could arise under Article 126, and they are subject to the rules of the following articles.

Article 127 Concurrence of Offenses Punishable with Imprisonment for Life and Offenses Punishable with Imprisonment

1. Imprisonment for life shall be imposed with separate confinement during daytime for a term of not less than one year and not more than five years,

where the offender is guilty of more than one crime, each of which is punishable with imprisonment for life.

2. Where an offender
(a) is convicted of a crime
(b) punishable with imprisonment for life, and
(c) one punishable with imprisonment,

the punishment of imprisonment for life shall be imposed, with separate confinement during daytime for a term of not less than six months and not more than four years.

Explanation:

This article and the articles that follow group the offenses together according to their punishments. All of them deal with the situation where two penalties are to be imposed. Obviously, a person sentenced to two life-imprisonment terms cannot serve such terms, since he has only one life to live. But a person who has been convicted of crimes warranting two life-imprisonment sentences should have a more serious penalty than a person who has committed a crime warranting only one life-imprisonment sentence. Article 127 deals with the situation where a person is convicted of crimes warranting two life-imprisonment sentences, or a life-imprisonment sentence and one for a term of years.

In both such cases, the offender is punished by a term of separate confinement during the day for a specified period of time. Such separation is deemed to be a more serious penalty than merely serving in prison for a lifetime.

Example:

X, a Somali citizen serving in the Somali Army, provides another country with information so that the foreign country can wage war against Somalia. X is discovered by the police, but flees to a neighboring

country and serves in its armed forces in the war against Somalia. X is captured after the war, and tried for BEARING ARMS AGAINST THE SOMALI STATE (Article 185) and having INTELLIGENCE WITH FOREIGNERS FOR THE PURPOSE OF WAGING WAR AGAINST THE SOMALI STATE (Article 186). Both offenses carry the penalty of life imprisonment. X is convicted of both crimes.

According to Article 127, Paragraph 1, when the offender is guilty of more than one crime, both punishable by life imprisonment, the judge must sentence him to life imprisonment, plus separate confinement during daytime for a period of one year to five years. In this case, in light of the seriousness of the offenses, the judge sentences X to serve a life-imprisonment term and the maximum period of five years separate confinement during the daytime.

Article 128 Concurrence of Offenses Punishable with Imprisonment or Pecuniary Punishments of the Same Kind

1. Where more than one offense is punishable with imprisonment of the same kind, a single punishment shall be imposed, for a term equivalent to the total duration of the punishment which would have been imposed for the separate offenses.

2. Where,

(a) there is a concurrence of more than one crime,

(b) each of which is punishable with imprisonment for not less than twenty-four years,

imprisonment for life shall be imposed.

3. Pecuniary punishments of the same kind shall all be imposed in full.

Explanation:

The rule established by this article is that where a person is tried for more than one offense, where the same kind of imprisonment is imposed, the judge shall impose a single punishment of imprisonment, but for a term equal to the total of each individual offense. In other words, the judge, in determining the sentence in such a case, must add the penalties he would have imposed for the separate offenses together and impose a single sentence.

Paragraph 2 provides that where the penalty for each of the offenses would be twenty-four years or more, then the judge must impose a sentence of life imprisonment, even though the two sentences added together would equal only forty-eight years.

In addition, for pecuniary punishments, the full amount shall be imposed.

Example:

X commits a theft, and causes HURT to Y in an assault on Y two days later. He is arrested and charged with the theft and the injury to Y. The sentence for THEFT, under Article 480, is imprisonment up to three years and a fine from 300 to 5,000 Somali shillings. The penalty for simple hurt is imprisonment from three months to three years. In sentencing X for these offenses, the judge, under Article 128, must determine what sentence he would have imposed for the individual offenses of THEFT and HURT and then impose the total punishment for the two offenses. In other words, if the judge would have sentenced X to two years in prison for THEFT and one year for HURT, he must impose a total sentence of three years imprisonment, plus the fine for the theft.

Article 129 Concurrence of Offenses Punishable with Imprisonment of Different Kinds

1. Where

(a) more than one offense

(b) is punishable with imprisonment

(c) of a different kind,

each punishment shall be imposed separately and in full.

2. Imprisonment for contraventions shall be executed last.

Explanation:

Article 128 applies to punishment of the same kind—for example, imprisonment for the commission of two crimes, or for two contraventions. Article 129 deals with the situation where imprisonment for both a crime and a contravention is imposed. In such a case, the penalty for the crime shall be imposed in full and served first, and then the penalty for the contravention shall be served separately. This is different from the case where the judge imposes one sentence for the commission of two different crimes.

Example:

X commits a theft, is arrested, sentenced, and serves his time. After being released, X causes HURT to Y, in violation of Article 440. He is arrested and found in possession of altered keys, a contravention in violation of Article 542. X is charged with both offenses. The judge sentences him to one year for causing hurt and one year for the possession of altered keys. The sentences are considered separate, and X must first serve the year in prison for HURT, and then the year for the commission of a contravention.

Article 130 Concurrence of Offenses Punishable with Pecuniary Punishment of Different Kinds

1. Where
(a) more than one offense
(b) is punishable with pecuniary punishments
(c) of different kinds,
each punishment shall be imposed separately and in full.

2. Where the pecuniary punishment imposed is not paid in full, the sum paid shall, for the purposes of conversion, be deducted from the amount of the fine.

Explanation:

This article deals with cases where different kinds of pecuniary punishments are imposed—for example, a fine for a crime and a fine for a contravention. In English, the word "fine" is used for both situations, but in Italian the word for fine for a crime is "*multa*" and for fine for a contravention is "*ammenda*," indicating a difference in treatment for purposes of the Penal Code.

The rule established by this article is that if fines of different types are imposed, each fine must be paid separately and in full. In other words, the judge cannot consider that because he is going to impose a fine for a contravention he will decrease the fine he will impose for the crime.

Paragraph 2 merely states the normal rule, expressed in Article 113, that the amount of the fine paid shall be deducted, at the conversion rate of 25 shillings for each day of imprisonment, from the time the convicted person must serve if he fails to pay the full fine.

Example:

X insults Y by publicly referring to him in derogatory terms. Two days later, X buys property he knows to have been stolen, from Z, a friend of X's who is a well-known thief. X does not declare this property to the police. X is arrested and charged with INSULT, in violation of Article 451(1), and FAILURE TO DECLARE STOLEN PROPERTY, in violation of Article 545.

The judge sentences X to pay a fine of 500 shillings for insulting Y and a fine of 500 shillings for failing to declare stolen property, which is a contravention. According to Article 130, X must pay each fine in full and separately.

Article 131 Punishments Considered as a Single Punishment or as Separate Punishments

1. Except as otherwise provided by law,
(a) the punishments of the same kind
(b) which are imposed in accordance with Article 128
shall be considered a single punishment for all legal purposes.

2. Punishments of different kinds which
(a) are imposed in accordance with Articles 129 and 130
(b) shall likewise be considered,
(c) for all legal purposes,
a single punishment of the most serious kind.
They shall, however,
(d) be regarded as
(e) different punishments
(f) for the purposes of their execution, the application of security measures, and for any other purpose prescribed by law.

3. Where
(a) a pecuniary punishment
(b) is imposed
(c) together with another punishment of a different kind,
the punishments shall be considered as separate for all legal purposes.

Explanation:

This article describes the effect of treating punishments as separate or single punishments, as discussed in Articles 128–30. In general, the punishment of imprisonment of the same kind (that is, both sentences for crimes or both for contraventions) shall be considered as one sentence for all legal purposes.

If a person is sentenced to imprisonment for two years for committing THEFT and imprisonment for two years for committing HURT, the sentence of four years shall be considered as one punishment. Thus, if after a prisoner has served one year, an amnesty law is passed, granting amnesty to all prisoners serving a sentence of more than two years, this person will be released under the terms of the amnesty. The sentence is treated as one sentence of four years. If it were treated as separate sentences of two years each, he would not be within the terms of the amnesty and would not be released, since each sentence is for two years, not more than two years.

Paragraph 2 states that punishments of imprisonment or fines of different kinds (that is, imprisonment for a crime and imprisonment for a

contravention) shall be considered as a single punishment of the most serious kind. This means that if a person is condemned to one year in prison for a theft and one year for unlawful possession of altered keys, the punishment of two years shall be considered as a single punishment for a crime, the more serious of the offenses. But the paragraph specifically states that for purposes of the execution of punishment, application of security measures, and other purposes prescribed by law, they shall be considered as separate punishments.

Thus, for example, if after X is sentenced to serve one year for a theft and one year for the contravention of unlawful possession of altered keys an amnesty is declared for all those serving over one and a half years, X will not be included, because for purposes of the amnesty his sentence is considered to be two separate ones—one for the crime and one for the contravention, neither of which is for one and a half years or more.

Article 132 Determination of Accessory Penalties

In order to determine the accessory penalties and all other penal consequences of a conviction, regard shall be had to the separate offenses in respect of which the offender is convicted, and to the principal punishment which could have been imposed in respect of each of them if there had not been a concurrence of offenses.

Explanation:

This article establishes a major exception to the concept of treating concurring offenses as one single offense. This concept does not apply in determining accessory penalties. The accessory penalties are Interdiction from Public Office (Article 101), Interdiction from a Profession or Trade (Article 103), Legal Interdiction (Article 105), and Suspension from the Exercise of a Profession or Trade (Article 107). Article 132 states that for purposes of applying accessory penalties, the judge must first determine what sentence he would have imposed for each separate offense, and then determine whether the accessory penalty is warranted or not.

Example:

X, a Somali citizen, commits a theft against Y on one day and an insult of Z on another day. He is arrested, and charged with both offenses. The judge sentences X to serve three years for the theft and two years for the insult. X therefore is to serve a total of five years.

Under Article 128, the sentence imposed for the offenses committed would be treated as a single one. Under Article 102, the accessory penalty

of interdiction from public office automatically applies where the sentence is not less than five years. Therefore, the sentence in X's case seems to warrant the application of this accessory penalty. But Article 132 provides that for the purpose of applying accessory penalties the law consider the individual sentence for each offense where there is a concurrence of offenses. Therefore, in X's case, no accessory penalty of interdiction from public office would apply, since the sentence for *each* offense—theft and insult—is not five years or more, as required by Article 102.

Article 133 Limits of Increase of Principal Punishments

1. Where
(i) there is a concurrence of offenses, referred to in Article 128,
(ii) the punishment to be imposed under that article shall not be more than five times the amount of the most serious of the joint punishments and shall not for any reason exceed:
(a) thirty years in case of imprisonment for crimes,
(b) six years in case of imprisonment for contraventions;
(c) Sh. So. 150,000 in case of fine for crimes, and Sh. So. 30,000 in case of fine for contraventions, and Sh. So. 400,000 in case of fine for crimes, and Sh. So. 80,000 in case of fine for contraventions, where the judge avails himself of the power specified in the third paragraph of Article 97 and the second paragraph of Article 99.

2. Where
(a) there is a concurrence of offenses under the terms of Article 129,
(b) the duration of the punishments to be imposed under that article shall not exceed thirty years.

The portion of punishment in excess of such limit shall in every case be deducted from imprisonment for contraventions.

3. Where
(a) pecuniary punishments
(b) are converted into imprisonment,
(c) owing to the insolvency of the offender,
(d) the total duration of such punishment shall not exceed four years in the case of imprisonment for crimes and three years in the case of imprisonment for contraventions.

Explanation:

This article merely establishes the limits for sentences in cases of concurrence of offenses. Where the term of imprisonment for the concurrence of offenses is the same type, the total penalty cannot exceed thirty years

for crimes and more than five times the amount for the most serious offense if that is less than thirty years.

It is necessary to establish such rules, because the general concept established in Articles 128 and 129 is simply the adding together of the total number of years for each offense, a method which could lead to imprisonment for a period of time greater than the law deems necessary or humane.

Paragraph 2 establishes the same limit of thirty years for offenses which require the imposition of diverse sentences, such as imprisonment for a crime and imprisonment for a contravention. But in such cases any amount over thirty years shall be deducted from the amount of time one must serve for the contravention. If, for example, a person is condemned to serve twenty-seven years for a crime and six years for a contravention, the total would be thirty-three years, or three years over the maximum set by Paragraph 2. These three years are deducted from the amount the person must serve for the contravention, so that the total term of imprisonment would be twenty-seven years for the crime and three years for the contravention.

Example:

X, a Somali citizen, brutally beats Y, causing Y to lose the sight of both eyes. X, knowing he is wanted by the police, breaks into a store and steals 450 shillings, so that he can escape. He is arrested by the police and charged with causing Very Grievous Hurt to Y, in violation of Article 440(3) and Theft (Article 480). Thus, there has been a concurrence of offenses. The offense of very grievous hurt is more serious than theft, and the judge could increase the penalty up to five times the maximum penalty for hurt, which, according to Article 440(3), is twelve years. Five times twelve years is sixty years. But Paragraph 1 of Article 133 sets the limit for the punishment where there is a concurrence of offenses requiring the same kind of punishment, at thirty years. Therefore, thirty years is the maximum penalty that the judge could impose in this case.

Article 134 Limits of Increase of Accessory Penalties

The maximum duration of the temporary accessory penalties shall not exceed, altogether, the following limits:

(a) ten years, in cases of interdiction from public offices or from a profession or craft;

(b) five years, in cases of suspension from the exercise of a profession or craft.

Explanation:

This article is similar to the preceding one, except that it establishes limits for temporary accessory penalties which may be imposed as a result of the sentences for different offenses. Since, according to Article 102, every sentence of not less than three years carries with it the accessory penalty of temporary interdiction from public office for five years, it would be possible, if three different offenses were committed, to have interdiction for a period of fifteen years—five years for each offense entailing a sentence of over three years. Article 134 sets the maximum of such temporary interdiction at ten years.

Article 135 Punishments Imposed by Different Sentences

The provisions of the preceding articles shall also apply where,

(a) after a conviction,

(b) the same person

(c) has to be tried for another offense

(d) committed before or after the said conviction,

(e) or where more than one sentence has to be carried out against the same person.

Explanation:

The provisions dealing with concurrence of offenses logically apply to situations where an offense is committed before or after conviction for another offense, or where more than one sentence has to be carried out against the same person. Thus, for example, if X is charged with theft, and released on bail, and then commits hurt against Y, the provisions regarding sentencing where there is a concurrence of offenses apply even though X will receive two different sentences as a result of two different trials.

Chapter V Execution of Punishment

Article 136 Special Establishments for Serving Imprisonment

1. Imprisonment for crimes shall, where possible, be served in special establishments for each of the following categories of offenders:

(a) habitual or professional offenders;

(b) persons sentenced to reduced punishments in consequence of mental infirmity or of being deaf and dumb or of chronic intoxication induced by alcohol or narcotic drugs; habitual drunkards and persons addicted to the use of narcotic drugs.

2. The offenders referred to in Paragraph 1(b) shall also be subjected, where necessary, to medical treatment.

3. Where,
(a) in the same offender,
(b) there coexist
(c) different personal conditions,
the judge shall decide in which of the special establishments the punishment is to be served. The decision may be modified during the execution of the punishment.

4. The punishment of imprisonment for a contravention shall, where possible, be served by the aforesaid classes of offenders and by habitual or professional contraveners in special sections of the establishments used for serving the aforesaid punishment.

5. Females shall serve imprisonment in establishments separate from those used for males.

Explanation:

Article 136 lists the special establishments or prisons for the detention of offenders. The controlling words in the article are "where possible." Article 136 does not require the government to provide the facilities listed. Instead, it sets down the ideal plan for prison facilities. At present, there are two main prisons—one in Mogadishu and one in Mandera. There are regional prisons in each regional capital, and a smaller prison in almost every district. As a general rule, prisoners who have committed serious crimes are kept in the main prison in Mandera or Mogadishu. Insane offenders are kept in separate buildings attached to the Tuberculosis Hospital in Mogadishu and the hospital in Berbera. Separate facilities are also available for women prisoners.

Article 137 Serving of Imprisonment by Minors

1. Until they have attained eighteen years of age, minors shall, where possible, serve imprisonment in establishments separate from those used for adults, or in separate sections of such establishments; and, during the hours not set apart for work, they shall be given instruction directed chiefly to moral rehabilitation.

2. They shall, where possible, be assigned to special establishments in the cases referred to in Paragraph 1(a) and (b) of the preceding article.

Explanation:

In general, boys are kept separate from other prisoners in the main prison. The reason for this is to prevent the boys from associating with hardened criminals and thus learning a life of crime and continuing such activities upon their release. This is especially true in light of the fact that most of the crimes committed by the boys are of a minor nature.

In the Central Prison in Mogadishu, boys are given religious instruction and language training. Recently, a sports program was begun for them.

Article 138 Supervision over the Execution of Punishments

The execution of punishments of imprisonment shall be supervised by the competent judge.

Explanation:

Under the Italian Penal Code (Article 144), the judge has the power to order the prisoner released during the day to work outside the prison. The judge is supposed to act according to his analysis of the prisoner's attitude and psychological conditions. This power does not exist in the Somali Penal Code. It is not clear what the scope of Article 138 is. It at least includes the power of the judge to ascertain that the imprisonment is being carried out properly and that the prisoner is not being abused.

Article 139 Remuneration of Convicts for Work Performed

In establishments where sentences of imprisonment are served, convicts shall be paid remuneration for work done.

Explanation:

Convicts should not be regarded as a source of unpaid labor. By paying them for their work, the prison helps to rehabilitate the prisoner by encouraging him to work and thus maintain a useful role in society, as well as providing him with some money for the time when he will be released from prison. The work areas in both of the main prisons are well organized and practical. In the main prison in Mogadishu, prisoners make furniture for government offices and uniforms for the police, Army, Illalos, and uniformed civil servants, as well as run a book bindery. Such work teaches them a useful trade, at which they can be employed upon being released. The prisoners are paid a small sum which is held for them by the prison authorities pending their release.

Article 140 Compulsory Postponement of the Execution of Punishment

1. The execution of a punishment other than a pecuniary punishment shall be deferred:
(a) where it has been imposed on a pregnant woman;
(b) where it has to be imposed on a woman who has been confined less than one year previously;

(c) where a petition for pardon is submitted, in the case of a death sentence.

2. In the case referred to in Paragraph 1(b) above, the deferment shall be revoked should the child die or be entrusted to a person other than the mother, and the birth occurred more than two months previously.

Explanation:

The law provides that pregnant women and women who have just given birth to children shall not be punished for offenses until such time as the child has become strong and healthy. The deferment of execution of punishment in such cases is compulsory. The judge does not have any discretion in the matter.

The reasons for such a rule are that the child, who is of course innocent of any wrongdoing, should not be made to suffer by being deprived of his mother at a time when he needs her most, nor should a pregnant woman be compelled to give birth to a child in a prison, which is poorly equipped for handling births.

The other important situation in which execution of punishment must be postponed is when a prisoner, condemned to death, has filed a petition of pardon. This is necessary to give the government authorities time to pass on the pardon before the prisoner has been executed.

Article 141 Optional Postponement of the Execution of Punishment

1. The execution of a punishment may be deferred:

(a) where a petition for pardon is submitted, and execution of the punishment is not required to be deferred in accordance with the preceding article;

(b) where the person against whom a punishment restricting personal liberty has to be executed is in a condition of serious physical infirmity.

2. In the case referred to in Paragraph 1(a) above, the execution of the punishment shall not be deferred for a period exceeding, in the aggregate, six months, counting from the day the sentence became final, even though the petition for pardon is subsequently renewed.

Explanation:

In some cases, the deferment of execution of punishment is optional. That means that it may or may not be deferred. The two instances in which such power may be exercised are when a petition for pardon has been submitted and the case does not come within the terms of Article 140 (that is, it is not a case involving the death penalty), and when a person to be imprisoned is ill.

Paragraph 2 limits the time of deferment in cases where a pardon has been requested to no longer than six months from the date the sentence becomes final, or, if there has been an appeal, from the date of the appeal judgment.

Article 142 Supervening Mental Infirmity of Convicted Person

1. Where

(a) a convicted person,

(b) before the execution of a punishment restricting personal liberty, or

(c) during the execution thereof,

(d) should become afflicted with a mental disability,

the judge shall, if he considers that the infirmity is such as to hinder the execution of the punishment, direct that the latter be deferred or suspended and that the convicted person be committed to an asylum, hospital, or nursing home.

2. The foregoing provision shall also apply where, by reason of mental disability which has supervened, a person sentenced to punishment of death has to be committed to an asylum.

3. Where

(a) the grounds on which the aforesaid measure was based

(b) have ceased to exist,

the order committing a convict to an asylum shall be revoked, and the punishment shall be executed.

Explanation:

This article applies to the situation where a convicted person becomes mentally ill before he begins serving his term of imprisonment, or during such term, or after the sentence of death has been imposed but before it has been carried out. In such a situation, the convicted person should be committed to a mental hospital, if the judge determines that his mental illness is such "as to hinder the execution of the punishment." If the convicted person's mental illness is such that he does not undertand what is being done to him, there is no rationale for punishing him, since he is not capable of understanding why he is being punished.

Paragraph 3 states that when the mental illness has been cured, the punishment shall be imposed.

This is a very difficult article for a judge to execute in Somalia. In general, judges should rely on medical evidence as to the convicted person's illness before exercising their discretion in deferring or suspending punishment.

Example:

X is charged with having murdered his nephew. He is convicted at trial, no defense having been made that X was insane. After being sentenced to death, X is taken to the Central Prison in Mogadishu for detention pending execution of the sentence. While in prison, X begins to act strangely, and the prison authorities think that he may be insane. They call this fact to the attention of the judge who sentenced X to death. The judge requests two doctors in Mogadishu to examine X. The doctors file a report with the judge stating that they believe X to be insane. The judge, having read this report, decides to exercise his discretion under Article 142(2), and orders that X be committed to an asylum for treatment, and that the death penalty be suspended until such time as X is mentally fit.

PART V EXTINCTION OF OFFENSE AND PUNISHMENT

Chapter I Extinction of Offense

Article 143 Death of the Offender before Conviction

The death of the offender, occurring before conviction, shall extinguish the offense.

Explanation:

This chapter deals with the extinction of the offense, as compared to the extinction of the punishment. It is obvious that if a person accused of an offense dies before conviction, he cannot be found guilty of the offense. His trial has never been completed according to the law.

Article 144 Amnesty

1. An amnesty shall extinguish the offense and, where a sentence has been passed, shall cause the execution thereof and the accessory penalties to cease.

2. Where there is a concurrence of offenses, the amnesty shall apply to the particular offenses in respect of which it is granted.

3. Extinction of offenses by virtue of an amnesty shall be limited to the offenses committed up to and including the day preceding the date of presentation of the bill to the National Assembly delegating to the President of the Republic the power of amnesty and pardon.

4. An amnesty may be made subject to conditions or obligations.

5. An amnesty shall not apply to recidivists, in the cases referred to in Paragraph 2 of Article 61, or to habitual or professional offenders, unless the decree otherwise provides.

Explanation:

Article 64 of the Constitution of the Somali Republic states:

The power of granting amnesty and indult may be delegated to the President of the Republic by a law approved by the Assembly, by a two-thirds majority of the deputies.

Amnesty and indult may not be granted in respect of offenses committed after the presentation of the draft law on the delegation of powers.

Article 144 of the Penal Code deals with the effects of amnesty. Paragraph 3 of that article repeats the provision of the Constitution that the amnesty applies to offenses committed up to and including the date of the presentation of the bill in the National Assembly, but not to offenses committed after that date of presentation. This means that the amnesty does not apply to offenses committed following passage of the bill delegating the authority to the President.

An amnesty may be in several forms. It may apply only to certain crimes or contraventions; it may specifically exempt certain offenses from its coverage; it may be drafted to cover penalties over a certain number of years.

According to Paragraph 1 of the article, an amnesty extinguishes the offense and halts the execution of the penalties, both principal and accessory. If there is a concurrence of offenses, the amnesty applies only to the particular offense for which it has been granted, and an amnesty as to one offense does not mean that the convicted person is amnestied as to the other one.

The Penal Code limits the application of amnesties as a matter of presumption. Unless the amnesty specifically states that it applies to recidivists and habitual and professional offenders, it automatically does not apply to such persons.

Example:

X commits the crime of Insult, in violation of Article 451, and Theft, in violation of Article 480(1). As there is a concurrence of offenses, X is sentenced to three years for the theft and one year for the insult. Immediately following his conviction, a bill is introduced in the National Assembly, delegating to the President of the Republic the power to grant an amnesty. The bill is approved shortly thereafter, and the President

drafts and signs the bill, granting amnesty to all those convicted of offenses carrying a penalty of not more than one year.

By the terms of the amnesty, it applies to X's conviction for insult, but not for theft. According to Paragraph 2 of Article 144, X's conviction for insult is extinguished, but his conviction for theft remains.

Article 145 Withdrawal of the Complaint

In the case of offenses punishable on the complaint of the party injured, except where the conviction has become final, withdrawal of the complaint or death of the injured person shall extinguish the offense.

Explanation:

Various offenses under the Penal Code are punishable only upon the complaint of the injured party. If that person withdraws the complaint or dies, then the offense is extinguished. Note, however, that this article applies only if the withdrawal of complaint or death occurs before the date the conviction has become final. A conviction becomes final if the court that has tried the case issues a sentence and there is no appeal. The conviction becomes final in cases of appeal when the last appeal has been made and the Appeal Court has issued its sentence. If, of course, the Appeal Court orders a new trial, then there is no final conviction until the outcome of that trial, and the appeals, if any.

Example:

X insults Y, in violation of Article 451(1). According to that article, there can be no prosecution of X unless Y files a complaint with CID. Y files this complaint, and X is brought to trial. While the trial is in process, Y decides to withdraw the complaint, and indicates that he does so. The offense of insult by X is extinguished by Y's withdrawal.

Article 146 Compounding Contraventions

In the case of contraventions for which the law prescribes the punishment of fine only, the offender may be permitted,

(a) before the hearing of the case commences,

(b) to pay a sum equal to a third of the maximum punishment prescribed by law for that contravention,

(c) together with the costs of the proceedings.

Such payment shall extinguish the offense.

Explanation:

This article simply provides that if the accused pays one-third of the maximum fine fixed by law, plus the court costs, there shall be no trial,

and the offense shall be extinguished. This does not mean that the accused is guilty or innocent of the offense charged. It simply means that he prefers to pay the amount required rather than go to trial and run the risk of being convicted. Note that the article applies only to contraventions—not crimes—and only to contraventions where the sole punishment is the payment of a fine. If the penalty is fine or imprisonment, or both, Article 146 does not apply. An example of such a contravention would be CRUELTY TO ANIMALS (Article 562), which punishes the offender with a fine up to 3,000 shillings.

Article 147 Judicial Pardon for Persons under Eighteen or over Seventy Years of Age

1. Where,

(a) in the case of an offense committed by a person under eighteen or over seventy years of age,

(b) the applicable punishment is imprisonment for a maximum term of not more than three years or a pecuniary punishment, or both,

(c) the judge may abstain from entering conviction and grant judicial pardon, where,

(i) having regard to the circumstances referred to in Article 110,

(ii) he considers the offender will not commit any further offense.

A judicial pardon shall extinguish the crime.

2. A judicial pardon may not be granted more than once.

Explanation:

This article grants to the judge discretion to pardon persons for the commission of minor offenses. The power is limited to offenses for which a prison sentence of not more than three years can be imposed either with or without a fine. By granting the pardon, the judge extinguishes the offense, and thus leaves the offender's record clean. Such judicial discretion must be exercised according to specific criteria listed in Article 110. The judge must, after examining the criteria specified in that article, conclude that the offender will not commit a further offense if released. Having made this decision, the judge can then grant a judicial pardon.

Paragraph 2 provides that such pardons can be granted only once. This means that the same offender cannot receive more than one judicial pardon. Obviously, if, after receiving one pardon, the offender returns before the Court, having committed another offense, he has shown himself unworthy of having received the first pardon.

The Penal Code, by limiting this power of judicial pardon to offenders under eighteen or over seventy, indicates the legislative judgment that

very young persons and those approaching death should be given another chance. It also indicates the legislative judgment that, if possible, such persons should be kept out of prison.

Example:

Z, a seventeen-year-old boy living in Mogadishu, breaks into a store and steals a radio and some records. He is arrested and charged with THEFT, in violation of Article 480(1). The penalty for theft is from five days to three years and a fine of from 300 to 5,000 shillings. Z is brought before a judge in Mogadishu for trial.

The judge examines the criteria of Article 110, and concludes that the crime was not particularly grave: nobody was injured physically, Z apparently committed the crime on the spur of the moment, he has no prior criminal record, he is a good student, and his family life is stable. The judge also notes that to put such a boy into prison in Mogadishu will bring him into contact with hardened criminals and may teach him a life of crime instead of educating him to be a decent member of society. Finally, the judge is satisfied that Z is scared enough by the prospect of having to serve three years in prison not to commit another offense. He therefore grants a judicial pardon, which extinguishes Z's offense and leaves his record as clean as if he had never committed the theft.

CHAPTER II EXTINCTION OF PUNISHMENT

Article 148 Death of the Offender After Conviction

The death of the offender after conviction shall extinguish the punishment.

Explanation:

This chapter deals with the extinction of punishment as distinguished from the extinction of the offense. The difference is that the following articles indicate what happens following conviction, when the accused has already been found guilty but certain conditions or circumstances prevent him from being punished. In the previous chapter, the accused was not found guilty; the offense was extinguished, so there was nothing on his record to show him guilty of an offense.

Obviously, the death of the convicted person extinguishes the punishment, since he is no longer in this world to receive punishment from the hands of men.

Article 149 Indult and Pardon

1. An indult or pardon shall constitute condonation, wholly or in part, of the punishment imposed; or shall commute it to another kind of punishment fixed by law.

It shall not extinguish the accessory penalties except where the decree otherwise provides, nor the other penal consequences of the conviction.

2. Where there is a concurrence of offenses, the indult shall apply once only, after the punishments have been added together in accordance with the rules governing the concurrence of offenses.

3. As regards indults, the provisions contained in the last three paragraphs of Article 144 shall apply.

Explanation:

An *indult* is impersonal, which means it applies to all persons in a specific category—for example, all persons serving a sentence of less than three years. A *pardon* is personal—that is, it applies and is granted to a named person.

An indult or a pardon extinguishes the punishment, either entirely or partially, or by its terms can change the punishment from one type to another—for example, substituting a fine for imprisonment.

The power of indult lies with the National Assembly, according to Article 64 of the Constitution, and it may be delegated to the President of the Republic. The power of pardon lies with the President of the Republic, under Article 75(c) of the Constitution.

There is a presumption that neither indult nor pardon extinguishes the accessory penalties for an offense, unless it is specifically stated in the indult or pardon. Thus, for example, a person may be pardoned and released from serving a prison term for PECULATION, but the accessory penalty of interdiction from public office will still be in force, unless the terms of the pardon apply to accessory penalties.

Paragraph 2 provides that the indult can apply only once, but it shall apply to the entire sentence imposed in cases of concurring offenses.

The provisions of Paragraphs 3, 4, and 5 of Article 144, AMNESTY, apply also to indults by the terms of Paragraph 3 of Article 149. This means that indult takes effect at the same time as an amnesty does, that conditions or obligations may be imposed by an indult, and that indults do not apply to recidivists and habitual or professional offenders unless the indult specifically states that it does. Note that these restrictions do not apply to pardons. Thus, a pardon may take effect at any time and apply to any offender, and it is not subject to conditions or obligations.

Article 150 Conditional Suspended Sentence

1. Where
(a) the offender is not a recidivist, and
(b) the judge, taking into account the circumstances referred to in Article 110, has reason to believe that the offender will maintain a good conduct in the future,
(c) he shall, when pronouncing sentence of conviction to imprisonment for a period not exceeding six months, or to a pecuniary punishment, or both, and
(d) the pecuniary punishment is convertible into imprisonment for the same period,
order that the execution of the punishment be suspended.

2. The suspension of the punishment shall be subject to the following conditions:
(a) that the offender does not, within five years from the sentence, commit a crime or contravention of the same nature as that for which he was convicted;
(b) that the offender, within the time prescribed by the judge, fulfills any civil obligation to make restitution or pay compensation to the party injured.

3. Where the above conditions are complied with, the punishment shall be extinguished.

Explanation:

In certain cases, the judge may suspend the sentence of the convicted person. This means that although the accused has been found guilty of the offense charged, and convicted and sentenced, the sentence is not imposed. Paragraph 1 states the conditions that must be satisfied before the judge can suspend the sentence. First, the convicted person cannot be a recidivist—a person who has committed another offense before. This is a logical condition, because the purpose behind granting a suspended sentence is to release a person who most likely will not commit another offense. If the person is a recidivist, he has shown himself to be the type of person who consistently violates the law. Second, the judge must determine under Article 110 the character of the convicted person in light of the circumstances of the offense committed, and conclude that the convicted person is not likely to commit another offense if released. And, third, the power to suspend a sentence extends only for those offenses where the term of imprisonment imposed (not the maximum imposed by law) by the judge is not greater than six months, or where there is such a term of imprisonment and a fine, or only a fine, as long as the fine can be converted into a term of imprisonment not greater than six months.

If the judge grants a suspended sentence, this does not mean that the convicted person gets off free. There are conditions imposed with a suspended sentence, and these are specified in Paragraph 2 of the article. First, the offender cannot commit a crime or contravention of the same nature as the one he has been convicted of for five years from the time of the sentence. (A crime or contravention of the same nature was defined in Article 63.) Second, the offender must fulfill any civil obligation arising from the commission of the offense. If the above conditions are fulfilled, the punishment shall be extinguished. This means that after five years, if the convicted person has not committed an offense of the same kind, the punishment at that time shall be extinguished.

Example:

X commits a THEFT, in violation of Article 480(1). He is arrested, tried, and convicted. The judge sentences him to six months in jail and a fine of 600 shillings. The judge, considering the circumstances of the crime, the nature of the convicted person, his character, family life, and prior criminal record, decides to suspend the sentence. He orders such suspension after X has paid the storekeeper the value of the goods stolen.

Article 151 Conditional Release

A person sentenced to imprisonment for life who has served at least twenty-five years, or a person sentenced to imprisonment who has served half of the punishment or at least three-fourths of the punishment if he is a recidivist, may be granted conditional release, provided that he has given continuous proof of good conduct.

Explanation:

Conditional release applies to persons who have been convicted and have already served part of their terms of imprisonment. It is a reward to those prisoners who have behaved well during their stay in prison, and who thus are eligible to have their sentence decreased. But Article 151 imposes the condition that they must have served a certain minimum period of time in prison first. A judge cannot order the release of a prisoner unless he has already served the minimum term. For a person imprisoned for life, no conditional release may be granted until he has served at least twenty-five years. For all other terms of imprisonment, the prisoner must have served one-half of his punishment, and if the person is a recidivist, he must have served three-fourths of the total punishment.

The fact that the prisoner has served the minimum time specified in the article is not enough. He must also have shown that over a continuous period of time he has behaved well. The judge, in making this determination, must rely on the records of the prison and statements by prison officials.

Example:

A is convicted of causing very grievous HURT to B, in violation of Article 440(3). He is convicted and sentenced to the maximum of twelve years in prison. This is his first offense. After serving for six years, he is eligible for conditional release, under the provisions of Article 151. However, proof must be presented that during his six years in prison he conducted himself properly and well.

Article 152 Rehabilitation

Rehabilitation shall extinguish the accessory penalty and every other penal consequence of the conviction provided by law.

Explanation:

This article simply provides that when rehabilitation is determined to have occurred, both the accessory and principal penalties shall be extinguished, as well as all other penal consequences of the offense.

When rehabilitation occurs is specified in the following article.

Article 153 Conditions for Rehabilitation

1. Rehabilitation shall be granted where
(a) five years have elapsed from the day on which the principal punishment was executed, or was in any other way extinguished,
(b) and the convicted person has given real and continuous proof of good conduct.
2. The period shall be ten years in the case of recidivists, as referred to in Paragraph 2 of Article 61.
3. The period shall likewise be ten years in the case of habitual or professional offenders.

Explanation:

As stated in the preceding article, rehabilitation extinguishes all the penal effects of the punishment. This means that in the case of a person who is still serving a term in prison, if he is deemed to be rehabilitated, he is released and the remainder of his term is extinguished at the time

of release. This is different from conditional release, where the convicted person is released on the ground that he has behaved well, but if he does not fulfill certain conditions, he can be put back into prison. His punishment is not extinguished until these conditions are met. Rehabilitation applies to those prisoners who have received long prison sentences and have served at least five years. If the punishment was extinguished by indult, which does not extinguish accessory penalties or other consequences of guilt, rehabilitation can be granted following a five-year period after the granting of an indult.

Paragraph 2 simply provides that the period for recidivists, within the category of Paragraph 2 of Article 61, shall be ten years instead of the five required for normal offenders. Note that this applies not to all recidivists but only to those within the second paragraph of Article 61—that is, where recidivism is an aggravated condition. Similarly, the period is ten years for habitual or professional offenders.

Example:

X is convicted of aggravated ROBBERY, in violation of Article 484(3), and is sentenced to fifteen years in prison. He serves two years and then is pardoned under Article 149. X is eligible for rehabilitation after five years following the granting of the pardon. He must prove that he has led a decent, honest life continuously for that period of time. If he has, the judge may grant rehabilitation, extinguishing all the penal consequences of his conviction.

Article 154 Revocation of Order of Rehabilitation

An order of rehabilitation shall be revoked *ipso jure* where
(a) the rehabilitated person
(b) commits
(c) within five years
(d) a crime not committed with culpa,
(e) in respect of which the punishment of imprisonment for a term of not less than three years, or any other more serious punishment, is imposed.

Explanation:

The phrase "*ipso jure*," roughly translated, means automatically revoked as a matter of law. In other words, there is no exercise of discretion. If the conditions of the article are met, then the order of rehabilitation must automatically be revoked.

The conditions are those which show that the granting of the rehabilitation in the first place was a mistake. The convicted person has, by committing an offense within five years of the rehabilitation order, shown that he has not reformed. But this applies only to certain types of offenses. The offense must not be committed negligently. This is logical, because an offense committed with culpa merely shows that the offender acted without care, not that he had a criminal state of mind. Thus, a person can be rehabilitated and still drive negligently, for example. Also, the punishment for the offense committed following the rehabilitation order must be for a period of three years or more. This means that if an offense is punishable by five years in prison and the accused is sentenced to two years, the order of rehabilitation cannot be revoked. If he is sentenced to four years for that offense, it may be revoked.

Article 155 Rehabilitation in the Case of Conviction Abroad

The provisions relating to rehabilitation shall also apply in the case of foreign convictions which are recognized in accordance with Article 10.

Explanation:

This article provides that if, according to Article 10 of the Penal Code, a conviction in another country is recognized under Somali law, then that conviction can be extinguished according to Somali law also, and Articles 152 to 154 will apply.

One further detail of this chapter involving extinction of punishments should be noted. Both CONDITIONAL SUSPENDED SENTENCE (Article 150) and CONDITIONAL RELEASE (Article 151) result in the extinction of punishments. The same is true for REHABILITATION. Rehabilitation is not conditional, in the true sense of the word, although it can be revoked. The conditions for a conditional suspended sentence are specified in Article 150. In the Italian Penal Code, there is also provision for the revocation of a CONDITIONAL RELEASE (Article 177 of the Italian Penal Code). In the Somali Penal Code, such an article has been omitted—I suspect, unintentionally. As the Code stands now, there is a conditional release, but no provision as to what are the conditions of such release and when such release shall be revoked. Article 253(2) of the Criminal Procedure Code (Legislative Decree No. 1 of 1 June 1963) provides that revocation of a conditional release shall be for the same reasons as revocation of a conditional suspended sentence, contained in Article 150(2) of the Penal Code and restated in Article 127(2a) of the Criminal Procedure Code. Thus, the two Codes must be read together with regard to the revocation of a conditional release.

CHAPTER III GENERAL PROVISIONS

Article 156 Effects of the Cause of Extinction of an Offense or Punishment

Except as otherwise provided by law, the extinction of an offense or a punishment shall have effect only in regard to the persons to whom the cause of extinction relates.

Explanation:

Generally, extinction will apply only to the offender. Logically, in certain cases, such as ADULTERY (Article 426), where the offense is extinguished for one participant in the offense it should be extinguished for the accomplice. This article provides that extinction shall apply to others only if the law so states, and there is nothing in the Penal Code that automatically extends any of the methods of extinction to accomplices in adultery cases. Therefore, in such cases, the act of extinguishing the punishment or offense will have to be carefully drafted so as to apply to both parties.

Article 157 More than One Cause of Extinction

1. The extinction of an offense or a punishment shall take effect as of the time when the causes therefor occur.

2. Where

(a) a cause which extinguishes an offense

(b) and a cause which extinguishes the punishment

(c) occur together,

the cause which extinguishes the offense shall prevail, even though it occurred subsequently.

3. Where

(a) more than one cause for the extinction of an offense or a punishment

(b) occur at different times,

the first cause shall extinguish the offense or the punishment, and the subsequent ones shall cause the cessation of the effects which have not yet been extinguished in consequence of the preceding cause.

4. Where more than one cause occurs simultaneously, the most favorable cause shall extinguish the offense or the punishment. In such a case, the preceding paragraph shall apply as regards the effects which have not been extinguished in consequence of the most favorable cause.

Explanation:

The preceding articles establish various ways in which either punishments or offenses can be extinguished, but since situations may arise when such ways occur either simultaneously or at different times with regard to the same offender, Article 157 deals with these situations of more than one cause of extinction. As a general rule, the law provides that the course most favorable to the convicted person will be followed.

Paragraph 1 states the general principle that the extinction of an offense or punishment takes place at the time the cause for such extinction occurs. Thus, for example, if a pardon is granted by the President of the Republic, that pardon extinguishes the punishment as of the time it becomes effective—that is, when the President signs it and it is published in the Official Bulletin.

Paragraph 2 provides that the cause which extinguishes the offense shall prevail over the cause which extinguishes the punishment. If, for example, a prisoner is released because of a conditional suspended sentence (Article 150) but the five years following his release have not yet elapsed, and the President in that time grants an amnesty (Article 144), the amnesty extinguishes the offense even though the offender is out under the terms of a conditional suspended sentence which extinguishes only the punishment. And it does not matter that the amnesty was granted after the granting of the conditional suspended sentence.

Paragraph 3 provides that if there is more than one cause for the extinction of the offense or the punishment and the causes occur at different times, then the first cause extinguishes the offense or the punishment and the second extinguishes the consequences not extinguished by the first one. For example, if X is serving a prison sentence and receives a pardon by the President of the Republic, his prison sentence is extinguished but the accessory penalties are not (Article 149). Following his release, after five years X is judged to be rehabilitated. The rehabilitation then extinguishes the accessory penalties, such as interdiction from public office. Note that Paragraph 3 applies to causes of extinction of the same type occurring at different times. This means that the paragraph deals with either more than one cause of extinction of punishments or more than one cause of extinction of offenses. Paragraph 2 involves the situation where causes of extinction of punishments and causes of extinction of offenses occur in the same case.

Paragraph 4 simply provides that the most favorable cause of extinction prevails when more than one cause occurs at a time, and the remaining cause extinguishes the consequences which have not been eliminated by the first cause. Thus, if a pardon and a conditional release are granted at the same time, the pardon will prevail, since it is more favorable to the convicted person than a conditional release.

PART VI CIVIL SANCTIONS

Article 158 Restitution and Compensation for Damages

1. Every offense shall entail the obligation to make restitution in accordance with the civil laws.

2. Every offense resulting in damage to property or any other damage shall entail the obligation to make compensation on the part of the offender and of the persons who, in accordance with the civil laws, are responsible for his act.

Explanation:

Part VI of Book I deals with civil sanctions for all offenses—both crimes and contraventions. In general, civil sanctions are governed by the relevant civil laws. The Penal Code, however, establishes in this part certain basic rules in order to make clear that the punishment has nothing to do with extinguishing the civil liabilities.

Paragraph 1 of this article establishes the general rule that every offense requires the offender to make restitution for the commission of the offense.

Paragraph 2 states that where the offense has caused damage to property or other damage, the offender must compensate the injured party, and in cases where a person other than the offender is liable, that person must compensate the injured party, as required by civil law.

In Somalia, the well-established rules of *dia*, arising out of customary law, are the applicable civil law governing the payment of compensation. Just as the punishment for the offense does not extinguish the offender's civil liability to the injured party, the payment of compensation does not extinguish the penal liability of the offender.

Article 159 Joint and Several Liability Regarding Obligation ex Delicto

Persons convicted of one and the same offense shall be jointly and severally liable to make restitution or pay compensation in accordance with the civil laws.

Explanation:

This article deals with the situation where more than one person commits an offense. In such a case, each of the persons participating in the

offense is liable civilly either to pay his share for the damage caused to the victim, or to pay the full amount. This type of liability is called joint liability (each to pay his share) and several liability (each participant individually responsible for the whole amount). The principal behind it is that the victim is entitled to compensation and he should receive it as quickly as possible. Any one of the offenders is responsible for having caused the damage or injury to the victim. Therefore, the victim can go against one of the offenders for the entire amount, and that offender can then collect the shares representing the collective responsibility of the other offenders.

Example:

Z, B, C, and D cause extensive damage to Q's tea shop by purposely smashing the furniture, doors, tables, windows, and dishes. They are arrested and charged with violating Article 491, DAMAGE TO PROPERTY. Q brings a civil suit against Z, B, C, and D for compensation for the damage caused, holding them jointly and severally liable. At the civil trial, knowing that Z is the wealthiest of the four offenders, Q requests that Z be held severally liable. The judge finds all four guilty, and orders Z to pay the full amount. Z must do so and collect from the other three offenders their share for the cost of the damage caused.

Article 160 Effects of the Extinction of the Offense or the Punishment on Civil Obligations

The extinction of the offense or the punishment shall not entail the extinction of the civil obligations arising from the offense.

Explanation:

The separation between civil and criminal responsibility must be kept clearly in mind. If a person has been found guilty and is subsequently pardoned, or his punishment or the offense is extinguished, this has no effect upon the civil liability. The person is still responsible for making restitution or compensation for the injury caused.

PART VII SECURITY MEASURES

CHAPTER I SECURITY MEASURES IN RESPECT OF PERSONS

SECTION I GENERAL PROVISIONS

Article 161 Express Provisions of Law

No one may be subjected to a security measure not expressly provided by law nor to a measure beyond the limits provided by law.

Explanation:

This article is self-explanatory. Security measures may only be imposed according to the provisions of the law and within such limits.

Article 162 Application of Security Measures

1. Security measures shall be regulated by the laws in force at the time when they are ordered.

2. Where the law in force at the time of the execution of the security measure is different, the law in force at the time of execution shall apply, where the latter is more favorable.

Explanation:

As will be seen below, security measures are, by their nature, likely to be applied over a long period of time. Thus, there is the distinct possibility that the law regarding such measures will change. This article states the general rule that the law regarding security measures in force at the time when such measures are ordered shall apply. The exception to this rule is that if the law in force at the time of the execution of such measures (that is, the time when the security measures are applied) is different from the law in force at the time the security measures were ordered (that is, at the time the judge sentenced the accused), then the law in force at the time of execution shall apply, but only if it is more favorable to the convicted person. If it is not favorable, then the old law applies.

This article, while it may be important in the future, has little practical value for the present, since there have been no changes in security measures as a result of recent laws.

Article 163 Persons in Respect of Whom Security Measures Are Applied

1. Security measures may be applied only

(a) against persons who are a danger to society, and

(b) who have committed an act which is made an offense by law.

2. Penal laws shall establish the cases in which security measures may be applied against persons who are a danger to society on account of acts which are not made offenses by law.

3. Security measures shall apply also to aliens who are in the territory

Explanation:

The various security measures prescribed by the Penal Code are contained in Article 172. These measures may be applied only against per-

sons described in this article. According to Paragraph 1, security measures may be applied only against a person who is a danger to society *and* who has committed an act which is made an offense by law. Note that both conditions must be met. The phrase "danger to society" is defined in the following article. An offense by law is, of course, any offense contained in any law prohibiting a specified kind of conduct.

Paragraph 2 provides an exception to the two conditions required before security measures can be imposed. The penal law may include those cases where security measures may be imposed when the person is a danger to society but has not committed an offense under any law. Examples of such situations are commitment of a lunatic to an asylum for treatment, or commitment of a child under fourteen years of age to a reformatory. In both such cases, the offender cannot be held criminally liable, either because of his mental condition (see Article 50) or because of his age (see Article 59). However, the Penal Code does classify such persons as dangers to society (see explanation under Articles 176 and 177), and, within the terms of Paragraph 2 of Article 163, the judge may impose security measures.

Paragraph 3 merely extends the application of security measures to aliens residing or located in the territory of the Somali state.

Article 164 Danger to Society

1. For the purposes of penal law, a person shall be deemed to be a danger to society where,

(a) even though neither liable nor punishable for an offense,

(b) he has committed any of the acts referred to in the preceding article, and

(c) where it is probable that he will commit other acts which are made offenses by law.

2. A person shall be adjudged a danger to society by the judge on the basis of the circumstances referred to in Article 110.

3. In the cases expressly provided for, a person shall be presumed by law to be a danger to society.

Explanation:

The basic reason for imposing security measures is to prevent a person who is a danger to society from committing acts which will cause injury or harm to others. Therefore, it is essential to be able to determine who is a danger to society. If such a person has already committed an act made an offense by law, he may be subjected to security measures under Article 163(1). If no such offense has been committed, a person may still be classified as a danger to society and be subjected to security measures according to Article 163(2).

The definition of a person who is a danger to society is contained in Paragraph 1 of Article 164. The person must have committed any of the acts referred to in Article 163—that is, committed an offense, or committed an act for which he is not liable. The judge must also determine the second condition—that the person is likely to commit other acts made offenses by law. In making this determination, the judge must look at the conditions established by Article 110. This article contains the major guides for the judge's exercise of discretion. First, the judge must consider the character and nature of the offense—the gravity of the injury and the intensity of criminal intent. Then he must consider the character of the person involved—his motives, criminal record, conduct, way of life, and his individual, domestic, and social conditions. After considering all these factors, the judge must decide whether the person is one likely to commit other acts which are made offenses by law.

Paragraph 3 deals with those cases where the penal law presumes that a person is a danger to society. In such cases, the judge does not have to make the determination under the conditions established by Article 110. All he must do is apply the appropriate security measure as prescribed by law. For example, Article 176(1) states that a person who is suffering from a total mental infirmity is classified as a danger to society, even though he has not been held liable for the commission of an offense. The judge must, in the case of acquittal for mental infirmity, commit the person to a lunatic asylum for treatment. Such commitment is a security measure, imposed by law on a person the law presumes to be a danger to society. No exercise of judicial determination based on Article 110 is necessary.

Article 165 Order of the Judge

1. The security measures shall be ordered by the judge in the judgment convicting or acquitting the person concerned.

2. Security measures may also be ordered by a subsequent order:

(a) in the case of a conviction, during the execution of a punishment or during a period in which the person convicted voluntarily evades the execution of the punishment;

(b) in the case of acquittal, where it is presumed that the person is a danger to society and a period equal to the minimum term of the appropriate security measure has not elapsed;

(c) at any time in the special cases provided by law.

Explanation:

This article specifies at what time security measures shall be imposed. Normally, they are applied at the time of sentencing—thus, at the time of either conviction or acquittal. It is possible to impose security measures on acquittal, because Articles 163(2) and 164 specify that cases may arise where the person is a danger to society without having committed an offense under the penal law.

However, Paragraph 2 establishes the exception to this rule. The judge may impose security measures by a subsequent order—that is, an order after the sentencing to imprisonment or acquittal. In the case of conviction, security measures may be imposed at any time during the period the person is serving his sentence of imprisonment, or during the time he has escaped. In the case of acquittal, security measures may be imposed where, by law, the person is presumed to be a danger to society—for example, when the person has been acquitted for reasons of total mental infirmity. But the judge may impose such security measures following acquittal only during the period of the duration of the security measure concerned. If, for example, a security measure can be imposed for a period of one year, the judge has a period of one year following sentencing to impose that security measure.

Article 166 Provisional Application of Security Measures

1. During the investigation or trial, the judge may order that
(a) a person under eighteen years of age, or
(b) a person of unsound mind, or
(c) a habitual drunkard, or
(d) a person addicted to the use of narcotic drugs, or
(e) a person in a state of chronic intoxication induced by alcohol or narcotic drugs,
be provisionally committed to a reformatory, a lunatic asylum, a hospital, or a nursing home.

2. The judge may revoke the order where he is of the opinion that the person concerned is no longer a danger to society.

3. The period of the provisional execution of a measure of security shall be deducted from the period of the measure of security.

Explanation:

Article 166 gives the judge discretion to order provisional application of security measures, before the person has been acquitted or found guilty. This power applies only to certain classes of persons who fall

within the categories specified in Subparagraphs a through e of Paragraph 1. The judge cannot impose provisional security measures on persons outside such categories. Paragraph 1 also limits the judge's discretion to the application of only a certain kind of security measure—commitment to a reformatory, an asylum, a hospital, or a nursing home. This article does not give the judge discretion to impose the provisional application of police surveillance.

The purpose of giving the judge this discretion is to enable him to protect society from persons who are dangers to society and might commit another offense prior to trial or sentencing. Note that the categories listed in Paragraph 1 are those of persons unable to make mature judgments, whose minds are affected, by either youth, mental infirmity, narcotics, or alcohol. Since they are not in the full possession of their senses, the judge may deem it better to have them committed during the time the trial is in process in order to protect society from the commission of dangerous acts which these people are not really responsible for.

Paragraph 2 gives the judge the power to revoke the provisional application of security measures if he feels that the person is no longer a danger to society.

Paragraph 3 states that the period of time for which the security measure was provisionally applied shall be deducted from the period of time of the security measure when it is finally imposed.

Example:

X, a thirteen-year-old boy living in Mogadishu, breaks into a store and beats the night guard over the head with an iron bar. He then steals three tape recorders, two radios, and some money, but is caught when leaving the building by the police. He is arrested and charged with ROBBERY, in violation of Article 484. The penalty for ROBBERY is three to ten years in prison, increased by one-third to one-half in cases of the use of violence (Article 484[3]). At the preliminary stages of the proceedings, the prosecutor indicates to the judge that the offender is under eighteen years of age, and thus within the category specified in Article 166. The judge orders that X be committed to a reformatory, under Article 166, pending trial. At the trial, it is proven that X is indeed only thirteen years old. Thus, according to Article 59, he is not liable for the offense. However, he can be subjected to the security measure of commitment to a reformatory (see Article 177). The period of commitment is for not less than three years. In this case, the judge sentences X to be committed to a reformatory for a period of three years, subtracting from the three years the time X has already served under the provisional application of commitment prior to trial.

Article 167 Revocation of Security Measures

1. A security measure may not be revoked if the person to whom it has been applied has not ceased to be a danger to society.

2. The revocation may not be ordered unless a time equal to the minimum period prescribed by law for that security measure has elapsed.

Explanation:

As stated above, the basic reason for the imposition of security measures is that the person is a danger to society. Therefore, as long as the person continues to be a danger to society, the security measure cannot be revoked. The provisions on security measures establish a minimum period of commitment or application but no maximum. The maximum period, or, rather, the time when the security measure ceases to apply, is the time when the person ceases to be a danger to society. Paragraph 2 provides that the judge cannot order the revocation of security measures until the minimum period of application of such measures has elapsed. Thus, if the minimum period of commitment to a reformatory is three years, the judge cannot order that the minor be released from the reformatory prior to the completion of that three-year period. Since the judge can release the person from the security measures only when that person has ceased to be a danger to society, he must review the case of the person frequently to determine whether the person can safely be released to society. The process of review is described in the following article.

Article 168 Review of Cases of Persons Adjudged as a Danger to Society

1. Where

(a) the minimum period prescribed by law for each security measure has elapsed,

(b) the judge shall review the conditions of the person who has been subjected to the measure in order to ascertain whether or not he is still a danger to society.

2. Where

(a) it appears that the person is still a danger to society,

(b) the judge shall fix a time for a further review. However, if there is reason to believe that the danger has ceased, the judge may review the case at any time.

Explanation:

Following the lapse of the minimum period for the security measure, the judge must review the conditions of the person subjected to the security measure. The purpose of such review is to determine whether the person is still a danger to society. Therefore, the judge should consider the person's actions and character during the time of commitment. According to the provisions of Paragraph 1, the judge must conduct the review of the person subjected to security measures after the lapse of the minimum period for that security measure. He has no discretion about conducting the review, but discretion only in determining whether the person is still a danger to society.

If the judge decides that the person is still a danger, then he must fix a date when he will review the conditions of the person to make another determination as to whether he is a danger to society. But, if the judge has reason to believe that the person is no longer a danger to society before such date for review occurs, he may review the person's case at any time.

Example:

X, a thirteen-year-old boy, has been committed to a reformatory for committing a robbery. At the end of three years, the minimum period of commission to a reformatory, the judge reviews his case to determine whether the boy is still a danger to society. The reformatory officials testify that X has tried to escape three times, has got into fights with many of the other boys in the reformatory, has attacked a guard, and has refused to learn, attend Koranic classes, or participate in sports. The judge decides that X is still a danger to society and decides to review X's case in seven months. After seven months, he learns from the reformatory officials that X has changed completely and become a model boy, studying and working hard. The judge orders a revocation of the security measure of commitment to a reformatory, on the basis of his judgment that X is no longer a danger to society.

Article 169 Effects of Extinction of Offense or Punishment

1. The extinction of the offense shall preclude the application of security measures and shall terminate their execution.

2. The extinction of the punishment shall preclude the application of security measures, except those which the law allows at any time, but shall not preclude the security measures which have already been ordered by the judge as measures accessory to a sentence of imprisonment for a period exceeding ten years.

3. Where, by reason of an indult or pardon, a sentence of death or of imprisonment for life is not to be executed, the person convicted shall be released under supervision for a period of not less than three years.

Explanation:

As we have seen above, the Penal Code draws a distinction between extinction of the offense and extinction of the punishment. The various causes for extinction are described in Chapters I and II or Part V. Chapter III describes the effects of such extinction. Article 169 describes the effects of such extinction on security measures.

The general rule is contained in Paragraph 1, which provides that extinction of the offense shall include the termination of security measures. This rule has no exceptions. Thus, for example, an amnesty (Article 144) or the withdrawal of a complaint (Article 145) terminates the application of security measures.

Paragraph 2 involves the extinction of punishment as distinguished from the extinction of the offense. The general rule is that the extinction of the punishment precludes the application of security measures. This rule has two exceptions:

(a) where the law allows security measures to be applied at any time; and

(b) where the security measures have already been ordered by the judge in cases involving prison sentences of over ten years.

Paragraph 3 provides that if a person is sentenced to death or life imprisonment, and is subsequently released as a result of indult or pardon, he must be subjected to supervision for a period of at least three years. This is logical, since those sentenced to death or life imprisonment are those criminals who have committed very serious crimes and thus should be subjected to supervision upon release in order to protect society.

Examples:

1. X, a boy of thirteen years, is arrested for assaulting Y, another boy, in violation of Article 439. Y does not file a complaint, and X is released. X shortly thereafter attacks and assaults Z, an old man in the town. X is brought before the judge, who notes that this is the second case involving X in a short period of time, and that X is under eighteen years of age. He orders X committed to a reformatory as a provisional security measure under the powers granted him by Article 166(1). After X has been committed, Z withdraws the complaint against him. This extinguishes the offense, according to Article 145. Thus, under Paragraph 1 of Article 169, the withdrawal of the complaint terminates the execution of the security measures, and X must be released from the reformatory.

2. G commits a violent robbery against B, a merchant. He is arrested, tried, and convicted, and sentenced to fifteen years in prison, under the provisions of Article 484(3). As will be seen later, Article 180 requires that police surveillance be imposed on persons who have been sentenced to prison for more than ten years. The judge includes in his sentence that G will be subjected to police surveillance for two years following his release from prison. While G is serving in prison, he is granted a pardon, which extinguishes the punishment. According to Paragraph 2 of Article 169, this is an exception to the general rule, and does not extinguish the application of security measures, since the judge has ordered police surveillance as accessory to the sentence of imprisonment, which was greater than ten years.

Article 170 Execution of Security Measures

1. Security measures which are ordered in addition to imprisonment shall be executed after the sentence has been served or otherwise extinguished.

2. Security measures ordered in addition to a punishment other than imprisonment shall be executed after the conviction has become final.

3. Temporary security measures

(a) not of a detentive character,

(b) ordered in addition to security measures of a detentive character, shall be carried out after the execution of the measures of a detentive character.

Explanation:

This article simply explains when security measures are to be applied. Note that each paragraph deals with a different situation. Paragraph 1 states that if the basic punishment is imprisonment, security measures shall be executed after the sentence has been served or extinguished. This must be read in connection with Paragraph 2 of Article 169, explaining when security measures are also extinguished if the punishment is extinguished. Thus, in the normal situation, if a person has been sentenced to two years in prison, and serves this period, the security measure of police surveillance, for example, will come into operation upon his release from prison.

Paragraph 2 provides that if the security measures are ordered in addition to a pecuniary punishment or punishment other than imprisonment, they shall become effective after the conviction of the person becomes final.

Paragraph 3 simply states that, in order of execution, security measures of a detentive character, such as commitment to a reformatory, shall be executed first, before temporary security measures of a non-detentive nature (such as police surveillance) are executed.

Article 171 Non-Observance of Security Measures

1. Where
(a) a person subjected to a security measure
(b) voluntarily evades the execution thereof,
the minimum period of the measure shall begin to run from the day on which it is again commenced.

2. The preceding provisions shall not apply to a person committed to a lunatic asylum, a hospital, or a nursing home.

Explanation:

The article applies to the situation where a person subjected to a security measure avoids its execution by escaping or avoiding apprehension. In such a case, the security measure commences to run from the time the person is apprehended and placed under the security measure again. Paragraph 1 specifies that the minimum period will run from this date of apprehension, and thus the time already spent under a security measure does not count.

Paragraph 2 exempts the security measures of commission to a lunatic asylum, a hospital, or a nursing home from this article. This is done because those security measures are imposed only in cases where the person is mentally ill, or under a grave physical disability, so that he is not really responsible for his acts.

Example:

X is placed under police surveillance. The minimum period of time for police surveillance is one year (Article 178). After X has been under such surveillance for three months, he crosses the border into Ethiopia to avoid continued surveillance. Four months later, he returns to Somalia. At that time, he is apprehended for evasion of police surveillance. The original order placing X under police surveillance now runs from the time he was apprehended, and X must be subjected to such surveillance for a year from this date.

SECTION II SPECIAL PROVISIONS

Article 172 Kinds of Security Measures in Respect of Persons

1. Security measures in respect of persons shall be divided into those which are of a detentive and those which are not of a detentive character.
2. Measures of a detentive character shall be:
(a) commitment to a hospital or nursing home;

(b) commitment to a lunatic asylum;
(c) commitment to a reformatory.
3. Measures not of a detentive character shall be:
(a) police surveillance;
(b) expulsion of an alien from the State.
4. Where
(a) the law prescribes a security measure
(b) without indicating its nature,
the judge shall order the person to be placed under police surveillance.

Explanation:

This article simply lists the kinds of security measures the Penal Code provides for with regard to persons. As will be seen in Chapter II, there are security measures for property also. The security measures with regard to persons are divided into two categories—detentive and non-detentive. Those detentive by nature involve commitment to either a hospital, nursing home, lunatic asylum, or reformatory. The non-detentive security measures are police surveillance and expulsion of aliens from the State. Note that the latter measure applies only to aliens. A Somali citizen cannot be deported. This is prohibited by Article 11 of the Constitution of the Republic.

Paragraph 4 establishes the general rule that where the Penal Code, or any other law, requires the imposition of security measures without specifying what measures are to be imposed, the judge shall order the person to be placed under police surveillance.

Article 173 Commitment to a Hospital or Nursing Home

1. A person
(a) convicted of a crime not committed with culpa,
(b) and sentenced to a punishment reduced by reason of his mental infirmity, or chronic intoxication by alcohol or narcotic drugs, or by reason of being deaf and dumb,
(c) shall be committed to a hospital or nursing home,
(d) for a period not less than one year,
(e) where the minimum punishment prescribed by law is imprisonment for not less than five years.
2. Where
(a) the punishment prescribed for a crime is death, imprisonment for life, or imprisonment for a period of not less than ten years,
(b) the security measure shall be ordered for a period of not less than three years.

3. Where
(a) the punishment prescribed for any other offense is imprisonment, and
(b) where it appears that the convicted person is a danger to society,
(c) he shall be committed to a hospital or nursing home for a period not less than six months.
However,
(a) the judge
(b) may order him to be placed under police surveillance instead of being thus committed, except
(c) where the punishment has been reduced for chronic intoxication by alcohol or narcotic drugs.
4. Where
(a) commitment to a hospital or nursing home has been ordered,
(b) no other security measures of a detentive character shall be applied.

Explanation:

The security measure of commitment to a hospital or nursing home can be applied, according to Paragraphs 1 and 2, only in cases of crimes, not contraventions, and for only those crimes committed with criminal intent. A crime committed negligently does not warrant commitment under this article. In addition, the convicted person's sentence must have been reduced for one of the following reasons:

(a) he is suffering from a mental infirmity;
(b) he is suffering from chronic intoxication by alcohol or narcotic drugs; or
(c) he is deaf and dumb.

These three types of conditions were discussed in Articles 50, 51, 57, and 58. The presence of these conditions affects the offender's capacity of understanding and volition, and thereby either makes him non-liable for punishment or requires a reduction of the punishment. Article 173 deals with those cases where a person has been found guilty of the offense but his punishment has been reduced because of the presence of any one of the three conditions listed above.

According to Paragraph 1 of Article 173, if the offender has been convicted of a crime for which the minimum penalty prescribed by law is at least five years imprisonment, then the judge must order commitment to a hospital or nursing home for a period of at least one year. Note that these crimes will generally be the more serious ones, if the minimum penalty must be at least five years in prison. For example, aggravated Robbery (Article 484[3]), very grievous Hurt (Article 440[3]), and aggravated Extortion (Article 485[2]) come within the terms of Article 173, Paragraph 1.

Paragraph 2 requires that the same conditions of Paragraph 1 be met; that is:

(a) the offense is a crime not committed with culpa;
(b) the person has been convicted; and
(c) his sentence has been reduced for one of the reasons listed above.

In addition, if the punishment for the offense is imprisonment for not less than ten years, imprisonment for life, or death, then the judge must order the commitment of the person to a hospital or nursing home for a period of at least three years. The general rule is that a person can be subjected to security measures only if he is a danger to society. In both Paragraphs 1 and 2, this danger to society is presumed, because of the seriousness of the crimes involved. Therefore, the judge does not have to make a finding of danger to society in ordering the imposition of commitment to a hospital or nursing home within the terms of Paragraphs 1 and 2.

Paragraph 3 involves any other *offenses*, meaning both crimes and contraventions. It applies to those offenses punishable by imprisonment, but not within the terms of the preceding two paragraphs. Thus, the term of imprisonment must be under the minimum punishment of five years required by Paragraph 1. If this condition is met, the judge must then determine that the person is a danger to society according to the terms of Article 164. Upon making such determination, the judge shall then order the convicted person to be committed for a period of not less than six months. However, the paragraph gives the judge limited discretion in certain cases. If the punishment of the convicted person has been reduced for reasons of mental infirmity or deafness and dumbness, then the judge may (he does not have to) order that the person be placed under police surveillance instead of being committed to a hospital or nursing home. Note that the paragraph specifically forbids the judge to impose police surveillance instead of commitment where the sentence has been reduced for reasons of chronic intoxication by alcohol or narcotic drugs.

Paragraph 4 simply states that if commitment has been imposed, no other security measures of a detentive nature—that is, those contained in Article 172, Paragraph 2—shall be applied. Thus, a judge cannot order commitment to both a hospital and a reformatory.

Example:

X, a Somali citizen, is convicted of having caused very grievous hurt to Y, by stabbing Y so that he lost the use of his arm. This is a violation

of Article 440(3c). The minimum punishment for this offense is six years. At the trial, X is shown to have been partially mentally deficient within the meaning of Article 51, and thus his sentence must be reduced, since his capacity for understanding and volition has been diminished by this condition of mind.

The judge, under Article 173(1), must sentence X to commitment to a hospital or nursing home for a minimum period of one year. X has committed an offense with criminal intent. He suffers from mental disability. He was convicted, but his sentence has been reduced by reason of his mental infirmity. Therefore, all of the conditions of Paragraph 1 have been met. The next article describes how the sentence of commitment shall be executed.

Article 174 Execution of the Order Committing a Person to a Hospital or Nursing Home

1. The order committing a person to a hospital or nursing home shall be executed after a sentence restrictive of personal liberty has been served or otherwise extinguished.

2. The judge, however,

(a) having regard to any special condition of mental infirmity of the person convicted,

(b) may order the person to be thus committed before the beginning or the end of the sentence restrictive of personal liberty.

Explanation:

The general rule is that the convicted person must first serve his term of imprisonment and then the term required by the security measure, or the term of imprisonment must first be extinguished for any of the reasons contained in Articles 148 through 152 before the commitment can commence.

This rule of Paragraph 1 is modified to some extent by Paragraph 2. The judge is given the discretionary power to order that the commitment begin before or even during the prison sentence. This discretionary power is necessary because the prisoner's mental condition may require immediate commitment. The judge in exercising this discretionary power should take into account any medical evidence or advice he can obtain to ensure that the prisoner's welfare is properly protected.

Example:

In the example under Article 173, the judge sentenced X to the minimum of six years in prison for causing very grievous hurt to Y. The judge

now reduces the sentence to four years, because of the evidence that X, at the time he committed the offense, was acting under a partial mental infirmity. The judge also orders that X be committed to a hospital for the minimum period of one year required by Paragraph 1 of Article 173. At this point, X's attorney argues that if X were to be sent to prison immediately, his mental infirmity would get worse as a result of prison life and confinement, whereas, if he were committed to the hospital first, he probably would improve and even get better, and thus then be able to serve his prison sentence. The judge reviews the medical evidence of the trial, and tends to agree with X's attorney. He therefore orders that X be committed to the hospital before he begins serving his term of imprisonment.

Article 175 Habitual Drunkards

1. Where

(a) no other security measure of a detentive character

(b) is required to be ordered,

(c) a person sentenced to imprisonment

(d) for crimes committed in a state of drunkenness

(e) if the drunkenness is habitual, or

(f) for crimes committed under the influence of narcotic drugs

(g) to the use of which he is addicted,

shall be committed to a hospital or nursing home, for a period of not less than six months.

2. However,

(a) in the case of crimes

(b) for which a sentence of imprisonment for a term of less than three years is imposed,

the offender may be placed under police surveillance instead of being committed to a hospital or nursing home.

Explanation:

This article applies to crimes committed in a state of intoxication from alcohol or narcotics, where the drunkenness is habitual or the use of narcotics is addictive. Habitual drunkenness or addiction to narcotics is defined in Article 55(2). Chronic intoxication, defined in Article 57, comes within the terms of Article 173. Paragraph 1 provides that where a person has been convicted of a crime committed under the influence of alcohol or drugs, where the person is a habitual user of alcohol or addicted to narcotics, the judge shall commit the person to a hospital or nursing home for a period of not less than six months.

Paragraph 2 gives the judge discretionary powers to impose police surveillance where the term of imprisonment is less than three years, instead of ordering the person's commitment.

Note that the commitment for drunkenness or narcotic addiction occurs after the imposition and execution of a prison sentence. There is no provision in this article for permitting the judge to impose commitment prior to the serving of a prison sentence. In the absence of such a provision, Article 170(1), which requires that the security measures be executed after the sentence of imprisonment has been served, applies.

Example:

Y, a resident of Mogadishu, is a habitual drunkard within the meaning of Article 55. He drinks a lot, is frequently seen drunk, and spends any money he has on drink instead of food. One night, while returning home from a bar, he attacks a pregnant woman to steal her money, knocks her to the ground, grabs her purse, and runs. As a result of this attack, the woman loses her child. Y is arrested and charged with causing grievous HURT, in violation of Article 440(2c). The judge sentences him to five years in prison, and orders that he be committed to a hospital, following his prison sentence, for a period of six months.

Article 176 Treatment in a Lunatic Asylum

1. In the case of acquittal for
(a) mental infirmity, or for
(b) chronic intoxication by alcohol or narcotic drugs, or for
(c) being deaf and dumb,
the offender shall be committed to a lunatic asylum for a term of not less than two years, provided that,
(d) in the case of contraventions or crimes committed with culpa,
(e) or other crimes for which the law prescribes a pecuniary punishment or imprisonment for a maximum period not exceeding two years,
(f) the judgment of acquittal shall be notified to the police.
2. The minimum period of commitment to a lunatic asylum shall be ten years, where
(a) the law prescribes a punishment of death or imprisonment for life; five years, if
(b) the law prescribes a punishment of imprisonment for a minimum period of not less than ten years.
3. Where
(a) a person who has been committed to a lunatic asylum
(b) is required to serve a sentence restrictive of personal liberty,
the execution of such sentence shall be postponed until the end of the period of commitment to the lunatic asylum.

4. The provisions of this article shall also apply to persons acquitted by reason of their age, where they have committed an offense, and any of the conditions referred to in the first paragraph of this article are applicable.

Explanation:

This article applies only to cases where the accused is acquitted for reasons of mental infirmity, for chronic intoxication by alcohol or narcotics, or for being deaf and dumb. All of these conditions prevent a person from being held liable for the act performed, because he is deemed to lack the capacity of understanding and volition required to hold anybody criminally responsible under the Penal Code. However, where these conditions exist, the person is presumed to be a danger to society, and thus the security measure of commitment to a lunatic asylum can be imposed. This article does not leave any discretion to the judge. He must impose the period of commitment for the various cases specified.

The periods of commitment are as follows:

(a) two years commitment in a lunatic asylum, where the term of imprisonment provided by law is greater than two years but less than ten;
(b) five years commitment in a lunatic asylum, where the term of imprisonment prescribed by law is not less than ten years;
(c) ten years commitment in a lunatic asylum, where the law prescribes a term of imprisonment for life, or imposes the death penalty.

If the person is acquitted of committing a crime with culpa, or a contravention, or a crime for which the law imposes a maximum prison sentence of no more than two years, then the accused cannot be sentenced to commitment in a lunatic asylum and must be released. However, Paragraph 1 provides that in such cases the police must be notified of such release.

Paragraph 3 specifically provides that the person must serve his period of commitment in the lunatic asylum prior to serving any sentence restrictive of personal liberty. Paragraph 4 extends the provisions of this article to those who are acquitted by reason of their age—that is, under fourteen, as provided for in Article 59. If a minor has committed an offense and is acquitted because of his age, but is also under a mental infirmity, or suffering from chronic intoxication caused by alcohol or narcotic drugs, or is deaf and dumb, he may be committed to a lunatic asylum under the provisions of Paragraphs 1, 2, and 3.

Example:

X, a resident of Mogadishu, kills Y, a member of his family, by beating him about the head with a rock. X is arrested, but claims that he doesn't

remember beating Y. At the trial, X's attorney shows that X has had a long history of various kinds of seizures when he does things he doesn't remember later. The judge acquits X on grounds of insanity.

Under Article 176, Paragraph 2, the judge must sentence X to ten years commitment to a lunatic asylum. This is the minimum period required. Under Article 167, the commitment cannot be revoked until this minimum period of ten years has been served.

Article 177 Commitment to a Reformatory

1. Where
(a) a minor under fourteen years of age
(b) has committed an offense,
(c) and is of a dangerous character,
the judge, having special regard to the gravity of the act, and the moral conditions of the family in which the minor has been brought up, may order him to be committed to a reformatory for a period of not less than two years.

2. Where
(a) the crime is punished with death or imprisonment for life,
(b) or imprisonment for not less than three years,
(c) and the crime committed is not with culpa,
commitment of a minor to a reformatory shall be ordered for a period of not less than three years.

Explanation:

This article deals with the commitment of minors—persons under the age of fourteen years—to reformatories. Such commitment may be made only where the judge makes the determination that the minor is of a dangerous character. In other words, the power of commitment under this article is discretionary. The judge must ascertain the minor's dangerous character by examining the nature of the offense committed and the moral conditions of the minor's family. As a general rule, the term of commitment is for two years as a minimum, but Paragraph 2 prescribes the limits for the more serious offenses. In the cases not covered by Paragraph 2, the judge also has the discretion to set the term of commitment. In cases under Paragraph 2, the judge must order the commitment according to the number of years prescribed.

Example:

Q, a thirteen-year-old boy, attacks a boy from another tribe near a waterhole. He beats him about the head and face with his *bud* and a

stone, and kills him. Two nomads come upon the scene and grab Q. They take him to the police, who arrest him and charge him with murder. At the trial, Q's attorney shows that Q is a minor under fourteen years of age. The judge, considering the gravity of the offense and the brutality with which Q committed the crime, decides that Q is a dangerous person. Q's family is a good one morally, but that does not outweigh the nature of Q's actions. Having exercised his discretion to have Q committed to a reformatory, the judge then imposes the minimum sentence required by Paragraph 2 in cases of a sentence of death—commitment to a reformatory for three years.

Article 178 Police Surveillance

1. The police shall exercise supervision over persons placed under police surveillance.

2. The judge shall lay down such instructions as are likely to prevent persons placed under police surveillance from committing further offenses. Such instruction may be subsequently modified or limited by the judge.

3. The supervision shall be exercised in such a manner as to facilitate, by means of work, the readjustment of the person to society.

4. Where a person is placed under police surveillance, it shall not last for less than a year.

Explanation:

The purpose of police surveillance is to prevent the person subjected to this security measure from committing another offense. The judge has broad discretion in setting the conditions of police surveillance, but in every case such conditions should be designed to prevent persons under police surveillance from committing further offenses. The judge also has the power to modify or limit the conditions that he has set after police surveillance has been imposed.

The conditions can be extremely varied. A person under police surveillance can be forbidden to leave a certain place or to frequent certain types of places, such as bars where alcoholic beverages are served, or be required to report to the police weekly, monthly, or daily. In each case, the conditions must be suited to the nature of the offense and the character of the offender, so that he will not commit offenses in the future.

Paragraph 3 states that the conditions and the supervision imposed should not hamper the person's work in such a way that his readjustment to normal society is impaired.

Paragraph 4 provides that the period of police surveillance shall last for at least one year.

Example:

Z, a foreigner resident in Mogadishu, while driving home in a drunken state, hits and kills a small boy. Z is arrested and charged with DEATH CAUSED BY NEGLIGENCE, in violation of Article 445 of the Penal Code. He is tried, convicted, and sentenced to two years in prison.

At the time of issuing the sentence, the judge, according to Article 165, may also order security measures. The judge in this case, considering the circumstances of the offense committed, orders that Z not frequent places where alcoholic beverages are sold for a period of one year, and that he report to his local police station weekly, to enable the police to make sure that he is obeying the terms of the police-surveillance order. The security measure of police surveillance will come into effect following Z's completion of two years in prison.

Article 179 Cases in Which Police Surveillance May Be Ordered

In addition to the cases in which police surveillance may be ordered by special provision of law, it may also be ordered:

(a) in the case of a sentence to imprisonment for a period exceeding one year;

(b) in the cases in which this Code authorizes a security measure for an act which the law does not make an offense.

Explanation:

Articles 179 and 180 describe when police surveillance is to be applied. Article 179 deals with those cases where police surveillance may be imposed—that is, where the judge has discretionary power to impose it. Article 180 deals with those cases where it must be imposed—the judge having no discretion about imposing it.

Article 179 provides that in all cases where the sentence of imprisonment is greater than one year, the judge may impose police surveillance. In addition, in those cases where the Penal Code specifically authorizes the imposition of a security measure for an act which the law does not make an offense, the judge may also impose police surveillance. An example of this is contained in Article 76, AGREEMENT TO COMMIT AN OFFENSE: INSTIGATION. In such a case, although the agreement to commit an offense or the instigation to commit an offense is not an offense, the judge under Article 76 is empowered to apply security measures. That article does not specify what kind of security measures, but according to the provisions of Article 179(b), the judge may impose police surveillance. This is logical, since the person or persons have indicated by their behavior that they are likely to commit offenses, and the use of police surveillance is designed to prevent this in the future.

Article 180 Cases in Which Police Surveillance Shall Be Ordered

Police surveillance shall be ordered:

(a) where a punishment of imprisonment for a period not less than ten years is imposed. In such cases, the police surveillance shall not last less than three years;

(b) where the convicted person is allowed conditional release;

(c) in any other case provided by law.

Explanation:

Article 180 deals with those cases where the judge must impose police surveillance. It must be applied in all cases where the person is sentenced to a minimum period of ten years in prison. Note that it is the actual sentence in prison which must be ten years, not the period provided as the minimum term of punishment by the Penal Code. Where a person has been sentenced to ten years, or more, in prison, police surveillance shall last for at least three years. Police surveillance must also be imposed in all cases where the person is conditionally released, and in all other cases provided by law (see explanation under Article 323).

One further word about security measures. The provisions of the Code establish only the minimum period of duration of security measures. Thus, Article 180 states that if a person is imprisoned for ten years, he must be subjected to police surveillance for at least three years. It does not say from three to five years or for no more than five years. The maximum is never established by law. It is always up to the judge to determine when to end the security measure, and he must make such determination according to Article 167 (see explanation). Security measures are imposed because a person is a danger to society. They can be revoked only after the judge has made the determination that the person is no longer such a danger. And the judge cannot revoke any security measure before the minimum term specified has elapsed.

Example:

X commits a robbery, using a pistol to force Y to give him money. This is aggravated robbery within the meaning of Article 484(3a). X is sentenced to twelve years in prison. At the time of the sentencing, the judge also states that under Article 180(a) he must impose police surveillance for a period of not less than three years. The judge requires X to report daily to a local police station, and restricts him to residence in a certain

town. Twelve years later, when X has served his sentence and been released, the police surveillance begins. After three years, the judge reviews X's character and behavior and decides that X has apparently reformed, and orders that the security measure of police surveillance be terminated.

Article 181 Expulsion of an Alien from the Territory of the State

The expulsion of an alien from the territory of the State shall be ordered by the judge where the alien has been sentenced to imprisonment for a period of not less than ten years, and in any other case expressly provided by law.

Explanation:

As stated at the beginning of Book I, in regard to the scope of the Penal Code, aliens as well as citizens of the Republic are subject to the terms of the Penal Code if they are within the jurisdiction of Somalia. Article 11 of the Somali Constitution provides that no citizen may be deported from the Republic. Aliens do not have this right. Article 181 provides that any alien convicted of a crime and sentenced to imprisonment for not less than ten years must be expelled from the Republic. The judge does not have discretion in imposing this security measure. Presumably, it comes into effect immediately upon the release of the alien from prison.

Chapter II Security Measures in Respect of Property

Article 182 Confiscation

Confiscation shall be a security measure in respect of property, which may be added to those prescribed by this Code or by special provisions of law.

Explanation:

Articles 172 to 180 dealt with security measures which applied to persons—that is, measures which subjected a person to certain restrictions or terms of detention. Articles 182 and 183 involve security measures which may be imposed against property. Article 182 merely states that confiscation is a type of security measure applicable to property, and it can be imposed in addition to the security measures against persons.

Article 183 Cases Where Confiscation Is Applicable

1. On a conviction,
(a) the judge may order the confiscation

(b) of the material objects which were used or intended to be used in the commission of the offense, or of those which are the proceeds or the profits thereof.

2. Confiscation shall be ordered:
(a) of all material objects which constitute the rewards for the offense;
(b) of material objects whose manufacture, use, possession, custody, or alienation constitutes an offense, even where no conviction was pronounced.

3. The provisions of Paragraphs 1 and 2(a) shall not apply if the material object belongs to anyone who is not a party to the offense.

4. The provisions of Paragraph 2(a) shall not apply where
(a) the material object
(b) belongs to a person
(c) who is not a party to the offense, and
(d) its manufacture, use, possession, custody, or alienation may be effected with the consent of the competent authority.

Explanation:

Confiscation is of two types—discretionary and obligatory. Discretionary confiscation is discussed in Paragraph 1 of this article. Upon conviction, the judge may order the confiscation of things which were used or intended to be used for the commission of an offense—such as tools used to break into a store—or those which are the proceeds or profits of an offense—such as stolen property. The judge does not have to order such confiscation; it is discretionary.

Obligatory confiscation—that is, when the judge must order confiscation—is discussed in Paragraph 2. Confiscation of property must be ordered for material objects which are the rewards for the offense, such as the bribe a public official receives to perform an act contrary to office, or the payment an editor of a newspaper receives from another to defame a third person. Confiscation is also required for things whose use, possession, or custody constitutes an offense in itself, even where there is no conviction. For example, rifles being smuggled into the Republic must be confiscated, even if the smugglers are not convicted of smuggling, because it is an offense merely to possess a rifle without a permit.

Paragraph 3 provides that there shall be no confiscation of the property used in the offense, the proceeds or profits from the offense, or the objects which are the reward for the offense, where it consists of property belonging to another person who has not participated in the offense at all. This is fair, since the person who owns the property should not be made to suffer the loss of it if he has not done anything wrong.

In the Italian version of the Penal Code, Paragraph 4 of Article 183

states that the terms of Subparagraph b of Paragraph 2 shall not apply where the material object belongs to a person not a party to the offense, and its manufacture, use, possession, custody, or alienation may be effected with the consent of the competent authority. The English version of Paragraph 4 states that it applies to Paragraph 2(a), which makes no sense and is probably a typographical error for 2(b). (The Italian version states, "La disposizione della lettera b) del secondo comma non si applica . . ." etc.)

If the Italian version is taken as correct, Paragraph 4 means that if a person takes X's pistol, for which X has a permit, and uses it in a crime, the pistol cannot be confiscated if X did not participate in the offense and his permit is valid (that is, permitted by the competent authority). Normally, the mere possession of a pistol without a permit would be grounds for confiscation, within the terms of Paragraph 2(b).

Example:

Q is a truck driver living in Hargeisa. He is hired by B, a Somali businessman, to drive B's truck from Hargeisa to Mogadishu with cloth, boxes of goods, and passengers. Just outside of Hargeisa, Q stops the truck and loads on rifles and ammunition, which he plans to sell through his friend C, who lives in Galkayo, a town along the truck route. Q is stopped by the police outside Galkayo and arrested for smuggling arms. The rifles, ammunition, and truck are all seized by the police.

At the trial, B claims that he knew nothing about Q's illegal activities, was not a party to the offense of smuggling, and is entitled to his truck. Q is convicted and sentenced to prison. The ammunition and rifles are confiscated under Article 183, Paragraph 2(b), as material objects whose possession is an offense. The judge must order such confiscation, as it is obligatory. The judge orders that B's truck be released to him. He must do this because, under Paragraph 3, the truck, although used to commit the crime, belonged to B, a person not involved in the offense at all.

Note that although the explanation and example deal with crimes, security measures with regard to property apply also to contraventions. This is so because Article 182 and 183 discuss *offenses*, meaning both crimes and contraventions. Note also that there is no need to prove the concept of the accused's being a danger to society in order to impose security measures against property. The measure is against the property, not against the person; thus, it is possible to have the property confiscated, even though there has been no conviction, as in the case of Paragraph 2(b).

BOOK II CRIMES

PART I CRIMES AGAINST THE PERSONALITY OF THE SOMALI STATE

CHAPTER I CRIMES AGAINST THE SOMALI STATE AS AN INTERNATIONAL PERSON

This chapter concerns itself with those crimes against the Somali Republic as a nation member of the international community. The crimes discussed relate to Somalia's role as one nation among many, as distinguished from crimes against the internal governmental structure of the Republic.

Article 184 Attempts against the Integrity, Independence, or Unity of the Somali State

Whoever commits an act directed
(a) to subject the territory of the State or a part thereof to the sovereignty of a foreign state, or
(b) to diminish the independence, or
(c) to dissolve the unity of the State,
shall be punished with death.

Explanation:

This article applies to foreigners as well as Somali citizens who commit this offense. No person may commit an act directed toward:
(1) subjecting the territory or part of the territory of Somalia to the sovereignty of a foreign state, or
(2) diminishing the independence of Somalia, or
(3) dissolving the unity of Somalia.
The accused does not have to commit an act for all three purposes. It is enough if his act is directed, for example, toward dissolving the unity of Somalia. Note also that although the act itself must be completed, the dissolution of Somali unity does not have to be accomplished. An act directed toward that end is enough.

Example:

Fifteen elders of one tribe establish an organization within Somalia to have a section secede from Somalia and join a neighboring foreign state. Besides establishing the organization, they collect arms, publicize their purpose, and urge others to join them. They attack government offices within their territory.

The leaders of the organization are guilty of committing an offense under this article, for they have engaged in acts directed toward subjecting part of the territory of the Republic to foreign sovereignty. The acts of organizing, collecting arms, publicizing their aims, and attacking government offices are completed actions. Although the secession of territory from Somalia has not in fact occurred, they are nevertheless guilty of the offense under this article.

Article 185 Citizen Who Bears Arms against the Somali State

1. A citizen who
(a) bears arms against the state, or
(b) serves in the armed forces of a state at war with the Somali Republic,
shall be punished with life imprisonment. If the Somali citizen holds a higher command or has a leading role, he shall be punished with death.

2. Whoever,
(a) being, during the hostilities,
(b) in the territory of an enemy state,
(c) commits the act,
(d) having been compelled thereto
(e) by an obligation imposed upon him by the laws of that state,
shall not be liable to punishment.

3. For the purposes of the Penal Code, the expression "states at war" includes political units which, although not recognized by the Somali Republic as states, are treated as belligerents.

Explanation:

This article applies only to citizens of the Somali Republic, not to foreigners. The distinction is made because Somali citizens are expected to owe their allegiance to their country, whereas non-citizens owe their allegiance to their own countries. The offense can be committed only in time of war. If a state of war exists between a foreign country and Somalia, a citizen of Somalia cannot:

(a) bear arms against Somalia, or
(b) serve in the armed forces of a state at war with Somalia.

The phrase "to bear arms" means to participate in military operations by fighting against Somalia. It means more than mere possession of weapons. It connotes using such weapons against Somalia on behalf of a foreign power with whom Somalia is at war.

"Serving in the armed forces" in this context means belonging to the armed forces in a capacity other than bearing arms; for example, serving as a truck driver, translator, or clerk in the army of a foreign state at war with Somalia. If the Somali citizen holds a higher command in the armed forces of another state at war with the Republic, or takes a leading role in bearing arms against the Republic, the punishment shall be death.

Paragraph 2 of this article states the circumstances that exclude punishment. If the Somali citizen is in enemy territory during hostilities and is forced to commit an act which, under this article, is an offense, by an obligation imposed by the law of the enemy state, then the Somali citizen cannot be punished.

Paragraph 3 simply defines what the phrase "states at war" means. Frequently, in international law, especially as a result of civil war, one side or the other may win the civil war and establish a government which is not recognized by foreign powers. Paragraph 3 states that if war breaks out between Somalia and a country it does not recognize as a nation but treats as a political unit, it is at war with that country within the meaning of this article. This means that a Somali citizen serving in the armed forces of a state Somalia does not recognize is still serving in the armed forces of a "state at war" with the Somali Republic (see Example 2 under this article).

Examples:

1. X, a Somali citizen, is living in a border area when war breaks out between Somalia and a neighboring country. The neighboring country captures the territory X lives in, declares it to be part of its own country, and enforces its own laws. One such law is compulsory military service for all men under the age of thirty. X is forced into the army and is made a truck driver. At the end of the war, the territory is returned to Somalia, and X is arrested for having served in the armed forces of a state at war with Somalia.

X is not guilty of the offense under this article. Being in enemy territory during the hostilities, he was required by the laws of the country at war with Somalia to serve against the Republic, and according to Paragraph 2 is not punishable.

2. The South Arabian Federation forms a new government after independence in 1967, and confiscates Somali businesses. As a result, Somalia severs diplomatic relations with the Federation. War between the two

countries subsequently breaks out. The South Arabian Federation government forces Z, a Somali in Aden, to serve as quartermaster in the army. After the war, Z comes to Mogadishu, and is arrested for violating Article 185. His defense is the same as X's in Example 1.

According to Paragraph 3, the South Arabian Federation is a state at war with Somalia, even though Somalia has no diplomatic relations with it and does not recognize it as a country. Z is therefore not guilty of an offense under this article, because of the terms of Paragraph 2.

Article 186 Intelligence with Foreigners for the Purpose of Waging War against the Somali State

1. Whoever
(a) holds intelligence
(b) with foreigners
(c) in order that a foreign state wage war or commit acts of hostility
(d) against the Somali State, or
(e) commits other acts directed toward the same end,
shall be punished with imprisonment for not less than ten years.

2. Where war results, punishment of death shall be imposed; where hostilities break out, imprisonment for life shall be imposed.

Explanation:

This article applies to foreigners and citizens alike. The phrase "holds intelligence" means to give information. The information must be given to foreigners for a specific purpose. The prosecution must prove that the person gave information to a foreigner so that a foreign state could wage war or commit hostile acts against Somalia. Any armed conflict, border incident, raid, or attack short of an actual declaration of war would be an example of a "hostile act." If the person commits acts other than giving information for the same purpose—that is, getting a foreign state to wage war or commit hostile acts against Somalia—the article also applies. An example of such an act would be kidnapping a government official and giving him to a foreign state to permit it to obtain information from him.

If the person has given information to a foreigner for the purpose of getting a foreign state to wage war or commit hostile acts against the Republic, the punishment cannot be less than ten years, even though the foreign state does not wage war or commit any hostile acts. But if war results, then the punishment is death, and if hostile acts are committed, the punishment is life imprisonment. The prosecution must, of course, prove that the war or the hostile acts resulted from the accused's giving the information to a foreigner.

Example:

X, a Somali citizen living in Mogadishu, tells a member of the embassy of a neighboring country that Somalia is concentrating troops along the border at a certain town, and that the next meeting of the Council of Ministers will probably authorize such troops to cross the border for an armed raid. The member of the embassy communicates this information to his own country, which then decides to strike first. Therefore, the foreign country stages a quick raid on the Somali side of the border.

X is guilty of an offense under this article, having given the foreign state information in order that the foreign state commit hostile acts against Somalia. Since the hostile acts actually did take place, X is subject to life imprisonment.

Article 187 Hostile Acts against a Foreign State Which Expose the Somali State to the Danger of War

1. Whoever,
(a) without the approval of the Government,
(b) effects recruitments or
(c) commits other hostile acts against a foreign state so as to
(d) expose the Somali State to the danger of a war,
shall be punished with imprisonment from five to twelve years; if war results, he shall be punished with imprisonment for life.

2. Should the hostile acts be such as only to
(a) disturb relations with a foreign government, or to
(b) expose the Somali State or its citizens, wherever residing, to the danger of reprisals or retaliations,
the punishment shall be imprisonment from two to eight years. Where a breach of diplomatic relations results, or where reprisals or retaliations occur, the punishment shall be imprisonment from three to ten years.

3. This offense shall be punishable at the request of the Minister of Grace and Justice.

Explanation:

This article applies to both citizens and non-citizens who act without the approval of the government. Such approval may be open—as, for example, when the government publicly states that it is in agreement with the aims of the person—or it may be undisclosed—as when the government, by such actions as contributing supplies or money, shows that it approves of the course being taken. The term "effect recruitment" means to recruit people for service. A person cannot, without the

approval of the government, recruit people or commit other hostile acts against a foreign state (distributing hostile propaganda against the other country, for example, or collecting arms) if such acts expose the Somali state to the danger of war. If such acts do not expose Somalia to this danger, there is no case for prosecution under Paragraph 1 of this article. If war between Somalia and the foreign state actually results, the person is subject to imprisonment for life; if war does not result, but the person by his acts has exposed Somalia to the danger of war, then imprisonment for from five to twelve years is the punishment prescribed.

Paragraph 2 deals with the situation where the hostile acts of the person either:

(a) disturb relations with a foreign state, or
(b) expose Somali citizens, wherever residing, to the danger of reprisals or retaliation.

This means that if Somali citizens living outside the Republic are placed in danger of retaliation or reprisals as a result of the actions of the accused, then the accused can be punished under Paragraph 2. The prosecutor must show the causal relationship between the accused's actions and the danger of reprisals or retaliation against Somali citizens. If such reprisals or retaliation would have occurred anyway, the prosecution must show that such pre-existing, simultaneous, or supervening causes do not break the causal chain of the accused's actions (see explanation under Article 21). The phrase "disturb relations with a foreign state" is very broad and can mean any change in relations for the worse.

The punishment is increased where an actual break in diplomatic relations between Somalia and a foreign state occurs as a result of the accused's actions, or where reprisals or retaliation against Somali citizens occurs.

Paragraph 3 states that the offense under this article is punishable only on the request of the Minister of Justice and Religious Affairs (formerly the Minister of Grace and Justice). This means that the Minister, on behalf of the government, must request that prosecution be initiated. The offense described in this article is essentially one involving Somalia's foreign relations. It is designed to prevent persons from interfering in the government's control of foreign affairs. The government therefore has the basic choice whether to prosecute or not, having first determined whether it would be in Somalia's national interest to do so.

Example:

X, a Somali citizen living in a border area, decides to print hostile propaganda against the neighboring country, urging Somalis to revolt and

attack the foreign government. The Somali government disapproves of such action, and in fact tries to arrest X and prevent him from printing and distributing such propaganda. The police, however, are unable to catch X. The foreign government, aware of the hostile propaganda and afraid of acts of sabotage by Somalis in the area, imposes a curfew on all Somalis living near the border, and requires them to obtain travel permits. The foreign government also files a protest with the Somali government. Shortly thereafter, X is arrested by the Somali police and charged with an offense under this article.

X, by his actions, has disturbed relations between Somalia and the neighboring country. He has also caused reprisals to be taken against the Somali citizens living in the border area of the neighboring state. He is subject to imprisonment for a period of three to ten years, *if* the Minister of Justice and Religious Affairs requests that he be prosecuted.

Article 188 Intelligence with Foreigners for the Purpose of Engaging the Somali State to Neutrality or War

Whoever
(a) holds intelligence with foreigners
(b) in order to engage in or to commit
(c) acts directed to engage the Somali State
(d) to a declaration or preservation of neutrality, or to a declaration of war,
shall be punished with imprisonment from five to fifteen years.

Explanation:

The offense specified in this article may be committed by anyone—citizen or non-citizen alike. The phrase "holds intelligence" means the same as in Article 186—that is, to give information to foreigners. But such information must be given for the specific purpose of getting Somalia to declare its neutrality in a war, to remain neutral, or to declare war against one of the other countries at war.

Note the distinction between the offense in this article and that of Article 186. In Article 186, the crime is much more serious—giving information to foreigners to get a foreign power to wage war *against* Somalia. In this article, the person has given information to foreigners to get Somalia to declare itself neutral, or to remain neutral, or to declare war and aid one of the warring powers.

Article 189 Corruption of a Citizen by Foreigners

1. A citizen who,
(a) even indirectly,

(b) receives or obtains
(c) from foreigners
(d) a promise of money or of any other benefit,
(e) for himself or for others,
(f) or accepts a promise of money thereof,
(g) with the object of performing acts contrary to the national interest,
shall be punished, where the act does not constitute a more serious offense, with imprisonment from three to ten years and with a fine from Sh. So. 5,000 to 10,000.

2. The foreigner who gives or promises the money or the benefit shall be liable to the same punishment.

3. The punishment shall be increased:
(a) where the act is committed in time of war;
(b) where the money or benefit given or promised is for propaganda by means of the press.

Explanation:

This offense requires the involvement of a Somali citizen and foreigner. The Somali citizen must receive a promise of money or any other benefit for himself or others, either directly or indirectly. Such receiving is not enough to make out the offense. The Somali citizen must receive it for the purpose of performing acts contrary to the Somali national interest. If he receives the money for any other purpose, it is not an offense under this article. The following examples explain how the article applies.

Examples:

1. X, a foreign national of a country hostile to Somalia but not at war with it, promises Y, a Somali citizen, that he will pay Y 20,000 Somali shillings if Y will publish a newspaper praising X's country and criticizing Somalia's foreign policy in relation to X's country. Y agrees to do this.

Both X and Y have committed an offense under this article, and the offense came into existence when Y agreed to accept X's money to do this act against the Somali national interest. Since the money promised was for an act of conducting propaganda in favor of X's country in the press, the punishment may be increased, according to Paragraph 3(b).

2. Q, a Somali citizen, promises Z, another Somali citizen, the sum of 20,000 shillings if Z will print a newspaper praising a hostile neighboring country and criticizing Somalia. Z accepts.

There is no offense under this article, unless the prosecution can show that Q was receiving money from a foreign power and using this money to pay Z. Z would then be receiving money indirectly from a foreigner (the foreigner who gave Q the money to give Z), and would be guilty under this article. If Q accepted money from a foreigner to give to Z, he would also be guilty of an offense under these provisions, because Paragraph 1 also applies to Somali citizens who receive money for others to perform an act contrary to the national interest (hiring Z to print an anti-Somali newspaper).

Article 190 Favoring the Enemy in Time of War

Whoever,
(a) in time of war,
(b) holds intelligence with foreigners
(c) in order to favor the military operations of the enemy to the prejudice of the Somali State, or otherwise to endanger the military operations of the Somali State,
(d) or commits other acts directed to the same objects,
shall be punished with imprisonment for not less than ten years; and, where he attains the object, he shall be punished with death.

Explanation:

This offense can be committed only in time of war. The article applies to everyone, foreigners as well as citizens. In order to prove an offense under this article, the prosecution must show that the person giving the information to foreigners did so "to favor the military operations of the enemy to the prejudice of the Somali State." This means that there must be proof of intent to give foreign troops the advantage over Somalia's, and that the intent was to benefit foreign military operations and harm Somalia's. It is not necessary to show that such benefit to foreign troops actually occurred.

Example:

X, a Somali citizen living in a military zone in time of war, gives members of the foreign army information about Somali troop movements. His intention in giving them this information is to enable the foreign troops to surprise the Somali Army and to win a decisive victory.

X has committed an offense under this article. If the Somali troops subsequently find out that the foreign army knows of their plans and avoid the trap, and even win the battle, X is still guilty. If the information enables the enemy to win or take advantage of the Somali troops and harm the Somali Army's position, then the punishment is death.

Article 191 Providing the Enemy with Supplies

1. Whoever,
(a) in time of war,

(b) provides, even indirectly,
(c) any enemy state
(d) with supplies or other articles
(e) which may be used to the detriment of the Somali State,
shall be punished with imprisonment for not less than five years.

2. The preceding provision shall not apply to a foreigner who commits the act abroad.

Explanation:

This article applies to anyone—either a foreigner or a citizen. Like the preceding article, it applies only in time of war. The very act of supplying provisions or material is enough to make out the offense. It does not matter why the person provided the enemy with supplies. He could do it with the motive of making money, or because he favored the enemy against Somalia. The fact that he provided supplies satisfies the provisions of the article. However, such supplies must be of the type which may be used by the enemy to the detriment of the Somali Republic. The supplies themselves do not actually have to be used. The provisions of the article require only that they may be used.

Examples:

1. Y, a Somali citizen living in the military zone during a war between Somalia and a neighboring state, sells 350 used lorry tires to a foreigner residing in the enemy country. The foreigner then sells the tires to the enemy army. Before the enemy army can make use of the tires, the war ends.

Y is guilty of an offense under this article. He has provided the enemy indirectly (through the foreigner he sold the tires to) with supplies (lorry tires) which could have been of use to the enemy to the detriment of Somalia. The tires could have been used on enemy trucks to carry troops or supplies into battle against the Somali Army. If Y, instead, had sold merely pencils to a foreigner, and the pencils in turn were sold to the enemy army, he would not have been guilty of an offense under this article. Supplying pencils to the enemy is not the kind of act which could be to the detriment of the Somali State.

2. Z, a foreigner in Aden, sells lorry tires to the enemy in time of war.

He has not committed an offense under this article. According to Paragraph 2, the article does not apply to foreigners who provide the enemy with supplies detrimental to Somalia outside of Somalia. If Z were a Somali citizen in Aden, he would be liable under the provisions of the article.

Article 192 Participation in Loans in Favor of the Enemy

1. Whoever,
(a) in time of war,
(b) participates
(c) in loans or payments
(d) in favor of any enemy state,
(e) or facilitates
(f) the operations relating thereto,
shall be punished with imprisonment for not less than five years.

2. The preceding provision shall not apply to a foreigner who commits the act abroad.

Explanation:

This article applies to anyone, Somali citizen or foreigner, who in time of war participates in any way in lending or paying money, or helps to get a loan or a payment of money for an enemy state. To prove an offense, it is not necessary to show the motive of the alleged offender. Nor does the prosecution have to prove that the loan aided the enemy in the war against Somalia. It is enough that the enemy received the loan.

Like the preceding article, this one does not apply to foreigners outside of Somalia who participate in making loans to the enemy. It does apply to Somali citizens abroad.

Example:

Q, a Somali citizen in Aden during a war between Somalia and another state, obtains credit for the enemy state in an Adenese bank, so that money may be advanced to that state.

Q is guilty of an offense under this article. Q, a Somali citizen, facilitated the obtaining of a loan for the enemy state at war with Somalia.

Article 193 Trading with the Enemy

A citizen or foreigner
(a) living in the territory of the State who,
(b) in time of war, and
(c) apart from the cases referred to in Article 191,
(d) trades, even indirectly,
(e) with subjects of any enemy state,
(f) wherever they may be living,
(g) or with other persons living in the territory of any enemy state,
shall be punished with imprisonment from two to ten years and with a fine equal to five times the value of the goods and, in any case, not less than Sh. So. 10,000.

Explanation:

This article deals with cases concerning trading with the enemy not within Article 191, which involves providing the enemy state with supplies that may be used to the detriment of the Somali Republic. This article does not require that the supplies be to the detriment of the Republic. Thus, in Example 1 under Article 191, Y's selling of pencils to citizens of an enemy state, although not an offense under that article, would violate the provisions of Article 193, because it is trading with the enemy.

Note that this article applies only to citizens or foreigners living within Somalia during time of war. It includes those situations where the trading is with:

(a) a subject of an enemy state living anywhere; and
(b) non-subjects of an enemy state living in the enemy state.

The trading may take place directly or indirectly. To prove an offense under this article, the prosecution must show that commercial dealings existed between the accused and the enemy subjects or foreigners residing in the enemy state. The prosecution does not have to prove any motive on the part of the accused, other than that he consciously wanted to engage in commercial dealings with prohibited persons.

Examples:

1. X, a Somali citizen living within the Republic during a time of war, sells paper and stationery to a foreigner living in the enemy state.

X has violated the provisions of this article.

2. Z, a foreigner living within the Republic during a time of war, sells paper and stationery to a citizen of the enemy state living in Aden.

Z is guilty of violating the provisions of this article.

If the value of the paper and stationery sold amounts to 20,000 shillings, the judge in sentencing Z can fine him up to 100,000 shillings (five times the value of the goods sold).

Article 194 Failure to Execute Contracts for Supplies in Time of War

1. Whoever,
(a) in time of war,
(b) does not carry out, in whole or in part,
(c) obligations arising from a contract
(d) for the supply of commodities or work
(e) concluded with the State or other public body, or with a firm performing public services or services of a public necessity,

(f) for the requirements of the armed forces or the population,
shall be punished with imprisonment from three to ten years and with a fine equal to three times the value of the goods or work which should have been supplied and, in any case, not less than Sh. So. 10,000.

2. Where non-performance, total or partial, of the contract is due to culpa, the punishment shall be reduced by one-half.

3. The preceding provisions shall apply also to:
(a) subcontractors,
(b) brokers, and
(c) agents of suppliers,
whenever, in breach of their contractual obligations, they have caused the non-performance of the contract for supplies.

Explanation:

To prove an offense under this article, the prosecution must show the existence of a valid contract to supply goods or labor for the armed forces or the population. The contract does not have to be directly with the armed forces. It may be with the state, any public body, or a private firm performing public services or services of public necessity. The prosecution must also show that the contract was not carried out or completed, either partially or totally. The motive for the failure to complete the contract does not matter. It could be owing to negligence or an intention to benefit the enemy. The article applies to anyone who fails to carry out a contract during time of war. It is not necessary to prove that the Somali war effort was harmed because of the failure to complete the contract. The fact that the contract was not completed is enough.

Examples:

1. X, a Somali businessman, signs a contract, in time of war, with the Ministry of Public Works to build a short road needed to bring supplies to an army camp. X subcontracts to Y, another Somali businessman, to provide him with the stones needed to build the road. Y fails to deliver the stones, and as a result X fails to complete the contract. The Ministry signs a new contract with Z, who finishes the road.

Y is guilty under this article. Because of his failure to deliver the stones, X was not able to complete the contract. X would also be liable under this article if he knew that Y would not be able to supply the stones when he signed the contract with the Ministry. By signing the contract anyway, X negligently undertook a contract which he couldn't finish.

Note that in the above example Y is a subcontractor to X. Paragraph 3 provides that liability under this article applies to subcontractors who, by

breaching their contracts with the main contractor, cause the failure of completion of the main contract.

2. Z, a Somali businessman, in time of war signs a contract with the Ministry of Defense to build barracks for the Army. He lays the foundations and then fails to complete the buildings.

Z is guilty of violating the provisions of this article. If the value of the buildings he should have supplied were equal to 30,000 shillings, then, besides being subjected to imprisonment, he can be fined 90,000 shillings (three times the value of the supplies he didn't provide).

Article 195 Fraud in Furnishing Supplies in Time of War

Whoever,
(a) in time of war,
(b) commits a fraud
(c) in the execution of contracts for supplies, or
(d) in the performance of the other contractual obligations referred to in the preceding article,
shall be punished with imprisonment for not less than ten years and with a fine equal to five times the value of the goods or work which should have been supplied and, in any case, not less than Sh. So. 20,000.

Explanation:

This crime, like most of the others contained in this chapter, can be committed only in time of war. The prosecution must prove the element of fraud, although it is not necessary to show that Somalia's war effort suffered as a result of such fraud. Notice that the punishment is *both* imprisonment and fine.

Example:

X, a foreigner residing in Mogadishu, contracts to sell the Army cans of meat as rations for the troops during a war. At the time X signs the contract, he knows that at least half the cans contain rotten meat that nobody could eat.

X is guilty of an offense under this article, for having sold the Army inedible meat in time of war.

Article 196 Destruction or Sabotage of Military Works

Whoever
(a) destroys or renders unserviceable,
(b) wholly or in part,
(c) even temporarily,

(d) ships, airplanes, trains, roads, installations, depots, or other military works or works assigned to the service of the armed forces of the State,
shall be punished with imprisonment for not less than eight years.
2. Punishment of death shall be imposed:
(a) where the act is committed in the interest of a state at war with Somalia;
(b) where the act has seriously affected the preparation or the efficiency of the State for war, or its military operations.

Explanation:

Notice that this article applies in both time of war and time of peace, to foreigners as well as citizens. The broad coverage with regard to time and persons is limited by application to destruction or sabotage of military works only. Therefore, the article applies to specifically mentioned things only—ships, planes, roads, depots, trains, etc. The damage does not have to be complete or permanent. It is enough if the road is temporarily made unserviceable. The punishment prescribed by the first paragraph is for imprisonment for not less than eight years.

However, if the crime has been committed in the interest of another state at war with Somalia, or the act of sabotage even in time of peace has seriously affected the preparations of Somalia for war, or its military operations, then the punishment is death.

Examples:

1. X is a Somali citizen. Somalia at the time is at war with another country. X plants an explosive charge on the road from Afgoi to Merca and detonates it, obstructing the road and destroying one army truck. X's motive in blowing up the truck was to kill the driver of the vehicle, who had taken X's girl away from him.

Besides being guilty of murder, X is guilty of obstructing the road, even temporarily, and of destroying the military vehicle. Under Paragraph 1, he can be sentenced to a term of imprisonment for not less than eight years for this offense. He would not be liable to the death penalty under Paragraph 2, because he did not sabotage the road and the truck to help the country at war with Somalia.

2. Y is a foreigner residing in Somalia in time of war. One night, he approaches an army base and places several packages of explosives around the buildings and equipment. The guard is asleep. Y then explodes the charges and escapes. He is later caught, and the prosecution proves that Y's motive was to sabotage the army base to aid the foreign country

at war with Somalia. Y had been paid 50,000 shillings for his activity.

Y is guilty of an offense under the provisions of this article, and is subject to the death penalty under Paragraph 2.

Article 197 Facilitation with Culpa

Where
(a) the execution of the crime referred to in the preceding article
(b) has been rendered possible, or facilitated,
(c) with culpa by the person who was in possession or had custody or supervision of the goods indicated,
that person shall be punished with imprisonment from one to five years.

Explanation:

"Culpa," as explained before, means negligence (see explanation under Article 23). If the crime of destruction or sabotage of military works (referred to in Article 196) is made possible or easier because of the negligence of some person, then that person has committed an offense under Article 197 and is subject to punishment.

Note that the prosecution does *not* have to prove that if the person had not been negligent, the sabotage would not have occurred. All the prosecution has to show is that the act of sabotage would have been more difficult to carry out.

Example:

In Example 2 under the preceding article, Y sabotaged a military depot while the guard of the base was asleep. The guard, because he was asleep, is guilty of an offense under this article. If he had been awake, he might have stopped Y, or Y might have come up behind him and killed him. But, in any event, the guard was negligent, and it would have been more difficult to commit the act of sabotage if the guard had not been asleep.

Article 198 Suppression, Falsification, or Purloining of Papers or Documents Concerning the Somali State

1. Whoever,
(a) wholly or in part,
(b) suppresses, destroys, or falsifies, or seizes, purloins, or diverts,
(c) even temporarily,
(d) papers or documents
(e) concerning the security of the State, or other domestic or international interests of the State,
shall be punished with imprisonment for not less than eight years.

2. Punishment of death shall be imposed where
(a) the act has seriously affected the preparation or the efficiency of the State for war, or
(b) its military operations.

Explanation:

The purpose of this article is to protect the national and international political interests of the state. It applies to anyone, whether a citizen or not, who commits the acts described. It is not limited to time of war. The act of this crime is completed at the moment the offender has seized, suppressed, destroyed, diverted, or purloined the documents specified. It is essential that the documents involved concern the security of the state, or other political, domestic, or international interests of the state. The prosecution does not have to prove that the motive for seizing, suppressing, destroying, diverting, or purloining the documents was to aid a foreign power, to sell the documents for money, or to harm the Somali nation. If documents affecting the security of Somalia have been taken by the accused, then the crime defined by this article has been made out. The punishment for the offense is imprisonment for not less than eight years.

The punishment of death applies if the act of seizing, suppressing, destroying, diverting, or purloining the documents has seriously affected the preparation or the efficiency of Somalia for war, or its military operations.

This second paragraph, dealing with the death penalty, could apply in either time of war or time of peace. The phrase "seriously affected the preparation or the efficiency of the State for war" is vague and indefinite. The prosecution would probably have to show that the accused's action with regard to the documents affected in a major way Somalia's ability to prepare for a war or to conduct a war. If the accused has committed the act of seizing the documents, but such seizure has not "seriously affected" Somalia's ability to prepare for or to conduct a war, then the death penalty under Paragraph 2 cannot be imposed, and the offense would come under Paragraph 1.

Example:

X, a Somali citizen, breaks into the Ministry of Defense in Mogadishu at night, and takes documents concerning the military strength of the Somali Army and troop locations. As he is leaving the Ministry, he is caught with the documents in his possession by the police.

X is guilty of an offense under Paragraph 1 of this article, because he

has seized or purloined (taken) documents concerning the security of the state. It does not matter that X did not have a chance to do anything with these documents.

X is not subject to the death penalty, because, whatever his intention, the mere taking of these documents and his subsequent immediate apprehension did not bring about any impairment of the efficiency of the state to wage war.

Article 199 Procuring Information Regarding the Security of the Somali State

1. Whoever
(a) procures information
(b) which in the interest of the security of the State, or
(c) in the political, domestic, or international interest of the State,
(d) ought to remain secret,
shall be punished with imprisonment from three to ten years.
2. The punishment of death shall be imposed where
(a) the act has seriously affected the preparation or the efficiency of the State for war, or
(b) its military operations.
3. For the purposes of the provisions of this Part, information which ought to remain secret in the political interest of the State shall include any information contained in Government papers not published for reasons of a political, domestic, or international nature.

Explanation:

This article applies to whoever obtains information of a certain nature, described in Paragraph 1. The material obtained must be information of the type which ought to remain secret. Paragraph 3 defines such information as that contained in government papers which have not been published for reasons of a political, domestic, or international nature. This necessarily implies that information which has been published by the government is by definition not material that ought to remain secret. Similarly, if information has not been published because the Official Bulletin is behind schedule in its printing, or because the government printing press is being used to publish more important material, lack of publication cannot be said to be due to "reasons of a political, domestic, or international nature." To procure such unpublished information would not be an offense under this article.

Under Italian law, the word "information" (*notizie*) applies only to factual material, not to personal opinions, analyses, or views by government officials that are not based on facts. Therefore, the procurement of such opinions would not come within the provisions of this article.

The penalty for violation of this article is death where the procurement of the information has seriously affected the preparation or efficiency of the state for war, or its military operations. The wording is identical with that of Paragraph 2 of Article 198, and means the same thing (see explanation under Article 198).

Example:

Y, a foreigner residing in Mogadishu, persuades a clerk at the Foreign Ministry to obtain documents classified as secret. Y pays the clerk the sum of 15,000 shillings, and takes the documents home to study and copy. He is arrested with the documents in his possession.

Y is guilty of an offense under this article. He has obtained documents which in the interest of the state ought to remain secret. (They were classified as secret by the Ministry.) The swiftness of his arrest, before he had the chance to turn the information over to anyone, prevented the act of his procuring the information from "seriously affect[ing] the preparation or the efficiency of the State for war."

Article 200 Political or Military Espionage

1. Whoever
(a) procures,
(b) for the purpose of political or military espionage,
(c) information which
(d) in the interest of the security of the State, or in the political, domestic, or national interest of the State,
(e) ought to remain secret,
shall be punished with imprisonment for not less than fifteen years.
2. Punishment of death shall be imposed:
(a) where the act is committed in the interest of a state at war with the Somali State, or
(b) where the act has seriously affected the preparation or efficiency of the Somali State for war, or its military operations.

Explanation:

This article is similar to the preceding one. Paragraph 3 of Article 199 defines, for purposes of this entire part of Book I, the phrase "information which ought to remain secret." Therefore, the comments under Article 199 apply to this article.

However, to make out an offense under this article, the prosecution must prove that the "information which ought to remain secret" was pro-

cured for the purpose of political or military espionage. This means that the prosecution must show that the accused obtained the information for the purpose of spying on the political or military conditions in Somalia. If the secret information was taken by accident, the motive required by this article is lacking, and no offense under Article 200 exists.

Paragraph 2 requires the death penalty if the procuring of the information was for a state at war with Somalia, or, even if it were not, if such procurement seriously affected the preparation or efficiency of Somalia for war, or its military operations.

Examples:

1. X, a foreigner residing in Mogadishu, breaks into the Ministry of Defense and takes documents describing plans for military operations in the event of attack by a neighboring country. X contacts members of that country's embassy and offers to sell these documents. At this point, X is caught by the police.

X is guilty of an offense under this article. He has obtained information which, under Article 199(3), is within the definition of information which ought to remain secret in the interests of Somalia. He has taken such information for the purpose of military espionage—that is, to provide a foreign country with military information about Somalia's plans in case of an attack by that country.

The death penalty would not apply, because, by offering to sell the documents to a foreign country, he has not seriously affected the preparation or efficiency of Somalia to wage war, or its military operations. If he had been arrested after he had turned this information over to the foreign embassy, the death penalty could be imposed. Under the facts as given, all the foreign embassy knows is that X has the documents concerning Somalia's military plans in case of attack—not what the plans are.

2. Y, a foreigner residing in Somalia, breaks into the Foreign Ministry and steals documents relating to Somalia's political relations and plans with regard to various foreign countries. Y informs the Foreign Minister of Somalia that he has taken the documents and will sell them back to the Somali government for 200,000 shillings. Y is then caught by the police.

Y has not committed an offense under this article. Instead, he has violated Article 199. He has not procured information for the purposes of political or military espionage, but in order to blackmail the Somali government into buying the information back. The information fits within Paragraph 3 of Article 199, as the type which ought to remain secret. The death penalty, specified by Paragraph 2, does not apply, because the taking of such information by itself has not "seriously affected the preparation or the efficiency of the State for war, or its military operations."

Article 201 Espionage Concerning Information, the Disclosure of Which Has Been Prohibited

1. Whoever
(a) obtains,
(b) for the purpose of political or military espionage,
(c) information the disclosure of which has been prohibited by the competent authorities,
shall be punished with imprisonment for not less than ten years.

2. Imprisonment for life shall be imposed where the act is committed in the interest of a state at war with Somalia.

3. Punishment of death shall be imposed where
(a) the act has seriously affected the preparation or efficiency of the State for war, or
(b) its military operations.

Explanation:

Like the preceding articles, Article 201 applies to both citizens and non-citizens alike. The word "obtains" in Paragraph 1 of this article means the same thing as the word "procures" in Articles 199 and 200. In the Italian Penal Code, the same verb, "*procurare*," is used in all three articles (see Articles 256, 257, and 258 of the Italian Penal Code in CARABBA, CODICE PENALE).

For an offense to be made out under Article 201, the prosecution must prove that the information was taken for purposes of political or military espionage. This article, however, is different in that it applies to a different category of information. Articles 199 and 200 apply to information which ought to remain secret, as defined in Paragraph 3 of Article 199. The definition, as stated in that article, is "any information contained in Government papers not published for reasons of a political, domestic, or international nature." Article 201, on the other hand, applies only to information "the disclosure of which has been prohibited by the competent authorities." In other words, any information classified by the competent official as of the type not to be disclosed cannot be disclosed regardless of whether it has or has not been published for reasons of a "political, domestic, or international nature." The prosecution does not have to show that the information fits within the definition of Paragraph 3 of Article 199. All that must be shown is that the competent authority has prohibited such disclosure.

Example:

The Commandant of the Police orders that the names of divisional commanders and the number of men under them shall not be published

or disclosed. Z, a civilian clerk working for the Ministry of Interior who has access to such information, decides that it would be useful to a foreign power. He steals the list of the names of the divisional commanders, the places they are assigned, and the number of men under them, and turns it over to a foreign embassy. Z is then apprehended by the police.

Z is guilty of an offense under this article's provisions. He has for purposes of military espionage obtained information which the competent authority (the Commandant of the Police) had ordered not to be disclosed. It does not matter that this information may come within the definition of Paragraph 3 of Article 199. It comes specifically within the definition of Article 201. The death penalty prescribed by Paragraph 3 could probably be imposed if it could be shown that the disclosure of this information seriously affected Somalia's military operations.

Article 202 Facilitation with Culpa

1. Where
(a) the execution of any of the crimes referred to in Articles 198, 199, 200, and 201
(b) has been rendered possible, or
(c) facilitated,
(d) with culpa,
(e) by the person who was in possession of the paper or document, or
(f) was acquainted with the information,
that person shall be punished with imprisonment from one to five years.
2. Imprisonment from three to fifteen years shall be imposed where
(a) the preparation or efficiency of the State for war, or
(b) its military operations,
have been seriously affected.
3. The same punishments shall apply where
(a) the execution of the aforesaid acts
(b) has been rendered possible, or
(c) facilitated,
(d) with culpa,
(e) by the person who had the custody or supervision of the places, whether on land, water, or air, to which access is forbidden in the military interest of the State.

Explanation:

"Culpa," as mentioned in Article 197, means negligence. This article applies to those persons who by their negligent actions either make it possible or merely make it easier for persons to commit any of the crimes

specified in Article 198 (to suppress, falsify, or purloin documents or papers concerning the security of Somalia); Article 199 (to procure information regarding the security of Somalia); Article 200 (to engage in political or military espionage); and Article 201 (to obtain for the purpose of espionage information the disclosure of which has been prohibited).

Paragraph 3 makes the article applicable to those persons who, having custody or supervision of places closed to the public in the military interests of the state, negligently allow any of the acts under Articles 198 through 201, inclusive, to occur, or to occur more easily. Note the distinction between Paragraph 1, which refers to persons who have possession of the papers or documents, and Paragraph 3, which refers to those who have custody of the place (the building or room) itself.

Example:

X, a director in the Ministry of Defense, negligently leaves documents pertaining to troop strength of the Somali Army on his desk at night, instead of locking them up in a safe in his office. Y, a Somali citizen, breaks into the Ministry at night, planning to open the safe and steal these secret documents. He sees the documents about troop strength lying on the director's desk instead, and takes them, intending to sell them to a foreign power. He is caught by the police shortly after leaving the building.

The prosecution must first show that a crime has been committed under Articles 198 to 201. Y, who broke into the Ministry and took the documents from the director's desk, is guilty of an offense under Article 198. He has taken information which in the interest of the security of the state ought to remain secret. It is not clear that his purpose was for military espionage so much as for the payment of money.

Since Y has committed an offense under Article 198, the prosecution, in order to prove X guilty under Article 202, must now show that X made Y's crime possible or facilitated it. X, by leaving secret documents on his desk instead of locking them in his safe, made it easier for Y to steal them. Note that the prosecution does *not* have to show that Y would have been unable to commit the crime at all, except for X's negligence. All the prosecutor has to show is that X's negligence made Y's crime easier to commit.

Article 203 Clandestine Penetration into Military Areas and Unjustified Possession of Means of Espionage

1. Whoever
(a) clandestinely or by deception

(b) penetrates into places, whether on land, water, or air,
(c) access to which is prohibited in the military interest of the State; or
(d) in the aforesaid places or in proximity thereto,
(e) is surprised in the unjustified possession of means suitable for committing any of the crimes referred to in Articles 199, 200, and 201; or
(f) is surprised in the unjustified possession of documents or any other means suitable for furnishing the information indicated in Article 199,
shall be punished with imprisonment from one to five years.

2. Where any of the acts referred to in the foregoing subparagraphs is committed in time of war, the punishment shall be imprisonment from three to ten years.

Explanation:

This article defines two different crimes. The first, described in Subparagraphs a, b, and c of Paragraph 1, deals with entry or penetration into prohibited areas. The second, described in Subparagraphs d, e, and f of Paragraph 1, involves the possession of instruments of espionage or of documents or other means of providing information.

With regard to entry into prohibited areas, the prosecution must show that entry into the area is prohibited in the military interest of the state. Generally, entry into military bases is prohibited. Medical and health reasons for quarantining an area and prohibiting entry by the general public obviously do not come under this article. Next, the prosecution must show that entry into such places was *clandestine* or *by deception*. "Clandestine" means secretly, by stealth, avoiding guards or devices designed to prevent unauthorized persons from entering. "Deception" means by some trick, lie, or falsehood to obtain entry into a military base. For example, if a person pretended to be a member of the Army, or had a false authorization which was a forgery stating that he should be allowed on the base, this would be entry by deception. Since the article requires entry to be either clandestine or by deception, it implies that the accused must have knowledge that entry into this area is prohibited to members of the public. If a person accidentally enters an area closed to the general public because of the military interest of the state, he has not violated this article. Note that this article does not require the prosecution to prove that such clandestine or deceptive entry was for the purpose of military espionage. The law assumes this if the person has entered an area prohibited to the general public for military reasons in a clandestine or deceptive manner. The punishment is for the entry into the base by these methods, not for the reason for such entry.

With regard to that part of Paragraph 1 dealing with unauthorized possession of means of espionage or documents or information, the elements the prosecution must prove are slightly different. The prosecution must show that the person was caught either in the prohibited area or near it. It must also show that the accused was in the unjustified possession of means suitable for committing any of the crimes referred to in Article 199 (procuring information regarding the security of the state); Article 200 (political or military espionage); or Article 201 (obtaining for the purpose of espionage information the disclosure of which has been prohibited). For example, if the accused were caught outside the military base with a flashlight, wirecutters, and tools for opening a safe, and he could not explain why he had these things in his possession, he would be guilty of an offense under this article.

With regard to documents and information, the prosecutor does not have to show that the accused was caught near or on a military base; it is enough that he was surprised in the unjustified possession of documents or any other means suitable for furnishing information regarding the security of the state within the meaning of Article 199.

Note that the prosecution, under this article, never has to prove that the crimes in Articles 199, 200, and 201 have been committed. All the prosecutor has to show is that the accused possessed either the means, the documents, or the information necessary to commit any of the crimes described in those articles.

Example:

X, a Somali citizen, is caught in his own house with three pages in his own handwriting of information concerning Somalia's secret negotiations with a foreign country on future military aid. The originals of these documents are discovered to be in the proper file of the Ministry of Defense. X cannot explain his possession of these handwritten copies, and refuses to tell the police how he obtained them.

X is guilty of an offense under Article 203 for the unjustified possession of the means (copies of the documents) suitable for furnishing the information indicated in Article 199 (information which in the interest of the security of the state ought to remain secret). X could also be guilty of an offense under Article 199 if proof is introduced to show that he procured such information.

Article 204 Disclosure of State Secrets

1. Whoever
(a) discloses
(b) any information of a secret nature specified in Article 199

shall be punished with imprisonment for not less than five years.

2. Where

(a) the act is committed in time of war, or

(b) has seriously affected the preparation or efficiency of the State for war, or its military operations,

the punishment shall be imprisonment for not less than ten years.

3. Where

(a) the offender

(b) has acted for purposes of political or military espionage,

imprisonment for life shall be imposed in the case referred to in the first paragraph of this article, and punishment of death shall be imposed in the cases referred to in the second paragraph.

4. The punishments prescribed in the foregoing provisions shall also apply to the person who obtains the information.

5. Where

the act is committed with culpa,

the punishment shall be imprisonment from six months to two years, in the case referred to in the first paragraph of the article, and from three to fifteen years where the act is committed under any of the circumstances referred to in the second paragraph.

Explanation:

This article, divided into five paragraphs, covers various situations involving the disclosure of state secrets. The phrase "information of a secret nature specified in Article 199" has the same meaning as "information which ought to remain secret" (see Article 199[3]). The first paragraph punishes anyone for revealing secret information. If such disclosure takes place in time of war, or in time of peace has seriously affected Somalia's war preparations or its efficiency to conduct a war or its military operations, then the punishment is greater than that specified in Paragraph 1.

Paragraph 3 states that if the person has disclosed information of a secret nature for purposes of political or military espionage, the punishment shall be life imprisonment. If the person has acted for the purpose of political or military espionage in time of war, or has seriously affected Somalia's war preparations or its efficiency to conduct a war or its military operations, the punishment is death. Note that under Paragraph 3 the prosecution must prove that the purpose of the person was to accomplish military or political espionage in order to make out the offense.

Paragraph 4 simply makes the punishments of the preceding three paragraphs applicable to the person who obtains such secret information.

If the act of disclosing information occurs through the negligence of a

person, the punishments are much less. An example of the negligent disclosure of secret information would be the accidental reference to a secret matter by a government official with access to secret information in the course of a conversation with a friend who should not know about such secret information.

Example:

X, a foreigner living in Mogadishu, pays Y, a Somali citizen, to steal some secret documents from the Ministry of Defense. These documents contain information about Somalia's military plans in time of war. X then sells the documents to Z, a national of a country unfriendly to Somalia, and receives 200,000 shillings for them.

X is guilty of an offense under Article 204(3). He has disclosed secret information to Z. X has, by doing this, seriously affected the preparations of Somalia for war, because now that the plans are revealed, Somalia must make new ones.

Y is also guilty of an offense under this article, because by giving the information to X, he has disclosed secret information.

Z is guilty under Paragraph 4 of this article, because he was the person who obtained the information. The article seems to contemplate a distinction between the person who disclosed the information and the one who obtained it. From the context, it therefore appears that "obtains" refers to the person who ultimately receives the information, rather than to the one who procures it in the first place. This interpretation is supported by the Italian Penal Code, in which the verb "*ottenere*" is used, rather than "*procurare*," as in the other articles (see Article 261 of the Italian Penal Code in CARABBA, CODICE PENALE). Z is therefore subject to the same penalty under Paragraph 2 as X is.

Article 205 Disclosure of Information Which Has Been Prohibited

1. Whoever

(a) discloses

(b) information

(c) the divulgation of which has been prohibited

(d) by the competent authorities,

shall be punished with imprisonment for not less than three years.

2. Where

(a) the act is committed in time of war, or

(b) has seriously affected the preparation or efficiency of the State for war, or its military operations,

the punishment shall be imprisonment for not less than ten years.

3. Where
(a) the offender
(b) has acted for purposes of political or military espionage,
imprisonment for not less than fifteen years shall be imposed in the case referred to in the first paragraph of this article; and punishment of death in the cases referred to in the second paragraph.

4. The punishments prescribed in the foregoing provisions shall also apply to the person who obtains the information.

5. Where
the act is committed with culpa,
the punishment shall be imprisonment from six months to two years in the case referred to in the first paragraph of this article, and from three to fifteen years where the act is committed under any of the circumstances referred to in the second paragraph.

Explanation:

Disclosure of information, "the divulgation of which has been prohibited by the competent authorities," includes any information, whether secret or not. The prosecutor must simply show that:

(a) the competent authorities prohibited disclosure of this information, and
(b) the accused disclosed such information.

The competent authorities are those persons who have jurisdiction over the information involved. For example, the Commandant of the Police would be the competent authority to prohibit the disclosure of any information involving the police force. Obviously, so would the Minister of Interior.

Note that the prohibition against disclosure applies to anyone. Therefore, if a civil servant in the Ministry of Information discloses information about the police force which the Commandant has prohibited the disclosure of, that civil servant is guilty of an offense under this article, even though he is not himself under the jurisdiction of the Commandant of the Police.

With respect to the punishments, this article is the same as the preceding one. Paragraph 4 also makes this article applicable to the person who obtains the information—that is, the person who receives the information from the person disclosing it.

The example under the preceding article would be applicable here if the information disclosed, instead of being secret, were information which had been prohibited by the competent authorities.

Article 206 Utilization of State Secrets

1. A public officer, or a person entrusted with a public service,
(a) who makes use
(b) for his own or another person's benefit
(c) of scientific inventions or discoveries or new industrial devices
(d) with which he is acquainted
(e) by reason of his office or service,
(f) and which ought to remain secret in the interest of the security of the State,
shall be punished with imprisonment for not less than five years and with a fine of not less than Sh. So. 10,000.

2. Where
(a) the act is committed in the interest of a state at war with the Somali State, or
(b) where it has seriously affected the preparation or efficiency of the State for war, or its military operations,
the offender shall be punished with death.

Explanation:

A "public officer" and a "person entrusted with a public service" are defined in Article 240(a) and (b). Article 206 applies only to these two categories of persons. To make out an offense under this article, the prosecutor must show that:

(a) the accused is either a "public officer" or a "person entrusted with a public service," and
(b) that he has made use of scientific inventions, discoveries, or new industrial devices for his own or another person's benefit.

Sale of the plans by itself is not "use for his own benefit." It must be shown that the person who bought the plans then used them, for some purpose.

The prosecutor must also show that the scientific inventions, discoveries, or new industrial devices ought to remain secret in the interests of state security, and that the accused knew about them only by reason of his office or service.

Example:

X, a clerk at the Ministry of Industry and Commerce, in the course of typing reports discovers the existence of a new industrial machine which extracts certain chemicals from the soil for the making of gunpowder. X

copies the plans for such a machine from the files, and gives them to Y, a Somali businessman and friend of his. Y has the machine manufactured and imported into Somalia from abroad. He then obtains a license from the government for the manufacture of gunpowder. X and Y then share the profits from the business. The police later arrest X, suspecting that he had given the plans to Y originally.

X is guilty of an offense under this article because:

(1) he is a public officer within the meaning of Article 240(a);
(2) he took plans of a new industrial device;
(3) he learned about this device as a result of being a clerk in the Ministry of Industry and Commerce;
(4) the existence of such device ought to remain secret in the interests of state security, because the manufacture of gunpowder is essential to making shells and bullets and should not be available to everybody; and
(5) he has not only made use of the plans for his own benefit, by sharing in the profits of Y's business, but also made the plans available for Y's benefit.

Y is *not* guilty of an offense under this article. He is not a public officer, and he did not know of the existence of the plans by virtue of his job. Y merely received the plans from X and benefited from X's offense.

Article 207 Unfaithfulness in Handling State Matters

Whoever,
(a) being charged by the Somali State
(b) to deal with State matters abroad,
(c) betrays his trust,
shall be punished with imprisonment for not less than five years
(d) where the act is such as to cause detriment to the national interests.

Explanation:

The elements of this crime are simple. A person must be entrusted by the Somali state to deal with state interests abroad, and he must betray that trust.

Example:

X is appointed Consul for Somalia in Aden. He is instructed by the Minister for Foreign Affairs to do everything possible to protect the interests of Somali citizens in Aden. In the course of formal discussions with members of the Adenese government, X ignores these instructions and tells the government officials that Somalia would not object if Aden nationalized all Somali businesses without providing compensation to the Somali owners. The Adenese government, taking these statements into consideration, proceeds with nationalization without compensation of Somali businessmen.

X, by ignoring his instructions from the Somali government to do everything possible to protect the interests of Somali citizens in Aden, has violated the provisions of this article. His action has been to the detriment of the national interests of Somalia in that it has made diplomatic and commercial relations with Aden much more difficult and burdened the government with the claims of Somali citizens in Aden.

Article 208 Political Defeatism

1. Whoever,
(a) in time of war,
(b) spreads or communicates
(c) false, exaggerated, or misleading
(d) rumors or news,
(e) which may create public alarm or
(f) despondency, or
(g) otherwise lessen the resistance of the nation to the enemy, or
(h) does anything whatsoever detrimental to the national interests,
shall be punished with imprisonment for not less than five years.

2. The punishment shall be imprisonment for not less than fifteen years:
(a) where the act is committed by means of propaganda or communications addressed to soldiers;
(b) where the act is committed as a result of intelligence with the enemy.

Explanation:

This offense may be committed only in time of war. The prosecution must show that the accused spread or communicated (either orally or in writing, to one person or to many) false or exaggerated (true only in part) or misleading rumors or news. These rumors or news do not actually have to create public alarm or despondency or lessen the resistance of the nation to the enemy. It is enough if they *may* cause such results. All the prosecution has to show is that such rumors or news reasonably could be expected to cause such results.

The accused must consciously want to cause a lessening of the national will to resist the enemy, or be aware that his action may bring about public alarm or despondency.

The punishment is greater for spreading rumors or news by propaganda or to soldiers, because these facts make the crime more serious. The same

thing is true where the offender receives his information as a result of communications with the enemy.

Example:

During a war, X, a Somali citizen living in Hargeisa, spreads false rumors that the enemy has blockaded the port of Berbera, that there is very little food left in the city, and that enemy bombers will probably attack the city soon. The rumors spread quickly; some people believe them, others do not. X is arrested for having started the rumors. Y and Z are arrested for having repeated the rumors they heard from X, thinking them to be true.

X is guilty of an offense under this article. He had started rumors which he could reasonably have anticipated would cause public alarm and despondency. The fact that they did not actually cause such alarm does not mean that X is innocent of the offense. Y and Z are also guilty under this article, even though they believed that X was telling them the truth. They, too, could have reasonably foreseen that by spreading this news, they would cause public alarm and despondency.

The prosecution does not have to show that the accused, knowing the rumors were false, spread them around the town. Instead, it has to show only that the accused actually spread false rumors, knowing that they might cause public alarm or despondency. The difference is in knowing what may be the public results of the action, and knowing the truth or falsity of what one is saying. If the news is completely true, then there is no crime, even if the accused wanted to cause public alarm by repeating it. If the news is false and the person communicating the news believes it to be true but realizes that it may cause public alarm, then he is guilty of an offense under this article.

Article 209 Instigating Soldiers to Disobey the Law

1. Whoever
(a) instigates soldiers
(b) to disobey the law or
(c) to violate the oath taken or
(d) the duties of military discipline, or
(e) other duties inherent in their status, or
(f) extols before soldiers
(g) acts contrary to law, oath, discipline, or other military duties,
shall be punished, where the act does not constitute a more serious crime, with imprisonment from one to three years.

2. The punishment shall be imprisonment from two to five years where the act is committed publicly.

3. The punishment shall be increased where the act is committed in time of war.

4. For purposes of penal law, the offense shall be considered to have been committed publicly where the act is committed:
(a) by means of the press, or by other means of propaganda;
(b) in a public place or a place open to the public and in the presence of more than one person,
(c) at a meeting which, owing to the place in which it is held, or the number of persons present, or its purpose or object, has the character of a meeting which is not private.

Explanation:

This offense can be committed by anyone, in time of either peace or war. The accused does not have to instigate an action which is an actual crime. The violation of military duty may or may not be a crime. Instigating a person to violate his military duty is an offense under this article. Paragraph 1 is broadly written to cover every type of instigation or extolling of acts contrary to law, oath, military duty, or discipline. It also provides that the person shall be punished with imprisonment from one to three years, provided that the act does not constitute a more serious crime. This leaves open the possibility of punishing the offender under a penal law other than the Penal Code, or under a different article of the Code, where the punishment is greater.

Paragraph 2 increases the punishment where the act is committed publicly, and Paragraph 4 defines what "committed publicly" means. Briefly, it is by use of the press or by propaganda, which would include radio, leaflets, and public addresses by loudspeakers. It also means public meetings, including committing the act in a public place even if only one other person is there at the time, and meetings in non-public places which because of their nature are public.

Paragraph 3 provides for the increase of punishment in time of war.

Note that the offense applies to the instigation of soldiers. It probably applies to the police also. In Italy, it has already been applied to instigating members of the Finance Guards, who in Somalia are integrated into the police force (see CARABBA, CODICE PENALE, p. 312). Considering the functions of the police force in Somalia, its organization, and the reasons behind the article, it logically should apply to instigating policemen to disobey military discipline, oaths, duty, or the law.

Example:

X, a Somali citizen and a civilian, is driving his car near the port area in Berbera, when he is stopped by units of the Somali National Army

who have blocked off the port road because of the unloading of arms shipments. Annoyed at being stopped, and angry about the rude way he thinks he has been treated, X jumps out of his car and stands on its roof. He then begins a speech to twenty-three soldiers nearby, telling them that they have no right to stop cars of Somali citizens, and should ignore any military orders from officers requiring them to block the port road and molest innocent Somalis. While X is making this speech, he is arrested by the police and charged with an offense under Article 209.

X is guilty of an offense under this article. He has instigated soldiers to disobey the duties of military discipline by urging them to disobey their officers. The fact that the soldiers did not listen to X or act on his advice does not matter in determining X's guilt.

Article 210 Economic Defeatism

1. Whoever,
(a) in time of war,
(b) employs means directed to
(c) depress the rate of exchange, or
(d) to influence the market of stocks and securities, public or private,
(e) in such a way as to imperil the resistance of the nation to the enemy, shall be punished with imprisonment for not less than five years and with a fine of not less than Sh. So. 30,000.

2. Where the offense has been committed as a result of intelligence with foreigners, imprisonment shall not be less than ten years; and not less than fifteen years, where the offense has been committed as a result of intelligence with the enemy.

Explanation:

The crime of economic defeatism can only be committed in time of war. The article has been taken directly from the Italian Penal Code, and therefore the reference to the "market of stocks and securities," while having meaning in Italy, has no relevance to Somalia. In most countries, people can own parts or shares of companies by purchasing what is called "stock" in that company. These "stocks" are sold in a market called a "stock exchange." This article refers to influencing this market and causing prices of stocks to fall by, for example, claiming that certain companies have been destroyed by the enemy or confiscated by the government. As Somalia has no stock exchange or system of stock in companies, this part of the article has no relevance at the present time.

However, a Somali can use means to imperil the rate of exchange. This means that the rate of changing Somali shillings into foreign currencies,

which is usually fixed, is altered by the offender so that Somali shillings become worth less. Such action, to make out a case under this article, must also "imperil resistance to the enemy." This does not mean that the accused must want to do so. It is enough if he wants to influence the rate of exchange downward. The prosecutor must prove that this is his motive, and that the use of means directed to depress the rate of exchange imperiled resistance to the enemy.

Article 211 Offenses against Allied States

The punishments prescribed in Article 190 and the articles following it shall also apply where
(a) the crime is committed to the detriment of a foreign state
(b) allied or associated with the Somali State
(c) for purposes of war.

Explanation:

This article applies the provisions of Article 199 and those following, concerning disclosure of secrets, espionage, political and economic defeatism, and instigation of soldiers to disobey the law, to situations where the crime is committed against a state allied or associated with Somalia for purposes of war against a common enemy. Normally, a state is allied with another by means of a bilateral treaty, but for purposes of this article no such treaty is necessary. It is enough if the state is associated with Somalia for purposes of war, which means that if the two states are fighting together against a common enemy, the terms of this article apply.

The phrase "to the detriment of a foreign state" is broad enough to include all of the prohibited purposes described in Articles 199 through 210. Thus, for example, it would include the procuring of information for purposes of military espionage against the foreign state.

There is no need for separate examples, as the ones for the above-mentioned articles apply where an allied or associated state is concerned. Thus, for example, MILITARY ESPIONAGE which is committed by a Somali citizen in Somalia but which damages the security interests of an allied state is a crime within the terms of Article 200 and this article, and is punishable accordingly.

Article 212 Anti-National Activity of a Citizen Abroad

A citizen who,
(a) outside the territory of the State,
(b) circulates or communicates
(c) false, exaggerated, or misleading rumors or news

(d) concerning the internal conditions of the State,
(e) so as to lessen the credit or prestige of the State abroad,
(f) or in any way acts in such a manner as to cause detriment to the national interests,
shall be punished with imprisonment for not less than five years.

Explanation:

This article applies only to citizens of the Somali Republic abroad. It does not apply to aliens, either abroad or within the Republic, or to citizens who commit this act within the Republic. The citizen abroad must consciously want to communicate or circulate false, exaggerated, or misleading rumors or news. If he unknowingly does so—believing such rumors to be true, for example—it would not be an offense under this article. Furthermore, the prosecution must prove that the effect of the accused's action was to lessen the credit or prestige of Somalia abroad, or was to the detriment of the national interests.

The article assumes that after the Somali citizen living abroad has committed the offense, he has returned to the Republic, thus subjecting himself to criminal prosecution.

Example:

X, a Somali citizen living in Tanzania, dislikes the Somali Ambassador to that country. X spreads rumors in Dar-es-Salaam that the Somali Ambassador is easily corruptible, is a bad Moslem, and had insulted the President of Tanzania when the President had visited Mogadishu. X knows all of these statements to be false. The effect of his action is that various newspapers in Dar-es-Salaam claim that the Tanzanian government should not deal with the Somali Ambassador, relations between the Ambassador and Tanzanian officials become strained, and much of the goodwill between the two countries is destroyed. X returns to Mogadishu on a business trip and is arrested and charged with violating Article 212.

X can be convicted of this offense. He has harmed the prestige of the Somali state by falsely claiming that the government had sent as Ambassador to Tanzania a person who had insulted the Tanzanian President, is a bad Moslem, and is a corrupt person. His statements have been to the detriment of national interests in worsening relations between the two countries.

Article 213 Subversive Associations

1. Whoever,
(a) within the territory of the State,

(b) promotes, constitutes, organizes, or directs
(c) associations
(d) whose object is to establish by force
(e) the dictatorship of one social class over others,
(f) or to suppress by force one social class,
(g) or to subvert by force the economic or social order of the State,
shall be punished with imprisonment from five to twelve years.

2. Whoever,
(a) within the territory of the State,
(b) promotes, constitutes, organizes, or directs
(c) associations
(d) having for their object the suppression by force
(e) of any political and legal institution
shall be liable to the same punishment.

3. Whoever
(a) participates in the associations referred to in the preceding paragraphs
shall be punished with imprisonment from one to three years.

4. The punishment shall be increased in the case of persons who
(a) reconstitute,
(b) even under a false name or form,
(c) any of the above-mentioned associations whose dissolution has been ordered.

Explanation:

This article concerns the activities of subversive associations within Somalia. Paragraph 1, in effect, defines a subversive association as one whose object is:

(a) to establish
(b) by force
(c) the dictatorship of one social class over others,
(d) or to suppress by force one social class,
(e) or to subvert by force
(f) the economic or social order of the state.

If an association does not have any of these objects, then it does not come within the terms of this article. The meaning of Paragraph 1 is broad. The term "social class" refers to a group of people united by common economic interests, as, for example, all laborers, or all civil servants. Paragraph 1 covers organizations which are aimed at establishing by force the dictatorship of one social class over another, or subverting the social or economic order of the state, or suppressing one social class.

Paragraph 2 applies this article to associations designed to suppress by force any political and legal institution, say, for example, Parliament.

Note that this article is aimed against persons who promote, direct, constitute, or organize the type of association described in Paragraphs 1 and 2. It does not, as such, outlaw these associations, but it makes it an offense for a person to organize such an association.

Paragraph 3 provides that those persons who participate in these associations (that is, a person other than one of the organizers, promoters, or directors) shall be punished, but the imprisonment is less than that for organizers, promoters, or directors.

If dissolution of the association has been ordered (as it can be under the Public Order Law), then those persons who reconstitute such an organization, even under a false name or in a different form, shall be subjected to increased punishment.

Example:

Q, a Somali citizen living in Mogadishu, decides to organize an association of returned students from abroad, whose specific purpose will be to take over the government by means of force and to establish a dictatorship of educated Somalis. Q believes that in this way the country will benefit from the returned students' superior knowledge, and economic progress will be attained much faster. Q presents his idea to B, C, and D, who agree to help him organize the association. They talk the idea over with many of their fellow returned students and persuade E, F, and G to join. At the first meeting, while they are discussing the means for taking over the government by force, the police enter Q's house and arrest all those present at the meeting. Those arrested are charged with violating Article 213 of the Penal Code.

Q, B, C, and D are liable for imprisonment from five to twelve years for promoting and organizing an association whose purpose is to suppress by force a political and legal institution—the government. E, F, and G, who joined the association but did not organize or direct it, are subject to imprisonment from one to three years, according to Paragraph 3.

Article 214 Anti-National Associations

1. Whoever,
(a) apart from the cases referred to in the preceding article,
(b) within the territory of the State
(c) promotes, constitutes, organizes, or directs
(d) associations which
(e) aim at pursuing or which pursue
(f) activities directed against the national unity,
shall be punished with imprisonment from one to three years.

2. Whoever
(a) participates
(b) in the associations referred to in the preceding paragraph
shall be punished with imprisonment from six months to two years.
3. The punishment shall be increased in the case of persons who
(a) reconstitute,
(b) even under a false name or form,
(c) any of the above-mentioned associations whose dissolution has been ordered.

Explanation:

This article applies to anti-national associations which are organized within the Somali Republic and directed against national unity. The phrase "national unity" is general, broad, and hard to define, but it can be said to include the concept of Somalia as a nation, and as a nation composed of different parts. Any association whose purpose is to divide the country into smaller units, or to form breakaway independent areas, would be an anti-national association within the meaning of this article.

Like Article 213, it provides that those who merely participate in such an association shall be punished less severely than those who organize and promote it. Note also that this article applies only in those cases not covered by Article 213.

Example:

X, a Somali citizen living in the Mijertinia Region, decides to form an association for the return of the King of Mijertinia. It is his plan to establish the King as ruler of all of the old kingdom, break away from the Somali Republic, and become a separate and independent nation. For this purpose, he and two friends, Y and Z form the Society for the Kingdom of Mijertinia. X, Y, and Z hold meetings and discuss ways of uniting the King's followers, organizing a takeover of Somali government functions in Mijertinia, and arming the King's supporters. They are arrested and tried for violating Article 214.

X, Y, and Z can be convicted under Article 214 for having organized and directed an association within the territory of Somalia whose aim is directed against the national unity of the state. They have pursued activities contrary to national unity by organizing the society, holding meetings, planning how to establish the kingdom, and preparing to arm the King's followers.

Article 215 Subversive or Anti-National Propaganda

1. Whoever,
(a) in the territory of the State,

(b) conducts propaganda
(c) in favor of the installation by force
(d) of the dictatorship of one social class over others,
(e) or of the suppression by force of any social class,
(f) or in favor of the subversion by force of the economic or social order of the State,
(g) or conducts propaganda in favor of the destruction of any political and legal institution,
shall be punished with imprisonment from one to five years.

2. If
(a) the propaganda
(b) is conducted in order to destroy or impair the national sentiment,
the punishment shall be imprisonment from six months to two years.

3. Any person who extols the acts referred to in the foregoing paragraphs shall be liable to the same punishment.

Explanation:

This article applies to propaganda concerning the subject matter of Articles 213 and 214. It concerns the activity of publicizing the subversive or anti-national goals. The person making the propaganda must act within the territory of the Somali Republic. Such propaganda must include the concept of use of force to accomplish the ends advocated, if such ends concern suppression of another social class, or the dictatorship of one social class over another, or subversion of the social order of the state, or the destruction of the political and legal institutions of the state. Note that propaganda designed to destroy or impair the national unity does not have to include the advocacy of the use of force.

A person who does not make such propaganda but who extols or praises the goals stated after such propaganda has been made is subject to the same punishments as those contained in this article.

Example:

X, a Somali citizen living in Mogadishu, obtains a permit from the District Commissioner to hold a public meeting to discuss the government's policies. At that meeting, some of X's supporters distribute a leaflet containing X's speech. X tells an audience of about five hundred people that the deputies are corrupt, that they are stealing money from the people, and that the only way they can be dealt with is for the people to attack Parliament, throw all the deputies out, and form their own government, which will respect the people's interests. X further tells the audience not to worry about the police or the Army, because after they shoot ten or twenty of their Somali brothers they will then join the people in the attack and help in the takeover. At that point, Y, a member of the crowd, yells that X is right, everything he has said is true, and the people should follow X. X starts to lead a group of about a hundred people—others in the crowd who have been persuaded by his speech—toward Parliament, but is stopped by the police and arrested. Y and other members of the crowd are also detained. X and Y are charged with violating Article 215 of the Penal Code.

X can be convicted of conducting propaganda in favor of the destruction of a political and legal institution—namely, Parliament—and subjected to imprisonment from one to five years. Y can be convicted of extolling X's propaganda and subjected to the same punishment, under Paragraph 3 of the article.

Article 216 Acceptance of Honors or Benefits from an Enemy State

A citizen who
(a) accepts
(b) from a state at war with the Somali State
(c) academic degrees or dignities, titles, decorations, or other public honors, pensions or other benefits attached to the said degrees, dignities, titles, decorations, or honors,
shall be punished with imprisonment up to one year.

Explanation:

This article applies only to Somali citizens, not to resident aliens or foreigners temporarily in Somalia. The crime can be committed only in time of war between Somalia and another state. The article applies to receiving the degree or title for the first time during the war, or to continuing to receive a pension for an award given before the outbreak of the war.

Example:

Z is a professor at the University Institute in Mogadishu. He has been honored by the title of Doctor of Laws, given by the university of a neighboring country, in recognition of his research. The title carries with it an annual award of five hundred shillings to be paid by the foreign university to Z. Three years after Z has received the award, war breaks out between Somalia and the neighboring country. Z continues to receive his annual award of five hundred shillings during the war. Z is

arrested and charged with violating Article 216, by accepting benefits attached to the title granted by a state at war with the Somali Republic.

Z is guilty as charged, and can be imprisoned for up to one year.

Chapter II Crimes against the Internal Order of the Somali State

Article 217 Attempts against the Order Established by the Constitution

Whoever
(a) commits an act
(b) for the purpose of changing the Constitution
(c) or the form of government
(d) by means not authorized by the Constitution
shall be punished with imprisonment for life.

Explanation:

The crime of Attempts against the Order Established by the Constitution can be committed by anyone—foreigner as well as citizen. The crime is committed when any act is performed for the purpose of changing the Constitution or the form of government in a way not authorized by the Constitution, and the prosecution must prove that this was the motive of the offender. There can be no attempted commission of this offense, since the very attempt is a violation, even if the end—that is, the change of government—is not accomplished.

The punishment of life imprisonment under this article is severe, considering that acts against the life and safety of the President of the Republic and other high government officials are made crimes under other articles and punished accordingly. Note that offenses under this article must not fall within the specific provision of the other articles contained in this chapter. The punishment under Article 283 of the Italian Penal Code for the offense of Attempts against the Order Established by the Constitution is imprisonment for not less than twelve years (see Carabba, Codice Penale, p. 235).

Article 218 Attempts against the Constitutional Organs

1. Whoever
(a) attempts to kill
(b) the President of the Republic, the President of the National Assembly, the Prime Minister, or the President of the Supreme Court

when the Supreme Court is constituted as the Constitutional Court or the High Court of Justice,
shall be punished, where the act does not constitute a more serious crime, with imprisonment for life.

2. Whoever
(a) attempts to impair the safety or personal liberty
(b) of the persons referred to in the previous paragraph
shall be punished, where the act does not constitute a more serious crime, with imprisonment from five to fifteen years.

3. Whoever
(a) commits an act
(b) directed to prevent, wholly or in part,
(c) the President of the Republic, the National Assembly, the Government, or the Supreme Court constituted as the Constitutional Court or the High Court of Justice
(d) from exercising the functions conferred on them by the Constitution or by law,
shall be punished, where the act does not constitute a more serious crime, with imprisonment for not less than ten years.

Explanation:

Attempts against the Constitutional Organs applies to attempts against the lives of certain government officials and the President of the Republic, or against their safety, or against their functioning as organs of the Republic. The article refers to the Supreme Court as constituted as the High Court of Justice or the Constitutional Court. The Organization of the Judiciary Law, Law No. 3 of 12 June 1962, provides for the establishment of both the Constitutional Court and the High Court of Justice. Both of these courts consist of the Supreme Court with the addition of other members, presided over by the President of the Supreme Court. Article 218 refers to the President of the Supreme Court or the organ of the Supreme Court when he or the Court are sitting as the two special courts mentioned.

This article is fairly straightforward. It punishes with life imprisonment the act of attempting to kill the President of the Republic and the other officials mentioned in Paragraph 1. If the offender, instead of attempting to kill the President, attempts to impair the safety or personal liberty of the President or the other officials mentioned, then the penalty is imprisonment from five to fifteen years, if the act does not constitute a more serious crime. The kidnapping of the President of the Republic would be an example of impairing his safety or personal liberty.

Paragraph 3 pertains to acts committed against the President of the Republic or the organs of the National Assembly, the government, or the Supreme Court constituted as the Constitutional Court or the High Court of Justice. The act must be designed to prevent the President or these organs from exercising their lawful functions. The term "the Government" refers to the Prime Minister, the Ministers, and the Council of Ministers. For example, seizing physical control of the Parliament building and preventing the deputies from entering would be an act directed to prevent the National Assembly from exercising its lawful function as a legislative body. If the National Assembly met somewhere else, or the Army and the police recaptured the Parliament building so that the Assembly really was not prevented from carrying out its functions, the offender would still be guilty under this article, because he has committed an act designed to prevent the Assembly from functioning. He does not actually have to prevent them from carrying out their duties.

This article provides that the punishments shall be inflicted where the act is not a more serious offense. In the above example, seizing physical control of the Parliament building, besides being an offense under this article, could also constitute the crime of ARMED INSURRECTION AGAINST THE POWERS OF THE STATE, as defined in Article 221, if the prosecution proved the proper motives on the part of the accused. In that case, the accused would be subject to the punishment for the crime under Article 221, not under Article 218.

Example:

X, a foreigner residing in Hargeisa, decides to kill the Prime Minister when he visits the north. He purchases a pistol and some ammunition and goes to the airport as part of the crowd to meet the Prime Minister. X stands on the edge of the group and, as the Prime Minister approaches, draws his pistol, but his aim is spoiled by a member of the crowd. X is arrested. He is charged with attempting to kill the Prime Minister in violation of Article 218.

X is guilty as charged. The case is a simple one of attempted murder, except that the offense has been attempted against the Prime Minister and thus comes within the provisions of Article 218. It does not matter whether X's motive for wanting to kill the Prime Minister was personal or political. The fact that brings X's offense within the terms of Article 218 is that the Prime Minister was the intended victim.

Article 219 Bringing the Nation or the State into Contempt

1. Whoever
(a) publicly
(b) brings into contempt

(c) the Somali nation, the State, the national flag or emblem, the constitutional organs, or the armed forces of the State

shall be punished with imprisonment from six months to three years.

2. The punishment shall be increased where the act referred to in the previous paragraph is committed by a citizen in foreign territory.

Explanation:

This article applies to words or actions which bring the nation, the state, the national flag or emblem, the constitutional organs, or the armed forces of the state into contempt. This means that the person has behaved insultingly or otherwise indicated his lack of respect for the objects or bodies listed in Subparagraph c. However, such disrespect must be committed publicly.

The punishment is increased if the crime is committed abroad by a Somali citizen, because the law deems it especially reprehensible for a Somali citizen to indicate his disrespect for his country or flag abroad, before foreigners.

Since Article 219 applies to bringing the constitutional organs into contempt, the prosecution must show that the action or words were directed against the persons who in their official capacity constitute these organs. If, for example, X publicly proclaims that the President of the Supreme Court has abandoned his wife, who is X's sister, and the statement is not true, it is DEFAMATION, under Article 452, not a violation under Article 219. This is so because the statement is directed against the President of the Supreme Court as a private person, even though X uses his title in defaming him. But if X says that the President of the Supreme Court is in the pay of a foreign government, this reflects on his conduct in office as a government official and is not defamation but a violation of Article 219.

Article 220 Offending the Honor or Prestige of the Head of the State

Whoever,
(a) apart from the cases referred to in the preceding articles,
(b) publicly
(c) offends the honor or prestige
(d) of the President of the Republic,
(e) or holds him to be blamed or responsible for the acts of the Government,

shall be punished with imprisonment from six months to three years.

Explanation:

No one may offend the honor or prestige of the President of the Republic, nor may the President be held responsible for the acts of the

government. In fact, Article 76 of the Constitution specifically provides that the President is not responsible for these acts, but that such responsibility shall rest with the Prime Minister and the competent Minister. Article 83 of the Constitution provides that the Prime Minister and the Ministers are jointly responsible for the acts of the Council of Ministers. As in the preceding article, the offense must be made publicly. There is no increased punishment for committing the crime abroad.

Example:

Y, a Somali citizen, obtains permission to hold a public political rally. Y addresses a crowd of about three hundred people and tells them that the President of the Republic is receiving money from foreign businesses and is using his influence to prevent bills against these foreign businesses from passing through Parliament. Y is arrested and charged with OFFENDING THE HONOR OR PRESTIGE OF THE HEAD OF THE STATE.

Y is guilty as charged. His statement to the effect that the President is being paid to support foreign instead of national interests is offensive to the President's prestige and honor.

Article 221 Armed Insurrection against the Powers of the State

1. Whoever
(a) promotes
(b) an armed insurrection
(c) against the powers of the State
shall be punished with imprisonment for life, and, where the insurrection ensues, with death.

2. Persons who participate in the insurrection shall be punished with imprisonment from three to fifteen years.

3. An insurrection shall be deemed to be an armed insurrection even though the arms are merely kept in a place of deposit.

Explanation:

An armed insurrection is group or collective violence for a period of time. It must be directed against the powers of the state—either legislative, judicial, or executive—and it must be directed against all such powers throughout the Republic, not just against an isolated organ of such powers. For example, an armed rescue of a person from jail, because the people believed that the judge decided incorrectly, would not be an armed insurrection against the judicial powers of the state. The insurrection must aim at the entire structure of state power.

Paragraph 1 provides that the person who promotes such armed insurrection shall be punished with life imprisonment if the insurrection does not occur, and, where it does, with death. Those persons who participate in the insurrection, as long as they do not promote it, shall be punished with imprisonment from three to fifteen years.

By definition, an armed insurrection involves the use of weapons. Paragraph 3 provides that such arms do not have to be used or even distributed among the members of the insurrection for a person to be punished under this article. It is enough if the arms have been kept in a place of deposit.

Example:

G, B, and Z, three nomads, decide that the Somali government is not providing for their interests with regard to water and grazing rights. They decide to administer their own territory by force, throw out other tribes which are grazing in their areas, and settle their own disputes. Accordingly, they refuse to obey any of the governmental organs or to participate in any governmental affairs. They obtain about five hundred rifles for their followers, and store them in one place. G, B, and Z plan to distribute the weapons on a certain day, drive all members of other tribes, as well as government officials, out of the area, and allocate grazing rights among their own people. They hold a large meeting of their followers, and discuss their plans. Before the day for the distribution of the rifles arrives, G, B, and Z are arrested, along with many of their more prominent followers. They are charged with promoting and participating in an armed insurrection in violation of Article 221.

G, B, and Z are guilty as charged. They have promoted an armed insurrection by planning it, obtaining rifles, hiding them, and organizing their followers. Because the insurrection has not occurred, they may be sentenced to only life imprisonment. Those followers who were also arrested may be charged with participation in the insurrection, and, depending on their degree of activity, be sentenced from three to fifteen years.

Article 222 Devastation, Pillage, and Slaughter

Whoever,
(a) for the purpose of making an attempt against the security of the State,
(b) commits an act directed to carry
(c) devastation, pillage, or slaughter
(d) into the territory of the State or a part thereof
shall be punished with death.

Explanation:

Devastation, pillage, and slaughter are a series of crimes on a wide scale, involving destruction of houses and property, robbery, death, and the creation of general disorder by a group of people. This article specifically provides that the person must have the purpose of acting against the security of the state. Thus, individual acts of violence or robbery for personal motives do not come under the provisions of this article. Note that the crime is committed when a person commits an act attemping to destroy the security of the state. His action does not have to accomplish disruption of such security. The punishment for this attempt is death, whereas in the Italian Penal Code it is only life imprisonment (see CARABBA, CODICE PENALE, p. 327, art. 285).

Example:

X is a member of a tribe living in a border area of a neighboring state. He wants to create unrest on the Somali side of the border. He leads a band of about four hundred armed men into Somalia on a raid. The band kills many people, steals about thirteen hundred camels, destroys several small villages, and takes many young girls back with them. Two weeks later, X comes back on a smaller raid, and is caught by the Darawishta on the Somali side of the *de facto* boundary. X and his followers are charged with causing DEVASTATION, PILLAGE, AND SLAUGHTER.

X is guilty as charged. He has led a large group of men across the border into Somalia for the purpose of disturbing the security of the Somali state. The extent of the violence and damage he has caused brings his actions within the scope of this article. In fact he has disturbed the security of the state by his actions, although if he had been caught before he began any of the raids, he would still have violated the article, because he intended to commit devastation and pillage for such purpose.

Article 223 Civil War

Whoever
(a) commits an act
(b) directed to provoke civil war
(c) in the territory of the State
shall be punished with imprisonment for life. Where civil war ensues, the offender shall be punished with death.

Explanation:

Civil war is the armed conflict between one part of the population and another. This article punishes acts directed to provoke a civil war in

Somalia. Generally speaking, tribal warfare is not civil war, because it does not involve most of the people of the country and is limited to the zone where the two tribes come in contact. Any act designed to bring about civil war is punishable with life imprisonment under this article, even if such warfare does not actually come about.

Article 224 Usurpation of Political Powers or Military Command

1. Whoever
(a) usurps political power,
(b) or persists in its unlawful exercise,
shall be punished with imprisonment from six to fifteen years.
2. Whoever
(a) unlawfully
(b) assumes a high military command
shall be liable to the same punishment.
3. Where the act is committed in time of war, the offender shall be punished with imprisonment for life; and he shall be punished with death where the act has seriously affected the outcome of military operations.

Explanation:

This article punishes usurpation of political power or military command and the continued unlawful exercise of political power. Usurpation is the action of unlawfully seizing or taking power which a person has no right legally to exercise. Paragraph 1 provides that a person who takes such political power or continues to exercise it unlawfully is subject to imprisonment from six to fifteen years. The same punishment applies to a person who assumes high military command unlawfully.

Example:

Y, a clerk for a mayor, decides that the mayor is acting contrary to the interests of the people. Y thinks that he knows what the people really want, and can do a better job than the mayor can. He gives him a drug which puts him to sleep, locks him in a room in his house, and then forges an edict purportedly signed by the mayor giving Y the power to govern the town. Y continues to keep the mayor drugged and locked in his room, and assumes his office. The police, on orders from the Minister of Interior, arrest Y for violating, among others, Article 224 of the Penal Code.

Y is guilty as charged. He has wrongfully and illegally assumed political power by taking over the office of mayor. Since the usurpation occurred in peacetime, Paragraph 3 does not apply, and Y is subject to imprisonment from six to fifteen years.

Article 225 Unauthorized Enlistment or Arming in the Service of a Foreign State

1. Whoever,
(a) within the territory of the State,
(b) and without the approval of the Government,
(c) enlists or arms citizens
(d) for the purpose of serving a foreign state or in its interest,
shall be punished with imprisonment from three to six years.
2. The punishment shall be increased where, among the persons enlisted, there are soldiers in service.

Explanation:

This article is designed to protect the government's power to control its own foreign policy. No one can enter Somalia and, within the territory of the state, enlist or arm Somali citizens for the purpose of serving in a foreign army, or to serve the interests of a foreign state, without the approval of the Somali government. The reason for this rule is that the government should not become involved in difficulties with foreign countries because of the actions of private persons in Somalia. Thus, it is first necessary for the person in Somalia to obtain official government approval before he can enlist or arm Somalis for service in foreign armies. Note also that the offender may be anyone—foreigner or Somali citizen—but the offense is only for recruiting Somali citizens on Somali territory. The punishment is more severe for recruiting soldiers of the Somali Army into the service of foreign interests, because that makes the Somali government appear to be officially involved in the recruitment, although it has not given its permission.

Example:

Z, a citizen of the People's Republic of Yemen, comes to Somalia for the purpose of recruiting men for the Republican army. Without seeking permission from the government, he opens an office in Mogadishu and offers anyone who enlists the sum of 500 shillings in advance and the promise of 1,000 shillings per month as pay. About fifty Somali men enlist in the army. The police then arrest Z, who is charged with violating Article 225 of the Code.

Z is guilty as charged. He has enlisted Somali citizens for the purpose of serving a foreign state, the Republic of Yemen, in the Somali Republic without first obtaining the permission of the government.

Chapter III Crimes against the Political Rights of Somali Citizens

Article 226 Attempts against the Political Rights of a Citizen

Whoever,
(a) by force, threat, or deception,
(b) prevents,
(c) wholly or in part,
(d) the exercise of a political right,
(e) or induces someone to exercise it in a manner contrary to his wishes,
shall be punished with imprisonment from one to five years.

Explanation:

This article protects the political rights of Somali citizens. These rights are contained in the Constitution of the Republic. The main political rights are:

(1) *The right to vote* (Article 8 of the Constitution):

Every citizen who possesses the qualifications required by law shall have the right to vote.

The vote shall be personal, equal, free, and secret.

(2) *The right of petition* (Article 10 of the Constitution):

Every citizen shall have the right to address written petitions to the President of the Republic, the National Assembly, and the Government.

Every petition which is not manifestly unfounded shall be examined.

(3) *The right of political association* (Article 12 of the Constitution):

Every citizen shall have the right to associate in political parties, without previous authorization, for the purpose of cooperating democratically and peacefully in the shaping of national policy.

Political parties and associations which are secret, have an organization of a military character, or have a tribal denomination shall be prohibited.

No one can prevent a citizen from exercising his political rights. The article forbids action which, by force, threat, or deception, interferes with the free exercise of such rights, and this includes inducing someone to act contrary to his free desires.

Example:

X, a candidate for deputy, threatens three tribal elders in his district with personal violence unless they use their influence to persuade their

followers to vote for X. The elders, fearful for their safety, in fact urge their followers to vote for X, and X is elected. After the election, Y, X's opponent in the election, informs the police that X had threatened the tribal elders with physical violence, and that is why they urged their followers to vote for X. After the provisions of the Criminal Procedure Code pertaining to deputies have been complied with, the police arrest X, and charge him with violating Article 226.

X is guilty as charged. He has, by threatening the elders, prevented them and their followers from freely exercising their constitutionally guaranteed political right of voting in elections. The elders voted for X from fear of being harmed, and their followers voted for X because they had been deceived into thinking that X was the free choice of their elders.

Chapter IV Crimes against Foreign States, Their Heads and Representatives

Article 227 Attempts against the Heads or Representatives of Foreign States

1. Whoever,
(a) within the territory of the State,
(b) attempts to kill
(c) the head of any foreign state
shall be punished, where the act does not constitute a more serious crime, with imprisonment for not less than twenty years;
where the offender attempts
(d) to impair the safety or personal liberty
(e) of the head of any foreign state,
the punishment shall be imprisonment from three to ten years.
2. The provisions of the previous paragraph shall also apply where
(a) the acts referred to therein
(b) are committed against the representatives of foreign states
(c) accredited to the Government of the Somali Republic as the heads of diplomatic missions,
(d) by reason of or in the exercise of their functions.

Explanation:

Attempts to kill the heads of state of foreign countries or their diplomatic representatives in Somalia are punishable as a separate offense, instead of coming under Homicide. This is so because the offense is in actuality committed against the foreign state itself, just as the attempt to kill the President of the Republic is a separate offense against the Somali Republic. The attempt to kill the head of a foreign state is punishable with twenty years imprisonment, so long as it is not a more serious offense. Paragraph 1 also provides for the punishment for attempts to impair the safety or personal liberty of a head of state. Impairment of safety or personal liberty means an attempt to wound or injure the head of state, or to kidnap him.

Paragraph 2 states that the punishments prescribed by Paragraph 1 shall also apply for attempts to kill diplomatic representatives in Somalia, or to impair their safety or personal liberty, by reason or in exercise of their functions. Thus, if a person intends to kill a foreign ambassador in Somalia because he deems that the ambassador's country is an enemy of Somalia, the attempted murder comes within the provisions of this article. If, however, a person intends to kill a foreign ambassador in Somalia because that ambassador had insulted the would-be murderer in his own country, then the offense comes under Attempted Homicide, not under Article 227. This is so because the motivation for the attempted murder is a personal grudge and has nothing to do with the ambassador's position or diplomatic functions. The person would want to kill the ambassador whether he was ambassador or not. Note that attempts on the life of a head of state come within the provisions of this article regardless of whether the motive is personal or political.

Example:

X, a citizen of Tanzania, is a member of a political party which has been outlawed by the President of Tanzania. X decides that the only way his party can obtain power is by killing the President. The President of Tanzania is invited to Somalia as a guest of the Somali government. X takes a commercial flight from Dar-es-Salaam, and arrives in Mogadishu two days before the arrival of the President. X plans to shoot the Tanzanian President as he is riding in an open car from the airport to Parliament. X stations himself along the route from the airport, but is arrested by a member of the Special Branch, who notices X's pistol hidden in his pocket. X is charged with violating Article 227.

X is guilty as charged. He has attempted to kill the Tanzanian President within the territory of Somalia.

Article 228 Bringing into Contempt the Flag or Emblem of a Foreign State

Whoever,
(a) within the territory of the State,
(b) in a public place or a place open to the public,
(c) brings into contempt

(d) the flag or the official emblem of a foreign state
(e) which, according to the domestic law of the Somali State, is used as such flag or official emblem,
shall be punished with imprisonment up to two years.

Explanation:

This article is similar to Article 219, except that it applies to the flags or official emblems of foreign states. The action of bringing the flag or official emblem into contempt must take place in a public place or a place open to the public.

Example:

Q, a Somali citizen in Mogadishu, believes that one of the countries that have an embassy in Mogadishu is an enemy of Somalia. One day, he sees the car of the ambassador of that country parked outside a government office with the official flag of the foreign state flying from a mast on the hood. Q goes up to the car, rips off the flag, throws it on the ground, and spits on it. A crowd gathers, and Q is arrested.

Q is guilty of bringing the flag of a foreign state into contempt. He has acted disrespectfully toward the flag in a public place.

Article 229 Condition of Reciprocity

The provisions of the two preceding articles shall apply only in so far as the foreign penal law reciprocally guarantees to the Head of the Somali State and the Somali flag equivalent protection.

Explanation:

"Reciprocity" means that foreign states afford the same protection to Somali diplomats, the President of the Republic, and the Somali flag and emblem in their countries as Somalia, by Articles 227 and 228, affords to them in the Republic. Thus, a neighboring state must have provisions in its laws making it a crime to attempt to kill or to impair the safety or personal liberty of Somali diplomats before a person in Somalia will be punished for attempting to kill a foreign diplomat from that country in Somalia.

Example:

Assuming the same facts as in the example under Article 228, if at Q's trial it is shown that the foreign state does not grant the same protection to the Somali flag in that country as Somalia does to the foreign flag in Mogadishu, Q cannot be found guilty, even though there is no doubt that

he committed the offense. It is as if the act of tearing up and bringing into contempt the flag of that state were not made an offense under the Somali Penal Code.

Chapter V General Provisions Relating to the Preceding Chapters

Article 230 Instigation to Commit Any of the Crimes Referred to in Chapters I and II

1. Whoever
(a) instigates
(b) a person to commit
(c) any of the crimes,
(d) not with culpa,
(e) referred to in Chapters I and II of this Part,
(f) in respect of which the law prescribes the punishment of death, imprisonment for life, or imprisonment,
shall be punished, if the instigation is not favorably received, or if it is favorably received but the crime is not committed, with imprisonment from one to eight years.

2. The punishment applied shall, however, in all cases be less than one-half of the punishment prescribed for the crime to which the instigation refers.

Explanation:

Chapters I and II of Part I of Book II deal with Crimes against the Somali State as an International Person (Articles 184 to 216) and Crimes against the Internal Order of the Somali State (Articles 217 to 225). If a person instigates any other person to commit any of the offenses contained in those articles where the penalty is death, life imprisonment, or imprisonment, the person who has instigated the offense is subject to imprisonment from one to eight years, if the crime urged is not committed or if the person did not agree to commit it. In other words, Article 230 punishes a person for merely urging and persuading another person to commit one of the crimes mentioned. The very act of instigation is an offense under this article, and it does not matter if the offense urged was not committed, or the person who was urged to commit the offense refused to listen. Note that this is an exception to the general rule, contained in Article 76, that a person cannot be punished for instigating an offense where the offense is not committed. The crimes in Chapters I and

II, however, are thought to be so serious that even urging someone to commit them should be punishable as an offense.

If a person instigates another to commit a crime and such crime is committed, the instigator is punishable according to Articles 320 and 321 (see explanation under these articles).

Example:

X, a Somali citizen living in Hargeisa, urges Y, an officer in the Army, to obtain military information about the Somali Army for a foreign power. X says that he can sell the information, and he and Y will split the money that X receives. Y refuses to obtain the information, and when X again urges him to do so, reports X's suggestion to his commanding officer. X is arrested and charged with instigating Y to commit the crime of MILITARY ESPIONAGE, in violation of Article 200.

X is guilty as charged. He has instigated Y to commit a crime contained in Part I, Chapter I, of Book II. The instigation was not favorably received by Y—that is, Y refused to do it. The punishment for instigation is one to eight years. However, Paragraph 2 of Article 230 provides that the punishment for instigation shall in all cases be less than one-half the punishment for the crime instigated—that is, military espionage. According to Paragraph 1 of Article 200, the punishment for military espionage shall be not less than fifteen years, and according to Article 96 not more than twenty-four years. Therefore, X can be sentenced to the maximum of eight years for instigation, since this is less than half of twenty-four years, the maximum prescribed for the offense of military espionage.

Article 231 Public Instigation and Extolling Crimes

1. Whoever
(a) publicly
(b) instigates the commission of any of the crimes referred to in the preceding article
shall be punished, for such act alone, with imprisonment from three to twelve years.

2. The same punishment shall apply to anyone who publicly extols any of the crimes referred to in the preceding article.

Explanation:

The difference between this article and the preceding one is that Article 231 punishes the *public* instigation or extolling of any of the crimes contained in Chapters I and II of Part I, whereas Article 230 does not require the element of public instigation. In addition, Article 231 also punishes the extolling of such crimes, whereas Article 230 does not.

"Extolling" a crime means praising it as a worthy course of action.

As in Article 230, the mere act of extolling such serious crimes, or instigating them publicly, is enough to warrant punishment, even though the advice is not taken and the crime is not actually committed.

Example:

X, a member of an opposition political party, is convinced that the President of the Republic is leading the country into ruin. He and Y conduct an outdoor political rally, and during the course of his speech, X urges members of the audience to remove the President from his office by force and to detain him until the people can elect a new President who will advance the country's economic development. Y then makes a speech saying that X's suggestion is the only course of action a truly patriotic Somali can take, and that no one will be punished for such action once a new President is elected. X and Y are arrested and charged with the public instigation and extolling of crimes.

Both X and Y are guilty as charged. They have violated Article 231. X has publicly instigated persons to seize the President of the Republic, thus impairing his personal liberty, contrary to Paragraph 2 of Article 218 of the Code. Y has publicly extolled this same crime by stating that such a course of action was patriotic and just. Both men can be sentenced from three to twelve years in prison.

Article 232 Political Conspiracy by Agreement

1. Where
(a) two or more persons
(b) agree to commit any of the crimes referred to in Article 230,
(c) whoever is a party to such agreement
shall be punished, if the crime is not committed, with imprisonment from one to six years. The punishment shall be increased in the case of the promoters.

2. The punishment applied shall, however, in all cases be less than one-half of the punishment prescribed for the crime to which the agreement refers.

Explanation:

This article makes it a crime to conspire to commit any of the crimes referred to in Chapters I and II of Part I, even if the crime planned is not committed. Thus, the mere act of conspiring is made an offense. The only elements of the crime are that there must be two or more persons involved in the conspiracy, and it must be a plan to commit one of the crimes mentioned above.

Note that the first paragraph provides that the punishment shall be increased for the promoters of the conspiracy. A promoter is a person who plans and urges the others to carry out the offense. He is not simply a member of the conspiracy. To be a promoter of a conspiracy to commit any of the offenses contained in Chapters I and II is an aggravating circumstance under Article 232. This means, since the increased punishment is not specified, that the punishment can be increased up to one-third of the punishment imposed for the offense, according to Article 118, Paragraph 1. However, the punishment must be less than one-half of the punishment for the crime the parties have conspired to commit.

Example:

X decides to steal military secrets from the Ministry of Defense. X plans the operation, recruits Y, persuades him to remain in the scheme when Y indicates he wants to quit, and in general is the moving force behind the attempt. At the last meeting before committing the crime, X and Y are arrested by the police and charged with conspiracy to commit MILITARY ESPIONAGE, in violation of Article 232.

X and Y are guilty as charged. Two persons have conspired to commit an offense contained in Chapter I of Part I. Both are parties to the agreement, and the crime of military espionage has not been committed.

X, as the promoter of the conspiracy, is liable to increased punishment. The maximum punishment for military espionage is twenty-four years. One-third of twenty-four years is eight years, so X's punishment may be increased by this amount. The maximum punishment for POLITICAL CONSPIRACY, according to Article 232, is six years, and eight plus six equals fourteen. However, Paragraph 2 of Article 232 provides that the punishment for conspiracy shall be less than one-half of the maximum punishment for the offense the offender conspired to commit. As the maximum punishment for military espionage is twenty-four years, X, as the promoter of the conspiracy, can receive only a twelve-year sentence.

Article 233 Political Conspiracy by Association

1. Where
(a) three or more persons
(b) associate
(c) for the purpose of committing any of the crimes referred to in Article 230,
(d) those who promote, constitute, organize, or direct the association shall be punished, for such act alone, with imprisonment from five to twelve years.

2. For the sole act of participating in the association, the punishment shall be imprisonment from two to eight years.

3. The punishment shall be increased if the association aims to commit two or more of the crimes referred to above.

Explanation:

This article applies to associations formed for the purpose of committing any of the crimes contained in Chapter I and II. It requires that three or more persons (as compared to two or more persons, required by the preceding article) associate for such illegal purposes. The act of such association itself is punishable, regardless of the fact that the crime specified in Chapters I and II is not committed. The article provides that those who organize, promote, constitute, or direct the association shall be punished more severely than those who merely belong to the association.

Paragraph 3 provides that the punishment shall be increased (by up to one-third of the sentence given for the offense, according to the provisions of Article 118) where the association plans to commit two or more of the crimes contained in Chapters I and II.

Example:

X, Y, and Z, three Somali citizens living in Mogadishu, plan to kidnap the President of the Republic and the Prime Minister, and establish a new government. They realize that they cannot succeed without having additional people, so they persuade B, C, and D to assist them. The six men meet regularly, making plans and forming a secret society for the purpose of carrying out their crime. At the last meeting, the police arrest all of them, and they are charged with violating Article 233 of the Code.

All are guilty as charged. They have formed a society or association for the purpose of impairing the liberty and safety of the President and the Prime Minister, a crime under the provisions of Article 218 of the Code. X, Y, and Z, who promoted and organized the association, are punishable for the organizing and directing of the association, under Paragraph 1 of the article. B, C, and D, who merely participated in the association, are punishable under Paragraph 2.

Article 234 Formation of and Participating in Armed Groups

1. Where,
(a) for the purpose of committing any of the crimes referred to in Article 230,
(b) any armed group is formed,
(c) those who promote, constitute, organize, or direct it

shall be punished, for such act alone, with imprisonment from five to fifteen years.

2. For the sole act of participating in the armed group, the punishment shall be imprisonment from three to nine years.

Explanation:

To prove an offense under this article, the prosecution must show that an armed group was formed for the purpose of committing any of the offenses contained in Chapters I and II of Part I. A person who promotes such an armed group is one who initiates the idea of its formation. One who constitutes it is a person who is present and assists in its initial formation. One who organizes it is a person who holds an office or exercises functions of the armed group. All of these people are punished more severely, according to Paragraph 1, and they are punished for the mere act of organizing, promoting, constituting, or directing. The prosecution does not have to show that the offense they planned to commit actually occurred, only that it was the purpose of the formation of the group to commit such an offense. Members of the group who simply participate in it are subject to imprisonment from three to nine years.

Article 235 Conspiracy: Exemption from Punishment

1. In the cases referred to in Articles 232 and 233, no punishment shall be imposed on those who,

(i) before the commission of the crime in respect of which the agreement was concluded or the association was constituted, and

(ii) prior to the arrest or the commencement of criminal proceedings:

(a) have dissolved or in any manner whatsoever brought about the dissolution of the association;

(b) not being promoters or leaders, have withdrawn from the agreement or the association.

2. Likewise, no punishment shall be imposed on any person who has in any manner prevented the commission of the crime in respect of which the agreement was concluded or the association was constituted.

Explanation:

This article is an exception to the rule contained in Article 18 of the Code (see explanation under that article). According to Article 235, if a person before the commission of the crime planned, and prior to the arrest or commencement of criminal proceedings, dissolves the agreement or association or withdraws from the agreement or association, he is not punishable under Articles 232 and 233. Article 235 applies only to the

crimes of POLITICAL CONSPIRACY BY AGREEMENT (Article 234) and POLITICAL CONSPIRACY BY ASSOCIATION (Article 235).

Paragraph 2 provides that even if the person remains in the association but prevents the commission of the crime in any way whatsoever, he shall not be punished. If, for example, a person at the last moment prevents his fellow conspirators from kidnapping the President of the Republic, he cannot be subject to punishment for belonging to an association which planned to carry out such crime.

Example:

X is a member of a group which has formed a society to kidnap and hold the President of the Republic and the Prime Minister. By belonging to such an association, X has violated Article 233 of the Code. Before the commission of the crime of impairing the liberty of the President and Prime Minister, X decides that he does not want to participate. He believes that it is wrong to do so, and he is afraid. He therefore informs Y, the leader of the association, that he is finished and won't help the conspirators in their plan. Y and the others go ahead anyway, and are arrested just before they put their plan into operation. The police, in searching Y's home, find records indicating that X was a member of the association. X is arrested and charged with violating Article 233.

X is not guilty as charged. He can plead, under Article 235, that he withdrew from the association before the crime was committed and before any of the other conspirators were arrested. Note that X would still be liable if he was a promoter of the association. Further, X does not have a duty to inform the police of the plans of the association, if he withdraws in order to avoid punishment. All he has to do is withdraw from the association before commission of the crime and arrest or commencement of criminal proceedings.

Article 236 Armed Groups: Exemption from Punishment

1. In the cases referred to in Article 234, no punishment shall be imposed on those who,

(i) before the commission of the crime for which the armed group was formed, and

(ii) prior to the order of the authorities or the police, or immediately following such order:

(a) have dissolved or in any manner whatsoever brought about the dissolution of the armed group;

(b) not being promoters or leaders of the armed group, have withdrawn from the same, or surrendered themselves without offering resistance, delivering or abandoning their weapons.

2. Likewise, no punishment shall be imposed on any person who has in any manner prevented the commission of the crime for which the armed group was formed.

Explanation:

This article is similar to Article 234, except that it deals with exemption from punishment concerning armed groups. The time for withdrawal from the group or dissolution must be either before the crime was committed and before the order of the authorities or the police to disband or immediately thereafter. Arrest or criminal proceedings may come after this order to disband. The article therefore tries to give the members of the armed group the opportunity of withdrawing or disbanding without punishment before any armed conflict occurs. As in Article 235, the promoters or leaders of the group cannot withdraw or surrender without being punished.

Article 237 Time of War

For the purposes of penal law, the term "time of war" shall also include the period of imminent danger of war, when war follows.

Explanation:

This article is simply a definitional one. The phrase "time of war" is defined for the purposes not only of the Penal Code but of other penal laws as well. Thus, for purposes of Article 191, for example (PROVIDING THE ENEMY WITH SUPPLIES), the first phrase in Paragraph 1—"Whoever, in time of war"—means not only after war has been declared but the period immediately prior to such declaration, when there is a danger of war. If war does not in fact occur, then a person cannot be punished for providing the enemy with supplies during that period. If the war does occur, such action prior to the official declaration of war is a crime under Article 191 as read with Article 237.

Example:

Z is a Somali businessman living in Mogadishu. On April 3, during a time of great tension with a neighboring country and after Somalia has placed its armed forces on alert, Z sells four hundred rifles to the enemy country. On April 16, the neighboring country declares war on Somalia.

Z can be punished under Article 191 for providing the enemy with supplies. The phrase "time of war," used in Article 191, includes the period of imminent danger of war as stated in Article 237.

Article 238 Extenuating Circumstances: Acts of Slight Importance

The punishment prescribed for the crimes referred to in this Part shall be reduced where,

(a) by reason of the nature, type, means, characteristics, or circumstances of the act,

(b) or by reason of the slightness of the injury or danger,

the act appears to be of slight importance.

Explanation:

This article applies to all the articles in Part I—that is, Articles 184 to 238. It is designed to give the judge discretion to reduce the penalties for acts which really have caused no harm, although they are technically crimes. The article gives the judge broad discretion to determine what acts of "slight importance" are. The fact that the act is of slight importance is an extenuating circumstance. Since no specific reduction is stated, the judge must reduce the sentence according to the provisions of Article 119, which means in most cases by not more than one-third.

Example:

X, a Somali citizen living in Hargeisa, believes that the President of the Republic is receiving money from foreign businesses. When the President comes to Hargeisa for a visit, X writes on the wall of a house, "Foreigners Own the President." He is arrested and charged with OFFENDING THE HONOR OR PRESTIGE OF THE HEAD OF STATE, in violation of Article 220.

X is guilty as charged. By publicly writing this slogan on the wall of a building, he has offended the honor of the President of the Republic. But the harm is slight. The nature of the act is such that it is an isolated event. X was not part of a large organization to discredit the President. He acted by himself. The injury itself was slight, because X wrote it only in one place. Therefore, the judge could sentence X to the minimum sentence of six months and reduce it by a full one-third. X would therefore serve four months.

Article 239 Expulsion of Foreigners

A foreigner sentenced to imprisonment for any of the crimes referred to in this Part shall be expelled from the State.

Explanation:

This article is in conformity with Article 181, providing for the expulsion of foreigners from the state in cases where it is expressly provided

by law. In the case of any of the crimes committed in Part I (Articles 184 to 238), a foreigner upon conviction shall be expelled from the state. Expulsion from the state is a security measure, and would be imposed following conviction and the serving of the sentence by the guilty person.

PART II CRIMES AGAINST THE PUBLIC ADMINISTRATION

Chapter I Crimes by Public Officers against the Public Administration

Article 240 Definition

For the purposes of penal law:
(a) a "public officer" means any person who,
(i) permanently or temporarily,
(ii) gratuitously or for reward,
(iii) voluntarily or under obligation,
(iv) performs any public legislative, administrative, or judicial function,
(v) on behalf or in the interest of the State, or of any other public body;
(b) a "person entrusted with a public service" means any person who,
(i) not being a public officer as defined in the previous subparagraph,
(ii) permanently or temporarily,
(iii) gratuitously or for reward,
(iv) voluntarily or under obligation,
(v) is entrusted by the State or any other public body with the performance of any public service;
(c) a "person performing a service of public necessity" means
(i) any private person who
(ii) practices the legal or medical profession,
(iii) or any other profession the practice of which is not permitted by law without the prescribed State qualification; or who
(iv) performs a service which is declared to be a public necessity.

Explanation:

Chapter I deals with crimes by public officials against the public administration. Public officials are of three types:
(a) a public officer;

(b) a person entrusted with a public service; and
(c) a person performing a service of public necessity.

Article 240 defines these three categories for purposes of penal law.

With regard to a *public officer* or a *person entrusted with a public service,* it does not matter whether he holds the position permanently or temporarily, gratuitously (that is, without pay) or for reward (meaning any kind of payment or benefit), voluntarily (that is, he has accepted the position without signing a contract of employment) or under obligation (meaning that he is part of the civil service and is required to take the job, or has signed a contract and is obligated to serve in that position).

A *public officer* is defined as any person who performs any public legislative, judicial, or administrative function on behalf of or in the interest of the state or of any other public body. Generally, a public officer is one who exercises public functions, and, by exercising his power, in effect exercises the power of the state or other public body. Thus, for example, judges, regional governors, district commissioners, ministers, deputies, director-generals, and directors all come within the definition of public officers acting in the interest of the state. An example of a public officer acting in the interest of "any other public body" would be an employee of a municipality.

A *person entrusted with a public service* is defined negatively as any person who does *not* come within the definition of a public officer and who is entrusted by the state or any other public body with the performance of any public service. Essentially, a person entrusted with a public service is a person performing a technical or material job instead of a policy-making or executive job. A public service is something performed for the community either directly, by the state government, or indirectly, by concession. The providing of electricity to Mogadishu is a public service provided by SEIS. The employees of SEIS who perform this function are persons entrusted with a public service.

There is much dispute in Italian law over the distinction between a "public officer" and a "person entrusted with a public service" (see Antolisei, Manuale di Diritto Penale, Parte speciale II, pp. 652–58). The distinction is unfortunate, because it creates confusion, but most of the cases are clear, and it will be only rarely that a problem arises.

A *person performing a service of public necessity* is easier to define. Such persons belong to two groups:
(a) members of the legal or medical profession or any other profession for which practice is not allowed without a state qualification; and
(b) any person who performs a service which is declared to be a public necessity.

Besides lawyers and doctors, surgeons, veterinarians, dentists, chemists,

pharmacists, engineers, and architects are persons performing a service of public necessity, and are within the definition. Note that this group can change as the law adds or subtracts those categories of persons who must receive a state qualification in order to practice.

The other group of persons who are within this definition are people who perform any service which the law declares to be a public necessity. Generally, this group includes persons who must have a license from the state to operate their businesses—for example, taxicab companies. The occupations within this category can also change according to the law.

Article 241 Peculation

1. A public officer or a person entrusted with a public service who,
(a) being by reason of his office or service,
(b) in possession of money or other movable property
(c) belonging to the Public Administration,
(d) appropriates it or converts it to his own use or the use of another,
shall be punished with imprisonment for a term from three to ten years and a fine of not less than Sh. So. 1,000.

2. Any person convicted under the terms of the preceding paragraph shall be perpetually interdicted from public office. Where, however, by reason of extenuating circumstances, the punishment imposed is imprisonment for a period of less than three years, the interdiction shall be temporary.

Explanation:

This article and the articles that follow very carefully define the offense and limit its application to a certain group of people. That is why Article 240 is a definitional article. It describes the different categories of people who can commit crimes against the public administration. Article 241 deals with PECULATION. This crime can be committed only by a *public officer* or a *person entrusted with a public service*. It cannot be committed by a *person performing a service of public necessity.*

For the prosecution to show that the crime of peculation has been committed, he first must prove that the person accused belonged to one of the two categories mentioned above. Then he must show that the person had possession of money or movable property belonging to the public administration by reason of his office or service. In other words, it must be a function of the accused's job to handle the money or property taken, or he must have been given possession of it because he is a public officer or person entrusted with a public service. Note also that the prosecution must show that the money or property belonged to the public administration. If it belonged to a private person, then it is not peculation

but another offense. Finally, the prosecution must show that the person converted the money or property to his own use or for the benefit of another. The term "use of another" means that the money that was taken was turned over to someone else, either a partner in the crime or a friend who would use it and pay the accused back in another way.

Paragraph 2 deals with the punishment. In discussing Article 101, we saw that interdiction from public office followed conviction for certain crimes. According to Paragraph 2 of Article 241, conviction for peculation means permanent interdiction from public office. The convicted person cannot hold public office for the rest of his life, and is deprived besides of the rights, titles, privileges, and benefits mentioned in Article 101. However, if the penalty is less than three years, and the light penalty is because of an extenuating circumstance, then the interdiction shall be temporary, which, according to Article 101(3), is from one to five years, as determined by the judge.

Example:

X is an employee of the Somali National Bank. His normal job is to prepare a statement of accounts every month. Y is the chief cashier. One day, Y does not report to work, and X is asked to do Y's job as a substitute. X does so and, as substitute chief cashier, at the end of the day he is assigned the task of counting up all the money taken in. X is deeply in debt because his two sons have been very sick, and X needs money to pay for their hospital bills and medicine. The temptation is too great for X, and while he is counting the money in a room by himself, he takes 200,000 shillings and stuffs them inside his shirt. The loss is discovered the next day, and X is suspected. He is detained by CID for questioning, his house is searched, and the 200,000 shillings are found under his mattress. X is charged with PECULATION.

X is guilty as charged. He is a public officer. He was performing an administrative function for a public body, the Somali National Bank. He had access to and possession of the money by reason of his job as substitute chief cashier. It does not matter that his normal job does not give him access to the money. Because he works for the bank, he was given the temporary task of counting the money, and thus comes within the terms of Article 241.

The judge decides that since this is X's first offense, and given the lack of a serious criminal motive, he should receive a minimum sentence of three years. The judge then further reduces the sentence by one-third for the extenuating circumstance of the crime's having been committed for the good social purpose of obtaining money for X's two sons' hospital bills. X is sentenced to two years, according to the provisions of Articles

119 and 241. Thus, X's sentence comes within the terms of Paragraph 2, and he is subject to temporary interdiction from public office. The judge states that such temporary interdiction shall last for only two years, instead of the maximum of five.

Article 242 Misappropriation to the Prejudice of Private Persons

1. A public officer or a person entrusted with a public service who
(a) appropriates, or
(b) in any manner converts to his own use, or to the use of a third party,
(c) money or any movable property
(d) not belonging to the Public Administration,
(e) of which he is in possession by reason of his office or duty,
shall be punished with imprisonment from three to eight years and with a fine of not less than Sh. So. 1,000.

2. The provision of the second paragraph of Article 241 shall also apply to the offense referred to in this article.

Explanation:

This article is identical with Article 241, except for one important difference. MISAPPROPRIATION is the taking of money *not belonging* to the public administration, whereas PECULATION is the taking of money *belonging* to the public administration. Otherwise, the two offenses are the same. Both apply only to public officers or persons entrusted with a public service. In both offenses, the person must have possession of the money or movable property as a result of his office or duty. Both cases carry the accessory penalty of permanent interdiction from public office unless the term of imprisonment is less than three years for reasons of extenuating circumstances.

Example:

Q is a postmaster in a town. B, a resident, tells Q that he is expecting a very important letter from Mogadishu, and asks Q to inform him when it arrives. The letter for B comes, but Q, instead of informing him, takes the letter and opens it. He finds a check made out to the bearer of the check, and good at any branch of the Somali National Bank, for the amount of 500 shillings. Q takes the check to the bank and cashes it. He tells B that his letter never arrived. The loss of the check is reported by B, and the police, after investigating at the post office in Mogadishu and the bank in Q's town, arrest Q and charge him with, among other things, misappropriation.

Q is guilty as charged. He is a public officer performing an administrative task—running a post office—on behalf of the state. He has taken money belonging to B, a private person. He had possession of the letter by reason of his position as postmaster.

Article 243 Peculation by Taking Advantage of the Error of Another Person

A public officer or a person entrusted with a public service who,
(a) in the exercise of his duties or service,
(b) taking advantage of another person's error,
(c) wrongfully receives or retains,
(d) for himself or for a third party,
(e) money or any other benefit,
shall be punished with imprisonment from six months to three years and with a fine from Sh. So. 500 to 10,000.

Explanation:

Article 243 describes another type of peculation. Like Article 241, it can be committed only by a public officer or a person entrusted with a public service, and it must be committed as a result of the person's exercise of duties or services. Furthermore, this offense is committed only when the offender wrongfully receives or retains money or any other benefit as a result of another person's error. If the money or other benefit is taken as a result of a planned crime, then it is not PECULATION BY TAKING ADVANTAGE OF THE ERROR OF ANOTHER PERSON, but another offense.

Example:

X is an employee of SEIS and is responsible for totaling the bills paid, registering the amount received by the company from its customers, and depositing the money in SEIS's account in the bank. In going over the bills, X discovers that Z, a Somali businessman in Mogadishu, has paid 5,000 shillings for electricity for his factory instead of the 3,000 shillings which was on the bill. Instead of refunding the 2,000–shilling overpayment to Z, X cashes Z's check, deposits 3,000 shillings to SEIS's account, and keeps the additional 2,000 shillings. Two months later, Z discovers that he has paid too much, and reports the matter to the police. After an investigation, X is arrested and charged with PECULATION BY TAKING ADVANTAGE OF THE ERROR OF ANOTHER PERSON, in violation of Article 243.

X is guilty as charged. He is a person entrusted with a public service. He has, during the exercise of his service as an employee of SEIS, retained money not belonging to him. And, most important for the proof

of this offense, he has taken advantage of Z's error of paying too much, and wrongfully retained Z's money.

Note that if X regularly made out bills higher than the amount owed, and then, upon receipt of the money, changed the bills to the proper amount and kept the difference, this would not be an offense under Article 243, because he would not be taking advantage of the error of another, but actively inducing overpayments. This would be MISAPPROPRIATION within the meaning of Article 242.

Article 244 Extortion by a Public Officer

1. A public officer who,
(a) by abusing his official position or his duties,
(b) wrongfully compels or induces
(c) anyone
(d) to give or to promise,
(e) to himself or to a third party,
(f) money or any other benefit,
shall be punished with imprisonment from four to twelve years and with a fine of not less than Sh. So. 3,000.

2. The provisions of the second paragraph of Article 241 shall also apply to the offense referred to in this article.

Explanation:

The offense described above can be committed only by a public officer. If a private person or one belonging to the other two categories in Article 240 commits this act, he is punishable for THREAT (Article 468) or EXTORTION (Article 485).

The public officer must commit the offense by abusing his official position or duties. This means acting in a way contrary to his position or duties—that is, using his power for illegal purposes or in an illegal way. He must compel or induce the person to give or to promise to give money to him or another person. To compel or induce means to force by threats or persuasion.

Paragraph 2 indicates that the accessory penalty of permanent interdiction applies to persons convicted of this offense. It can be reduced to temporary interdiction where the punishment imposed is less than three years by reason of extenuating circumstances.

Example:

X is a Deputy Attorney General stationed in Mogadishu. He is assigned to prosecute an important peculation case in Hargeisa against B and C, two high government employees. X goes to Hargeisa and reads the case file. He discovers that B and C have taken approximately 125,000 shillings

as a result of their crime. X tells B and C that if they give him half of what they took—62,500 shillings—he will fix the investigation in such a way that they will not be tried. Otherwise, he will prosecute them and see that they get the maximum sentence. B and C decide that it is better to keep half of what they stole from the government than nothing at all, and agree to X's plan. They pay X the amount asked, and X begins to prepare the case. A CID officer, assigned to assist X in the investigation, gets suspicious, and reports to his superior that he thinks X is being paid off. X is removed from the investigation by the Attorney General, and is later arrested and charged with EXTORTION, under Article 244.

X is guilty as charged. He is a public officer. He has, by reason of his office of Deputy Attorney General, taken money from B and C for himself, by wrongfully compelling them to pay him 62,500 shillings or go to jail. In effect, X threatened B and C with the choice of getting off scot-free with half of what they took or losing all the money and going to jail. He was in a position to carry out his threat by abusing or misusing his powers as Deputy Attorney General.

Note that upon conviction X must be sentenced to both imprisonment and a fine as well as the accessory penalty of interdiction from public office. As there are no extenuating circumstances in his case, the interdiction would be permanent.

Article 245 Corruption for Performing an Official Act

1. A public officer who,
(a) for the performance of an act pertaining to his office,
(b) receives, for himself or for a third party,
(c) any sum of money or any other benefit,
(d) as a reward which is not due to him,
(e) or accepts the promise of any sum of money or any other benefit, shall be punished with imprisonment up to three years, and with a fine from Sh. So. 500 to 10,000.

2. Where
(a) the public officer
(b) receives the reward
(c) for an act pertaining to his office
(d) already performed by him,
the punishment shall be imprisonment up to one year and a fine up to Sh. So. 3,000.

Explanation:

This article, like the preceding one, is limited to public officers. The public officer must receive money or other benefits as a reward which he

is not entitled to for some act he did related to his official position. In other words, he is paid for doing something which he should do anyway as a result of holding office by a private person interested in the action he wants the public officer to take. The reward given is generally proportionate to the act performed by the public officer.

The main difference between corruption, under Article 245, and extortion, under Article 244, is that in the case of corruption the person paying the money does so willingly, and frequently is the one to suggest making the payment. Extortion, on the other hand, involves a threat on the part of the public officer to force the private person to pay him. It involves compulsion by the public officer, and forces the private person to do as the public officer wants against his will. If, in the example under the preceding article, B and C themselves suggested to the Deputy Attorney General that they would pay him half of what they had stolen if he would drop the charges against them, then the Deputy Attorney General could not be guilty of extortion.

In general, Article 245 involves the commission of acts by the public officer not contrary to the duties of his office. His corrupt act in fact is in conformity with his duties, except that he is paid by a private party for doing what he should do by reason of holding office. The article makes a distinction between corruption of the official before the performance of the act and corruption of the official after the performance of the act. In the first case, the private party offers to pay the official a sum of money, or other benefit, if the official will act in a certain way. In the second case, the official acts in a certain way, and then the private party, as a reward, pays him for acting in the private person's interests. This latter case is described in Paragraph 2. Note that the punishment is less where the public officer is paid following the performance of the act pertaining to his office than where he is paid first as an inducement to act in a certain way. This is so because the corrupt intent of the official is deemed to be less in cases under Paragraph 2.

The punishment for Corruption for Performing an Official Act is both fine and imprisonment. It cannot be one or the other.

Example:

Y is a Somali businessman living in Mogadishu. He pays 200,000 shillings for elephant tusks, knowing that the elephants have been illegally killed and that the ivory has not been registered. Y then goes to the Minister of Industry and Commerce and requests a permit to export the ivory. He offers to pay the Minister 10,000 shillings "for his trouble," so that he can get the permit quickly and without an examination of the ivory by Ministry officials. The Minister accepts the money and signs an

authorization for exportation. Y then takes his ivory to the port and shows the authorization of export to the police officer in charge of customs. The police officer notices that there is no certificate showing that the elephants have been legally killed and the ivory lawfully registered, and he requests instructions from his commanding officer. The officer in charge of customs informs Y that the ivory cannot be exported, regardless of the authorization of the Minister, who can issue such authorization only upon receipt of a valid certificate showing the lawful killing of the elephants. Upon further investigation, the payment to the Minister is discovered.

Assuming that authorization to arrest and prosecute the Minister is obtained from Parliament, according to Article 58 of the Constitution, the Minister is guilty of violating Article 245. He is a public officer performing an administrative function. He has received money for himself which he was not entitled to. The purpose of the payment was to ensure a quick and safe authorization for export. The Minister did not extort the payment from Y. Y offered to pay and paid willingly.

Note that the meaning of corruption for performing an official act means doing something required by the position of one's office or within the scope of one's official power.

Article 246 Corruption for Performing an Act Contrary to the Duties of Office

1. A public officer who,
(a) for omitting or delaying to do an act pertaining to his office,
(b) or performing an act contrary to the duties of his office,
(c) receives, for himself or a third party,
(d) any sum of money or any other benefit,
(e) or accepts the promise thereof,
shall be punished with imprisonment from two to five years and with a fine from Sh. So. 3,000 to 20,000.

2. The punishment shall be increased where the act results in:
(a) the granting of public employment, salaries, pensions, or honors, or the stipulation of contracts which are of interest to the Administration to which the public officer belongs;
(b) favoring or prejudicing a party in a civil, criminal, or administrative proceeding.

3. Where the act results in the sentencing of a person to imprisonment for life or imprisonment, the punishment shall be imprisonment from six to twenty years and a fine of not less than Sh. So. 25,000.

Where the act results in a sentence of death, the punishment of imprisonment for life shall be imposed.

4. Where
(a) a public officer receives the money or the benefit
(b) for having acted contrary to the duties of his office,
(c) or for having omitted or delayed an act pertaining to his office, the punishment shall be imprisonment from one to three years and a fine from Sh. So. 1,000 to 10,000.

Explanation:

This article is very similar to the preceding one, and the prosecution must take care to ensure that the accused is charged with the proper offense. The major difference between Articles 245 and 246 is that under Article 246 the public officer must have received a reward for:

(a) omitting to do an act pertaining to his office (such as failing to file a report);
(b) delaying to do an act pertaining to his office (such as holding up a report for a month or two); or
(c) performing an act contrary to the duties of his office.

Under Article 245, the public officer must act corruptly, but not by doing any act within the meaning of a, b, or c above. The difficulty comes in determining what is meant by "contrary to the duties of his office." For instance, in the preceding example, the Minister could be said to have acted contrary to the duties of his office by granting an export license without ascertaining whether the ivory had been legally registered. But acting contrary to the duties of office means something more directly contrary to such duties. Thus, if a policeman lets an arrested person go after being bribed, this is clearly an act contrary to the duties of the policeman's office, because he is supposed to arrest criminals and bring them to the police station. Similarly, if a judge decides a case in favor of the person who has bribed him, this is an act contrary to the duties of his office—to judge cases fairly and to the best of his ability.

Paragraph 2 provides that certain circumstances shall be regarded as aggravating circumstances for the purposes of Article 246, and thus the punishment shall be increased. Since no amount is specified, the increase, according to Article 118, shall be up to one-third of the punishment that the judge would have imposed for commission of the offense. In general, the increased penalty is for acts which result in the employment of persons, the payment of state funds for salaries or pensions, and the granting of contracts. Note that the contracts must be those in which the ministry which employs the corrupt official has an interest. The penalty is also increased for favoring or prejudicing a party in a civil, administrative, or criminal proceeding.

Paragraph 3 provides severe penalties in those situations where, as a result of the act of a corrupt judge, a person has been sentenced to imprisonment for life or sentenced to death. In neither case does the sentence have to be carried out. It is apparently punishment enough if the sentence has been handed down by the judge.

Paragraph 4 deals with the situation in which the corrupt official is paid after he has omitted or delayed the act pertaining to his office, or after he has acted contrary to the duties of his office. This distinction was discussed under Article 245(2). The punishment according to Article 246(4) is less where the official is paid after performing the corrupt act. It of course is not within Paragraph 4 if the offer of payment comes before the act and the payment after. Paragraph 4 implies that the corrupt official is approached and offered the money after the event.

Examples:

1. X is a court clerk in the Regional Court of Hargeisa. Y is a person accused of PECULATION BY TAKING ADVANTAGE OF THE ERROR OF ANOTHER PERSON, under Article 243, by CID, Hargeisa. CID has sent the case file to the court and is awaiting the setting of a trial date by the judge. Y offers to pay X 2,000 shillings if X will misplace the case file so that the judge will not set the case for hearing. X agrees to put the case file in the basement of the courthouse. CID becomes suspicious when the judge says that he has never heard of the case. X is arrested, and charged with violating Article 246(1) and (2b) of the Penal Code.

X is guilty as charged. He is a public officer performing a judicial function as an employee of the court. He has omitted to file a case file—that is, an act pertaining to his duties of office as court clerk—and received payment from Y for this act. In addition, the act is an aggravating circumstance within the meaning of Paragraph 2(b), because it favors a party in a criminal proceeding. A criminal proceeding begins when the party is charged with an offense. Y has been so charged. He is favored in the sense that his case will not come to trial. Thus, upon conviction, X is subject to an increased sentence. If the judge sentences X to imprisonment for three years and a fine of 3,000 shillings according to Paragraph 1, he can increase it up to one-third and impose a total sentence of four years and 4,000 shillings. Note that the punishment must be both a fine and imprisonment.

2. Z is an official of the Ministry of Public Works. The Ministry has decided to build a road in Mogadishu. The Ministry publishes notice of the project and asks for tenders by various companies. Three companies submit bids. Q, the manager of one of the companies, goes to Z's office and offers to pay 50,000 shillings if Z will arrange for Q's company to receive the contract. Z accepts the money and selects Q's company as the

one which will build the road. K, the manager of one of the other companies who submitted a bid, complains to CID that Q paid someone in the Ministry. The police investigate, and arrest Z for violation of Article 246.

Z is guilty as charged. He is a public officer. He has performed an act contrary to the duties of his office by accepting a payment for the awarding of a contract, instead of deciding which company should receive the contract on the basis of lowest costs and best service to the government. The punishment must be increased according to Paragraph 2, because Z's act resulted in the granting of a contract by the Ministry of Public Works, the Ministry which employs Z.

Article 247 Corruption of a Person Entrusted with a Public Service

1. The provisions of Articles 245 and 246 shall also apply where the act is committed by a person entrusted with a public service.

2. In this case, the punishment shall be reduced to an extent not exceeding one-third.

Explanation:

Articles 245 and 246 by their terms apply only to public officers. Article 247 extends their coverage to persons entrusted with a public service. Thus, for example, if the manager of SEIS accepted payment from a contractor for granting a contract to that person's company, instead of receiving and passing on bids, the manager would be guilty of violating Article 246.

Article 248 Punishment of Persons Giving or Promising Money or Other Benefit

The punishment prescribed in Articles 245, 246, and 247 shall also apply to a person who gives or promises the money or benefit to a public officer or a person entrusted with a public service.

Explanation:

This article establishes the punishment for the person who offers the money or benefit to the public officer or person entrusted with a public service. The punishments for the public officer or person entrusted with a public service for receiving the payment also apply to the person who offered it.

Example:

In the example under Article 245, the Somali businessman who paid the Minister of Industry and Commerce 10,000 shillings for the permit

to export illegal ivory can be punished according to Article 245(1) with imprisonment for up to three years and with a fine from 500 to 10,000 shillings.

Article 249 Instigation of Corruption

1. Whoever
(a) offers or promises
(b) money or other benefit,
(c) as a reward not due,
(d) to a public officer or a person entrusted with a public service,
(e) in order to induce him to perform an act pertaining to his office or service,
(f) shall be liable,
(g) where the offer or promise is not accepted,
to the punishment prescribed in the first paragraph of Article 245, reduced by one-third.

2. Where
(a) the offer or promise
(b) is made in order to induce a public officer or person entrusted with a public service
(c) to omit or delay an act pertaining to his office or service,
(d) or to perform an act contrary to his duties,
(e) the offender shall be liable,
(f) where the offer or promise is not accepted,
to the punishment prescribed in the first paragraph of Article 246, reduced by one-third.

Explanation:

This article deals with the punishment of the person offering the money or benefit where the public officer or person entrusted with a public service does not accept the bribe. It applies only where such benefit is *not* accepted. If the money or the promise of money has been accepted, then Article 248 applies.

Paragraph 1 of Article 249 deals only with offers to induce a public officer or person entrusted with a public service to perform an official act —that is, within Article 245. Paragraph 2 deals with offers to induce a public officer or a person entrusted with a public service to perform an act contrary to the duties of his office, or to omit or delay performing an act pertaining to his office.

Examples:

1. X, a Somali businessman, wants to export charcoal to Aden. He has no proof that the charcoal has been obtained legally, but he thinks that

by paying an official in the Ministry of Industry and Commerce he can get official approval and the export license. X goes to the director in charge of granting export licenses and offers to pay him 25,000 shillings for the proper papers and the export license. The director pretends to accept but informs the police of X's offer. A police officer hides in the director's room and, when X comes again with the money, arrests him immediately after he has paid the director. X is charged with violating Article 249(1), INSTIGATION OF CORRUPTION.

X is guilty as charged. He has offered to the director, a public officer, money as a reward which the director is not entitled to, in order to induce him to perform an act pertaining to his office—the granting of the export license. The crucial fact which brings X's offense within Article 249 is that the director did not accept the offer. The acceptance of the money for purposes of obtaining evidence so that X can be arrested is not acceptance within the meaning of Article 248. The director did not keep the money and never intended to do so.

2. Y, a defendant in a civil suit before the Regional Court of Boslasso, promises the Regional judge 2,000 shillings if he will decide the case in Y's favor. The judge refuses, and reports the offer to the police. Y is arrested and charged with violating Article 249(2).

Y is guilty as charged. He has offered a public officer money to perform an act contrary to his public office—that is, to decide the case for money instead of on the facts—and the judge has refused to accept the bribe.

Article 250 Abuse of Office in Cases Not Specifically Provided for by Law

A public officer who,
(a) abusing the powers inherent in his functions,
(b) commits,
(c) for the purpose of causing injury to any person or
(d) of procuring an advantage for any person,
(e) any act not deemed to be an offense by any particular provision of law,
shall be punished with imprisonment up to two years or with a fine from Sh. So. 500 to 10,000.

Explanation:

This article is designed to apply to all those instances of abuse of office not covered by any specific article. It is necessary to have a catch-all article of this type, because it would be impossible to state all the ways a public officer could commit a corrupt act. Article 250 prevents the occurrence of any loopholes which could result from omissions.

The article applies only to public officers. The public officer must abuse his power—that is, misuse his power. If the public officer misuses his discretionary power, his action also comes within this article. The prosecution must show that the public officer committed the official act for the purpose of:

(a) causing injury to any person, or
(b) procuring an advantage for any person.

Examples:

1. X is a District Commissioner. During an election campaign, he grants permission to the candidate he favors to hold public meetings and parades, and denies this permission to all other candidates. X is arrested and charged with abusing his office.

X is guilty as charged. He has committed an act as a result of the powers of his office of District Commissioner, since commissioners must grant permission for public meetings within their district. He has abused his power for the specific purpose of procuring an advantage for the candidate he favors, by allowing him to receive publicity while denying the other candidates the opportunity to meet with the public.

2. Y is a graduate of secondary school who has won a scholarship to study in a foreign country. In order to receive the scholarship, he must send the foreign school a certificate showing that he has completed secondary school, signed by an official of the Ministry of Education to prove that the certificate is true. Z, the official at the Ministry of Education, has always disliked Y. He refuses to sign the certificate. Y complains to the police. Z is arrested and charged with violating Article 250.

Z is guilty as charged. He has committed an offense which is not specifically covered by any other article. He is a public officer. The prosecution can show that he acted to cause injury to Y by not validating the certificate, and the verification of certificates is inherent in his power as an official of the Ministry of Education.

Article 251 Private Interest in Official Acts

A public officer who,
(a) directly or through an intermediary,
(b) or with deceptive actions,
(c) takes a private interest in any act of the Public Administration under which he serves,
shall be punished with imprisonment from six months to five years and with a fine from Sh. So. 1,000 to 20,000.

Explanation:

This article applies only to public officers. It is designed to prevent any public officer from having private interests which may conflict with his duties as an employee of the government. The phrase "public administration" means the broad concept of all government functions and not the limited specific branch of government in which the public official serves.

Example:

X is an employee of the Ministry of Public Works. X gives his brother, Y, money to buy two trucks and a cement-making machine. Y buys this equipment, and forms a company called the Mogadishu Trucking and Concrete Company. Y pays Z, a person unrelated to X, to be the head of the company in name only, while X and Y really run the business. The Ministry of Public Works publishes a notice requesting bids for the construction of a small road. The Mogadishu Trucking and Concrete Company places a bid and wins the contract. Later, it is discovered that the company is owned by X, an employee of the Ministry. X is arrested and charged with violating Article 251.

X is guilty as charged. He is a public officer who has a private interest in the awarding of contracts by his Ministry. X owns the Mogadishu Trucking and Concrete Company, although he has made his brother appear to be the real owner and Z the fake head of the company. Article 251 specifically states that the public officer can commit the offense indirectly, through an intermediary (in this case Y and Z), or by deceptive actions, such as setting up a company and hiding the fact that he owns and controls it.

Article 252 Utilization of Inventions or Discoveries by Reason of Office

A public officer or a person entrusted with a public service who
(a) uses,
(b) for his own or another person's profit,
(c) scientific inventions or discoveries or new industrial devices
(d) with which he is acquainted by reason of his office or service,
(e) and which ought to remain secret,
shall be punished with imprisonment from two to five years and with a fine of not less than Sh. So. 5,000.

Explanation:

This article is very similar to Article 206. The only real difference in terminology is that in Article 206 the invention or discovery "ought to remain secret in the interest of the security of the State," whereas Article 252 provides only that it "ought to remain secret." Thus, Article 206 is designed to protect the security of the state. As the example under Article 206 pointed out, discoveries like new methods of making gunpowder, or a new type of weapon, would come under that article, whereas inventions of a non-military nature, unrelated to defense, would come under Article 252.

Note that Article 252 applies to both public officers and persons entrusted with a public service. In either case, the person must be acquainted with the new discovery or invention by reason of his office or service.

Example:

X is an employee of the Livestock Development Agency. He is assigned the job of revising the Agency's program pertaining to the vaccination of cattle. While looking through the files, he discovers that Z, a Somali businessman, has developed a new and cheap method for making vaccine, and is planning to sell the vaccine to the Agency. X informs Y of Z's discovery, and the two of them raise enough money to form their own business, buy the necessary machinery, and begin the manufacture of such vaccine themselves. X and Y's company then sells the vaccine to the Livestock Development Agency. Z hears about X's company, and complains to the police that X must have taken his invention from the files of the Agency. The police arrest X and charge him with violating Article 252 of the Code.

X is guilty as charged. He is a public officer. His position at the Agency has enabled him to discover a process that Z had developed for making a vaccine cheaply. He and Y have profited from his taking of Z's invention by setting up their own company to produce the vaccine and sell it to the government. The process of making the vaccine is not a state secret in the sense that it affects the security of the nation, and thus is not within Article 206. On the other hand, it is a discovery which ought to remain secret, because Z had not yet built his company or begun producing the vaccine, and he is the discoverer of the process. Note that X's punishment is both imprisonment and a fine. Y cannot be punished under this article, because he is not a public officer and he did not find out about the discovery by reason of his office.

Article 253 Disclosure of Official Secrets

A public officer or a person entrusted with a public service who,
(a) in violation of the duties inherent in his functions or service,
(b) or in any way abusing his position,
(c) discloses official information

(d) which ought to remain secret,
(e) or in any manner facilitates the disclosure thereof,
shall be punished with imprisonment from six months to three years. If the facilitating of the disclosure was merely through culpa, the punishment shall be imprisonment up to one year.

Explanation:

This article is similar to Article 204, DISCLOSURE OF STATE SECRETS (see explanation under that article). However, as in the case of Articles 206 and 252, the difference between Articles 204 and 253 lies in the definition of secret information, which is defined in Article 199(3) as:

> . . . information which ought to remain secret in the political interest of the State shall include any information contained in Government papers not published for reasons of a political, domestic, or international nature.

Article 253 merely states that "official information which ought to remain secret" should not be disclosed. Therefore, secret information within the terms of Article 253 covers the categories not included in the definition for Article 204. This would be information which is not about treaties, military agreements, military equipment, arms, military manpower, and so on.

Article 253 applies to public officers as well as persons entrusted with a public service. The prosecution must show that they disclosed information which ought to remain secret in violation of the duties or functions of their office or service. This is different from saying that the prosecution must show that the accused found out about the information by reason of his office, although in most cases this will be the factual situation.

The phrase "facilitates the disclosure thereof" means makes it easier for someone to obtain information which ought to remain secret. The last sentence of the article provides that if such facilitation occurs as a result of culpa, the punishment shall be imprisonment up to one year. The punishment for facilitating the disclosure intentionally is greater.

Example:

X is an employee of the Ministry of Health. The Ministry is planning to construct small clinics throughout Mogadishu and Merca, and X is a member of a committee discussing the plans. X finds out where the Ministry is going to build these clinics, and then tells Y, a Somali businessman, of these locations. Y then buys the property very cheaply from the owners in Mogadishu and Merca, because these people do not know about the Ministry's plans. When the Ministry is ready to construct its clinics, Y sells them his property for a very high price. Y then pays X 25,000 shillings as a reward for giving him the information about which property the Ministry intended to buy. The Ministry, however, is suspicious because all the property was bought from one man, and reports the matter to CID. After an investigation, X is arrested and charged with violating Article 253.

X is guilty as charged. He is a public officer. He has abused his position as an employee of the Ministry by disclosing information that ought to have remained secret; it enabled Y to buy the property and charge the Ministry a higher price than it would otherwise have had to pay, and thus cost the government more money. X is subject to imprisonment from six months to three years. Y, the businessman, is not punishable under this article because he is not a public officer.

Note that X's action could also come under Article 250, ABUSE OF OFFICE IN CASES NOT SPECIFICALLY PROVIDED FOR BY LAW. However, because X's action specifically comes within the provisions of Article 253, Article 250 does not apply.

Article 254 Incitement to Disparage or Bring into Contempt Public Institutions, Laws, or Orders of Authorities

A public officer or a person entrusted with a public office who,
(a) in the exercise of his functions,
(b) incites
(c) the disparagement of public institutions or
(d) the non-observance of the laws or orders of the authorities or
(e) of the duties pertaining to a public office or service, or who
(f) extols acts contrary to the laws or orders of the authorities or to the aforesaid duties,
shall be punished, when the act is not made an offense by any particular provision of law, with imprisonment up to one year or with a fine up to Sh. So. 2,000.

Explanation:

This crime can be committed only by a public officer or a person entrusted with a public service. The article is aimed against incitement, but the prosecution must show that such incitement was for certain specific purposes. The incitement must be for:

(a) the disparagement of public institutions;
(b) the non-observance of the laws or orders of authorities;
(c) the non-observance of duties pertaining to public office or service;
(d) the extolling or praising of acts contrary to laws, orders, or duties.

Thus, for example, if a public officer employed by the Customs Office tells everybody that the new regulations just issued by the office are

ridiculous and impossible to enforce and that the people should forget about them and continue under the old regulations, he is guilty of inciting the non-observance of the regulations of the Customs Office. Note that the penalty can be imposed under this article only if the act is not made an offense under another specific provision of other laws, including the Penal Code.

Example:

X is an employee of the municipality in Mogadishu. He is assigned to collect the water fees from private homes for the government. The municipality has just raised the price of water per month. X goes around to each house to collect the monthly bill, and at each place tells the people that they should not have to pay increased rates, that the old rates were high enough, and that the people are being made to suffer so that the municipal officials can steal more money from the government. X also encourages the people not to pay the higher rate, and promises to tell his superiors that the people threatened him and refused to pay. X is arrested for violating Article 254.

X is guilty as charged. He is a public officer. He has incited people to disparage the municipality by claiming that the rates were raised so that officials could steal more money, he has incited people to disobey the regulations of the municipality setting the water rates, and he has in effect praised the act of not paying—a violation of the regulations.

Article 255 Omission or Refusal to Perform Official Acts

1. A public officer or a person entrusted with a public service who
(a) wrongfully
(b) refuses, omits, or delays
(c) to perform an act
(d) pertaining to his office or service,
shall be punished with imprisonment up to one year or with a fine up to Sh. So. 10,000.

2. Where
(a) the public officer
(b) is a judge or an officer of the Office of the Attorney General,
(c) there shall be deemed to be omission, refusal, or delay
(d) when the conditions required by law for a civil cause of action against him exist.

Explanation:

The next several articles deal with strikes, work stoppages, and delays by public officers or persons entrusted with a public service. Each article

is slightly different with regard to the action it prohibits. This article applies only to refusals, omissions, or delays to perform an act pertaining to the public office or service.

Paragraph 2 makes a special provision for the refusal, omission, or delay by a judge or an officer of the Office of the Attorney General. This is necessary because the Law on the Organization of the Judiciary (Law No. 3 of 12 June 1962) provides that members of the judiciary are entitled to special protection for acts committed in the exercise of their function. According to Article 24 of the Law on the Organization of the Judiciary, no member of the judiciary is civilly liable unless the civil liability arises from the commission of the crime. Thus, for example, if a judge strikes the lawyer of the accused in court with a stick, the lawyer can sue the judge civilly for the injury caused and the judge can be prosecuted criminally for causing HURT. All Paragraph 2 of Article 255 means is that the act of the judge constituting an omission, refusal, or delay occurs for purposes of this article when the judge can be tried for the commission of a crime as a result of such omission, refusal, or delay.

Technically, it would seem that acts that come within this article are also within the terms of Article 250. However, the omissions, refusals, and delays under Article 255 do not have to be motivated to cause injury to a person or to procure an advantage for another, as in the case of Article 250. Rather, in light of the articles that follow, this article deals with a kind of work stoppage designed to benefit the public officer or person entrusted with a public service.

Example:

X is the employee at the Agricultural Development Agency responsible for filing reports of the Agency's activities with the Ministry of Agriculture. X has asked his superior for a promotion, but this officer has refused on the ground that X's work is not good enough. X therefore deliberately misplaces all of the reports that are supposed to be filed with the Ministry, so that the delay of filing will cause the Ministry to criticize the Agency. X hopes that, when his superior asks him for the reports, he will receive a promotion in return for "finding" them. X talks about his plan to Y, who in turn tells X's superior what X is doing. His superior files a complaint with the police, requesting X's arrest for violating Article 255. X is arrested.

X is guilty as charged. He is a public officer who has wrongfully refused to file reports with the Ministry of Agriculture, an act pertaining to his position in the Agricultural Development Agency. The element of his wrongful refusal is proved by the fact that he was ordered to file the reports by his superior and disobeyed such instruction.

Article 256 Collective Abandonment of Public Offices, Employments, Services, or Works

1. Where
(a) three or more
(b) public officers or persons entrusted with a public service, or
(c) private persons who, not being part of an organization or concern, perform public services of public necessity, or
(d) employees of concerns performing a public service or a service of public necessity,
(e) collectively abandon
(f) the office, employment, service, or work, or
(g) perform their duty in such a manner as to disturb its continuity or regularity,
they shall be punished with imprisonment up to two years.

2. The leaders, promoters, or organizers shall be punished with imprisonment from two to five years.

3. The punishment shall be increased where the act:
(a) is motivated by political purposes;
(b) had caused popular demonstrations, tumults, or riots.

Explanation:

This offense can be committed only if at least three persons participate in it together. It applies to a wide category of people. It covers public officers and persons entrusted with a public service. It also covers private persons performing a service of public necessity as well as employees of concerns which also perform such services. Thus, the article includes the employees of SEIS as well as government employees, and private persons who perform a service of public necessity even if they do not work for any company or concern.

The article prohibits these persons from abandoning their work. The reason for this article is that the state deems the service of these people to be essential to the collective security of the nation; therefore they are prohibited from abandoning work and causing disruption and chaos. At this point, it is useful to discuss Article 260, which states that any person who commits an act under Article 256 (and other articles) in the exercise of the right to strike in a lawful manner shall not be punished. Thus, there appears to be a contradiction between these two articles.

Article 27 of the Constitution provides:

> The right to strike is recognized and may be exercised within the limits prescribed by law. Any act tending to discriminate against, or to restrict, the free exercise of trade union rights shall be prohibited.

The Somali Constitution guarantees the right to strike, but within the limits prescribed by law. This is in effect what Article 260 provides also. There are certain obvious limits on this right. First, the right to strike cannot be exercised in such a way that human life is endangered or people are killed. Second, and equally important, certain groups, such as the police and the Army, are prohibited from striking because of the grave danger to law and order and the security of the nation. Thus, the right to strike has to be balanced against the needs of the nation. In Italy, the Italian Constitution (Article 40) guarantees the right to strike, and Article 330 of the Italian Penal Code contains the same provisions as Article 256 of the Somali Penal Code. Therefore, the Italian courts have been faced with the same problem. In a recent decision, the Constitutional Court of Italy decided that employees of a business performing a service are not performing a service so essential to the state as to warrant the deprivation of their right to strike (see ANTOLISEI, MANUALE DI DIRITTO PENALE, Parte speciale II, p. 699, *n.* 93). Thus, in each case, the court must determine the harm to the state that will ensue if these employees are allowed to strike, as compared with the reasons for guaranteeing to employees the right to bring collective economic pressure against their employers.

With regard to the specific activity prohibited, the article punishes collective abandonment—that is, abandonment by three or more persons—of the office, employment, service, or work. Abandonment itself is different from a strike. A strike involves a set procedure. First, the employees inform their employer of their demands, and threaten to strike unless these demands are met by a certain date. Then there are negotiations, and if the employees are not satisfied by the offer of their employer, they can strike. Abandonment, on the other hand, occurs when the employees leave off work without presenting any demands or making known their reasons to their employer. Abandonment is not protected by the Constitution; the right to strike is. Article 256 also includes actions on the part of the employees designed to disrupt the normal performance of work. For example, if a clerk works in an office, but deliberately types only two words in the whole day, that is considered disturbing the normal regularity of work.

Paragraph 2 provides an increased punishment for the leaders, promoters, or organizers of the group. Paragraph 3 makes it an aggravating circumstance to abandon work for political purposes or where the action has caused popular demonstrations or riots.

Example:

Q, B, Z, D, and J are all employees of the municipality, serving as city policemen in Mogadishu. They have frequently talked among themselves

about how poorly they are paid and about the lack of pensions and promotions. One morning at work, Q and B tell the others to just leave work, saying to them that they are tired of working under such conditions. Q, B, Z, and D walk out, J remains, but many other municipal police also leave. They go around and persuade the municipal employees at the water pumps to also abandon their work. By the end of the day, about one-half of Mogadishu is without water, and about 70 percent of the municipal police have left work. The national police are called out, and they arrest all those who have left their work. They are charged under Article 256 with illegally abandoning their positions. Q and B are charged under Paragraph 2 as being the organizers.

They are all guilty as charged. They are public officers who have participated in a collective abandonment of their work. This is not a lawful strike, because no demands were made, no bargaining sessions held, no discussions or complaints voiced. It was simply an abandonment of work to protest conditions and to use absence as pressure to obtain demands which would be made later.

It is still an open question whether municipal police can strike. Even if they had the right to strike, it would not affect their guilt under Article 256, because no one has the right to abandon work.

Article 257 Interruption of a Public Service or a Service of Public Necessity

1. Where
(a) a person
(b) operating a concern performing a public service or a service of public necessity
(c) interrupts the service or
(d) suspends the work in the establishment, office, or firm
(e) in such a manner as to disturb the regularity of the service,
he shall be punished with imprisonment from six months to one year and with a fine of not less than Sh. So. 5,000.

2. The leaders, promoters, or organizers shall be punished with imprisonment from three to seven years and with a fine of not less than Sh. So. 10,000.

3. The provisions of the last paragraph of the preceding article shall apply to the offense referred to in this article.

Explanation:

Article 257 applies to the person who operates a concern performing a public service or a service of public necessity. SEIS, in Mogadishu, would be such a firm. The article forbids such a person to interrupt the service or suspend work so that the regularity of service is disturbed. Where the operator of a firm interrupts the service in an economic dispute, it is usually by means of a "lockout," which prevents employees from coming into the plant. This is done to force them to accept the employer's demands with regard to wages and conditions. Article 257 forbids the use of "lockouts" by employers, or any other method of suspending work which disrupts the service of the firm. The reason for the rule is to protect the public, which is entitled to a continuous use of a service deemed to be public or of public necessity.

The Constitutional Court of Italy has decided that the right of the employer to lock out his employees is protected by the right to strike guaranteed by the Italian Constitution. Such a question, of course, has not yet been decided in Somalia.

Paragraph 2 increases the punishment for the leaders, promoters, or organizers of the lockout. Paragraph 3 in effect provides that a lockout for political purposes or one that has caused popular demonstrations or riots shall be considered an aggravating circumstance.

Example:

X is the manager of SEIS in Mogadishu. X knows that all of the employees are going to request a pay increase and are planning to strike in about two weeks. In order to force them to continue working at the present wage scale and to avoid a strike before it begins, X closes down SEIS completely and informs the employees that he will not let them come to work unless they sign a new contract to work at the old wages. Practically all of Mogadishu is without lights as a result of the closing of SEIS, and many industries lack electrical power to operate their machinery. X is arrested and charged with "locking out" the employees in violation of Article 257.

X is guilty as charged. He has suspended the work of SEIS in such a manner as to disturb the regularity of the service provided. He is a person operating a concern performing a public service, and thus is within the terms of the article.

Note that X can appeal his conviction to the Constitutional Court, on the grounds that Article 257 is a violation of his right to strike as guaranteed by Article 27 of the Constitution of the Republic.

Article 258 Failure to Perform Duties of Office on the Occasion of Abandonment of a Public Office or of Interruption of a Public Service

A public officer or a person in charge of a public service or a service of public necessity who,

(a) at the time of the commission of any of the crimes referred to in the two preceding articles,
(b) in which he has not taken part,
(c) refuses or omits to use his endeavors
(d) toward the resumption of the service to which he is attached or of which he is in charge, or
(e) to perform what is necessary for the regular continuation of the service,

shall be punished with a fine up to Sh. So. 5,000.

Explanation:

Those persons who, at the time of collective abandonment (described in Article 256) or interruption of a public service or a service of public necessity (described in Article 257), fail to try or refuse to help bring about the resumption of the service for which they are responsible are punishable under this article. In other words, the article punishes those public officers or persons in charge of a public service or a service of public necessity who, although not part of the original crime, further its effects by failing to do everything possible to continue the public service or service of public necessity for the good of the people.

Example:

Y is an officer in the municipal police. He is performing his normal duties one morning when five people come into his office and inform him that all of the municipal police are going to abandon their work that day. They ask Y to join them. Y says that he will not leave his office, but that he won't try to stop the others from doing so. Y remains at work until 2 P.M. and then goes home for lunch. Later in the day, Y is arrested for violating Article 258.

Y is guilty as charged. He is a public officer. He has not been a party to the collective abandonment of work by the other municipal police, and thus has not committed an offense under Article 256. But he has failed to use his power as an officer in the municipal police either to persuade the others not to leave their jobs or to assist in performing work necessary to continue the service of the municipal police at a time when many men have abandoned their work.

Note that this article applies only if Y has not participated in the offenses defined in Articles 256 and 257. If Y had abandoned his work when the others urged him to, he would be punishable not under this article but under Article 256.

Article 259 Individual Abandonment of Public Office, Service, or Work

1. A public officer or a person entrusted with a public service or a private person who, not being part of an organization or concern, performs a public service or a service of public necessity, or an employee of a concern performing a public service or a service of public necessity, who
(a) abandons his office, service, or work
(b) for the purpose of disturbing the continuity or regularity thereof,

shall be punished with imprisonment up to six months or with a fine up to Sh. So. 5,000.

2. The same punishment shall also apply to any person who, with the same object, without abandoning the office, service, or work, performs his duties in such a manner as to disturb the continuity or regularity thereof.

3. The punishment shall be increased where the act results in public or private injury.

Explanation:

This article applies to individual abandonment—not collective abandonment or a strike. It affects public officers, persons entrusted with a public service, and employees of concerns performing a public service or a service of public necessity as well as private persons who perform such service. All these people are forbidden to individually abandon their office or work. But the prosecution must show that such abandonment was for the specific purpose of disturbing the continuity or regularity of the work performed. If the abandonment was for another reason (for example, if the employee's son was suddenly and gravely ill) and a disturbance in the continuity of service occurred anyway, this is not an act punishable under Article 259, because the person did not abandon his work for the purpose of causing a disturbance in service.

Paragraph 2 expands the definition of abandonment to include acts like performing one's duties so slowly or incorrectly as to create a disturbance in the service. Again, the prosecution must prove that such acts of slowing down or sabotaging the work were for the purpose of creating a disturbance in the continuity or regularity of service.

Note that the punishment is either imprisonment or a fine, not both.

Example:

Z is a pilot for Somali Airlines. He has asked for a raise in pay, but his superiors have refused to increase his salary. Z is scheduled to fly a Somali Airlines plane with passengers from Mogadishu to Dar-es-Salaam, with a stopover at Chismayo. Z flies as far as Chismayo, and then, knowing that

there is no other pilot there, refuses to continue the flight to Dar-es-Salaam unless the company representative in Chismayo agrees to sign a contract increasing his pay. The official refuses, and the airline instead flies another pilot down from Mogadishu. Z is arrested and charged with violating Article 259 by individually abandoning his work.

Z is guilty as charged. He is a person entrusted with a public service. He has abandoned his position as pilot with the express purpose of creating a disruption in the airline service from Mogadishu to Dar-es-Salaam so that the company would be forced to increase his salary.

Article 260 Cases Not Punishable

Whoever
(a) commits an act
(b) referred to in Articles 256, 257, 258, and 259
(c) in the exercise of the right to strike
(d) in the manner prescribed by law,
shall not be punishable.

Explanation:

This article reaffirms the principle of Article 27 of the Constitution of the Republic, protecting the right to strike. (See the discussion under Article 256.)

Article 261 Removal or Damage of Property Subjected to Attachment or Sequestration

1. Whoever,
(a) for the sole purpose of benefiting the owner of a property
(b) subjected to attachment or sequestration and
(c) entrusted to his custody,
(d) removes, conceals, destroys, wastes, or causes it to deteriorate,
shall be punished with imprisonment from six months to four years and with a fine from Sh. So. 500 to 5,000.
2. Where
(a) the removal, concealment, destruction, waste, or deterioration is committed
(b) by the owner of the property subjected to attachment or sequestration and
(c) entrusted to his custody,
the punishment shall be imprisonment from three months to two years and a fine from Sh. So. 300 to 3,000.
3. Where
(a) the act is committed by the owner of the property, and

(b) such property is not entrusted to his custody,
the punishment shall be imprisonment up to one year and a fine up to Sh. So. 3,000.

Explanation:

Attachment and sequestration are the results of a court order or provisions of law. The person in charge of the property attached or sequestered is a public official for the purposes of custody of the property, and thus the crimes concerning such property come within this chapter—Crimes by Public Officers against the Public Administration.

Paragraph 1 requires that the sole purpose of the act of destroying, removing, damaging, or wasting the property attached or sequestered must be to benefit the owner of the property. If the destruction, for example, is also for another purpose, then the prosecution cannot prove an offense under Paragraph 1. Note that this paragraph applies to "whoever" does the act described, and that the punishment is both imprisonment and fine.

Sometimes the owner of the property is entrusted with the custody of his own property which has been attached or sequestered. Paragraph 2 provides a separate punishment if the person who has removed, concealed, destroyed, wasted, or permitted the property to deteriorate is the owner.

Paragraph 3 provides that if the property is entrusted to another person and the owner commits the act of destruction or removal, then the punishment shall be up to one year in prison and a fine up to 3,000 shillings.

In cases arising under Paragraphs 2 and 3, it is still necessary for the prosecution to prove that the sole purpose of the act was to benefit the owner of the property.

Example:

According to Article 69 of the Public Order Law (Law No. 21 of 26 August 1963), the Public Order authorities may sequester camels from the tribal group likely to pay compensation, where, following a murder, there is sufficient reason to believe that the victim's relatives will resort to acts of vengeance.

Q, a member of one tribe, is killed by B, a member of another, as a result of a fight at a waterhole. The Regional Governor, aware of the fact that the feeling between the two groups is bad and that there is a great likelihood of renewed tribal fighting, orders the police to seize one hundred camels belonging to B's tribe. The police seize a hundred camels in the area belonging to C, D, and E, all members of B's tribe. While the

Regional Governor is trying to settle the dispute peacefully, the camels are removed to a police compound and kept there. C, D, and E want their camels back immediately, because they are planning to move on to new grazing lands. One night, they go to the police compound, overpower the police guard, and take their camels back. They are caught by a Darawishta patrol just before crossing the *de facto* boundary. Among other offenses, they are charged with violating Article 261 of the Penal Code.

C, D, and E are guilty as charged. They have removed property (the camels) which had been sequestered by a lawful order of the Regional Governor. Their offense would come under Paragraph 3, because the camels were in the custody of the police, but the offense was committed by the owners of the property. Therefore, C, D, and E are subject to imprisonment for up to one year and a fine up to 3,000 shillings.

Article 262 Violation with Culpa *of the Duties Inherent in the Custody of Property Attached or Sequestrated*

Whoever,
(a) having in his custody
(b) any property subjected to attachment or sequestration,
(c) with culpa
(d) causes the destruction or waste thereof, or
(e) facilitates its removal or concealment,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 3,000.

Explanation:

Whereas Article 261 deals with the person who tries to damage or remove the property sequestered or attached for the benefit of the owner of the property, Article 262 involves acts of negligence by the person having custody of the property. Since the article involves negligence, there is no need to prove that the sole purpose of the loss of the property was to benefit the owner of the property.

Note that the punishment is either imprisonment or fine, not both, and that the article punishes negligent action which results in the destruction or waste of the property, or enables the removal or concealment of it. Thus, if the police guard in the previous example was asleep when C, D, and E came to steal their camels, he would be guilty of facilitating the removal of the camels by negligently guarding them.

Chapter II Crimes of Individuals against the Public Administration

Article 263 Force or Threats to a Public Officer

1. Whoever
(a) uses force or threats
(b) toward a public officer or toward a person entrusted with a public service,
(c) in order to compel him
(d) to perform an act contrary to his duties, or
(e) to refrain from doing an act pertaining to his office or service,
shall be punished with imprisonment from six months to five years.
2. Where
(a) the act is committed in order to compel any of the aforesaid persons
(b) to perform an act pertaining to his office or service or
(c) in order to influence him in any manner,
the punishment shall be imprisonment up to three years.

Explanation:

This chapter deals with acts against the personnel of the public administration, committed by private persons.

Article 263 punishes anyone (resident aliens as well as Somali citizens) who uses force or threats toward public officers or persons entrusted with a public service. Paragraph 1 applies to those situations where the force or threats are for the purpose of compelling the person to commit an act contrary to the duties of his office, or to refrain from doing an act pertaining to his office. Paragraph 2, on the other hand, applies only to those cases where the force or threat is designed to compel the person to commit an act pertaining to his office or to influence him in any manner.

Compelling a person to commit an act contrary to his office would be forcing him to grant a contract or a job by threatening personal violence. Compelling a person to refrain from doing an act pertaining to his office would be forcing a person not to file reports or certain papers. Compelling a person to perform an act pertaining to his office would be forcing him to issue a license or permit under threat of personal violence.

Example:

X, a businessman in Hargeisa, wants permission from the customs officials to export three hundred Somali leopard skins. X has no certificate

of ownership for these skins, and does not want to pay a bribe to the officials. He therefore goes to Y, the customs official in charge, and personally asks for the export certificate. When Y asks to see the certificate of ownership, X replies that unless the export certificate is issued, he will see to it that Y is removed from office by people in Mogadishu. Y pretends to be afraid, and issues the certificate. He then reports X's threats to CID, Hargeisa, who arrest X and charge him with violating Article 263.

X is guilty as charged. He has threatened a public officer in order to compel him to commit an act pertaining to his official duties—the issuance of export certificates. This comes within Paragraph 2 of the article. Note that the article covers any type of threat, whether it be of bodily injury or removal from a job.

Article 264 Resistance to a Public Officer

Whoever
(a) uses force or threats
(b) in order to oppose a public officer or a person entrusted with a public service
(c) while he is performing an act pertaining to his office or service, or
(d) to oppose anyone who, having been called upon, is lending him assistance,
shall be punished with imprisonment from six months to five years.

Explanation:

The purpose of this article is to protect public officers or persons entrusted with a public service from interference with the performance of their duties. The article punishes any person who uses force or threats of force to oppose a public officer or a person entrusted with a public service from carrying out his official functions. The protection also covers those who are lawfully assisting public officers in the exercise of their functions.

Example:

X and Y are two policemen. They are sent to the outskirts of a town to investigate a beating. They go to Z's house, and find three men inside beating Z with sticks. X and Y knock the three men out, and drag them outside to put them into the Land Rover and take them to the police station. While they are doing this, D, H, F, and G, all friends of Z arrive. They demand that X and Y give them the three men who were beating Z. The policemen refuse, and order Z's friends to step aside. Instead, all four men draw knives, and D states that unless the policemen give them the three men they will take them by force. X draws his pistol and covers the four men, Y gets into the Land Rover and starts the engine. X jumps in, and they drive back to the police station. X and Y then return quickly with four more policemen and arrest D, H, F, and G, and charge them with violating Article 264.

D, H, F, and G are guilty as charged. They have used the threat of force to prevent the policemen from taking the three men who had beaten Z back to the police station. Thus, they have tried to oppose public officers while performing their official duties.

Article 265 Force or Threats to a Political, Administrative, or Judicial Body

1. Whoever
(a) uses force or threats
(b) toward a political, administrative, or judicial body, or representatives thereof, or
(c) toward any public authority acting as a collective body,
(d) in order to prevent,
(e) wholly or in part,
(f) even temporarily, or
(g) to disturb in any manner
(h) their activities,
shall be punished with imprisonment from one to seven years, except where the act constitutes a more serious offense.
2. Whoever
(a) commits the act
(b) in order to influence the corporate deliberations of concerns performing public services or services of public necessity,
(c) where the object of such deliberations is the organization or the performance of the services,
shall be liable to the same punishment.

Explanation:

This article applies to the use of force or threats against political, administrative, and judicial bodies in general, and the representatives of such bodies. Political bodies include the government and Parliament, but these are specifically covered in Article 218, ATTEMPTS AGAINST THE CONSTITUTIONAL ORGANS. Administrative bodies are those exercising purely administrative functions, such as the Office of Accounts. Judicial bodies are any court sitting as a court. Representatives of judicial bodies would be the judges, who compose the body itself. The phrase "public authority

acting as a collective body" refers to all public employees who exercise a public collective function, such as the Senate of the University Institute. The article makes it a crime to use force or threats against the bodies as a unit or the individual representatives of the bodies.

The prosecution must show that the act of the accused was aimed at preventing or disturbing the activities of such bodies, even if the disturbance or prevention of activities was temporary or partial, as well as that the act was against one of the bodies or persons named above.

Paragraph 2 extends the coverage of the article to companies performing public services or services of public necessity. But the paragraph applies only where the force or threat is aimed at influencing the deliberations of the group responsible for managing the company. In addition, such discussions must concern either the organization or the performance of the services of the company. If they concern something else, then the article does not apply. Thus, for example, if the Board of Directors of SEIS were discussing whether to expand services or not, any attempt to influence their decision by the use of force or threats would come within the article.

Example:

X is a Regional Court judge who is trying Y for the crime of murder. Z, a relative of Y's, comes to the judge's house and threatens that unless X releases Y immediately, Z or one of Z's friends will kill X. X pretends to be frightened, and agrees to do what Z says. However, as soon as Z has left, he reports the matter to the police, and Z is arrested. Among other offenses, Z has committed the crime of using threats against a judicial officer.

X is a representative of a judicial body. Z has threatened him with violence in order to prevent X from conducting a trial of Y, or at least in order to disturb the proceedings of the trial.

If Z had tried to kill X in his home in order to prevent X from trying Y's case, this would be not an offense under Article 265 but attempted murder. Article 265 would not apply, because Paragraph 1 specifically states that the person shall be punished except where the act constitutes a more serious offense.

Article 266 Aggravating Circumstances

1. The punishments prescribed in the three preceding articles shall be increased where

(a) the force or threat is used with arms, or
(b) by a person disguised, or
(c) by more than one person acting together, or

(d) with anonymous communication, or
(e) in a symbolic manner, or
(f) by making use of the intimidating force derived from secret associations, whether the said associations exist or not.

2. Where

(a) the force or threat
(b) is used by more than five persons together,
(c) accompanied by the use of arms even by one of them, or
(d) is used by more than ten persons though not accompanied by the use of arms,

the punishment, in the cases referred to in the first paragraph of Article 263 and in Articles 264 and 265, shall be imprisonment from three to fifteen years and, in the case referred to in the second paragraph of Article 263, imprisonment from two to eight years.

Explanation:

Article 266 describes the aggravating circumstances for the crimes of Force or Threats to a Public Officer (Article 263), Resistance to a Public Officer (Article 264), and Force or Threats to a Political, Administrative, or Judicial Body (Article 265). Paragraph 1 provides that the punishment for these three crimes shall be increased if any of the conditions described in that paragraph occur. Since the amount of the increase is not specified, Article 118 applies, and the increase shall be up to one-third of the sentence imposed for the offense by the judge.

The conditions which the law considers to be aggravating circumstances in Paragraph 1 are where the force or threat is made with arms, or by a person disguised, or by more than one person acting together, or by anonymous communications (for example, an unsigned threatening letter), or in a symbolic manner (such as using a sign which is generally known to be the sign of death), or by making use of the intimidating force derived from secret associations, even though the associations do not exist (such as claiming to be an officer in a secret society whose function is to force public officials to obey the society's wishes).

Paragraph 2 concerns two conditions which are deemed to be graver aggravating circumstances:

(a) if more than five persons acting together threaten or use force, where one (or more) of them is armed; or
(b) if ten persons, even if unarmed, acting together threaten or use force.

If either of these circumstances exist, then:

(1) forcing or threatening a public officer or a person entrusted with a public service to perform an act contrary to his office or to refrain

from doing an act is punishable by imprisonment from three to fifteen years (Article 263[1] and Article 266[2]);

(2) forcing or threatening a public officer in order to oppose him while he is performing an act pertaining to his office is punishable with imprisonment from three to fifteen years (Article 264 and Article 266[2]);

(3) forcing or threatening a political, administrative, or judicial body in order to prevent or disturb their activities is punishable with imprisonment from three to fifteen years (Article 265[1] and Article 266[2]);

(4) forcing or threatening a public officer or a person entrusted with a public service to compel him to perform an act pertaining to his office or to influence him is punishable with imprisonment from two to eight years (Article 263[2] and Article 266[2]).

Example:

X is a Regional judge. He has been assigned to try a major smuggling case against thirteen men accused of bringing arms into the country, shooting it out with the Darawishta, and resisting public officers. X sets the trial date for the case. Before the trial begins, X is visited in his home by seven men, all of the same tribe as the defendants in the case. The leader of the seven men tells X that unless all of the defendants are acquitted, X will be killed, and so will members of his family. X is not impressed. He orders the seven men to leave his house. At this point, two of the men draw pistols and tell X that they mean what their leader has said. With this warning, they leave. X informs the regional commander of the police of the incident. The seven men are arrested, and charged with threatening the representative of a judicial body, aggravated by conditions described in Article 266(2).

The seven men are guilty as charged. They have threatened a judge in order to disturb his judicial activities. The threat has been carried out by seven men, two of whom were armed. This is an aggravating circumstance to the offense contained in Article 265, and is punishable with imprisonment from three to fifteen years, instead of the normal punishment of one to seven years contained in Article 265.

Article 267 Interruption of a Public Office or Service or a Service of Public Necessity

1. Whoever,
(a) where no other provision is made by law,
(b) causes an interruption or disturbs the regularity of

(i) a public office or service or of
(ii) a service of public necessity,
shall be punished with imprisonment up to one year.

2. The leaders, promoters, and organizers shall be punished with imprisonment from one to five years.

Explanation:

This article applies only if no other provision of law covers such a disturbance or interruption. It deals with the effect of the illegal action, not with the person against whom it is directed. Thus, the article does not pertain specifically to public officers or persons entrusted with a public service, but instead deals with interruptions or disturbances of a public office or service, or a service of public necessity. Imprisonment is up to one year, and since the minimum sentence is not specified, according to Article 96 the minimum is five days. The punishment is increased for the leaders, organizers, or promoters of the interruption or disturbance.

Example:

X, Y, and Z have permission from the District Commissioner of Hargeisa to conduct a demonstration against the Ministry of Education in Hargeisa. The three get about 250 students together, and are peacefully protesting in front of the Ministry building. Suddenly X, Y, and Z decide that the demonstration would be much more effective if everybody marched through the Ministry building and went to the office of the regional education officer. X, Y, and Z lead most of the crowd into the building. As a result of the demonstration inside the building, work is disrupted, and order is restored only after about two hours. X, Y, and Z and most of the participants in the demonstration are arrested. They are charged with disturbing the regularity of a public office, in violation of Article 267.

The accused are guilty as charged. They have disrupted the regular functioning of the Ministry in Hargeisa. Their action doesn't come within any of the previous articles discussed, since it was not intended to threaten or force the Ministry to do anything. X, Y, and Z can be punished under Paragraph 2, because they were the organizers, promoters, and leaders of the group, with imprisonment from one to five years. The members of the group who were also arrested can be punished according to Articles 96 and 267(1) and receive a sentence from five days to one year.

Article 268 Insult to a Public Officer

1. Whoever
(a) offends the honor or prestige

(b) of a public officer
(c) in his presence,
(d) and by reason of or in the execution of his duties,
shall be punished with imprisonment from six months to five years.

2. The same punishment shall apply in the case of a person who commits the act by means of telephone or telegraphic communication, or by writing or drawing, addressed to a public officer, by reason of his duties.

3. The punishment shall be imprisonment from one to three years where the offense consists in alleging the commission of a specific act.

4. The punishment shall be increased where the act is committed by force or threats, or where the offense is committed in the presence of one or more persons.

Explanation:

To prove an offense under this article the prosecution must show two essential elements:

(a) that the offense to honor or prestige of the public officer *was made in his presence*, and
(b) that it was made by reason of or in the execution of his duties.

Paragraph 2 expands the meaning of "in the presence" of the public officer to include telephone conversations, cables, letters, or drawings, but they must be addressed to the public officer whose honor or prestige is offended. A letter sent to someone else insulting a public officer is not a letter addressed to the public officer, and thus is outside the terms of this article. A defamatory letter or article published in a newspaper is not addressed to the public officer defamed and is also outside this article.

The insult must also relate to the duties of the public officer. A personal insult, such as a statement that a public officer beats his children, does not pertain to his office or duties and is not within this article. INSULT in general is covered by Article 451.

If the offense to honor or prestige consists of alleging a specific act, such as that the public officer hired only members of his tribe for certain jobs, the punishment, according to Paragraph 3, shall be increased to imprisonment from one to three years.

Paragraph 4 provides that the punishment shall be increased if the offense to honor or prestige is committed in the presence of one or more persons or by use of force or threats.

Example:

X is a graduate of the National Teacher Education Center. He applies to the Ministry of Education for a job as teacher, and is told that no

appointments will be made for another year. He continues to send letters to the director in charge, and is repeatedly told that he must wait. Finally, X goes into the director's office and tells him that he is so stupid that he wouldn't even recognize a teacher when he saw one. He adds, "You never even finished elementary school, and how could you hold a position requiring you to pass on educated people, you idiot." The director is very angry at X's insults, and informs the police. X is arrested and charged with insulting a public officer.

X is guilty as charged under Article 268. The director is a public officer. X has committed the act in the director's presence. The insult, calling the director an idiot and a person who had not finished elementary school, pertains to the duties and services of the director in his position as an official of the Ministry of Education. The insult was motivated by the director's refusal to hire X as a teacher, and not for reasons outside the scope of the director's official duties.

Article 269 Insult to a Political, Administrative, or Judicial Body

1. Whoever
(a) offends the honor or prestige
(b) of a political, administrative, or judicial body, or
(c) of representatives thereof, or
(d) of a public authority acting as a collective body,
(e) in the presence of the body, its representatives, or corporate assembly,
shall be punished with imprisonment from six months to three years.

2. The same punishment shall apply to a person who commits the act by means of telegraphic communication, or by writing or drawing, addressed to the body, its representatives, or corporate assembly, by reason of their duties.

3. The punishment shall be imprisonment from one to four years where the offense consists in alleging the commission of a specific act.

4. The provisions of the last paragraph of the preceding article shall apply to the offense referred to in this article.

Explanation:

This article is almost identical with the preceding one, except that it covers insults to the honor or prestige of bodies or groups rather than of individuals. The prosecution must prove that the offense was committed in the presence of the body or group or its representative, as well as that the offense pertained to the body by reason of the execution of its function.

The provisions with regard to letters, drawings, telephone conversations, and cables apply to insults to groups or bodies as long as they are addressed to them or to their representative. Paragraphs 3 and 4 are the same as the two paragraphs in the preceding article.

Example:

Y is a candidate for the judiciary. He takes the written exam given by a judicial commission composed of officials of the Ministry of Justice and Religious Affairs and members of the Supreme Court and the Attorney General's Office. The chairman of the commission is a member of the Supreme Court. The marks are posted and Y fails the examination. Y writes a letter stating that he was not passed because of the personal dislike of the commission and the stupidity of most of the members of the commission, and sends it to the chairman of the commission. Y sends a copy of his letter to the Prime Minister's office. Y is arrested and charged with violating Article 269 by insulting a public body, the commission.

Y is guilty as charged. He has offended the honor and prestige of the commission by calling the members stupid and claiming that they decided on the basis of personal reasons. The insult was contained in a letter addressed to the chairman of the commission in his capacity as representative of the commission. The letter contained insults dealing with the functions and duties of the commission. The sending of the letter to the Prime Minister's office is not an aggravating circumstance, since the insult was made only in the presence of the chairman of the commission. However, by alleging a specific act—that is, the refusal of the commission to pass him, for reasons of bias and stupidity—Y has committed an aggravating circumstance within the meaning of Paragraph 3 of Article 269, and is subject to imprisonment from one to four years.

Article 270 Insult to a Judge during a Hearing

1. Whoever
(a) offends the honor or prestige
(b) of a judge
(c) during a hearing
shall be punished with imprisonment from one to four years.

2. The punishment shall be imprisonment from two to five years where the offense consists in alleging the commission of a specific act.

3. The punishment shall be increased where the act is committed by force or threat.

Explanation:

To make out an offense under this article, the prosecution must show that the offense to the honor or prestige of the judge took place during a hearing. The article does not apply if the insult was made outside the courtroom, in the judge's house, after the hearing had been adjourned, or at any other time other than during a hearing. These other cases are covered by Article 268.

If the insult involves the allegation that the judge committed a specific act, such as deciding against the defendant for personal reasons, the punishment is imprisonment from two to five years. If the insult is accompanied by force or a threat during the hearing, then the punishment shall be increased, according to the provisions of Article 118.

Note that the word "hearing" includes the entire process in the court, from the time the accused is brought before the judge to have his confession validated until the time the sentence is pronounced.

Example:

Z, a lawyer for the accused, becomes angry with the judge during the course of the trial. Z loses his temper and tells the judge that he is so stupid he has to have his clerk sign his name for him on the judgments, and that if he could only read he would see that the law supports Z. Z is arrested for insulting the judge during the course of the hearing.

Z is guilty as charged. He insulted the judge during the course of a hearing, and is responsible for his actions.

Article 271 Offense against the Authorities by Means of Damaging Posters

Whoever,
(a) as a sign of contempt toward the authorities,
(b) removes, tears, or otherwise renders illegible, or in any manner unserviceable,
(c) notices or pictorial posters affixed or exhibited to the public
(d) by order of the said authorities,
shall be punished with imprisonment from six months to one year or with a fine up to Sh. So. 5,000.

Explanation:

This article applies to public acts of destroying signs or posters put up by order of the public authorities. The prosecution must prove that

the act of destruction or tearing was done as a sign of contempt towards the authorities. If someone rips a poster off a wall because he wants to take the poster home and keep it, that is not tearing for the purpose of showing contempt.

Example:

During Ramadan, the government approves a law ordering all restaurants to be closed from dawn until dusk. Notices are posted in Mogadishu informing the public of this law. X, a resident of Mogadishu, goes up to one of the notices posted on the outside of the Government building and states that he will eat when and where he wants and doesn't care what the authorities say. He then rips the poster off the wall. X is arrested and charged with violating Article 271.

X is guilty as charged. He has torn the poster off the wall in order to show his contempt for the authorities.

Article 272 Pretending to Have Influence with a Public Officer

1. Whoever,
(a) pretending to have influence
(b) with a public officer or a person entrusted with a public service,
(c) receives or causes to be given or promised,
(d) to himself or to others,
(e) money or any other benefit,
(f) as the price of his good offices with the public officer or person entrusted with a public service,
shall be punished with imprisonment from one to five years and with a fine from Sh. So. 3,000 to 20,000.

2. The punishment shall be imprisonment from two to six years and a fine from Sh. So. 5,000 to 30,000, where
(a) the offender receives or causes to be given or promised,
(b) to himself or to others,
(c) money or any other benefit,
(d) on the pretext that he must purchase the favor of a public officer or person entrusted with a public service or must reward him.

Explanation:

Pretending to have influence with a public officer means that the offender claims that he can obtain the action by a public officer desired by another person. Paragraph 1 of the article involves the situation where the offender receives money or a promise of money or benefit because the person paying believes that the offender will then go and use his influence

to obtain something the person paying wants from a public officer. Paragraph 2 involves the slightly different situation where the offender claims that he must pay the public official some money in order to obtain the favor desired by the person paying. The offense under Paragraph 2 is punished more severely, because it involves either the corruption of a public officer or the allegation that the public officer is corrupt. Note that the article applies only to those cases where the offender pretends to have influence with a person who is a public officer or a person entrusted with a public service—not with those performing a service of public necessity.

Examples:

1. X is the brother of the Minister of Industry and Commerce. Y is a Somali businessman who wants to export a large quantity of illegal charcoal. Y goes to X and asks him what is the best way to obtain the permit for export. X says that he could talk to his brother about the permit for Y's charcoal and he is certain that if he puts in a good word for Y, his brother will grant the permit. Y thanks X very much, and says that since X is doing this favor for him, he will give X 10,000 shillings now and another 10,000 when the permit is obtained. X boasts that Y has paid him to get the permit for charcoal export from his brother, and that now he has enough money to avoid working for a while and to buy a house in Mogadishu. The boasts become public knowledge, and the police investigate and subsequently arrest X, who is charged with violating Article 272.

X is guilty as charged. He has pretended to have influence with his brother, the Minister of Industry and Commerce, who is a public officer. He has received money and the promise of more money as the price of using his influence with his brother to obtain the permit that Y wants. Note that the punishment is both imprisonment and a fine.

2. Q and B organize an association in Mogadishu. They find out that, according to the law, they must register the constitution and the names of the organizers with the Regional Governor. They are not sure how to go about registering, so they go to Z, a notary public in Mogadishu. Z tells them that the Regional Governor never approves any new association unless he is first paid a sum of money. However, Z says that if Q and B will pay him 5,000 shillings, he himself will give the money to the Regional Governor, and that he is certain that the association will then be approved. Q and B promise to return with the money, but instead report the conversation to Q's husband, a foreign lawyer working for the Somali government. He advises them to report the matter to the police, which they do. The police write down the numbers of the bills before witnesses, and then instruct Q and B to pay the money to Z. They do so, and Z is arrested and charged with violating Article 272(2).

Z is guilty as charged. He has asked Q and B for money, pretending that he must pay the Regional Governor, a public officer, in order to obtain the registration of the association. He has received the money, intending to keep it for himself. If in fact he had to pay the money to the Regional Governor, this would not be a crime under Article 272(a), because the article applies only to those cases where the person pretends that the money must be paid to a public officer.

Article 273 Usurpation of Public Functions

1. Whoever usurps a public function shall be punished with imprisonment up to two years.

2. A public officer who,

(a) having received notice of the order

(b) which terminates or suspends his functions or his attributes,

(c) continues to exercise the same,

shall be liable to the same punishment.

Explanation:

Usurpation of public functions involves the taking over by a person of a function reserved to the public administration, when that person has no right at all to exercise such power. This article must be carefully distinguished from USURPATION OF POLITICAL POWERS OR MILITARY COMMAND (Article 224) and ABUSE OF OFFICE (Article 250). USURPATION OF POLITICAL POWERS involves taking political power. In the example under Article 224, the power usurped was that of a mayor. A mayor is a political figure, exercising political power and elected by the people. To usurp his power is to violate Article 224. However, Article 273 deals with taking over public functions, meaning administrative or non-political functions. If a private person took it upon himself to collect the bills of the municipality, that would be an example of usurping public functions. ABUSE OF OFFICE means that the person has the power but is exercising it in a wrongful way; for example, a judge has the power to decide cases on the merits, but he decides them instead on the basis of favoritism.

Paragraph 2 of Article 273 provides that usurpation of public functions shall be deemed to have occurred where a public officer continues to exercise his functions after having received notice of suspension or termination. Thus, for example, if a District Commissioner is suspended from office by order of the Minister of Interior, but continues to remain in office and exercise his functions because he believes the Minister was wrong to relieve him, he is guilty of violating Article 273(2).

Example:

X is a private citizen in Mogadishu. He thinks it would be fun to direct traffic near the center of the city. One morning, he goes out and stands in the middle of the street and orders cars to stop and go, permits some to turn right and others to turn left, and in general creates a disturbance. A policeman comes over to see what the trouble is, and arrests X, charging him with violating Article 273.

X is guilty as charged. He has usurped a public function–that of the police in directing traffic.

Article 274 Abusive Exercise of a Profession

Whoever

(a) abusively exercises a profession

(b) for the practice of which a special State qualification is required

shall be punished with imprisonment up to six months or with a fine from Sh. So. 1,000 to 5,000.

Explanation:

Abusive exercise of a profession means carrying out one's occupation in a wrongful or harmful way. The article applies only to those professions which require a special state qualification, such as doctors, dentists, pharmacists, engineers, or lawyers.

Example:

X is a pharmacist in Hargeisa. He has a state license to run a pharmacy and sell medicines. Among the medicines in his store are narcotics and drugs. X is supposed to sell these drugs only upon being shown a lawful prescription or order by a doctor. Instead, X sells these narcotics to anyone who has enough money to pay for them, and soon is supplying several of the narcotic addicts in Hargeisa with drugs. X is arrested and charged with violating Article 274.

X is guilty as charged. He has abused his profession by wrongfully dispensing narcotics without a doctor's prescription. X is a person exercising a profession for which there is a special state qualification–that of being a pharmacist–and thus is within the provisions of the article.

Article 275 Tampering with Seals

1. Whoever

(a) tampers with the seals

(b) affixed in accordance with any direction contained in any provision of law or by order of the authorities,

(c) for the purpose of ensuring the preservation or the identity of an article,

shall be punished with imprisonment from six months to three years and with a fine from Sh. So. 1,000 to 10,000.

2. Where the offender is the person who has the custody of the article, the punishment shall be imprisonment from three to five years and a fine from Sh. So. 3,000 to 30,000.

Explanation:

Seals are official signs of a public authority which are usually attached to property of a person as a result of a civil suit. For example, if a civil suit involves the contents of a warehouse that both X and Y claim to own, the court may order that a seal be attached to the door of the warehouse, so that the court can be certain that the goods inside will remain there until it determines whether X or Y is entitled to them.

Article 275 deals with those cases where the seals are tampered with. "Tampering" means altering, breaking, or in any other way changing so that the original seal of the public authority is no longer the same as it was when it was affixed to the property. Paragraph 1 makes it an offense for anyone to tamper with a seal which has been affixed by order of a public authority, or according to a law, for the purpose of ensuring the preservation or identity of the property. Thus, the prosecution must show that this was the purpose for attaching the seal. If it was for any other purpose, this article does not apply.

Paragraph 2 provides for a stronger penalty if the tampering was done by the person who had custody of the sealed property.

***Article 276 Facilitation with* Culpa**

Where

(a) the tampering with seals

(b) is rendered possible or in any way facilitated

(c) with culpa

(d) by the person who has custody of the article,

the latter shall be punished with a fine from Sh. So. 500 to 10,000.

Explanation:

"Culpa" means negligence, and this article punishes the custodian of the property under seal if he negligently permits or makes it easier for someone to tamper with the seals.

Article 277 Violation of the Public Custody of Articles

Whoever

(a) removes, destroys, wastes, or causes to deteriorate

(b) an object of a crime, papers, documents, or other movable property kept in a public office or by a public officer or person entrusted with a public service,

shall be punished, where the act does not constitute a more serious crime, with imprisonment from one to five years.

Explanation:

This article deals with property in public custody. Public custody means being kept in a public office or by a public officer or person entrusted with a public service. The article applies to a specific kind of property—the object of a crime, papers, documents, or other movable property. The offender must have removed, destroyed, or wasted such property or caused it to deteriorate.

Note that this offense is punishable only if it is not a more serious one.

Example:

X is a clerk for a District Court. He attends the trial of a person charged with illegal possession of contraband leopard skins. The judge in that case orders the leopard skins kept in the courthouse until the Court of Appeal has decided the case. X has access to the room where the skins are kept. He breaks into the room one night, and takes fifteen of the twenty skins. He then sells them to Y for 40,000 shillings. The Court of Appeal decides the case in favor of the accused, and the District Court judge orders that the skins be returned. The theft is discovered, and CID is notified. After a brief investigation, X is arrested and charged with violating Article 277, by removing property kept in a public office.

X is *not* guilty under Article 277. True, he has taken property held in a public office, but the act is a more serious offense. X has committed aggravated THEFT under Article 481(1g), by taking property from a public office. The punishment for aggravated theft is imprisonment from one to six years and a fine of 1,000 to 10,000 shillings. The punishment under Article 277 is only imprisonment from one to five years. Therefore, the offense under Article 481(1g) is more serious, and X should have been charged under that article (see explanation under Article 481).

Article 278 Sale of Printed Matter the Sequestration of Which Has Been Ordered

Whoever

(a) sells, distributes, or affixes,

(b) in a public place or a place open to the public,

(c) writings or drawings

(d) the sequestration of which has been ordered by the authorities,

shall be punished with a fine up to Sh. So. 5,000.

Explanation:

The Penal Code prohibits the importation for purposes of sale or distribution of obscene articles or drawings (see explanation under Article 403). Because such articles or drawings are obscene, the court may order that they be seized in order to protect public morals. If such articles or drawings have been ordered seized and are still sold or distributed, then the person who sells such material is guilty of violating Article 278. However, the sale, distribution, or display must be public or in a public place. If it is privately done, then there is no violation under this article.

Example:

Z, a resident alien living in Mogadishu, imports foreign magazines for sale in several stores. On one occasion, he brings in a thousand copies of a magazine alleged to be obscene. He keeps five hundred copies in his house and sells the other five hundred in a store he owns. Z is arrested and charged under Article 403 with the importation for the purpose of sale and distribution of obscene publications. The judge orders that all the copies of this magazine be seized, and the police confiscate the five hundred located in Z's store. Y, Z's brother, goes to Z's house and takes the five hundred copies he has there and brings them to Z's store. He does not display the magazines, but people know he has them in the store, and if they ask for a copy, he sells it to them. A policeman in plainclothes buys the magazine and then arrests Y. Y is charged with the sale of writings which have been ordered seized.

Y is guilty as charged. Article 278 applies to anyone. It does not matter that Y is a resident alien. He has sold a magazine which the court had ordered seized, and the sale has been in a public place.

Article 279 Interfering with Auctions

1. Whoever,

(a) by force or threat, or by gifts, promises, collusion, or other fraudulent means,

(b) prevents or disturbs

(c) competitive bidding

(d) at public auctions or private sales on behalf of Public Administrations, or

(e) sends away bidders,

shall be punished with imprisonment up to two years and with a fine from Sh. So. 1,000 to 10,000.

2. Where

(a) the offender is a person appointed under any law or by the authorities

(b) to be in charge of the aforesaid auctions or sales,

the term of imprisonment shall be from one to five years and the fine from Sh. So. 5,000 to 20,000.

3. The punishment prescribed in this article shall apply also in the case of private sales on behalf of private individuals, supervised by a public officer or by a person legally authorized; but the punishment shall be reduced by one-half.

Explanation:

"Auctions" are sales—either public or private—where the buyers bid on the price to be paid for the property being sold. This article punishes interference with the auction in such a way as to fix the bidding so that the price is not determined by what people are willing to pay but by who controls the auction.

Paragraph 1 punishes the use of force or threats, gifts, promises, or collusion which disturbs the competitive bidding at public auctions or private sales conducted on behalf of the public administration. The paragraph also applies to the act of sending away bidders from the auction.

Paragraph 2 makes it an aggravating circumstance under this article if the person who committed the act is the person who had been appointed to be in charge of the auction.

Paragraph 3 provides that the terms of the article shall also apply to private sales for private individuals, if they are supervised by a public officer or a person legally authorized to supervise the sale, but the punishment is less, being reduced by one-half.

Example:

The government in Mogadishu decides to conduct a public auction of all the contraband skins and ivory confiscated by the police during the past year. It announces that the sale will be on a certain day, and publishes notices asking all who are interested in buying to come to the auction. X is appointed to conduct the auction. X, Y, and Z plan to fix the auction so that they can buy most of the products at lower prices than could be obtained if there was true competitive bidding. Before the auction, Y and Z threaten many of the people who want to attend, so that they do not come. Y and Z also bribe others to stay away. On the day of the auction, Z stands at the door of the warehouse and tells many bidders who come that the place is full and they cannot come in. Inside,

X, who is in charge, handles the auction in such a way that Y is usually the person who buys the ivory and skins. X refuses to recognize bidders who are willing to pay higher prices than Y. Some of the bidders report these irregularities to the police, who investigate and arrest X, Y, and Z, and charge them with violating Article 279.

X, Y, and Z are guilty as charged. They have threatened some of the bidders, paid others, and by fraudulent means (telling the other bidders that they could not enter because the place was full) prevented real competitive bidding at a public auction. X is subject to the penalties under Paragraph 2, because he was the person appointed to preside over the auction.

Article 280 Breach of Contracts for Public Supplies

1. Whoever,
(a) in breach of the obligations arising under a supply contract
(b) concluded with the State or other public body,
(c) or with a concern performing public services or services of public necessity,
(d) fails to supply,
(e) wholly or in part,
(f) articles or works necessary to a public establishment or a public service,
shall be punished with imprisonment up to three years and with a fine of not less than Sh. So. 1,000.

2. The punishment shall be increased where the supply relates to:
(a) food or medicine, or articles or works intended for land, water, air, telegraphic, or telephonic communications;
(b) articles or works intended for the armament or equipment of the armed forces of the State;
(c) articles or works intended to obviate a common danger or a public calamity.

3. Where
(a) the act is committed with culpa,
(b) the punishment shall be imprisonment up to one year or a fine from Sh. So. 500 to 20,000.

4. The aforesaid provisions shall apply to the subcontractors, brokers, and representatives of supplies when these persons, in breach of their contractual obligations, have caused a failure of the supply.

Explanation:

This article is similar to Article 194 (see explanation under that article), except that it does not have to occur in time of war. It applies to anyone

who breaches, or breaks, a contract with the state, a public body, or a company performing a public service or a service of a public nature. The contract must be with one of these bodies for this article to apply. A contract between two private parties, neither of whom have any interest with the state, is not covered. This is logical, because the article is designed to protect the state's interest in having its contracts fulfilled on time.

The article punishes those breaches of contract which result in the failure to supply articles or work necessary to a public establishment or public service. Thus, for example, the failure to supply the Ministry of Public Works with cement, an article necessary to that Ministry's work, would be a violation of Article 280. In each case, the prosecution has to show that the thing which was not supplied was necessary to the government body or public service. A failure to supply small items like pencils, for example, while technically a breach of contract, probably would not, in the absence of other facts, be covered by this article.

Paragraph 2 provides that in cases involving certain goods, the punishment shall be increased. Since no amount is specified, the provisions of Article 118 apply. If the failure to provide goods involves food or medicine, or articles pertaining to communications or armaments, or articles for use in a common danger or public calamity, this is an aggravating circumstance. An example of a common danger or public calamity would be a flood or epidemic. If a businessman contracted to provide pumps for a flood-stricken area and did not do so, then his failure to provide these goods would come within Paragraph 2.

Paragraph 3 provides that if the failure to provide goods as contracted for is a result of negligence, the punishment shall be less than that contained in Paragraph 1 or 2. Thus, for example, if a businessman negligently miscalculated the time it would take to have goods delivered from a foreign country and therefore could not supply the public body on time as promised, his breach would come within Paragraph 3.

Paragraph 4 states that subcontractors, brokers, and representatives of suppliers are also covered by this article, when these people, by their actions, cause a failure of the supply of goods. A subcontractor is a person who contracts with the main contractor to provide goods. Brokers and representatives of suppliers also supply the main contractor with goods.

In sum, the prosecution must show that this contract was concluded between the accused and a public body, the state, or a company performing a public service or services of a public nature. He must show that it was a supply contract—that is, a contract to supply the state with goods, products, or articles—or a contract to provide the state with works, such

as buildings. And he must show that these articles or works were necessary to a public establishment or a public service.

Example:

The Civil Aviation Department of the Ministry of Communication contracts with the National Construction Company (NATCO) to build a runway for a new airport. NATCO agrees to complete the runway and have it ready for service in six months. NATCO contracts with X, a Somali businessman, to provide the rocks and labor to build the foundation of the runway. NATCO also contracts with Y, a Somali businessman in Mogadishu, for the rental of eight trucks for two weeks to carry essential supplies from Mogadishu to the construction site. NATCO then contracts with Z, the representative of a Tanzanian firm in Mogadishu, for the supply of two thousand bags of Tanzanian cement.

Y fails to provide eight trucks; instead, only three are available. Therefore, it takes four weeks just to get the supplies from Mogadishu to the site. Z informs NATCO that, because of shipping problems, the cement will not arrive from Dar-es-Salaam until after the date NATCO promised the Civil Aviation Department that the runway would be ready for service. Thus, by the date promised in the contract, NATCO can provide only a rough runway with rocks and stones laid down. The Civil Aviation Department files a claim against NATCO for breach of contract. The police investigate the circumstances, and charge NATCO, Y, and Z with violating Article 280.

All are guilty as charged. The contract was between NATCO and the Civil Aviation Department, a public body representing the state. The contracts between Y and NATCO and Z and NATCO are covered in Paragraph 4, since both Y and Z are subcontractors. The contract was for the supply of works necessary to the Civil Aviation Department—a runway. The offense comes within Paragraph 2(a) as an aggravating circumstance, because the contract was to supply works intended for air communications. Paragraph 1 specifically provides that the article applies even if the contract is breached only in part. Presumably this will be taken into account in calculating the punishment. NATCO provided the Civil Aviation Department with a partially completed runway by the date they had agreed to provide a completed one. Y and Z, by their failure to comply with their contracts with NATCO, caused the failure of the supply of the runway on time.

Article 281 Fraud in Public Supplies

Whoever
(a) commits fraud

(b) in the execution of supply contracts or
(c) in the performance of any other contractual obligation referred to in the preceding article
shall be punished with imprisonment from one to five years and with a fine of not less than Sh. So. 10,000.

Explanation:

This article applies only to the contracts covered by Article 280—that is, contracts between private persons and the state, a public body, or a concern performing a public service or a service of public necessity. Fraud in public contracts in time of war are covered by Article 195.

Example:

X, a resident-alien businessman in Mogadishu, contracts with the police force to provide twenty thousand tins of canned beef. At the time of making the contract, X knows that ten thousand of the tins contain beef that is spoiled and cannot be eaten. He plans to give the police these tins anyway and claim that they spoiled while in their possession. The police accept delivery of the tins, and the next day open a few cans to test the quality of the meat. They discover a few spoiled cans, and by the end of the day about six hundred spoiled cans have been opened. X is arrested and charged with violating Article 281.

X is guilty as charged. He has supplied the police, a public body, with goods, knowing them to be spoiled or bad at the time of supply.

PART III CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

CHAPTER I CRIMES AGAINST THE COURSE OF JUSTICE

Article 282 Omission or Delay on the Part of a Public Officer or a Person Entrusted with a Public Service to Give Information of an Offense

1. A public officer or a person entrusted with a public service who
(a) omits to give or delays giving
(b) information to the judicial authorities or
(c) to other authorities whose duty is to notify the former authorities,
(d) of an offense of which he has knowledge
(e) in the exercise or by reason of his function,
shall be punished with imprisonment up to one year or with a fine from Sh. So. 300 to 5,000.

2. The provisions of the preceding paragraph shall not apply
(a) in the case of omission to give information
(b) is in respect of a crime against the personality of the State, party only.
3. Where
(a) the omission to give information or delay in so doing
(b) is in respect of a crime against the personality of the State,
the punishment shall be imprisonment from six months to three years.

Explanation:

This article applies only to public officers or persons entrusted with a public service. It punishes such persons for failure to report or delay in reporting information about offenses of which they have knowledge. But the article contains two restrictions with regard to its coverage. First, the public officer or person entrusted with a public service must have knowledge of the offense by reason or in the exercise of his function. This means that if a public officer witnesses a traffic accident while walking home from work and does not report it, he is not within the coverage of the article. Second, he must have failed to report the information to the judicial authorities or to authorities who have the duty to report it to the judicial authorities. Thus, he must report an offense he has knowledge of by reason of his job to the police, but he does not have to report it to someone in his Ministry.

Paragraph 2 contains the exception to the coverage of the article. Its conditions do not apply at all if the offense is of the type punishable on the personal complaint of the injured party only. Many provisions of the Penal Code require that the injured party file a complaint before criminal proceedings can be initiated. DEFAMATION (Article 452), for example, is one of these. If a public officer by reason of his office is aware of a defamation but fails to give information to the judicial authorities, he is not punishable under this article, because of the exception contained in Paragraph 2.

Paragraph 3 provides for a heavier punishment where the omission or delay in giving information of an offense relates to crimes against the personality of the state. Such crimes are contained in Articles 184 to 216. Thus, if a person fails to report the crime of MILITARY ESPIONAGE (Article 200), which he has knowledge of by reason of his job, the punishment shall be imprisonment from six months to three years. Violations within Paragraph 1 are punishable with either fine or imprisonment, whereas if the violation is under Paragraph 3, the punishment is only imprisonment.

Note that Paragraphs 1 and 2 both apply to crimes and contraventions, since the word "offense" is used. Thus, failure to report information concerning the commission of a contravention which one knows about as a result of one's work is within the terms of this article.

Example:

X is an auditor for the Office of the Magistrate of Accounts. In the course of investigating the accounts of the Ministry of Public Works in Hargeisa, he discovers that Y, a good friend of his, has apparently been entering exaggerated expenses to be paid, paying the bills, and keeping the difference between the actual amount owed and the amount drawn. Because Y is a close friend of X's, X does not report the matter to his superior or to the Anti-Corruption Section of CID. About two months later, a routine check by another auditor uncovers Y's peculation. In the course of the investigation, the police discover that X did not report Y's illegal activity although he knew about it. X is arrested and charged with violating Article 282 of the Code.

X is guilty as charged. He is a public officer. He has omitted to give information to the judicial authorities (the police) or authorities who have a duty to report the matter to the police (his superiors in the Office of the Magistrate of Accounts). X knew of Y's offense by reason of his job as auditor for the office—that is, he found out about the peculation in the course of auditing the accounts of the Ministry of Public Works. The failure to report comes within Paragraph 1 because it is not an offense punishable on the complaint of the injured party only (Paragraph 2) and it is not a crime against the personality of the state (Paragraph 3).

Article 283 Omission by a Citizen to Give Information Regarding an Offense

A citizen who,
(a) having had knowledge of a crime against the personality of the State,
(b) for which the law prescribes the punishment of death or imprisonment for life,
(c) does not immediately
(d) give information to the authorities mentioned in Article 282,
shall be punished with imprisonment up to one year or with a fine from Sh. So. 1,000 to 10,000.

Explanation:

This article applies only to citizens. Obviously, it includes public officers and persons entrusted with a public service if they are also citizens. It does not include resident aliens or foreigners.

The article requires all citizens to immediately report any information concerning a crime against the personality of the state if the crime is serious enough to carry the punishment of death or life imprisonment. The information must be reported to the same authorities mentioned in Article 282—that is, the judicial authorities or authorities who must report to them.

There is no condition that the citizen must be sure of the crime against the personality of the state by reason of his job or function. Thus, a public officer who is aware of such crime not by reason of his job or function but as an ordinary citizen is covered by this article and must report it immediately. If he is aware of the crime by reason of his job, then he is covered by Paragraph 3 of Article 282.

Example:

During time of war, X, a Somali citizen living in Hargeisa, overhears a conversation in a tea shop between Y and Z. Y states that he has obtained plans for the military defense of the Northern Regions and troop strengths, and he wants to sell this information to the enemy country. Z offers to help him in his plan. X does not report this conversation to the police. Two weeks later, the police arrest Y and Z for MILITARY ESPIONAGE. X then brags that he knew Y and Z were engaged in espionage two weeks ago, and criticizes the police for taking so long to catch them. X is questioned, and informs the police that he had overheard the conversation two weeks ago in a tea shop. He says that he didn't report it because it is the police's job to catch criminals, not his. X is charged with violating Article 283.

X is guilty as charged. He is a citizen who had knowledge of the crime of MILITARY ESPIONAGE—one punishable by death in time of war. He failed to report this knowledge to the police, one of the authorities mentioned in Article 282.

Article 284 Omission to Report by a Member of the Medical Profession

1. Whoever,
(a) in the exercise of a medical profession,
(b) has given his assistance or services
(c) in cases which appear to have the elements of a crime which must be prosecuted on the initiative of the State,
(d) and omits or delays reporting the same
(e) to the authorities mentioned in Article 282,
shall be punished with a fine up to Sh. So. 5,000.

2. The foregoing provision shall not apply when the report would expose the person assisted to criminal proceedings.

Explanation:

This article applies to persons exercising a medical profession. In Somalia, that would include doctors, surgeons, nurses, and dressers. When such people provide medical assistance to others, they must report to the authorities circumstances which indicate that a crime has been committed if the crime is of the type which it is the state's responsibility to prosecute. Failure to do so is punishable under Paragraph 1. Note that the article applies only to crimes, not contraventions.

Paragraph 2 provides the exception—the person performing the medical service does not have to report that he thinks a crime has been committed if it would expose the person he has treated to criminal prosecution. The reason for this is that if doctors were required to report such facts, it would discourage people from going to doctors for treatment. Within these limits, the article is designed to provide the police with information about crimes by requiring those who give medical services, and are likely to know of the commission of crimes, to report them.

If the doctor fails to report through negligence, it is no offense under this article. The doctor must willfully refuse to report the facts he has obtained as a result of treating someone.

Example:

Q is a dresser. One night, B is brought to his station by Z, B's younger son, with a stab wound in the stomach and various cuts and bruises. B tells Q that he was beaten and stabbed by members of another tribe, and that he and his tribe will deal with them. Although there is a small group of Darawishta camping near the station, Q fails to notify them of what has happened. About two days later, tribal fighting breaks out, in which four people are killed and several wounded. Eventually, the Darawishta are able to restore order. In the course of an investigation as to the cause of the fighting, the police discover that Q was the dresser who treated B, the first person to be injured in the fighting beween the two groups. Q is questioned, and reveals that he knew of the stabbing of B, treated him, but failed to report it to the police. Q is charged with violating Article 284.

The prosecution must show that Q willfully failed to report the fact of B's stabbing. The stabbing and bruises were evidence that some crime had been committed—the crime of HURT, which is prosecuted on the initiative of the state. Q should have reported the fact. In this particular example, Q also knew that the crime had tribal implications. By not acting, he prevented the Darawishta from intervening sooner and perhaps

averting further bloodshed. If Q had reported the incident, he would not have exposed B to any criminal prosecution, because B was the victim of the crime, not one of the participants.

Article 285 Refusal of Services Legally Due

1. Whoever,
(a) having been appointed by the judicial authorities
(b) as expert, interpreter, or custodian of articles subjected to sequestration,
(c) obtains by fraudulent means
(d) exemption from the obligation to appear or to give his services,
shall be punished with imprisonment up to six months or with a fine from Sh. So. 300 to 5,000.

2. The same punishment shall apply to a person who,
(a) being summoned before the judicial authorities
(b) to perform any of the said duties,
(c) refuses to give particulars concerning himself, or to take the required oath, or to assume or perform the said duties.

3. The foregoing provisions shall apply to a person summoned to give evidence before the judicial authorities and to any other person called upon to perform judicial duties.

4. Where the offender is an expert or interpreter, the sentence shall entail interdiction from the profession or craft.

Explanation:

This article punishes the refusal to perform what are classified as "services legally due." Such services are defined by the article as acting as an interpreter, expert, or custodian of property subject to sequestration. The article also covers any person required to give evidence before a court or to perform any other judicial duties, such as serving as court clerk or stenographer. The provisions apply to all proceedings, civil, criminal, or administrative, if the other terms of the article are met.

The prosecution must show that the accused was appointed by judicial authority to one of the positions mentioned above, and that he either fraudulently obtained exemption from performing these services or, upon being summoned, refused to take the oath, perform the services, give particulars about himself, or give evidence. An example of obtaining exemption from serving by fraudulent means is to present the court with a forged medical certificate stating that a person is too sick to work as a translator for the court. To refuse to give particulars about himself means to refuse to state name, address, education, qualifications, and

other facts which bear on a person's ability to perform the services required.

Paragraph 4 provides that the punishment for an offender who is an expert or a translator shall be interdiction from the profession or craft, as well as the punishment contained in Paragraph 1. Thus, if a pharmacist who is called to testify as an expert on drugs refuses to give evidence, he is subject to being barred from practicing his profession of pharmacy if convicted under this article.

Example:

D is a foreign doctor living and practicing in Mogadishu. B is accused of having killed C, shooting him from his window while C was standing in the doorway of his own home. It is B's defense that it was impossible for a bullet fired from his window to have traveled to C's door and struck the victim at the angle at which the bullet entered C's body. D has performed an autopsy and is called by the prosecution to testify at the trial that it was medically possible for the bullet to have come from B's window and hit C. The trial has aroused much interest in Mogadishu, and public opinion favors B. D is afraid that if he testifies against B, people will blame him if B is convicted, and will not come to his office as patients. Thus, he will lose business. Therefore, when he is called to testify in court, he appears but refuses to give evidence. The prosecution charges D with violating Article 285 of the Code.

D is guilty as charged. He has been summoned by the judge to testify in court as an expert and is thus within Paragraph 3 of the article. He has refused to give evidence, and such refusal was willful. The judge finds D guilty as charged, and sentences him to a fine of 2,000 shillings. (Note that the punishment under Paragraph 1 is either a fine or imprisonment.) However, under Paragraph 4, the judge must order that D be interdicted from practicing his profession as a doctor, because he has been convicted for failing to testify as an expert. According to Article 103, such interdiction shall be from one month to five years, the period of interdiction to be determined by the judge (see explanation under Article 103).

Article 286 Simulation of Offense

Whoever,
(a) by a complaint,
(b) even though anonymous or under a false name,
(c) addressed to the judicial authorities,
(d) or to other authorities whose duty is to notify the former authorities,
(e) falsely alleges that an offense has been committed, or

(f) simulates the traces of an offense in such a manner that criminal proceedings may be instituted to ascertain it,

shall be punished with imprisonment from one to three years.

Explanation:

This article must be carefully distinguished from the provisions of the following article. The purpose of this article is to punish people for falsely claiming that offenses have been committed, requiring the judicial authorities and the police to become involved in useless and time-consuming work for no reason. Thus, Article 286 punishes any person who "falsely alleges that an offense has been committed," or fakes evidence of an offense, so that criminal proceedings may be initiated. The complaint must be addressed to the judicial authorities or the police. If no complaint is made, or if it is not addressed to the proper authorities, then the person has not committed a crime under this article, because he has not caused the judicial authorities or the police to engage in useless, time-consuming investigations and procedures.

Example:

X, Y, and Z are three students attending a boarding school. They decide to play a joke on the police just for the fun of it. They find an abandoned *agal* site outside of town and kill a chicken there. Then they smear chicken blood on stones and pieces of wood. They dig a hole in the ground the shape of a human body and put some old goat bones and clothes in it. X then sends an unsigned letter to the police station, stating that he saw a murder committed at this old *agal*, and that the murderers buried the body nearby and then left. The police go to the scene of the alleged crime, dig up the bones and the clothes, and collect the rocks and wood smeared with blood. Further investigation reveals that the bones are those of a goat, that the blood is not human, and that no crime has been committed. X, Y, and Z boast about how they made the police go out to the *agal* and conduct this false investigation. They are arrested and charged with violating Article 286.

They are guilty as charged. They have sent a complaint, even though it was unsigned, to the police—that is, an authority which must notify the judicial authorities if a crime has been committed. They have made up evidence and falsely alleged in the letter that an offense—murder—had been committed. It is enough that they have falsely made this allegation. But since they have also simulated the traces of the murder, the prosecution does not have to show that criminal proceedings were actually instituted as a result, but only that they may have been.

Article 287 False Accusation

1. Whoever,
(a) by a complaint,
(b) even though anonymous or under a false name,
(c) addressed to the judicial authorities,
(d) or to other authorities whose duty is to notify the former authorities,
(e) charges with the commission of an offense
(f) a person whom he knows to be innocent,
(g) or simulates to that person's prejudice the traces of an offense,
shall be punished with imprisonment from two to six years.

2. The punishment shall be increased where
(a) a person is charged with the commission of an offense
(b) for which the law prescribes the punishment of imprisonment for more than ten years as a maximum, or a more serious punishment.

3. The punishment shall be imprisonment from four to twelve years where the false accusation results in a sentence of imprisonment exceeding five years; from six to [twenty] years where it results in a sentence of imprisonment for life; and imprisonment for life where it results in a death sentence.

Explanation:

The major difference between this article and the preceding one is that to commit a false accusation the offender must allege that a specific person has committed an offense when he knows that person to be innocent. To violate Article 286, the offender merely has to allege falsely that an offense has been committed, without naming a specific person or, for that matter, any person. Thus, the two key elements for making out the crime of false accusation are:

(1) that the offender has charged a specific person with the commission of an offense, and
(2) that at the time of making the charge he knew the person to be innocent.

In addition, several of the conditions present in Article 286 must also be met. The offender must make the charge by a complaint, but the complaint can be anonymous or signed with a false name. The word "complaint" does not mean a formal, official complaint within the sense of the Criminal Procedure Code. A letter to CID alleging that a certain person has committed a crime would be a "complaint" for the purposes of this article. The complaint must be addressed to the judicial authorities or to authorities which must report the complaint to the judicial authorities, such as the police force.

Paragraph 2 provides for an increased punishment where the crime the person is alleged to have committed is serious. Thus, if the offender has falsely accused another person of murder, he is subject to an increased punishment under Paragraph 2 for accusing someone of having committed a crime which carries a sentence of more than ten years. Note that the sentence with regard to the alleged offense—in this case, murder—does not have to have been imposed, nor does there even have to have been a trial. In fact, Paragraph 2 does not apply where the alleged offender has been convicted. It is enough if the offender has charged another with the offense.

Paragraph 3 deals with the situation where the person alleged to have committed the offense is wrongly convicted and this error is discovered later. If he has been convicted and sentenced to imprisonment for a period of five years or more, the person who made the false accusation is subject to imprisonment for four to twelve years. If the wrongly accused person has been sentenced to imprisonment for life, the person who made the false accusation is subject to imprisonment from six to twenty years. (The Italian text of this article of the Somali Penal Code provides for imprisonment from six to twenty years, while in the English version the sentence is given as six to twelve years. The English text is obviously incorrect, as the punishment for the accused under this article would be the same whether his false accusation resulted in a sentence of ten years or of life imprisonment for the person wrongly accused. Falsely accusing someone so that he gets a sentence of life imprisonment is clearly more serious and merits a heavier punishment.) And if the person who has been falsely accused is sentenced to death, the offender who made the false accusation shall be punished with imprisonment for life. The death sentence does not have to have been carried out. It is enough if the person has been wrongly convicted and sentenced to death.

Example:

X is a Somali citizen. The Darawishta have recently had a fight with a large band of arms smugglers, and two of the Darawishta were wounded. X knows that the police are intensively searching for members of this smuggling gang. X, who has always disliked Z, decides to inform the police that Z is the leader of the smuggling group. X buys an old rifle of the type the smugglers are known to have brought into the country. He sneaks to Z's house one night and buries the rifle wrapped in cloth in Z's yard. X then writes an unsigned letter to the police, informing them that Z is the leader of the smuggling group and that he has one of the rifles that was smuggled buried in his yard. The police surround Z's house one night, and three of them rush in, seize Z, and drag him roughly outside. They dig up the rifle and take him to the police station. Z does not

confess, but the police charge him with smuggling, illegal possession of a rifle, and causing grievous hurt to a policeman. After further investigation, Z convinces the police of his innocence. He is released and the charges against him are dropped. Z requests the police to find the person who accused him in the unsigned letter, and the police eventually arrest X for falsely accusing Z.

X is guilty as charged. He has filed a complaint with the police. He has charged Z with committing an offense, knowing such charge to be false and Z to be innocent. He has simulated evidence of an offense by planting the rifle in Z's yard. He has committed the offense with an aggravating circumstance by causing Z to be charged with an offense for which the maximum punishment is more than ten years in prison—the offense of causing very grievous hurt to a policeman, under Article 440(3). According to Article 118, the punishment for the aggravating circumstance is an increase in the penalty up to one-third. Therefore, if the judge sentences X to six years in prison, he can increase the punishment up to two years for a total punishment of eight years.

Article 288 False Self-Accusation

Whoever,

(a) by means of a statement,
(b) even though made by an anonymous communication or under a false name,
(c) to any of the authorities mentioned in the preceding article, or
(d) by means of a confession before the judicial authorities,
(e) accuses himself of an offense
(f) which he knows he has not committed, or
(g) of an offense committed by some other person,

shall be punished with imprisonment from one to three years.

Explanation:

False self-accusation is the same as false accusation, except that the person accused is the same person who makes the accusation. False self-accusation can be committed by any communication, including a confession before any judicial authority, not limited to a complaint to the judicial authorities or authorities who must report the offense to the judiciary. The person accusing himself must know that he did not commit the offense or that another person did.

Example:

X and Y are close friends. X kills Z as the result of a fight over a girl, and comes to Y's house to avoid being caught by the police. X wants to

flee across the border but needs time to escape. Y volunteers to confess that he committed the crime, so that the police will stop looking for X. Then, when X is safely across the border, the police will discover that Y did not really commit the crime and release him. Y goes to the police station and tells the officer that he killed Z as a result of a fight over a girl. He is arrested and questioned. In the meantime, X leaves town and crosses the border. When it becomes known that Y has confessed to killing Z, several people come to the police station and state that Y could not have done it, because he was with them in a tea shop at the time the crime was committed. The charge against Y for murder is dropped, but he is then charged with false self-accusation.

Y is guilty as charged. He has stated to the police that he killed Z, thus accusing himself of a crime. He knows it to be false and even knows it was X who did it. He is therefore subject to imprisonment from one to three years.

Article 289 Simulation or False Accusation for an Act Constituting a Contravention

The punishment prescribed in the preceding articles shall be reduced where the simulation or the false accusation relates to an act deemed by the law to be a contravention.

Explanation:

Articles 286, 287, and 288 apply to offenses—that is, both crimes and contraventions. Article 289 merely provides that if the crime of SIMULATION OF OFFENSE, FALSE ACCUSATION, or FALSE SELF-ACCUSATION has been committed, but the person has simulated or falsely accused someone or himself of a contravention instead of a crime, then the punishment specified in the relevant article shall be reduced. Since no amount of reduction is indicated, the reduction shall be up to one-third, according to Article 119(c).

Example:

In violation of Article 287, X falsely accuses Y of CONDUCTING GAMES OF CHANCE, a contravention under Article 553. The penalty for false accusation is imprisonment from two to six years. Because X has charged Y with committing a contravention, the sentence imposed by the judge may be reduced up to one-third. Note that according to this article, the judge must reduce the sentence, because a contravention is involved. He has discretion to determine by how much to reduce it.

Article 290 Perjury by a Party to a Suit

1. Whoever,
(a) being a party to a civil suit,
(b) swears what is false
shall be punished with imprisonment from six months to three years.

2. In the case of an oath administered on the motion of the Court, the offender shall not be punishable if he retracts the false statement before final judgment is passed on the matter at issue.

3. Conviction shall entail interdiction from public offices.

Explanation:

This article applies only to parties in a civil suit. It does not apply to witnesses who are not parties, and it does not apply to criminal cases. The article punishes those parties who falsely swear that what they have stated is true. Logically, the party must knowingly falsely swear to something.

Paragraph 2 provides an exception to the first paragraph. If the oath has been administered to the party at the court's desire, then the party shall not be liable for falsely swearing if, before final judgment is passed on the matter in dispute, he retracts the false statement.

Conviction, according to Paragraph 3, also carries as a punishment interdiction from public office. In this case, it would be temporary interdiction, according to Article 102.

Example:

Q and B are two merchants. Q has sold B forty sacks of rice. B has not paid. Q sues B in civil court for the price of the forty sacks. B swears that he has already paid Q, but that Q for some reason didn't want to write down the fact that he had been paid and there was therefore no written record of the payment. The court finds that Q was not paid, and orders B to pay the money owed. The court also informs the police of B's false testimony. B is charged with violating Article 290.

B is guilty as charged. He is a party to a civil suit. He falsely swore that he had already paid Q when he knew this to be untrue. He is liable to imprisonment from six months to three years, accompanied by temporary interdiction from public office.

Article 291 False Evidence

Whoever,
(a) giving evidence as witness

(b) before the judicial authorities,
(c) affirms what is false or denies what is true,
(d) or conceals, wholly or in part,
(e) what he knows concerning the facts regarding which he is being questioned,
shall be punished with imprisonment from six months to three years.

Explanation:

Article 291, unlike the previous article, applies to any person, whether a witness or a party, in criminal, civil, and administrative hearings. The offense is committed when the accused has made a false statement by affirming something which is false, by denying something which is true, or by concealing facts concerning the subject he is being questioned on. For purposes of this article, the offense occurs the moment the accused makes such a false statement, and even if the case is later reversed on appeal, he is still liable for punishment under this article.

Example:

X is arrested and charged with murder. Y, a close friend of his, goes to X's lawyer and offers to testify that he was with X at a tea shop at the time of the crime, and therefore X couldn't be guilty. In court, Y makes this statement, knowing it to be false. X is convicted on the basis of other evidence. Y is then charged with giving false evidence, by affirming that X was with him at the time the crime was committed.

Y is guilty as charged under Article 291. He was a witness in a criminal case. He gave false statements in court on the matter he was being questioned on—whether X was with him at a certain time.

Article 292 False Opinion of Experts or False Interpretation

1. An expert or interpreter who,
(a) having been appointed by the judicial authorities,
(b) gives false opinion or false interpretations,
(c) or affirms facts which are not in conformity with the truth,
shall be subjected to the punishment prescribed in the preceding article.
2. Conviction shall entail, in addition to interdiction from public offices, interdiction from the profession or craft.

Explanation:

Frequently, the courts appoint experts or interpreters to assist in the trial. This article is designed to ensure that the opinions or interpreting by such persons will be accurate. The article applies only to experts

or interpreters appointed by the judicial authorities. It does not, for example, cover an expert witness called by the defense. The phrase "not in conformity with the truth" means not only clear and outright false opinions or false interpretations but any kind of misstatement or error intended to hide the truth. The offense can be committed only willfully and knowingly.

Example:

X is on trial for possessing and dealing in contraband cigarettes. The judge speaks Somali and writes Italian. The prosecutor and the defense attorney both speak Somali and write English. The judge therefore appoints Y as official interpreter, to assist in recording the proceedings from Italian to English and translating the papers filed in the case. In translating from Italian to English, Y deliberately changes some of the testimony so that it appears that X is not guilty. The lower court convicts X, and X appeals. The Court of Appeal, using the English record, acquits X, and the case is appealed by the state to the Supreme Court. At that level, the difference between the Italian and English versions of the court record is noticed. The police conduct an investigation, and discover that Y was paid by X to falsify the record. Y is arrested and charged with violating Article 292.

Y is guilty as charged. He has been appointed by the judge as interpreter. He has knowingly given false interpretation not in conformity with the actual testimony given. He is therefore subject to imprisonment from six months to three years, along with the accessory penalties of interdiction from public office, according to Article 101, for a period from one to five years. If Y was a professional interpreter—that is, if he practiced interpreting as a profession—he would also be subject to interdiction from this work, according to Article 103.

Article 293 Fraud in Proceedings

1. Whoever,
(a) in the course of any civil or administrative proceedings,
(b) for the purpose of misleading the judge,
(c) fraudulently alters the condition of
(d) any place, thing, or person,
shall be punished, where the act does not constitute an offense under any specific provision of law, with imprisonment from six months to three years.
2. The same provision shall apply where the act is committed in the course of penal proceedings or prior to them; in such an event, however, liability to punishment shall be excluded in the case of an offense for

which proceedings may only be taken on complaint, and such a complaint has not been submitted.

Explanation:

The prosecution must show that the purpose of the accused in altering the facts is to mislead the judge. Thus, the article is designed to protect the judge's need to discover the truth in the proceedings before him. The article applies to civil, administrative, and penal proceedings, with minor differences between penal proceedings, on the one hand, and civil and administrative proceedings, on the other.

With regard to civil and administrative proceedings, the fraudulent alteration must take place during the course of the proceeding. With penal proceedings, according to Paragraph 2, it can take place either prior to or in the course of such proceedings. Thus, if a person goes out to the scene of a murder before criminal proceedings have begun and builds a wall in front of the place from which the accused was supposed to have shot the victim, for the purpose of misleading the judge into believing that the wall was there all the time and therefore the accused could not have committed the crime, he is guilty, under Paragraph 2, of fraudulent alteration of place. But if a person alters the scene before a civil proceeding has begun, he is not guilty under this article, because Paragraph 1 does not apply to alterations prior to the proceedings.

In both civil and administrative as well as criminal proceedings, if the act of alteration constitutes a specific offense under another article or provision of law, then Article 293 does not apply. For example, if a person alters an official tax register in order to mislead the judge, this is not an offense under this article but is within the terms of Article 374.

Finally, with regard to fraudulent alterations in criminal proceedings, if the injured party has not filed a complaint, in those cases where such complaint is necessary, the act of alteration shall not be punishable.

Examples:

1. X defames Y by sending a letter to the Minister, the director-general, and the director of Y's Ministry. X keeps a copy of the letter for himself. X's friends advise him that Y will file a complaint and have X prosecuted for Defamation, under Article 452. X decides to protect himself against such a suit, and he alters the copy of the letter he has in his possession so that it is not defamatory. X plans to present this letter in court and claim that he never sent the letters in the possession of the Minister, the director-general, and the director. Y never files a complaint against X for defamation.

X is not guilty of fraudulent alteration under Article 293, although he altered the letter, intending to mislead the judge, and the alteration occurred prior to the initiation of criminal proceedings. For a charge of defamation to be initiated, the person defamed must file a complaint. Since Y did not do so, X cannot be prosecuted for altering the letter.

2. Z and B are businessmen. Z sells B forty bags of rice. B pays Z, and Z writes "Paid" on the bill in B's presence. Then, one month later, Z sues B in court for the price of the rice. B claims that he paid and that Z wrote "Paid" on the bill, and asks the court to require Z to produce the bill. Z is ordered to produce the bill in court the next day, but he alters the bill and writes "Not" in front of the word "Paid." The judge, on the basis of other testimony, finds that B has already paid, and dismisses Z's civil suit. The police are informed of the facts of the case, and Z is charged with violating Article 293.

Z is guilty as charged. He altered the bill in order to mislead the judge into thinking that B had not paid the amount owed. He made the alteration in the course of civil proceedings, and altering a bill is not an offense under any other specific provision of law.

Article 294 Aggravating Circumstances

In the cases referred to in the three preceding articles, the punishment shall be:

- **(a) imprisonment from one to five years where the act results in a sentence of imprisonment not exceeding five years;**
- **(b) imprisonment from three to twelve years, where the act results in a sentence of imprisonment exceeding five years; and**
- **(c) imprisonment from six to twelve years, where the act results in a sentence of imprisonment for life.**
- **(d) Where the act results in a death sentence, the punishment shall be imprisonment for life.**

Explanation:

This article simply establishes the punishments where, as the result of False Evidence (Article 291), False Opinion of Experts or False Interpretation (Article 292), or Fraud in Proceedings (Article 293), another person is sentenced to imprisonment or death.

Example:

X is a witness to a robbery. He falsely and willfully identifies Y as one of the participants in the crime in order to get Y imprisoned. At the trial, X testifies that he saw Y commit the robbery. Y is convicted and sen-

tenced to seven years in prison under Article 484. Before Y begins serving his sentence, it is discovered that X gave false evidence within the meaning of Article 291. X is tried and convicted. His punishment is determined by Article 294, because he has committed the offense of giving FALSE EVIDENCE with the aggravating circumstance of causing Y to be sentenced to seven years.

According to Article 294, since Y was sentenced to more than five years, X can be sentenced to imprisonment from three to twelve years.

Article 295 Retraction

1. In the cases referred to in Articles 291 and 292, the offender shall not be punishable if,

(a) in the course of penal proceedings

(b) in which he performed the said duties,

(c) he retracts what is false and discloses what is true

(d) before the preliminary inquiry is closed with a decision not to proceed with the trial, or

(e) before the hearing is closed or adjourned in consequence of the false statements.

2. Where

(a) the false statement has been made in any civil action,

(b) the offender shall not be punishable if

(c) he retracts what is false and discloses what is true

(d) before final judgment is passed.

Explanation:

Retraction is a cause for the exclusion of punishment, not the extinction of the offense itself (see Articles 143–57).

Paragraph 1 deals with penal proceedings. It applies only to FALSE EVIDENCE (Article 291) and FALSE OPINION OF EXPERTS OR FALSE INTERPRETATION (Article 292). The offender must retract the false evidence, false opinion, or false interpretation that he has made and reveal what is the truth, so far as he is able. The retraction must occur before the preliminary inquiry is closed by a decision not to proceed with the trial as a consequence of the false statements made, or before the hearing itself is adjourned or closed as a result of such statements. Any retraction made after these times is not a reason for extinguishing punishment.

Paragraph 2 applies to civil suits. In civil cases, the offender may retract the false statement at any time up to the final judgment.

Example:

Assuming the facts of the preceding example, X decides during the hearing to retract his false evidence against Y, because he doesn't dislike

Y so much that he wants to see him sent to prison for several years. Thus, before the hearing is closed, X states in court that he really didn't see Y commit the robbery, and that he couldn't identify the person he did see because it was too dark.

X is not punishable for giving false evidence. He has retracted the false statements he made and told the truth about what he had seen. He has made the retraction before the actual hearing was closed, and Y has not been sentenced as a result of X's testimony.

Article 296 Subornation

1. Whoever

(a) offers or promises money or other benefit

(b) to a witness, expert, or interpreter,

(c) to induce him to give false evidence, opinion, or interpretation,

shall be liable, where

(d) the offer or promise is not accepted,

to the punishment prescribed in Articles 291 and 292, reduced by one-half to two-thirds.

2. The same provision shall apply where

(a) the offer or promise is accepted,

(b) but the false statement is not made.

3. Conviction shall entail interdiction from public offices.

Explanation:

Subornation is the paying or bribing of persons to give false statements. The article is not limited to one particular kind of hearing, but applies to administrative, civil, and criminal proceedings. The offender must promise money or some other benefit to a witness, expert, or interpreter. The prosecution must prove that the purpose of such promise or payment was to get the witness, expert, or interpreter to make false statements. Paragraph 1 applies only where the offer or promise has *not* been accepted.

Paragraph 2 covers the situation where the offer of money has been accepted, but the person accepting the money does not make the false statement. The failure to make the false statement can be due to many things. If the person tells the police, or decides that it would be wrong to testify falsely, he is covered by Paragraph 2 of this article.

This leaves the situation where the person accepts the money *and* gives false testimony. The person making the false statement is punishable under either Article 291 or 292. The person suborning or paying the money is not guilty under Article 296, since there is no provision in this article for cases in which the false testimony is actually given. However,

the person paying the money is guilty under Article 71 as a participant in the offense of FALSE EVIDENCE (Article 291) FALSE OPINION OR INTERPRETATION (Article 292). He participated in the offense of false evidence by paying a person to testify falsely.

Example:

X is arrested for committing a robbery. Y is a witness to the crime and is going to testify in court. Z, a member of X's tribe, comes to Y and offers him 500 shillings if he will testify that he couldn't identify X as the person who committed the crime. Y accepts the money and reports the bribe to the police. Z is arrested and charged with SUBORNATION, in violation of Article 296.

Z is guilty as charged. He has offered money to Y, a witness in a criminal proceeding, so that Y will give false evidence concerning X. Since Y accepted the money but did not give the false testimony, Z is guilty under Paragraph 2. The punishment for FALSE EVIDENCE under Article 291 is imprisonment from six months to three years. The judge determines that he would have sentenced Z to two years if he had given the false testimony himself, and he then sets the punishment at one year in prison—the sentence under Article 291 reduced by one-half, according to Article 296.

Article 297 Assistance to a Suspected Person

1. Whoever,
(a) after the commission of a crime in respect of which the law prescribes the punishment of death, imprisonment for life, or imprisonment, and
(b) not being himself a participant thereto,
(c) assists anyone
(d) to evade the investigation of the authorities, or
(e) to escape searches made by them,
shall be punished with imprisonment up to four years.

In the case of crimes for which the law prescribes a punishment other than any of the above, or in the case of contraventions, the punishment shall be a fine up to Sh. So. 5,000.

2. The provisions of this article shall apply also when the person assisted is not chargeable or when he did not commit the crime.

Explanation:

This article applies to assistance to persons by those not connected with the actual commission of the crime. The offender must aid the person in either evading the investigation of the police or escaping

searches conducted by them. The penalty for aiding anyone who has committed a crime punishable with death, life imprisonment, or imprisonment is imprisonment for the person who performed the act of assistance. If the person assisted has committed a crime punishable solely by a fine or other punishment, or has committed a contravention, the person who performed the act of assistance is punishable by fine.

Since the rationale for punishing people under this article is to discourage members of the public from providing assistance to persons suspected of having committed offenses, it does not matter whether the suspect has actually committed an offense or not. The intent of the person providing the assistance is the same, since he thinks he is helping someone to avoid being arrested or caught.

Example:

X is a member of a smuggling gang which is running rifles and ammunition from the coast into the interior. The group is seen by the Darawishta. After a short gun battle, some of the smugglers escape, although most of them are caught. X is one of those who were wounded, but he escaped into the bush. He meets Y, who says he will help X escape from Darawishta patrols. Y hides X in out-of-the-way places, gives him food and water, and helps X to make his way almost to the border before he is caught by the police. Y is also arrested, for violating Article 297.

Y is guilty as charged. He has assisted X after the commission of a crime for which the punishment is imprisonment. He has helped X to evade search and arrest, and he has done so knowing that X is wanted by the police. Y is punishable with imprisonment up to four years.

Note that if X is later found not guilty or is not even charged with an offense, Y is still guilty under Article 297, and his conviction stands.

Article 298 Assistance Relating to the Object of a Crime

1. Whoever,
(a) not being himself a participant to an offense,
(b) and not being within the case referred to in Article 504,
(c) assists anyone
(d) to secure the proceeds, profit, or price of an offense,
shall be punished with imprisonment up to five years, in the case of a crime; and with a fine from Sh. So. 500 to 10,000 in the case of a contravention.

2. The provisions of the last paragraph of the preceding article shall apply to this article also.

Explanation:

The preceding article dealt with assisting a person to evade or escape the authorities. Article 298 involves assistance in obtaining the profits of an offense. It applies only to persons who have not participated in the commission of the offense itself. It covers the profits of both crimes and contraventions. The major condition that must be met is that the act of the accused is not within the provisions of Article 504. Briefly, that article pertains to receiving stolen property, known to be stolen. Thus, a store owner in Mogadishu who buys fifteen radios from a man, knowing that the man is a thief and that the radios have been stolen from private homes, is within the provisions of Article 504.

Article 298, on the other hand, applies to actions by the accused which assist the person who committed the offense to obtain the proceeds or profits from the offense. Such actions are more positive than receiving—for example, helping the person who committed the crime to sell the stolen property, or to transport it from one part of the country to another for sale.

Even if the person who committed the offense is not punishable or chargeable, the person who assisted him to obtain the proceeds or profits is guilty under Article 298, as was the case for Article 297.

Example:

X smuggles two thousand cartons of contraband cigarettes into Somalia. X was going to hide the cigarettes at Y's store, but Y has been arrested by the police for another crime, and is in prison. X then approaches Z, and asks him to help in hiding the cigarettes. Z hides them in a small locked room attached to his house until X is ready to transport them. X takes the cigarettes from Z, loads them on his truck, and drives toward another town. He is stopped by a police patrol and arrested. In the course of the investigation, the police discover that X hid the cigarettes at Z's house until he thought it was safe to transport them. Z is arrested and charged under Article 298.

Z is guilty as charged. He has assisted X in obtaining the profits or proceeds of the offense of smuggling the cigarettes into Somalia. X could not make money from his crime of smuggling unless he sold them at a profit. To do so, X had to hide the cigarettes somewhere until it was safe to transport them. Z, by helping X hide the cigarettes, assisted X to obtain the profits from the crime of smuggling.

Note that if X could not be charged because he was illegally arrested, Z could still be convicted under Article 298.

***Article 299** Unfaithful Advocates or Technical Advisers*

1. An advocate or technical adviser who,
(a) being not faithful to his professional duties,
(b) causes injury
(c) to the interests of the party defended, assisted, or represented by him
(d) before judicial authorities,
shall be punished with imprisonment from one to three years and with a fine of not less than Sh. So. 5,000.

2. The punishment shall be increased:
(a) where the offender has committed the act in collusion with the opposing party;
(b) where the act was committed to the prejudice of an accused person.

3. A period of imprisonment from three to ten years and a fine of not less than Sh. So. 10,000 shall be imposed if the act is committed to the prejudice of a person accused of a crime for which the law prescribes the death penalty or imprisonment for a term of more than five years.

Explanation:

This article applies only to advocates or technical advisers. A technical adviser is a person such as an engineer, accountant, ballistics expert, or doctor who is consulted for purposes of a judicial proceeding. The article punishes these persons if, as a result of being unfaithful to their professional duties, they harm the interests of the party they are representing, in any civil, criminal, or administrative proceeding. The phrase "unfaithful to their professional duties" refers to deliberately representing their clients poorly, accepting money from another person for giving the client wrong or bad advice, not attending court sessions at all, and performing other acts which are harmful to the client's interests.

Paragraph 2 makes it an aggravating circumstance if the advocate or technical consultant is unfaithful to his professional duties by:

(a) working with the opposing party in the proceedings, or

(b) harming the interests of an accused person.

Paragraph 3 makes it a specific aggravating circumstance, punishable by a defined period of imprisonment, if the unfaithful act involves a person accused of a crime for which the law imposes a penalty of more than five years in prison or the death penalty. Thus, for example, if a lawyer for a defendant in a murder trial takes money from the family of the victim to make sure that the accused is convicted, the lawyer is subject to imprisonment from three to ten years and a fine of not less than 10,000 shillings under Paragraph 3.

Example:

X is suing Y for 100,000 shillings in a civil suit. X's lawyer, Z, feels that X is not paying him enough money for his services. Z therefore offers to ensure that Y will win the case if Y will pay him an extra 5,000 shillings. Y agrees. As a result of Z's deliberately poor representation, X loses the case. Y boasts about winning because he paid Z, and after an investigation the police arrest Z and charge him under Article 299.

Z is guilty as charged. He was unfaithful to his professional duties in representing X. He accepted money from Y and made sure that Y won the case. Moreover, Z is subject to increased punishment under Paragraph 2 for cooperating with Y, the opposing party.

Article 300 Other Acts of Betrayal of Trust by Advocates and Technical Advisers

1. An advocate or technical adviser who,
(a) in proceedings before the judicial authorities,
(b) places his professional services or his advice
(c) at the disposal of the opposing party, even [through] a third party,
shall be punished, where the act does not constitute a more serious offense, with imprisonment from six months to three years and with a fine of not less than Sh. So. 1,000.

2. The punishment shall be imprisonment up to one year and a fine from Sh. So. 500 to 5,000, where
(a) the advocate or the adviser,
(b) after having defended, assisted, or represented a party,
(c) undertakes,
(d) without the consent of the latter and in the same proceedings,
(e) the defense of or the function of adviser to the opposing party.

Explanation:

This article is similar to the preceding one, except that it covers situations not included in Article 299. Article 300 punishes an advocate or technical adviser for providing advice or counsel to both parties, or for quitting the party he originally represented to work for his opponent in the same proceedings. The only time an advocate or adviser can do that is when his original client gives him permission to do so.

The example under the preceding article does not come within Article 300, because Z did not offer his advice or counsel to Y. He merely agreed to throw the case if Y paid him 5,000 shillings. To come within this article, Z would have had to offer to advise Y how to win the case at the same time he was representing X, or to abandon working for X and represent Y in the same civil suit.

Note that the punishment is both fine and imprisonment.

Article 301 Advocate Pretending to Have Influence

An advocate who,
(a) pretending to have influence
(b) with the judge or with the Office of the Attorney General, or
(c) with a witness, expert, or interpreter,
(d) receives or causes money or any other benefit to be given or promised to himself or to a third party
(e) by his client,
(f) on the pretext that he has to procure the favor of the judge or of the Office of the Attorney General or of the expert or interpreter,
(g) or that he has to remunerate them,
shall be punished with imprisonment from two to eight years and with a fine of not less than Sh. So. 10,000.

Explanation:

This article applies only to advocates. The advocate must claim to have influence with a judge, members of the Office of the Attorney General, witnesses, experts, or interpreters. Because of his claim to have such influence, his client must pay him or promise to pay him or a third party money or other benefit which the advocate is supposed to pass on to the judge or other person he claims he has influence with. If the lawyer actually does pay the judge, he is guilty of an offense under Article 248; if he pays the witness or expert, he is guilty under Article 296. Article 301 applies only in those cases where the advocate pretends that he must pay someone but keeps the money for himself.

Example:

X is the lawyer for Y in a civil suit. X tells Y that there is no chance of winning the case unless X approaches the judge and offers to pay him at least 1,000 shillings. Y agrees to pay that amount, and gives X the money, instructing him to give it to the judge so that Y will win the case. X keeps the money for himself. Y loses the case because the judge fairly decides in his opponent's favor. However, Y complains that he paid the judge 1,000 shillings to decide in his favor, and that the judge kept the money and decided against him. The police investigate the matter, and discover that X, the lawyer, took 1,000 shillings from Y under a pretext, and kept it for himself. X is arrested and charged with violating Article 301.

X is guilty as charged. He received money from Y, his client, pretending that it was necessary to pay the judge, and kept the money. He is subject to both imprisonment and a fine as punishment.

Article 302 Interdiction from Public Offices

Conviction in respect of the crimes referred to in Article 299, Paragraph 1 of Article 300, and Article 301, shall entail interdiction from public offices.

Explanation:

This article merely specifies that persons convicted for violating Article 299, Unfaithful Advocates or Technical Advisers, Article 300(1), placing professional services or advice at the disposal of the opposing party, and Article 301, Advocate Pretending to Have Influence, shall be punished with interdiction from public office. For some strange reason, Paragraph 2 of Article 300 does not entail such interdiction. Thus, if an advocate defends his client, and then in the same proceedings defends the opposing party, he is subject to the penalties prescribed in Paragraph 2, but not to interdiction from public office.

The term of interdiction is specified in Articles 101(3) and 102. Articles 299 and 300 involve a maximum sentence of three years. According to Article 102, a sentence of imprisonment for more than three years requires temporary interdiction for a period of five years. For any sentence below three years, the judge may impose the accessory penalty of temporary interdiction for one to five years. Article 301 involves a maximum sentence of eight years. According to Article 102(1), a sentence of imprisonment for more than five years requires the imposition of permanent interdiction.

Article 303 Cases Which Are Not Punishable

1. In the cases referred to in Articles 282, 283, 284, 285, 286, 291, 292, 293, and 297,

(a) a person who has committed an act,

(b) having been forced thereto

(c) by the necessity of saving himself or a near relative

(d) from a serious and unavoidable injury to liberty or honor,

shall not be punishable.

2. In the cases referred to in Articles 291 and 292, no punishment shall be imposed where the act is committed by a person who,

(a) by law, should not have been called as witness, expert, or interpreter, or

(b) should have been warned of his right to refrain from giving evidence, opinion, or interpretation.

Explanation:

The exemption from punishment, provided for by this article, applies only in certain cases and only to certain specified people. It applies in cases arising under Article 282, Omission or Delay on the Part of a Public Officer or a Person Entrusted with a Public Service to Give Information of an Offense; Article 283, Omission by a Citizen to Give Information Regarding an Offense; Article 284, Omission to Report by a Member of the Medical Profession; Article 285, Refusal of Services Legally Due; Article 286, Simulation of Offense; Article 291, False Evidence; Article 292, False Opinion of Experts or False Interpretation; Article 293, Fraud in Proceedings; and Article 297, Assistance to a Suspected Person. There is no exemption from punishment for any of the articles in this chapter. The reason behind granting exemption from punishment in these cases is that the law recognizes that persons who are not criminals may commit these offenses on behalf of close relatives for reasons of family bonds or honor. To commit such offenses for these reasons is regarded as sufficiently acceptable and worthy of merit to exempt the offenders from punishment.

However, there are limits to such exemption other than the specification of certain articles. First, the offender must have committed the act for the purpose of saving either himself or a close relative. If the act was committed on behalf of anyone else (a friend, for example), the offender must be punished according to the law. Second, the act, if committed on behalf of a near relative, must be for the purpose of saving that person from a serious and unavoidable injury to liberty or honor. This would include conviction at a trial, arrest, or searches.

Paragraph 2 provides that, in cases arising under Article 291, False Evidence, and Article 292, False Opinion of Experts or False Interpretation, no punishment shall be imposed where the person accused of committing the offense should not have been called as a witness, expert, or interpreter, or, having been called, should have been warned of his right to refrain from giving testimony, opinion, or interpretation. Thus, for example, if a police officer, called to testify, gives false names for police informants, to protect them, he cannot be prosecuted for giving false evidence in violation of Article 291. According to Article 176(a) of the Criminal Procedure Code, a police officer cannot be compelled to reveal the name of any person who has given the police information. The police officer should have been warned of his right to refrain from giving evidence; since he was not, Paragraph 2 of Article 303 of

the Penal Code provides that he cannot be punished for giving false evidence. The scope of Paragraph 2 is determined by those provisions of the Criminal Procedure Code pertaining to who may or may not be required to testify before a court.

Note that Article 303 does *not* apply to the offenses of False Accusation (Article 287), Perjury by a Party to a Suit (Article 290), and Subornation (Article 296). Thus, even if these crimes are committed by the accused on behalf of a near relative, he is still punishable.

Example:

Assume that the facts are the same as in the example under Article 282 except that X discovers that his brother, Y, has been taking money by altering the accounts of the Ministry of Public Works in Hargeisa. According to Article 282, X, as an auditor of the Magistrate of Accounts, is a public officer and should report the offense by his brother to his superiors and the police. If Y had been anyone but his brother, X would be committing an offense under Article 282 by not reporting the loss of money. But since Y is X's brother, according to Article 303 X cannot be punished.

He has committed an offense listed in the first paragraph of Article 303—failing to report. He has committed the act on behalf of a near relative—his brother. And he was forced to do so because of the necessity of saving his brother from imprisonment—a serious injury to liberty and honor.

Article 304 Definition of Near Relative

1. For the purposes of the penal law, "near relative" means: ascendants, descendants, spouses, brothers, sisters, relatives by marriage of the same degree, and uncles, aunts, nephews, and nieces.

2. However, the term "near relative" shall not include relatives by marriage where the marriage from which the relation arose has been annulled or dissolved for any reason.

Explanation:

This article defines the term "near relative" for purposes of the preceding article as well as the entire penal law. The meaning of the term is subject to much dispute. In the Italian and Western European context, "near relative" has a very clear meaning. The word "ascendants" means parents, grandparents, and any other relatives farther back if they are living. The term "descendants" means children, grandchildren, and any others farther forward in time if they are living. The definition does not include cousins.

However, under the Somali system of lineage, ascendants should include all relatives preceding the person in point of time. And certainly, given the cultural aspects of the Somali family relationship, cousins should be considered near relatives. The Supreme Court has not yet ruled on the meaning of this phrase, but any such determination should take into account the nature of Somali society. The purpose of exempting from punishment acts committed on behalf of near relatives is to give recognition to the social and blood bonds among people. Considering this broad purpose, it should apply to cousins and members of the *rer* in the Somali context, just as it would apply only to certain closer relatives in a Western European context.

Chapter II Crimes against the Authority of Judicial Decisions

Article 305 Escape

1. Whoever,
(a) being lawfully arrested or imprisoned for an offense,
(b) escapes
shall be punished with imprisonment up to six months.

2. The punishment shall be imprisonment up to eighteen months where
(a) the offender commits the act by force or threat to any person, or
(b) by breaking out;
and imprisonment from two to five years where
(c) the force or threat is committed with arms, or
(d) by more than one person acting together.

3. The foregoing provisions shall also apply to a person convicted who is permitted to work outside a penal establishment.

4. When the escaped person surrenders himself to custody before conviction, the punishment shall be reduced.

Explanation:

The offense of Escape can be committed only by those persons who have been lawfully imprisoned or arrested for an offense (meaning either a crime or contravention). The arrest or imprisonment must be lawful. Thus, if the arrest has been illegal and the person escapes before a judicial authority has passed on the legality of the arrest, the person still cannot be punished for escaping if the arrest is subsequently determined to have been illegal.

Paragraph 2 makes it an aggravating circumstance of Escape to use force or threats of force or to break out, and it is a more serious aggra-

vating circumstance if the force or threat is committed with arms or by more than one person acting together. The paragraph prescribes the increased punishments.

Paragraph 3 states that Paragraphs 1 and 2 also apply to situations where the person escapes from a place outside a penal establishment where he has been permitted to work. For example, if some prisoners are assigned to work on building schools, under proper supervision, and one of them escapes, then the terms of Paragraphs 1 and 2 apply to him even though he has not technically escaped from a penal institution.

Paragraph 4 provides that any escaped person who surrenders himself to custody prior to conviction for escape shall receive a reduced punishment. This is an extenuating circumstance for the crime of ESCAPE.

Example:

X is arrested for AFFRAY (Article 444), tried, convicted, and sentenced to three years in prison, according to Paragraph 2 of that article. He is imprisoned at the Central Prison in Mandera. After staying in prison, X decides to break out. He plans the escape with Y and Z. One night, they overpower a prison guard, tie him up, and escape. All three make directly for the border. After two days of walking, Z voluntarily surrenders to a police patrol. X and Y continue, and are caught by a police patrol near the *de facto* border. All three are tried for escaping from prison.

X, Y, and Z are guilty as charged. Since the offense was committed by more than one person acting together, all three are subject to the increased punishment contained in Paragraph 2, of imprisonment from two to five years. Z, by surrendering, is entitled to a reduction of punishment under Paragraph 4. Thus, with regard to Z, there is one aggravating circumstance and one extenuating circumstance. The judge, according to Article 123(3), decides that the two circumstances are equal, and therefore sentences Z as if no circumstances of either type had occurred. Z receives a sentence of six months under Paragraph 1, and X and Y receive sentences of three years each. These sentences are added to their periods of imprisonment for the original crimes.

Article 306 Assisting Escape

1. Whoever
(a) effects or facilitates
(b) the escape of a person lawfully arrested or imprisoned for an offense,
shall be punished with imprisonment from six months to five years.

2. Where
(a) the act is committed
(b) for the benefit of a person
(c) sentenced to death or imprisonment for life,
the punishment shall be imprisonment from three to ten years.
3. The punishment shall be increased where
(a) the offender,
(b) in order to commit the act,
(c) uses any of the means specified in Paragraph 2 of the preceding article.
4. The punishment shall be reduced where the offender is a near relative.
5. Conviction in every case shall entail interdiction from public offices.

Explanation:

This article applies to those who help persons to escape. The escaping person must be one who has been lawfully arrested or imprisoned. If the person has not been lawfully arrested, and another helps him to escape, he cannot be liable under this article. The wording of the article is broad enough to cover any type of assistance, so long as such assistance to the person is intentional.

Paragraph 2 provides that if the offender has helped a person sentenced to death or life imprisonment to escape, the punishment shall be three to ten years. Paragraph 3 provides that if the act of helping another to escape has been committed:

(a) by force or threat of force,
(b) by force or threat of force accompanied with arms, or
(c) by more than one person acting together,

then these facts shall be treated as aggravating circumstances and the punishment shall be increased.

Paragraph 4 provides that if the offender is a near relative of the person he enables to escape, this shall be treated as an extenuating circumstance. "Near relative" is defined in Article 304.

Paragraph 5 provides that the judge must order the accessory penalty of interdiction from public office if the accused has been convicted. Such interdiction may be temporary or permanent, depending upon the length of the sentence imposed.

Example:

X has been convicted of theft, and sentenced to prison. Y, a friend of his, decides to help him to escape. Y obtains a pistol and goes to the prison one night. He overpowers one of the guards, and X, according

to a prearranged plan, breaks through the fence and escapes. Y returns to his home in the town. Two days later, he is arrested for assisting in X's escape.

Y is guilty as charged. He has aided a person lawfully imprisoned, in accordance with a judicial sentence for conviction for theft, to escape. He has committed the offense with aggravating circumstances within the meaning of Paragraph 3, by using a pistol to overpower the guard. The fact that he was X's friend does not come within the definition of near relative, and thus is not an extenuating circumstance within the meaning of Paragraph 5.

Article 307 Custodian Acting with Culpa

Whoever,
(a) having by reason of his office
(b) the custody,
(c) even temporarily,
(d) of a person arrested or imprisoned for an offense,
(e) causes by culpa
(f) that person's escape
shall be punished with imprisonment up to three years or a fine from Sh. So. 1,000 to 10,000.

Explanation:

The crime defined in Article 307 can be committed only by a person who is the custodian of an arrested or imprisoned person. "Culpa" means negligence or lack of care. The article therefore punishes any custodian of a person arrested or imprisoned who, by negligence, causes or allows the prisoner to escape. The custodian must have care or custody of the prisoner by reason of his office. This means that because he is a prison guard, or a policeman, he has been entrusted with the prisoner. The punishment is either fine or imprisonment, not both; since no minimum term of imprisonment is specified, the provisions of Article 96 apply, and the minimum term is five days.

Example:

X, a policeman, is ordered to take three prisoners who have been arrested and kept in the station to the prison in town. He is given a rifle, and begins to walk down the road behind his three prisoners. Along the way, he sees a friend of his in a tea shop and stops to talk to him. During this conversation, he fails to watch the three prisoners, and one of them sneaks behind a bush and then runs back into the village. X then takes

the remaining two prisoners to the prison, and reports the loss of one prisoner to the station. After an investigation, X is charged with permitting the prisoner to escape.

X is guilty as charged. He was a custodian in charge of persons arrested. This was by reason of his office—that is, of his being a policeman. The article specifically states that such custody can be temporary, as it was in this case—merely taking the prisoners from the station to the prison. By stopping to talk to his friend and not watching the prisoners closely, X negligently permitted one of them to escape. The judge has the discretion to determine the extent of the sentence and whether to impose a fine or imprisonment.

Article 308 Willful Disobedience to Execute an Order of the Judge

1. Whoever,
(a) in order to avoid the performance of the civil obligations arising from a conviction or
(b) which are in course of investigation before a judicial authority,
(c) performs,
(d) on his own property or the property of another,
(e) simulated or fraudulent acts, or
(f) with the same object commits other fraudulent acts,
shall be punished,
(g) where he thereby disobeys an order for the execution of a judgment,
with imprisonment up to three years or fine from Sh. So. 1,000 to 10,000.
2. The same punishment shall be imposed upon a person who
(a) evades the execution of an order of a civil judge
(b) concerning the custody of any minor or any other person under disability or
(c) prescribing precautionary measures for the protection of property, possession, or credit.
3. The offender shall be punished only on the complaint of the injured party.

Explanation:

This article applies only to certain types of disobedience to a judge's orders. It does not apply to all such acts. The crime under Article 308 can be committed only if the purpose of the offender is to avoid civil obligations arising from a conviction for an offense, or to avoid probable civil obligations arising from an offense which is being investigated. This means that if a person who has been convicted of defamation and ordered to pay civil damages of 20,000 Somali shillings transfers his

money or property from Somalia to Aden or Italy, in order to avoid paying the money, he is guilty of an offense under Paragraph 1 of this article. The same would be true if he realized, while investigation of the defamation was taking place, that he would probably lose the criminal case and be ordered to pay civil damages, and therefore transferred his money and property before conviction for defamation. The prosecution must show that the transfer of property—that is, the fraudulent act—was for the purpose of avoiding such civil obligations arising out of a conviction or investigation.

Paragraph 2 in effect applies to anyone who commits acts to evade the execution of an order by a civil judge with regard to the custody of a minor or any other person under disability. If a judge's order requires that X, a child's father, have custody of the child, and Y, the child's uncle, who has custody at that time, takes the child and tries to cross the border, Y is guilty of an offense under this article. Paragraph 2 also applies to persons who try to evade a civil judge's order with regard to sequestration of property or credit. Thus, if a person tries to avoid an order of sequestration by moving the property covered by the order before it becomes effective, he is guilty of an offense under Paragraph 2.

Paragraph 3 makes this article applicable only upon the complaint of the injured party. The state cannot initiate criminal proceedings by itself.

Article 309 Non-Observance of Accessory Penalties

1. Whoever,
(a) having received a conviction
(b) which involves interdiction from public offices, or
(c) interdiction or suspension from a profession or a craft,
(d) infringes the obligations inherent in such a penalty,
shall be punished with imprisonment up to one year or with a fine from Sh. So. 500 to 10,000.

2. The same punishment shall apply to a person who infringes the obligations arising out of a provisional suspension from the exercise of public offices or of a profession or craft.

Explanation:

As we have seen, many crimes involve the accessory penalty of interdiction from public office or suspension from a profession or craft. If a person, after having been convicted and sentenced where the sentence involves such penalties continues to hold public office or receives any of the titles, honors, or privileges described in Article 101(2), or practices his profession or craft, he is then subject to the penalty under Article 309 for violating the interdiction or suspension.

Paragraph 2 states that the same penalties shall apply in the case of provisional suspension from public office, profession, or craft. Provisional suspension means that a person is suspended from his office, profession, or craft pending final determination of his guilt by a court. It is a precautionary measure designed to prevent the person from doing any harm to the public before it has been determined whether he is guilty of the offense charged. Provisional suspension from public office is regulated by the Civil Service Law (Law No. 7 of 15 March 1962), which provides that the competent Minister must suspend a person from public office when criminal proceedings have been instituted, and a warrant of arrest issued against that person (Article 23). Provisional suspension from a profession or craft is determined by administrative decision of the authority which licensed the person to practice such craft or profession.

Example:

X, a doctor living in Mogadishu, commits an abortion on a woman with her consent. This is a violation of Article 419. He is convicted and sentenced to three years in prison. According to Article 104, a person convicted of any crime involving abuse of his profession shall be subject to temporary interdiction from that profession. The period of such interdiction is from one month to five years, according to Article 103. The judge sentences X to be interdicted from practicing medicine for three years. This three-year period runs from the time X is released from prison.

Following his release, X does not practice medicine for one year. Then he secretly opens up his office again, treating only special people, and avoiding publicity. X's practice is discovered by a plainclothes policeman, and X is arrested and charged with violating Article 309.

X is guilty as charged. He has been convicted of a crime, ABORTION, and has received the accessory penalty of interdiction from the exercise of the profession of medicine. He has violated this interdiction by opening his office and practicing before the three-year period of interdiction has expired. He is therefore subject to either imprisonment for one year or a fine. The accessory penalty of interdiction would, of course, still apply.

Article 310 Facilitating Non-Observance of Punishment

1. Whoever,
(a) [not] being a participant in an offense,
(b) assists anyone
(c) to evade the execution of a punishment,
shall be punished with imprisonment from three months to five years,

in the case of conviction for a crime, and with a fine from Sh. So. 500 to 10,000 in the case of conviction for a contravention.

2. The provisions of Paragraph 4 of Article 306 shall apply to this article also.

Explanation:

This article applies only to persons who are not participants in the offense itself. Thus, if someone assists a person convicted but released on bail to escape, he is within the terms of this article. The English translation of Paragraph 1 begins:

"Whoever, being a participant in an offense . . ." instead of:

"Whoever, *not* being a participant in an offense . . ." as in the Italian version. The Italian version is obviously correct, since the paragraph does not make sense if it includes participants in the offense. They are subject to punishment under Article 71.

Article 310 deals with evading the execution of a punishment, whereas Article 306 involves escape from lawful arrest or imprisonment. Article 306, therefore, is concerned with the physical act of breaking out of prison or wherever the person is detained. Article 310 involves the situation where the person is not imprisoned but is free, although convicted. The offender under this article, then, helps the convicted person to avoid execution of judgment, which may be a fine, a sentence of imprisonment, or the application of security measures.

Paragraph 2 provides that the sentence of the person convicted under this article shall be reduced if he is a near relative of the person he assists to evade the execution of judgment.

Example:

X has been arrested and charged with theft. He is released on bail pending trial. Upon conviction in the lower court, he is then permitted to remain free on bail pending decision by the Court of Appeal. Y, who is X's brother, advises him that he will probably be sentenced to prison, since the Court of Appeal will confirm his conviction. Y offers to help X cross the *de facto* border. X agrees, and Y arranges to have his brother put on a truck heading toward Ethiopia. The Court of Appeal confirms X's conviction. The police come to arrest X, but discover that he has left. After investigation, they arrest Y for assisting him to evade the judgment of the court.

Y is guilty as charged. He was not a participant in X's theft. He assisted X to evade the punishment for commission of the theft by helping

and advising him to cross the *de facto* border before the Court of Appeal issued its decision making the lower court's judgment final.

However, Y also comes within Paragraph 2, because he is X's brother, and thus a near relative within the definition of Article 304. Therefore, the judge, in sentencing Y, must reduce his sentence from that required by Paragraph 1. The amount by which it may be reduced is contained in Article 119(c)—that is, up to one-third. Since Y assisted his brother in evading execution of a punishment with regard to a crime, he is subject to imprisonment from three months to five years, under Paragraph 1. If the judge sentences him to nine months in prison, he may order the sentence reduced by up to one-third, or by three months. Under these facts, the judge sentences Y to six months in prison.

Article 311 Facilitating Non-Observance of Measures of Detentive Security

1. Whoever
(a) effects or facilitates
(b) the escape of a person
(c) subjected to a measure of detentive security, or
(d) harbors the escaped person, or
(e) in any way assists him in evading the search of the authorities,
shall be punished with imprisonment up to two years. The provisions of Paragraph 4 of Article 306 shall apply to this article also.

2. If
(a) the escape takes place through the culpa
(b) of the person who,
(c) by reason of his office,
(d) has the custody,
(e) even temporarily,
(f) of the person subjected to the security measure,
the offender shall be punished with a fine up to Sh. So. 10,000.

Explanation:

Security measures of a detentive character are:
(a) commitment to a hospital or nursing home;
(b) commitment to a lunatic asylum; or
(c) commitment to a reformatory,
as defined in Article 172(2). Article 311 applies to those who help persons committed to the above institutions to escape, or hide such persons, or help them in any way to avoid being caught by the authorities. If the offender under this article has helped a committed person who is his near

relative, this is regarded as an extenuating circumstance, and the penalty is reduced accordingly.

Paragraph 2 provides that if the person who has custody of the committed person by reason of his office permits him to escape through his own negligence, he is subject to a fine up to 10,000 shillings.

Example:

X has been tried for murder. The court finds that he was totally insane within the meaning of Article 50, and orders that he be committed to a lunatic asylum according to the provisions of Article 176. Y, who is X's uncle, decides that he cannot let X spend his days locked up in an asylum. He plans to help X to escape, and then have him live with Y's family, where they can keep an eye on him. Y goes to the asylum to visit X. Z, the guard, negligently leaves the key to the main gate in the room with X and Y, and walks out. Y takes the key, leads X outside, unlocks the gate, and leaves. He hides X with his wife's family, but the police eventually find X and recommit him to the asylum, and arrest Y for violating Article 311.

Y is guilty of violating Article 311. He has helped X to escape from an asylum where he had been committed for detentive security. Since Y was X's uncle, and therefore a near relative within the meaning of Article 304, his punishment under Paragraph 1 must be reduced.

Z, the guard, is subject to a fine under Paragraph 2. He had custody of X because he was a guard at the asylum. He negligently facilitated X's escape by leaving the key in the room with X and Y.

Chapter III Arbitrary Protection of Private Rights

Article 312 Unauthorized Exercise of Private Rights

1. Whoever,
(a) for the purpose of exercising an alleged right
(b) in a case in which it would be possible to have recourse to a judicial authority,
(c) takes the law into his own hands
(d) and uses force against persons or property,
shall be punished with imprisonment up to one year or with a fine up to Sh. So. 4,000.

2. Whoever,
(a) for the purpose of exercising an alleged right

(b) in a case in which it would be possible to have recourse to a judicial authority,
(c) takes the law into his own hands
(d) and uses threat against persons or property,
shall be punished,
(e) on the complaint of the injured party,
with imprisonment up to six months or with a fine up to Sh. So. 2,000.

Explanation:

The basis of a legal system in any country is the use of a peaceful system of settling disputes among the citizens of that nation. This is the main reason for a court system. Article 312 therefore punishes those persons who take the law into their own hands instead of relying on the judicial system to settle their disputes. The essential element that the prosecution must show is that it would have been possible for the accused to have used the normal court procedures instead of taking the law into his own hands.

Paragraph 1 of this article applies to situations where the accused uses force against another person or against property. Paragraph 2 covers the situation where only threats of force are made. In the cases under Paragraph 2, the injured party must file a complaint to initiate criminal proceedings. No such complaint is necessary under Paragraph 1.

Example:

Z is a farmer. The water for his crops comes from a ditch running from the river through B's land. B has stopped the flow of water by building a dirt wall across the ditch and using all the water for himself. Z goes to B and asks him to tear down the wall. B refuses, and Z hits him with a stick, knocks him to the ground, and then tears down the wall. B reports the incident, and Z is charged with causing Hurt, Destruction of Property, and the Unauthorized Exercise of Private Rights. Z claims that B had no right to cut off the water.

With regard to the charge of a violation of Article 312, Z claimed that B had no right to cut off his water supply. He used force against B and destroyed B's property to enforce his claim to the water. Instead of so acting, he could have filed a complaint in a civil court and had the judge decide whether B could lawfully refuse to let the water come through Z's land. By taking the law into his own hands, even if he was entitled to the water, Z failed to use peaceful means to settle a dispute and thus is guilty under Paragraph 1 of the article.

PART IV CRIMES AGAINST RELIGIOUS FEELINGS AND REVERENCE FOR THE DEAD

Chapter I Crimes against the Religion of the State and Other Forms of Worship

Article 313 Bringing the Religion of the State into Contempt

1. Whoever
(a) publicly
(b) brings the religion of Islam into contempt
shall be punished with imprisonment up to two years.
2. Whoever
(a) publicly
(b) insults the religion of Islam
(c) by bringing into contempt persons professing it or places or objects dedicated to worship,
shall be liable to the same punishment.

Explanation:

This article punishes public acts which either bring the religion of Islam itself into contempt or insult the religion by bringing into contempt persons who believe in Islam or places dedicated to the worship of Islam. The act must be committed publicly. Private expressions of dislike or disagreement with the principles of Islam or its believers are not punishable.

Example:

P, a resident alien, is violently opposed to Islam because he believes it requires the use of force to suppress his faith. One day, while passing a mosque, he picks up some mud, throws it at the mosque, and yells, "That is what I think of Islam!" P is arrested and tried under Article 313.

P is guilty as charged. He has publicly shown his contempt for the religion of Islam by an act which insults a place dedicated to the worship of Islam, within the meaning of Paragraph 2.

Article 314 Disturbance of Religious Functions

Whoever
(a) impedes or disturbs
(b) the exercise of functions, ceremonies, or religious practices of the Islamic faith

(c) in a place intended for the purpose, or in a public place or a place open to the public,
shall be punished with imprisonment up to two years.

Explanation:

This article applies to disturbances or disruptions of Islamic functions, ceremonies, or practices. The disturbance, however, must take place in a mosque or near it, in a public place or a place open to the public. The act of disturbance must be an intentional one. If a person's car breaks down in front of a religious procession, that is not a violation within the meaning of this article, even though the religious procession was thereby disturbed.

Example:

On the anniversity of the death of Sheikh Sufi, a large religious procession begins marching toward the Sheikh's tomb in Mogadishu. X believes that the Sheikh is not worthy of such a procession. He tries to break up the procession by driving a truck through the marchers and blowing the horn to drown out the chanting. X is arrested and charged with violating Article 314.

X is guilty as charged. He has disturbed a religious ceremony of the Islamic faith. He has committed the act in a public place—a street in Mogadishu—and he has done this act willfully.

Article 315 Crimes against Forms of Worship Permitted in the State

Whoever
(a) commits any of the acts referred to in Articles 313 and 314
(b) against a religion permitted in the State
shall be punished in accordance with the provisions of the aforesaid articles.

Explanation:

Article 29 of the Constitution of the Republic provides that:

Every person shall have the right to freedom of conscience and freely to profess his own religion and to worship it subject to any limitations which may be prescribed by law for the purpose of safeguarding morals, public health, or order. However, it shall not be permissible to spread or propagandize any religion other than the religion of Islam.

Thus, the Constitution guarantees to persons of other faiths the right to worship according to their own religions (but not to teach them). Article 315 merely protects the worship and religious functions and practices of

non-Moslem religions in the state. This is not much of a problem, since outside of the Christian and Hindu communities in Mogadishu and a few other coastal cities, non-Moslem religious groups do not exist in Somalia.

Chapter II Crimes against Reverence for the Dead

Article 316 Violation of or Bringing Contempt upon Tombs or Disturbance of Funerals or Funeral Services

Whoever
(a) violates or brings into contempt
(b) a tomb, sepulchre, or sepulchral urn or objects intended for the reverance of the dead, or
(c) disturbs or prevents a funeral or a funeral service,
shall be punished with imprisonment up to two years.

Explanation:

Acts directed against the dead by destroying or mutilating a tomb or container of the ashes or body of a dead person, or interrupting or disturbing a funeral service or funeral, are punishable under this article. There is no requirement that the act be publicly committed.

Example:

X and Y, residents of Mogadishu, enter the British Armed Forces cemetery one night. They paint derogatory slogans on some of the tombstones, tear down others, and rip up plants and bushes planted near the graves. The matter is reported to the police, and after a brief investigation X and Y are arrested.

They are guilty of violating Article 316. They have brought the tombs of those buried in the cemetery into contempt by tearing down or writing on the tombstones, and in general defacing the graves and area. The fact that the act was done at night when no one was watching does not matter.

Article 317 Bringing into Contempt Dead Bodies

Whoever
(a) brings into contempt,
(b) disfigures, mutilates, or commits acts of brutality or obscenity
(c) on a dead body
shall be punished with imprisonment from one to three years.

Explanation:

This article applies to acts committed against the dead body itself, not against the grave, funeral procession, or services. If, in the preceding example, X and Y had dug up a grave, taken the body out, and cut off its head, their action would also be a violation of this article.

Note that the term of imprisonment for this offense is specified as from one to three years, whereas in Articles 313 to 316 the penalty was limited to a maximum of two years. Thus, with regard to those articles, the minimum penalty can be less than one year, and is governed by Article 96, which specifies the minimum at five days.

Article 318 Destruction, Concealment, or Removal of Dead Bodies

Whoever
(a) destroys, removes, or conceals
(b) a dead body or any part thereof
shall be punished with imprisonment up to three years.

Explanation:

This article punishes persons for the act of destroying, removing, or concealing a dead body or a part of it. It does not apply to mutilating a dead body. A person mutilates a body to show disrespect or as an act of vengeance. Article 318 is aimed against those persons who want to hide the body because it has marks on it that are evidence of a crime. Thus, the article punishes destruction or removal of a part of the body. If a person were shot in the head, the bullet wound would reveal that a crime had been committed. Therefore, if the offender also cut off the head of the victim and threw it in a river, he has committed an offense under this article.

Example:

X and Y get into a fight. X strikes Y, who falls back and hits his head on a rock and dies. X did not intend to kill Y. But now, because Y is dead and X is afraid of being caught, he takes Y's body to the river and drops it in. A few days later, the body is discovered washed ashore. After a brief investigation, X is arrested and charged with Homicide without the Intention of Causing Death, in violation of Article 441.

X is also guilty of violating Article 318. He has removed a dead body, attempting to conceal his crime of causing Y's death. His motivation does not have to be proven by the prosecution. It is enough to show that he has in fact removed the body of Y from the place where it was.

Article 319 Unlawful Use of Dead Bodies

Whoever
(a) dissects or uses a dead body, or any part thereof,
(b) in cases not authorized by law,
shall be punished with imprisonment up to six months.

Explanation:

This article applies only to the unlawful use of bodies, not to concealing or disfiguring them. The dissection or unlawful use of a dead body would most likely be committed by someone connected with the medical profession.

PART V CRIMES AGAINST PUBLIC ORDER

Article 320 Instigation to Delinquency

Whoever
(1) publicly
(2) incites another
(3) to commit one or more offenses
shall be punished, for the sole act of instigation:
(a) with imprisonment from one to five years, where the instigation has been to commit a crime;
(b) with imprisonment up to one year, or with a fine up to Sh. So. 2,000, where the instigation has been to commit a contravention.

Explanation:

This article applies to acts of urging or inciting another person to commit either a crime or a contravention. The act of urging or incitement must be public—that is, in a public place or a place open to the public, or through a public means of communication, such as a newspaper. The act of instigation by itself is punishable according to the article. This means that, regardless of whether anybody is incited by the statements made, or whether a crime or contravention is actually committed as a result of such incitement, the offender is punished for merely urging the commission of an offense.

Instigation to commit a crime is punishable solely by imprisonment. Instigation to commit a contravention is punishable by imprisonment from five days to one year, or by a fine.

Example:

X is a speaker at a political rally in Hargeisa. The meeting has been authorized by the Public Order authorities. At the meeting, X states that the leader of an opposing political group is corrupt, immoral, anti-democratic, and against the Somali people. He further states that if someone were to kill this leader, nothing would happen, because the people would support the elimination of this unworthy person. After the speech, X is arrested. Nobody has gone to kill the leader of the other party, and there are no riots or acts of violence between the two groups.

X can be charged and convicted of violating Article 320. He has publicly, at a political rally, urged members of the audience to commit the offense of murder. He is liable to imprisonment for a period of one to five years, because the offense he incited people to commit was a crime. Note that it does not matter for purposes of X's conviction that he did not effectively incite anyone to commit the crime.

Article 321 Instigation to Disobey the Laws

Whoever
(a) publicly
(b) incites another
(c) to disobey the laws relating to public order, or
(d) to stir up hatred between the social classes,
shall be punished with imprisonment from six months to five years.

Explanation:

This article is different from the preceding one in that it involves instigation to disobey existing laws, not instigation to commit an offense. Thus, urging a person to commit a murder comes under Article 320, because it involves the affirmative action of committing a crime. Disobeying a law is not an affirmative act but the negative one of not doing what the law requires you to do. Urging people not to pay their taxes would be a violation of this article.

The incitement must be public, and it must be to disobey laws relating to the public order. This does not mean that the person must urge others to disobey the Public Order Law. The term "public order" means the normal state of peace and security that the state provides for the people. Therefore, any urging of a mass refusal to pay taxes or municipal bills would come within the meaning of public order.

In addition, the article prohibits inciting people to stir up hatred between social classes. The phrase "social classes" means different eco-

nomic groups, but also includes groups of different cultural or ethnic backgrounds. It does not mean different political parties. In the Somali context, this article applies to stirring up tribal disputes.

In the English version of the Code, there is a misprint concerning the prescribed punishment. The punishment is imprisonment from six months to five years. The phrase "from three to seven years" does not belong in this article at all, and should be stricken.

Note, finally, that, as in Article 320, the person incited to disobey the law does not have to have actually done so for the accused to be punished under this article.

Example:

X is a member of a tribe. During a meeting of the *rer* for a festive occasion, he begins to recite poetry about the camels and girls another tribe has stolen, describes the great battles of the past between the two groups, and ends by asking whether the young men of the *rer* are less brave than their fathers and grandfathers. Many of the men present thereupon agree to raid the other tribe. The Regional Governor learns of their plans and is able to persuade the tribe not to do anything. An investigation is conducted into the causes of the attempted raid, and X is arrested under Article 321.

X is guilty as charged. He has publicly incited others, by his poetry, to stir up hatred between his tribe and another one. X has incited people to disobey public-order laws.

Article 322 Association for Purpose of Committing Crimes

1. Where
(a) three or more persons
(b) associate for the purpose of committing
(c) more than one crime,
(d) those who promote, constitute, or organize the association
shall be punished, for that act alone, with imprisonment from three to seven years.

2. The punishment for the sole act of participating in the association shall be imprisonment from one to five years.

3. The leaders shall be liable to the same punishment as is prescribed for the promoters.

4. Where
(a) the persons associated,
(b) being armed,
(c) roam about the countryside or public streets,
imprisonment from five to fifteen years shall be imposed.

5. The punishment shall be increased where the number of persons associating is ten or more.

Explanation:

This article punishes the act of association for the commission of crimes (not contraventions), even though none of the crimes have been committed. "Associating" means working together with common purposes or goals to achieve certain results. The prosecution must show that the purpose of associating together is to commit more than one crime. If a group forms for the specific purpose of committing only one crime, such as robbing the National Bank in Mogadishu, this is not within the terms of this article.

Paragraph 1 provides that those who organize, promote, or constitute the association shall be punished with imprisonment from three to seven years. The crime described in this paragraph is the mere act of organizing, promoting, or constituting. The prosecution does not have to prove that the association committed any crimes. "Organizing" means forming the framework of the association, delegating responsibility, appointing officers, and assigning jobs. "Promoting" means obtaining members, persuading people to join, encouraging those already in the association to remain. "Constituting" means establishing the agreement or statutes of the association.

Paragraph 2 provides that persons who merely participate in such an association shall be subject to imprisonment from one to five years.

Paragraph 3 subjects the leaders of the association to the same punishment as the promoters. In some cases, the leaders may not be the people who promoted the association, but, as leaders, they are subject to the same punishment as they would have been if they had initiated the association from the start.

Paragraph 4 states that if the persons in the association are armed and roam the street or the countryside, the punishment shall be from five to fifteen years. This would apply in the case of armed bands of *shiftas*, who are organized to rob trucks in the interior.

Paragraph 5 makes it an aggravating circumstance where the number of persons in the association is ten or more. Thus, according to Article 118, the penalty imposed can be increased up to one-third for this offense.

Example:

X and Y decide to organize a car-theft gang in Mogadishu. It is their plan to steal cars at night and bring them to a garage which X and Y will run. During the night, another group of men will take all of the parts

off the cars, and these will be sold to various auto-repair places and garages throughout the city the next day. A third group will repaint the bodies of the stolen cars, and remove any identifying marks. X and Y tell C, D, H, F, and G about their plan. At their first meeting, X and Y persuade the others to join, and describe the organization of the gang, how the profits from the stolen cars will be divided, and the functions of each man. The group agrees to the plan, and C is appointed leader of the car-stealing and parts-distribution groups. X and Y are assigned to run the garage operation and supervise the dismantling of the stolen cars. The group works very well, stealing about three cars a week for four months. Eventually, the police are able to trace all of the parts from stolen cars sold to a garage to C, who is arrested and tells everything. The police then arrest X, Y, D, H, F, and G and charge them with THEFT (Article 480), VIOLATION OF THE PRIVACY OF THE HOME (Article 470), and ASSOCIATION FOR PURPOSE OF COMMITTING CRIMES (Article 322).

At the trial, it is shown that the purpose of the gang was to commit a series of car thefts and to sell the parts and bodies for a profit. More than three people belonged to the group, and they committed more than one crime by stealing cars and wrongfully entering enclosed property to get the cars from private persons' garages. X and Y were the organizers and promoters of the group. They planned the organization, persuaded the others to join, assigned them jobs, and established the division of the profits. They are punishable with imprisonment from three to seven years, under Paragraph 1. Let us assume that the judge sentences each of them to six years in prison.

D, H, F, and G are all punishable under Paragraph 2 for the sole act of participating in the association. Let us assume that they each receive three years in prison.

C was the leader of the group. As such, under Paragraph 3, he is subject to the same punishment as X and Y under Paragraph 1. Let us assume that the judge sentences him to six years also.

Since only seven people participated in the group, the provisions of Paragraph 5 do not apply. Nor did the group roam about the streets or countryside armed.

In addition to the above punishments, the members of the group are also subject to imprisonment for the crimes of THEFT and VIOLATION OF THE PRIVACY OF THE HOME. The punishment for the offense under Article 322 would have been the same if the group had been caught before they had committed any thefts. Note that Paragraph 1 provides that the purpose of the group must be to commit *more than one crime*. Under the facts given, the acts of three car thefts a week for four months is a continuing offense within the meaning of Article 45. The thefts themselves would thus not be more than one crime, and a group formed for the purpose of committing simple theft would not be within the terms of this article. But as a practical matter, any plan to commit theft on this large a scale will necessarily involve other violations of the Penal Code. In the above example, it also involved VIOLATION OF THE PRIVACY OF THE HOME (see Article 470 and its explanation). In other cases, another article may be necessarily violated in the commission of the crimes planned, if such crimes come within the definition of a continuing offense.

Article 323 Security Measures

In the case of a conviction for the crime referred to in the preceding article, a security measure shall always be ordered.

Explanation:

The security measures in respect of persons are listed in Article 172 and explained under that article. Article 323 simply provides that in cases of conviction for ASSOCIATION FOR PURPOSE OF COMMITTING CRIMES, some security measure must be imposed. Within the limits of the Penal Code's articles dealing with such measures, the judge has discretion as to which measure to impose. Thus, for example, if H in the above example was under fourteen years of age at the time he committed the offense, the judge could order that he be committed to a reformatory or that he be subject to police surveillance. But he must order one or the other. With regard to the other offenders, they most likely would be subject only to police surveillance, which the judge, according to Article 323, must order. Note that Article 180 establishes those situations where the judge must order police surveillance. Paragraph c of that article provides that the judge must order police surveillance in any other case provided by law. Violations of Article 322, by the provisions of Article 323, are such cases.

Article 324 Devastation and Pillage

1. Whoever,
(a) other than in the cases referred to in Article 222,
(b) commits acts of devastation or pillage,
shall be punished with imprisonment from eight to fifteen years.

2. The punishment shall be increased where the act is committed in respect of arms, ammunition, or foodstuffs in places where they are kept for sale or in storage.

Explanation:

This article applies only in situations where the offense is *not* within the terms of Article 222. Article 222 deals with DEVASTATION, PILLAGE,

AND SLAUGHTER. The specific element of that offense is committing the act of pillage or devastation *for the purpose of making an attempt against the security of the state*. This means that for Article 222 the prosecution must show that the person accused wanted to endanger the security of the Somali state by such actions. But no such purpose is necessary to prove an offiense under Article 324. All that has to be shown is that the accused committed acts of devastation and pillage for any purpose other than to disturb the security of the state.

Paragraph 2 makes it an aggravating circumstance if such offense has been committed against places where arms, ammunition, or food are kept or sold. Thus, according to Article 118, the penalty can be increased up to one-third of the punishment imposed under Paragraph 1.

Article 325 Intimidation of the Public by Means of Explosive Materials

Whoever,
(a) with the sole object
(b) of causing public fear or arousing tumult or public disorder,
(c) causes the explosion of bombs, firecrackers, or other explosive machines or materials,
shall be punished, where the act does not constitute a more serious offense, with imprisonment from six months to three years.

Explanation:

This article applies if the only purpose of the act was to cause public fear, tumult, or public disorder. If the purpose is for any other reason, or for the reason mentioned above and other reasons, this article does not apply. Thus, if a person explodes firecrackers in a public street to show his son how firecrackers work, and the noise creates public fear, the action is not within the terms of this article. The prosecution must show that the *sole* purpose of exploding bombs or other explosive materials was to cause public fear, tumult, or disorder.

Note that this article applies only if the act is not a more serious offense.

Example:

Y and Z are students at a boarding school. They come to Hargeisa during school vacation and have nothing to do. A demonstration of greeting is being planned at the airport for the Minister of Agriculture, who is visiting the Northern Regions. Y and Z think it would be fun to explode firecrackers in the midst of the people at the airport to scare them and make them run. They buy some firecrackers in town, and go to the airport before the arrival of the Minister. At a given signal, both of them

start dropping firecrackers. The sudden noise of the explosions in their midst causes the crowd to scatter. A few people are knocked over by others, and most of the crowd flees. A policeman sees that Y and Z are the cause of the explosions, and arrests them. They are charged with violating Article 325 of the Code.

Y and Z are guilty as charged. The sole object of exploding the firecrackers in the crowd was to create public disorder by causing the people to panic and run.

Article 326 Intimidation of the Public

Whoever
(a) threatens
(b) to commit crimes against public safety, or acts of devastation or pillage,
(c) so as to cause public panic,
shall be punished with imprisonment up to one year.

Explanation:

The crime of INTIMIDATION OF THE PUBLIC may be committed by threatening to:
(1) commit crimes against the public safety, or
(2) commit acts of devastation or pillage.
Crimes against public safety are defined in Articles 329 to 343. A threat to commit the crime of causing a fire (CAUSING DISASTER, Article 330) would be such a crime. We have already seen what devastation and pillage mean. Both the threat to commit a crime against public safety and the threat to commit acts of devastation or pillage must be aimed at causing public panic.

Example:

X, a Somali citizen, makes several speeches against members of another tribe. X states that he has many friends who are waiting for his signal to poison the wells in the grazing areas of that tribe. In fact X has no friends ready to poison the wells, and doesn't plan to do so. His purpose in making the statement is to create fear among members of that tribe. X is arrested and charged with violating Article 326, after the news of his statement has caused widespread talk and reached the interior.

X is guilty as charged. He has threatened to poison the wells, which is a crime against public safety within the meaning of Article 335. His purpose in making the threat was to create public panic among members of the other tribe, disrupt their use of the wells, and make them afraid to

drink the water. It does not matter that X never intended to carry out his threat, or that he was not able to do so. The fact that he made it for the purpose of creating public panic is enough.

Article 327 Giving False Alarm to Authorities

Whoever,
(a) by announcing
(b) nonexisting disasters, accidents, or dangers,
(c) gives alarm to the authorities or to bodies or persons who carry on a public service,
shall be punished with imprisonment up to one year, or a fine up to Sh. So. 6,000.

Explanation:

The offense defined by this article requires that the accused report to some public authority the false existence of a disaster, accident, or nonexistent danger. The purpose behind this article is to protect the authorities from wasting time and effort in investigating the event and preparing to prevent public panic. The penalty is either imprisonment or a fine, but not both.

Example:

Y starts a rumor that the wells in another tribe's grazing area are poisoned. To make it more believable, Y reports the fact that the wells are poisoned to the Regional Governor and the police. Truckloads of police are seen leaving the town for the interior to warn the people and to prevent vengeance from being taken. Y then spreads the story around town that obviously the wells must be poisoned, since the police would not be traveling into the interior if the story were not true. Y is arrested and charged with violating Article 327 when it is discovered that he started the rumors and they were not true.

Y is guilty of violating Article 327, among others. He has reported to the authorities—the Regional Governor and the police—the nonexistent disaster of poisoned wells, knowing the fact to be false. The element of knowing the event to be false is necessary to make out the offense under this article.

Article 328 Publication or Circulation of False, Exaggerated, or Tendentious News Capable of Disturbing Public Order

Whoever
(a) publishes or circulates
(b) false, exaggerated, or tendentious news

(c) so as to disturb public order
shall be punished, where the act does not constitute a more serious offense, with imprisonment up to six months or with a fine up to Sh. So. 3,000.

Explanation:

This article prohibits either the publication or the circulation of certain types of news. Circulation includes distribution of published material as well as circulation of rumors by word of mouth. The article prohibits the publication or circulation of false, exaggerated, or tendentious news. "False," of course, means untrue. "Exaggerated" means true in part, but the facts have been changed a little to distort the truth. For example, if a person circulated the news that as a result of a tribal dispute two hundred men had been killed, when in fact only thirteen had been killed, this would be an example of exaggeration. "Tendentious" means biased, prejudiced, or slanted. The story is changed so that it presents only one side of the picture. If, for example, a story were circulated that members of Tribe A had killed forty people of Tribe B, without mentioning that Tribe B had first killed twenty-seven members of Tribe A, that would be a tendentious statement.

The prosecution must show that the purpose of such statements was to disturb public order. Thus, in the preceding example, Y is guilty of violating Article 328 as well as Article 327. He circulated the false news that certain wells had been poisoned for the purpose of creating a public disorder.

PART VI CRIMES AGAINST PUBLIC SAFETY

CHAPTER I CRIMES ENDANGERING PUBLIC SAFETY BY FORCE

Article 329 Carnage

1. Whoever,
(a) other than in the cases referred to in Article 222,
(b) with the intention of causing death,
(c) commits any act so as to endanger public safety,
shall be punished with imprisonment up to fifteen years;
Where
(d) the act results in the physical injury of any person,
the punishment shall be imprisonment for life;

Where
(e) the act results in the death of any person,
the punishment of death shall be imposed.

2. The term "endangering public safety" means exposing the public to the danger of death or physical injury.

Explanation:

Like Article 324, this article does not apply in cases where carnage results from an attempt against the security of the state. The situation is covered by Article 222 (see explanation). Generally, carnage is the attempt to kill one person while endangering the lives of many. The act must be intended to cause the death of one person. If there is no such intention, then there is no crime under this article. But by committing an act with such intention the accused must have endangered the lives or safety of many others whom he does not want to kill. The phrase "endangering public safety" is defined in Paragraph 2 to mean exposing the public to the danger of death or physical injury.

If the act is committed and members of the public are endangered but not harmed, the punishment is imprisonment for up to fifteen years. If the act is committed and any person is injured, the penalty is life imprisonment. And where the act is committed and any person is killed, the punishment is death. Thus, if even the person the accused wanted to kill is injured or killed, Article 329 applies.

Example:

X wants to kill Y, an enemy of his. He goes to a place outside town where the road passes between two hills and trucks must drive slowly. Knowing that Y will pass on this road as a passenger on a truck, X plants a land mine in the road. He has seen Y get in the front of the truck in the town, and therefore thinks that the mine will explode under the cab and kill Y instantly. The truck carrying Y comes along, runs over the mine, which explodes, killing the driver and seriously injuring four other passengers. Y, who had changed his seat and was at the very back of the truck, is not hurt at all. The police catch X, and he is charged with causing death by carnage in violation of Article 329.

X is guilty as charged. He has committed an act—the planting of the mine—with the purpose of causing the death of Y. The act of planting the mine is certainly one which endangers public safety, since it exposes all of the persons on the truck to the danger of death or physical injury. It does not matter for the purposes of this article whether Y was killed or not. X is subject to the death penalty because the driver was killed.

Note that if the mine had not exploded when the truck went over it and what X had done had been discovered later, X would still be guilty of CARNAGE, because he committed the act of planting the mine for the purpose of causing Y's death. If no one had been injured or killed, X would still be subject to imprisonment for up to fifteen years.

Article 330 Causing Disaster

Whoever
(a) causes
(b) fire, flood, shipwreck or sinking of a ship or any other floating structure, crashing of an aircraft, destruction of any public means of transport, demolition of a building, or any other disaster
(c) endangering public safety,
shall be punished, where the act does not constitute a more serious offense, with imprisonment from three to ten years.

Explanation:

This article covers every kind of disaster. Disaster means widespread and unforeseen destruction of property or injury to human life. The article punishes any person who causes a disaster which endangers public safety, within the meaning of the definition contained in Paragraph 2 of Article 329. The causing of a disaster, however, must not constitute a more serious offense. For example, the destruction of public means of transportation is causing disaster. However, in the example under the preceding article, X caused the destruction of a truck carrying Y, the person he wanted to kill. Since X had the intention to kill someone, he is guilty of CARNAGE, not CAUSING DISASTER, even though his act also comes within Article 330.

Article 331 Unlawful Omission to Take or Removal of Precautions against Accidents

1. Whoever
(a) omits to place in position
(b) machinery, apparatus, or signals
(c) the object of which is to prevent disaster or accidents,
(d) or removes or injures the same,
shall be punished with imprisonment from one to five years.

2. Where a calamity or accident results from the act, punishment shall be imprisonment from eight to ten years.

Explanation:

This article punishes acts or omissions which cause accidents or calamities. The act or omission must be directed against things whose purpose

or function is to prevent disaster or accidents. The act must be committed voluntarily and willfully; that is, the person accused must have wanted the disaster or accident to occur and must have removed the object or damaged it for that specific purpose. Removal or damage to such objects by negligence is not a violation under this article, but instead comes under Article 346 (see explanation).

Presumably, if a person intentionally removes a signal or a switch, thus causing a disaster, his act will be punished as a more serious offense than Article 331(2), if the facts warrant it.

Article 332 Attempts Endangering Public Safety

Whoever,
(a) other than in the cases referred to in the three preceding articles,
(b) commits any act
(c) so as to endanger public safety,
shall be punished with imprisonment from one to five years.

Explanation:

This article is a catch-all provision. It covers any act endangering public safety which is not within the provisions of Articles 329, 330, and 331. The prosecution must show that the act alleged to have been committed exposed the public to the danger of death or physical injury, *and* did not come within the provisions of the preceding three articles. In drafting a charge sheet under this article, the prosecution should be certain that the alleged act does not fit within the terms of the other articles mentioned.

Article 333 Causing Impediments to Protection of Public Safety

Whoever,
(a) on the occasion of a disaster,
(b) conceals or renders useless
(c) any material intended for protection, salvage, or assistance, or
(d) in any other manner impedes or hinders such operation,
shall be punished with imprisonment from two to seven years.

Explanation:

The major requirement of this article is that a disaster has occurred, for whatever reason. Given this situation, if a person hides or ruins material used to protect, save, or assist those affected by the disaster, or does anything to hinder or impede efforts to help those involved in the disaster, he may be punished under this article.

Example:

X is a Somali citizen living in a village. News comes to the town that another village about ten miles away, inhabited by a group disliked by X, has been burned down and that many people are injured and homeless. The District Commissioner and the police decide to send two trucks with supplies and food to the area and bring back the seriously injured. X sneaks into the police station at night and pours sand into the gasoline tanks of the two trucks. The next morning, when the police try to start the trucks, the engines won't work. The supplies are not sent to the stricken area until one day later, when extra trucks from Mogadishu arrive. The police investigate the reason for the failure of the trucks to run, discover sand in the gasoline tanks, and eventually arrest X for putting the sand there. X is charged with violating Article 333.

He is guilty as charged. He has committed the act after a disaster had occurred. By putting sand in the gas tanks of the two trucks, he has made them unusable for carrying supplies to the burned village and bringing injured people back to his village. The trucks were material intended for the assistance and saving of the people affected by the disaster. X is therefore subject to imprisonment for a period from two to seven years.

Chapter II Crimes Endangering Public Safety by Fraud

Article 334 Epidemics

Whoever
(a) causes an epidemic
(b) by diffusing noxious germs
shall be punished with imprisonment for life. Where death of any person results from such act, the punishment of death shall be imposed.

Explanation:

An epidemic is a widespread disease affecting many people. This article punishes a person who causes an epidemic by distributing noxious germs. The phrase "noxious germs" means germs which carry a highly contagious disease capable of being spread very quickly through large segments of the population. The prosecution must show that the act of the accused was the cause of the epidemic.

Example:

Y is a laboratory technician working in a hospital in Mogadishu. He purposely takes a container full of germs carrying the disease of typhus

and drops it into one of the public wells in town. Within a week, an epidemic of typhus breaks out in the city. Y is arrested and questioned. As a result of the investigation, he is charged with violating Article 334. Before the trial, Z, a resident of Mogadishu, dies of typhus.

Y is guilty as charged. He has caused the epidemic by dropping a container of typhus germs into a public well. Some of the facts which would indicate that Y caused the epidemic would be the absence of typhus before Y's act, the number of people who used this well who became sick, the absence of typhus in other parts of the city at the beginning of the epidemic, and medical testimony that such an act could cause an epidemic. The fact that Z died as a result of typhus must also be proven. On the facts stated above, Y is subject to the death penalty for causing Z's death by starting a typhus epidemic.

Article 335 Pollution of Water and Food

Whoever
(a) pollutes
(b) water or any substance which is used for food,
(c) before it has been distributed or has reached the consumer,
shall be punished with imprisonment for not less than fifteen years. Where death of any person results from such act, the punishment of death shall be imposed.

Explanation:

"Pollute" means to make dirty or unclean. It applies to both food and water. The essential element which must be proven is that the act of pollution occurred before the food or water was distributed or had reached the people. A person does not pollute food if he enters a friend's house and, while the friend is not looking, pours some dirty material into a pot cooking on the fire. The food has already reached the friend. To be within the terms of this article, the act must occur in the store, at the market, or in the factory. The prosecution must also show that the water or food would not have become poisonous if the person had not polluted it. This establishes the element of causality, required by Article 20 of the Code (see explanation under that article).

The punishment for the act of pollution is imprisonment for not less than fifteen years. The article therefore establishes the minimum sentence the judge must impose. It is within his discretion to make the punishment greater. According to Article 96, imprisonment for crimes shall be for a period from five days to twenty-four years. Therefore, a judge may sentence a person convicted under Article 335 to imprisonment from fifteen to twenty-four years. If the death of anyone results from the act of pollution, and the causal relationship between the act and the death is shown, then the penalty is death.

Example:

X is an employee of a sugar factory. He is responsible for inspecting the sugar before it is put into sacks. While he is inspecting the sugar at the factory, he adds a handful of white poison to each sack of sugar. The sugar is then put into bags and sent to various towns in the country for sale to stores and then to customers. A great number of people become sick, and several complaints are made by hospitals, which report that the cause seems to be sugar. The police conclude that the only place the sugar could be contaminated must be at the factory. They investigate, and discover that X put poison in the sugar. X is arrested and charged with violating Article 335.

X is guilty as charged. He has polluted the sugar by adding the poison. He did so before the sugar was distributed from the factory. People would not have got sick from the sugar but for X's action of adding the poison. Since no one died because of his act, X is not subject to the death penalty, but he must be sentenced to a minimum of fifteen years in prison.

Article 336 Adulteration and Simulation of Food

1. Whoever
(a) adulterates or simulates
(b) any substance intended for food,
(c) before it has been distributed or has reached the consumer,
(d) and thereby makes it dangerous to public health,
shall be punished with imprisonment from three to ten years.
2. The punishment shall be increased where any medicinal substance is polluted, adulterated, or simulated.

Explanation:

"Adulterate" generally means to change a substance by adding something which is less valuable to the substance, which is in its original form more valuable. For example, if one wanted to adulterate sugar, one could mix some white sand which looks like sugar into every bag so that at first glance it would seem that the sack contained only sugar. "Simulate" means almost the same thing—to make something look like something it is not. Selling jars of paint which looks like jam would be an example of simulation.

Article 336 punishes any person for adulterating or simulating any substance intended to be used as food. Thus, if someone adulterates

cement by adding dark sand to the bags, this does not come within the terms of the article, since cement is not intended for use as food. As in the previous article, the adulteration or simulation must take place before the food has been distributed or has reached the consumers. The prosecution must show that the adulteration of the food was dangerous to public health. This means that he must prove the causal relationship between the accused's act of altering the food and the danger to the public.

Under Paragraph 2, polluting, adulterating, or simulating any medicinal substance is an aggravating circumstance, and the punishment must be increased, according to the provisions of Article 118.

Example:

Z is the owner of a pharmacy. During the rainy season, many people have colds. A certain medicine, a red liquid in a bottle, is found to help the colds, and many people are buying it. Z sees that he soon will have no more left. He decides to take half of the medicine out of each bottle and add a mixture of water and red dye. In that way, he will be able to sell more medicine to more people, although he knows that the medicine won't be as good as the original. A few people become sick from Z's medicine and many others with colds simply are not helped by the weakened medicine Z sells. After a few complaints, the police investigate and find that Z has been adding water and red color to the bottles after removing part of the medicine. Z is arrested and charged with violating Article 336(2).

Z is guilty as charged. He has adulterated a medicine before it has been distributed to the public. By adding water and red dye to the medicine instead of leaving all of the medicine in the bottle, he has created a danger to public health in two ways. The colored water was harmful to people's health in that the dye was not good to drink, and the water was thereby polluted. Moreover, people who were sick with colds wanted the medicine to help them. But colored water is not a medicine, so Z was selling a product that would not help the sick to get better, thus causing them to continue to suffer from colds, which could develop into something worse.

Z is sentenced to three years in prison, and the judge increases this penalty by one-third, for a total of four years under Paragraph 2 as read with Article 118.

Article 337 Adulteration or Simulation of Other Articles to the Detriment of Public Health

Whoever
(a) adulterates or simulates,

(b) in a manner dangerous to public health,
(c) any article intended for sale,
(d) other than those specified in the preceding article,
shall be punished with imprisonment from one to five years or with a fine of not less than Sh. So. 3,000.

Explanation:

This article applies to all substances intended for sale to the public other than food or medicinal substances, which are covered by Article 336. Such things would be cooking utensils, pots, pans, glasses, or plates. As in the previous article, the person must alter or change the thing in such a way as to make it dangerous to public health before it has reached the members of the public.

Article 338 Sale of Adulterated or Simulated Food

Whoever,
(a) not being a party to any of the crimes referred to in the two preceding articles,
(b) has in his possession for sale, offers for sale, or distributes for consumption
(c) water or any substance or article
(d) which has been poisoned, adulterated, or simulated
(e) by other persons in a manner dangerous to public health,
shall be liable to the punishments respectively prescribed in the said articles.

Explanation:

Article 338 applies only if the person has not been a party to the crimes referred to in Articles 336 and 337. This means that the person accused under Article 338 was not the person who actually adulterated or simulated food or other products before they were sold to the customers. The prosecution must show that the accused had knowledge that he was possessing or offering for sale or distributing for consumption products, including medicines, which had been adulterated or simulated. If he should have known, but negligently did not, then his action comes within the provisions of Article 347 (see explanation under that article).

Example:

X is the owner of an orange-soda bottling factory in Mogadishu. His brother, Y, owns a large store in Mogadishu for the sale of X's bottled drinks. X has been adulterating his drinks with orange-colored liquid to save on the cost of production and to make a bigger profit. Such adultera-

tion is dangerous to public health because the water X is using is bad, and the orange color is harmful if taken in too large quantities. X tells Y what he is doing, and Y agrees that this is a good idea, because they both will make more money. Several people become sick, and after a careful investigation the police discover that the cause is the bottled soda. X and Y are arrested. X is charged with violating Article 336, and Y is charged under Article 338.

Both are guilty as charged. With regard to Y, he has not been a party to any of the crimes described in Articles 336 and 337. He has not adulterated the food or drink. He has offered for sale and distributed the soda, knowing that it had been adulterated by his brother. Therefore, he is subject to the same punishment his brother is subject to, as if he himself had done the adulterating. The judge can sentence Y to imprisonment from three to ten years for the sale of adulterated soda.

Article 339 Sale of Noxious Food

1. Whoever
(a) has in his possession for sale, offers for sale, or distributes for consumption
(b) any substance intended for food,
(c) not simulated or adulterated, but dangerous to public health,
shall be punished with imprisonment from six months to three years and with a fine of not less than Sh. So. 500.

2. The punishment shall be reduced if the noxious nature of the substance is known to the person who buys or receives it.

Explanation:

This article applies to "noxious" foods, which means food not altered or changed but still dangerous to public health. An example of such food would be spoiled fish or meat—fish or meat which has been left out in the sun for a long time, and which is generally known to be bad if eaten. The article punishes those who possess for sale, sell, or distribute as food such spoiled products. The penalty for the offense is both imprisonment and fine.

Paragraph 2 makes it an extenuating circumstance if the customer who buys the product knows that it is spoiled. Thus, for example, if a man sells fish to another, first telling him that it is two days old, the punishment of the seller is reduced according to Article 119.

Example:

X sells spoiled meat in the market. Many people become sick, and the cause is traced to X's shop. X is arrested and charged under Article 339.

The prosecution must prove that X did not adulterate or change the meat in any way. It must be shown that X knew the meat was old, that old meat is dangerous to public health, and that X sold such meat to customers. The judge sentences X to imprisonment for six months and a fine of 1,000 shillings. Note that Article 97 prescribes the limits for fines for crimes. The limits are from 10 shillings to 50,000 shillings. Article 339 sets the minimum at 500 shillings, giving the judge discretion to increase it from that sum up to 50,000 if the facts warrant it.

Article 340 Sale and Supply of Spoiled Medicinal Substances

Whoever
(a) has in his possession for sale, offers for sale, or supplies
(b) any spoiled or defective medicinal substance,
shall be punished with imprisonment from six months to three years and with a fine of not less than Sh. So. 1,000.

Explanation:

This article is the same as the preceding one, except that it applies to medicinal substances of any type. The prosecution must, of course, prove that the accused knew that the medicines were spoiled or defective. This article applies to the person who does not adulterate or simulate the medicines but receives in some way spoiled medicines and then sells them as if they were good.

Example:

Z is a businessman who owns and operates an import business. He imports three cartons of drugs from Aden. Each bottle is clearly marked, "Not Good If Used after January 1, 1968." The bottles arrive in Somalia in August, 1968. Z crosses out the warning on the bottles, and prepares to send them to various cities for sale to pharmacies there. Before sending them, Z is arrested and charged with violating Article 340.

Z is guilty as charged. He has held in his possession for purposes of supplying others medicines which are clearly spoiled. The manufacturer states in the warning on the bottle that the medicine is not good after a certain date. Z knew this, and deliberately tried to sell such medicine by crossing off the warning. He is subject to both fine and imprisonment.

Article 341 Supply of Medicinal Substances in a Manner Dangerous to Public Health

Whoever,
(a) being engaged,

(b) even in an unauthorized manner,
(c) in trading in medicinal substances,
(d) supplies them in kind, quality, or quantity
(e) not corresponding to the medical prescriptions or different from what is stated or agreed upon,
shall be punished with imprisonment from six months to two years and with a fine from Sh. So. 1,000 to 10,000.

Explanation:

This article applies to those persons who are engaged in providing medicinal substances. Because the article contains a reference to prescriptions, this means that the provisions are aimed at those who supply either doctors or customers directly, not at importers of the medicines in sealed packages. The article would normally cover pharmacists, but it specifically includes those who illegally sell medicines. The prosecution must show that the accused disregarded a doctor's prescription by providing a different medicine, a greater or smaller amount of the same medicine, or medicine of a different quality. Such acts must be committed knowingly and intentionally.

Example:

X is a pharmacist in Hargeisa. Y, a doctor in Hargeisa, prescribes an energy pill containing a narcotic for Z, a patient of his. Y writes a prescription for twenty-five of these pills for Z. Z has had the pills before and liked them because they produced the same effect as *qat*, but worked faster and lasted longer. Z offers to pay X for fifty pills if X will give him fifty pills instead of the twenty-five the prescription calls for. X accepts Z's money, and sells him fifty of the pills. A few days later, when Z is under the influence of the pill, he boasts that he bought fifty of the pills from X instead of the twenty-five the doctor prescribed. The matter comes to the attention of the police, and X and Z are arrested. X is charged with violating Article 341 of the Code.

X is guilty as charged. He is a person engaged in trading in medicinal substances—as a pharmacist. He has supplied Z, willfully and knowingly, with a greater quantity of the pills than the doctor prescribed. Therefore, he is subject to both imprisonment and fine. In addition, because X is a pharmacist and has committed the offense by abusing his profession, he is subject to interdiction from his profession according to Articles 103 and 104.

Article 342 Trading in Narcotics

1. Whoever,
(a) other than in the cases allowed by law,

(b) trades in narcotics, or
(c) has them in his possession for the purpose of sale, or
(d) supplies them or procures them for others,
shall be punished with imprisonment from one to three years and with a fine of not less than Sh. So. 1,000.

2. The punishment shall be increased where any of the aforesaid substances is sold or delivered to a person under the age of eighteen years, or to a person of unsound mind or mentally deficient, or to a person addicted to the use of narcotics.

Explanation:

The law authorizes various people to possess or sell narcotics. Doctors and pharmacists, for example, are such people. This article applies to all others who are not authorized by law to trade in narcotics. A list of narcotics for purposes of the penal law is not contained anywhere in the Code. Generally, the narcotics that are found in Somalia, because of either importation or local cultivation, are hashish (or marijuana) and *qat*. *Qat* is not illegal in the north, but its use is prohibited in the Southern Regions. Therefore, Article 342 would have no application with regard to *qat* in the Northern Regions, because it is not a narcotic for purposes of the penal law in that area.

If a person trades in narcotics, or possesses them for purposes of sale, or supplies them for another person, or obtains them for another, he has violated the terms of this article. The prosecution must prove that a person caught with narcotics possessed them for one of the above purposes. If, for example, a man is arrested for smoking cigarettes containing hashish in his own house, but bought the cigarettes for his own use and has never given or sold them to anyone else, he is not criminally liable under Article 342. The article does not punish the mere possession of narcotics for one's own purposes.

Paragraph 2 makes it an aggravating circumstance to supply, provide, or sell narcotic substances to those who are unable to protect themselves from bad influences and who therefore need the protection of the law. Such people are persons under eighteen years of age, mentally deficient or insane persons, and those already addicted to the use of drugs.

Example:

X is a Somali citizen who was born near Hargeisa but is now living in Mogadishu and working for the government. He goes back to Hargeisa to visit his family, and brings with him upon his return to Mogadishu three bundles of *qat*. Once back in Mogadishu, he invites some of his friends, who were also born in the north, over to his house for a *qat* party.

While the party is in progress, the police come to the house with a search warrant, arrest X and his friends, and charge X with violating Article 342 of the Code.

X is guilty as charged. He has supplied others with *qat*, a narcotic substance under the laws in force in the south.

Article 343 Abetting of the Use of Narcotics

1. Whoever,
(a) not being a party to the crime referred to in the preceding article,
(b) uses or permits the use of premises,
(c) public or private,
(d) for the meeting of persons
(e) for the purpose of consuming narcotics,
shall be punished with imprisonment from six months to two years and with a fine from Sh. So. 500 to 10,000.
2. Whoever
(a) enters any such place
(b) for the purpose of consuming narcotics
shall be liable to imprisonment up to six months and a fine from Sh. So. 1,000 to 5,000.

Explanation:

This article applies only if the person has not committed the crime, under Article 342, of trading in narcotics. The prosecution must show that the accused permitted his house or property to be used by people for the specific purpose of consuming narcotics. Other people who enter the accused's house for the purpose of using narcotics are punishable under Paragraph 2. The prosecution must prove that this was their purpose in entering the place.

Example:

X is a resident of Mogadishu, born in Hargeisa. A friend of his, Y, comes to Mogadishu from Hargeisa with three bundles of *qat*. Y offers to share the *qat* with X and his friends if they can meet at X's house, since Y has no other place to stay. X agrees, and invites some of his friends to a *qat* party. The police come to the house with a search warrant, and arrest X and Y and the friends. X is charged with violating Article 343(1), Y is charged with violating Article 342, and the friends are charged with violating Article 343(2).

They are all guilty as charged. Y is guilty under Article 342 for having brought the *qat* from the north—that is, for supplying or obtaining a narcotic substance for others. X is guilty of violating Article 343(1). He is not guilty under Article 342, since he did not trade, possess for sale, supply, or procure narcotics for others. He did permit the use of his house for a *qat* party for his friends. He is subject to both fine and imprisonment. X's friends are subject to the punishment prescribed by Paragraph 2 of Article 343. They came to X's house to chew *qat*—that is, for the purpose of consuming narcotics in a place being used for such purpose.

Chapter III Crimes with *Culpa* Endangering Public Safety

Article 344 Crimes with Culpa *Involving Damage*

Whoever
(a) with culpa
(b) causes a fire or other disaster referred to in Chapter I of this Part,
shall be punished with imprisonment from one to five years.

Explanation:

This entire chapter involves crimes committed through negligence or lack of care. Article 344 punishes persons who, by negligence, cause fire, flood, shipwreck, crashing of an aircraft, destruction of any means of transportation, demolition of a building, or any other disaster endangering public safety included in Articles 329 to 333. The prosecution must show that if the accused had not committed his negligent act, the disaster would not have occurred.

The definition of culpa is contained in Article 24(1c). Therefore, the prosecution must show that the elements of culpa contained in that article were present in the case of prosecution under Article 344. Specifically, the prosecution must show that the disaster was not desired by the accused, and that it occurred because of negligence, lack of skill, or nonobservance of the laws, regulations, or orders in force.

Example:

Z is a mechanic employed by Somali Airlines. He is responsible for cleaning the airplane engines and ensuring that they are in good order. One day, he is cleaning the engine of a DC–3. He fails to observe the regulations with regard to no smoking, and negligently drops a lighted match into the engine. No fire starts, so Z assumes that the match must be out. About two minutes later, however, the engine begins to burn, the whole plane catches fire, and soon all the gasoline in the hangar ignites.

As a result, the plane, the spare parts, the hangar, and the gasoline are all destroyed. Z is arrested for causing the fire.

Z is guilty under Article 344 for negligently causing a fire of such magnitude as to be called a disaster. He did not intend to cause the fire, and in fact would not have wanted one to occur. He violated the regulation against smoking, and from lack of care caused the engine to catch fire, which in turn caused the fire at the airport. He is subject to imprisonment from one to five years.

Note that if someone had died in the fire, Z would also be liable for DEATH CAUSED BY NEGLIGENCE, under Article 445 (see explanation). He would thus be responsible for both offenses. He would not be liable for causing a disastrous fire under Article 330, because he did not do so intentionally.

Article 345 Crimes with Culpa *Involving Danger*

1. Whoever,
(a) by his own culpable act or omission,
(b) creates or continues the danger of a disaster,
shall be punished with imprisonment up to two years.

2. The term of imprisonment shall not be less than one year where the offender has infringed a particular order of the authority directed to the elimination of the danger.

Explanation:

This article also applies only to negligent acts. The prosecution must show, as in the preceding article, that the accused did not desire to cause a disaster but that his actions were due to lack of care, negligence, or non-observance of orders or regulations in force. However, this article applies not to causing the disaster itself but only to acts which create the danger of a disaster or cause such danger to continue.

Paragraph 2 provides that the punishment shall be at least one year in prison where the accused had failed to obey a specific order of the responsible authority aimed at eliminating the danger he created. This paragraph is necessary, since Paragraph 1 only provides for a maximum sentence of two years. Thus, under Article 96, the minimum may be five days. If the accused has disobeyed a specific order, the judge must sentence him to at least one year in prison, and up to a maximum of two years.

Example:

X is an employee of the Civil Aviation Department in Mogadishu. He is responsible for seeing to it that the lights at the airport are on at night,

so that night flights can land safely. One night when he is on duty, he fails to turn on the lights. A Somali Airlines plane flies overhead, but is unable to land, because the pilot cannot see the runway. X's supervisor turns on the lights, and the plane lands. The failure to turn on the lights is blamed on X, and his action is reported to the police. X is subsequently charged with violating Article 345 of the Code.

X is guilty as charged. He has created the danger of a disastrous air crash by failing to turn on the landing lights at the Mogadishu Airport. He can be sentenced from five days to two years for his omission.

Article 346 Culpable Omission of Precautions or Protections against Disasters or Accidents

Whoever
(a) culpably omits
(b) to put in place or removes or makes unserviceable
(c) any device or apparatus, or other means
(d) for salvage or assistance
(e) intended to be used at the time of accidents, or for the prevention thereof,
shall be punished with imprisonment up to one year or with a fine from Sh. So. 1,000 to 10,000.

Explanation:

This article applies to omissions caused by negligence. The omission must relate to devices, apparatus, or mechanisms which are intended to be used for salvage or assistance at times of accidents, or to prevent such accidents. The offender must fail to put the device in its proper place, or remove it, or do something to it which makes it unworkable. The punishment is either fine or imprisonment.

Example:

Y is an employee at the Mogadishu Airport, in charge of the fire truck. This truck is always ready for use whenever an airplane lands or takes off. The truck has a large water tank and two high-pressure hoses for spraying in case of fire. Y is supposed to make sure that the tank is full of water at all times, and that the hoses are connected to the tank. One day, he forgets to close the valve on the bottom of the tank, and most of the water leaks out. The truck is standing by for a routine landing of a Somali Airlines flight when the plane's landing gear collapses and the airplane skids along the runway. A small fire starts near the tail, and Y drives the truck out to the plane. He turns on the hoses, but nothing happens, since

there is no water in the tank. One of the army trucks used by the Air Force rushes to the scene, and the fire is put out, but most of the plane is destroyed. The Civil Aviation Department investigates the cause of the accident and the failure to put out the fire. Y is arrested and charged under Article 346.

Y is guilty as charged. By failing to close the water valve, he made the fire truck unserviceable, since there was no water with which to put out the fire. The fire truck itself is the type of apparatus used at the time of accidents or for preventing an accident from becoming worse. Y is therefore subject to either imprisonment or a fine.

Article 347 Crimes with Culpa *against Public Health*

1. Whoever,
(i) with culpa,
(ii) commits any of the acts referred to in Articles 334 and 335,
shall be punished with:
(a) imprisonment from three to twelve years, in the cases in which the punishment of death is prescribed;
(b) imprisonment from one to five years, in the cases in which imprisonment for life is prescribed;
(c) imprisonment from six months to three years, in the cases in which the punishment of imprisonment for a period is prescribed.
2. When
(a) any of the acts referred to in Articles 336, 337, 338, 340, and 341
(b) is committed with culpa,
the punishment therein respectively prescribed shall apply, reduced by one-sixth to one-third.

Explanation:

This article applies only to acts of negligence. Paragraph 1 deals solely with acts of negligence which come within the terms of Article 334, Epidemics, or Article 335, Pollution of Water and Food. A person can negligently cause an epidemic, for example, by dropping a tube full of noxious germs while carrying it from one part of town to another. If an epidemic results, Paragraph 1 prescribes the punishment for the person who has negligently caused it. If anyone dies as a result of the offender's negligence in causing the epidemic, the punishment is imprisonment from three to twelve years. If an epidemic results, but no one dies from it, the punishment is imprisonment from one to five years. Note that the prosecution must prove that the offender negligently caused the epidemic and that, if a person died, he died as a result of that epidemic. The provisions

of Paragraph 1 also apply with regard to polluting water or food in a negligent manner.

Paragraph 2 applies only to acts of negligence causing offenses under Article 336, Adulteration and Simulation of Food; Article 337, Adulteration or Simulation of Other Articles to the Detriment of Public Health; Article 338, Sale of Adulterated or Simulated Food; Article 340, Sale and Supply of Spoiled Medicinal Substances; and Article 341, Supply of Medicinal Substances in a Manner Dangerous to Public Health. If the accused has, by an act of negligence, committed an offense which would be under any of the above articles, he is subject, according to Paragraph 2, to the punishment prescribed for that article reduced by the judge by one-sixth to one-third. Thus, for example, if a person is convicted of negligently selling adulterated foods, in violation of Article 338, he is subject to the punishment prescribed in that article reduced accordingly. Article 338 provides that the punishment shall be the same as if the person had adulterated the food in violation of Article 336—that is, three to ten years imprisonment. So, for negligently selling adulterated food, in violation of Article 347, the judge may sentence the offender to imprisonment from three to ten years and reduce that sentence by one-sixth to one-third. Thus, if the judge sentenced the offender to three years, he may reduce the sentence by a full one-third—that is, one year—for a total sentence of two years. Note that Article 339, Sale of Noxious Foods, is not within the provision of Article 347. This means that there is no specially prescribed sentence for the negligent selling of noxious foods.

Example:

Z is a businessman who owns and operates an import business. He imports three cartons of drugs from Aden. Each carton and each bottle in the carton is clearly marked, in English and Arabic, "Not Good if Used after January 1, 1968." The bottles arrive in August, 1968. Z fails to notice the warning on the cartons and the bottles. Several pharmacists come to look at the goods before purchasing them, and one of them, noticing the warning on the carton, reports the matter to the police. Z is arrested and charged under Article 347.

Z is guilty as charged. Z was negligent in failing to notice the warning on the cartons and the bottles that the medicine was no longer any good. He has committed an offense which, if it were not for his negligence, would be within the terms of Article 340, one of the articles mentioned in Article 347(2). He has offered defective medicinal supplies for sale to pharmacists. The punishment under Article 340 is imprisonment from six months to three years and a fine of not less than 1,000 shillings. According to Paragraph 2 of Article 347, if the offense is committed negligently,

the judge must reduce the sentence by one-sixth to one-third. The judge sentences Z to imprisonment for six months and a fine of 1,200 shillings. He then reduces the sentence by a full one-third, which means that Z must serve four months in prison and pay a fine of 800 shillings.

PART VII CRIMES RELATING TO ABUSE OF THE GOOD FAITH OF THE PUBLIC

Chapter I Counterfeiting Currency, Securities, and Stamps

Article 348 Counterfeiting Currency, Spending or Introducing into the State Counterfeit Currency by Concerted Action

1. The following shall be punished with imprisonment from three to twelve years and with a fine from Sh. So. 5,000 to 30,000.

(a) whoever

(i) counterfeits national or foreign currency,

(ii) being legal tender in the State or abroad;

(b) whoever

(i) in any manner alters genuine currency

(ii) by giving it the appearance of a higher value, or by decreasing its actual value;

(c) whoever,

(i) not having been a party to the counterfeiting or alteration,

(ii) but acting in concert with the person who has carried out the process or through an intermediary,

(iii) introduces into the territory of the State,

(iv) counterfeit or altered currency,

(v) or holds, spends, or otherwise places it in circulation;

(d) whoever,

(i) for the purpose of putting it into circulation,

(ii) purchases or in any way receives counterfeit or altered currency

(iii) from the person who has counterfeited it, or from an intermediary.

2. The punishment shall be increased where,

(a) as a consequence of the act,

(b) the value of the national currency is decreased or its credit in the internal or external market is adversely affected.

Explanation:

Crimes of counterfeiting are those which result in the altering of money or the production of false money so that it appears to be genuine money produced under the authorization of the state. Somali money is printed and manufactured in Italy by a special company which makes currency for many countries. This money is the valid currency of Somalia, and can be used to buy goods, pay people, and serve all the other purposes of money. Obviously, if someone could produce money which looked genuine by himself, he would be very rich, since he could use it for all his needs without ever having to work to earn it or sell things to obtain it. But such money is not the valid currency of the Republic. It is counterfeit, and if a shopkeeper took a counterfeit bill to the bank, the bank would not pay him real Somali money for it. The shopkeeper would suffer a loss from having taken counterfeit money. It would be the same as if the shopkeeper had given the goods away free to the man who gave him the counterfeit money in return. For this reason, the crime of counterfeiting comes under the heading of abusing the good faith of the public; it is the public that assumes that the counterfeit money is good, and that takes the loss when it turns out to be counterfeit.

Article 348 defines the general crime of counterfeiting currency, introducing it into the state, or spending it in the Republic, by concerted action.

Paragraph 1(a) states that it is a crime under this article to counterfeit currency of the Republic or currency of any foreign country. But the currency must be legal tender—that is, the money lawfully used, either in the Republic or in that foreign country. Thus, if someone counterfeits Somali twenty-shilling notes, this is clearly within Paragraph 1(a), because twenty-shilling notes are lawful money used in Somalia. But if someone manufactured fifteen-shilling notes with the picture of a former sultan of Zanzibar on them, this would not be within the paragraph, because such money is not the normal money lawfully used in the Republic. In other words, no attempt has been made to duplicate money in use in Somalia, and thus no one is likely to be misled.

Paragraph 1(b) applies to any person who alters genuine money by either raising or lowering its stated value. An example of this would be the adding of a zero to a ten-shilling note so that it appeared to be a hundred-shilling note, or changing a hundred-shilling note by crossing out one of the zeros.

Paragraph 1(c) applies only to those persons who are not parties to the actual process of counterfeiting or altering of the money. However, the prosecution must show that the person under this paragraph acted

together with the person who did the counterfeiting or altering, or through a person acting as an intermediary. The prosecution must also show that the person under this paragraph brought or had brought into Somalia the counterfeit currency, or kept it, or introduced it into circulation in any way (such as by giving the counterfeit money away, paying employees with it, or giving it as a gift to charity).

Paragraph 1(d) applies only to those who obtain the counterfeit money for purposes of putting it into circulation. The person may receive the money in any manner, or purchase it either from the person who has counterfeited it or from an intermediary.

Paragraph 2 makes it an aggravating circumstance if the value of the national currency is decreased so that internal or external credit is adversely affected. This would occur if the counterfeiting was on such a large scale, and so clever, that it would be impossible to tell the real money from the false. The value of the national currency would thus be decreased, because people would not have faith in the real currency and would have fear of accepting it.

Example:

Z is an Adenese citizen. He has a small printing press in Mogadishu. B is an expert forger. B makes metal plates of Somali twenty- and one-hundred-shilling notes. Z then provides the paper and the ink, and together they produce 20,000 shillings' worth of twenty-shilling notes and 100,000 shillings' worth of one-hundred-shilling notes. Z and B then decide that they cannot distribute all of this money by themselves. They approach C and D, two friends of theirs, and tell them that they have counterfeited Somali money, and ask them to help distribute it. All four men begin paying their bills with the counterfeit money. C tells his friend H about the money, and H asks C if he can buy 40,000 counterfeit shillings from him for 25,000 real Somali shillings. C agrees, and sells H the money. H then pays his employees with the counterfeit shillings. After about two weeks, the bank in Mogadishu notices that many counterfeit bills are turning up, and it reports the matter to the police. Following a careful investigation by CID, Z, B, C, D, and H are arrested and charged under the various paragraphs of Article 348.

Z and B are charged under Paragraph 1(a). They are guilty as charged. They have counterfeited Somali shillings, which is the national currency of Somalia and the lawful money of the Republic.

C and D are charged under Paragraph 1(c). They are guilty as charged. They were not parties to the counterfeiting itself. They have acted together with Z and B, the real counterfeiters, for the purpose of circulating and spending the counterfeit currency in Somalia.

H is charged under Paragraph 1(d). He is guilty as charged. He has purchased counterfeit currency, knowing it to be counterfeit, from C. C, although not one of the counterfeiters, is an intermediary for Z and B, since he was helping them put the money into circulation and assisting them in distributing and selling the counterfeit notes.

All of the offenders—Z, B, C, D, and H—can be sentenced to three to twelve years in prison and a fine from 5,000 to 30,000 shillings. In this case, the judge sentences Z and B to ten years each and a fine of 20,000 shillings each; C and D to four years each and a fine of 10,000 shillings each; and H to two years and a fine of 20,000 shillings.

Article 349 Spending or Introducing Counterfeit Currency into the State, without Concerted Action

Whoever,
(a) other than in the cases referred to in the preceding article,
(b) introduces into the territory of the State,
(c) purchases, or holds
(d) counterfeit or altered currency,
(e) for the purpose of putting it into circulation,
shall be liable to the punishment prescribed in the said article, reduced by one-third to one-half.

Explanation:

This article applies only if the offender does not come within the terms of Article 348. The major difference between this article and the preceding one is that, whereas Article 348 requires some sort of concerted action, Article 349 does not. Article 349 is somewhat like Paragraph 1(d) of Article 348, which requires that the person accused purchase or receive the money from the counterfeiter or an intermediary. There is no such requirement for Article 349. Article 349 is thus a general catch-all article, designed to cover those situations that may arise which do not fall within the more specific provisions of the preceding article.

Article 350 Spending Counterfeit Currency Received in Good Faith

Whoever
(a) spends, or otherwise puts into circulation,
(b) counterfeit or altered currency
(c) which he has received in good faith,
(d) knowing that such currency is counterfeit or altered,
shall be punished with imprisonment up to six months, or with a fine up to Sh. So. 10,000.

Explanation:

If a person receives money which is counterfeit, a bank will not pay him real money for it. Thus, the shopkeeper who receives such money takes the loss with regard to the value of the counterfeit money. Therefore, people try and avoid this loss by passing the money off on someone else. Article 350 applies to such persons. The article is very specific. The accused must have received the counterfeit money in good faith—that is, he did not know it was counterfeit at the time he received it. He must then, knowing that it is counterfeit or altered, spend it or further circulate it. The punishment is either imprisonment or a fine.

Example:

X is a shopkeeper in Mogadishu. A man comes to his store to buy one hundred kilos of rice, some pans, cloth, and other goods. X sells him these goods for 2,300 shillings. The man pays, and leaves with his purchases. After he has left, X takes a closer look at the money he has been paid with and notices that it looks a little different from the normal Somali shilling notes. Upon closer inspection, and comparison with other shilling notes, X discovers that the money is counterfeit. X does not want to lose 2,300 shillings. Therefore, X pays Y, a creditor, with the counterfeit money. Y then takes the money to his bank, which tells him that it is counterfeit. Y reports the matter to the police, and states that he got the bills from X. The police investigate, and X, afraid of being accused of being the counterfeiter, confesses that he paid Y with what he knew was bad money. X is charged with violating Article 350.

X is guilty as charged. He received the money from the man he sold the goods to, thinking that the money was normal, valid Somali shilling notes. Only after he had been paid did he notice that they were different. X, then knowing the money to be counterfeit, spent it by paying Y, his creditor. Besides being liable for the penalty under Article 350, X, of course, is also civilly liable to Y for the price of the goods he bought from him for which he paid in counterfeit money.

Article 351 Equivalence of Securities to Currency

1. For the purposes of penal law, securities shall be deemed to be equivalent to currency.

2. For the purposes of penal law, "securities" mean, in addition to those which are legal tender as money, the certificates and coupons to bearer issued by Governments, and all others which are legal tender issued by institutions authorized to do so.

Explanation:

Article 351 is merely a definitional one, for the term "securities." For purposes of penal law, securities shall be deemed to be equal to money. Thus, counterfeiting of securities comes within Article 348, which applies to counterfeiting of currency.

A "security," in general, is a share in a company. It represents the amount of money a person has invested in the company and entitles that person to a share of the company's profits. Paragraph 2 states that securities also include certificates and receipts entitling a person to income if he has purchased "shares" issued by a government or any other body authorized to issue such shares.

Generally, there are very few securities issued in Somalia, and violations under this article will not arise in the near future.

Article 352 Counterfeiting of Stamps and Introduction into the State, Purchase, Possession, or Placing in Circulation of Counterfeit Stamps

1. The provisions of Articles 348, 349, and 350 shall also apply to:
(a) the counterfeiting or alteration of stamps, and
(b) to the introduction into the territory of the State, or
(c) the purchase, possession, and placing in circulation of counterfeit stamps;
the punishment, however, shall be reduced by one-third.

2. For the purpose of penal law, "stamps" mean
(a) stamped paper,
(b) receipt stamps,
(c) postage stamps, and
(d) other papers of value to which they are made equivalent by special laws.

Explanation:

This article applies to the counterfeiting or alteration of stamps, or the introduction, purchase, possession, or placing in circulation of such stamps. Generally, it is the same as those articles dealing with the counterfeiting or altering of money. Paragraph 1 specifically provides that Articles 348, 349, and 350 apply to stamps. This means that the provisions of Article 348, including all of the subparagraphs under Paragraph 1, apply (see explanation); that the catch-all provisions of Article 349 apply (see explanation); and that the receipt in good faith and subsequent passing on of counterfeit stamps, as described in Article 350 (see explana-

tion) also apply. However, the punishment is reduced by one-third from the punishment specified in those three articles.

Paragraph 2 defines what is meant by stamps for purposes of penal law. Note that the definition includes stamped paper, which is used for filing official papers with courts or administrative bodies, as well as receipt stamps and postage stamps.

Example:

Z, a foreigner residing in Mogadishu, counterfeits postage stamps. He uses them on his business letters and sells many to his friends. B, a friend of Z's, buys about thirty shillings' worth of stamps from him, and then notices that they are different from the ones he normally receives from the post office. The police, on the basis of information received, have been investigating Z. The police question B, and discover that Z has been selling these stamps. Both Z and B are arrested. Z is charged with violating Article 352 as related to Article 348, and B is charged with violating Article 352 as related to Article 349.

Z is guilty as charged. He has counterfeited postage stamps of the Somali Republic. According to Article 352, counterfeiting of postage stamps is a crime, and the provisions of Article 348 apply. Article 348(1a) as read with Article 352 makes it an offense to counterfeit the stamps of Somalia. The punishment under Article 348 is imprisonment from three to twelve years and a fine from 5,000 to 30,000 shillings. Paragraph 1 of Article 352 provides that the sentences with regard to counterfeit currency shall be reduced by one-third in cases involving stamps. The judge may sentence Z to imprisonment for three years, reduced by a third to two years, and a fine of 6,000 shillings reduced by a third to 4,000 shillings.

B is guilty as charged. He has purchased the counterfeit stamps. Thus, he has violated Article 349 as read with Article 352, which states that the provisions of Article 349 shall also apply in the case of stamps. The penalty under Article 349 is the penalty of Article 348 reduced by one-third to one-half. The judge may sentence B to pay a fine of 2,500 shillings and to serve one and a half years. This is again reduced by one-third, according to Article 352.

Article 353 Counterfeiting of Watermarked Paper Used for the Manufacture of Securities or Stamps

Whoever
(a) counterfeits
(b) watermarked paper
(c) in use for the manufacture of securities or stamps, or

(d) purchases, possesses, or disposes of such counterfeit paper,
shall be punished, where the act does not constitute a more serious offense, with imprisonment from two to six years and with a fine from Sh. So. 3,000 to 10,000.

Explanation:

Watermarked paper is special paper used in the manufacture of stamps or securities. It has special identifying marks embedded in it which make counterfeiting more difficult. Therefore, if someone counterfeited such paper, he could easily sell it to anyone who wanted to counterfeit stamps or securities. Article 353 makes it a crime merely to counterfeit the watermarked paper which is used for the manufacture of stamps or securities. The article also applies to those who purchase, possess, or dispose of such counterfeit paper. No provision is made for the purchase in good faith of such paper, because no private person would need to purchase such paper. Only the government is allowed to make stamps. Note that the punishment is both a fine and imprisonment.

Example:

X, a Somali citizen living in Mogadishu, counterfeits watermarked paper for the specific purpose of selling it to Y, who plans to counterfeit the stamps used by SEIS for receipts on its bills. Y buys fifteen large sheets of such paper from X. While the paper is in his possession, he is arrested by the police and reveals that he received the paper from X. Both X and Y are charged with violating Article 353.

Both are guilty as charged. X has counterfeited watermarked paper used for the manufacture of stamps. Y has purchased such paper, knowing that it is counterfeit. Both men are subject to imprisonment and fine as punishment. The judge sentences X to imprisonment for three years and a fine of 6,000 shillings. Y is sentenced to imprisonment for two years and a fine of 4,000 shillings.

Article 354 Manufacturing or Possessing of Watermarks or Instruments Intended for Counterfeiting Currency, Stamps, or Watermarked Paper

Whoever
(a) manufactures, purchases, possesses, or disposes of
(b) watermarks or instruments,
(c) intended solely for the counterfeiting or alteration of currency, stamps, or watermarked paper,
shall be punished, where the act does not constitute a more serious of-

fense, with imprisonment from one to five years and with a fine from Sh. So. 1,000 to 5,000.

Explanation:

This article applies to the instruments used for counterfeiting, including watermarks, which impress identifying marks in the paper used for making stamps or securities. The article applies to a person who manufactures such instruments, or buys, possesses, or disposes of them. The prosecution must show that the instruments or watermarks were intended solely for the purpose of counterfeiting or altering currency, stamps, or watermarked paper. By punishing persons for the possession of such instruments, the article makes it more difficult for counterfeiters to operate. Note that the punishment is both a fine and imprisonment.

Example:

X is a tailor, living and working in Mogadishu. In the back of his shop, he has set up a small counterfeiting operation, making five- and ten-shilling notes. He has the plates for making the notes, several special tools for cutting the plates, and the type of ink and paper necessary for making the counterfeit money. The police suspect that X has been counterfeiting shilling notes. They obtain a search warrant and search his shop, and find the tools and equipment listed above. X is charged, among other offenses, with having violated Article 354.

X is guilty as charged. He has possessed instruments intended solely for the counterfeiting of currency. The plates, specialized tools, ink, and paper are all used for one purpose—making false shilling notes. They are in no way related to X's business as a tailor.

Article 355 Counterfeiting of Tickets of Public Transport

Whoever
(a) counterfeits or alters
(b) tickets of public transport, or,
(c) not having been a party to the counterfeiting or alteration,
(d) purchases or possesses, or puts into circulation
(e) such counterfeit or altered tickets,
shall be punished with imprisonment up to one year and with a fine from Sh. So. 100 to 2,000.

Explanation:

This article applies only to the counterfeiting or alteration of tickets of public transport. In Somalia, such tickets are usually the tickets used

on the buses in Mogadishu and the airplane tickets for Somali Airlines. The article makes it an offense to either counterfeit or alter these tickets, or, knowing that the tickets are counterfeit or altered, to buy them, possess them, or put them into circulation. The punishment is both a fine and imprisonment.

Example:

X, a resident of Hargeisa, counterfeits Somali Airline tickets. The valid airline tickets sell for six hundred shillings for a trip from Hargeisa to Mogadishu. X sells his counterfeit tickets for three hundred shillings apiece. Y, a friend of X's, wants to save the three hundred shillings he would have to spend if he bought a valid ticket. He therefore buys a counterfeit one from X for three hundred shillings, knowing it to be counterfeit. A clerk at Somali Airlines in Hargeisa notices that many people are taking flights down, and he can't remember having sold them all tickets. Upon examining the tickets closely, he discovers that they are counterfeit, and reports the matter to the police. Both X and Y are arrested and charged under Article 355.

Both are guilty as charged. X has counterfeited tickets of Somali Airlines. Y, who was not a party to the process of counterfeiting, purchased a counterfeit ticket knowing it to be counterfeit. The judge sentences X to one year in prison and a fine of 2,000 shillings. Y is sentenced to three months and a fine of 600 shillings.

Article 356 Exemption from Punishment

Whoever,
(a) having committed any of the acts referred to in the preceding articles,
(b) succeeds in preventing the counterfeiting, alteration, manufacture, or circulation of the articles specified in the said articles,
(c) before the authorities obtain information thereof,
shall not be liable to punishment.

Explanation:

This article provides that if a person commits one of the crimes mentioned in Articles 348 to 355, and then prevents the results of that crime from occurring before the police find out about the crime, he shall not be punished. The person must act before the police discover that the crime has been committed. In addition, the person must effectively prevent the crime from occurring or the effects of such crime from resulting. Thus, with regard to the counterfeiting of money, the person must

either stop the actual process of making the counterfeit money or prevent the money already made from being circulated.

Example:

X, a resident of Hargeisa, has been manufacturing Somali Airlines tickets. He has not sold any yet. After he has made about two hundred of them, he realizes that his action may ruin the airline by bankrupting it, and harm the economy of Somalia. Thus, for reasons of patriotism, he decides not to go through with his plan. He destroys all of the tickets he has manufactured, as well as the plates he used to make them. CID, Hargeisa, has heard rumors of his counterfeiting activity, and believes that X is one of the few people with the skill required for such activity. Accordingly, it searches his house, and discovers some tools used for the counterfeiting of money, stamps, and tickets. X is arrested and charged under Article 354.

X is not guilty as charged. He has committed the act of counterfeiting tickets of public transport in violation of Article 355, but he has destroyed the tickets and the plates, and thus prevented the circulation of the counterfeit tickets. He did this before CID obtained information that X was counterfeiting airline tickets. Therefore, under Article 356, he cannot be charged with counterfeiting such tickets, nor can he be charged with the possession of tools for the use of counterfeiting. His act in preventing the results of his crime bars punishment.

Article 357 Use of Counterfeit or Altered Stamps

1. Whoever,
(a) not having been a party to the counterfeiting or alteration,
(b) makes use of counterfeit or altered stamps,
shall be punished with imprisonment up to three years and with a fine up to Sh. So. 5,000.
2. Where
(a) the stamps were received in good faith,
(b) the punishment prescribed in Article 350 shall be reduced by one-third.

Explanation:

This article applies solely to the use of counterfeit or altered stamps. Article 352 as read with Article 348(1d) applies to the person who purchases or receives altered or counterfeit stamps. The offense punishable by those articles is the receipt of such stamps. The offense punishable by Article 357 is the use of such stamps.

Under Article 357, the person accused must be a person who was not a party to the actual process of counterfeiting or alteration. To make use of a stamp would be, for example, to place it on a letter for mailing.

Paragraph 2 provides that if the person received the stamps in good faith, and then, knowing them to be altered or counterfeit, used them, he is subject to the punishment prescribed by Article 350 reduced by one-third.

Example:

X is a resident of Mogadishu. He knows that his friend, Y, is counterfeiting stamps for use on letters. Y gives him fifty shillings' worth of these counterfeit stamps. X keeps them for a while, and then decides to use them on letters he is sending out of the country. He puts them on about forty letters and takes them to the post office. A clerk notices that the stamps seem strange, and reports the matter to the police. X is arrested.

X is guilty of two offenses. He has received counterfeit stamps, knowing them to be counterfeit, although he was not a party to the process of counterfeiting. This is an offense under Article 352(1) as read with Article 348(1d). X is sentenced to three years and a fine of 6,000 shillings under Article 348, reduced by one-third, according to Article 352(1), to two years and 4,000 shillings. X is also guilty of having used counterfeit stamps, knowing them to be counterfeit. This is a violation of Article 357. The judge sentences him for this offense to six months and a fine of 600 shillings.

Article 358 Use of Counterfeit Tickets of Public Transport

Whoever,
(a) not having been a party to the counterfeiting or alteration,
(b) makes use of counterfeit or altered tickets of any public transport,
shall be punished with imprisonment up to six months or with a fine from Sh. So. 100 to 2,000.
Where
(c) the ticket was received in good faith,
only a fine up to Sh. So. 300 shall be imposed.

Explanation:

This article is the counterpart of the preceding one, except that it deals with counterfeit or altered tickets of public transport instead of stamps. Article 355 punishes persons for the offense of either counterfeiting or altering tickets of public transport, or purchasing, possessing, or putting such tickets into circulation. Under Article 355, the person must know

that the tickets are counterfeit or altered, and must not be a party to the crime of counterfeiting. The act of possession or purchase of such tickets is made a crime.

Under Article 358, the crime is using such tickets. The punishment for using such tickets is either imprisonment or a fine. If a person receives the ticket in good faith, and then, after discovering that it is counterfeit or altered, uses it anyway, he is subject only to a fine.

Thus, in the example under Article 355, Y is guilty of two crimes: (1) purchasing a ticket which is counterfeit in violation of Article 355, and (2) using such ticket in violation of Article 358.

Article 359 Alteration of Marks on Used Stamps or Tickets and Use of Articles Thus Altered

1. Whoever
(a) cancels, or
(b) in any manner causes to disappear from stamps or tickets of any public transport
(c) the marks placed thereon to indicate that they have already been used,
(d) and makes use of them, or
(e) allows another to make use of them,
shall be punished with imprisonment up to six months or with a fine from Sh. So. 100 to 2,000.

2. Whoever,
(a) without having been a party to the alteration,
(b) makes use of the altered stamps or tickets,
shall be liable to the same punishment.

Where
(c) the articles were received in good faith,
only a fine up to Sh. So. 300 shall be imposed.

Explanation:

This article applies only to the altering or cancellation of marks showing that the stamp or ticket has been used. Normally, when stamps are used, the post-office clerk marks, or "cancels," such stamps. The same is true of tickets. The article punishes those persons who retain the stamp or ticket, and then try to alter it so that it looks as if it had never been cancelled. Under Paragraph 1 of this article, a person who alters such stamps or tickets, and then uses them again himself or permits another to use them (by selling them or giving them away), is punishable with either a fine or imprisonment.

Paragraph 2 covers those persons who have not been parties to the crime of altering such stamps or tickets but who use them. A person who, knowing the stamp or ticket to be altered, uses it anyway is subject to the same punishment as is prescribed in Paragraph 1. A person who receives the altered ticket or stamp in good faith and then uses it, knowing it to altered, is subject to a fine up to 300 shillings.

Example:

X is a businessman living in Hargeisa. He sends many letters to Mogadishu in the course of his business, and he decides to save money by using the same stamps over and over again. He collects the envelopes he has received, and scrapes off the cancellation mark on the stamps; then he glues them to other envelopes for use another time. He sends several letters with such stamps before he is caught and arrested.

X is guilty as charged under Article 359(1). He has cancelled or altered used postage stamps so that they seemed to be new, and has made use of them. X is sentenced to a fine of 500 shillings.

Note that X can be prosecuted only under Paragraph 1, because he was the person who committed the act of altering the stamps. Paragraph 2 applies only to persons who were not parties to the alteration.

Chapter II Counterfeiting of Seals, Instruments, or Marks of Authentication, Certification, or Identification

Article 360 Counterfeiting the Seal of the State, and Use of the Counterfeit Seal

Whoever
(a) counterfeits
(b) the seal of the State,
(c) intended to be affixed to Government documents, or,
(d) without having participated in the counterfeiting, makes use of such seal counterfeited by others,
shall be punished with imprisonment from three to six years and with a fine from Sh. So. 1,000 to 20,000.

Explanation:

The seal of the state is a mark placed on official government documents. It represents the authenticity of the document, proving that it was issued by the government body involved. Article 360 prohibits anyone from counterfeiting this seal, or, if the person has not participated in the act

of counterfeiting, from using the seal, knowing it to be counterfeit. The punishment is both fine and imprisonment.

Example:

X is an employee of the Ministry of Industry and Commerce. X's brother, Y, wants to be given a monopoly on the manufacture of a soft drink, Arangata, in Mogadishu. Such monopoly can be granted only by decree of the Minister of Industry and Commerce. X makes a counterfeit seal of the state, drafts a decree granting his brother the monopoly, and places the seal on the decree. The decree is then sent to the Official Bulletin for publication. A clerk in that office becomes suspicious, and informs the police. X is arrested and charged under Article 360.

X is guilty as charged. He has counterfeited the seal of the state, which is intended to be affixed to government documents. Y is not guilty under this article. Although the false decree was for his benefit, the decree prior to publication had no effect, and thus he cannot be said to have used the seal counterfeited by his brother.

Article 361 Counterfeiting of Other Public Seals or Instruments Intended for Public Authentication or Certification, and Use of Such Counterfeit Seals and Instruments

1. Whoever
(a) counterfeits
(b) the seal of a public body or a public office or,
(c) not having participated in the counterfeiting, makes use of such counterfeit seal,
shall be punished with imprisonment from one to five years and with a fine from Sh. So. 1,000 to 10,000.

2. The same punishment shall apply to any person who
(a) counterfeits
(b) other instruments intended for public authentication or certification or,
(c) without having participated in the counterfeiting, makes use of such instruments.

Explanation:

This article is similar to the preceding one, except that it applies to seals of public bodies and public offices. An example of a public body would be the municipal government in Mogadishu, while a public office would be any government position not covered by the preceding article. Article 361 applies to the act of counterfeiting such seals, or making use

of the counterfeit seal if the person has not participated in the actual process of counterfeiting.

Paragraph 2 is a catch-all paragraph, which covers any other counterfeited instruments intended for public authentication or certification. An example of such an instrument would be the seal of a notary public.

Article 362 Counterfeiting the Impressions of a Public Authentication or Certification

Whoever,
(a) by means other than the instruments mentioned in the preceding articles,
(b) counterfeits the impressions of a public authentication or certification or,
(c) not having participated in the counterfeiting, makes use of the article bearing the counterfeit impression,
shall be liable to the punishments respectively prescribed in the two preceding articles, reduced by one-third.

Explanation:

The preceding articles apply to the counterfeiting of the instrument—the seal itself. Article 362 applies to the counterfeiting of the impression left by the instrument on the document. Thus, for example, if a person took a wax impression of a genuine seal, and then transferred this impression to another document, this would be within the meaning of Article 362. Note that acts that come within Article 362 are those that do not fall within the meaning of the preceding articles. The punishment is the same as that prescribed in the preceding articles, but the sentence must be reduced by one-third.

Article 363 Improper Use of Genuine Instruments

Whoever,
(a) having procured the genuine seal or the genuine instruments intended for public authentication or certification,
(b) makes use of them to the prejudice of others, or for his own or another person's profit,
shall be punished with imprisonment up to three years and with a fine up to Sh. So. 3,000.

Explanation:

The preceding articles have dealt with the counterfeiting of seals or the impressions left by seals. Article 363 involves using the actual seal but in an unlawful manner. The seal used by the offender must be the genuine

one. The prosecution must show that the person used the genuine instrument for his own benefit, for the benefit of another, or to harm another person. The punishment is both a fine and imprisonment.

Example:

X is an employee of the Ministry of Industry and Commerce. X's brother, Y, wants to obtain a monopoly for the sale of mineral water in the Southern Regions. X enters the Ministry one night after it is closed, takes the Minister's seal from his desk, and stamps a phony decree giving Y the monopoly. The decree is published, and Y then tries to establish a bottling plant and to bring about the closing of the other plants already in operation. The owners of the other plants complain to the Minister, who claims that he never issued Y a monopoly. The police investigate the matter, and X is arrested and charged under Article 363.

X is guilty as charged. He has used a genuine instrument—the actual seal of the Minister—which is a seal intended for public authentication of documents, to the prejudice of the other company owners and for the benefit of his brother, Y. X is sentenced to three years in prison and a fine of 1,000 shillings.

Note the difference between this example and the one following Article 360. In that example, X counterfeited the seal of the Minister; in this one, he took the genuine seal and used it for a prohibited purpose.

Article 364 Use or Possession of Measures or Weights with False Stamp

1. Whoever,
(a) to the prejudice of another,
(b) makes use of measures or weights
(c) counterfeiting or altering the legal stamp thereon, or
(d) of measures or weights in any manner altered,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 5,000.

2. The same punishment shall apply to any person who,
(a) in the course of commercial activities, or
(b) in a shop open to the public,
(c) keeps measures or weights with a legal stamp counterfeit or altered, or
(d) measures or weights in any manner altered.

3. For the purposes of penal law, measures and weights include instruments of any kind used for measuring or weighing.

Explanation:

This article applies to the use and possession of false weights and measures. Paragraph 3 of the article defines weights and measures as any

instrument of any kind used for weighing or measuring. This is a broad definition, capable of including both the normal, recognized measures and weights and others such as a length of stick or a piece of metal of a prescribed weight.

Most weights and measures have a stamp imprinted on the bottom that indicates the fixed weight or measure represented. Paragraph 1 applies to the alteration or counterfeiting of such stamps. It also prohibits the use of measures or weights so altered and those altered in any manner whatsoever. It must be shown that such measures and weights have been used to the prejudice of another.

Paragraph 2 applies to the possession of measures or weights with an altered or counterfeit stamp, or altered or counterfeited in any way. The prosecution must show that a person had possession of the altered objects in connection with commercial activities, or kept them in a shop open to the public. The mere presence of such altered weights or measures in a shop is an offense under Paragraph 2. The prosecution does not have to prove that such weights and measures were actually used. The punishment is the same as the offense under Paragraph 1.

Example:

Z is a butcher. He has shaved about three grams off his weights. When his customers come to his shop and ask for one hundred grams of meat, he puts the meat on the scale, adds his lighter weights, and charges them the full price for one hundred grams. Z boasts about how clever he is to have shaved off some of the weight. His boasts become widely known, and the police investigate the matter. Z is arrested and charged with violating Article 364(1).

Z is guilty as charged. He has made use of altered weights to the prejudice of his customers, and thus comes within Paragraph 1. He has also committed an offense under Article 395 (see explanation under that article), FRAUD IN THE EXERCISE OF COMMERCE.

Article 365 Counterfeiting, Alteration, or Use of Identification Marks of Literary or Artistic Works, or Industrial Products

1. Whoever
(a) counterfeits or alters
(b) the trade or identification marks, national or foreign,
(c) of literary or artistic or industrial products or,
(d) without having been a party to the counterfeiting or alteration, makes use of such counterfeit or altered marks,
shall be punished with imprisonment up to three years and with a fine up to Sh. So. 20,000.

2. Whoever
(a) counterfeits or alters
(b) patents, industrial designs, or models, national or foreign, or,
(c) without having participated in the counterfeiting or alteration, makes use of such counterfeit or altered patents, designs, or models,
shall be liable to the same punishment.

3. The foregoing provisions shall apply provided that the person entitled to the protection has complied with the provisions of domestic law or international conventions for the protection of literary, artistic, or industrial property.

Explanation:

Paragraph 1 applies to trade or identification marks of literary, artistic, or industrial products. Such marks identify the product as having been made or belonging to a specific person. For example, the distinctive mark on the 555 brand of cigarettes is the three fives on the cigarette package. This is a trademark of an industrial product. Paragraph 1 applies to anyone who alters such marks, or, although not a party to the process of counterfeiting or alteration, makes use of them. The punishment is both imprisonment and a fine.

Paragraph 2 applies to patents, industrial designs, and models. These are designs, plans, or blueprints for making a machine or a product. Paragraph 2 is aimed against persons who alter or counterfeit patents in order to be able to use the design without having to pay a royalty.

Paragraphs 1 and 2 both apply to either national or foreign trade and identification marks, patents, industrial designs, and models. At present, Somalia does not have a unified patent or trademark law. There are a few Italian Trusteeship regulations concerning these subjects. Somalia has not signed any international treaties covering these matters. However, Paragraph 3 provides that Article 365 shall apply where the person who is entitled to the trademark, patent, or industrial design has complied with the requirements of Somali law or international conventions. Thus, as the law stands now, a Somali citizen, resident or foreigner, must comply with the provisions of the Italian Trusteeship regulations in order to be protected under Article 365. When Somalia does sign an international treaty on this subject, the number of people covered will greatly increase.

Chapter III Falsification of Documents

Article 366 Falsification of Public Documents by a Public Officer

A public officer who,
(a) in the performance of his duties,
(b) makes, wholly or in part,

(c) a false document, or alters a genuine document,
shall be punished with imprisonment from one to eight years.

Explanation:

This offense can be committed only by a public officer, as defined in Article 240(a). The prosecution must therefore show that the accused is a public officer, and that he committed the offense in the performance of his duties. It is not an offense under this article for a public officer in his private capacity, or in any capacity other than his official one, to commit the act of falsifying a public document. Thus, if a director of the Ministry of Information draws up a false court judgment showing that a *qaadi* has awarded certain land to him, the director is not guilty under Article 366. He has not made a false document in the performance of his duties as director of the Ministry of Information.

The article applies to the act of making a document false either wholly or in part. Thus, altering a real document in some such way as changing the date or the name on the document would be a violation under this article.

Example:

X is an employee of the Ministry of Agriculture responsible for administration. The Minister has just signed a ministerial decree which provides that, as of February 20th, all permits for the sale of charcoal are null and void, and that no charcoal may be exported after that date. X's friend, Y, is a charcoal merchant. Y asks X to alter the decree so that Y can continue to export the large amount of charcoal he has already obtained, which is in his warehouse in Mogadishu. X is given the decree by the Minister to send to the Official Bulletin office for publication. He changes the date of prohibition of exportation from February 20th to April 20th. The next day, the signed decree goes to the Official Bulletin office. When the Minister sees the decree as published, he realizes that someone changed the date after he had signed it. He informs the police, and after an investigation, X is arrested and charged with violating Article 366.

X is guilty as charged. He is a public officer. He has altered a genuine document by changing the date in the ministerial decree. He has made this change in the performance of his duties as an employee of the Ministry of Agriculture. The judge sentences X to two years in prison.

Article 367 Falsification of Administrative Certificates or Authorizations by a Public Officer

A public officer who,
(a) in the performance of his duties,

(b) counterfeits or alters
(c) administrative certificates or authorizations, or,
(d) by means of counterfeiting or alteration,
(e) causes it to appear that the conditions required for their validity have been complied with,
shall be punished with imprisonment from six months to three years.

Explanation:

This article applies only to administrative certificates or authorizations, not to public documents in general. The crime can be committed only by a public officer in the performance of his duties, as in the preceding article. An administrative certificate would be, for example, a certificate issued by the Ministry of Education to show that a person had completed secondary school. An authorization is a permit to carry on a specified activity, such as a hunting license, a permit to export ivory, or an appointment to a position. If such certificates or authorizations are counterfeited outright or altered, a crime has been committed under this article. The article also covers those situations where the counterfeiting or alteration makes it appear that the conditions for the validity of the certificate or authorization have been met. Thus, for example, altering school records to show that a student had passed all of his courses, in order for him to obtain a Certificate of Graduation, would come within the meaning of this article.

Example:

Q is an employee of the Ministry of Education responsible for hiring new teachers for the school system. B, Q's friend, has applied for a job as teacher in a secondary school, but his application has been turned down. The Minister has signed a decree naming fifteen persons appointed to serve as teachers. Q enters the Minister's office and writes B's name at the bottom of the list contained in the decree. When the decree is published, with B's name on it, some of B's acquaintances become suspicious and report the matter to the police. After an investigation, Q is arrested.

Q is guilty of a violation under Article 367. He is a public officer. He has altered an administrative authorization by adding the name of B to a decree already signed by the Minister. He has done this in the performance of his duties as the person in charge of hiring new teachers. The judge sentences Q to fifteen months in prison.

Article 368 Falsification of Authentic Copies of Public or Private Documents and of Certificates of the Contents of Documents by a Public Officer

1. A public officer who,
(a) in the performance of his duties,
(b) simulates a copy of a public or private document,
(c) and issues it in legal form, or
(d) issues a copy of a public or private document different from the original,
shall be punished with imprisonment from one to six years.

2. If the falsification is committed by a public officer in a certificate of the contents of public or private documents, the punishment shall be imprisonment from one to three years.

Explanation:

This article applies only to copies of public or private documents. Public officers must frequently issue official documents which affirm the existence of certain facts. These copies are then accepted as true just as if the original had been presented. The purpose of Article 368 is to prevent public officers from issuing false copies of originals. The article applies even if no original document exists, but the public officer has made up a counterfeit copy, pretending that it is the copy of the original. The public officer may issue the counterfeit or altered copy either in legal form, simulating an official copy, or in a form different from the original. The article applies to both public and private documents. As in the preceding articles, the crime can be committed only by a public officer in the performance of his duties.

Paragraph 2 covers certificates of the contents of public or private documents. A certificate of the contents is not an exact copy of the document involved. Instead, it is a statement of what the document contains, in the words of the public officer certifying its contents.

Example:

X has been arrested in Mogadishu for illegal possession of thirty leopard skins. When interrogated by the police, he claims that an employee of his bought the skins from a Somali nomad in Chismayo and that the sale was registered before the local *qaadi* there. X asks the police for time to get a copy of the sale agreement from the *qaadi* in Chismayo. The police agree. X travels down to Chismayo and asks Y, the court clerk to the *qaadi*, to make up a false registry entry showing that a sale of

leopard skins took place between X's employee and the nomad. The clerk fills out a false registry page, makes a copy of the page, certifies that it is a true copy of the original, and gives it to X. X returns to Mogadishu and shows the copy to the police. CID in the meantime had been conducting its own investigation, which showed that the *qaadi* of Chismayo was in the hospital at Mogadishu at the time X says the *qaadi* certified the sale. CID then investigates the certified copy of the court record, and arrests the court clerk.

The clerk is guilty as charged under Article 368. He is a public officer, carrying out a judicial function within the meaning of Article 240. He has simulated a copy of a public document by making out a false registry entry, and then prepared a copy and certified that it was a true copy of the Court Registry. He has done this in the performance of his duties as court clerk. The clerk is sentenced to two years in prison.

Article 369 False Certification of Public Documents by a Public Officer

A public officer who,

(a) when receiving or drawing up a document in the performance of his duties,

(b) falsely certifies that an act has been performed by him or has taken place in his presence, or

(c) certifies as received by him declarations which have not been made to him, or

(d) omits or alters declarations received by him, or

(e) in any manner falsely certifies facts of which the document is intended to prove the truth,

shall be liable to the punishment prescribed in Article 366.

Explanation:

Only a public officer can commit an offense under this article. The act must be in the performance of his duties. Some public officers, such as public notaries, are responsible for drawing up documents concerning statements or acts of the parties involved, and validating them. This article applies to the situation where the public officer falsely certifies that an act has been performed by him or has taken place in his presence (as, for example, that two parties had signed a contract in his presence, or that the notary had witnessed the signing of a will). The article also applies if the public officer certifies that declarations have been made in his presence which in fact have not been made, or changes such declarations from what was actually said.

False certification is an act of a public officer concerning the contents of a document or acts performed in his presence. It is the act of the public officer in his official capacity as the person responsible for verifying a fact which brings the situation within the scope of false certification. On the other hand, falsification, as included in Articles 366, 367, and 368, concerns the physical changing or making of the document itself, not the act of affirming what is in the document.

Example:

Z is a *qaadi*. B comes to Z and states that he wants to indicate how his property should be divided among his family when he dies. He wishes to leave one house to his widow, and all the income from his other two houses and a store in Mogadishu to his four sons. Z agrees to make out a statement according to B's wishes. C, one of the sons, then comes to Z and states that he should have one of the houses outright, and asks Z to draw up the statement as if B had decided to give C one of the houses. Z agrees to do so. B dies, and C sells one of the houses and keeps the sale price. The other three sons protest, claiming that under Sharia law none of the property can be sold unless a majority of the children and the widow agree. C claims that B gave this house to him alone, and that therefore he can sell it. The three other sons then appeal the matter to the Qaadi Court in Mogadishu. At the hearing, other evidence shows that Z had falsified the declaration of the father. Z is arrested and charged with violating Article 369.

Z is guilty as charged. As a *qaadi*, he is a public officer within the meaning of Article 240. In drawing up the document recording B's intentions, he falsely certified that B wanted the house to go to C, when B actually wanted the income from the houses to be shared among his children. Z thus certified as received by him a declaration that B never made. Z is subject to imprisonment for one to eight years.

Note that if Z had falsely made a copy of B's will, by adding a clause stating that B wanted to leave the house to C, and sent this copy to the Qaadi Court in Mogadishu, the offense would not be under Article 369 but, rather, under Article 368.

Article 370 False Certification of Administrative Certificates or Authorizations by a Public Officer

A public officer who,

(a) in the performance of his duties,

(b) falsely certifies,

(c) in administrative certificates or authorizations,

(d) facts of which the document is intended to prove the truth,

shall be punished with imprisonment from three months to two years.

Explanation:

This article is different from Article 367 in that it involves the false certification of facts contained in an administrative certificate or authorization, as opposed to falsifying the administrative certificate or authorization itself. The act must be committed by a public officer in the performance of his duties.

Example:

X is an official of the Ministry of Education responsible for issuing certificates showing graduation from various schools. Y, a friend of his, has applied for a job with another Ministry, which requires that he have a secondary-school certificate. Y does not have such a certificate, but tells the director of the Ministry that he has lost it. He then comes to X's office and asks X to certify that the records show that Y has graduated from a secondary school and has received such a certificate. X agrees to do this. X writes an administrative certificate stating that the records at the Ministry of Education show that Y graduated from a secondary school in 1965, that he had passed all his courses, and that a certificate had been issued to him at that time. Y takes this certificate to the Ministry and shows it to the director. Unfortunately for Y, the director's son graduated from the same secondary school in 1965 and cannot remember ever having seen Y. The director reports the matter to the police, and X is arrested and charged with violating Article 370.

X is guilty as charged. He is a public officer. In the performance of his duties as the person responsible for issuing graduation certificates, he has issued an administrative certificate stating that Y had graduated from a secondary school and received a certificate of graduation. The administrative certificate that X has given Y is intended to prove the truth of the fact that Y has graduated from that school. The judge sentences X to serve six months in prison.

Article 371 False Certification by a Person Performing a Service of Public Necessity

1. Whoever,
(a) in the exercise of a medical or legal profession,
(b) or of another service of public necessity,
(c) falsely certifies in a document
(d) facts of which the document is intended to prove the truth,
shall be punished with imprisonment up to one year or with a fine from Sh. So. 500 to 5,000.

2. The said punishments shall be applied together where the act is committed for the purpose of gain.

Explanation:

All of the preceding articles apply to public officers. Article 371 applies only to a person performing a service of public necessity, as defined in Article 240(c). Generally, this category includes doctors, lawyers, engineers, dentists, veterinarians, and chemists (see explanation under Article 240). The offender must commit the act prohibited by this article within the exercise of his profession. The document must falsely certify facts which it is supposed to prove the truth of. For example, if a doctor wrote a formal letter to a person's employer stating that the person was sick and could not work, to enable the person to go on vacation or to work at another job temporarily, this would be within the meaning of Article 371.

Paragraph 2 provides that if the offender has committed the offense for the purpose of gain—that is, for payment or for some other benefit or advantage to himself—then the penalty of both fine and imprisonment must be imposed.

Example:

Z is a doctor practicing in Mogadishu. B is the son of a director of the Ministry of Industry and Commerce. B has been taking medicine which is a type of narcotic producing mild mental stimulation. Z has been giving B this medicine. B tells Z that he is going to Hargeisa for a year, and would like to continue taking this medicine. He says that if Z will write a certificate that B is sick and needs this medicine so that B can get the medicine in Hargeisa, his father, at the Ministry of Industry and Commerce, will let Z import some medicines duty free, which Z can then sell at a very high price. Z agrees to do this. He writes a statement that B is suffering from a certain disease, that he has been treating B for several years, that the only medicine which seems to work is the narcotic mentioned, and that B should receive all of this medicine he needs from the hospital in Hargeisa. B takes the letter to the director of the Hargeisa hospital, who, knowing the type of medicine requested, becomes suspicious and reports the matter to CID. After an investigation, Z is arrested and charged with violating Article 371.

Z is guilty as charged. He is a doctor, and thus within the definition of a person performing a service of public necessity. He has falsely certified in a document that B is in need of a certain type of medicine, knowing such statement to be false. He has done this act in the performance of his duty as a doctor. The contents of his written statement are supposed

to prove the truth of the assertions that B is sick and that he is in need of this drug, neither of which is true. Z has committed the offense for the purpose of making a profit on the medicines he will be able to import duty free, thanks to the efforts of B's father. Thus, he has committed the offense for gain. Accordingly, the judge must sentence Z, under Paragraph 2, to both a term of imprisonment and a fine. The judge sentences Z to six months in prison and a fine of 5,000 shillings.

Article 372 False Certification by a Private Individual

Where
(a) any of the acts referred to in Articles 366, 367, or 368
(b) is committed by a private individual,
(c) or by a public officer not within the performance of his duties,
the punishments prescribed in the said articles shall be reduced by one-third.

Explanation:

Article 372 merely extends the coverage of Articles 366, 367, and 368 to include private individuals and public officers who have not committed the act in the exercise of their official duties. Thus, if a public officer working for the Ministry of Public Works falsifies a document of the Ministry of Agriculture, he is not guilty under Article 366, because he did not commit the act in the performance of his duties. But he is punishable under Article 372.

The punishments mentioned in Articles 366, 367, and 368 are reduced by one-third if the person is convicted under Article 372.

Article 373 False Certification of a Public Document by a Private Individual

1. Whoever
(a) falsely certifies to a public officer,
(b) for inclusion in a public document,
(c) facts of which the document is intended to prove the truth,
shall be punished with imprisonment up to two years.
2. The period of imprisonment shall not be less than three months in cases of false certification of documents relating to personal status.

Explanation:

This article applies to false statements made to a public officer. The prosecution must show that the accused made these false statements for the purpose of having them included in a public document. The prosecution must also show that the document is intended to prove the facts

falsely stated by the accused. There is no definition of "public document" in the Penal Code, but the term should include any document signed by any public officer in his official capacity.

Paragraph 2 provides that the penalty shall be at least three months if the false certification involves the personal status of the individual. The phrase "personal status" means whether the person is married or not, his age, citizenship, and other facts relating to him as an individual.

Example:

X is a Somali businessman living in Mogadishu. He wants to export a large shipment of ivory, but he can't get an export permit from the Ministry of Industry and Commerce. He ships the ivory to Berbera by truck, and goes to see the director of customs and the regional officer of the Ministry of Industry and Commerce in Berbera. He tells them that he has been issued a certificate of export for the ivory by the Minister himself, but that the certificate was in his wallet, which was stolen on the trip up from Mogadishu to Berbera. He therefore asks the regional officer of the Ministry to issue another certificate to permit him to ship the ivory from Berbera on a boat which is waiting in the harbor. The regional officer believes X and, rather than delay him and cause him to miss the chance of sending the ivory on the boat by waiting for confirmation from the Ministry in Mogadishu that they had in fact issued him such a permit, the regional officer writes out another certificate, stating that X has already obtained a permit from the Ministry. X ships the ivory out. After the boat has left, a wire is received from Mogadishu, saying that X had applied for a permit but that it had been rejected, and that under no circumstances should the ivory be sent out of the country. The regional officer reports the matter to the police, and X is arrested and charged under Article 373.

X is guilty as charged. He has made a false statement to a public officer —the regional officer of the Ministry. He has deliberately and falsely claimed that he had already received an export permit, in order to have this statement included in the permit granted by the regional officer. The document issued by the regional officer was intended to prove the truth of the statement that a prior permit had been issued by the Minister, and that it was therefore all right for the customs officer to allow the ivory to be exported. The judge sentences X to imprisonment for the full two years.

Article 374 Falsification of Registers and Notifications

Whoever,
(a) being obliged by law to keep registers

(b) which are subject to inspection by the competent authorities, or
(c) to give notifications to the said authorities
(d) concerning his industrial, commercial, or professional operations,
(e) writes or allows to be written false particulars,
shall be punished with imprisonment up to six months, or with a fine up to Sh. So. 3,000.

Explanation:

Several of the laws of the Republic require businessmen to keep registers or to notify the authorities. This article applies only to people required by law to keep these registers or to make such notification. Article 374 punishes persons who either write or allow to be written false information. The false information must be about their business or professional activities. The punishment is either imprisonment or fine, but not both.

Example:

Somalia has two hunting laws, one in force in the north, the other in the south. The Game Law requires all persons who sell, trade, or transfer trophies—that is, horns, skins, teeth, or ivory—to keep what is called a Trophy Dealer's Register. This register must name the person from whom the dealer acquired the trophy, the date, the number of the certificate of lawful ownership, to whom he sold the trophy, and when. The Hunting Law gives the police the power to inspect the register at reasonable times.

Z is a trophy dealer in Hargeisa. He has just bought five hundred gazelle skins and three hundred pairs of horns from nomads who had illegally killed these animals. Z puts the skins and horns in his shop, and enters in the register false names for the persons he bought them from, and invents numbers for the certificates of ownership. Two weeks later, the police make a routine check of Z's register, and discover that Z has all of these trophies but cannot produce the certificates of ownership which the register states he possesses. Z is arrested and charged with violating Article 374, among other crimes.

Z is guilty as charged. He is a person required by law—the Hunting Law—to keep a register of his business transactions. He has entered false information concerning his business operations in this register by writing fictitious names for the persons from whom he had obtained the skins and horns and by inventing numbers for the certificates of ownership. Z is sentenced by the judge to six months in jail.

Article 375 Falsification of Private Deed

1. Whoever,
(a) for the purpose of procuring for himself or another any advantage,

or
(b) of causing harm to another,
(c) makes, wholly or in part,
(d) a false private deed, or alters a genuine private deed,
shall be punished, if he makes use of it or allows another to make use of it, with imprisonment from six months to three years.

2. Additions falsely inserted in a genuine deed, after it has been finally drawn up, shall be considered to be alterations.

Explanation:

The wording of this article is peculiar, because the article defines the elements of the offense and then requires the judge to impose the punishment only if the accused has made use of the false deed or allowed another to use it. Thus, although the use is not an element of the crime, it is a necessary requirement before punishment can be imposed under this article. The prosecution must therefore prove that the accused in fact used or permitted another to use the false deed. The term "used" means to present in court, or to introduce or produce for the purpose of legally binding another person.

A "private deed" is a contract—specifically, according to Italian legal practice, a contract that is signed by the parties but not notarized. Thus, the article applies to most transactions of a simple business nature. The prosecution must show that the offender falsified a contract either by fabricating it entirely or by altering a genuine contract to contain false information. Thus, if a party to a sales contract changed the sales price agreed upon from a hundred shillings to a thousand shillings by adding another zero, that would be altering a genuine contract. The prosecution must also prove that the purpose of the alteration or the fabrication was to obtain a benefit for the offender or another or to cause harm to another. As a practical matter, this will be implicit in any altered or falsified contract, because the accused normally commits such an act to obtain money or a contractual advantage at the expense of the other party.

Paragraph 2 makes clear what is meant by alteration. The term includes additions, such as the incorporation of another clause in the contract by the accused after the contract has already been signed.

Example:

X and Y sign a contract for the sale of rice. Y agrees to sell X fifty bags of rice to be delivered in thirty days, and X agrees to pay a fixed price of two hundred shillings a bag. The week after they have signed the contract, the price of rice rises and a hundred-kilo bag is worth three hundred shillings. Y wants to get out of the contract so that he can sell the rice at a higher price. He adds to the contract above their signatures

the statement, "If the price of rice rises above two hundred shillings a bag, Y may sell to anyone else." When the rice arrives, Y sells it to another store at three hundred shillings a bag. X finds out, and sues Y in a civil court for breaking the contract. Y introduces the contract, but other evidence at the hearing proves that Y altered the contract after it was signed. The judge reports this matter to the police, who arrest Y for violating Article 375.

Y is guilty as charged. He has altered a genuine private contract by adding the clause allowing him to sell the rice at a higher price. He has done this after X had signed the contract, and he has made the alteration for his own benefit. The judge sentences Y to six months in prison.

Article 376 Falsification of Paper Signed in Blank: Private Document

1. Whoever,
(a) for the purpose of procuring for himself or another any advantage, or
(b) of causing harm to another,
(c) makes wrongful use of a paper signed in blank, which is in his possession, and
(d) which he has a right or a duty to fill [in], and
(e) writes or causes to be written thereon a private document which produces legal effects different from the one which he was under obligation or was authorized to write,
shall be punished, if he makes use or allows another to make use of the paper, with imprisonment from six months to three years.

2. A paper in which the signatory has left blank any space intended to be filled [in] shall be deemed to be signed in blank.

Explanation:

This article, like the preceding one, requires that the person make use of or permit another person to use the false document before punishment can be imposed. Thus, the element of use must be proven by the prosecution.

The article applies only to documents which are private in nature and have been signed in blank. "Signed in blank" means that a paper is signed at the bottom by one person before someone else fills in the terms of agreement in the blank space above the signature. The crime may be committed by anyone who is in possession of a paper signed in blank *if* that person has the duty or right to fill it in. Thus, if a person finds a paper signed in blank, or steals it, he is in possession, but not as required by this article, because he does not have the right or the duty to fill it in. Under the Italian Penal Code, there is a separate article covering the

use of papers signed in blank by persons illegally possessing such papers (see Article 488 of the Italian Penal Code in CARABBA, CODICE PENALE, pp. 597–98). This article has been omitted from the Somali Penal Code. Therefore, such acts by persons in illegal possession will have to be brought under other articles. If a person who steals a paper signed in blank fills in a false contract, for example, this would come under Article 375. Cases will probably arise where no such article will cover the situation.

The prosecution must also prove that the accused wrongfully used the paper signed in blank to produce legal effects different from those intended, or from those he was authorized to produce, by filling in the document incorrectly.

Paragraph 2 provides that a paper with parts left blank is the same as a blank paper. Thus, if a contract omits the amount agreed upon to be paid, and the person who is supposed to fill in that figure puts in a much higher sum of money, his action comes within the terms of this article.

Example:

B is a Somali businessman living in Mogadishu. He wants to sign a contract with a firm in Dar-es-Salaam for the purchase of five hundred bags of cement. Since B does not write English, he goes to a friend, Q, and asks him to draft a contract in English for him. B wants it done immediately, because he is going down to Chismayo for two weeks and wants the contract signed before he leaves. Q says that he is busy, but that if B signs a paper in blank, Q will fill in the terms of the contract as B tells him to. B agrees. He signs the paper, tells Q that he wants to buy five hundred bags of cement at a hundred shillings a bag and that he wants them delivered by the end of the month, and then leaves for Chismayo. Shortly thereafter, C, the representative of the Tanzanian firm in Mogadishu, comes to Q. He offers to pay Q a thousand shillings if Q will put in the contract that B must pay three hundred shillings per bag. Q agrees to do this. C then signs the contract. When B returns from Chismayo, C delivers the cement and demands payment of three hundred shillings per bag. B files a complaint with CID that Q and C had made a contract contrary to B's wishes. Q is arrested and charged with violating Article 376.

Q is guilty as charged. He has falsely filled in the document signed in blank for his own advantage (to receive a thousand shillings from C) and for C's advantage (to receive a higher price). Q lawfully possessed the paper signed in blank, because B asked him to draft the contract for him in English. Q therefore had the right to fill in the paper, and he filled it in contrary to the instructions he had received from B. In doing

so, he drafted a private document which had a legally binding effect different from the effect B wanted–that is, he was bound to pay three hundred shillings per bag instead of one hundred. Finally, Q and C have used the contract to try to make B pay the price of three hundred shillings per bag. The judge sentences Q to one year in prison.

Article 377 Falsification of Paper Signed in Blank: Public Document

A public officer who,
(a) making wrongful use of a paper signed in blank
(b) of which he has possession by reason of his office and
(c) which he has a right or duty to fill [in],
(d) writes or causes to be written thereon
(e) a public document different from the one which he was under obligation or was authorized to write,
shall be liable to the punishments respectively prescribed in Articles 369 and 370.

Explanation:

Article 377 applies solely to public documents. It may be committed only by a public officer. The prosecution must show that the public officer had in his possession *by reason of his office* a paper signed in blank. The prosecution must also show that the accused had the right or the duty to fill in the paper but filled it in in a manner different from that required by his obligation or instructions. Note that there is no requirement that the public officer use the document or permit another to use it before punishment can be imposed, as was true in Articles 375 and 376.

The punishment under this article is that prescribed in Article 369 if he fills in a document falsely certifying that one of the acts or conditions specified in Article 369 has occurred, or the punishment under Article 370 if the document is filled in so that it amounts to a false certification of administrative certificates or authorizations.

Example:

Z is a notary public. He is asked by B to draft a contract with regard to B's banana production for sale to C. B signs the contract paper in blank, and leaves it to Z to fill in the details according to his instructions. Z fills in the document contrary to B's instructions, because C has agreed to pay him a thousand shillings if he drafts a contract favorable to C. B files a complaint against Z when he is asked to conform to the contract drafted against his instructions. Z is arrested and charged under Article 377.

Z is guilty as charged. He is a public officer. A contract which is notarized is a public document. Z had possession of the paper signed in blank by reason of his public office as notary. He had the right to fill in the paper, because B had instructed him to do so. He drafted the contract contrary to B's instructions. Z is subject to the punishment prescribed under Article 369, because he has altered declarations made to him–that is, B's instructions. According to Article 369, the punishment shall be the same as that in Article 366, which is imprisonment from one to eight years. The judge sentences Z to one year in prison.

Article 378 Use of False Document

1. Whoever,
(a) not being a party to the falsification,
(b) knowingly
(c) makes use of a false document,
shall be subject to the punishments prescribed in the preceding articles, reduced by one-third.

2. In cases of private deeds, the person committing the act shall be punishable only if he acted for the purpose of procuring for himself or another any advantage or of causing harm to another.

Explanation:

This article applies to persons who use false documents, but such persons must be other than those who made or participated in making the false document. The prosecution must also show that the person who used the document knew it to be false. According to Paragraph 1, the punishments with regard to the act of falsifying the document shall apply, reduced by one-third. Thus, if a person uses a false document made by a public officer in the performance of his duties, and knows that document to be false, he is subject to the punishment under Article 366–imprisonment from one to eight years–reduced by one-third.

Paragraph 2 applies only to private deeds–that is, contracts. In such cases, the accused is punishable only if he used the deed for benefiting himself or another, or for harming another person.

Example:

X is an employee of the Ministry of Education, responsible for issuing certificates of graduation. Y, a friend of his, has applied for a job with another Ministry and needs a certificate showing that he has completed secondary school. Y has never been to secondary school. X agrees to make a false certificate for Y. X gives Y this false certificate. Y shows the certifi-

cate to Z, the director in charge of personnel at the Ministry he wants to be hired by, as proof of his attendance at secondary school. However, friends of Z tell him that Y did not attend secondary school while they were there, and advise him that Y's certificate is suspicious. Z reports the matter to the police, who investigate and arrest X and Y. X is charged with violating Article 367 and Y with violating Article 378.

X is guilty as charged, for the reasons given in Article 367. Y is guilty as charged. He was not a party to the falsification. X prepared the false certificate, not Y. Y knew it to be false and used it to obtain a job with the civil service requiring a secondary-school certificate. The punishment for making a false certificate is imprisonment from six months to three years. Y, according to Article 378(1), is subject to this punishment reduced by one-third, or eight months.

Article 379 Suppression, Destruction, or Concealment of Genuine Documents

1. Whoever,
(a) wholly or in part,
(b) destroys, suppresses, or conceals
(c) a genuine public document or private deed
shall be liable respectively to the punishments prescribed in Articles 366, 367, 372, and 375, according to the provisions therein contained.

2. The provisions of Paragraph 2 of the preceding article shall apply to this article also.

Explanation:

This article applies only to genuine documents. The term "destruction" means to make unusable with regard to having legal effect. "Suppression" in this context means to make the document illegible, and "conceal" means to hide. Whoever destroys, suppresses, or conceals a genuine document is subject to the punishments prescribed in the articles dealing with the falsification of such documents.

Article 379 also applies to private deeds, or contracts. However, if such a private deed is involved, the prosecution must show that the person acted for the purpose of obtaining an advantage for himself or another, or to harm another person.

Example:

Y is an official at the Ministry of Industry and Commerce. Z, a friend of his, has applied for authorization from the Minister to establish a small tomato-paste factory near Mogadishu. C, D, and H have also applied

for authority to open such a factory. The Minister awards the contract to C, and signs a decree granting the authorization. Y is angry because his friend did not receive the contract, and burns the ministerial decree before it is sent over to the office of the Official Bulletin for publication. After several weeks, C, who had been informed by the Minister that he had been awarded the contract, asks the Minister why the decree has not been published. The Minister states that he signed the decree. After an administrative investigation, Y is found to be the person who destroyed the decree. The matter is reported to the police, and Y is arrested and charged with violating Article 379.

Y is guilty as charged. He has destroyed a genuine public document. The document became public when it was signed by the Minister for publication. Y is subject to the punishment of imprisonment from one to eight years, as specified in Article 366. Note that such punishment is not reduced by one-third, as in the preceding article.

Article 380 Documents Deemed Equivalent to Public Documents for the Purposes of Punishment

1. Where
(a) any of the falsifications referred to in the preceding articles relate to
(b) a holograph will, or a bill of exchange, or other negotiable instrument,
(c) instead of the punishment prescribed in Article 375 for falsification of private deeds, the punishments respectively prescribed in Paragraph 1 of Article 366 and in Article 372 shall apply.

2. In the case of counterfeiting or alteration of any of the aforesaid documents, a person making use of them without having taken part in the falsification shall be liable to the punishment prescribed in Article 378 for the use of a false public document.

Explanation:

Article 380 is a definitional one, in effect defining a category of public documents. Normally, a holograph will, bills of exchange, and any other negotiable instruments are considered to be private documents. Thus, they would come within the terms of Article 375. Paragraph 1 of this article provides, instead, that they shall be deemed to be public documents and that the punishment shall be calculated according to Articles 366(1) and 372. Under Paragraph 2, if a person who was not a party to the counterfeiting or alteration uses such false documents, he shall be subject to the punishment under Article 378, for the use of a false public document.

A "holograph" will is one which is written entirely in the handwriting of the person who is leaving the property. Bills of exchange and negotiable instruments are pieces of paper indicating ownership in commercial goods which are not in the person's possession. The piece of paper is taken as proof of the person's right of ownership, and can be used to obtain money or transfer such ownership.

Example:

Z is a Somali businessman living in Berbera. He imports two hundred truck tires and leaves them in a warehouse. In return, he receives a receipt from the port officer stating that Z has two hundred truck tires belonging to him in the warehouse at Berbera. Z flies to Mogadishu to find a buyer for his tires. He changes the number two hundred on the receipt to two thousand. Z sells his truck tires to B, who pays the price for two thousand tires. B gives Z the money, and Z gives B the receipt for the tires in the warehouse, signing the receipt to show that he authorizes B to take the tires. B sends a telegram to his agent in Hargeisa to go to Berbera and check on the tires. The agent does so, and wires back that there are only two hundred tires, not two thousand, in the warehouse. B reports the matter to the police, and Z is arrested.

Z should be charged with making an alteration on a public document under Article 366 as read with Articles 372 and 380. First, he has altered a negotiable instrument—the receipt from the port officer, certifying that two hundred truck tires were held in the warehouse in Berbera. According to Article 380(1), the receipt is a public document. Article 366 makes it an offense for a public officer, in the performance of his duties, to alter a genuine document. Z altered the document, but he is not a public officer. Article 372, however, provides that if a violation of Article 366 is committed by a private person, the punishment of Article 366 applies but shall be reduced by one-third. Therefore, Z can be sentenced to imprisonment from one to eight years, reduced by a third. The judge sentences Z to three years, reduced to two years.

Article 381 Authentic Copies of Missing Originals

For the purposes of the preceding provisions, public documents and private deeds include original documents and the authentic copies thereof when, according to law, they take the place of the missing originals.

Explanation:

Article 381 is also definitional. It simply states that authentic copies of public documents and private deeds are as valid as the original documents when the originals are missing.

Article 382 Falsification Committed by Persons Entrusted with a Public Service

The provisions of the preceding articles relating to false acts committed by public officers shall

(a) likewise apply to persons entrusted with a public service, and
(b) to officers of any other public body,
(c) with relation to the documents which they draw up in the performance of their duties.

Explanation:

Several articles in this chapter have specifically applied to public officers. Article 382 provides that they shall also apply to persons entrusted with a public service and to "officers of any other public body." However, the false acts must be committed with relation to documents which they have drawn up in the performance of their duties.

A "person entrusted with a public service" is defined in Article 240(b). This category includes employees of SEIS and the bus company in Mogadishu, among others. The category of "officers of any other public body" is not listed in Article 240. That article includes only "public officer," "person entrusted with a public service," and "person performing a service of public necessity." The category of "officers of any other public body" is thus meaningless in the context of the Code. Its inclusion in the English version of the Penal Code seems to be due to a translation error. In the Italian version, Article 382 reads:

Le disposizioni degli articoli precedenti sulle falsità commesse da pubblici ufficiali si applicano altresi agli *incaricati di un pubblico servizio*, relativamente agli atti che essi redigono nell'esercizio delle loro attribuzioni.

Thus, in the Italian version, Article 382 applies only to persons entrusted with a public service. There is no mention of the additional category of "officers of any other public body." In light of the Italian text, it would be best to treat the additional phrase in the English version as nonexistent.

Chapter IV Personation

Article 383 Substitution of Person

Whoever,
(a) for the purpose of procuring for himself or another any advantage, or of causing harm to another,
(b) deceives someone

(c) by unlawfully impersonating another, or
(d) by attributing to himself or another a false name, or a false status, or a capacity to which the law attributes juridical effects,
shall be punished, where the act does not constitute a more serious crime, with imprisonment up to one year.

Explanation:

This article is a general one, dealing with all types of impersonations, false identity, status, or capacity. The prosecution must show that the accused acted for the purpose of obtaining a benefit for himself or another, or of causing harm to another person. As a practical matter, this will be easy to show in almost every case.

There are several ways the crime under this article can be committed. "Impersonating another" means pretending to be another person. "Attributing to himself or another a false name" means taking a name which is not a person's real one, or identifying someone by a false name. For purposes of this article, it does not matter whether the false name taken or given is a real name or one that has been invented. All that has to be shown is that it is not the real name of the person pretending to have that name. "False status" means a claim to be, for example, a citizen, when a person is not, or a child or wife of a person, or a member of the military. "Capacity to which the law attributes juridical effect" means the position of a lawyer or a doctor or a member of a licensed profession.

The prosecution must show that another person was deceived by the accused's actions, in any of the forms mentioned above. The punishment is imprisonment for one year if the act is not a more serious offense.

Example:

X, a Somali citizen living in a town, finds a wallet in the street belonging to Abdi Abokar Awale. The wallet contains an identity card, with Abdi Abokar's picture, stating that Abdi Abokar is an employee of the Ministry of Education. X discovers that he and Abdi Abokar look alike. X takes the identity card and the wallet to Hargeisa, intending to collect Abdi Abokar's salary from the office of the Ministry of Education. X presents himself at the Ministry's pay office with the identity card, and claims that he is Abdi Abokar. The pay clerk tells X to come back tomorrow, because he must get more money from the bank to meet the payroll. The next day, when X returns—but before the clerk has paid him the money—another employee notices that X is not Abdi Abokar, and calls the police. X is arrested and charged with violating Article 383 of the Code.

X is guilty as charged. He has acted in order to obtain an advantage for himself—the salary of Abdi Abokar as a teacher. He has deceived the pay clerk by claiming to be Abdi Abokar and presenting his identity card. He has impersonated Abdi Abokar by taking his name and assuming the false status of being a teacher. Note that it doesn't matter whether Abdi Abokar is a real name or not. In this case, such a person does exist, but X is not that person. Therefore, he is liable under this article. The judge sentences X to the full one year in prison.

Article 384 False Certification or Declaration to a Public Officer

1. Whoever
(a) falsely states or certifies
(b) to a public officer,
(c) in a public document,
(d) the identity or status or other capacity of himself or another,
shall be punished with imprisonment up to three years.
2. Whoever
(a) commits the act
(b) in a declaration intended to be reproduced in a public document
shall be liable to the same punishment.
3. The term of imprisonment shall not be less than one year:
(a) in cases of declarations in documents of identification;
(b) where the false declaration regarding his own identity, status, or personal capacity is made by an accused person to the judicial authorities, or where, in consequence of the false declaration, a penal conviction is entered in court records under a false name.

Explanation:

This article applies only to false statements with regard to identity, status, or personal capacity. The false statement must be made to a public officer. Paragraph 1 also requires that the statement be made in a public document. Paragraph 2 requires that the statement be made for purposes of reproduction in a public document. Thus, under Paragraph 2, it is not necessary for the accused to make the false statement in the presence of a public officer. If, for example, he sends a letter containing false information as to his identity to a public officer, for inclusion in a public document, this act comes under the provisions of this paragraph.

The punishment in general is imprisonment up to three years. Since no minimum is specified, Article 96 applies, which states that the minimum sentence for a crime is imprisonment for five days. Paragraph 3 establishes a minimum sentence of one year for certain cases deemed to be more serious than others. If the false statement is made with regard

to documents of identification, such as an identity card, imprisonment must be from one to three years. If the false statement as to identity, status, or personal capacity is made to any of the judicial authorities, or results in a conviction's being entered under a false name, then the sentence cannot be less than one year.

Example:

X is arrested by the police in Mogadishu for theft. He has already been convicted of one prior theft in Hargeisa. X knows that if he is convicted again, he will receive a very heavy sentence as a recidivist within the meaning of Article 61 (see explanation). X therefore does not give the police his real name when he is being questioned, but states that his name is Abdulcadir Amin Mohamed. In this way, he hopes, his prior conviction will not be revealed and he will be sentenced as if he had committed only one theft. X is convicted under Article 480, and sentenced to six months in prison. His conviction is entered in the court records, and he is sent to the Central Prison in Mogadishu. One of the prison guards, who served at the prison in Mandera, recognizes X and reports that he is certain X had been convicted before of another crime. An investigation is conducted, and X is charged with violating Article 384.

X is guilty as charged. He has given a false name to the police and court. Under Paragraph 3(b) it is enough that X has made this false declaration. He has also brought his action within the terms of Paragraph 3(b), because his false statement has resulted in the false name's being entered in the court records. The judge sentences X to the full three years under Paragraph 1.

Article 385 False Statements as to Identity or Personal Capacity

Whoever,

(a) other than in the cases referred to in the preceding articles,

(b) being questioned regarding the identity, status, or other capacity of himself or another,

(c) makes inaccurate declarations to a public officer in the performance of his duties,

shall be punished with imprisonment up to one year or with a fine up to Sh. So. 5,000.

Explanation:

This article applies only if the act alleged does not come within the provisions of any of the preceding articles. This is the first test the prosecution must meet if charges are brought under Article 385. This article is very like the preceding one. The major difference is that the false

statements do not have to be in a public document or for purposes of being included in a public document. The inaccurate statements must, however, be made to a public officer in the performance of his duties. The article applies only to those situations where the accused is being questioned for some reason with regard to his identity, status, or capacity.

Note that the punishment is either a fine or imprisonment, not both.

Example:

Z is a resident alien living in Chismayo. He has been in Somalia for five years. He decides to apply for a hunting license. Under the Game Law in force in the south, a hunting license costs a resident alien six hundred shillings, and a tourist only two hundred shillings. A tourist is defined as a person in Somalia for thirty days or less. The new District Commissioner in Chismayo does not know Z. Z goes to his office and applies for a hunting license. The District Commissioner asks Z if he is a resident or tourist, and Z replies that he is a tourist. The Commissioner then issues a tourist's hunting license for two hundred shillings. Z uses the license, and then travels to Mogadishu on business. After about two months, he returns to Chismayo, and the District Commissioner sees him. Since, obviously, if Z is still in the country, he cannot be a tourist, the Commissioner reports the matter to the police. Z is arrested and charged with violating Article 385.

Z is guilty as charged. The case does not come within the terms of any of the preceding articles. Z was being questioned with regard to his status by a public officer—the District Commissioner—in the performance of his duty—that is, issuing hunting licenses. Z made a false declaration with regard to his status as a resident alien by claiming that he was a tourist. The judge sentences Z to pay a fine of 3,000 shillings.

Article 386 Usurpation of Titles or Honors

1. Whoever

(a) wrongfully wears in public

(b) the uniform or the distinctive marks of a public office or post, or

(c) of a legislative, administrative, or judicial body, or

(d) of a profession for which a special authorization from the public authorities is required,

shall be punished with a fine from Sh. So. 1,000 to 10,000.

2. The same punishment shall apply to a person who assumes academic dignities or degrees, titles, decorations, or other public honorific insignia, or capacities inherent in any of the offices, posts, or professions specified in the preceding paragraph.

Explanation:

This article applies to abusing the public faith by appearing to be a person holding a public office or post, a member of a legislative, administrative, or judicial body, or a member of a profession for which special authorization from the public authorities is required, such as a doctor, pharmacist, or dentist. The crime is committed by wrongfully—that is, without right—wearing the uniform or distinctive marks of one of these people. The wrongful act must take place in public.

Paragraph 2 applies to persons who assume academic titles, honors, degrees, or decorations intended for the person in the categories included in the first paragraph. Thus, to make out a crime under the second paragraph, the prosecution does not have to show that the accused wore a distinctive uniform in public but that he accepted an honor, even if by mail, pretending that he was, for example, a doctor or a judge.

PART VIII CRIMES AGAINST NATIONAL ECONOMY, INDUSTRY, AND COMMERCE

CHAPTER I CRIMES AGAINST NATIONAL ECONOMY

Article 387 Destruction of Raw Materials or Agricultural or Industrial Products or Means of Production

Whoever,

(a) by destroying raw materials, or agricultural or industrial products or means of production,

(c) causes serious injury to the national production or

(d) a substantial shortage of goods of common consumption,

shall be punished with imprisonment from three to twelve years and with a fine of not less than Sh. So. 20,000.

Explanation:

This crime can be committed by anyone, including the person who owns the property destroyed. The article applies only if certain kinds of property have been destroyed. The prosecution must show that either raw materials or agricultural or industrial products or their means of production were destroyed. "Means of production" refers to anything used to produce goods—such as textile machinery or sewing machines—or food —farm equipment, for example. The prosecution does not have to prove any specific motive for the act of destruction. However, it is necessary

to show that the act of destruction caused "serious injury" to the national production or a "substantial shortage" of goods of common consumption. In other words, the harm to the national economy must be substantial. Destroying three sewing machines in a tailor shop in Mogadishu would not satisfy the conditions of this article. If large farming areas were deliberately destroyed by fire, creating a shortage of sugar or some other commonly used food, this action would come within this article.

Example:

X is a Somali citizen. He has been employed by SomalTex, the new textile factory built at Balad. One day, he is fired by a foreman because he negligently ruined one of the spinning machines in the factory by failing to oil it properly. X is angry at losing his job, and feels that he has been unfairly treated. He vows to get even. One night, he sets fire to a part of the factory, spreads gasoline on the walls of other buildings, and watches while the entire factory, with all of the machinery and textile goods, burns down. After an investigation, X is arrested and charged with violating Article 387.

X is guilty as charged. He has destroyed the textile factory, a means of industrial production. By this act of destruction, X has caused serious injury to the national production of textile goods. The textile factory is the only major one of its kind in the country. Its destruction resulted in an almost total stoppage of textile manufacture in Somalia. In addition, imports of foreign textile products had dropped sharply since the factory began operating, and its loss created a serious, although temporary, shortage of textile goods in the country. The judge sentences X to the maximum term of imprisonment—twelve years—and fines him 20,000 shillings.

Note that X's offense is not causing a disaster by fire within the meaning of Article 330 (see explanation). That article provides that the act of destruction of a building shall be punished, if the act does not constitute a more serious offense, by imprisonment from three to ten years. Violations under Article 387 are punishable with imprisonment up to twelve years as well as a fine of not less than 20,000 shillings. Therefore, a violation of this article is a more serious offense and the one X should be charged with.

Article 388 Diffusion of Diseases of Plants or Animals

Whoever

(a) causes the spread of any disease to plants or animals,

(b) which is prejudicial to agriculture or to livestock,

shall be punished with imprisonment from one to five years.

Explanation:

This article prohibits any act which causes the spread of animal and plant diseases. The act must be committed knowingly and willfully. The prosecution does not have to prove serious injury to the national economy, although that would probably be the result if a cattle disease affected large numbers of cows and decreased meat exports. The prosecution has to show only that the spread of the disease was prejudicial to agriculture or livestock—that is, that it harmed plants or animals.

Example:

Q, a Somali citizen, has a herd of three hundred cattle. One day, he notices that several of them have hoof-and-mouth disease, a sickness that kills the animals. Q becomes very worried, and tells his friends about it. One of his friends, B, makes fun of Q, and says that since all of Q's cows will die, Q will be poor and have to beg from B. Q becomes angry. He is also desperate, because he sees all his wealth vanishing before his eyes. He takes two of his sickest cattle, and puts them with B's herd. Two days later, B's cows begin to get sick. B then discovers one of Q's cows in his herd, almost dead. He reports to the police that Q deliberately put a sick animal in B's herd to make B's cattle sick. The police investigate, and arrest Q, charging him with violating Article 388.

Q is guilty as charged. He has caused the spread of hoof-and-mouth disease to B's cattle. His act is prejudicial to livestock, since the disease is fatal. In addition, his action increases the danger of the disease's spreading to other people's animals. The judge sentences Q to imprisonment for one year.

Article 389 Fraudulent Raising or Lowering of Prices in the Public Market

1. Whoever,
(a) for the purpose of disturbing the domestic market
(b) in securities or goods,
(c) publishes or otherwise spreads
(d) false, exaggerated, or tendentious news, or
(e) employs other means of deception capable of causing a rise or fall in the price of goods, or of the securities which are on the Stock Exchange lists or are negotiable in the public market,
shall be punished with imprisonment up to three years and with a fine of not less than Sh. So. 3,000.

2. Where the rise or fall in the price of goods or securities takes place, the punishment shall be increased.

3. The punishment shall be doubled where:
(a) the act is committed by a citizen for the purpose of favoring foreign interests;
(b) the act results in a depreciation of the national currency, or in a rise in price of goods of common consumption.

4. The punishment prescribed in the foregoing provisions shall also apply where the act is committed abroad to the prejudice of
(a) the national currency or
(b) of Somali public securities.

5. Conviction shall involve interdiction from public office.

Explanation:

This article concerns acts which affect the market for goods or securities in Somalia. As stated before, a security is a share in a company or an investment in a public body by a private individual. No problem will arise in Somalia with regard to securities. Therefore, for purposes of discussion, this article will be treated as applying only to goods.

Paragraph 1 provides that the accused must have acted for the purpose of disturbing the domestic market in goods. This means that the prosecution must show that the accused wanted to make the prices rise or fall sharply. The accused must act to disturb the market by publishing or spreading false, exaggerated, or tendentious news. These terms are defined in the explanation under Article 328. In addition, the paragraph contains a broad clause to cover all other situations which cause a sharp rise or fall in market prices. If the prosecution cannot show that the accused's act fits within the terms of spreading or publishing, he can show that the person used other means of deception which are capable of causing a rise or fall in the price of goods. The penalty under Paragraph 1 is imprisonment up to three years and a fine of not less than 3,000 shillings.

Paragraph 2 makes it an aggravating circumstance if the prices actually do rise or fall as a result of the accused's act. Thus, Paragraph 1 punishes for the act of spreading false news capable of causing the market prices to rise or fall, regardless of whether they actually do so or not. If they do rise or fall, the punishment is increased by one-third, according to Article 118.

Paragraph 3 requires the judge to double the punishment where certain conditions are met. If the act is committed by a Somali citizen with the intention of favoring or benefiting foreign interests, the accused must receive double the punishment. If the act results in the lowering of the value of the national currency, or a rise in the price of goods of common

consumption, the punishment must be doubled, whether the offense has been committed by a Somali citizen or by any other person.

Paragraph 4 of the article covers those persons who commit the offense abroad, to the harm of the national currency or Somali public securities. Thus, the paragraph subjects any person outside the territorial jurisdiction of the state to the provisions of the Penal Code if the act is committed under this article. For example, if an Adenese citizen spreads false news which causes the price of rice to rise in Somalia, he is subject to the punishment under Paragraph 3, because he has caused the rise in the price of goods of common consumption. His liability is established by Paragraph 4.

Paragraph 5 simply states that conviction shall entail interdiction from public office, the consequences of which are described in Article 101.

Example:

X is a Somali businessman living in Mogadishu. He has just imported a large quantity of sugar from Europe. Owing to a slight mechanical failure, the sugar factory in Somalia has not finished producing the sugar it normally supplies to the stores in Mogadishu. The delay is only temporary, and in a few weeks all the sugar needed will be available from the factory. However, X sees an opportunity to become rich quickly. He hires people to spread the rumor around town that the factory has stopped producing sugar because the crop wasn't large enough, and that there will be no sugar in Mogadishu for another six months. The people believe this. X then begins to sell the sugar he imported at double the normal price. People pay this price, believing that X's sugar is the only sugar they will be able to buy for the next half year. The director of the factory hears the rumors that are being circulated, and assures the government that sugar will be available in a few weeks. The government publishes an official notice to this effect, and orders an investigation into the reasons for the price rise. Subsequently, X is arrested and charged with violating Article 389.

X is guilty as charged. He has spread false news about the shortage of sugar. He has done so for the specific purpose of disturbing the local market by causing the price of sugar to rise. The rise actually did take place, and it involved a product of common consumption—sugar. X has therefore committed the crime with an aggravating circumstance under Paragraph 2, by actually causing the price to rise, and an aggravating circumstance under Paragraph 3, by causing a rise in the price of a good of common consumption. According to Article 122, if one aggravating circumstance includes another one, only the greater aggravating circumstance shall apply (see explanation under Article 122). The judge sentences X to imprisonment for three years and a fine of 3,000 shillings. Then, according to Paragraph 3, he doubles the punishment to six years and a fine of 6,000 shillings. X is also interdicted from public office.

Article 390 Lockouts and Strikes

1. An employer who,
(a) other than in the cases allowed by law,
(b) with the intention of affecting the formation, application, or modification of any labor contract or of the policy of the State,
(c) suspends work, wholly or in part,
(d) in his establishment or office,
shall be punished with a fine of not less than Sh. So. 10,000.

2. Employees engaged in any establishment or office who,
(a) other than in the cases allowed by law,
(b) with any of the objectives referred to in the previous paragraph,
(c) collectively abandon their work or
(d) perform their work in such a manner as to disturb the continuity or regularity thereof,
shall be punished with a fine up to Sh. So. 1,000.

Explanation:

Any penal provision regarding strikes or lockouts must be read with Article 27 of the Constitution, which provides:

> The right to strike is recognized and may be exercised within the limits prescribed by law. Any act tending to discrimination against, or to restrict, the free exercise of trade union rights shall be prohibited.

This constitutional provision was discussed under Article 256.

Article 390 applies to both employers and employees, Paragraph 1 dealing with the former, and Paragraph 2 with the latter. There is a misprint in the English version of Paragraph 2. Instead of "Employees," it reads, "Employers." Employers obviously cannot collectively abandon their work, because there is only one employer in a shop, factory, or other place of production. In addition, the Italian text of Article 390(2) reads: "I lavoratori addetti a stabilimenti, azienda od uffici che, fuori dei casi consentiti dalla legge, abbandonano collettivamente il lavoro . . ." Therefore, the article applies to strikes by employees or lockouts by employers. The Italian courts have treated a lockout as a form of strike by an employer, and have given it constitutional protection under Article 40 (the Italian Constitution's equivalent of Article 27 of the Somali Constitution). This question is still open in Somalia.

Paragraph 1 deals with employers who lock out their employees for purposes of affecting labor contracts or the policy of the state. The employer must suspend the work in his office or establishment for one of these purposes, and such suspension may be in whole or in part.

Paragraph 2 applies to the collective abandonment of work by any employees, as distinguished from Article 256, which prohibits collective abandonment by public officers, employees performing public services of public necessity, or employees of concerns performing a public service or a service of public necessity.

The Italian courts have found the similar articles in the Italian Penal Code unconstitutional in so far as they restrict the right to strike for economic reasons. The articles have been held to be constitutional in prohibiting the right to strike or lock out for political reasons—that is, to affect the policy of the state (see CARABBA, CODICE PENALE, pp. 615–16).

Article 391 Unauthorized Occupation of Agricultural or Industrial Undertakings and Sabotage

1. Whoever,
(a) with the sole object of preventing or disturbing the normal course of work,
(b) invades or occupies
(c) any agricultural of industrial undertaking belonging to another, or
(d) disposes of the machines, equipment, apparatus, or implements intended for agricultural or industrial production and belonging to another,
shall be punished with imprisonment up to three years and with a fine of not less than Sh. So. 1,000.

2. Whoever damages buildings used for agricultural or industrial undertakings or any of the articles specified in the foregoing provision, shall be liable, where the act does not constitute a more serious offense, to imprisonment from six months to four years and to a fine of not less than Sh. So. 5,000.

Explanation:

This article applies to acts designed to seriously affect either agriculture or industry. The article in effect embodies two different offenses. Paragraph 1 deals with those cases where the offender has invaded or occupied agricultural or industrial places. The term "invade" means to enter a place without authorization. An unauthorized entry could be committed by an employee of a factory if he was not authorized to be

at the factory at the time he entered. The term "occupy" means to take control of a place and to exclude the entry of others. The prosecution must show that the sole purpose of the accused was to prevent or disturb the normal course of work at the farm or factory. If there was more than one purpose, the accused is not liable under this article. In addition, Paragraph 1 covers the case where the offender has disposed of the machinery or equipment belonging to another person for the sole purpose of preventing or disturbing that person's agricultural or industrial business. The punishment under Paragraph 1 is both a fine and imprisonment.

Paragraph 2 involves sabotage—that is, the damaging of buildings, machinery, and equipment used in agricultural or industrial undertakings. Although it is not clearly stated, the prosecution must show that such act was for the sole purpose of preventing or disturbing the agricultural or industrial enterprises. Paragraph 2 does not apply where the act constitutes a more serious offense. Thus, an act of sabotage at one factory may in fact seriously affect the national production of that product and bring the accused within the terms of Article 387 (see explanation under that article). In such a case, Paragraph 2 of Article 391 will not apply.

Example:

Z is the leader of a union of banana-plantation workers in Ginalli. The union has called a strike to obtain higher wages. The employers have hired other people to work on the farms, and the strike has been ineffective. Work is going on almost as usual. Z decides to take drastic action. He and three others enter one of the larger farms at night with rifles, and take control of the banana-truck loading station at the center of the farm. The next day, when the workers come to the station, Z and the three others refuse to let them enter. They claim that they will stay there until all of the workers leave the farm and the employers grant the union's wage demands. The employers, instead, call the police. After a great deal of talking, Z and the three men with him agree to give themselves up. They are arrested and charged with violating Article 391.

All four men are guilty as charged. They have invaded and occupied an agricultural establishment. They have done so for the sole purpose of disturbing the shipment of bananas and preventing the employees who normally work in the loading station from working as usual. The farm and the banana station belong to a person or persons other than Z and his co-defendants. All of the accused are subject to imprisonment up to three years and a fine. The judge may, under Article 40(g), consider the fact that they willingly gave themselves up to be an extenuating circumstance, and reduce the punishment according to Article 119.

Article 392 Accessory Penalty

Conviction for any of the crimes provided for in the two preceding articles shall involve interdiction from any office in a trade union for a period of five years.

Explanation:

Article 392 simply establishes the accessory penalty of interdiction with regard to persons convicted of LOCKOUTS AND STRIKES (Article 390) and UNAUTHORIZED OCCUPATION OF AGRICULTURAL OR INDUSTRIAL UNDERTAKINGS AND SABOTAGE (Article 391). Note that the application of interdiction has nothing to do with the length of the sentence. Conviction under Articles 390 and 391 entails interdiction. Thus, in the example under the preceding article, Z, who is the leader of the union, is subject to interdiction from any union office for a period of five years.

CHAPTER II CRIMES AGAINST INDUSTRY AND COMMERCE

Article 393 Infringement of Freedom of Industry and Commerce

Whoever
(a) uses violence on objects or fraudulent means
(b) in order to prevent or disturb
(c) the conduct of an industrial or commercial concern,
shall, on the complaint of the party injured, be punished, where the act does not constitute a more serious offense, with imprisonment up to two years and with a fine from Sh. So. 1,000 to 10,000.

Explanation:

This article applies to acts against industry and commerce. It does not include farms. The prosecution must show that the accused intended to prevent or disturb the normal running of a commercial or industrial concern. Industrial concerns include factories of all types. Commercial concerns include import or export businesses, banks, stores, and transportation offices. The crime can be committed either by an act of violence, in the sense that the person has taken the law into his own hands, or by fraudulent means—that is, by deceiving or misleading another person. The punishment is both fine and imprisonment.

Note that this crime can be prosecuted only if the injured party has filed a formal complaint. The state cannot initiate proceedings by itself without such complaint.

Example:

X and Y are Somali businessmen living in Mogadishu. Both men run general stores in the city, and each has ordered from Z, another businessman, fifty sacks of Kenyan coffee, which is in great demand. Z informs X and Y that only fifty sacks arrived on the boat, and that each man could take twenty-five of them until the next shipment arrived. Both X and Y refuse to do this. Each one claims that he placed his order with Z first, and is thus entitled to the full fifty sacks. They both go to Z's office. Z tries to get them to compromise, but they won't agree. Z finally says that he remembers that X placed his order first. X pays Z the money for the fifty sacks, and loads them into his truck. Y yells that X and Z are conspiring against him to ruin his business and give all the profits to X, and that if he can't have the coffee, no one can. He draws a knife and begins slashing at the sacks of coffee beans on the truck, and the beans fall into the street. By the time X and Z stop him, Y has destroyed almost all of the sacks. X files a formal complaint with the police. Y is arrested and charged with violating Article 393.

Y is guilty as charged. He has committed a violent act against an object —the sacks of coffee beans. He has done so in order to prevent X from selling the coffee, which is a disturbance of the normal conduct of X's business—that of selling products. X has filed a formal complaint. The judge sentences Y to imprisonment for two months and to a fine of 1,000 shillings.

Article 394 Fraud against National Industries

Whoever,
(a) by offering for sale or otherwise putting into circulation,
(b) on national or foreign markets,
(c) industrial products with counterfeit or altered distinctive names, marks, or signs,
(d) causes injury to national industry,
shall be punished with imprisonment from one to five years and with a fine of not less than Sh. So. 5,000.

Explanation:

This article applies only to cases of fraud against national industries. It does not apply to commercial or agricultural establishments. The products involved in this article must be industrial ones—that is, products which have been manufactured. The SomalTex Company, producing Somali-made cloth, is a national industry and within the terms of this article.

The article forbids persons to place counterfeit or altered names, trademarks, or signs on products that make them appear to be genuine products produced by Somali industries. The accused must offer such products for sale, or in some other way put them on the market. The article applies even when a person distributes such false products in a foreign market. The genuine products do not have to be covered by an international trademark treaty or agreement by the Somali government. The prosecution must show that there was damage to the national industry. Such damage will most likely take the form of people not buying the product of the national industry because the counterfeit product is no good.

The punishment is both fine and imprisonment, and proceedings may be initiated by the state.

Article 395 Fraud in the Exercise of Commerce

1. Whoever,
(a) in the exercise of commercial activity, or
(b) in a shop open to the public,
(c) delivers to the purchaser
(d) an article instead of another, or an article different in origin, source, quality, or quantity from the one stated or agreed upon,
shall be punished, where the act does not constitute a more serious offense, with imprisonment up to two years or with a fine up to Sh. So. 20,000.

2. In the case of precious objects, the punishment shall be imprisonment up to three years or a fine of not less than Sh. So. 1,000.

Explanation:

This article applies to commercial activity, which means trading, importing, exporting, and selling. It specifically covers shops and stores open to the public. The fraud in this article is committed by the act of selling a person an article different from the article he thought he was buying and which he had agreed to purchase. The product can be different in terms of origin (the storekeeper claims that an animal skin is leopard, but it is really cheetah), source (the storekeeper says that the product comes from Germany, but it was really made in Tanzania), quality (the storekeeper says the product is 100 percent silk, and in reality it is only 50 percent silk), or quantity (the storekeeper says the length is three yards, and it is only two and a half yards). The agreement between the purchaser and the person selling the goods does not have to be stated. Its terms are understood.

Paragraph 2 deals specifically with precious objects. The term "precious object" includes gold, jewelry, and valuable gems and metals. The punishment is heavier if the accused has by fraud sold a precious object inferior in quality or quantity to the object the purchaser thought he was buying. Thus, if the owner of a gold shop in Mogadishu sells a person a gold pin that he says is of twenty-four-karat gold when the gold weighs only twelve karats, he is liable to punishment under Paragraph 2.

Example:

X is a truck driver. He takes his vehicle into a gas station and asks for ten liters of gasoline. The owner of the gas station has been short of gasoline lately, and has added water to the storage tanks so that he can continue to sell gasoline until a new shipment arrives. He puts ten liters into the truck's tank, but it is only about 75 percent gasoline. X's truck breaks down, and X discovers that it was because of water in the gas tank. He complains to the police, who investigate, and they arrest the owner of the gas station.

The owner is guilty of violating Article 395. He has sold a product which was different in quality from the quality X expected to receive. There was no formal agreement, but X understood that he was paying for gasoline to be put into his truck, not water. The gas station was a shop open to the public, and the owner was engaged in commercial activity. The judge sentences the owner to six months in prison and a fine of 10,000 shillings.

Article 396 Sale of Non-Genuine Food Products as Genuine

Whoever
(a) offers for sale or otherwise trades
(b) non-genuine food products as genuine,
shall be punished, where the act does not constitute a more serious offense, with imprisonment up to six months or with a fine up to Sh. So. 10,000.

Explanation:

This article applies to the sale of non-genuine foods. The article differs from the preceding one in that it applies to a person who offers the non-genuine product for sale. The preceding article applies to the situation where the item has been delivered to the customer. Thus, if a shop owner sells a person watered milk instead of pure milk, he is selling an article different in quality and origin from the one the customer thinks

he is receiving. This comes under Article 395. That article also applies to products other than food or drink. Article 396 applies only to food products. If a shopkeeper offers to sell watered milk and is arrested before he has sold such milk to anyone, this is a violation under Article 396.

Article 396 must also be distinguished from Articles 336 and 337. Those two articles involve adulteration, and the prosecution must prove that the offender adulterated the food, making it dangerous to public health. Under Article 396, he does not have to prove any element of danger to health. The prosecution must prove, however, that the offender knew that the food product was non-genuine at the time he offered it for sale.

Note that the punishment is either a fine or imprisonment, not both.

Article 397 Sale of Industrial Products under False Signs

Whoever
(a) offers for sale or otherwise puts into circulation
(b) literary or artistic works or industrial products
(c) with trade or other marks, national or foreign,
(d) likely to deceive the purchaser
(e) as to the origin, source, or quality of the work or product,
shall be punished, where the act does not constitute a more serious offense, with imprisonment up to one year or with a fine up to Sh. So. 10,000.

Explanation:

This article is designed to protect the public from deceptive or misleading marks, names, or other indications on products. The purpose is to prevent persons from misleading the public into buying a product thinking it was made by someone else. The article applies only to certain types of products. A literary product would be a book or any other written work; an artistic product would be a painting, a sculpture, or any other kind of art work; and an industrial product would be anything which has been manufactured. Thus, peanuts are not industrial products, but peanut oil is.

The article applies to persons who offer such falsely identified items for sale or put them into circulation—that is, make them available to markets, stores, and other means of distribution. The prosecution must show that the mark on the product was of the type likely to deceive the public. Note that he does not have to prove that the purchaser was in fact deceived by the mark, merely that it is likely he would be deceived. In addition, the prosecution must show that the deception would have misled the person as to the origin, source, or quality of the product.

The punishment is either imprisonment or a fine, not both, and the article does not apply if the facts indicate that a more serious offense has been committed.

Example:

X owns a pharmacy in Hargeisa. He imports aspirin from Germany, which he sells for a cheaper price than Aspro, the brand of aspirin most widely sold in Somalia. However, nobody buys it. People do not recognize the German name, and think anything cheaper than Aspro cannot be any good. In fact German aspirin is identical with Aspro and produces the same effects. X then puts his German aspirin in bottles which look very much like the Aspro bottles. He changes the name of the German product to "Aspri," and places the bottles on the shelves in his store. The first customer in his store that morning is the man who imports Aspro. He takes one look at the "Aspri" bottles in X's store, and immediately goes to the police to stop X from selling this product. After an investigation, X is arrested and charged under Article 397.

X is guilty as charged. He has offered an industrial product for sale, with a mark on it likely to deceive the purchaser as to the origin of the product. By selling his product as "Aspri," X hoped to mislead people into thinking it was Aspro, a product with which they were familiar. The judge fines X 5,000 shillings.

Note that if X had sold "Aspri" to people, he would have been guilty, under Article 395, of delivering to the purchaser an article different in origin than the one the purchaser thought he was getting.

PART IX CRIMES AGAINST MORALS AND DECENCY

Chapter I Crimes of Sexual Violence

Article 398 Carnal Violence

1. Whoever
(a) with violence or threats
(b) has carnal intercourse
(c) with a person of the other sex,
shall be punished with imprisonment from five to fifteen years.

2. The same punishment shall be imposed on anyone who has carnal intercourse with a person of the other sex who
(a) is incapable of giving consent or
(b) with a person who has been deceived by the offender personating as another person.

3. The same punishment shall be imposed also on
(a) a public officer who,
(b) by abusing his power,
(c) has carnal intercourse
(d) with a person of the other sex who is under arrest or detained in custody under the said officer by reason of his office or entrusted to him in execution of an order of the competent authority.

4. For purposes of penal law, penetration by the male sexual organ shall constitute carnal intercourse.

Explanation:

This article involves carnal violence, commonly called "rape." The term "carnal intercourse" is defined in Paragraph 4 of this article as the penetration by the male sexual organ. Thus, unless such penetration has taken place, there can be no commission of the crime under this article. Carnal violence can be committed only against a member of the opposite sex. Theoretically, the rape can be committed by a man against a woman or a woman against a man. As a practical matter, the latter case will occur very rarely, if at all.

The main element of carnal violence is the use of force or threats of force by the accused against the injured party. The threat must convey the danger of immediate harm to the victim unless she submits to the offender. The main defense against a charge of rape is that the woman consented—that is, she agreed to sexual intercourse and therefore was not forced against her will. Therefore, the prosecution must clearly show the elements of violence or threats. Any marks on the face or other parts of the body of the accused showing resistance by the woman are good evidence that the woman did not consent. Similarly, any marks of a beating on the woman indicate that the accused had to force her to submit.

Paragraph 2 provides that carnal intercourse with a person of the other sex who cannot give consent is a crime under this article. A person who cannot give consent is one who is mentally deficient, within the meaning of Article 50 or 51; is drunk or under the influence of drugs, within the meaning of Article 57; is deaf and dumb, within the meaning of Article 58; or is under fourteen years of age, within the meaning of Article 59. The paragraph also provides that carnal intercourse shall be a crime where the woman is deceived as to the identity of the man with whom she has consented to commit the act. The reason for this is that is assumed that the woman was acting against her will in having carnal intercourse with someone other than the person she thought she was consenting to.

Paragraph 3 applies only to public officers of a particular type. The prosecution must show that the public officer had arrested or detained in custody, by reason of his office or in the execution of an order by the competent authorities, the person with whom he committed carnal intercourse. Thus, police, members of the prison service, or persons requested by them to detain others who commit carnal intercourse with the person detained are subject to the provisions of Article 398.

In a recent case, the Supreme Court of the Somali Republic ruled on the requirements of proving a rape case. In *Ibrahim Idris Saeed* v. *State* (Criminal Appeal No. 7 of 1965, Somali Law Reports [Hargeisa and Burao Regions], 1964–65, p. 233), the Court affirmed the former rule of evidence established under the Indian Penal Code in the north. The general evidentiary rule is that in cases of carnal violence, conviction of the accused should not be based solely on the testimony of the woman injured. There should be some corroborating evidence to show that the crime was in fact committed and that the accused was the man. The Supreme Court accepted as such corroborating evidence the facts that the woman had reported the matter to two witnesses, that she had given a full description of the accused to the police, and that she picked the accused out of an identification parade of fifty men. The Court also relied on the facts that in Somali society a woman will not usually falsely claim rape, because it ruins her prospects for future marriage, that there was no evidence of a dispute between the woman and the accused, and that the woman was of moral character.

Example:

Q is a Somali woman living in a *gurgi*. One afternoon a nomad passes her *gurgi* and notices her. That night, when she is sitting alone, he returns, grabs her, throws her to the ground, and commits the act of carnal intercourse. The next day he leaves, and Q reports the matter to the police. After a brief investigation, they arrest a nomad who fits the description Q has given. Q is taken to a doctor, who examines her and finds scratches and bruises on her thighs, face, and arms, and medical evidence of carnal intercourse. The nomad has scratches on his face about the eyes, and bruises on his knuckles. At the trial, the accused admits that he had carnal intercourse with Q, but claims that she consented. The prosecution offers the medical testimony to show that the woman was forced.

The accused is guilty as charged. He has by violence had carnal intercourse with Q, a person of the other sex. The corroboration of Q's claim that she was raped is the medical testimony of bruises and scratches

showing evidence of force being used, and the scratches on the accused's face. The judge sentences the accused to ten years.

Article 399 Acts of Lust Committed with Violence

Whoever,
(a) by employing the means or under the conditions specified in the preceding article,
(b) commits upon a person of the other sex
(c) acts of lust other than carnal intercourse,
shall be punished with imprisonment from one to five years.

Explanation:

This article is identical with the preceding one, except with regard to the acts committed. The offense must be committed on a member of the other sex. It must be done by threats or violence, or be committed against a person who cannot give consent or gives consent because of mistaken identity. It can be committed by public officers against persons in their lawful custody, as in the provisions of Paragraph 3 of Article 398.

The main difference between this article and the preceding one is that Article 399 applies only to acts of lust other than carnal intercourse. The prosecution does not have to prove penetration by the male sex organ.

Article 400 Unnatural Offenses Committed with Violence

Where
(a) any of the acts referred to in Articles 398 and 399
(b) is committed
(c) against a person of the same sex or
(d) a person of different sex, against nature,
the punishment shall be increased.

Explanation:

This article establishes the aggravating circumstance of unnatural acts when committed in the course of carnal intercourse. The article applies to acts committed against a person of the same sex, which is deemed unnatural because it is against a member of the same sex, and acts against a person of different sex which are against nature. Thus, the article in part covers homosexuality—acts between men—and lesbianism—acts between women—as well as unnatural acts against persons of different sex.

As in Articles 398 and 399, the prosecution must show violence or threats of harm and lack of consent on the part of the victim. If carnal

violence or an act of lust is committed in an unnatural way, as defined by this article, the punishment for those crimes shall be increased. According to Article 118, the increase for a single aggravating circumstance shall be up to one-third of the basic punishment.

Example:

X is a fifteen-year-old boy. He is arrested for petty theft, and imprisoned pending trial. While in prison, he is approached by one of the guards, who states that he wants to have homosexual relations with the boy. X refuses. The guard takes X to a locked room, beats him, and then commits the homosexual act. Two days later, when X is brought before the judge, he complains about the guard's conduct. The police investigate, and the guard is arrested and charged under Article 400.

The guard is guilty as charged. He has committed the act of carnal intercourse by means of violence. This is in violation of Article 398. He has committed the act on a person lawfully in his custody, and as a public officer is liable against a member of the same sex. Therefore the guard is subject to an increased penalty under Article 400. The judge sentences him to six years under Article 398, and increases the sentence by a full one-third, to a total of nine years in prison.

Note that, by committing a homosexual act, the guard has engaged in carnal intercourse within the meaning of Article 398(4). Thus, the homosexual act does not come within "acts of lust other than carnal intercourse," described in Article 399.

Article 401 Abduction for Purposes of Lust or Marriage

1. Whoever,
(a) with violence, threat, or deceit,
(b) abducts or detains a person
(c) for purposes of carnal violence or lust,
shall be punished with imprisonment from two to five years.
2. Whoever,
(a) with violence, threat, or deceit,
(b) abducts or detains
(c) for purposes of marriage an unmarried person,
shall be punished with imprisonment from one to three years.
3. Whoever
(a) abducts or detains
(b) a person who is incapable of giving consent,
(c) for purposes of carnal violence, or lust, or marriage,
shall be subject to the punishments prescribed respectively in the two preceding articles.

Explanation:

This article applies to the abduction or detention of persons for certain purposes. The prosecution must show that the accused abducted or detained a person for purposes of carnal violence or lust under Paragraph 1, or for purposes of marriage under Paragraph 2. Furthermore, he must show that the act of abduction or detention was committed by violence, threats, or deceit. An example of deceit would be an offer from X to give Y a free ride in his Land Rover from one town to another, intending instead to take Y alone into the interior for purposes of carnal intercourse. He has abducted and detained Y by deceiving her into coming with him for the purposes of a free ride. The term "abduction" means physically taking a person away from somewhere. The term "detention" means holding or keeping a person against that person's will.

Paragraph 1 imposes a punishment of imprisonment from two to five years for abduction or detention for purposes of carnal violence or lust. Paragraph 2 imposes the punishment of imprisonment from one to three years for abduction or detention for purposes of marriage. The person abducted or detained must be an unmarried person. If the person is already married, then it is not a crime under Article 401 to take that person for purposes of marriage. Instead, it will be SEIZURE OF A PERSON, under Article 460 (see explanation under that article).

Paragraph 3 applies to abduction or detention of persons incapable of giving consent. Such persons were described in connection with Paragraph 2 of Article 398. The abduction or detention of a person incapable of giving consent must be for purposes of carnal violence, lust, or marriage as described in the two preceding paragraphs. The English version of the article contains an error; it states that the punishment in Paragraph 3 shall be according to the two preceding "articles," instead of "paragraphs." The phrase in the Italian version is "ai precedenti commi," or "preceding paragraphs." Therefore, the punishments under Paragraph 3 are as follows:

(1) For the abduction or detention of a person incapable of giving consent for purposes of carnal violence or lust, two to five years in prison, as stated in Paragraph 1;

(2) For the abduction or detention of a person incapable of giving consent for purposes of marriage, one to three years in prison, as stated in Paragraph 2.

Example:

X is a nomad, living outside a town. He sees a young, beautiful unmarried girl in town one day. He follows her down the street late one afternoon, grabs her, and drags her off into the bush, intending to rape her. He stops a few miles out of town, ties the girl to a tree, and leaves her, meaning to return later. The girl gets free and runs back to town. She informs the police, who send out a patrol and catch X. X is charged with violating Article 401.

X is guilty as charged. He has abducted—that is, taken against her will—a girl by force. He has done so for the purpose of carnal violence, because he intended to rape her. The judge sentences X to imprisonment for three years.

CHAPTER II OFFENSE AGAINST MODESTY AND SEXUAL HONOR

Article 402 Obscene Acts

1. Whoever,

(a) in a public place or a place open to the public,

(b) commits obscene acts,

shall be punished with imprisonment from six months to three years.

2. Where the act is committed through culpable negligence, the punishment shall be a fine from Sh. So. 300 to 3,000.

Explanation:

This article involves only acts committed in public places or places open to the public. A "public place" is a street, square, beach, public garden, or park. A "place open to the public" is a restaurant, tea shop, movie theater, or other such place. The Italian Penal Code includes a third category—"places exposed to the public" (see Article 527 of the Italian Penal Code). This category is included in Article 509 of the Somali Penal Code (see explanation under that article).

Article 404 defines "obscene acts and objects" as being in the general opinion offensive to modesty. This means that the act must offend the attitudes or sensibilities of a majority of normal people in the society. The definition will therefore vary from society to society. The article gives the judge broad discretion to determine what is accepted social behavior and what offends the good taste and morals of the people. The judge cannot impose his personal moral tastes, but must determine whether the act or object is one that most respectable people would find offensive.

Paragraph 2 of Article 402 provides that the punishment shall be less where the offense is committed through negligence.

Example:

Y is a resident of Mogadishu. One night, he is coming home late from a friend's house after a party. He meets a prostitute in the street, takes her to a public park in the center of town, and has carnal intercourse with her on a bench in the park. Nobody else is in the park at this time, but two policemen pass by on patrol and arrest Y and the prostitute. Both are charged with violating Article 402, among other offenses.

Y and the girl are guilty as charged. They had carnal intercourse in a public place—a park in the city. The act of carnal intercourse in public is obscene, because the majority of people do not regard the public performance of the act as acceptable behavior. The judge sentences both persons to imprisonment for six months.

Article 403 Obscene Publications and Performances

1. Whoever,
(a) for purposes of sale or distribution, or public exhibition,
(b) manufactures, introduces into the territory of the State, purchases, holds, exports, or puts into circulation
(c) any obscene paper, drawing, representation, or any other obscene object of any nature,
shall be punished with imprisonment from three months to three years and with a fine of not less than Sh. So. 1,000.

2. A person who trades, even clandestinely, in the articles mentioned in the preceding paragraph, or distributes or exhibits them publicly, shall be liable to the same punishment.

3. The said punishment shall also apply in the case of a person who:
(a) employs any means of publicity intended to facilitate the circulation or sale of the objects specified in Paragraph 1 of this article;
(b) gives public theatrical or cinematographic performances, or public concerts or recitals, which have an obscene character.

4. In the case referred to in letter b of the preceding paragraph, the punishment shall be increased where
(a) the act is committed
(b) notwithstanding the prohibition of the authorities.

Explanation:

Article 403 deals with obscene publications and performances. Paragraph 1 concerns the sale, distribution, or public exhibition of obscene publications or objects of any other nature. The prosecution must prove

that the accused acted for one of these purposes. The meaning of the word "sale" is obvious. The word "distribution" means circulation among other persons. A "public exhibition" would be a movie performance or theatrical show, among other things. The prosecution must also show that the accused committed certain acts in furtherance of one of these purposes. He must show that the accused manufactured in Somalia, brought into the country, bought, possessed, exported, or put into circulation—that is, distributed among others—a thing prohibited by this article. Such things are obscene papers, drawings, representations (which would include movies), or any other obscene object of any nature. Thus, the prosecution must prove the prohibited purpose, the act of the accused, the object involved, and its obscenity. The punishment under Paragraph 1 is both a fine and imprisonment.

Paragraph 2 applies to persons who trade in any of the obscene objects mentioned in Paragraph 1, even if such trading is secret. It also applies to persons who distribute or exhibit the obscene articles publicly. The difference between Paragraphs 1 and 2 is that under Paragraph 1 the accused can import obscene movies for the purpose of distribution to movie theaters and be punished, without ever having distributed the movies themselves. Merely importing for that purpose is an offense under Paragraph 1. Under Paragraph 2, the person must actually distribute such movies to be liable to the same punishment as specified in Paragraph 1.

Paragraph 3 provides that a person is subject to the punishment contained in Paragraph 1 if he uses any means of publicity to assist in the circulation or sale of the obscene objects. Thus, if a person advertises an obscene movie in a newspaper, or announces over the radio that he has certain obscene magazines for sale, he would be guilty under this paragraph. The paragraph also applies to persons who actually give public theatrical or movie shows, or public concerts or recitals, of an obscene character. Thus, even if a movie-theater owner did not advertise an obscene film but merely showed it to the public, he would be guilty under this paragraph and subject to the punishment specified in Paragraph 1.

Paragraph 4 makes it an aggravating circumstance if the public performance is given after it has been prohibited by the authorities. Under the Public Order Law (Law No. 21 of 26 August 1963), the Public Order authorities have the power to authorize the showing of movies, concerts, and other public performances (see Article 44). If a Public Order authority has prohibited the showing of a film, for example, and it is shown anyway and found to be obscene, then the punishment under Paragraph 1 shall be increased up to one-third, according to Article 118.

Example:

Z is a resident alien living in Mogadishu. He runs a bookstore and imports magazines and other printed material from Italy. He has imported five hundred copies of a magazine published in Italy, containing photographs of nude women and stories about sex. When these magazines arrive, he publicly displays them on the counter in his store, and sells many of them. A plainclothes policeman comes into the store and buys one, obtains a warrant, and has Z arrested and the magazines confiscated. Z is charged with violating Article 403 of the Penal Code.

Z is guilty as charged. The article says "whoever," and therefore applies to resident aliens as well as Somali citizens. Paragraph 1 makes it a crime to introduce into the territory of the state—that is, import—for purposes of sale any obscene paper, representation, or any other obscene object of any nature. Z has imported the magazines for purposes of sale. The magazines are obscene within the meaning of Article 404. Sex magazines are generally not sold in Somalia. Pictures of naked women and stories about sex activities are considered offensive to most people in Somali society. By placing the magazines on sale in his store, Z also exhibited them to the public, and his act of selling them is a violation under Paragraph 2. Z has therefore violated the article under Paragraphs 1 and 2. He cannot, of course, be punished for violating each paragraph. The judge sentences Z to imprisonment for six months, and orders him to pay a fine of 5,000 shillings.

Note that Paragraph 1 establishes only the minimum for the fine. Article 97 provides that the maximum fine for crimes may be 50,000 shillings. In this case, therefore, the judge had the discretion to fine Z any amount between 1,000 and 50,000 shillings.

Article 404 Definition of Obscene Acts and Objects

For purposes of penal law, acts and objects are deemed to be obscene where they, in the general opinion, are offensive to modesty.

Explanation:

The provision of this article has already been discussed in connection with Article 402.

Article 405 Prostitution

1. Whoever practices prostitution in any form shall be punished with imprisonment from two months to two years and with a fine from Sh. So. 100 to 2,000.

2. Where the act is committed by a married person, the punishment shall be increased.

Explanation:

The major article dealing with prostitution in the Somali Penal Code is Article 405. Articles 531 to 536 of the Italian Penal Code used to cover the offense, but they were replaced by a special law to deal specifically with the problem. Article 405 covers prostitution of all types and in any form. The term "prostitution" means to commit the sexual act on a regular basis with different people over a period of time for money or other benefit.

Paragraph 2 makes it an aggravating circumstance if the prostitute is a married woman.

Example:

X is a prostitute living in Mogadishu. She goes to one of the night clubs, picks up a man, takes him back to her house, and has carnal intercourse with him. He pays her twenty shillings, and leaves. The man is observed coming out of X's house by a policeman, and X is arrested and charged with violating Article 405.

X is guilty as charged. She has committed an act of carnal intercourse for money. The prosecution must show that she was paid for the act, and that this is her normal activity over a period of time.

Article 406 Incitement to Lewd Acts

Whoever,
(a) in a public place or a place open to the public,
(b) incites anyone
(c) to lewd acts,
(d) even in an indirect manner,
shall be punished, where the act does not constitute a more serious offense, with imprisonment up to one year or with a fine up to Sh. So. 2,000.

Explanation:

A "lewd" act is one which is obscene, generally involving sexual activity. Article 406 involves inciting or provoking someone to commit a lewd act in a public place or a place open to the public. The phrases "public place" and "place open to the public" were defined under Article 402. The punishment is either a fine or imprisonment.

Example:

Y is a customer in a night club in Mogadishu. He becomes drunk and urges one of the girls in the club to get up on the table and take her

clothes off. She at first refuses, but he persuades her, and she does so. Both the girl and Y are arrested. The girl is charged, under Article 402, with committing an obscene act in a place open to the public. Y is charged with inciting the girl to commit a lewd act.

Both are guilty as charged. Y urged the girl to get up on the table and take off all her clothes. He did this in a restaurant–night club, which is a place open to the public. The act of taking off one's clothes in public is a lewd act when committed by a woman in such a manner. It is lewd because it is contrary to the morals of most people, and sexually suggestive. A lewd act does not have to be an obscene one, but it generally is. The judge sentences Y to pay a fine of 1,000 shillings.

Article 407 Instigation, Aiding, and Exploitation of Prostitution

1. Whoever
(a) instigates another
(b) to commit prostitution, or
(c) aids or in any manner facilitates prostitution, or
(d) exploits, wholly or in part, the proceeds of prostitution,
shall be liable to the punishment provided for in Paragraph 1 of Article 405.

2. The punishment shall be increased where:
(a) the act is committed against a person who is incapable of giving consent;
(b) the offender is an ascendant, spouse, brother, sister, or guardian of the person;
(c) the act is committed against a person entrusted to the offender for care, education, instruction, supervision, or custody.

Explanation:

This article applies to persons who urge others to commit acts of prostitution, aid prostitutes in carrying on their business, or receive some of the profits from the prostitutes' activities. The article is broadly worded, and includes aiding or facilitating prostitution in any manner whatsoever. Generally, this will include running houses of prostitution, procuring men for the prostitutes, or any other such activity.

Paragraph 2 defines the aggravating circumstance for this offense. If a person instigates or aids a prostitute incapable of giving consent, as specified in the explanation under Article 398, he or she shall be subject to an increased punishment. The punishment is also increased if the person who facilitates or aids the prostitute is in a defined special relationship to the prostitute. Thus, if the offender is an ascendant, husband, brother, sister, or guardian of the prostitute, the punishment is increased. The

same is true where the offender is entrusted with the care of the prostitute, or with her education, instruction, supervision, or custody. This would apply to headmasters of boarding schools, teachers, or public or private officials lawfully having custody of the person under the criminal law, such as a prison guard, or under the civil law.

Example:

Z is a woman living in Mogadishu. She has a large house with several rooms. Many of the prostitutes in the town have no place to go with the men. Z offers to let them use her house, in return for which the prostitutes agree to pay her one-third of the amount they earn each night. Z runs this house of prostitution for about two weeks before she is arrested by the police and charged under Article 407.

Z is guilty as charged. She has aided prostitutes by providing them with a place to come with their customers. She has exploited prostitutes by receiving some of the proceeds of their activities. She is therefore subject to the punishment provided for in Paragraph 1 of Article 405—imprisonment from two months to two years and a fine from 100 to 2,000 shillings. The judge sentences her to prison for one year and to a fine of 1,000 shillings.

Article 408 Compulsion to Prostitution

1. Whoever,
(a) by violence or threats,
(b) compels another to commit prostitution
shall be punished with imprisonment from two to six years and with a fine from Sh. So. 5,000 to 15,000.

2. Where any of the conditions referred to in Paragraph 2 of the preceding article exists the punishment shall be increased.

Explanation:

Compulsion to prostitution is forcing someone to become and remain a prostitute against her will. The prosecution must show that the offender committed the act of compulsion by force or threats.

Paragraph 2 defines the aggravating circumstances for the commission of this offense. If the offender has forced or threatened a person who is incapable of giving consent, or is related to the person forced as an ascendant, husband, brother, sister, or guardian, or the person who was forced to become a prostitute was entrusted to the offender for care, education, supervision, or custody, then the punishment is increased up to one-third, according to the provisions of Article 118.

Example:

Q is the mother of B, a twelve-year-old girl, living in an *agal* near a public-works camp in the interior. Q is a prostitute, and has been living near the public-works camp because of the men there. Q decides to make her daughter a prostitute for the men also, to increase her profits. The girl refuses, and Q beats her and starves her until she agrees. The girl, B, then becomes a prostitute, and turns over the money she earns to her mother. A police patrol passing through the area arrests both Q and B. Besides being charged with prostitution, Q is charged with violating Article 408. B, since she is under fourteen, cannot be charged with anything.

Q is guilty as charged. She has committed acts of prostitution within the meaning of Article 405. She is also guilty, under Article 408, of compelling her daughter, B, to commit acts of prostitution. Q beat and starved B until she agreed to commit such acts. Her offense under Article 408 is aggravated because she is the mother of B, and therefore an ascendant of the person compelled to prostitution, within the definition of Article 407, Paragraph 2(b). The judge sentences Q to six months and a fine of 300 shillings for the crime of prostitution. The judge further sentences Q to three years in prison and a fine of 6,000 shillings for compelling her daughter to commit acts of prostitution. He then increases this sentence by a full one-third under Article 408(2b), to four years in prison and an 8,000–shilling fine.

Note that Q is not guilty under Article 407, although she assisted B in becoming a prostitute and received the money she earned. This is because the offense under Article 407 is incorporated into the offense under Article 408. In other words, the offense under Article 407 consists of elements which constitute the offense under Article 408. This puts the case within the meaning of Article 46, which defines a complex offense (see explanation under that article).

Article 409 Homosexuality

Whoever
(a) has carnal intercourse
(b) with a person of the same sex
shall be punished, where the act does not constitute a more serious crime, with imprisonment from three months to three years.
Where
(a) the act committed
(b) is an act of lust different from carnal intercourse,
the punishment imposed shall be reduced by one-third.

Explanation:

Carnal intercourse was defined in Article 398(4) as penetration by the male sexual organ. When such carnal intercourse occurs as a result of a relationship between two males, the crime of homosexuality has been committed. Therefore, this crime is committed by the act of carnal intercourse itself. If the parties involved consent and agree to the act, they are still liable under Article 409.

If the act committed between two persons of the same sex is an act other than carnal intercourse, but an act of lust, the punishment shall be reduced by one-third.

Note that Article 409 applies only if the act is not a more serious offense. Thus, homosexuality committed with violence, or other acts of lust committed with violence, do not come under this article but under Articles 400 and 399, respectively.

Article 410 Security Measures

A security measure may be added to a sentence for the crimes referred to in Articles 407, 408, and 409.

Explanation:

Security measures are defined in Article 172 (see explanation under that article). These measures may be imposed as part of the sentence for conviction for Instigation, Aiding, and Exploitation of Prostitution (Article 407), Compulsion to Prostitution (Article 408), and Homosexuality (Article 409). Normally, the security measure which will be applied will be police surveillance to guarantee that the person convicted does not again engage in the activities defined in those three articles.

Thus, in the example under Article 407, the judge could impose the security measure of police surveillance on Z to make sure that she does not open another house of prostitution.

Chapter III Crimes against Morals

Article 411 Supply or Sale of Alcoholic Beverages

1. Whoever
(a) sells or otherwise supplies
(b) to a Somali citizen or to a Muslim of a foreign nationality
(c) any alcoholic beverage,
shall be punished with imprisonment up to three months or with a fine up to Sh. So. 1,000.

2. Where
(a) any alcoholic beverage is sold or supplied
(b) to a person under the age of fourteen years, or
(c) to a person who is afflicted with mental disease or
(d) is in a condition of mental deficiency owing to any other infirmity,
the punishment shall be increased.

Explanation:

This article applies to the sale or supply of alcoholic beverages. An "alcoholic beverage" is defined in Article 417 as:

> . . . any alcoholic beverage of a strength exceeding 3 per centum of proof spirit.

Every bottle of an alcoholic beverage has a statement of the percentage of alcohol contained in the bottle. According to the Somali Penal Code, anything with a content of less than 3 percent of proof spirit will not be considered an alcoholic beverage for purposes of the penal law. Most alcoholic beverages, such as whiskey, gin, bourbon, Scotch, vodka, wine, Chianti, and all other types of liquors, as well as beer, contain more than this 3 percent.

The article applies to any person, Somali citizens and aliens alike. But the act prohibited is the act of supplying or selling alcoholic beverages to only Somali citizens or Muslims of foreign countries. The sale of alcoholic beverages to non-Muslim foreigners is permitted. Although it is not specified, Somali citizens who are Christians should also be exempt, because the article is specifically designed to prevent the sale of alcohol to Muslims. The punishment is either imprisonment or a fine.

Paragraph 2 applies to the sale or supply of alcoholic beverages to any person under the age of fourteen, or a person afflicted with a mental disease, or one who is mentally deficient. Note that Paragraph 2 applies to any person, whether he is a Muslim or not. It is against the law to sell liquor to a child under fourteen, regardless of his religious beliefs. If such an act is committed, in violation of Paragraph 2, the punishment prescribed in Paragraph 1 must be increased up to one-third, according to the provisions of Article 118.

Example:

X owns a food and general-goods store in Mogadishu. He also sells wines, beer, and Scotch, as well as soft drinks. Y, a Somali citizen, enters X's store and buys a case of beer and two bottles of Scotch. X sells him these goods, and as Y is leaving the store he is stopped by the police and questioned. X is then arrested and charged under Article 411.

X is guilty as charged. He has sold alcoholic beverages to Y, a Somali citizen, knowing that he was a Somali citizen. The judge sentences X to a fine of 500 shillings.

Article 412 Consumption of Alcoholic Beverages

1. In cases other than those referred to in the preceding article,
(a) a Somali citizen or a Muslim of a foreign nationality,
(b) who acquires for his consumption or the consumption of another Somali citizen or Muslim of foreign nationality, or
(c) consumes in any form whatsoever
(d) any alcoholic beverage,
shall be punished with imprisonment up to four months or with a fine up to Sh. So. 1,000.
2. Where
(a) the act is committed
(b) in a public place or a place open to the public,
the punishment shall be increased.

Explanation:

This article is also designed to enforce the provisions of the Koran forbidding Muslims to drink alcoholic beverages. Article 412 applies to the consumption or the acquiring for purposes of consumption of alcoholic beverages by Somali citizens or other Muslims. Thus, in the example under the preceding article, Y was guilty of a violation under this article by acquiring the alcoholic beverages he bought for the purpose of consumption. The prosecution has only to prove that this was his purpose in buying it, not that he actually consumed it. The actual consumption by the accused is, however, covered by Article 412.

Paragraph 2 makes it an aggravating circumstance for a Somali citizen or a Muslim of foreign nationality to consume alcohol in a public place or a place open to the public.

Example:

X, a Somali citizen, buys two cases of beer for a party he is giving at his house. He invites many of his Somali friends, as well as some Muslims from foreign countries. All of the guests are drinking beer when the police enter X's house. X and all of his guests are charged with violating Article 412.

All of them are guilty as charged. X has acquired an alcoholic beverage for the purpose of consuming it and offering it to his friends for consumption. This in itself is an offense under Article 412(1). He and all of his

guests have also consumed this alcohol, and have therefore violated Paragraph 1, since they are all either Muslims or Somali citizens. The judge sentences X to a fine of 400 shillings and all of his friends and guests to a fine of 100 shillings each.

Article 413 Drunkenness

1. Whoever,
(a) in a public place or a place open to the public,
(b) is in a state of manifest drunkenness,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 2,000.

2. The punishment shall be imprisonment from three to six months where the act is committed by a person who has previously been convicted of a crime against human life or safety committed with criminal intent.

3. The punishment shall be increased where the drunkenness is habitual.

Explanation:

This article applies to those persons who become drunk, as distinguished from the mere act of consuming alcoholic beverages, prohibited under Article 412. The article applies to anyone, which means both foreigners and Somalis. The act of drunkenness must be committed in a public place, such as the streets or the parks, or in a place open to the public, such as restaurants, tea shops, or bars. The person commits the offense if he is in a state of manifest drunkenness, meaning obvious drunkenness, clearly to be seen. According to Paragraph 1, the punishment is either imprisonment up to six months or a fine up to 2,000 shillings, not both.

Paragraph 2 provides a heavier punishment if the person convicted of drunkenness has previously been convicted of crimes against human life or safety. The phrase "crimes against human life or safety" means any crime involving death or injury, or danger of death or injury. Such crimes are contained in Articles 434 to 450, but they also include crimes against the health of the human race, contained in Articles 418 to 423. Note that Paragraph 2 applies only in those cases where such crimes were committed with criminal intent. Thus, if a person convicted of drunkenness had previously been convicted of HURT CAUSED BY NEGLIGENCE (Article 446), Paragraph 2 does not apply, and the offender would not be subject to a heavier penalty.

Paragraph 3 provides that the punishment shall be increased where the drunkenness is habitual. Habitual drunkenness is defined in Article 55(2) as:

> . . . a person who is addicted to the use of alcoholic beverages and is frequently in a state of drunkenness . . .

For Paragraph 3 to apply, the prosecution must prove that the offender was a habitual drunkard. It will be necessary to show that the person continually used alcohol, to the point where he could not do without it, and was frequently drunk. The increase in the penalty is up to one-third of the sentence imposed, pursuant to Article 118.

Example:

Y is a resident alien living in Mogadishu. Every Thursday evening, he goes to one of the local bars and drinks until two in the morning. One Thursday night, as he is coming home, he is stopped by the police. Y is staggering from side to side, cannot stand up straight, has glazed eyes, and smells of alcohol. The police arrest him, and he is charged with violating Article 413.

Y is guilty as charged. He was in a state of manifest drunkenness, being unable to walk straight or to stand up, and in general showing the usual traits of a drunk. Medical testimony is introduced to show the alcoholic content in his blood, which confirms that he was drunk on that night. Y was in a public place, since he was arrested in the street. The prosecution also proves that Y was frequently drunk and that he is so used to alcoholic beverages that he cannot voluntarily stop drinking. The judge sentences Y to three months in prison increased by a full one-third, to four months, under Paragraph 3.

Article 414 Causing a State of Drunkenness in Other Persons

Whoever,
(a) other than in the cases referred to in Article 411,
(b) in a public place or a place open to the public,
(c) causes the drunkenness of other persons
(d) by supplying alcoholic beverages,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 2,000.

Explanation:

Article 411 applies to the sale or supply of alcoholic beverages to a Somali citizen or a Muslim of foreign nationality. The article applies whether the liquor is sold or supplied in a public restaurant or in a store or served to a Somali citizen in a private home. Article 414, on the other

hand, applies to supplying anyone else with alcoholic beverages in a public place or a place open to the public so as to cause a state of drunkenness in that person. The mere act of supplying a non-Somali or a non-Muslim with alcohol in a public place is not an offense. The offense is in making the person drunk by supplying him with such alcoholic beverages.

Example:

Z is a foreigner residing in Mogadishu. He goes to a night club in town and buys several beers. By the end of the night, he is thoroughly drunk. Upon leaving the night club, he is arrested by the police for being drunk in a public place. B, the bartender in the night club who sold the beer to Z, is also arrested and charged under Article 414.

Z is guilty under Article 413. He was drunk on the public streets. B is guilty as charged, under Article 414. His night club is a place open to the public. He caused Z's drunkenness by supplying Z with beer. The proof of the offense at B's trial would be the proof of Z's drunkenness. The judge sentences B to pay a fine of 2,000 shillings.

Article 415 Supply of Alcoholic Beverages to a Person in a State of Manifest Drunkenness

1. Whoever,
(a) other than in the cases referred to in Articles 411 and 414,
(b) supplies alcoholic beverages to a person
(c) in a state of manifest drunkenness
shall be punished with imprisonment up to one year.
2. Where
(a) the offender is the keeper of a public establishment for the sale of food or beverage,
(b) conviction shall entail suspension of the license or permit for running the establishment.

Explanation:

This article does not apply if the case comes under either Article 411 or 414. The difference between those two articles was explained under the preceding article. Article 415 differs from both Articles 411 and 414 in that it makes it a crime to supply alcoholic beverages to a person in a state of manifest drunkenness. The prosecution must therefore prove that the accused served alcohol to a person who was clearly and thoroughly drunk. The article will not apply to Somali citizens or Muslims of other countries, because these cases will be covered by Article 411.

Paragraph 2 provides that if the offender is the keeper of a public establishment which sells food or drink, conviction under Article 415 means that his license or permit to operate his business must be suspended. According to Article 107, such suspension shall be for a period from fifteen days to two years.

Example:

X is the owner and bartender of a night club. Y, a resident alien, comes to his club one evening around midnight. Y can barely stand or walk straight, and he speaks with a distinct slur. His breath smells of alcohol, and his eyes are glazed. He sits down at a table and orders a bottle of beer. X sells him the beer. Y stays for another two hours, drinking four more bottles of beer, and then staggers out. He is arrested and charged with violating Article 413. The next day, he is questioned, and states that he was drinking at X's club from about twelve to two, and before that he had been drinking at home. After an investigation, X is arrested and charged under Article 415.

X is guilty as charged. He has sold alcoholic beverages to a person who was manifestly drunk at the time. The prosecution shows that X and other people in the club saw that Y was obviously drunk when he came in. Since X is the owner and proprietor of the club, the judge, upon convicting him, sentences him to two months in prison and suspension from running his club for six months.

Article 416 Unlawful Manufacture of or Trade in Liquors or Substances Intended for the Preparation of Same

1. Whoever,
(a) without observing the provisions of the law or the orders of the authorities,
(b) manufactures, introduces into the territory of the State, holds for the purpose of sale, or sells
(c) illegal liquors or other alcoholic beverages,
shall be punished with imprisonment up to one year or with a fine from Sh. So. 500 to 5,000.
2. The same punishment shall be imposed on any person who,
(a) without observing the provisions of the law or the orders of the authorities,
(b) manufactures or introduces into the territory of the State
(c) substances intended for the preparation of liquors.

Explanation:

This article applies to illegal liquors or other alcoholic beverages. The acts prohibited are the manufacture, importation, possession for the pur-

pose of sale, or sale of such illegal liquors or alcoholic beverages. The normal laws on importation apply to the importation of liquor. Similarly, permission for the manufacture of alcoholic beverages must be obtained from the Ministry of Industry and Commerce, as for the manufacture of other items. As a practical matter, however, there are very few places in Somalia where illegal liquor could be manufactured. To sell alcoholic beverages or liquor, the seller must have a license issued by the District Commissioner. If a person sells liquor or other alcoholic beverages without the necessary licenses and permits from the Ministry of Industry and Commerce, he is liable to prosecution under Article 416. The punishment under this article is either a fine or imprisonment, but not both.

Paragraph 2 states that the offense under the article shall also include manufacturing or importing the material necessary to make liquor, such as pure alcohol or large quantities of sugar.

Example:

X is a businessman living in Hargeisa. He smuggles into the country several cases of Scotch, which he intends to sell. He is arrested, and the Scotch is confiscated before it is actually sold.

Besides being guilty of violating the provisions of the relevant fiscal laws, X is also guilty of violating Article 416. He has imported and held for sale an alcoholic beverage, Scotch, contrary to the provisions of the law. The judge sentences X to a fine of 3,500 shillings.

Article 417 Definition

For purposes of penal law, "alcoholic beverage" means any alcoholic beverage of a strength exceeding 3 per centum of proof spirit.

Explanation:

Article 417 is merely a definitional article, explaining the meaning of the term "alcoholic beverage" (see explanation under Article 411).

PART X CRIMES AGAINST THE HEALTH OF THE HUMAN RACE

Article 418 Abortion without Consent

1. Whoever
(a) causes the abortion of a woman,
(b) without her consent,
shall be punished with imprisonment from three to seven years.
2. The same punishment shall be imposed on any person who
(a) causes the abortion of a woman

(b) who is incapable of giving consent,
(c) where the consent is extorted by violence, threat, or undue influence, or
(d) is induced by fraud.

Explanation:

"Abortion" is an act or omission resulting in the loss of a child by a pregnant woman. An abortion may be committed in many ways—by a surgical operation, by the use of drugs or medicines which chemically induce abortion, or by mechanical means. In effect, all but the natural loss of the unborn child by the mother will qualify as an abortion. In any case involving a charge under this article, the medical testimony of a doctor indicating the reasons for the loss of the unborn child will be necessary at the trial.

The article applies only to abortions committed without the consent of the woman involved. The provisions of the article also apply if the abortion is committed against a woman who is incapable of giving consent. Such a woman would be one who is totally or partially mentally deficient (Articles 50 and 51); suffers from chronic intoxication from alcohol or drugs (Article 57); is deaf and dumb (Article 58); is under fourteen years of age (Article 59); or is in any other way incapable of understanding and willing the act of abortion. The woman is deemed not to have consented to the abortion if it is performed as a result of violence, threats, or undue influence. The meaning of violence and threats is obvious. The term "undue influence" means that the woman consented, but because of the persuasion of a person who was in a special position of trust or confidence. For example, if a young girl agreed to an abortion because her mother urged her to have it performed, the girl's consent would not prevent punishment under this article. Her consent is due to the influence of her mother, a person upon whom the girl would naturally rely for advice and to whom she would listen. Similarly, if the consent is obtained by fraud, the person committing the abortion is still liable under Article 418. An example of consent by fraud would be the belief of the woman that the medicine she was taking was for a cold or some other disease, when in reality it caused the abortion. The woman's consent to take the medicine was obtained by the fraudulent statement that it was for something other than an abortion.

Example:

D is a doctor living in Mogadishu. B, a woman, comes to D and says that her daughter, C, is pregnant and wants an abortion. D agrees to perform the operation in his office for the sum of 2,000 shillings. B brings

C to D's office one night. C says that she doesn't want the abortion, screams, and tries to leave. D gives her an injection, which puts her to sleep. He then performs the abortion. B then takes C home. B talks about the abortion to her friends, and the police are informed. After an investigation, D is arrested and charged with violating Article 418.

D is guilty as charged. He has performed an abortion on C, a girl, without her consent. He knew that C did not consent to the operation, but went ahead with it anyway. The judge sentences D to three years in prison. Article 424 makes it an aggravating circumstance for a doctor to perform an abortion. The judge may increase D's sentence by one-third, to four years. In addition, since the crime of abortion is one committed in abuse of the medical profession, the judge may order that D be temporarily interdicted from practicing as a doctor for a period of two years, according to Articles 104 and 101(3).

Note that B, the girl's mother, cannot be charged with violating this article, since she did not perform the abortion.

Article 419 Abortion with Consent

1. Whoever
(a) causes the abortion of a woman,
(b) with her consent,
shall be punished with imprisonment from one to five years.

2. The same punishment shall apply to a woman who consents to such abortion or by any means causes it herself.

Explanation:

Article 419, as distinguished from the preceding article, applies to those cases where the woman consents to have the abortion performed. Such cases would, of course, include that of a woman who herself, knowingly, performs the abortion. The article also makes it a crime for the woman to consent knowingly to the abortion, even if it is performed by another.

Example:

Q is a woman who wants an abortion. She goes to Z, an old woman in a nearby village, who gives her medicine and drugs which will cause an abortion. Q takes the medicine, and the unborn child is aborted. Q wraps the body of the unborn child in some rags, and leaves it outside the village. The body is found by a boy, who reports the matter to the police. After a brief investigation, Q and Z are arrested.

Q is guilty of violating Article 419. She has consented to have an abortion performed and, by taking the medicines given her by Z, has helped to bring about the abortion herself. The judge sentences Q to imprisonment for two years.

Z is guilty, under Article 419, of causing the abortion of Q. She gave Q the medicine, knowing that such medicine causes abortions, for the specific purpose of producing an abortion. The judge sentences Z to three years in prison.

Article 420 Instigation to Abortion

Whoever,
(a) other than in the cases referred to in the preceding article,
(b) instigates a pregnant woman
(c) to commit abortion
(d) by administering to her appropriate means thereto,
shall be punished with imprisonment from six months to two years.

Explanation:

This article does not apply if the person caused the abortion. The causing of an abortion is within the terms of the preceding article. Article 420 applies to those situations where the accused assists the pregnant woman in obtaining an abortion. If a person gave a pregnant woman money to buy medicines or to pay a doctor, or offered to take the pregnant woman to a doctor who performed abortions, that person would be guilty under this article. The phrase "administering to her appropriate means" refers to helping the woman to obtain an abortion, not supplying her with the actual things which cause an abortion. Directly supplying a pregnant woman with such things comes under Article 419, because the person is then guilty of having caused an abortion.

Example:

In the example under Article 418, B, the mother of the pregnant girl, is guilty of violating Article 420. She has paid for the abortion and brought her daughter to a doctor who performed the abortion.

Article 421 Death or Injury of the Woman

1. Where
(a) the act referred to in Article 418
(b) results in the death of the woman,
the punishment imposed shall be imprisonment from ten to fifteen years;
where
(c) hurt results,
the punishment imposed shall be imprisonment from three to eight years.

2. Where
(a) the act referred to in Paragraph 1 of Article 419
(b) results in the death of the woman,
the punishment imposed shall be imprisonment from four to eight years; where
(c) hurt results,
the punishment imposed shall be imprisonment from two to six years.

Explanation:

This article merely defines the punishments for the crimes of ABORTION WITHOUT CONSENT (Article 418) and ABORTION WITH CONSENT (Article 419) when the woman dies or is injured as a result of the abortion. Naturally, the penalty is more severe in cases of death or injury where the woman did not consent to the abortion.

Example:

X is a pharmacist. One night, a young girl comes to his home and asks for an abortion. X agrees to perform it if the girl will pay him 1,000 shillings. The girl returns one week later with the money. X performs the operation to the best of his ability. After he has finished, he sends the girl home. Two days later, she dies of massive internal bleeding. After a brief investigation, X is arrested and charged with violating Articles 419 and 421(2).

X is guilty as charged. He has performed an abortion on a girl who consented to the operation. This is a violation of Article 419. Regardless of his intention to perform the operation well and not to harm the girl, the abortion caused her death. According to Article 421(2), X is subject to imprisonment from four to eight years instead of the term of one to five years specified in Article 419. The judge sentences X to five years in prison.

Article 422 Abortion for Reasons of Honor

Where
(a) any of the acts referred to in Articles 418, 419, 420, and 421
(b) is committed for the purpose of safeguarding one's own honor or that of a near relative,
the punishments prescribed therefor shall be reduced by one-half to two-thirds.

Explanation:

The law recognizes that abortions committed for reasons of honor should not be punished as severely as other abortions. An abortion for

reasons of honor can be committed only to safeguard one's own honor or that of a near relative. The term "near relative" was defined in Article 304 (see explanation under that article). If a doctor performs an abortion for a friend, it is not performed for reasons of honor and is not within the provisions of Article 422. The article applies to abortions committed with or without the consent of the woman, instigation to abortion, and situations where death or injury results from the abortion. The punishment must be reduced by one-half to two-thirds.

Example:

Z is a girl who has become pregnant. B, her mother, takes her to a doctor for an abortion. Z consents to the operation. Two days later, Z dies as a result of the abortion, which caused internal bleeding. The police investigate Z's death, and arrest B and the doctor. The doctor is charged with violating Article 419 and Article 421(2). B, the mother, is charged with violating Article 420.

B is guilty as charged. She paid for and brought her daughter to a doctor for an abortion. The punishment under Article 420 is imprisonment from six months to two years. The judge sentences B to six months, and reduces it by one-half, as prescribed in Article 422. B committed the offense for reasons of the honor of her daughter, a near relative within the meaning of Article 304.

The doctor is guilty, under Article 419, of performing an abortion on Z with her consent. According to Paragraph 2 of Article 421, he is subject to imprisonment from four to eight years because the girl died. Article 422 does not apply in his case. He did not perform the abortion to save his own honor or the honor of a near relative. Z and B were not related to him at all. He committed the abortion for money paid to him by B. Therefore, his sentence is not reduced.

Article 423 Procuring the Impotence of a Person to Procreate

1. Whoever
(a) performs on a person of either sex,
(b) with the consent of the latter,
(c) acts directed to render that person impotent to procreate,
shall be punished with imprisonment from six months to two years and with a fine from Sh. So. 1,000 to 5,000.
2. Whoever
(a) consents to such acts
(b) on his own person,
shall be liable to the same punishment.

Explanation:

This article applies to operations on members of either sex which are designed to prevent the person from having or producing children. It apparently covers only those situations where the person made impotent has consented to the acts performed which will make him so. Such acts include chemical, surgical, and mechanical means designed to render a person infertile.

Paragraph 2 subjects the person who consented to have the act performed on him to the same punishment as the person performing the act.

Article 424 Aggravating Circumstances and Accessory Penalty

1. Where
(a) the person guilty of one of the crimes referred to in Article 418, Paragraph 1 of Article 419, Articles 420 and 421, and Paragraph 1 of Article 423
(b) exercises a medical profession,
the punishment shall be increased.

2. In the event of repetition, interdiction from the medical profession shall be permanent.

Explanation:

Article 424 merely establishes as an aggravating circumstance the performance of an abortion by a member of the medical profession, with or without the consent of the person; instigation to abortion; death or injury resulting from an abortion; and causing the impotence of a person to procreate. Members of the medical profession include both doctors and surgeons, as well as dressers, who are authorized to practice medicine in the Republic.

Paragraph 2 provides that if the doctor has already performed another abortion or committed another offense under Paragraph 1 of the article, the interdiction from practicing medicine shall be permanent. Note that the paragraph does not provide that permanent interdiction must follow a prior *conviction*. All the prosecution must show is that the doctor has committed the offense of performing an abortion prior to the one he is being tried for.

Example:

X is a doctor practicing in Mogadishu. He has performed an abortion on Y with her consent. Z, a friend of Y's, also wants an abortion. Y tells her about the doctor, and Z goes to him and has an abortion performed. Z dies two days later from internal bleeding. After an investigation, both X and Y are arrested. Y is charged with consenting to an abortion, in violation of Article 419(2). X is charged with causing Z's death by abortion, in violation of Article 419 and Article 421(2). At the trial, the prosecution shows that X had performed an abortion on Y, who told Z about the doctor. The proof of the prior abortion and the conviction for the abortion and death of Z requires the judge to order that X be permanently interdicted from practicing medicine, in addition to the prison sentence he receives.

PART XI CRIMES AGAINST THE FAMILY

CHAPTER I CRIMES AGAINST FAMILY DECENCY AND MORALS

Article 425 Illegal Marriage

Whoever
(a) contracts a marriage when,
(b) owing to his personal status,
(c) such marriage is not allowed,
shall be punished with imprisonment from six months to three years.

Explanation:

The laws regarding marriage are governed by the Koran and Sharia law. If, according to Sharia law, a person cannot marry another person—because of closeness of relationship, for example, or because he already has four wives—Article 425 then establishes the punishment for such illegal marriages. In other words, whether persons may marry or not is determined by Sharia law, while the punishment for an illegal marriage is prescribed by the Penal Code. The prosecution must show that Sharia law prohibits the marriage contracted.

Article 426 Adultery

1. Whoever,
(a) being bound by a marriage having civil effects,
(b) has carnal intercourse
(c) with a person other than his or her spouse,
shall be punished with imprisonment up to two years. The same punishment shall be imposed on the accomplice.

2. The offense shall be prosecuted on the complaint of the party injured.

Explanation:

There can be no prosecution under this article unless the party injured has filed an official complaint. The state cannot initiate proceedings on its own. Adultery can be committed only by persons who are legally married. A legal marriage is one having civil effects, meaning that the marriage is recognized, the children of the marriage are legitimate, and in all other respects the people are treated as husband and wife. The crime of adultery can be committed either by the wife against the husband or by the husband against the wife. The crime consists in having carnal intercourse, as defined in Article 398(4), with a person other than the offender's husband or wife. The term "accomplice" means the person who participates in the carnal intercourse. The accomplice is subject to the same penalty as the person who commits adultery.

Example:

X, a man, is legally married to Z, his wife. X finds himself attracted to P, the wife of Q. P is similarly attracted. X and P commit carnal intercourse together on several occasions before being discovered by X's wife, Z. Z tells Q about it, and Q sends his wife out of the town to live with her parents. Q does not want to file a complaint against his wife for adultery, preferring to discipline her himself. Z, however, does file an official complaint against her husband, naming P as the accomplice in the act of carnal intercourse.

X is charged with having committed adultery. P is charged as an accomplice. Both are guilty as charged. Z, X's wife, is one of the injured parties, and can therefore file an official complaint. She has done so. X is legally married to Z. He had carnal intercourse with a person other than his wife. He is therefore guilty, and the judge sentences him to six months in prison. P, X's accomplice in the crime, is guilty as an accomplice. She is not guilty of ADULTERY, because her husband, Q, did not file a formal complaint as the injured party in relation to her. The judge sentences P, as X's accomplice, to three months in jail.

Article 427 Incest

1. Whoever
(a) has carnal intercourse
(b) with a person whom he or she is forbidden to marry
(c) by his or her personal status,
shall be punished with imprisonment from two to five years.
2. The punishment shall be increased in case of incestuous relationship.

Explanation:

Whether an act is incestuous or not depends on the provisions of Sharia law forbidding marriage between persons of close relationship. If marriage is forbidden, the act of carnal intercourse between such people (whether they are married or not) is a crime under this article. The crime of incest will be committed by both participants in the act of carnal intercourse, since each is prohibited by Sharia law from marrying the other.

Paragraph 2 provides that the punishment shall be increased in the case of an incestuous relationship. A relationship means a series of continuous acts over a period of time. Paragraph 1 punishes the single act of carnal intercourse. Paragraph 2 punishes the continued relationship.

Example:

X and Y are brother and sister. They commit the act of carnal intercourse together once, before being discovered. They are charged with violating Article 427.

Both X and Y are guilty as charged. Sharia law forbids marriage between brother and sister. X and Y have had carnal intercourse despite the prohibition. Both are sentenced to two years in prison.

CHAPTER II CRIMES AGAINST FAMILY STATUS

Article 428 Simulation or Suppression of Entries in Civil Register

1. Whoever
(a) causes an entry in the civil registers of the State
(b) of a birth which never took place,
shall be punished with imprisonment from one to five years.
2. Whoever,
(a) by concealing a newly born child,
(b) prevents its name from being entered in the civil register,
shall be punished with a fine up to Sh. So. 100.

Explanation:

In Somalia, there are civil registers in each municipal center for the registration of births of children. Paragraph 1 makes it a crime to cause the false entry of a birth which in fact never occurred. The punishment is imprisonment from one to five years. Paragraph 2 makes it a crime to fail to have the name of a newborn child registered by concealing the child. The punishment is a fine up to 100 shillings. Article 566 of the Italian Penal Code provides the same punishment of imprisonment for either of

the offenses mentioned above (see CARABBA, CODICE PENALE, p. 694). It is not clear why there should be a difference in punishment for the two offenses, or why the difference should be so great.

Example:

X is an unmarried, pregnant girl. She gives birth to Y, a son. X conceals the child for reasons of honor. She does not register the child with the municipal government, in order further to conceal its existence. However, the child is seen by people, and the matter is reported to the police. X is charged with violating Article 428(2).

She is guilty as charged. She has concealed Y, her newborn son, and has not registered his name in the civil register. The judge sentences X to a fine of 25 shillings.

Article 429 Alteration of Entries in Civil Register

1. Whoever,
(a) by substituting a newly born child,
(b) alters an entry relating to it in the civil register,
shall be punished with imprisonment from six months to one year.

2. A term of imprisonment from six months to two years shall be imposed on any person who,
(a) in drawing up a certificate of birth,
(b) alters the entry in the civil register
(c) relating to a newly born child
(d) by means of any false certification, or other false statement.

Explanation:

This article applies to the actual alteration of the civil register with regard to births. The offense under Paragraph 1 can be committed only by the substitution of newly born children by the parents so that the real parents are not bringing up their child, but the child of another. Thus, for example, if two babies are born in a hospital, registered, and then changed, so that the real mother does not take home her baby but another, a violation of the first paragraph has been committed.

Paragraph 2 applies to the falsification of birth certificates which results in an erroneous entry in the civil register. Thus, a false statement to a person drawing up a birth certificate that X rather than Y is the father of the child will result in the false entry in the register that X is the father. The person making this false statement is subject to imprisonment from six months to two years.

CHAPTER III CRIMES ARISING OUT OF DERELICTION OF DUTY TOWARD FAMILY

Article 430 Violation of Duty toward Family

1. Whoever
(a) avoids the obligations
(b) relating to the exercise of parental authority, legal guardianship, or marriage,
shall be punished, where the act does not constitute a more serious crime, with imprisonment up to one year or with a fine from Sh. So. 1,000 to 10,000.

2. The same punishment shall apply to a person who misuses or squanders the estate of a minor child or ward.

Explanation:

Various obligations exist as a result of the relationship of parents to children, a guardian to his ward, and a husband to his wife. These obligations are established by the Koran, and also by civil law. Article 430 provides for the punishment of persons who do not fulfill these obligations.

Paragraph 2 applies to the relationship between a parent and a minor child and a guardian and his ward. Frequently, under the civil law, a parent or guardian will be responsible for the finances or property of a minor child or ward. If the parent or guardian does not take care of the money or property correctly, but instead uses it for his own benefit, he has committed an offense under Article 430(2) and is subject to the same punishment as that prescribed in Paragraph 1.

Example:

X is a resident of Hargeisa. He is married and has three children. He gets tired of living with his wife and children and staying in the city. One day, he leaves them and goes back into the interior to stay with his relatives. He does not provide his family with any money, or tell them where he is going. His wife has no kinsfolk in Hargeisa. She reports to the police that her husband has left her. Four months later, a patrol finds X living in the interior. He is questioned, and states that he simply left his wife and family and has no intention of returning. X is arrested and charged with violating Article 430.

X is guilty as charged. He has avoided the basic obligations of both father and husband by abandoning his family. He has left them with no means of support, and has not provided for his children's education and health. The judge sentences him to a fine of 1,000 shillings.

Article 431 Abuse of Measures of Correction or Discipline

1. Whoever
(a) abuses measures of correction or discipline
(b) to the detriment of a person subject to his authority, or
(c) entrusted to him for the purpose of education, instruction, treatment, supervision, or custody, or
(d) for the exercise of a profession or craft,
shall be punished with imprisonment up to six months
(e) where the act results in the danger of a disease of body or mind.
2. Where
(a) the act results in hurt,
the punishment prescribed in Article 440 shall be reduced to one-third; where
(b) death results,
the punishment shall be imprisonment from three to eight years.

Explanation:

This offense can be committed only as a result of the abuse of measures of correction or discipline. The prosecution must show that the injury resulted from such measures. Furthermore, the crime can be committed only by persons lawfully in a position of supervision over the person injured. For example, a father in relation to his children, a husband in relation to his wife, a headmaster toward his students, a doctor toward his patients, a prison guard toward his prisoners, are all instances of the lawful supervision of one person by another. The crime under this article is the abuse of the power of supervision in cases of discipline or correction. If the use of force in correcting or disciplining a person results in the danger of disease, then the offender is subject to imprisonment for up to six months.

Paragraph 2 provides that if actual hurt results, the punishment shall be that prescribed in Article 440, reduced to one-third. Article 440 deals with all grades of HURT. If the hurt caused is grievous, it comes within Paragraph 2 of Article 440, and the offender is subject to imprisonment from three to seven years. Thus, if the offense committed under Article 431 results in grievous hurt, the judge can sentence the offender to six years in prison and then reduce the sentence to one-third, according to Article 431(2). Note that Paragraph 2 of Article 431 provides that the sentence shall be reduced *to* one-third of that prescribed by Article 440, not *by* one-third.

In the Italian version of the Penal Code, the punishment under Paragraph 1 is given as up to six years, instead of up to six months. The Italian version reads: ". . . con la reclusione fino a sei anni." In light of the punishments prescribed in Paragraph 2, this is obviously an error, since it imposes a punishment more severe than that for causing HURT for a less serious act.

Example:

X is the headmaster of a boarding school. Several of the boys have not been attending classes. The headmaster has a small pit, three feet by two feet, dug in the ground, in the center of the schoolyard. A normal-sized boy could not stand or sit in the pit, but only squat. X then gets some boards to cover the top of the pit. When Y, one of the students, fails to attend class the next day, X calls all of the boys together. He tells them that as a punishment Y will be confined to the pit for two days without food or water. Y is then put in the pit, and heavy stones are placed on the boards so that he can't get out. Two days later, when Y is released, he is very weak, cannot eat, and is affected by bright sunlight. Z, one of the other boys at the school, reports the matter to the police, who investigate and then arrest X for violating Article 431.

X is guilty as charged. Y is a student entrusted to his care at the boarding school for purposes of education. X is therefore in a position of supervision with regard to Y. In the exercise of his supervisory powers, X has abused the measures of discipline he can take against Y. Such normal measures would be beating or suspension, but not imprisonment in a pit in the sun for two days without food or water. As a result of this disciplinary action, Y became physically sick. X has therefore caused HURT, within the meaning of Article 440, Paragraph 1. The punishment for such hurt is imprisonment from three months to three years. The judge sentences X to the full three years, under Article 440(1), and then reduces the sentence, according to Paragraph 2 of Article 431, to one-third or one year in prison.

Article 432 Ill-Treatment of Children and Members of the Family

1. Whoever,
(a) other than in the cases referred to in the preceding article,
(b) ill-treats a member of the family, or
(c) a person under the age of fourteen years, or
(d) a person subject to his authority, or
(e) entrusted to him for the purpose of education, instruction, treatment, supervision, or custody, or
(f) for the exercise of a profession or craft,
shall be punished with imprisonment from one to five years.

2. Where
(a) the act results in a serious or very serious hurt,
the punishment shall be imprisonment from two to eight years;
where
(b) death results,
the punishment shall be imprisonment from ten to fifteen years.

Explanation:

This offense can be committed only if it does not come within the provisions of the preceding article. In general, it applies to the same categories as Article 431, but the difference lies in the type of acts committed. Article 432 punishes "ill-treatment." This means that the harmful act is not a single, isolated act of violence or harm but a continuous pattern of behavior or conduct which results in injury to the victim. Thus, if a prison guard continually abuses one of the prisoners so that after a month of starvation and beatings the prisoner dies, the guard has committed an offense under Article 432, not Article 431.

Paragraph 2 provides the punishment for causing serious or very serious hurt, as well as for death. The terms "serious hurt" and "very serious hurt" are defined in Article 440, in Paragraphs 2 and 3, respectively.

Example:

X is a resident alien living in Somalia. Y is his four-year-old daughter. X is constantly drunk, and when he is in such a state, he beats his daughter. He has done this for about six months, and the little girl is continually bruised. One day, when X is sober, some neighbors come to his house and complain about the way he is treating Y. He tells them it is none of their business, and starts drinking. That night he beats Y again. The next day, the neighbors report X to the police. X is arrested and charged with violating Article 432.

X is guilty as charged. He has ill-treated a member of his family, his daughter, who is under fourteen years of age. He has continually beaten her for almost half a year for no reason at all. The judge sentences X to imprisonment for one year.

Article 433 Abduction of Persons under Legal Incapacity

1. Whoever
(a) abducts a person under fourteen years of age, or
(b) a person mentally infirm,
(c) from a parent exercising parental authority, or
(d) from a guardian or trustee, or
(e) detains such person against the will of the aforesaid people,

shall be punished on the complaint of the parent exercising parental authority, or the guardian or trustee, with imprisonment from one to three years.

2. Whoever
(a) abducts or detains
(b) a minor who has attained fourteen years of age,
(c) without the minor's consent,
(d) for purposes other than lust or marriage,
shall be liable to the same punishment, on the complaint of the parent exercising parental authority, or the guardian or trustee.

Explanation:

This offense may be punished only if the parent exercising parental authority, the guardian, or the trustee of the minor abducted or detained makes an official complaint. The state may not initiate proceedings without such complaint.

Abduction is taking a person by force against his will. Since persons under the age of fourteen cannot legally give their consent, abduction under this article involves taking a minor without the consent of the parent, guardian, or trustee responsible for him. The same is true for mentally infirm people, even though they have attained the age of adulthood. Because they are mentally infirm, they do not understand, and therefore cannot legally give their consent. Detention simply means keeping a person against his will—in this case, the will of the parent, guardian, or trustee.

Paragraph 2 provides that if the minor is over fourteen but under eighteen years of age, and is abducted or detained without his consent, the parent, guardian, or trustee may file a complaint and press charges. Note that Paragraph 2 does not apply to abduction or detention for purposes of lust or marriage. This is a separate offense under Article 401 of the Code (see explanation under that article).

Example:

X is the uncle of Z, a ten-year-old boy. Y is Z's father, and the brother of X. X and Y do not get along with each other. Y has agreed to send Z to live with X for the summer. Z likes his uncle, and at the end of the summer, when Z is supposed to return to his father in Mogadishu, X refuses to send him. X says that the boy wants to remain with him, that Y, the father, is not bringing the boy up correctly, and that it would be better for Z to remain with X. Y orders his brother to send Z to Mogadishu, but X refuses. Y then complains to the police in Mogadishu.

Following an investigation, X is arrested and charged with violating Article 433.

X is guilty as charged. He has detained Z, who is a child under fourteen years of age. Such detention has been directly contrary to the wishes of Y, the father of Z and the person exercising parental authority over him. Note that it does not matter that the boy has said that he wants to remain with his uncle. The boy is legally incapable of consenting to his detention by his uncle. Y, the boy's father, is the only person who can agree to this. Y, by filing an official complaint, has indicated that he does not want X to keep the boy. The judge finds X guilty, and sentences him to one year in prison, after ordering him to return Z to his father.

PART XII CRIMES AGAINST THE PERSON AND SAFETY OF THE INDIVIDUAL

Chapter I Crimes against the Life and Safety of Individuals

Article 434 Murder

Whoever commits murder shall be punished with death.

Explanation:

This chapter involves crimes resulting in the death of a human being. The major article of this chapter is Article 434, Murder. The article does not define what is meant by the term "murder," or what the elements of the crime are. In general, murder is causing the death of another by an act or omission. There must be a causal relationship between the act and death. It does not matter what type of act is committed in causing the death; the death may be caused by shooting, stabbing, poisoning, burning, starving, torturing, exploding, electrocuting, beating, running over, or any other method, so long as the act causes the death.

Article 434 does not say anything about the intention of the offender. The intention necessary to prove this article can be found by studying the other articles of the chapter. According to Article 24 (see explanation under that article), crimes may be committed with one of three mental attitudes. The crime may be intentional, within the meaning of Article 24(a); it may be preterintentional, or beyond the intention of the offender, within the meaning of Article 24(b); or it may be committed negligently, within the meaning of Article 24(c). In Chapter I of Part XII, which deals with the death of persons, Article 441 involves Homicide without the Intention of Causing Death. This is the article that is

concerned with preterintentional acts causing death—that is, acts beyond the intent, as where a person hits another, intending to knock him to the ground, and instead kills him. Article 445 deals with Death Caused by Negligence—that is, acts without any intent, as where a person by driving his car recklessly hits and kills a little boy crossing the street. Therefore, the only category left is intent. Article 434, Murder, refers to those acts committed with the intention of killing someone. This intention is called "premeditation," meaning that the offender planned and intended to kill the victim before he committed the act. The prosecution must therefore prove that the accused intended to kill the victim—that is, that he committed murder with premeditation.

There are several ways to prove premeditation or intention. Most cases will not involve a statement by the accused before he committed the crime that he intended to murder his victim. The prosecution must show such intention and premeditation from the evidence of the case. The circumstances of the killing, the time, place, and method, all serve to show premeditation. If, for example, X kills Y by putting poison in his food, the act of buying the poison, going to Y's house, and finding a chance to put the poison in his food all serve to show that X planned and intended to kill Y.

In the case of *Jama Hassan Wais* v. *State* (Criminal Appeal No. 2 of 1965, Somali Law Reports [Hargeisa and Burao Regions], 1964–65, p. 199), the Supreme Court had a chance to comment upon the evidence in a murder case. In that case, Jama Hassan Wais was accused of having killed Mohamed Aden by shooting, in the village of Samater Ahmed. Jama Hassan Wais claimed that the shooting was accidental and that he was not guilty of murder. He was convicted and the judgment was confirmed by the Court of Appeal, Hargeisa. Before the Supreme Court, his lawyer argued that the evidence at the trial showed that there was a struggle between the accused and the deceased, and that while they were fighting the rifle went off. The prosecution claimed that this story was false, and that Jama Hassan Wais had shot the deceased from a distance. Thus, the crucial question in the case was whether Jama Hassan Wais had shot the victim from a distance or in the course of a struggle. If it was from a distance, then that fact showed murder, since it was clear that the defendant wanted to kill Mohamed Aden. If, on the other hand, the deceased was killed in the course of a struggle over a rifle, the evidence would support a charge of accidental shooting. The Supreme Court stated:

> The (trial) Court should have taken into consideration circumstances which medical jurisprudence provides by way of guidance in order to ascertain the questions involved in this case. (Somali Law Reports [Hargeisa and Burao Regions], 1964–65, p. 202.)

The Court went on to point out that medical evidence can be used to prove at what distance firearms have been fired. A bullet fired at very close range leaves a large entry wound in the victim. A bullet fired from a distance normally does not. The clothing and the bullet entry hole will reveal signs of burning if the rifle has been fired at close range, but will not if fired from a distance. Powder marks found on the skin and clothes if the shot has been fired at close range will not be present if the shot is fired from a distance. In this case, the Court pointed out, no medical testimony had been introduced to prove in effect the element of intent to justify a murder charge against Jama Hassan Wais, and the Court therefore set aside the conviction and sentence of death.

The penalty under Article 434 is death. In the Italian Penal Code, the penalty is imprisonment for not less than twenty-one years, with subsequent articles that define aggravating circumstances which increase the penalty up to life imprisonment (see CARABBA, CODICE PENALE, pp. 711–14, and Articles 575, 576, and 577 of the Italian Penal Code). In the Somali Penal Code, no special articles exist for aggravating circumstances for murder. Instead, they are contained in the general provisions of Article 39, and most of the extenuating circumstances are contained in Article 40. Thus, if a person commits a murder in the heat of anger caused by the unlawful act of the deceased, he is guilty of murder, but the sentence is reduced because of the presence of an extenuating circumstance.

To summarize, then: Article 434, although simply worded, contains all of the elements required to make out a charge of murder. These are:

(a) the prosecution must show that the accused committed the act;
(b) the prosecution must show that there was a death;
(c) the prosecution must show that the act of the accused was the cause of the victim's death; and
(d) the prosecution must show that the accused intended to cause the death of the victim.

Examples:

1. X and Y are two nomads who approach the same waterhole at about the same time. They get into a fight over which one of them shall water his camels first. After arguing back and forth for a while, X strikes Y with his *bud*. Y falls to the ground but knocks X down with him. The two of them roll over and over on the ground, fighting and kicking each other. Finally, Y grabs a rock, and hits X on the head with it. X, who had been sitting on top of Y, banging his head against the ground, falls off. Y then walks away, waters his camels, and leaves. A few hours later, other nomads come to the waterhole and find X lying there. Before they can get him to a hospital for medical treatment, he dies. The police send out a patrol to investigate, and arrest Y, charging him with murder.

Y may or may not be guilty of murder under Article 434. He has committed the act which caused X's death, by hitting him on the head with a rock. The crucial question is what was Y's intent. If he hit X in the course of the fight, intending to knock X unconscious and win the fight, he is not guilty of murder, since he didn't intend to kill him. But if he had become so angry during the fight that he was no longer just fighting but wanted to kill X, he would be guilty of murder. It is the presence or absence of Y's intention to kill that makes the difference between a conviction under Article 434 and one under another article—in this case, Article 441.

2. Z is the headmaster of a school. B is one of the teachers at the school. Both men are interested in marrying C, a young Somali girl. Z knows that B is interested in C, and therefore, as B's headmaster, constantly causes trouble for B at the school. He yells at him in front of the students, gives him extra hours to teach, files bad reports with the regional education officer, and, in general, does everything to make life difficult for B. On top of all this, C agrees to marry Z. B feels that he has lost the girl because of Z's tricks and lies. One evening, he takes his friend's pistol and goes to the school, where Z lives. He enters the school grounds, and when Z comes out of his house to sit on the porch, he shoots him three times in the chest and runs away. The next morning, Z is found dead on the porch of his house. The police arrest B and charge him with MURDER, in violation of Article 434.

B is guilty as charged. He has committed an act which caused the death of Z, by shooting him three times in the chest. He committed the act with the intention of killing Z. Various pieces of evidence can be used to prove this intention. The very act of shooting a person three times with a pistol is evidence of intention to kill. In addition, the police can obtain evidence from the townspeople to show that both Z and B wanted to marry C, but that she had chosen Z, that Z made life difficult for B at the school, and that he lied to the regional education officer about B. All of this evidence shows that B had a reason for wanting to kill Z, and that this evidence of motive as well as the act itself shows that B intended to cause Z's death.

Other evidence can be obtained to show that B in fact committed the act of shooting Z, if B does not confess. He borrowed the pistol from his friend. Ballistics tests can be used to show that this pistol was the one which killed Z. The most important piece of evidence would be the ballistics report, which would conclusively prove which weapon killed Z. Testimony by B's friend that he lent him the pistol would make B the possessor of the murder weapon, and be strong proof of his guilt, along with his motive for killing Z and his failure to account for his activities the night of the murder.

Article 435 Infanticide for Reason of Honor

1. Whoever
(a) causes the death of a child
(b) immediately after its birth,
(c) or of an unborn child during the delivery,
(d) for the purpose of safeguarding one's own honor, or
(e) that of a descendant or ascendant,
shall be punished with imprisonment from ten to fifteen years.

2. The same punishment shall be imposed upon the persons abetting the commission of the crime.

Explanation:

Infanticide is the killing of either a newborn child or one in the process of being born. The death must take place immediately after the child's birth (if not during delivery) in order to be classified as infanticide. In general, the prosecution must show the same elements as those required for proving MURDER. He must prove that the defendant committed an act which caused the death of the child, and that he committed this act intentionally and willfully. In addition, the prosecution must show that the purpose of the act was to safeguard the honor of the accused, his descendants or ascendants. If a person kills a newly born child for reasons other than honor, this is MURDER, under Article 434, and not within the terms of Article 435. Similarly, if the killing is committed on behalf of a person other than an ascendant or descendant, the crime is not within Article 435. The purpose of Article 435 is to recognize the element of committing the murder for reasons of honor in certain cases, and to punish the offender less severely. It does not excuse all murders of all infants.

Paragraph 2 provides that the same punishment as that prescribed in Paragraph 1 shall be imposed on those who aid in the commission of the crime.

Examples:

1. Q is the unmarried daughter of B, a Somali citizen. Q gives birth to a baby girl, and a few hours after the baby is born, B takes it outside of town and strangles it. The body of the baby is found, and after a police investigation, B is arrested and charged with violating Article 435.

B is guilty as charged. He has caused the death of the child by strangling it. He has committed the act immediately after its birth. The purpose of B's act was to protect the honor of his daughter, who is, of course, his descendant. Therefore, he is subject to imprisonment from ten to fifteen years.

The offense is not a murder, under Article 434, because it was committed against an infant immediately after its birth, for the specific purpose of protecting a daughter's honor. If P, a thief, broke into Q's house after the birth of the child, stole some things, and killed the baby, he would be guilty of murder, among other offenses.

2. X is an unmarried woman. She becomes pregnant by a man living in the town, and she moves to the outskirts of the village in order to hide her pregnancy. In her sixth month, the baby is born prematurely and is delivered dead. X hides the body outside her house, but the body is discovered and she is arrested.

X cannot be charged with committing an offense under Article 435. She has not caused the baby's death. It was born dead prematurely, for natural reasons. She did not induce an abortion or kill the baby at birth.

Article 436 Death Caused to a Person with His Own Consent

1. Whoever
(a) causes the death of a person
(b) with the latter's consent,
shall be punished with imprisonment from six to fifteen years.

2. The offender shall be punished with death where the act has been committed:
(a) against a person under the age of eighteen;
(b) against an insane person;
(c) against a person whose consent has been obtained by the offender by violence, threat, suggestion, or fraud.

Explanation:

According to Article 32, consent by the injured party means that the offender is not subject to punishment (see explanation under that article). The exception to this general rule is where the injured party has consented to his own death. Article 436(1) provides that even where the victim consents to be killed, the offender shall be subject to imprisonment from six to fifteen years. The law recognizes that if a man commits an act causing the death of another with that person's consent, he should not be punished as if it were a normal murder. On the other hand, he should be punished to some extent, because it is wrong to take another man's life. This explains the light punishment under Paragraph 1.

However, Paragraph 2 imposes the death penalty in cases where the consent of the victim is given without a full understanding of what he is

consenting to. In such cases, the consent is treated as if it had never been given, and the death of such a consenting person is just like an actual murder under Article 434. Persons under eighteen and insane persons are considered by the law to be incapable of giving meaningful consent. Therefore, if a sixteen-year-old consents to be killed, such consent is no defense to a charge under Article 436, because the consent has no significance according to the law. Similarly, if the accused has used force against the victim, or threatened him, such consent cannot be said to have been made knowingly and willingly. Therefore, the consent of any person given under such circumstances is no defense for the accused. Subparagraph c of Paragraph 2 also includes the situation where the consent is obtained by suggestion or fraud. Consent obtained by suggestion means that the accused has suggested to the victim that he consent to be killed. An example of consent by fraud would be the accused's telling the victim that he is going to give him some medicine to cure a disease and instead actually giving him a powerful poison. The consent to take the medicine in no way qualifies as a defense for the accused when he is charged with causing the person's death by poison.

Example:

X is a resident of Hargeisa. He has been sick for a long time and has lately been in great pain. He has gone to several doctors, but none of them has been able to help him. He is admitted to the Hargeisa hospital, where one of the doctors tells him that his disease is incurable and that nothing can be done to help the pain. X is then released from the hospital. He goes to his brother's house and asks his brother, Y, to kill him now, saying that he would rather die quickly than slowly and in pain. Y agrees to do this, and after a long and sad discussion, Y shoots X in the heart. Y is arrested and charged with violating Article 436.

Y is guilty as charged. He has committed an act which caused the death of X, but he did so with X's consent. Therefore, he is not guilty of murder but only of violating Article 436. Under the circumstances, the judge sentences Y to the minimum of six years.

Note that if Y had suggested to his brother that he let Y kill X, then the offense would have been under Paragraph 2, and Y would have been subject to the death penalty. The reason for this distinction is that the victim must on his own, willingly, knowingly, and without any outside interference, arrive at the conclusion that he wants to die.

Article 437 Attempt to Commit Suicide

Whoever
(a) attempts

(b) to cause his own death
(c) by committing an act sufficient to cause it,
shall be punished with imprisonment up to five years or a fine up to Sh. So. 10,000.

Explanation:

Suicide is the act of bringing about one's own death. Usually it is committed by mentally disturbed persons. Article 437 applies to attempted suicide. An attempted crime is defined in Article 17 of the Code as one in which the acts are clearly directed toward causing the event (see explanation under that article). According to Article 437, not only must the act be clearly directed toward causing the event but it must also be sufficient to cause the person's death if completed.

Since suicide and attempted suicide will usually be committed by a person who is not mentally normal, prosecutors and judges should be careful to determine whether Articles 50, TOTAL MENTAL DEFICIENCY, and 51 PARTIAL MENTAL DEFICIENCY, apply, and whether commitment to a hospital (Article 173) or a lunatic asylum (Article 176) is warranted.

Example:

X is a cadet in the Somali Army, stationed in Mogadishu. He writes his father that he has been selected to be sent to the Soviet Union for advanced training, and asks his father to send him some money for expenses in Russia. His father sends him the money. X then finds out that he has not been selected for advanced training, and that in fact there is doubt whether he will be able to remain in the Army as a cadet. Ashamed of his failure, and worried about having to tell his father what happened, X takes a strong rope, puts it around his neck, ties it around a light fixture in his house, stands on a chair, and jumps, intending to hang himself. The fixture, however, cannot hold the weight of his body, and is ripped out of the ceiling. X hits his head when he falls, and is knocked out. A friend finds him the next morning lying on the floor, unconscious, with the rope around his neck. X is taken to the hospital, and a report is filed with the police. X is arrested and charged with violating Article 437.

X is guilty as charged. He has attempted to commit suicide. He has taken steps to commit this act by getting the rope, putting it around his neck, tying the other end to a light fixture, standing on a chair, and jumping. Such acts would have caused his death if the light fixture in the ceiling had held. However, medical testimony at the trial shows that X was partially mentally incapacitated at the time he committed the act. A doctor testifies that X was so upset by his failure that he really didn't

completely understand what he was doing. The judge finds X guilty, but also concludes that X was partially mentally incapacited, according to Article 51 (see explanation). The punishment under Article 437 is either imprisonment or a fine. The judge sentences X to a fine of 1,000 shillings, and orders him committed to a hospital, in accordance with Article 173, for a period of one year. The judge further reduces the sentence, in accordance with the rule of Article 51, to a fine of 500 shillings.

Article 438 Instigating or Aiding to Commit Suicide

1. Whoever
(a) instigates or aids another
(b) to commit suicide or
(c) in any manner facilitates the commission of suicide,
shall be punished,
(d) where the suicide takes place,
with imprisonment from five to ten years.

Where the suicide does not take place, he shall be punished with imprisonment from one to five years, provided that the attempt results in a serious or very serious personal injury.

2. The punishment shall be increased where
(a) the person instigated or aided
(b) falls in one of the categories of persons referred to in letters a and b of Paragraph 2 of Article 436.

However, where the aforesaid person is below the age of fourteen, or is in any way incapable of giving consent, provisions relating to murder shall apply.

Explanation:

This article punishes those persons who instigate or help others to commit suicide without actually causing the death of the person, as under Article 436. The article is broadly worded, and covers most types of assistance, aid, or facilitation. The term "instigate" means to incite, provoke, or encourage. It would include suggesting the idea of suicide, persuading the person that it was a good idea, and urging him to carry it out. If the suicide actually takes place, the offender is subject to the punishment of imprisonment from five to ten years. If the suicide does not occur, but the attempt has seriously or very seriously injured the victim, then the punishment is imprisonment for one to five years. The terms "serious" and "very serious" correspond to "grievous" and "very grievous" as defined in Article 440(2) and (3).

Paragraph 2 of this article provides for an increased punishment for the aggravating circumstance of instigating or aiding a person to commit suicide where that person is under the age of eighteen or is insane. If the person is under fourteen years of age, or incapable of giving any kind of consent, then the act of aiding him to commit suicide is considered MURDER, under Article 434. The reason for this is that in such cases the law considers that aiding a child under fourteen to commit suicide is the same as killing the child, because he doesn't understand what he is doing; the offender is actually causing his death with intent, not just assisting.

Example:

X is a Somali citizen. He has made up his mind to commit suicide because the girl he wanted to marry has married another man. He goes to a pharmacy run by Y, a friend of his, and asks for a supply of poison sufficient to kill a man. Y at first does not want to sell it to him, but X says that he is certain that he wants to commit suicide, and that if Y doesn't sell him the poison, he will commit suicide in another way. Y agrees, and gives his friend the poison, instructing him on how much it is necessary to take to kill oneself. X returns to his house and takes the poison, but does not follow Y's instructions as to the amount. Instead, he takes too little and does not die. X is found unconscious the next day and taken to a hospital. The police investigate, and find a half-empty bottle of poison and trace it to Y. Y is arrested. The effect of the poison on X is so great that he is very sick for about seventy days, and his stomach is severely injured. Y is charged with violating Article 438, and X is charged under Article 437.

Both are guilty as charged. Y has assisted X in a suicide attempt. He has helped X by providing him with a strong poison and instructions on how to take it, knowing that X wanted to commit suicide. Note that if Y just sold X the poison, without knowing that X wanted to commit suicide, he would not be guilty of violating Article 438. X's attempt has resulted in serious injury to himself, as defined in Article 440(2). He has been incapacitated for a period greater than forty days, and has caused serious damage to his stomach. Therefore, Y is guilty of having assisted X in a suicide attempt which resulted in serious injury. The judge sentences him to two years in prison.

X is guilty of attempting to commit suicide. The taking of the poison, as he intended to do, would have caused his death, but he made a mistake as to the amount. The judge, after hearing medical testimony which indicates that X was mentally stable at the time of the act, sentences him to six months in prison.

Article 439 Assault

1. Whoever
(a) strikes another, and

(b) no physical or mental illness results therefrom,
shall be punished, on the complaint of the party injured, with imprisonment up to six months or with a fine up to Sh. So. 3,000.

2. The above provision shall not apply when
(a) the law deems the act to be a constitutive element or
(b) an aggravating circumstance of another offense.

Explanation:

Generally, this article does not apply unless the injured party has filed a complaint. The state cannot initiate criminal proceedings on its own. An assault is defined in Paragraph 1 as an act of attacking another which does not produce any injury. If physical or mental injury occurs, then the act comes under the following article as some form of hurt. Examples of such acts would be pushing or shoving another, punching a person in the arm, spitting on him, or grabbing his shirt. All of these acts are a form of attacking another person, but produce no physical effects.

Paragraph 2 provides that there is no need for a complaint by the injured party where the assault is part of another offense. For example, Article 466 defines PRIVATE VIOLENCE, which involves acts of violence to compel another to do something. A person could twist another's arm and force him to do something without causing any physical injury to that person. The element of assault is part of the crime of PRIVATE VIOLENCE. In such case, the state can initiate proceedings against the offender under Article 466 without having to obtain a complaint from the person injured.

Example:

X is a taxicab driver in Mogadishu. Y is a Somali teacher who wants to take a cab to the Ministry of Information. Y gets in X's taxi and goes up to the Ministry. He gives X one shilling and walks away. X throws the shilling after Y and claims that the fare is three shillings. Y offers to go to the Traffic Division and settle the matter. X instead grabs Y's shirt, and refuses to let go until he is paid. Y forces X to let go, but X then grabs Y's sunglasses from his face. Finally, Y decides to pay and report the matter later. He gives X two more shillings. Later, he files an official complaint with the police, claiming that X overcharged him and that he committed the acts of grabbing his glasses from his face and holding on to his shirt. The police find X and question him. X is then charged with violating Article 439.

X is guilty as charged. He has committed an assault against Y. The acts of grabbing Y's sunglasses and shirt did not cause any physical harm to Y, but they constituted acts of attack against Y and are therefore

punishable. According to Articles 96 and 97, the minimum term of imprisonment is five days for a crime and the minimum fine is 10 shillings. The judge sentences X to a fine of 50 shillings.

Article 440 Hurt

1. Whoever
(a) causes hurt to another
(b) from which physical or mental illness results,
shall be punished with imprisonment from three months to three years.

2. The hurt shall be deemed to be grievous and imprisonment from three to seven years shall be imposed:
(a) where the act results in an illness which endangers the life of the person injured, or in an illness or incapacity which prevents him from attending to his ordinary occupation for a period exceeding forty days;
(b) where the act produces a permanent weakening of a sense or organ;
(c) where the party injured is a pregnant woman and the act results in the acceleration of the birth.

3. The hurt shall be deemed to be very grievous, and imprisonment from six to twelve years shall be imposed, where the act results in:
(a) an illness certainly or probably incurable;
(b) the loss of a sense;
(c) the loss of a limb, or a mutilation which renders the limb useless, or the loss of the use of an organ or of the capacity to procreate, or a permanent and serious difficulty in speech;
(d) deformity, or the permanent disfigurement of the face;
(e) the miscarriage of the person injured.

Explanation:

HURT is the act of causing any physical or mental injury to a person, as distinguished from ASSAULT, where no harm results. HURT can be anything from causing a facial bruise by punching someone in the nose to loss of an arm or leg, stabbing or shooting a person, or deforming him by burning. The punishments are, of course, greater for those acts which cause the more serious injury.

Paragraph 1 provides that any person who causes hurt which results in physical or mental illness shall be punished with imprisonment from three months to three years. This paragraph applies to all the kinds of hurt which are not within the following paragraphs. Generally, it applies to minor injuries, such as facial bruises, and any kind of injury which results in no permanent damage and does not keep the injured party away from work for a long period of time.

Paragraph 2 defines what is meant by "grievous hurt." The punishment is imprisonment from three to seven years. The injury done by the accused to the victim must fall within one of the Subparagraphs, a, b, or c. If the offender has committed an act which causes an injury endangering the life of the victim (such as hitting him on the head with a stick and causing unconsciousness and coma), or where the person is so incapacitated that he cannot attend work for more than forty days (such as where the victim's legs are both broken), then the injury is classified as grievous. The same is true if the act produces a permanent weakening of a sense or organ. The senses are smell, touch, sight, hearing, and taste. Thus, if a blow on the head causes a weakening of the victim's eyesight, the injury is grievous. Organs are internal parts of the body, such as the stomach, heart, lungs, and liver. Body blows with a heavy stick, or stab or bullet wounds, may cause permanent damage to internal organs. The prosecution must show that the effects of the injury are permanent, and that the act caused a weakening of that sense or organ. If the injured party is a pregnant woman, any act which causes the child to be born prematurely is considered grievous hurt. Paragraph 2(c) provides that the birth must be accelerated. It does not apply if the baby is born dead. That is a miscarriage under Paragraph 3(e), and punishable as very grievous hurt.

According to Paragraph 3, very grievous hurt generally includes incurable illnesses and the loss of senses, limbs, or the use of organs. The prosecution does not have to prove that the illness is in fact incurable, but only that it is probably incurable. In addition, deformities and permanent disfigurements of the face are considered to be very grievous hurt.

Example:

X and Y, two men, are Somali citizens living in Mogadishu. Both men are sitting in a tea shop one evening when they get into an argument. At first, they merely shout at each other, but then X pushes Y and knocks him to the ground. While Y is lying there, X hits him about the head and shoulders with his *bud*, until Y is unconscious. X then leaves. Y is taken to the dresser, and the police arrest X and charge him with causing HURT. A medical report is then obtained, indicating that Y has lost the sight of his right eye and cannot hear very well with his right ear. He also has severe bruises on his shoulders, although no bones have been broken. X is then charged with causing very grievous hurt.

X is guilty as charged. He has caused the loss of sight in Y's right eye, which is the loss of a sense. Note that he has also caused other injuries—the weakening of Y's ability to hear, which is grievous hurt under Paragraph 2, and the bruises on the shoulders, which is hurt under Paragraph

1. X is punishable for the more serious hurt caused—that is, for the very grievous hurt of the loss of sight in Y's right eye. The other acts of hurt, which are of a lesser degree, come under the provisions for COMPLEX OFFENSES, described in Article 46 (see explanation under that article). The judge therefore sentences X to the maximum term of twelve years.

Article 441 Homicide without the Intention of Causing Death

Whoever,

(a) with acts directed to commit one of the crimes referred to in Articles 439 and 440,

(b) causes the death of another,

shall be punished with imprisonment from ten to fifteen years.

Explanation:

The general rule under the Penal Code is that where one act results in two violations of the law, the accused shall be punished for each violation. This is contained in Article 44 of the Code (see explanation under that article). However, this rule does not apply in the case of death resulting from either ASSAULT or HURT. Article 441 provides that in such cases the person is punishable for the death of the victim of his assault or hurt. This makes the crime of ASSAULT or HURT a constituent element of the crime defined in Article 441, and therefore, under Article 46 (COMPLEX OFFENSES), the accused is subject only to the punishment under Article 441 (see the case of *Musa Dualeh Ali* v. *State*).

In general, Article 441 applies to the situation of preterintentional acts —that is, acts beyond the intent. The prosecution must show that the accused did not intend the death of the victim, but that such death resulted from the accused's act of assault or hurt. It must be proven that the act itself was the cause of the death. The punishment is ten to fifteen years in prison.

Example:

X and Y are two nomads who arrive at a waterhole at the same time. They begin quarreling over who should go first. X gives Y a push, intending to make him move aside so that X can go first. Y falls backward, strikes his head on a rock, and loses consciousness. X waters his camels, and then, finding that Y is still unconscious, gets scared and runs away. One hour later, Z, another nomad, comes to the waterhole, finds Y, and brings him to a town for medical treatment. Y is dead by the time Z arrives. The police investigate, and subsequently arrest X. X is charged under Article 441.

X is guilty as charged. He has committed ASSAULT by pushing Y. He did not intend to kill Y at all. However, his act of pushing caused Y's death, because Y fell and smashed his head on a rock. The judge sentences X to the minimum penalty of ten years in jail.

Article 442 Homicide or Hurt Caused by Parent

1. Where
(i) any of the crimes referred to in Articles 434, 436, 440, and 441
(ii) is committed by a parent,
the punishment prescribed in the aforesaid articles shall be modified as follows:
(a) the punishment of death shall be reduced to imprisonment from ten to fifteen years;
(b) the punishment of imprisonment shall be reduced from one-third to one-half.
2. The parent who commits the act referred to in Article 439 shall not be punishable.

Explanation:

This article substantially reduces the penalties for crimes resulting in death when such act is committed by a parent and the victim is his child. The basis for this article is the Somali family tradition of obedience to the father, and his role as head of the family. There is no counterpart in the Italian Penal Code.

The article does not apply to all crimes which result in death, but only to MURDER (Article 434), DEATH CAUSED TO A PERSON WITH HIS OWN CONSENT (Article 436), HURT (Article 440), and HOMICIDE WITHOUT THE INTENTION OF CAUSING DEATH (Article 441). If a parent commits any of these crimes against his children, the punishment is reduced according to the provisions of Paragraph 1.

Paragraph 2 provides that a parent cannot be punishable for committing the crime of assault against his child.

The English version of the article omits the limitation that the victim must be a child subject to the offender's paternal authority. The text of the Italian version reads: ". . . dal genitore sul figlio sottoposto alla sua patria potestà."

Example:

X is a resident of Mogadishu, and Y is his daughter. Y has become a very pretty girl, and X decides to marry her to a friend of his and cement good relations with him. Y is informed of her father's wishes, and says

that she does not want to marry his friend. X becomes so angry at his daughter's disobedience that he beats her severely. As a result of the beating, she dies. The police investigate her death, and X is arrested and charged with violating Article 441.

X is guilty as charged. He has caused Y's death as a result of hurt, not intending to kill her. The punishment under Article 441 is imprisonment from ten to fifteen years. However, X is the parent of Y. Therefore, Article 442 applies, and the punishment must be reduced by one-third to one-half. The judge sentences X to the full fifteen years, and then reduces it by one-third, or five years, to a total sentence of ten years imprisonment.

Article 443 Homicide and Hurt for Reasons of Honor

1. Whoever
(a) finds his or her spouse, a daughter, or a sister
(b) committing fornication,
(c) and in the sudden heat of rage for the offense caused to his or her honor and to the honor of his or her family,
(d) causes the death of such spouse, daughter, or sister,
shall be punished with imprisonment from five to ten years. The same punishment shall be imposed upon a person who, under the same circumstances, causes the death of the person whom he or she finds committing fornication with his or her spouse, daughter, or sister.
2. Where
(a) the offender,
(b) under the same circumstances,
(c) causes hurt to the aforesaid persons,
the punishment prescribed in Article 440 shall be reduced to one-third; where
(d) death results from the hurt,
the punishment shall be imprisonment from two to eight years.
3. Whoever,
(a) under the same circumstances,
(b) commits against the aforesaid persons
(c) the act referred to in Article 439
shall not be punishable.

Explanation:

This article applies to the crimes of MURDER and HURT committed for reasons of honor. The law recognizes that persons who are not real criminals may, in the heat of the moment, commit such crimes to protect their own honor and the honor of their families. For this reason, the penalties

under Article 443 are greatly reduced. However, the conditions of this article must be carefully complied with. First, Article 443 applies only if the offender has found certain relatives in the act of fornication. "Fornication" means the act of sexual intercourse. The crime under this article may be committed by either a man or a woman. The accused must find either his wife (or husband), daughter, or sister committing the act of fornication with another. The accused must then act in the sudden heat of rage because of the stain on his honor or the honor of his family. The word "sudden" implies an immediate reaction. Thus, if a brother finds his sister fornicating and waits two weeks before he kills her for the offense to the family's honor, this is not an act done "in the sudden heat of rage." The time period of two weeks eliminates the element of acting on the spur of the moment upon seeing his sister fornicating. The accused must actually find one of the specified relatives committing the act of fornication. He cannot act after having been told by another that it occurred; he must see it for himself. If all of these conditions are met, and the offender kills or injures either his wife, daughter, or sister or the man they were fornicating with, the punishments are reduced.

Paragraph 2 merely applies the conditions of Paragraph 1 to cases involving hurt instead of murder, and specifies the punishment for the offender.

Paragraph 3 provides that acts of assault—that is, acts which do not cause any physical or mental injury—when committed for the reason of honor and with the conditions specified in Paragraph 1 are not punishable at all.

Example:

X is a resident of Hargeisa. One day, he decides to visit his married sister. He enters her house without knocking on the door. Inside, he finds his sister lying in bed naked with a man X knows is not her husband. X yells in rage, draws his knife, and stabs the man repeatedly, killing him. He then beats his sister severely. Her screams bring the police, who seize and arrest X, and charge him with MURDER. After a brief investigation, X is officially charged under Article 443.

X is guilty as charged. He has found his sister fornicating with a man other than her husband. He committed the act of killing the man immediately after seeing what was happening, in a fit of rage. There was no motivation for his killing the man except the offense to the honor of the family. His act of stabbing the man obviously caused his death. According to Paragraph 1, the penalty for such an act is imprisonment from five to ten years. The judge sentences X to imprisonment for five years.

Article 444 Affray

1. Whoever takes part in an affray shall be punished with imprisonment up to one year or a fine up to Sh. So. 1,000.

2. Where,

(a) in the course of the affray,

(b) someone is killed, or receives hurt,

the punishment for the act of participating in the affray shall be imprisonment from three months to five years. The same punishment shall apply where death or hurt occurs immediately after the affray and in consequence thereof.

3. The punishment prescribed in the two preceding articles shall be increased where the affray is caused

(a) for political reasons or

(b) by rivalry between ethnical groups.

Explanation:

An "affray" is a fight, either with or without weapons, among many men. Obviously, the offense has to be committed knowingly and willfully. Paragraph 1 punishes for the mere participation in the affray.

Paragraph 2 provides for a more serious punishment where someone is injured or killed in the course of the affray, or immediately thereafter, as a consequence of the affray. Paragraph 2 applies to any participants in the affray, even if they did not cause the injury or death. Thus, merely participating in an affray where someone was killed or injured brings one under Paragraph 2. The death or injury does not have to occur during the affray. It may occur immediately thereafter as a result of the affray.

Paragraph 3 defines the aggravating circumstances for this crime. If the affray has been for political reasons or because of rivalry between ethnic groups, the punishment must be increased; according to Article 118, this will mean by up to one-third of the sentence imposed. In the Somali context, the term "ethnic groups" refers to *rers*, subtribes, and tribes.

Example:

Two large groups of the Arap and Saad Mussa tribes meet on the Ethiopian side of the *de facto* border. W, X, Y, and Z are in the Arap group, and E, F, G, and H are in the Saad Mussa group. The two groups shoot at each other, and many people are wounded and a few are killed. W, X, E, and F are responsible for killing some of the people in the

affray; Y and Z do not have rifles and do not do any of the shooting; G is wounded during the fighting, and H, who also has been wounded, dies on the Somali side of the *de facto* boundary about one hour after the two groups have scattered. The police patrols in the area, on the Somali side of the border, pick up the wounded and as many of the participants of the affray as they can catch. W, X, Y, Z, E, and F are among those caught. After an investigation, it proves impossible to gather evidence to charge any of the persons caught with specific acts of murder or hurt. No one is willing to testify as to who shot whom. Therefore, all of the prisoners are charged with AFFRAY, in violation of Article 444.

Assuming jurisdiction, all are guilty as charged. All were participants in the affray, even Y and Z, who did not have rifles but came armed with spears and knives. Paragraph 2 will apply to all of the prisoners, because many persons were killed and wounded. If none had been killed or wounded during the actual affray, the death of H shortly after the affray ended, on the Somali side of the boundary, would be enough to justify conviction under Paragraph 2. His death was a consequence of the affray, since he was shot during the fight. In addition, all are subject to the increased penalty under Paragraph 3, because the affray was caused by tribal rivalry. The judge sentences all of the offenders to the maximum period of five years imprisonment under Paragraph 2, and increases the sentence by a full one-third, under Paragraph 3, to a total sentence of six years and eight months.

Article 445 Death Caused by Negligence

1. Whoever
(a) by culpable negligence
(b) causes the death of another
shall be punished with imprisonment from six months to five years.
2. In the case of
(a) the death of more than one person, or
(b) the death of a person and hurt to one or more persons,
the provisions of Article 44 shall apply, but the punishment shall not exceed in the aggregate twelve years.

Explanation:

This article applies only to cases of death caused by culpable negligence, as defined in Article 24(c). It does not apply to deaths caused by intentional or preterintentional acts. Since the death was not intended but resulted from a lack of care, the penalty is much less severe than if the act had been intended. Paragraph 2 provides for an increased penalty

where more than one person is killed or where one person is killed and one or more persons are hurt. The paragraph provides that in such cases Article 44 shall apply. Article 44 states that the offender can be punished for each violation or act even where the same act results in more than one violation of the law (see explanation under that article). Thus, if a person by negligence kills two persons, he can be punished for the death of each person. However, Paragraph 2 of Article 445 sets the maximum sentence for the total punishments at twelve years.

Example:

X is driving a truck to Mogadishu. He is driving very fast, and he fails to notice another truck, loaded with people, stopped on the road ahead. X tries to swerve, but cannot, and hits the other, stopped truck. Ten people in that truck are killed and twelve others are severely injured. X is charged with causing death and injury by negligence.

X is guilty as charged. He has driven his truck too fast and has failed to observe the road carefully. Thus, as a result of his negligence, he smashed into a stopped truck and killed ten people and injured twelve others. He is subject to imprisonment from six months to five years for each death caused, except that Paragraph 2 limits his total sentence to twelve years. The judge sentences X to three years in prison for each person killed, and thus orders him imprisoned for a total of twelve years.

Note that if X had killed only one person and injured two others, he would have been subject to imprisonment for six months to five years for causing the death of the person, under Article 445(1), and imprisonment depending upon the type of hurt caused for each of the two others injured, under Article 446, with the imprisonment not to exceed twelve years, as required by Paragraph 2 of Article 445.

Article 446 Hurt Caused by Negligence

1. Whoever
(a) by culpable negligence
(b) causes hurt to another
shall be punished with imprisonment up to three months or a fine up to Sh. So. 5,000.
2. Where
(a) the hurt is grievous,
the punishment shall be imprisonment from one to six months or a fine from Sh. So. 2,000 to 10,000;
where
(b) it is very grievous,

imprisonment shall be from three months to two years or a fine from Sh. So. 5,000 to 20,000.

3. In the case of hurt to more than one person, the provisions of Article 44 shall apply, but the punishment of imprisonment shall not exceed in the aggregate five years.

4. In the case referred to in the first paragraph of this article, the offender shall be punished on the complaint of the party injured.

Explanation:

This article applies to hurt caused by negligence, and is very similar to the preceding one. The penalties are more severe for the more serious kinds of hurt. Paragraph 3 also provides that the provisions of Article 44 shall apply, meaning that the accused can be punished for each individual injured, but the total sentence cannot exceed five years. This provision will apply only if all the victims were injured. If one was killed and the others injured, the penalty for the death is determined by Paragraph 1 of Article 445 and the penalties for each individual injured by Article 446, but the total penalty is determined by Article 445(2)—that is, twelve years. This is so because a case in which one person is killed and others are injured comes within the provisions of Article 445, whereas Article 446 applies only to cases involving injured individuals.

If the injury caused is minor (within the provisions of Paragraph 1), the injured party must file a complaint before criminal proceedings can be brought.

Example:

X is a truck driver coming from Chismayo to Mogadishu. He arrives on the Afgoi-Mogadishu road sometime after midnight, and decides to stop the truck and spend the night on the road. He parks the truck in the middle of the highway, turns off all the lights, and goes to sleep in the cab. About one hour later, a small car, driven by Y, with his wife and two children in the car, is returning from Afgoi. Y is driving carefully and slowly, but the road is so dark he doesn't see the truck until it is too late. Y jams on the brakes, but his car hits the back of the truck. Y breaks his arm, his wife suffers bruises, and one of the children breaks his foot. Eventually, all are taken to the hospital, and X, the truck driver, is detained by the police. He is charged with violating Article 446 of the Code.

X is guilty as charged. By parking his truck in the middle of the road without any lights, he has violated a traffic rule and created a dangerous situation. Through his negligent act, Y and his family were injured. The injuries suffered were not grievous, since no organs were permanently

weakened, and Y is able to go back to work shortly after the accident. Y, however, files an official complaint with the police, and X is prosecuted. The judge sentences him to nine months in prison, or three months each for the injuries to Y, his wife, and one of his children.

Article 447 Death or Hurt Caused as a Consequence of Another Crime

In cases
(a) other than those provided for in Article 441,
(b) whenever the death or hurt of a person
(c) results from an act which is made a crime
(d) committed with criminal intent by law,
(e) as a consequence not intended by the offender,
the provisions of Articles 445 and 446 shall apply, but the punishment shall be increased.

Explanation:

Article 441 deals with death caused as a result of the crime of ASSAULT or HURT. Article 445 deals with DEATH CAUSED BY NEGLIGENCE, and Article 446 deals with HURT CAUSED BY NEGLIGENCE. Article 447 deals with the situation where death results from the commission of any crime with criminal intent other than ASSAULT or HURT. The prosecution must show that the offender did not intend such death. If he intended it, then the act is a crime under another article.

The punishments under Article 447 are imprisonment from six months to five years in the case of death, according to Article 445, and imprisonment according to the various provisions of Article 446 in the case of hurt. However, these penalties must be increased by up to one-third, as prescribed in Article 118. Technically, Article 118 applies only to situations where there is one aggravating circumstance. However, there is no other provision in the Code for the amount of the increase if it is not specified in the article defining the crime. Therefore, a crime under Article 447 should be treated as an aggravating circumstance to Articles 445 and 446, and thus the increase in the sentence will be defined under Article 118.

Example:

X is a resident of Chismayo. He decides to hold Z, a foreign employee of the Chismayo Port Project, a captive in his house until the foreign company pays X 200,000 shillings for Z's release. X goes to Z's house and forces him at gunpoint to come with him. He takes Z to his house, ties him up, and locks him in the back room. X then sends a note to the

foreign company demanding 200,000 shillings for Z's release. Z is an elderly man of about sixty-five years of age, and the shock of being tied up and held by X is too much for his heart. Z has a heart attack, and dies. When X opens the back room and finds Z dead, he panics and leaves Chismayo immediately. Z's body is discovered in X's house, and the police put out a bulletin for X's arrest. X is captured in Mogadishu. He is charged with detaining a person for the purpose of extortion, in violation of Article 486, and with causing Z's death, in violation of Article 447.

X is guilty of both charges. With regard to Article 447, he has caused Z's death by kidnapping him. X didn't intend to kill Z, and he didn't want Z to die, because he was trying to sell Z's safe release to Z's company for 200,000 shillings. Nevertheless, Z dies as a result of X's crime. If X had not kidnapped him, Z would never have been scared and had a heart attack. X's act comes under Article 447 because the crime of detaining a person for purposes of extortion is not under Article 441 and is not a crime committed with negligence. It is a crime committed with criminal intent. X is subject to imprisonment from six months to five years for causing the death of Z, plus an increase. The judge sentences X to three years, increases it by the full one-third, and sentences X to a total of four years for violating Article 447. Note that X is also subject to a separate penalty under Article 486 for detaining Z for purposes of extortion.

Article 448 Abandonment of Minors or Incapable Persons

1. Whoever
(a) abandons
(b) a person under the age of fourteen, or
(c) a person incapable of looking after himself for reason of his mental or physical infirmity or old age or any other cause,
(d) when such person is entrusted to him for custody or care,
shall be punished with imprisonment from six months to five years.

2. Whoever
(a) abandons
(b) in a foreign territory
(c) any Somali citizen
(d) under the age of eighteen,
(e) entrusted to his care in the territory of the State
(f) for the purpose of work,
shall be liable to the same punishment.

3. The punishment shall be imprisonment
(a) from one to six years where the act results in hurt, and
(b) from three to eight years where death results therefrom.

4. The punishment shall be increased where
(a) the act is committed by
(b) a parent, child, guardian, or spouse, or by an adoptive parent or child.

Explanation:

This article is designed to protect those people incapable of protecting themselves from abandonment. The term "abandonment" means to be left, usually in a helpless condition, which increases the chances of injury or even death. Paragraph 1 applies to the abandonment of minors, meaning persons under fourteen, and any other person incapable of looking after himself for any reason. However, the offender must be a person entrusted with the care or custody of the person he abandoned. Such care or custody will normally arise from family bonds rather than from an official legal order. The punishment for such an act is imprisonment from six months to five years.

Paragraph 2 applies only to abandonment in foreign territory. The person abandoned must be a Somali citizen who is under eighteen. The offender must be a person entrusted with the care of such person for purposes of work. In other words, the abandonment of a boy under eighteen in foreign territory by a person entrusted with the care of the boy for purposes other than work is not punishable under this article. If, for example, a Somali businessman takes a sixteen-year-old boy with him into Ethiopia to help him load his truck and then abandons the boy there, the businessman is guilty of a crime under Paragraph 2. If, on the other hand, the businessman takes his nineteen-year-old son along with him on the trip into Ethiopia just for company and then abandons the boy in Ethiopia, he has not violated Paragraph 2, because the boy was not entrusted to him for purposes of work. Nor is he within Paragraph 1. Note that Paragraph 1 applies whether the person is abandoned in the state or in foreign territory, as long as Somalia has jurisdiction over the offender.

Paragraph 3 simply prescribes the punishments where death or hurt results from abandonment.

Paragraph 4 makes it an aggravating circumstance for certain persons to commit the act of abandonment.

Example:

X is a young man living with his wife. His seventy-eight-year-old father is also living with him. X decides to move his family from the interior to a town four hundred miles away. His wife loads the burden camels, and they begin the walk. Soon X's father cannot keep up. X has never liked his father and feels that he does not owe him anything. As the old man falls farther and farther behind, X and his wife just keep walking. Finally,

the old man drops from exhaustion, and X leaves him behind. About four hours later, the old man is found by two nomads and given milk and food. He is taken to the nearest town and left there in charge of the police. The police investigate the matter, and then arrest X. X is charged with violating Article 448.

X is guilty as charged. His father is a person incapable of taking care of himself because of his old age. X, as his son, was entrusted with his care, it being a general moral rule of Islam that sons are to take care of their parents in need. X abandoned his father in the interior by leaving him and continuing on his way. The judge sentences X to one year in prison, and then increases this by a full one-third, under Paragraph 4, because X was the son of the victim.

Article 449 Abandonment of a Newly Born Child for Reasons of Honor

1. Whoever
(a) abandons
(b) a newly born child,
(c) immediately after its birth,
(d) for the purpose of safeguarding one's own honor or the honor of an ascendant or a descendant,
shall be punished with imprisonment from three months to one year.

2. The punishment shall be imprisonment
(a) from six months to two years where the act results in hurt, and
(b) from two to five years where it results in the death of the newly born child.

3. The circumstances referred to in Article 39 shall not aggravate the offense.

Explanation:

Article 435 involved the situation where a person has killed a newly born child for reasons of honor. The basis for that article is the same as for Article 449. In both cases, the law recognizes that such crimes committed for reasons of honor should be punished less severely than those committed for purely criminal reasons.

Article 449, however, strictly limits the application of this principle. The child must be abandoned immediately after its birth. The purpose of abandoning it must be to save the honor of the offender or that of an ascendant or descendant. The crime cannot be committed on behalf of a friend. This would be murder.

Paragraph 1 provides that the punishment for the act of abandoning shall be imprisonment from three months to one year. If, however, the baby is injured or killed as a result of the abandonment, the penalty is heavier, according to Paragraph 2.

Paragraph 3 is strange. It states that aggravating circumstances as defined in Article 39 shall not apply to the commission of this offense. In effect, this means that crimes under Article 449 cannot be committed with aggravating circumstances. However, Infanticide for Reason of Honor (Article 435), which is in principle the same crime, can be committed with aggravating circumstances. It is peculiar in that the two similar offenses are treated differently.

Example:

Q is an unmarried girl. She becomes pregnant, and gives birth to a baby girl. Her mother, B, helps Q give birth. B then takes the newly born daughter, leaves the *agal*, and carries the child about half a mile away. She leaves it, and returns to the *agal*. During the night, hyenas come and kill the baby. Q is very upset by this, and becomes slightly mad. She wanders about town crying for her baby. Somebody, thinking the child has been lost, reports the matter to the police. After a brief investigation, B is arrested and charged with violating Article 449.

B is guilty as charged. She has abandoned a newly born child. She committed the act immediately after the child was born. She committed the crime to protect the honor of her daughter, a descendant. As a result of abandoning the child, it was killed by animals. Therefore, the punishment under Paragraph 2 applies. The judge sentences B to the minimum penalty of two years in jail.

Article 450 Failure to Render Assistance

1. Whoever,
(a) finding an abandoned or lost child under the age of ten years, or
(b) any other person incapable of looking after himself for reason of his mental or physical infirmity or old age or any other cause,
(c) fails to give immediate information to the authorities,
shall be punished with imprisonment up to three months or a fine up to Sh. So. 3,000.

2. Whoever,
(a) finding a human body
(b) which is or appears to be lifeless, or
(c) a person wounded or otherwise in danger,
(d) fails to afford the necessary assistance or to give immediate information to the authorities,
shall be liable to the same punishment.

3. Where,
(a) by reason of the offender's conduct,
(b) hurt results,
the punishment shall be increased;
where
(c) death results,
the punishment shall be doubled.

Explanation:

This article establishes the duty of the public to assist persons they find when they are incapable of helping themselves. Paragraph 1 applies to abandoned and lost children under the age of ten and any other person incapable of looking after himself for any reason, including old age or mental and physical infirmities. Under Paragraph 1, the member of the public has a duty to report the matter to the authorities immediately. This paragraph applies only to situations where the person found is not in any immediate danger or harm.

Paragraph 2 covers cases in which the person is in such danger. In these cases, the member of the public must provide the necessary assistance to protect him, or in the appropriate situations to give immediate information to the authorities. If, for example, a man sees another man clinging to a tree in a *tug* full of water, he is not required to dive into the water and swim out and save him. But he is obliged to report the matter immediately to the authorities so that they can take the necessary steps to save the man. Note that Paragraph 2 covers all persons, not only those abandoned or lost, as in Paragraph 1.

Paragraph 3 prescribes the punishment where hurt or death results from the offender's conduct.

Example:

Assume the same facts as in the preceding example. Z, a nomad, comes across the baby girl that B has just abandoned. He does not pick her up and bring her to town, but instead leaves her out in the bush. When he gets to the town, he tells people he meets that he saw a baby girl abandoned out in the bush, but that he didn't pick her up because he didn't want to get into any trouble. After B has been arrested, Z is also questioned. He is then charged with violating Article 450.

Z is guilty as charged. His actions come within the provisions of Paragraph 2. He found a baby girl abandoned. She obviously was not able to take care of herself and, being abandoned in the late afternoon, would either die of exposure at night or be eaten by hyenas. Z failed to give the necessary information immediately to the authorities. As a result of his failure to act, the baby was eaten by hyenas. Therefore, the punishment is doubled, according to the provisions of Paragraph 3. The judge sentences Z to three months in prison, and then doubles it to six months.

Chapter II Crimes against Honor

Article 451 Insult

1. Whoever
(a) offends the honor or dignity of a person
(b) by words or act
(c) in his presence, or
(d) by writing, or drawing, or by telephonic or telegraphic communications
(e) to that person,
shall be punished, on the complaint of the party injured, with imprisonment up to one year or with a fine up to Sh. So. 1,000.

2. The punishment shall be increased up to double:
(a) where the insult is committed in the presence of more than one person, or in such a manner that it directly comes to their knowledge;
(b) where the act consists in the attribution of a specific act;
(c) where the insult is also directed to the nationality, ethnical community, or family to which the party injured belongs;
(d) where the insult is committed by means of word, act, writing, drawing, or communication which, according to the social customs, tends directly to provoke the party injured or which, even where no such provocation is caused, is of a particularly serious nature.

3. The prosecution for the offense shall be initiated by the State where
(a) any of the circumstances referred to in letter c or d of the preceding paragraph
(b) is present.

4. Where the insult is reciprocal, the Court may declare that one of the parties or both are not punishable, notwithstanding that one of the parties has filed the complaint.

Explanation:

The crime of Insult, with two exceptions, may only be initiated after the injured party has filed a complaint. The state cannot initiate proceedings on its own except in the two cases described below. The crime may be committed in only two ways: either by an insult in the presence of the person insulted or by some communication addressed to that person.

It cannot be committed outside the presence of the injured party. If X makes an insulting remark about Y in a tea shop, and Y is at work in the Ministry, this is not the crime of INSULT under Article 451. The insults sent to the person insulted by letter or telegram, or spoken over the telephone directly to that person, are considered to be made in the presence of the injured party. This is reasonable, since the communications must be directed to the injured party, not to others. A newspaper story that insults someone is not under this article, because it is not addressed to the injured party but is published generally for the knowledge of the public.

The prosecution must show that the insult was in the form of a word or an act, and that it offended the honor or dignity of the person injured. As stated above, the prosecution must show that the insult was made either in the presence of the person injured or by a communication addressed to that person. If these elements are present, and the injured party has filed a complaint, the punishment is imprisonment or a fine, not both.

Paragraph 2 describes the aggravating circumstances for the offense. If such aggravating circumstances are present, the judge must increase the penalty, but he has the discretion to increase it up to double the amount prescribed. Thus, the judge may increase it by one-quarter, one-third, or one-half, or he may double the punishment. Subparagraph a of Paragraph 2 makes it an aggravating circumstance to commit the insult in the presence of more than one person. If several men are sitting around a table in a tea shop, and X insults one of them, he has committed insult with the aggravating circumstance of insulting a person in the presence of others. This subparagraph also applies where the insult is made in the presence of the injured party, but done in such a manner that it comes directly to the knowledge of more than one person.

Subparagraph b makes it an aggravating circumstance to insult someone by attributing to him a specific act. If Y insults a person by stating that he took 15,000 shillings from people by fraud, Y has attributed the specific act of stealing to the injured party.

Subparagraph c makes it an aggravating circumstance if the insult is also made about the person's nationality, ethnic group, or family. The terms "ethnical community" and "family" in the Somali context refer to tribes and *rers*.

Subparagraph d makes it an aggravating circumstance to commit the insult in a way which, according to the social customs, tends to directly provoke the party injured, or is particularly serious. Various gestures, such as spitting or making signs with one's hands, may have a special significance according to local customs. In such cases, the punishment is increased.

Paragraph 3 establishes the cases in which the state may initiate proceedings, even though no complaint has been filed by the injured party. If the insult comes within Subparagraphs c or d—that is, the insult is directed against the nationality, ethnic group, or family of the injured party, or is made in an especially serious way or in a way tending to provoke the insulted party—then the state itself may bring the proceedings.

Paragraph 4 provides that if the injured party and the offender have exchanged insults, the court may declare that only one party is punishable or that neither person is punishable. And the court may do this regardless of the fact that one of the parties has filed a complaint.

Note that insults to public officers are covered by Article 268 (see explanation under that article). Article 451 will apply only to private persons.

Example:

X is sitting at a table with four other men, including Y, in a tea shop in Hargeisa. X and Y begin discussing the policies of the government, with X defending certain Ministers and Y attacking them. X makes the statement that Y has never really understood politics, and this makes Y very angry. He replies that everyone knows that X is a slave and the son of a slave, and that Y always felt that X's stupidity was due to this background. Before X can reply, Y walks out. X threatens to kill Y, but his friends at the table convince him that using force will not help matters. Instead, X files an official complaint with CID. The police investigate, and Y is arrested and charged under Article 451.

Y is guilty as charged. He has offended the honor and dignity of X by calling him stupid. He has insulted both X and his family by calling X a slave and the son of a slave. He has also committed the offense in the presence of the other men seated at the table. Therefore, Y is guilty of committing the offense of INSULT with two aggravating circumstances:

(1) insulting X in the presence of more than one other person, and

(2) also directing the insult to X's ethnic background and family.

The police could have initiated prosecution without X's complaint, but since he filed an official statement of complaint, it doesn't matter.

The penalty for insult is imprisonment up to one year or a fine up to 1,000 shillings. The penalty for each aggravating circumstance is an increase in the punishment up to double. Article 120 provides that where there is more than one aggravating circumstance, the total penalty shall not exceed the maximum penalty multiplied by three. Thus, the judge may not sentence Y to more than three years in prison or a 3,000–shilling fine. The judge decides that the punishment for each aggravating circumstance should be one-half the punishment for the offense. He there-

fore fines Y 1,000 shillings for the offense and 500 shillings for each of the aggravating circumstances.

Article 452 Defamation

1. Whoever,
(a) other than in the cases referred to in the preceding article,
(b) by communicating with more than one person,
(c) injures the reputation of another,
shall be punished, on the complaint of the party injured, with imprisonment up to one year or with a fine up to Sh. So. 2,000.

2. The punishment shall be increased up to double where
(a) any of the circumstances referred to in letters b, c, or d of Paragraph 2 of the preceding article
(b) is present.

3. Where
(a) the act is committed
(b) by means of the press, or
(c) by any other means of publicity,
the punishment shall be imprisonment from six months to three years or a fine of not less than Sh. So. 4,000.

Explanation:

Insult must be committed in the presence of the person insulted or by means addressed directly to that person. *Defamation*, on the other hand, is committed by communicating to others statements which injure the reputation of a person. Defamation is punishable only upon the complaint of the injured party. There is no provision for the initiation of proceedings by the state, as in the case of INSULT (Article 451(3)), although the aggravating circumstances which allow for initiation by the state are also applicable to defamation. The statements made must be communicated to more than one person if a charge of defamation is to be sustained.

The aggravating circumstances for defamation, according to Paragraph 2, are:

(1) where the act consists in the attribution of a specific act;
(2) where the statement is also directed to the nationality, ethnical community, or family to which the party injured belongs; and
(3) where the statement is committed by means of word, act, writing, drawing, or communication which, according to the social customs, tends directly to provoke the party injured or which, even where no such provocation is caused, is of a particularly serious nature.

These are the same aggravating circumstances that are described in Subparagraphs b, c, and d of Article 451(2), as explained above.

Paragraph 3 provides for increased punishment where defamation is committed by means of the press or by any other means of publicity. The press would include newspapers. If a defamation was broadcast over the radio, or if a person printed posters and pasted them up all over the city, or distributed them, or addressed a large crowd by means of a loudspeaker, this would be within the term "other means of publicity," and punishable under Paragraph 3. Paragraph 1, simply defining defamation, applies to the situation where the offender has made defamatory statements to a group in a tea shop, or to several different individuals on separate occasions.

Example:

X is the editor of a small newspaper in Mogadishu. He prints a story in which he alleges that a high police official is a foreign spy, and has sold police military information to a foreign government. The newspaper is distributed in Mogadishu and Hargeisa. The police official files a complaint with CID, and X is arrested. He is charged with defaming the officer under Article 452(3).

The elements of the offense are present. X has injured the reputation of the officer by alleging that he is a foreign spy. He has committed the act by means of the press. The prosecution does not have to show that the communication was made to more than one person. It is enough that the story was printed in the newspaper and the paper was distributed. The punishment is imprisonment from six months to three years or a fine of not less than 4,000 shillings. Article 97 provides that the maximum for fines in cases of crimes is 50,000 shillings. The judge may sentence X to a fine of 4,000 to 50,000 shillings.

Whether X is guilty or not depends upon the next article.

Article 453 Proof of Truth

1. In the cases referred to in Articles 451 and 452, whenever
(a) the offense consists in the attribution of a specific act,
(b) the proof of the truth of such act
(c) shall be admitted in penal proceedings,
(d) provided that the party injured makes an express request before the commencement of the proceedings.

2. The offender shall in all cases have the right to prove the truth:
(a) where the party injured is a public officer and the act attributed to him relates to the exercise of the functions of such officer;
(b) where criminal or disciplinary proceedings are pending against the party injured in respect of the act attributed to him, or where such proceedings are about to be instituted.

3. Where the truth of the act attributed to the party injured is proved, the offender shall not be punishable.

Explanation:

Paragraph 3 of this article establishes the basic rule that truth is a complete defense for charges of either insult or defamation. If the insulting statement or the defamatory remark is proven to be true, then the offender cannot be punished. However, since truth is a defense for such charges, the burden of proof is upon the defendant to show the truth of the statements. The prosecution does not have to prove that the statements were false. It is not an element of the prosecution's case.

Article 453 describes the rules for when proof of truth of the statements made may be introduced in court. It is essentially an article of criminal procedure. According to Paragraph 1, the injured party must request that the defendant try to prove the statement made, if such statement relates to claiming that the injured party committed a specific act. If the injured party does not request that proof of the statement be made, then such proof cannot be introduced.

Paragraph 2 provides when the defendant shall have the absolute right to introduce evidence to prove that the statements made were true. In all cases where the injured party is a public officer, and the defamatory or insulting statement relates to his functions as a public officer, the offender must be allowed to introduce evidence to show the truth of the statements he made. The same is true where criminal or disciplinary proceedings are pending or about to be instituted against the party insulted or defamed for the act specified in the insulting or defamatory statement. Thus, if X defames Y by claiming that he took money from the public treasury, and Y is in fact being brought before a disciplinary board for taking funds, X must have the right to prove in court the truth of the statement he made.

Examples:

1. In the example under Article 451, Y insulted X by calling him a slave and a son of a slave. This is not a specific act attributed to X. Therefore, it does not come within the provisions of Article 453, and Y will not have any chance to prove the truth of the insulting statement he made.
2. In the example under Article 452, X has alleged that a police officer is a foreign spy and has sold military information to the foreign government. This allegation comes within Paragraph 2(a) of Article 453. It relates to the police officer's functions in that it concerns his handling of military information which he has access to as a police officer. Therefore,

X has the right to prove the truth of the statement that the officer is a foreign spy. At the trial, if he fails to do so, or offers no proof at all on the subject, he can be convicted and sentenced under Paragraph 3 of Article 452.

Article 454 Provocation

Whoever
(a) commits any of the acts referred to in Articles 451 and 452
(b) in a state of anger
(c) caused by an unlawful act of another person,
(d) and immediately after the same,
shall not be punishable.

Explanation:

Article 454 provides that an offender shall not be punished if he is provoked into insulting or defaming a person. The article defines what is meant by a state of provocation. The person insulted must have committed an unlawful act. The offender must respond immediately to that act and insult or defame the person in a state of anger. The element of immediate response is necessary for an act to come within this article.

Example:

X is a resident of Mogadishu. He sees Y grab X's son and shake him. X runs at Y and yells, "Hey, you stupid pig, let go of my son." Before X can reach Y, friends stop him and keep the two men separated. X could be prosecuted for insult upon the complaint of Y. However, such prosecution would not be successful. X was provoked into insulting Y by calling him a stupid pig because of Y's unlawful grabbing of X's son. X acted immediately after Y grabbed his son, in a state of anger over his action. Therefore, he cannot be punished for insult.

Chapter III Crimes against Individual Liberty

SECTION I CRIMES AGAINST HUMAN PERSONALITY

Article 455 Reduction to Slavery

Whoever reduces a person to slavery or to a similar condition, shall be punished with imprisonment from five to twenty years.

Explanation:

The Constitution of the Somali Republic prohibits any person from subjecting another to slavery. Article 17, Paragraph 2, provides that:

2. Subjection to any form of slavery or servitude shall be punishable as a crime.

Article 455 fulfills this instruction of the Constitution by making it a crime to reduce a person to slavery or to a similar condition. The phrase "similar condition" means anything like slavery in its effects, such as forcing a person to work for no pay, feeding him very little, and having the power of punishment and discipline and the rights of ownership of the person without the actual, visible signs of slavery, such as chains.

Article 456 Dealing and Trading in Slaves

Whoever
(a) deals or in any manner trades
(b) in slaves or persons in a condition similar to slavery,
shall be punished with imprisonment from five to twenty years.

Explanation:

Since slavery is made a crime by the Constitution, dealing or trading in them is also a crime. Dealing or trading in slaves means to conduct the business of catching, possessing, selling, and transporting human beings as slaves. Note that this article applies even if the offender has been using Somalia as a mere transit country for taking slaves from one country to another. It does not matter whether the slaves are taken from Somalia or not. As long as Somalia has criminal jurisdiction over the case, Article 456 applies.

Article 457 Sale and Purchase of Slaves

Whoever,
(a) other than in the cases referred to in the preceding article,
(b) disposes of or transfers a person
(c) who is in a state of slavery or a similar condition, or
(d) takes possession of or purchases or holds such person in such state,
shall be punished with imprisonment from three to twelve years.

Explanation:

This article applies to those who sell or buy slaves, other than in the cases covered by Article 456. Article 457 thus applies to individual sales or purchases of slaves rather than to the business of buying and selling slaves. The article applies both to the person selling the slave and to the purchaser, and it covers those unfortunate persons who are either actual slaves or in a condition similar to slavery.

Article 458 Enforced Subjection

Whoever
(a) compels another
(b) to submit to his own power,
(c) so as to reduce him to a total state of subjection,
shall be punished with imprisonment from five to fifteen years.

Explanation:

This article applies to the situation where a person is in fact reduced to a state of total subjection to another person. It is in effect "a condition similar to slavery," except that there is no need for any judicial or legal effect with regard to this article, whereas under slavery there is generally some recognition of ownership of the slave by another. Under Article 458, the prosecution must prove that the person subjected has been compelled by another. The term "compelled" implies some use of force or coercion. Note also that a total state of subjection must result, meaning that the person is totally dependent upon the offender.

Example:

X is a person owning a small tea shop in the interior. One day he finds Y, a little girl about ten years old who has been abandoned, and he takes her in. He tells her that since he found her and saved her life, she is his for the rest of her life. He puts her to work and beats her frequently, and gives her barely enough to eat. As the girl grows older, she tries to escape a few times, but X always catches her and beats her more severely. Finally, she gives up trying, and continues working for X, doing everything he tells her to do. One day, when she is fifteen, a police patrol passing through the area stops at the tea shop. The sergeant in charge asks X about the girl, and discovers that she is not X's child, does not get paid, has tried to leave, and was prevented by X. X also proudly states that Y will remain with him for the rest of her life, providing him with a servant for the tea shop so that he will be free to do other things. The sergeant asks the girl if she wants to leave, and she tells him that she does but that she is afraid of X. The police take the girl to the nearest town, investigate the matter, and then arrest X. He is charged with violating Article 458.

X is guilty as charged. He has forced Y to become his servant. He doesn't pay her anything, has total power over her in terms of punishment, starves and beats her, forces her to do all of the work he wants her to do, and prevents her from freely leaving. The fact that X found her

when she was abandoned does not give him the right to exercise this power over her. Y has been reduced to a state of total dependence on X. The judge finds X guilty and sentences him to five years in prison.

Article 459 Crimes Committed Abroad

Notwithstanding the provisions of Article 8,
(a) the provisions of this Section
(b) shall also apply when
(c) the act is committed abroad
(d) to the prejudice of a Somali national,
(e) provided that the offender is within the territory of the State when criminal proceedings are initiated.

Explanation:

Article 8 is the main jurisdictional article of the Penal Code with regard to offenses committed abroad. Paragraph 1 of that article provides that crimes committed abroad against Somali nationals can be punished if:

(a) the act is considered a crime by the foreign country where the crime was committed;
(b) the injured party has filed a complaint; and
(c) the offender is in Somalia when the complaint is made or when penal proceedings are initiated.

Article 459 changes these conditions with regard to crimes contained in Articles 455 to 458. In such cases, the only condition required is that the offender is within the territory of Somalia when criminal proceedings are initiated. It is not necessary for the injured party to file a complaint or for the foreign state where the act occurred to make slavery a crime. Note that Article 459 applies only in cases where the offense has been committed against a Somali national.

Example:

X is a Somali citizen. He is traveling through a Middle Eastern country on his way to Somalia when he is seized by a group of criminals and carried off into slavery. Slavery is allowed by law in that country. The head of this group of criminals is Y, who sells X to Z, an old merchant. When Z dies, he provides for the release of X because he has been a good slave. X returns to Somalia. Upon arriving in Mogadishu, he finds that Y is a prosperous importer of goods in Somalia. X goes to CID and relates what has happened to him. Y is arrested and charged with violating Article 455 of the Somali Penal Code.

At his trial, Y's lawyer claims that Article 8 of the Somali Penal Code provides that Somalia can try a person for a crime committed in another

state only if that state makes the act a crime also. He defends Y on the ground that slavery is permitted in the foreign state where the act occurred, and that therefore Y cannot be punished. The prosecution, however, argues that, under Article 459 of the Code, if the crime of slavery is committed against a Somali citizen abroad, all that is required to give the Somali courts jurisdiction is that the accused be in Somalia at the time of criminal proceedings. Y is convicted and sentenced to fifteen years in prison.

SECTION II CRIMES AGAINST PERSONAL LIBERTY

Article 460 Seizure of a Person

Whoever
(a) deprives another
(b) of personal liberty
shall be punished with imprisonment from six months to eight years.

Explanation:

Although this article is entitled "Seizure of a Person," it applies to more than just the physical act of seizing a person. The text of the article is broadly worded to cover any situation where one person deprives another of his personal liberty. The term "personal liberty" refers to a person's freedom to move or go where he wants. If one person prevents another from leaving, or holds a person prisoner, these are acts of depriving a person of his liberty. The article does not specify how the deprivation of personal liberty must be committed. Therefore, any method of deprivation is within the provisions of the article. If a person uses physical force, or threats, or violence, or fraud (as, for example, if a doctor falsely fills out an order requiring a person to be committed to a hospital or lunatic asylum), medicine or drugs, or any other form of coercion, the provisions of this article apply. Presumably, if the victim knowingly and willingly consents to be detained, a charge of deprivation of personal liberty cannot be proven.

Note also that many crimes involve deprivation of personal liberty. Carnal Violence (Article 398), for example, implies that the offender has by violence had carnal intercourse with a woman against her will. By holding her for purposes of having carnal intercourse, he has deprived her of her freedom to go, and has thus committed the offense specified in Article 460. However, the act of depriving her of her freedom is a necessary element of the crime under Article 398. Therefore, Article 46, Complex Offense, applies, and the offender is punishable solely under Article 398, and not under both that article and Article 460.

Example:

X is a headmaster of a boarding school. He has been running the school poorly, and Y, one of the students, reports him to the regional education officer when that officer visits the school. The regional education officer investigates, and promises to report back to the Ministry. X finds out that Y was the student who reported him to the officer. One day before the Ramadan holiday, X locks Y in his dormitory. X intends to keep Y a prisoner at the school throughout the holiday to get even for Y's act of complaining to the education officer. All of the other boys have already left the school to go home. Z, one of Y's friends, was supposed to meet Y during the holiday. When Y does not turn up, Z finds out from other students that no one saw Y leave the school. Z reports the matter to the police, who send out a patrol. They find the school empty except for the headmaster, whom they question. Y, hearing other voices, starts to yell for help, and the police make X unlock the door. Y is released, and X is arrested and charged with violating Article 460.

X is guilty as charged. He has deprived Y of his personal liberty by keeping him locked up in the school. It is clear that this was done against Y's will and that Y's freedom of movement was restricted. X acted willfully and knowingly in keeping Y locked up. Therefore, the judge finds X guilty as charged, and sentences him to nine months in prison.

Article 461 Illegal Arrest

A public officer who,
(a) other than in the cases allowed by law,
(b) effects an arrest, or,
(c) being in charge of a prison,
(d) receives therein any person without an order from the competent authorities, or
(e) unduly delays the execution of the punishment or security measures,
shall be punished with imprisonment up to three years.

Explanation:

The crime described in this article can be committed only by a public officer, as defined in Article 240(a) of the Code (see explanation under that article). The crime can be committed in one of three ways: (1) by making an illegal arrest; (2) by receiving a person at a prison for detention without the proper order from the competent authorities; and (3) by delaying to execute the punishment or security measures. The prosecution must show that the accused committed one or more of these three acts. The crime must, of course, be committed willfully and knowingly. If a policeman, through negligence, arrests the wrong person, and then lets the person go when the mistake is discovered, he cannot be prosecuted under this article, which does not specifically provide for punishment for acts of negligence.

Note also that Article 74 of the Criminal Procedure Code requires the authorization of the Minister of Justice and Religious Affairs before a police officer, as defined in Article 23(b) of the Procedure Code, can be prosecuted for acts involving the use of physical coercion. This would apply to any arrest where the person was forced to go with the arresting officer.

An illegal arrest or other act under this article is technically an abuse of the powers of office, in violation of Article 250. However, that article provides that its provisions shall apply where the act is not made an offense under any other particular provisions of law (see explanation under Article 250). Article 461 makes the abuse of office in committing an illegal arrest punishable as a separate offense. In addition, such abuse of office is an inherent element in the crime of illegal arrest. Therefore, the offender may be prosecuted only under Article 461.

Example:

X is a police officer in charge of a station. He wants to marry Y, the daughter of Z, a resident of the town. Z has refused to grant permission, and has publicly stated that he would rather see his daughter dead than married to X. X goes to Z's house one night and again asks for permission to marry Z's daughter. Z refuses. X then takes out two bottles of beer, and tells Z that he is under arrest for consuming alcoholic beverages and offering a bottle to X. Z says that this is not true, but X replies that he will testify in court that this is what happened, and Z will be convicted. X then grabs Z and takes him to jail and fills out a report. Y, who was in the other room when X came to the house and heard everything that was said, goes to the Regional judge and explains what happened. The judge orders the second officer in command of the station to arrest his commanding officer, X. The second in command does so. After an investigation, X is charged with violating Article 461.

X is guilty as charged. He knowingly and willfully arrested Z illegally. He knew that Z had done nothing wrong, and in fact it was X who had produced the false evidence against him. X did this to get even with Z for refusing to let him marry his daughter. X is a public officer and thus within the scope of the article. The judge sentences X to six months in prison.

Article 462 Abuse of Authority toward a Person Arrested or Detained

1. A public officer who
(a) subjects to rigorous measures not allowed by law
(b) a person arrested or detained,
(c) of whom he has custody,
(d) even temporarily, or
(e) who is entrusted to him in execution of an order of the competent authorities,
shall be punished with imprisonment up to three years.
2. The same punishment shall apply where the act is committed by
(a) another public officer
(b) vested, by reason of his office,
(c) with any authority over the person in custody.

Explanation:

The crime described in this article can be committed only by a public officer. The public officer must have custody of the person, even if it is only temporary custody. Since there is no provision for "lawful" custody, presumably any kind of custody by a public officer is covered by this article. Thus, if the crime is committed as a result of custody stemming from an illegal arrest, the act is still within the terms of this article. It also applies if the officer has custody of the person pursuant to an order of the competent authorities, who will in most cases be members of the judiciary.

Paragraph 2 applies to the public officer who has authority over the person in custody by reason of his office. Paragraph 1, on the other hand, applies to the public officer who has actual custody of the person. A policeman who arrests a person would come under the provisions of Paragraph 1. A commandant of a prison would have authority over all prisoners by reason of his position as commandant, although he would not have custody of any one individual. The commandant would come within the terms of Paragraph 2.

The criminal act under this article is subjecting a person in custody to "rigorous measures not allowed by law." The punishments with regard to offenses are prescribed by Articles 90 through 108 of the Penal Code. These are the only punishments that may be imposed and executed in accordance with the law. Article 18 of the Constitution of the Republic provides that:

> Any physical or moral violence against a person subject to restriction of personal liberty shall be punishable as a crime.

The Constitution thus forbids the use of violence against prisoners. Naturally, normal disciplinary measures are permitted, but acts beyond that are punishable by Article 462.

Example:

X is a prisoner in a regional prison. He is serving a sentence of six months. Two weeks after he is admitted to the prison, he tries to escape. He is quickly recaptured, and the prison guards watch him more closely. Two weeks later, he tries to escape again, and again he is caught. The Commandant of the prison hears about his two attempts, and has X brought into his office. He then takes a heavy hammer and smashes X's foot with it, breaking several bones. X can no longer run, or even walk. The Commandant says this will be done to any prisoner who tries to escape in the future, and that it is a good way to prevent such escapes. Y, another prisoner and a friend of X's, is released a week later, after having served his sentence. He reports the Commandant's action to the police and to the Ministry of Justice and Religious Affairs. An investigation is conducted, and the Commandant is arrested. He is charged with violating Article 462, among others.

The Commandant is guilty as charged. He is a public officer. X was a person under his authority by reason of the Commandant's position as head of the prison. X was subjected to rigorous measures not allowed by law. His foot was broken as punishment for escaping and to prevent his escaping in the future. The judge sentences the Commandant to the full three years in prison.

Article 463 Arbitrary Personal Search and Inspection

A public officer who,
(a) by abusing the powers inherent in his functions,
(b) carries out a personal search or inspection,
shall be punished with imprisonment up to one year.

Explanation:

This article is the counterpart of Article 461, prohibiting ILLEGAL ARREST. It applies to all cases where searches or inspections are not permitted by law. Such action, of course, must be done willfully and knowingly. The negligently illegal search is not punishable under this article. The phrase "by abusing the powers inherent in his functions" means that the public officer has conducted the search without proper authority, knowing that it is contrary to the law to do so.

Article 21 of the Constitution of the Republic protects people from

illegal searches and inspections, and provides that searches and inspections be conducted only according to the law. Article 463 thus merely restates the provisions of the Constitution.

Example:

If in the example under Article 461, X had continually searched Z's house to harass him and make him agree to give X permission to marry Z's daughter, his act would be within Article 463. He is a public officer as commandant of the station. He has the authority to conduct lawful searches, but his actions are an abuse of this function, because he has knowingly and willfully searched a private house when there was no legal reason to do so. The judge could sentence X to imprisonment from five days to one year.

SECTION III CRIMES AGAINST THE RIGHT TO WORK

Article 464 Compulsory Labor

Apart from the cases of military or civil emergency, or the cases in which compulsory labor is expressly provided for by law, whoever
(a) forces another
(b) to compulsory labor or
(c) avails himself of the services of persons forced to compulsory labor, shall be punished, where the act does not constitute a more serious offense, with imprisonment from six months to five years and a fine from Sh. So. 5,000 to 20,000.

Explanation:

Article 35, Paragraph 2, of the Constitution of the Republic provides:

2. Forced and compulsory labor of any kind shall be prohibited. The cases in which labour may be ordered for military or civil necessity or pursuant to a penal conviction shall be prescribed by law.

The Constitution thus expressly forbids forced or compulsory labor. Article 464, in conformity with the Constitution, allows for such forced labor in times of military emergency, such as war, or civil emergency, such as floods, or other cases where such labor is specifically provided for by law. Thus, if there was a bad flood, the government could order the people to dig ditches to prevent the water from further ruining homes, or to repair the damage done, or to carry property away in order to save it.

The kind of forced labor prohibited is any labor not for purposes of an emergency but for private gain or selfish reasons. Thus, a banana-plantation owner could not force people who lived near him to work on his plantation for low wages in order to harvest the bananas for shipment to Italy.

Acts under Article 464 are punishable only if they do not constitute a more serious offense. There is a very fine line between enforced subjugation, in violation of Article 458, and compulsory labor, under Article 464. Generally speaking, enforced subjugation will mean a total loss of freedom of movement and choice. Forced labor will either be temporary or the individual will have freedom to leave and make other decisions. He will just be forced to labor at certain work if he remains.

Article 465 Violation of the Right to Engage Workers or to Participate in a Trade Union

1. Whoever,
(a) by violence or threats,
(b) forces an employer
(c) to engage one or more workers or
(d) prevents him from engaging them,
shall be punished with imprisonment up to four years and a fine up to Sh. So. 10,000.
2. The same punishment shall be imposed where
(a) violence or threats are used
(b) to force one or more persons
(c) to participate in a trade union or
(d) to prevent them from participating therein.

Explanation:

This article protects the freedom of Somali citizens, employers and employees alike, to decide whether to belong to a trade union or not, and to hire or fire whom they like. The article prohibits coercion designed to force a person to join a union or not to join a union, to hire a person or not to hire a person. The coercion used must be violence or threats. The prosecution must show that the purpose of such coercion was to force the person to do one of four things:
(1) hire somebody he does not want to hire;
(2) not hire somebody he wants to hire;
(3) join a trade union he does not want to join;
(4) not join a trade union he wants to join.
Note that the penalty is both imprisonment and a fine.

Example:

X is the head of a sugar workers' trade union. Not all of the employees of the sugar plantation belong to the union, but many of them do. X is planning to ask for higher wages and better working conditions when the

present contract expires, in about one year. Therefore, he wants to get as many people as possible to join the union, so that he will have the strength to bargain with the plantation owners and get them to meet his demands. He has conducted a campaign to get many workers to join. Most are favorable to the idea. The head of the plantation owners' association, Y, decides to do something to counter X's efforts. He hires a group of people who go around trying to persuade the workers that they don't need a union. When the group is unsuccessful in persuading people, Y orders them to threaten the workers. C and D, two members of this group, go to H's house. They tell him that unless he promises not to join the union, he will meet with a "little accident." They point out that his house is not safe at night, and that his children might be hit on the road by a passing car. They also warn him that his wife has to walk alone along a path, and she might fall into the river. H promises not to join the union, and then reports the threats by C and D to the police. C and D are arrested, and confess that they were ordered to make the threats by Y. Y is also arrested, and all three are charged with violating Article 465.

Y, C, and D are guilty as charged. They have used threats to prevent H from participating in a trade union. It doesn't matter whether H really wants to join or not. They have tried to coerce him into not joining. The threats of possible accidents to H and his family are threats of violence designed to encourage him not to join the union. Y participated in the crime by hiring C and D and ordering them to threaten people into not joining the union. The judge sentences Y to the maximum period of imprisonment for four years and a fine of 5,000 shillings. C and D are each sentenced to six months in prison and a fine of 500 shillings.

SECTION IV CRIMES AGAINST MORAL LIBERTY

Article 466 Private Violence

Whoever,
(a) by violence or threats,
(b) compels another
(c) to do, or omit, an act
(d) which, under the law, is left to his option,
shall be punished, where the act does not constitute a more serious crime, with imprisonment up to three years.

Explanation:

The purpose of this article is to protect a person's freedom to decide what he wants to do. The article prohibits a person from forcing another

to do something he does not want to do, or forcing him not to do something that he wants to do. The compulsion of the victim must be accomplished by either violence or threats. In addition, the law must not require the victim to act in a certain way. If, for example, the law prohibits public employees from striking, then compelling a public employee to continue working when he wants to strike cannot be an offense under this article.

Note also that an act is an offense under this article only if it is not a more serious offense. The act of CARNAL VIOLENCE (Article 398), for example, is one of compelling a woman against her will to submit to carnal intercourse. She is thus compelled by violence to do something she doesn't want to do. But carnal violence is a much more serious crime than private violence, and therefore the offender would be punishable under Article 398 instead of Article 466. In addition, Article 46, COMPLEX OFFENSE, would require that the offender be punished under Article 398, because the crime of carnal violence consists of the element of compelling a person against her will.

Example:

X is a foreigner residing in Somalia. Y is a Somali citizen employed by X. One day, the two men get into a discussion about the differences between their religions. X says that it is silly for Muslims not to eat pork. Y says it is not. X replies that pork tastes good and that Y would like it if he ate it. Y says that he would never eat it because a pig is an unclean animal. X tries to persuade Y to voluntarily eat it. When Y continues to refuse, X grabs him, throws him to the ground, and forces him to eat pork. Then he lets Y up. Y immediately tries to attack X, but X runs away. Y then reports the matter to the police. After a brief investigation, X is arrested and charged with assault and violating Article 466.

X is guilty as charged. He has assaulted Y by throwing him to the ground but without causing any physical injury. He has violated Article 466 by compelling Y to do something against his will, by use of force. Y has the freedom to eat or not to eat pork, and as a Muslim has the duty not to do so under the Koran. The judge sentences X to one year in prison.

Article 467 Violence or Threats Used to Cause the Commission of an Offense

1. Whoever
(a) uses violence or threat
(b) to compel or cause another
(c) to commit an act which constitutes an offense,
shall be punished with imprisonment up to five years.

2. The punishment shall be increased if the conditions referred to in Article 266 exist.

Explanation:

This article applies only to acts designed to cause another to commit an act which constitutes an offense—that is, either a crime or a contravention. The prosecution must show that the offender sought to force another person to commit an offense. If the offender tried to force the injured party to commit an act which is not an offense under the law, then he is punishable under the preceding article, for compelling someone to do something he does not want or have to do. The act of forcing another must be done by the use of violence or threats. The punishment is imprisonment from five days (as prescribed by Article 96) to five years.

Paragraph 2 provides for an increased punishment in certain cases. If the offender has used violence or threats by:

(1) the use of arms,
(2) the use of a disguise,
(3) in cooperation with at least one other person,
(4) by anonymous communication,
(5) in a symbolic manner, or
(6) by making use of intimidating force derived from a secret association,

he is subject to an increased punishment under this paragraph. The prosecution has to show only the presence of one of the above circumstances. They are the aggravating circumstances for Articles 263, 264, and 265, and are described in Article 266 (see explanation under that article). Article 266 itself prescribes the increase of the penalty if one of these circumstances occurs. However, Paragraph 2 of Article 467 states only that the punishment shall be increased, not that it shall be increased as prescribed by Article 266. Therefore, the penalty must be increased by up to one-third, according to the rule in Article 118, for simple aggravating circumstances.

Example:

X is a truck driver. He is driving his vehicle from Hargeisa to Mogadishu, carrying passengers and goods. He stops at a town for more passengers. Y gets on the truck with a large, long bundle, and X observes that it contains ten rifles. Y notices that X has found out that he is smuggling rifles on X's truck. Y takes X aside and tells him that unless X cooperates and helps Y to get the rifles past the police and into Mogadishu, Y will kill

him. Y then takes the rifles and hides them in the driver's bed in the cab of the truck. Just outside a town, the truck is stopped by a police patrol. It is searched, and the rifles are found. Both Y and X are arrested and charged with smuggling rifles and illegal possession of firearms. X claims that he was compelled to commit the offense by Y. The police investigate, and charge Y with violating Article 467 as well.

Y is guilty of violating Article 467, among others. He has threatened X to compel him to commit an act—the smuggling of rifles on X's truck—which is an offense under the laws of Somalia. Y is guilty, and is sentenced to two years for this offense alone. He can also be sentenced for the crime of smuggling.

X is not punishable for the act of smuggling if he can prove, under Article 27 (see explanation under that article), that he was compelled to act by physical violence. X must show that he was threatened, had no way of escaping, and was in serious danger of physical harm.

Article 468 Threats

1. Whoever
(a) threatens another
(b) with unlawful harm
shall be punished, on the complaint of the party injured, with a fine up to Sh. So. 500.
2. Where
(a) the threat is serious, or
(b) is made in any of the ways referred to in Article 266,
the punishment shall be imprisonment up to one year, and the prosecution shall be initiated by the State.

Explanation:

This article applies only to threats of unlawful harm against another person. It does not apply to threats to compel another to commit an unlawful act, as that is within the terms of the preceding article. The prosecution must simply show that the threat of unlawful harm was made to another. The term "unlawful harm" will include all threats of physical or mental injury not permitted by law. If a father threatens to beat his child if the child disobeys him, that is not a violation of this article, because it is a threat of lawful harm. The father, as head of the family, has the power and authority to beat his children for purposes of discipline.

There is a very fine line between this article and Article 466, PRIVATE VIOLENCE. The basis of the crime of private violence is the use of force or threats to compel a person to do something or not to do something which he is free under the law to do or not to do. Thus, if a person threatens

to kill another person if he applies for a job that the offender is also applying for, this is PRIVATE VIOLENCE. The offender is using a threat to compel another not to apply for a job—something he is perfectly free to do under the law. If, on the other hand, the offender threatens to kill somebody because he got the job and the offender did not, this is a THREAT under Article 468. There is no attempt to prevent any lawful action. The injured person has already received the job. He is not being compelled to do anything in order to avoid the physical danger with which he is threatened. He is being threatened with harm because of something in the past which he has already done.

Threats under Paragraph 1 can be prosecuted only after the injured party has filed a complaint. Under Paragraph 2, serious threats or threats made by any of the means described in Article 266 (and explained in relation to the preceding article) may be prosecuted upon the initiation of the proceedings of the state. There is no need for an official private complaint. The punishment for serious threats or threats committed by the means described in Article 266 is imprisonment, whereas the punishment for threats under Paragraph 1 is simply a fine.

Example:

X and Y both live in a town. Both men are eager to marry the same girl, Z. After a long period of time, Z's father chooses X as his daughter's future husband. Y believes that he was not chosen because X told Z's father lies about his character. Y meets X in the town, and says to him, "You may have won Z's father's approval, but I will see to it that you will never live to marry her." He then walks off, leaving X standing alone. X reports the matter to the police. Y is charged with violating Article 468.

Y is guilty as charged. He has threatened X with unlawful harm—that is, death in the immediate future. This is not a threat to compel X to do anything. It is a threat made because X has already done something—won the approval of Z's father to marry Z. The threat of death is a serious one, and comes under Paragraph 2 of the article. Y is therefore subject to imprisonment from five days (Article 96) to one year. The judge sentences Y to imprisonment for two months.

Article 469 State of Incapacity Produced through Violence

1. Whoever,
(a) by means of hypnotic suggestion, or
(b) by administering alcoholic or narcotic substances, or
(c) by any other means,
(d) renders a person,
(e) without the latter's consent,

(f) incapable of giving consent,
shall be punished with imprisonment up to one year.

2. Consent given by the persons referred to in Paragraph 2 of Article 436 shall not exclude liability to punishment.

3. The punishment shall be imprisonment up to five years:
(a) where the offender acted with the object of causing an offense to be committed;
(b) where the person rendered incapable commits, in such a state, an act which is made a crime by law.

Explanation:

The general rule, contained in Article 47, is that a person must have the capacity of understanding and volition at the time he committed the offense in order to be liable for that offense (see explanation under Article 47). Article 48 states that a person who compels another to lose this capacity for the purpose of having that person commit an offense is himself liable for the offense committed (see explanation).

Article 469 is related to the two general concepts contained in those articles. It makes it an offense for a person to cause another to lose the capacity of understanding and volition for any purpose. The very act of causing such a condition is a crime. If it has been committed for the purpose of having the person incapacitated commit an offense, then it is an aggravating circumstance under Paragraph 3 of the article. The article has been mistranslated in English. As written, Paragraph 1 makes it a crime to render a person incapable of "giving consent," instead of incapable of understanding and volition. The relevant phrase in Italian is: ". . . in stato d'incapacità d'intendere o di volere . . ." Article 47, which in English is entitled "Capacity of Understanding and of Volition" is entitled "Capacità d'intendere e di volere" in Italian. Thus, it is clear that Article 469 meant to refer to this capacity of understanding and volition, but the phrase was improperly translated as the incapacity of giving consent.

The act of causing the loss of understanding and volition must be accomplished in a certain way to bring such act under the terms of Article 469. The offender must have rendered the person incapable by using drugs, alcoholic beverages, hypnotic suggestion, or other such means. The prosecution must prove that the means used in fact brought about the injured party's incapacity of understanding and volition. And such acts must have been performed without the consent of the person incapacitated.

Paragraph 2 provides that consent to the act of taking the drugs or alcoholic substances must be given freely. If consent is given by a person:

(a) under eighteen years of age,

(b) insane, or

(c) under the influence of violence, threats, suggestion, or fraud,

then the person's consent does not preclude punishment under Article 469.

Paragraph 3 provides that the punishment for the offense shall be imprisonment up to five years if either the offender has acted to cause the person incapacitated to commit an offense or the person incapacitated has committed a crime during his state of incapacity. The difference between the two situations is this: In one case, the prosecution must prove the intent of the offender to have the incapacitated person commit an offense —either a crime or a contravention. In the other case, even if the offender did not intend to make the incapacitated person commit a crime but the person did so anyway, the offender is responsible because he caused the incapacitation in the first place. He is thus subject to an increased punishment.

Example:

X is the son of the owner of a pharmacy. He takes some narcotics from his father's store. X and two of his friends, Y and Z, meet at Z's house. Y is sixteen years old, and Z is seventeen. X gives them drugs, and the three sit around until they begin to take effect. At about two in the morning, X and Y leave Z's house and start to return home. Y, under the influence of the drugs, thinks that he is superhuman and has great powers. He believes that he is invisible. As they are passing a radio shop, Y throws a rock through the window, breaks the wooden slats, and takes two radios. Two policemen on patrol approach them. Y does not try to run away, because he thinks that the police cannot see him. Both he and X are arrested and charged with theft. After an investigation, X is also charged with violating Article 469.

X is guilty as charged. He has made Y incapable of understanding and volition by giving him narcotic substances. Y consented to take such substances, but his consent does not preclude punishment for X. Y is a person under the age of eighteen and thus, according to Paragraph 2 of Article 469, is within Paragraph 2 of Article 436, and his consent does not matter. The prosecutor shows that Y believed that he was invisible, and committed the theft without understanding what he was doing, under the influence of narcotics. Although X did not give Y the drugs in order to make Y incapable of understanding what he was doing, and then have him commit a crime, Y did commit a crime. X is therefore responsible for Y's criminal action, because X was the person who gave Y the narcotics in the first place. Therefore, under Paragraph 3(b), X is subject to imprisonment up to five years. The judge sentences him to eighteen months in prison.

Note that Article 48 does not apply, because X did not intentionally

incapacitate Y for the purpose of having Y commit an offense. Y will also be responsible for the theft, since he voluntarily took the drugs, if the prosecution, under Article 60, shows that as a person under eighteen years of age he had the capacity of understanding and volition at the time he took the drugs (see explanation under Article 60).

SECTION V CRIMES AGAINST THE PRIVACY OF THE HOME

Article 470 Violation of the Privacy of the Home

1. Whoever
(a) enters
(b) the dwelling house of another or any other place of private residence, or
(c) the appurtenances thereof,
(d) against the will of the person who has the right to exclude him, or
(e) enters therein clandestinely or fraudulently,
shall be punished with imprisonment up to three years.

2. Whoever
(a) stays in the said places
(b) against the express will of the person who has the right to exclude him, or
(c) remains there clandestinely or fraudulently,
shall be subject to the same punishment.

3. The crime shall be punishable on the complaint of the party injured.

4. The punishment shall be imprisonment from one to five years, and the prosecution shall be initiated by the State, where
(a) the act is committed with violence
(b) against objects or persons, or
(c) where the offender is openly armed.

Explanation:

This article is designed to protect a person's right to live peacefully, free from interference by people he does not want coming into his home. The first paragraph applies to three different types of violation of the privacy of the home. The owner of the home may expressly forbid the entry of another person, or by gestures or actions indicate that he does not want another to enter. The first type of violation is therefore against the will of the owner or any other person who has the right to exclude another. The oldest son, or a servant, has the right to exclude others from the house if the owner or head of the family is not present. The second type of violation under this paragraph is entering a home clandestinely, by breaking into a house without the knowledge of the owner. The third

type is entering by fraud, as when a person claims to be a water inspector for the municipal government in Mogadishu, to gain access to the house.

Note that the article applies to other places besides houses. It applies to any private residence or any appurtenance to a dwelling house or private residence. The article does not apply to stores or shops unless the person lives in the store or shop. An "appurtenance" would be a garage or storage place which is part of the compound of the dwelling house or private residence but is not itself used for living quarters.

Paragraph 2 of the article punishes offenders for staying in dwelling places or other buildings within the compound, as distinguished from the act of entering such places. The act of staying there can be committed in any of the three ways described in Paragraph 1:

(a) against the will of the person who has the right to exclude him;
(b) clandestinely; or
(c) fraudulently.

Paragraph 3 provides that the crime of violation of the privacy of the home can be punished only upon the complaint of the injured party—that is, the home owner or other person who has the right to exclude the offender.

Paragraph 4 states the exception to the rule that a private complaint is necessary to initiate prosecution. If the act is committed with violence, or the offender is openly armed, then the punishment is more severe and prosecution may be initiated by the state. The violence does not have to be committed against a person; it can also be committed against objects. Forcing a door or window would be committing the act with violence against an object.

Example:

X, a resident of Hargeisa, is the mother of B, a sixteen-year-old boy. C, another boy, twenty-two years of age, is B's friend. X feels that C is immoral and has been teaching her son bad habits, like drinking and card playing. One night, C comes to the house and asks to see B. X tells him to go away, that B is not home, and that she doesn't want C to be friends with her son any more. C insists on entering the house to see for himself whether B is there or not. X refuses to let him in, and closes the door. C pushes against the door, forces it open, enters the house, throws X out of his way, walks through the rooms, and then leaves when he finds that B is not at home. X reports the incident to the police. After a brief investigation, C is arrested and charged with violating Article 470.

C is guilty as charged. He has entered X's home against her express wishes. X has the right, as the woman of the house, to forbid C to enter. C has used violence to enter by pushing open the door and throwing X out of his way. The judge sentences C to the minimum of one year in jail. Note that because violence was used, the state could have initiated prosecution.

Article 471 Violation of the Privacy of the Home Committed by a Public Officer

1. A public officer who,
(a) by abusing the powers inherent in his functions,
(b) enters or remains
(c) in the places indicated in the preceding article,
shall be punished with imprisonment from one to five years.
2. Where
(a) the abuse consists
(b) in entering the said places without observing the formalities prescribed by law,
the punishment shall be imprisonment up to one year.

Explanation:

This crime can be committed only by a public officer. The article is designed to protect private persons from interference in their homes by public officers. It applies to dwelling houses and private residences or other buildings within the same compound. The public officer must commit the offense by abusing the powers within the functions of his office. If he commits the act outside the sphere of his power of office, then he cannot be prosecuted under this article. Thus, the article would not apply to a situation where a director of the Ministry of Education tried to enter a private home and arrest the owner. Acts committed by public officers outside the sphere of the power of office are punishable under Article 273 (see explanation under that article), as usurpation of public functions.

Paragraph 2 provides that if the violation of privacy occurs as a result of the public officer's entering a home without observing the formalities prescribed by law, the punishment shall be less than in Paragraph 1. Thus, if a policeman breaks into a home without a search warrant in cases where, according to the Criminal Procedure Code, such a warrant is necessary, he is subject to prosecution under this article. However, it must be proved that he acted knowingly and willfully.

Note that no private complaint is necessary to initiate criminal proceedings.

Example:

X is a water-bill collector for the municipal government in Mogadishu. He goes to Y's house to present the monthly bill and collect the amount

owed. Z, Y's wife, is home, but Y is not. Z asks X to return tomorrow for the money. X refuses, and states that he will remain in the house until Y returns. X then sits down in a chair in the main room. After a while, he begins to walk around the house looking at things. Z again asks him to leave, but X refuses. Finally he says he will take some of Z's jewelry as security that Y will pay the bill the next day. Z refuses to give it to him, and X then resumes sitting in the chair. After about two hours, during which Z has constantly asked X to leave, X goes out. Z reports the matter to her husband, who in turn informs the police. The next morning, when X returns to Y's house, the police are waiting for him. They question him and investigate, and he is subsequently arrested and charged with violating Article 471.

X is guilty as charged. He is a public officer within the meaning of Article 240(a). He is responsible for carrying out administrative functions of the municipal government. He has the power to collect bills for water. He does not have the right to remain in a person's house against the wishes of the person in charge of the house in order to collect money owed. Nor can he take jewelry or other valuables as a guarantee of payment in the future. X was repeatedly asked to leave by Z, but refused to do so. His remaining in the house constitutes the violation under this article. The judge sentences X to the minimum of one year in prison.

SECTION VI CRIMES AGAINST SECRECY

Article 472 Interception, Removal, and Suppression of Correspondence

1. Whoever
(a) ascertains
(b) the contents of a closed correspondence,
(c) not addressed to him, or
(d) removes or diverts a closed or open correspondence,
(e) not addressed to him,
(f) for the purpose of ascertaining its contents or enabling another to ascertain its contents, or
(g) destroys, or suppresses the same, wholly or in part,
shall be punished, where the act is not deemed to be a crime by another provision of law, with imprisonment up to one year or with a fine from Sh. So. 300 to 5,000.

2. Where
(a) the offender,
(b) without good cause,
(c) discloses, wholly or in part,

(d) the contents of the correspondence,
he shall be punished,
(e) where harm results from the act and
(f) the said act does not constitute a more serious offense,
with imprisonment up to three years.

3. The crime shall be punishable on the complaint of the party injured.

4. For the purpose of the provisions of the present Section, the term "correspondence" includes letters, telegrams, or telephone.

Explanation:

This article, and the ones that follow, are designed to protect a person's right to private communication. Article 22 of the Constitution of the Republic provides that:

1. Every person shall have the right to freedom and secrecy of written correspondence and of any other means of communication.

Paragraph 1 of Article 472 punishes for three different types of actions:
(a) learning the contents of correspondence;
(b) removing or diverting correspondence;
(c) destroying or suppressing correspondence.
Correspondence is defined in Paragraph 4 of the article as including letters, telegrams, or telephone conversations. Note that this definition is only for the word "correspondence" when used in the section "Crimes against Secrecy."

Under Paragraph 1, the prosecution must show that the person who ascertained or learned the contents of correspondence did so with relation to closed correspondence not addressed to him. Thus, if the letter or telegram had already been opened, the accused would not come under this clause of the paragraph. However, with regard to acts of removal or diversion of correspondence, such correspondence may be either open or closed. All the prosecution has to show is that the correspondence was not addressed to the accused, and that he removed or diverted it for purposes of learning its contents or having another learn its contents. With regard to the destruction or suppression of correspondence, it does not matter whether it is closed or open. The prosecution has only to show that it was not addressed to the accused. The purpose of such destruction or suppression is irrelevant. The offense under Paragraph 1 applies only if the act is not a more serious offense under another provision of law.

Paragraph 2 applies to the situation where the offender discloses the contents, either wholly or in part, of the correspondence he found out about, removed, diverted, or destroyed. The prosecution must show that the offender had no good cause for disclosing such contents, and that his

disclosure caused some sort of harm. Disclosure where no harm results is not punishable under this paragraph. The punishment under Paragraph 2 is imposed only if the act does not constitute a more serious offense.

Paragraph 3 requires that prosecution under Article 472 be initiated only upon the complaint of the injured party.

Example:

X is a driver for Y, a Somali businessman in Mogadishu. He normally goes to the post office to pick up the mail and deliver it to Y, his employer. For this purpose, Y has given him the key to the post-office box. One Thursday afternoon, X goes to the post office. Y has received about fifteen letters. X casually looks at the envelopes to see where they have come from. One is from a German car company, Volkswagen. Before bringing the letters to Y, X goes home, and, using steam from his teakettle, opens the letter from the Volkswagen Company. The letter states that the company would like to open up another large garage and salesroom in Mogadishu, and would like Y, the Somali businessman, to operate this enterprise. The letter further states that the Volkswagen Company will forbid Z, the current operator of the Volkwagen garage in Mogadishu, from working on Volkswagen cars. X then reglues the envelope and delivers the mail to Y, his employer. The next day, X goes to Z and offers to sell him some very important information about Volkswagen operations in Somalia. Z is curious, and agrees to pay X 2,000 shillings if the information is important. X then tells Z that Volkswagen is going to take his business and give it to Y. Z then goes to the Ministry of Industry and Commerce in order to try and prevent Y from getting a license to do business for Volkswagen in Somalia. A friend of Y's in the Ministry tells him that Z is trying to stop him from getting a license. Y is surprised, because nobody knew about the contents of the letter except him. However, he begins to suspect his driver, since he was the only other person who handled the letter. Y complains to the police, who investigate and arrest X, charging him with violating Article 472.

X is guilty as charged. He has ascertained the contents of closed correspondence not addressed to him. By steaming open the letter from Volkswagen addressed to Y, X found out what the letter said. In addition, under Paragraph 2, he disclosed the contents of the letter to Z, in order to be paid for the information which was valuable to Z. This is not a disclosure of information for good cause. Harm has in fact resulted from X's act of disclosure, because Z has tried to prevent Y from getting a license to operate a garage and car-sales business. Z's action, based on the knowledge X gave him, has made it more difficult for Y to lawfully begin

working on Volkswagens. X is thus subject to punishment under Paragraph 2. The judge sentences him to imprisonment for one year.

Article 473 Fraudulent Ascertainment, Interruption, and Prevention of Telegraphic or Telephonic Communications or Conversations

1. Whoever,
(a) by fraudulent means,
(b) ascertains
(c) the contents of a telegraphic communication
(d) not addressed to him, or
(e) of a telephonic conversation between other persons, or
(f) interrupts or prevents the same,
shall be punished with a fine from Sh. So. 100 to 3,000.
2. Where
(a) the offender,
(b) without good cause,
(c) discloses,
(d) wholly or in part,
(e) the contents of the communication or conversation,
he shall be punished,
(f) where the act results in harm,
with imprisonment up to three years.
3. The crime shall be punishable on the complaint of the party injured.

Explanation:

This article applies only to telegraphic communications and telephone conversations. It does not apply to letters, either open or closed. The crime under this article can be committed only by fraudulent means. This distinguishes it from acts under Article 472. An example of fraudulent means would be pretending to be the person the telegram or telephone conversation is addressed to. Paragraph 1 also applies to the fraudulent interruption or prevention of telephonic or telegraphic communications.

Paragraph 2 provides that if the offender disclosed the contents of the telegram or telephone conversation, he is subject to a more serious penalty, if the prosecution shows that harm resulted from such disclosure.

Paragraph 3 simply provides that the crime under Article 473 is punishable only upon the complaint of the injured party.

Example:

X is a clerk working for Y, a Somali businessman in Hargeisa. X is alone in the office when the telephone rings. Z, an Adenese businessman, asks

to speak to Y. X pretends that he is Y, and asks what Z wants. Z states that he is willing to sell five hundred large truck tires for 200 shillings per tire, but Y must make up his mind and buy them by the next day. Z says that he is giving Y the first chance, because a friend of Z's in Aden told him that Y was a good man to do business with. X promises to tell Z the next morning. Instead, X goes to Q, another businessman, and tells him about Z's offer. The next morning, Q signs the contract with Z and buys the tires. Z then meets Y, and tells him he is sorry that they couldn't do business together. Y says that he never even spoke to Z, but Z tells him about the telephone conversation the day before. Y then suspects that X impersonated him on the phone, and he reports the matter to the police. The investigation shows that X misled Z, and Y then files a formal complaint. X is arrested and charged with violating Article 473.

X is guilty as charged. He has obtained information from Z through a telephone conversation, by fraudulently pretending that he was Y, the person Z wanted to speak to. By his action, he also prevented Y from receiving the contents of the call. He has disclosed the information so obtained to Q, another businessman, and thus prevented Y from signing a contract with Z. The penalty therefore comes under Paragraph 2, and X is subject to imprisonment up to three years. The judge sentences him to four months.

Article 474 Disclosing the Contents of Correspondence

1. Whoever,
(a) apart from the cases referred to in Article 472,
(b) having wrongfully ascertained the contents of correspondence not addressed to him,
(c) which ought to have remained secret,
(d) discloses the same, wholly or in part,
(e) without good cause,
shall be punished,
(f) where the act results in harm,
with imprisonment up to six months or with a fine from Sh. So. 1,000 to 5,000.
2. The crime shall be punishable on the complaint of the party injured.

Explanation:

This article is similar to Article 472, but applies only in those situations where the case does not come under that article. Therefore, it is very important to distinguish the factual situations which come under each article. First of all, Article 474 does not apply to cases where the accused has destroyed, suppressed, removed, or diverted the correspondence concerned. Article 474 applies only in cases of wrongfully ascertaining the contents of the correspondence. Second, Article 472 applies to ascertaining the contents of closed correspondence, whereas Article 474 simply says correspondence. Thus, if an employee of a businessman steams open a letter addressed to his employer, reads it, and closes the envelope again, and later reveals the contents of the letter for no good cause, he is punishable under Article 472. He has opened closed correspondence to ascertain the contents of the letter, which was not addressed to him. However, if an employee finds an open letter lying on his employer's desk, reads the letter, and later discloses the information, he has violated Article 474. The letter he read was already open, and thus does not come within Article 472 with regard to the act of ascertaining its contents.

Article 474 also provides that the accused must have wrongfully ascertained the contents of the letter, and that such letter was not addressed to him. The article applies mainly to the act of disclosing information obtained wrongfully. Besides showing that the accused has disclosed the information without good cause, the prosecution must also show that the information ought to have remained secret. This does not mean secret in terms of state security; it refers to the attitude of the persons who sent or received such correspondence. The information ought to have remained secret if either person did not want it to be publicized or if the information is of such nature that it is understood that it should remain secret. The prosecution must show that the accused's act of disclosing the information caused some sort of harm, such as the harm illustrated by the examples under Articles 472 and 473.

As in the cases arising under the preceding article, violations of Article 474 can be prosecuted only upon the complaint of the injured party.

Article 475 Interception, Removal, and Suppression of Correspondence Committed by a Person Employed in the Postal, Telegraph, or Telephone Services

1. Any person
(a) employed in the postal, telegraph, or telephone services
(b) who, by abusing his position,
(c) commits any of the acts referred to in Paragraph 1 of Article 472,
shall be punished with imprisonment from six months to three years.
2. Where
(a) the offender,
(b) without good cause,
(c) discloses, wholly or in part,
(d) the contents of the correspondence,

he shall be punished, where the act does not constitute a more serious offense, with imprisonment from six months to five years and with a fine from Sh. So. 300 to 5,000.

Explanation:

The crime defined in this article may be committed only by persons employed by the postal, telegraph, or telephone services. If the offense has been committed by a person not so employed, it will come under one of the other articles in this section. Article 475 requires that the accused commit the offense by abusing his office or position, which means that the act must occur in the course of his duty. The acts prohibited are those specified in Article 472. Therefore, the prosecution must prove that the accused, in abuse of his position as an employee of the postal, telegraph, or telephone services:

(a) ascertained the contents of closed correspondence;
(b) removed or diverted closed or open correspondence; or
(c) destroyed or suppressed such correspondence.

The definition of "correspondence" in Article 472(4) applies to Article 475 also.

Paragraph 2 of Article 475 provides that disclosure of the contents of such correspondence, without good cause, shall be punishable with a more severe penalty. The meaning of "good cause" is open to interpretation in each case, but, in general, disclosure in order to prevent a crime from occurring, or to inform the police, would be for a good cause, while disclosure for reasons of private gain or blackmail would not.

Example:

X is an employee of the post office in Hargeisa. Y, a prominent citizen in Hargeisa, is involved in a civil case being tried in Mogadishu. Y is continually corresponding with his lawyer, Z, in Mogadishu about the case. Everybody in Hargeisa is curious about the facts of the suit, the amount of money involved, and Y's chances of winning. One day, a very thick envelope from Z arrives at the post office, addressed to Y. X removes the envelope from Y's post-office box, steams it open, and reads the letter from Y's lawyer, and the legal papers enclosed. He then reseals the envelope and puts it back in Y's box. When Y picks up the letter, he notices that it has been opened and resealed. He reports the matter immediately to the police, who investigate, and then arrest X, charging him with violating Article 475.

X is guilty as charged. He is an employee of the post office. Because of his position, he was able to obtain the letter addressed to Y, and by doing so he abused the functions of his office. He has committed an act which is prohibited by Article 472 in that he has ascertained the contents of closed correspondence not addressed to him. The judge sentences X to the minimum of six months in prison, under Paragraph 1 of the article.

Article 476 Disclosure of Contents of Correspondence by a Person Employed in the Postal, Telegraph, or Telephone Services

Any person
(a) employed in the postal, telegraph, or telephone services,
(b) who has, in such capacity,
(c) knowledge of the contents of open correspondence, or of a telegraphic communication, or of a telephonic conversation,
(d) and discloses the same, without good cause,
(e) to persons other than the one for whom it is intended, or to a person other than those between whom the communication or the conversation took place,
shall be punished with imprisonment from six months to three years.

Explanation:

Article 476, like the preceding one, applies only to employees of the postal, telegraph, or telephone services. The offense can be committed only if the accused, by reason of his position, has knowledge either of open correspondence (that is an unsealed letter), of a telegram, or of a telephone conversation. The prosecution must show that the accused disclosed the information he had without good cause to a person the message was not intended for or sent to.

Note that under Article 476 the accused does not have to open a letter or remove a telegram or other communication. The offense is committed if he discloses information he obtained by reason of his position. This distinguishes the act from one committed in violation of Article 472, where the accused must remove, destroy, open, or suppress some type of correspondence.

Example:

X is an employee of the telegraph office in Mogadishu. Y, a Somali businessman, comes to the telegraph office one day to send two telegrams. X fills in the forms and writes down the messages that Y wants to send. One telegram in effect requests Y's bank in Rome to send him 40,000 Somali shillings as soon as possible. The other telegram, to Y's business associate in Hargeisa, states that Y does not have the money at the moment to buy a large shipment of cloth and goods from Aden, and that

he should postpone the purchase until the money arrives from Rome. X sends these two telegrams, but that evening he goes to Z, a friend of his, and tells him about the two telegrams Y sent. Z flies up to Hargeisa the next day and buys the goods that Y was going to purchase when he received the money from Rome. Z then boasts that he was able to make a huge profit, thanks to his friend in the telegraph office. Y hears of this, and requests the police to investigate. X is subsequently arrested and charged with violating Article 476.

X is guilty as charged. He is an employee of the telegraph office. In his capacity as employee, he records telegrams to be sent. He therefore had knowledge of the telegrams by reason of his position. He revealed the contents of these two telegrams to Z, who was not the person to whom the telegrams were addressed or the person who was supposed to receive them. Such disclosure was not for a good cause but for the purpose of benefiting Z, a friend of his. Note that X did not have to open any telegrams. He merely revealed the contents of the telegrams he sent, which he knew about by reason of his position with the telegraph office. The judge sentences X to six months in prison.

Article 477 Disclosing the Contents of Secret Documents

1. Whoever,

(a) having wrongfully obtained knowledge of the contents,
(b) which are intended to be secret,
(c) of deeds or documents, public or private,
(d) belonging to others and not constituting correspondence,
(e) discloses the same without good cause, or employs them to his own advantage or to the advantage of another,

shall be punished, where harm results from the act, with imprisonment up to three years or with a fine from Sh. So. 1,000 to 10,000.

2. The crime shall be punishable on the complaint of the party injured.

Explanation:

This article applies only to deeds or documents which are not within the meaning of "correspondence" as defined by Article 472(4). Thus, the article does not apply to letters, telegrams, and telephone conversations. The article is not limited to employees of postal, telegraph or telephone services but applies to anyone. The person must wrongfully obtain knowledge of the contents of deeds or documents, and such deeds or documents must be of the type intended to be secret. An unauthorized act, or an act by a person who has no legal right to see or obtain such deeds or documents, would be wrongfully obtaining knowledge of such deeds or documents. In addition, the prosecution must show that the accused disclosed

the contents of the deeds or documents either without good cause or for his own advantage or the advantage of another.

The offense under this article is punishable only if the injured party has filed a complaint and if harm has resulted from the disclosure of the contents of the deed or document by the accused.

Article 478 Disclosing Professional Secrets

Whoever,

(a) having knowledge of a secret
(b) by reason of his status or office, or his profession or craft,
(c) discloses it without good cause, or employs it to his own advantage or to the advantage of another,

shall be punished,

(d) where harm results from the act,

with imprisonment up to one year or with a fine from Sh. So. 300 to 5,000.

Explanation:

This article applies only to those who have knowledge of a secret by reason of their status, office, profession, or craft. The article would thus apply to doctors, lawyers, accountants, or other such persons. The prosecution must show that the accused disclosed the secret without good cause, or used this knowledge to his own advantage or for the benefit of another. Punishment is dependent upon proof of the fact that the act of the accused resulted in harm to the injured party. Note that there is no requirement that the injured party file a complaint before prosecution can be initiated. Punishment is either a fine or imprisonment.

Example:

X is a doctor living in Mogadishu. Y is a Somali citizen who has just arrived from Aden. Y comes to X for a general physical examination. Y tells X that when he was younger he suffered a mental breakdown, but that he has been all right for the past ten years. X finds that Y is physically fit. The next day, Y applies for a job with Z, the head of a construction company, and is hired to work as a supervisor. The pay is very good, and Y is pleased to have got the job. A few nights later, X and Z, who are good friends, are having dinner together. Z tells X that his company is about to begin a major construction project for the government, and that Z is sure that the project will go well because Y will be one of the supervisors and he is very competent. X then tells Z that Y has a history of mental illness, and that he shouldn't trust important decisions to someone who may be insane. Z immediately fires Y, telling him that he doesn't want crazy people working for him. Y realizes that X must have been the

person who told Z, and he reports the matter to the police. After a brief investigation, X is arrested and charged with violating Article 478.

X is guilty as charged. He knew of Y's mental illness because of his professional status as a doctor. The fact that Y had been mentally ill should be a secret. X disclosed this fact to Z for no good reason. This act of disclosure resulted in harm to Y, since Z fired him immediately. The judge sentences X to a fine of 3,000 shillings.

Article 479 Disclosing Scientific or Industrial Secrets

1. Whoever,
(a) having knowledge,
(b) by reason of his profession or craft,
(c) of information intended to remain secret relating to scientific discoveries or inventions or industrial appliances,
(d) discloses the same or uses them to his own advantage or to the advantage of another,
shall be punished with imprisonment up to two years.

2. The crime shall be punishable on the complaint of the party injured.

Explanation:

This article applies only to secret information concerning scientific discoveries or inventions or industrial appliances. The accused must have knowledge of such secrets by reason of his profession or craft. Thus, the article would apply to engineers, scientists, laboratory technicians, and other such persons similarly employed. The prosecution merely has to show that the accused has disclosed such secret information for any purpose, or used the information for his own advantage or the benefit of another. Unlike Article 478, the punishment is imprisonment only, and the crime is punishable only upon the complaint of the injured party.

PART XIII CRIMES AGAINST PROPERTY BY MEANS OF VIOLENCE

CHAPTER I CRIMES AGAINST PROPERTY BY MEANS OF VIOLENCE

Article 480 Theft

1. Whoever,
(a) for the purpose of deriving wrongful gain for himself or for another,
(b) takes any movable property of another,
(c) by depriving him of the possession thereof,

shall be punished with imprisonment up to three years and with a fine from Sh. So. 300 to 5,000.

2. For the purposes of penal law, electric power and any other power which has an economic value are deemed to be movable property.

Explanation:

This is the basic article relating to theft, the most commonly committed crime in Somalia. There are three basic elements for the offense. First, the prosecution must show that the accused acted with the purpose of obtaining a wrongful gain for himself or for another. The important word in this element is "wrongful." If a person takes property from another, believing it to belong to him, it cannot be a theft, because he did not act for the purpose of obtaining a wrongful gain. Thus, if a man takes a goat wandering around the street, believing it to be his, but in actuality it is not his but another's, he is not guilty of theft. Second, the prosecution must show that the accused took the movable property of another. Generally, "movable property" is anything other than land, houses, trees, or other fixed things. All kinds of personal property, such as radios, rifles, money, clothing, animals, furniture, cars, and other such things, are movable property. For a theft to be committed, the movable property must belong to another person. Obviously, it is not a theft to take your own property. Third, the prosecution must show that the accused deprived the person of possession of the movable property. The important thing to remember is that the person who possesses the property does not have to be the owner of that property. A man can leave his property in the custody of his brother while he goes on a trip. If a thief takes the property from the brother, he has committed a theft, because he has deprived the brother of possession of the property. Each of these three elements must be present for a case of theft to be proven.

Paragraph 2 defines what is meant by "movable property" in special circumstances for purposes of the penal law. Generally, one would not think of electrical power as movable property. However, according to Paragraph 2, such power is made movable property. Thus, if a person somehow changed the electric wires so as to divert the electric current from another's house to his own and not have to pay for the power, he would be guilty of a theft under this article.

Note that the punishment for a simple theft under Article 480 is both fine and imprisonment.

Examples:

1. X is a resident of Mogadishu. One night, he goes to a residential area with a flashlight and a long hanger. He takes the hanger and bends it so that it is about two feet long with a hook on the end of it. X crouches out-

side Y's house and shines the flashlight through the window. He sees Y's radio on the table in the main room. X then pushes the hanger through the bars and hooks it around the handle of the radio. When it is close enough, he reaches in with his hand, grabs the radio off the hook, pulls it through the bars, and leaves. The next morning, Y, discovering that his radio has been stolen during the night, reports the matter to the police. Later that morning, X is arrested trying to sell the radio to a storekeeper in the city.

X is guilty of THEFT, in violation of Article 480. He has acted for the purpose of obtaining wrongful gain for himself. He took the radio in order to sell it and keep the money. He has taken movable property belonging to Y, and by taking such property he has deprived Y of possession of his radio. The judge sentences X to six months in prison and a fine of 300 shillings.

2. Z is a passenger on a truck from Hargeisa to Mogadishu. When he gets on the truck, he is carrying a small teapot and a large blue *goa*. The truck is very crowded. At a small town, Z gets off the truck, but by mistake he takes the blue *goa* belonging to Q, another person on the truck, instead of his own. Q has wrapped two hundred shillings in a pouch inside his *goa*. When Q also gets off the truck, he feels for the pouch and discovers that it is not there. He then realizes that someone has taken his *goa*, and reports the matter to the police. The police find Z sitting in a tea shop with Q's *goa*, and take him to the station.

Z should not be charged with theft. He has taken the movable property of another and deprived Q of posssession of his *goa*, but he has not acted for the purpose of obtaining any wrongful gain for himself. Z thought that he was taking his own *goa* from the truck. He had no intention of taking Q's *goa*, and in fact did not know it was Q's until the police found him at the tea shop. Since one of the essential elements is not present, Z cannot be charged with theft.

Article 481 Aggravating Circumstances

1. The punishment shall be imprisonment from one to six years and a fine from Sh. So. 1,000 to 10,000:

(a) where the offender, in order to commit the act, enters or remains in a building or other place intended for habitation;

(b) where the offender employs violence against objects or avails himself of any fraudulent means;

(c) where the offender carries upon his person arms or narcotics, even without making use of them;

(d) where the act is committed by sleight of hand, or by snatching any movable property from the hand or person of another;

(e) where the act is committed by three or more persons, or even by a single person disguised or pretending to be a public officer or a person entrusted with a public service;

(f) where the act is committed on the luggage of travelers in any kind of vehicle, in stations, on platforms or quays, in hotels or in other places where food or drinks are supplied;

(g) where the act is committed on movable property in public offices or establishments, or on any movable property under sequestration or attachment or exposed by reason of necessity, custom, or in public trust, or destined for public service, use, defense, or worship;

(h) where the act is committed on three or more head of cattle assembled in a flock or herd, or on bovine or equine animals, even though not gathered in a herd.

2. Where

(a) there is a concurrence of two or more of the circumstances referred to in the preceding paragraph, or

(b) where one of the said circumstances exists along with one of those referred to in Article 39,

the punishment shall be imprisonment from three to ten years and a fine from Sh. So. 2,000 to 15,000.

Explanation:

Article 481 describes the aggravating circumstances relating to theft. These are special aggravating circumstances, in addition to the general ones described in Article 39, which apply to all offenses. If a single aggravating circumstance described in this article occurs, the judge must impose a penalty of imprisonment from one to six years and a fine from 1,000 to 10,000 shillings, instead of the lesser penalty specified in Article 480 for simple theft.

To simplify the explanation of this article, each subparagraph under Paragraph 1 will be described, with a brief illustration as an example.

(a) It is an aggravating circumstance of theft if the offender has committed the act by entering or remaining in any building or other place intended for living. Thus, if a thief enters a house by a back window, steals a radio, and then leaves, he has committed a simple theft under Article 480 with an aggravating circumstance under Article 481(1a). Subparagraph a applies only to places intended for use as living quarters. If the thief breaks into a store, it is not an aggravating circumstance under this subparagraph.

(b) This subparagraph contains two different kinds of aggravating

circumstances. The first is the use of violence against objects, while the second is the use of fraudulent means to commit the theft. The phrase "violence against objects" means the use of force to destroy things and cause damage. There must be material damage as a result of the violence. Thus, if in the course of a theft, the accused breaks the lock on a window and forces it open, cuts the screen, and enters a store, he has committed theft with an aggravating circumstance under this subparagraph.

To commit theft by fraudulent means would be to use any form of deceit or trickery. An example of theft by fraud would be for the accused to deceive a store owner by telling him that he has already paid for a radio and that he gave the money to the store owner's partner the day before, when in fact he had done no such thing. If the accused then takes the radio and leaves, he has stolen it by fraudulent means.

(c) This subparagraph simply makes it an aggravating circumstance for the accused to have been armed or in possession of narcotics at the time he committed the offense. It does not matter whether the accused used the weapon in the course of the offense or not, or whether he was under the influence of narcotics. Thus, if the accused is arrested immediately after a theft and, upon being searched, is found to be carrying a pistol, he is subject to the increased penalty under Article 481(1c).

(d) This subparagraph also contains two types of aggravating circumstances. First, it is an aggravating circumstance for the accused to have committed the theft by sleight of hand. The phrase "sleight of hand" means some sort of trick with the hands so that the person does not realize that his property has been stolen. If, for example, a thief goes into a jewelry store and asks to see some watches, and then quickly removes one watch from the counter and puts it in his pocket while the shopkeeper is not looking, this is a theft by sleight of hand. The second aggravating circumstance is to snatch any movable property from the hand or person of another. Thus, if a street boy runs up to a woman and grabs her purse from her arm and runs away, he has committed a theft with the aggravating circumstance specified in this subparagraph.

(e) If the theft is committed by three or more persons, it is an aggravating circumstance under this subparagraph. It is also an aggravating circumstance if one person disguised as or pretending to be a public officer or a person entrusted with a public service commits the theft. Thus, if a thief enters a person's house by claiming to be the bill collector from the municipal government or a plainclothes policeman and, while in the house, takes a watch or money, he is guilty of committing theft with the aggravating circumstance described in this subparagraph.

(f) This subparagraph is especially designed to protect travelers from theft. It is an aggravating circumstance of simple theft to steal from the

luggage of any traveler on any kind of vehicle, or to commit the theft in a station or at the embarkation area in the port, or in hotels, tea shops, or any other place where food or drink is supplied. These places are normally the ones where most thefts concerning travelers occur. Therefore, if a thief climbs onto a truck while all the passengers are having tea and takes some of their goods, he has committed an aggravated theft under this subparagraph.

(g) This subparagraph applies to thefts committed in specific places or on special types of property. It applies to any theft committed in public offices or establishments. Thus, the theft of any property, public or private, in a public office is an aggravated theft. If a thief takes the purse of a secretary working in a Ministry, this theft would come under Subparagraph g, as would the theft of a typewriter from that Ministry.

Sequestration or attachment refers to property seized and held pursuant to a court order in a civil suit. To steal such property is an aggravating circumstance under this subparagraph. The same is true for any movable property pertaining to public service, use, defense, or worship.

(h) This subparagraph makes it an aggravating circumstance to steal certain types of animals. If the theft is committed against three or more head of cattle assembled in a herd, this is an aggravating circumstance. The theft of bovine or equine animals, even if they are not gathered in a herd, is also an aggravating circumstance. Presumably, the theft of one such animal is an aggravating circumstance under this subparagraph.

In English, the term "cattle" generally refers to cows and bulls. A "bovine" animal is an animal like a cow or a bull, such as an ox; an "equine" animal is an animal like a horse, such as a donkey. Thus, it would seem that there is no room in any of these definitions for camels, sheep, or goats. However, "cattle" can also mean any four-legged domesticated animal, and therefore the term should be read in this broad manner to logically include cows, bulls, sheep, goats, and camels. If three or more of any of these animals gathered in a herd are stolen, the accused has committed an aggravated theft. If the accused has stolen oxen or donkeys, even though not part of a herd, that too is an aggravated theft.

Paragraph 2 of Article 481 specifies the punishment to be imposed where two or more of the aggravating circumstances listed in Paragraph 1 occur, or where any one of such circumstances occurs along with an aggravating circumstance described in Article 39. In such cases, the punishment is heavier than for an aggravated theft. For example, if a person carrying a pistol enters a home and steals a radio, he is guilty of theft aggravated by his entry into a home (Subparagraph a) and by his carrying a weapon (Subparagraph c). Therefore, instead of being punished upon conviction with the penalties prescribed in Paragraph 1 of Article

481, the convicted person is subject to imprisonment from three to ten years and a fine from 2,000 to 15,000 shillings, according to Paragraph 2.

Article 482 Thefts Punishable on the Complaint of the Party Injured

1. In the case referred to in Article 480, a term of imprisonment up to one year or a fine up to Sh. So. 2,000 shall be imposed, and the crime shall be punishable on the complaint of the party injured:

(a) where

(i) the offender has acted for the sole object of making temporary use of the movable property taken, and

(ii) the property has been returned immediately after such use;

(b) where

(i) the act is committed on movable property of trifling value,

(ii) with the purpose of meeting a serious and urgent need;

(c) where,

(i) the act consists in picking, raking, or gleaning from the farms of another

(ii) not yet wholly cleared of crops.

2. These provisions shall not apply where there is a concurrence of any of the circumstances specified in letters a, b, c, and d of Paragraph 1 of the preceding article.

Explanation:

Article 482 is the exception to the rule established in Articles 480 and 481. Generally, prosecution for theft may be initiated by the state without the filing of a complaint by the party injured. However, in cases of minor theft and certain other situations described in Article 482, prosecution may be initiated only upon the complaint of the injured party. Article 482 also provides for a lesser punishment for the cases of minor theft described than that established for simple theft in Article 480. Note that Article 482 applies only to the specific cases defined by the article as minor thefts.

Subparagraph a provides that the lesser punishment prescribed shall apply where the accused has taken the movable property for the sole purpose of using it temporarily, and has returned the property immediately after he has used it. Thus, for example, if a man steals a bicycle in order to go to the market and do his shopping, and then after returning from the market, he returns the bicycle to the owner, he is guilty of a theft under Article 482 but is punishable only upon the complaint of the owner of the bicycle.

Subparagraph b applies to thefts committed on property of trifling

value where the purpose of taking the property is to meet a serious and urgent need. Note that there is no requirement that the property be returned immediately after the need is fulfilled, as is necessary under Subparagraph 1(a). The phrase "trifling value" means that the property taken is not worth much.

Subparagraph c generally applies to taking vegetables, fruit, or other crops from fields not yet wholly harvested.

Paragraph 2 provides that any acts within Subparagraphs a, b, or c of Paragraph 1 shall nevertheless not come within the provisions of Article 482 if the crime has been committed by:

(1) entering or remaining in a building or other living quarters (Article 481[1a]);

(2) employing violence against objects or using fraudulent means (Article 481[1b]);

(3) carrying arms or narcotics upon the person (Article 481[1c]); and

(4) using sleight of hand or snatching any movable property from the hand or person of another (Article 481[1d]).

In other words, if any of the conditions of Subparagraphs a, b, c, and d of Article 481(1) are met in the commission of what normally would be classified as a minor theft, the offense is punishable as an aggravated theft under Article 481 and not as a minor theft under Article 482.

One further point is worth mentioning. With regard to the offenses committed under Article 482, the prosecution must still make out the elements of a theft under Article 480, and then show that the act also comes within Article 482. If the person did not intend to obtain a wrongful gain for himself, then his act is not punishable as a theft, even if the conditions of one of the subparagraphs of Article 482 are met.

Examples:

1. X is a Somali citizen living in an agricultural area. One afternoon, he goes on the property of Y, a banana grower, and takes two bunches of bananas from some of the trees that have not yet been picked clean. X is caught by some of Y's employees and taken to the police station. Y decides that there has been a lot of petty theft from his farm by people in the area, and he wants to make an example of X. He therefore files an official complaint, requesting that X be criminally charged. X is charged with committing THEFT under Article 482(1c) of the Penal Code.

X is guilty as charged. All of the elements under Article 480 are present. He took the bananas with the purpose of obtaining them for nothing—a wrongful gain for himself. He deprived Y of the possession of the bananas, which were Y's movable property. Y has filed an official complaint, so prosecution is permissible. X's act comes within Subparagraph

c, because he has taken fruit which has not yet been wholly harvested for sale from the farm of another. The crime has not been committed with any of the aggravating circumstances specified in Paragraph 2 of Article 482, and therefore that article still applies. The judge sentences X to three weeks in prison.

2. Q is a *shifta* roaming through the countryside. He is armed with a rifle, several rounds of ammunition, and a knife. One afternoon, he comes to Z's farm and takes about ten papayas from the trees. Z sees him do this, and reports the matter to the police, who search the area and arrest Q. Z then files a formal complaint against Q. Besides the violations for carrying firearms, Q is charged with aggravated theft under Article 481(1c).

Q has been correctly charged, and is guilty of such offense. He has committed a theft under Article 480 by taking the papayas for his own benefit and depriving Z of possession of them. Q's act does not come within Article 482, even though taking fruit from the farm of another is normally a minor theft. Paragraph 2 of Article 482 provides that the article does not apply where the offender has committed the crime while carrying arms on his person (Article 481[1c]). Therefore, Q is guilty of aggravated theft, and is subject to imprisonment from one to six years and a fine from 1,000 to 10,000 shillings. The judge sentences Q to one year in prison and a fine of 1,000 shillings.

Article 483 Taking Movable Property in Joint Ownership

1. The joint owner, partner, or co-heir who,
(a) in order to obtain wrongful gain for himself or for another,
(b) takes possession of any movable property jointly owned,
(c) by removing it from the person who holds the same,
shall be punished with imprisonment up to two years or with a fine from Sh. So. 1,000 to 10,000.
2. Whoever
(a) commits the act upon movable properties
(b) which are replaceable
shall not be punished where the value thereof does not exceed his share.

Explanation:

This article applies only to persons who own property together with another person and take such property for themselves. It applies only to movable property. The prosecution must show that the accused took possession of the jointly owned movable property by taking it from the other person for the purpose of obtaining a wrongful gain. Thus, three elements must be proven:

(1) that the purpose of the act was to obtain a wrongful gain;

(2) that the accused took possession of the jointly owned movable property; and
(3) that the act was committed by removing the property from the person who held it.

Paragraph 2 provides that the article does not apply if the crime has been committed against movable property which is replaceable if the property is equal in value to the accused's share of the jointly owned property. The theory behind this paragraph is that the partner from whom the property was stolen can simply replace the property taken and become sole owner, since the accused, by taking out property worth the value of his share, has in effect withdrawn from the joint-ownership relationship.

Example:

X and Y are two partners who own a small store. Both men have invested 10,000 shillings in the store and are equal partners. Over the past year, X has been taking goods from the store and selling them on his own and keeping the money. When Y has remarked that some of the goods seem to be missing, X has always replied that Y must be mistaken, because they never bought that much in the first place. By the end of the year, X has taken about 15,000 shillings' worth of goods out of the store. Y finally discovers X's crime, and reports it to the police. After a brief investigation, X is arrested and charged with violating Article 483.

X is guilty as charged. He is a joint owner or partner of Y. He has taken movable property belonging to both of them as the property of the store. He has done this for the purpose of obtaining a wrongful gain for himself, and he has committed the crime by removing the property from the store—that is, taking it from Y, who was in effect the possessor of the property. X's offense comes within the terms of the article, because he removed more than his share of the property of the store. X's share was 10,000 shillings, and yet by the end of the year he had taken 15,000 shillings' worth of goods. Therefore, Paragraph 2 of the article does not apply. The judge sentences X to a fine of 10,000 shillings.

Article 484 Robbery

1. Whoever,
(a) for the purpose of obtaining for himself or for another a wrongful gain,
(b) by means of violence against the person or threats,
(c) takes any movable property of another,
(d) depriving him of the possession thereof,

shall be punished with imprisonment from three to ten years and with a fine from Sh. So. 5,000 to 20,000.

2. Whoever

(a) uses violence or threats

(b) immediately after the taking,

(c) in order that he or another may retain possession of the movable property or

(d) in order that he or another may avoid punishment,

shall be liable to the same punishment.

3. The punishment shall be increased from one-third to one-half:

(a) where the violence or threats are committed with arms, or by a person disguised, or by more than one person acting together;

(b) where the violence consists in rendering anyone incapable of giving consent.

Explanation:

Robbery is essentially theft committed with violence or threats of violence. It is thus a combination of two offenses—THEFT and HURT, or THEFT and THREAT—but it is punishable as one crime—ROBBERY. The element of such violence or threats must be present for a robbery to be proven. It is not necessary that the violence or threats be directed against the person from whom the property is taken. If, for example, two armed men stop a husband and wife and threaten to beat the wife unless the husband gives them his watch and all the money he has, they have committed a robbery, even though there was no direct threat of violence against the husband who possessed the property taken. Aside from the element of violence or threats, the elements of a robbery are the same as those necessary for proving theft. Thus, the prosecution must show that:

(1) the accused acted for the purpose of obtaining a wrongful gain;

(2) the accused took movable property of another;

(3) the accused deprived a person of possession of such property; and

(4) the accused committed the act with violence or threats.

Paragraph 2 specifies that the same punishment shall apply where violence or threats are used immediately after the taking of the property, in order to retain possession of the property taken or to avoid punishment. If a thief threatens the victim with bodily harm if he calls for the police within ten minutes after the thief has left, the crime committed is ROBBERY under Article 484(2), instead of simply THEFT and THREAT.

Paragraph 3 describes the aggravating circumstances for a robbery. The punishment may be increased by the judge from one-third to one-half of the punishment prescribed for a normal robbery. The judge has discretion

to increase the punishment within these amounts, but he must increase it by at least one-third if the aggravating circumstances are proven. According to Paragraph 3, an aggravated robbery is one where:

(a) arms are used in the course of the robbery to make the threats or to commit violence;

(b) the robber is disguised;

(c) more than one person acts together in committing the offense; or

(d) the violence itself consists of rendering the person incapable of giving consent.

Except for the last item, all of these categories are clear. If the robber forces the victim to take a drug or alcohol or any other substance which affects the mind so that the victim cannot know what he is doing, this is violence which has rendered the person incapable of giving consent. In such cases, the punishment must be increased.

Example:

X is a Somali citizen. One night, he climbs on the roof of Y's house and lowers himself through an open part in the roof into the rooms of the house. He takes a radio, some silverware, and clothing, and climbs back up on the roof, leaving the stolen property there. Then X lowers himself back down into the apartment to look for more things to take. Y's wife wakes up after hearing a noise, and goes into the room where X is. She sees him and begins to scream. X picks up a knife which is lying on the table, stabs her, and flees. The next day, he is arrested by the police. Y's wife is seriously injured. X is charged with robbery in violation of Article 484(3a).

X is guilty as charged. He has taken the movable property of Y, depriving Y of possession of such property for the purpose of obtaining a wrongful gain for himself. He has committed the act by violence. Although no violence was used in the actual crime of taking the property, X's act of stabbing Y's wife when she saw him and screamed converted a simple theft into a robbery. According to Paragraph 2 of Article 484, if a person uses violence immediately after the taking so that he can retain possession of the property or avoid punishment, the act shall be punished as a robbery. X had possession of the stolen goods. He stabbed Y's wife in order to escape from the house—that is, to avoid punishment. X's acts therefore are punishable as a robbery. However, because he stabbed and seriously injured Y's wife, X has committed aggravated robbery within the meaning of Article 484(3a). He has used arms to commit an act of violence. The word "arms" is defined in Article 541 (see explanation). Paragraph b of that article states that "arms" include:

. . . any instruments of attack, which are forbidden to be carried or which can be carried only for justifiable reasons.

Article 29 of the Public Order Law gives district commissioners the power to issue licenses for the carrying of pointed or edged weapons in towns or villages. Thus, knives are "arms" within the meaning of Article 541(b), because they can only be carried in a village or town with the permission of the district commissioner.

Since X has used arms, his action comes within the meaning of Article 484(3a), and the judge must increase X's sentence by one-third to one-half. The normal sentence for robbery is imprisonment for three to ten years and a fine from 5,000 to 20,000 shillings. The judge sentences X to nine years in prison and a fine of 6,000 shillings. Then, considering the seriousness of the injury to Y's wife, the judge increases the penalty by one-third, sentencing X to a total of twelve years in prison and a fine of 8,000 shillings.

Note the difference between the application of Paragraph 2 of this article and the aggravating circumstance of Article 39(b). Article 39(b) provides that it is an aggravating circumstance to commit an offense in order to conceal another offense. It could be said that X stabbed Y's wife to conceal his crime of theft, and therefore he should be charged with theft committed with the aggravating circumstance under Article 39(b). However, Article 39 provides that the aggravating circumstance specified shall be considered as such if it is *not* considered a special aggravating circumstance of the offense charged. Article 484(3a) makes it a special aggravating circumstance to commit the act of robbery by violence with arms. Therefore, the stabbing of Y's wife is a special aggravating circumstance of the crime of robbery, and not a general aggravating circumstance to conceal the offense of theft. X was properly charged with committing aggravated robbery.

Article 485 Extortion

1. Whoever,
(a) by means of violence or threats,
(b) compels anyone
(c) to do or to refrain from doing any act,
(d) and thus obtains for himself or for another a wrongful gain to the detriment of another,
shall be punished with imprisonment from three to ten years and with a fine from Sh. So. 5,000 to 20,000.

2. The punishment shall be increased from one-third to one-half where there is a concurrence of any of the circumstances referred to in the last paragraph of the preceding article.

Explanation:

Extortion is the crime of compelling another by violence or threats to do something or refrain from doing something, so that the offender obtains a wrongful gain. The elements are the same as those for robbery except for the additional element of violence or threats designed to compel the victim to act in a certain way. Thus, the prosecution should emphasize the element of compulsion in any charge involving extortion.

Paragraph 2 defines aggravated extortion as extortion where the crime is committed:

(a) by violence or threats with arms;
(b) by a person disguised;
(c) by more than one person acting together; and
(d) by violent acts which render a person incapable of giving consent.

Any two of these circumstances must occur together for the offense to be aggravated extortion. If only one occurs, then it is not aggravated.

The major difficulty is in distinguishing *extortion* from *robbery*. First of all, a robbery can be committed only against movable property. Extortion can be committed against any kind of property. Thus, any offense against immovable property, such as land, inheritance, farms, or houses, if the other elements of the offense are present, will be extortion rather than robbery. But extortion can also be committed against movable property, and in this regard it is most like robbery. There is a great deal of confusion about such cases in Italian legal writing (see CARABBA, CODICE PENALE, pp. 802–3; ANTOLISEI, MANUALE DI DIRITTO PENALE, Parte speciale I, pp. 287–90). A typical robbery, in which the offender threatens to kill the victim unless the victim gives him all of his money, could be said to be extortion, since it is compelling the person to do an act (pay the money) by means of threats. But if this were true, there would be no need to have a definition of the crime of robbery. The general rule should be that if the act of the victim is immediate in time to the violence or threat, it is a robbery. If a time period elapses between the threat or violence and the completion of the act by which the offender obtains his wrongful gain, that is extortion. Thus, if the threat or violence is one of immediate harm or injury, and the victim instantly pays the money or gives up the property, that is robbery. If the threat or violence is not immediate, or the obtaining of the wrongful gain is not immediately after the threat or violence, that is extortion.

Examples:

1. X and Y are brothers. After the death of their father, his property is divided between the two brothers in a Qaadi Court. X feels that Y

received the better property. X goes to Y's house one night, points a pistol at his head, and orders him to sign a paper giving X all their father's property. Y signs the paper, and the next day X takes it to the Qaadi Court for registration. Shortly thereafter, when X is already in possession of the property, Y reports the matter to the police. After a brief investigation, X is arrested and charged with extortion.

X is guilty as charged. He has committed extortion and not robbery. He has compelled Y by threats of violence to sign a paper giving X all of the property of their deceased father. By forcing Y to do this, X has wrongfully obtained for himself the property which belonged to Y. If the property involved was immovable property, such as land or a house, then X's crime must be extortion, since robbery does not apply to immovable property. If the property was cattle, then X's crime is still extortion. The threat of violence was immediate, but there was a time lapse between the time of the threat and the time X obtained his wrongfully gained property.

2. Q is walking with his son over a bridge. B comes along, grabs Q's son, and holds him over the bridge, threatening to drop the boy unless Q gives B all of the money he has. Q pays B, who then puts the child down on the bridge and runs away. B is subsequently caught and charged with robbery.

B has been properly charged, and is guilty of robbery. The threat of violence was immediate. Q paid B while the danger to his son existed, and no time period elapsed between the time of the threat and the time of the payment.

Article 486 Detention of a Person for the Purpose of Robbery or Extortion

1. Whoever
(a) detains a person
(b) with the object of obtaining for himself or for another a wrongful gain
(c) as the price of releasing him,
shall be punished with imprisonment from eight to fifteen years and with a fine from Sh. So. 10,000 to 20,000.

2. The term of imprisonment shall be from twelve to eighteen years where the offender achieves his object.

Explanation:

Article 486 describes a special kind of robbery or extortion, punishable with a heavier sentence than for the normal crime of ROBBERY (Article 484) or EXTORTION (Article 485). The prosecution must show that the accused detained a person for the purpose of having someone pay a price for the release of such person. If the price is actually paid, the punishment is greater, according to Paragraph 2 of the article.

This article conforms to the explanation under Article 485, distinguishing between robbery and extortion. Detention under this article can be for the purpose of either robbery or extortion. With regard to extortion, the time period will be longer between the detention and the payment of the price for release of the person. With robbery, the period of detention will be shorter, and the payment will be almost immediately following the detention itself.

Examples:

1. X, a resident of Chismayo, meets Y's son on the way home from school. Instead of taking the boy home, X drives him to the outskirts of town and locks him in a little building. He then sends a note to Y saying that unless 50,000 shillings is placed in a bag at the bottom of a certain tree near town, Y will never see his son alive again. Y borrows the money from friends, and follows X's instructions by placing the money in a bag under the tree specified. Later that day, Y's son is released unharmed. The matter is then reported to the police, who subsequently arrest X, charging him with violating Article 486.

X is guilty as charged. He has detained Y's son for the purpose of obtaining money from Y as the price of releasing the boy. He succeeded in that Y did in fact pay the money to buy his son's safety. The judge, according to Paragraph 2, sentences X to twelve years in prison.

This is an example of detention for the purpose of extortion. X has compelled Y to pay the money by threatening harm to Y's son. The threat was not immediate in time to the payment of the money by Y.

2. Z and B are two thieves living in Mogadishu. One night, they break into Q's house and steal a radio and some clothing. While they are in the house, they notice that Q has a large safe with a combination lock. Z and B leave the house with the stolen property. Two days later, toward six o'clock in the evening, they meet Q walking near the ocean. They grab him and throw him in their car and drive out of the city. When they are several miles outside of town, they tell Q that they will not release him until he gives them the combination to the safe in his house. Q at first refuses, but Z and B threaten to beat him, so he tells them the numbers. Z and B then throw Q out of the car and drive back to Q's house. They break in, open the safe according to the combination Q has given them, and remove 50,000 shillings from the safe. Q arrives back in town after a

walk of five hours, and reports the matter to the police. Z and B are arrested the next day and charged with violating Article 486.

Both men are guilty as charged. They detained Q in their car outside of Mogadishu for the purpose of obtaining the combination to the safe as the price of releasing Q, in order to obtain a wrongful gain. Their attempt was successful; they obtained the combination and the 50,000 shillings in the safe, and are therefore subject to punishment under Paragraph 2 of Article 486. The judge sentences each of them to imprisonment for twelve years.

This is an example of detention for the purpose of robbery. Z and B have threatened Q with immediate violence unless he gives them the combination to the safe. They have detained him in their car for the purpose of obtaining the combination. The time lapse between the threat and the obtaining of the combination and the money from the safe was relatively short. The purpose of the detention was to obtain the combination in order to rob Q's safe, not to extort money for Q's own safety.

Article 487 Trespass

Whoever,
(a) for the purpose of appropriating, wholly or in part,
(b) the immovable property of another,
(c) removes or alters the boundaries thereof,
shall be punished with imprisonment up to three years and with a fine up to Sh. So. 10,000.

Explanation:

The crime of trespass can be committed only against immovable property. The prosecution must show that the accused altered or removed the boundaries of property belonging to another for the specific purpose of obtaining it for himself or another. If this purpose is lacking, no offense of trespass can be made out. Note that the punishment is both fine and imprisonment.

Example:

X and Y are farmers having adjoining land. X has offered to buy Y's land, because he wants to own a larger farm, but Y has refused. The boundary between the two pieces of land is marked with stones. One day, Y becomes sick and is taken to the hospital in Mogadishu. When Y has left, X moves the stone boundary farther and farther into Y's property, thus acquiring part of Y's land. Y dies, and his son, Z, takes over the farm. Z notices that the amount of land seems smaller than it was before his father left for the hospital in Mogadishu. He examines the boundary closely and discovers that the stones have been moved. Z then reports the matter to the police, who investigate and arrest X, charging him with trespass.

X is guilty as charged. He has acted for the purpose of taking Y's land, which is immovable property. He has altered the boundary of the land in order to obtain it for himself. The judge sentences X to imprisonment for six months and a fine of 2,000 shillings.

Article 488 Deflection of Waters and Alteration of Place Features

Whoever,
(a) for the purpose of obtaining for himself or for another
(b) a wrongful gain,
(c) deflects public or private watercourses, or
(d) alters place features in the property of another,
shall be punished with imprisonment up to three years and with a fine up to Sh. So. 10,000.

Explanation:

This article applies to the act of altering the path of water so that the offender benefits and another person's interests are harmed. The prosecution must show that the offender acted for the purpose of obtaining a wrongful gain for himself, and that he has actually deflected, or changed, the course of the water. The word "deflection" implies something other than merely stopping the water and preventing it from reaching the property of another. It means altering or changing the course of the water so that it flows in a direction different from the one it was flowing in before the act of the offender.

The article also makes it a crime to change the place features of the property of another. "Place features" are distinguishing natural characteristics, such as trees, large rocks, or ditches, which serve to indicate that a certain piece of land of fixed boundaries belongs to some person.

Example:

X and Y are farmers. A small irrigation ditch has been dug along the northern boundaries of X's and Y's plots of land. Both men take water from the ditch for their crops. X feels that he is not getting enough water, and that the southern part of his piece of land would grow much more if he had more water. He therefore digs a long ditch running the length of his property, dams up the irrigation ditch just before it reaches Y's plot, and makes the water flow through his ditch to the southern part of his

land. Y complains to the police that X has prevented him from getting any water. X is arrested and charged with violating Article 488.

X is guilty as charged. He has acted for the purpose of obtaining all of the water for himself, something he is not entitled to. He has deflected a watercourse, the irrigation ditch, so that Y receives none of the water and X receives all of it. The judge sentences X to one year in prison and a fine of 1,000 shillings.

Article 489 Trespass on Lands or Buildings

1. Whoever
(a) arbitrarily
(b) trespasses on public or private lands or buildings of another,
(c) with the object of occupying them or otherwise deriving gain therefrom,
shall be punished,
(d) on the complaint of the party injured,
with imprisonment up to two years or with a fine from Sh. So. 1,000 to 10,000.

2. Both the punishments shall apply and proceedings shall be initiated by the State, where
(a) the act is committed by more than five persons,
(b) of whom at least one is openly armed, or
(c) by more than ten persons, even though unarmed.

Explanation:

This article applies to acts of trespass on either land or buildings. Trespass generally means entry into the property of another without that person's permission. Trespass is an offense against the rights of ownership of another person. That person has the right to admit or exclude anyone he wants from his property, and any unauthorized entry on his property is a violation of his rights of ownership or possession. However, to make out a trespass under Article 489, the prosecution must show that the accused entered the land or building of another for the specific purpose of occupying such property or for obtaining some wrongful gain. The punishment is either a fine or imprisonment, and prosecution can be initiated only upon the complaint of the injured party.

Paragraph 2 provides that the punishment of both fine and imprisonment shall apply where the act of trespass is committed by more than five persons, one of whom is openly armed, or by more than ten persons, none of whom are armed. In such cases, the state can initiate proceedings without a complaint by the party injured.

Example:

X is the owner of a plot of land. He has built a house on the land, cleared away the trees, and planted bananas. There is no clear boundary other than the area of land cleared of the natural growth of bushes and trees. X lives in Mogadishu and only visits his property once a month. On one of these visits, he notices three men living in a corner of his land, grazing their cattle among his banana trees. X orders them off his land, but Y, the leader of the three men, states that the land belongs to them and that they intend to stay there. Y knows the land belongs to X, but wants to stay there because there is plenty of water and the grazing is good for his cattle. X files a complaint with the police, who investigate and charge Y and his two friends with violating Article 489.

Y and the two others are guilty as charged. They have arbitrarily trespassed on land belonging to X. They have done so, knowing that the land belongs to X, for the purpose of occupying it temporarily and using X's grass and water to feed their cattle. X has filed a complaint with the police against Y and the two others. The judge finds them guilty, and sentences each man to two months in prison.

Article 490 Violent Disturbance of the Possession of Immovable Property

1. Whoever,
(a) in cases other than those referred to in the preceding article,
(b) disturbs,
(c) with violence against the person or with threats,
(d) the peaceful possession of another
(e) over any immovable property,
shall be punished with imprisonment up to two years and with a fine from Sh. So. 1,000 to 3,000.

2. The act shall be deemed to have been committed with violence or threats where it is committed by more than ten persons.

Explanation:

Article 490 applies only to immovable property. The act does not have to be committed for the purpose of occupying the land or buildings. All the prosecution has to show is that the accused has committed by violence or threats acts which disturb the peaceful possession of another of such immovable property. If the accused's purpose was to occupy the land, then the case comes within the preceding article. If the accused has used violence or threats, instead of merely trespassing for the purpose of occupation, then the case comes within Article 490.

Paragraph 2 establishes the presumption that an act is threatening or committed with violence if more than ten people commit the act together.

Example:

X is the manager of the Livestock Development Agency's Holding Ground near Chismayo. He and several employees have cleared a large area of land, built several buildings and cattle pens, marked out the boundaries of the Holding Ground, and dug some wells. The purpose of the Holding Ground is to provide a place for examining, treating, and grazing cattle before their sale in Chismayo for export. The land has been given to the Agency by the government to further livestock development in Somalia. The Agency has constructed a fence around the Holding Ground to keep out other cattle which may be diseased or which will eat all of the grass reserved for the cattle to be exported. B, C, D, and H are four nomads residing in the area. They dislike the idea of any land being fenced in, and want the freedom to graze their camels on the Holding Ground and use the water from the wells. One day, they come upon X in a tractor, as he is putting up some fences. All four men threaten X with death unless he tears down all of the fences, opens up the wells to all persons, and leaves the area of Chismayo permanently. They promise to come back and kill X if he hasn't left in one week. X reports the matter to the Chismayo police station. A patrol is sent out to investigate, and then arrests B, C, D, and H, charging them with violating Article 490.

All four men are guilty as charged. They have threatened X with death unless he tears down the fences and leaves the Holding Ground. This is a disturbance of X's peaceful possession of the land, as a representative of the state. The judge sentences each of the men to serve six months in prison and to pay a fine of 1,000 shillings apiece.

Note that the act is also the offense of THREAT, under Article 468. However, the men were properly charged with violating Article 490, since this offense includes, as a constitutive element, a threat of violence.

Article 491 Damage to Property

1. Whoever

(a) destroys, disperses, spoils, or renders wholly or partly unserviceable

(b) the movable or immovable property of another,

shall be punished,

(c) on the complaint of the party injured,

with imprisonment up to one year or with a fine up to Sh. So. 3,000.

2. The punishment shall be imprisonment from six months to three years and proceedings shall be initiated by the State where the act is committed:

(a) with violence against the person or with threats;

(b) by employers of labor on the occasion of lockouts, or by workers on the occasion of strikes, or on the occasion of any of the crimes referred to in Articles 256, 257, and 259;

(c) upon public buildings or buildings intended for public use, or for the worship of a religious body, or upon movable properties specified in letter g of Article 481;

(d) upon works intended for irrigation;

(e) upon plantations of trees or fruit-bearing shrubs, or upon woods, thickets, or forests, or upon nurseries intended for reafforestation purposes.

Explanation:

Article 491 is divided into two main parts. Paragraph 1 deals with damage to property where prosecution may be initiated only upon the complaint of the injured party. The damage under this paragraph is usually slight and the punishment is mild. Paragraph 2, on the other hand, deals with damage to property where the state may initiate proceedings, and involves a more severe punishment.

The article applies only to acts of destruction and damage of either movable or immovable property. It does not apply to simple acts of trespass. The prosecution must therefore show that the accused in some way damaged, destroyed, spoiled, spread out, or in any way made such property unusable. In addition to these elements, the prosecution must show certain specific facts, described in Subparagraphs a through e of Paragraph 2, in order to bring the accused's act within that paragraph and subject him to a more severe punishment.

Subparagraph a provides that if the accused has caused damage to property and used violence against the person or threatened the person, the accused is subject to the severer penalty prescribed.

Subparagraph b applies the heavier punishment if the damage to property has been caused by an employer in the course of a lockout. The term "lockout" was explained in connection with Article 390. Similarly, the heavier penalty applies if the damage was caused by strikers in the course of a strike or by persons involved in the crimes described in Article 256, COLLECTIVE ABANDONMENT OF PUBLIC OFFICES, EMPLOYMENTS, SERVICES, OR WORKS; Article 257, INTERRUPTION OF A PUBLIC SERVICE OR A SERVICE OF PUBLIC NECESSITY; or Article 259, INDIVIDUAL ABANDONMENT OF PUBLIC OFFICE, SERVICE, OR WORK. In other words, damage to property

in the course of a labor dispute will generally be within the terms of Paragraph 2 of Article 491.

Subparagraph c provides that any damage to a public building (such as a Ministry), or a building intended for public use (such as a private building rented for use as a public school), or a place of worship (such as a mosque or a church), or any movable property in public offices or establishments, any movable property under sequestration or attachment or in a public trust, and any movable property intended for use in public service, defense, or worship shall be punished with the heavier penalties prescribed in Paragraph 2.

Subparagraphs d and e are designed to protect irrigation facilities, such as ditches, pumps, and pipes, and agriculturally productive trees, plants, and bushes.

Example:

X, Y, and Z are employees of a banana plantation. They have been fired from their jobs. They decide to get even. One night, they enter the plantation and cut down about thirty banana trees and severely damage several others. The next night, when they return to commit similar acts, they are caught by the police, arrested, and charged with violating Article 491(2e).

All three men are guilty as charged. They have destroyed banana trees belonging to another person and spoiled and damaged other plants. This act comes within Paragraph 2(e) because it was committed against trees of a plantation. Therefore, the judge must sentence X, Y, and Z according to the punishment described in Paragraph 2, which is imprisonment from six months to three years. The judge sentences each man to the minimum term of six months.

Article 492 Trespass by Animals

1. Whoever
(a) takes animals
(b) in flocks or herds
(c) into another person's property, or
(d) leaves them there,
shall be punished with a fine from Sh. So. 100 to 1,000.
2. Where
(a) the animals,
(b) though not in flocks or herds,
(c) are taken into or left with the intention of making them graze on another person's property,
the punishment shall be imprisonment up to one year or a fine from Sh. So. 200 to 2,000.

3. Where
(a) the grazing takes place, or
(b) the land is damaged as a result of the animals' being taken into it or being left thereon,
the offender shall be punished with imprisonment up to two years and with a fine from Sh. So. 500 to 5,000.

Explanation:

Article 492 applies to trespass by animals, meaning unlawful entry of animals upon the property of another. Paragraph 1 makes it an offense merely to take flocks or herds of animals onto another person's property, or to leave them there. It is not an offense to take one or two animals onto another person's property; the paragraph applies only to flocks or herds.

If the animals are taken onto another person's property for purposes of grazing, this is within Paragraph 2 and is punished more severely. In addition, the paragraph applies either to animals in flocks or herds, or to single animals. The prosecution must prove that it was the intention of the accused to have his animals graze on the land of another. By implication, this means that bringing animals upon the land of another for any purpose other than grazing will come within Paragraph 1.

Paragraph 3 imposes a still heavier penalty if the grazing actually takes place or if the property is damaged in any other way as a result of the animals' being brought or left there. Thus, to make out a case under Paragraph 3, the prosecution must show that the animals of the accused actually grazed on the land or damaged it. Presumably, the prosecution must also show that the accused brought or left the animals there with the intention of having them graze on the property. Note that Paragraph 3 applies whether the animals are in herds or not.

Example:

X is the owner of a small farm. Y, a nomad with a herd of camels, drives his camels onto X's land, to eat the plants that X has grown. Y's camels trample many of X's plants, eat some others, and in general damage a large part of the crop X is raising. X reports the matter to the police, who catch Y and charge him with violating Article 492.

Y is guilty as charged. He has brought his camels onto X's land for the purpose of having them graze there. The animals have actually grazed and damaged X's land. Therefore, Y is punishable under Paragraph 3, and the judge sentences him to three months in prison and a fine of 1,000 shillings. Note that it doesn't matter in this case whether Y's camels were in a herd or grazed on the land singly.

Article 493 Wrongful Entry upon Enclosed Property

Whoever
(a) enters the property of another
(b) which is surrounded by a ditch, hedge, or other permanent boundary,
shall be punished, on the complaint of the party injured, with a fine up to Sh. So. 1,000.

Explanation:

Almost every trespass will involve entry onto property of another which is protected or marked by a hedge or permanent boundary. If the trespass does not come within any of the other articles of this section, Article 493 will apply. Generally, a trespass—as, for example, a trespass by animals—will be a more serious offense and incorporate the offense contained in Article 493, so there will be no need to prosecute under this article. Note that prosecution can be initiated only upon the complaint of the injured party.

Article 494 Killing or Injuring of Animals

1. Whoever,
(a) without necessity,
(b) kills or renders useless, or in any manner impairs the value of
(c) animals belonging to another,
shall be punished,
(d) on the complaint of the party injured,
with imprisonment up to one year or with a fine up to Sh. So. 3,000.
2. Where the act is committed
(a) upon three or more head of cattle assembled in a flock or a herd, or
(b) upon bovine or equine animals or camels, even though not in a herd,
the punishment shall be imprisonment from six months to four years and proceedings shall be initiated by the State.

Explanation:

This article applies to killing or damaging animals of any type belonging to another person. The prosecution must show that the injury or death of the animal was done wantonly—that is, without necessity—by the accused. Paragraph 1 provides that prosecution shall be initiated upon the complaint of the injured party.

Paragraph 2 describes those more serious situations where the state may initiate prosecution. Generally, if the accused has killed or injured a

number of animals or animals regarded as having a special value in Somali culture, such as camels, it is a more serious offense, and the state has the power to prosecute. The definition of cattle and bovine and equine animals is contained in the explanation under Article 481(1h).

Example:

X and Y are nomads living near each other. X boasts that his camels are the best in the region, because they are strong, are never sick, and can go without water longer than anybody else's. Y claims that his camels are better. One day, two of Y's camels get sick and die. X makes fun of Y and says that this proves that Y's camels are poorer than X's. That night, Y, who is angry because X made fun of him, cuts the leg tendons of two of X's best camels so that they cannot walk. The next day, X discovers this, and immediately suspects Y. He reports the matter to the police. Y is arrested and charged with violating Article 494.

Y is guilty as charged. He has injured two of X's camels by cutting the tendons on their legs so that they cannot walk. This lessens their value and makes them almost useless. Y has done this without any necessity, but merely because he was angry with X for making fun of him. Y's act comes within Paragraph 2, because it was committed against camels. It does not matter whether the camels were in a herd or separate. The judge sentences Y to six months in prison.

Article 495 Disfigurement and Contamination of Property

Whoever,
(a) other than in the cases referred to in Article 491,
(b) disfigures or contaminates movable or immovable property belonging to another,
shall be punished,
(c) on the complaint of the party injured,
with a fine up to Sh. So. 1,000.

Explanation:

Generally, cases involving damage to property come within Article 491. Article 495 applies to all other cases with regard to both movable or immovable property. Whereas Article 491 applies to destroying property or making it unusable, Article 495 applies to disfiguring the property or contaminating it so that others will not use it. If, for example, a person burned cloth belonging to another man, that would be the destruction of property. But if, instead, he rubbed dirt or slime into the cloth, that would be disfiguring or contaminating the cloth. The cloth is not ruined.

It can be washed and made usable again. But it is temporarily unserviceable because of the dirt the accused rubbed on it.

Prosecution can be initiated only upon the complaint of the injured person.

Chapter II Crimes against Property by Fraud

Article 496 Cheating

1. Whoever,
(a) by deceit or subterfuge,
(b) leads another into error and
(c) obtains for himself or another a wrongful gain to the detriment of another,
shall be punished with imprisonment from six months to three years and with a fine from Sh. So. 500 to 10,000.

2. The punishment shall be imprisonment from one to five years and a fine from Sh. So. 3,000 to 15,000:
(a) where the act is committed to the detriment of the State or of any public body, or under the pretext of securing exemption for anyone from military service;
(b) where the act is committed by inducing in the party injured the fear of an imaginary danger or an erroneous belief of having to comply with an order of the authorities.

Explanation:

The crime of cheating is committed only if the elements of deceit or subterfuge are present. "Deceit" means to lead another person to believe something which is not true. The victim must in fact be deceived by the accused. Deception can be by gestures, dress, or motions. It does not have to be by words alone. "Subterfuge" is trickery of any sort which produces a deception. The prosecution must also show that the deceit or subterfuge led the victim into an error. This means in effect that the prosecution must prove that the victim would not have made the mistake but for the deceiving acts of the accused. Finally, the prosecution must show that the accused obtained a wrongful gain for himself at the expense of his victim.

These three elements must also be present to make out a case of aggravated cheating under Paragraph 2, in addition to the special circumstances described in that paragraph. Generally, there are two kinds of aggravated cheating. The first is where the act is committed against the state or any public body. The phrase "under the pretext of securing exemption from military service" does not apply in Somalia, since there is no compulsory military service, but only voluntary enlistment. The second kind of aggravated cheating is where the act induces fear of a nonexistent danger in the victim, or an erroneous belief that it is necessary to act in a certain way in order to comply with an order of the authorities. With regard to inducing fear of an imaginary danger, it is necessary to distinguish between this offense and Extortion, described in Article 485. Extortion involves violence or threats to force somebody to do something against his will. Aggravated cheating, on the other hand, does not imply an immediate danger from a threat but rather the possibility of danger if the victim does not act in a certain way. There is no compulsion; instead, the injured person voluntarily decides to act after reasoning and deciding on his own. The difference is made clearer by Example 2 below.

Examples:

1. X is a resident of Mogadishu. He has been in a car accident and is paralyzed in both legs. No doctors in any of the hospitals have been able to cure him. Y is a friend of X's, and a taxicab driver. One day, he meets Z, who tells him that he has magical powers. Y asks him if he can cure paralysis, and Z says that he has done so in the past. Y brings Z to X's house. Z examines X and says that he can cure X, but he must be paid a fee of 1,500 shillings. X agrees to pay the money if Z can demonstrate first that he has some magical powers. X tells Z that some friends of his were visiting the house a few days ago, and one of them lost forty shillings somewhere in that room. X asks Z to use his magical powers to find the money. Z pretends to look around the room, and cleverly takes forty shillings out of his pocket and hides it in the cushion of the chair. He then says that his powers tell him the money is in the cushion of the chair. Y goes to the chair and finds the money. X is very impressed, and agrees to pay Z 1,500 shillings in advance. X gives Z the money, and Z promises to return the next day and begin curing X. Three days go by, and Z does not return. X then reports the matter to the police, who investigate, and arrest Z. Z is charged with violating Article 496.

Z is guilty as charged. He has deceived X into thinking that he is a person with magical powers capable of curing paralysis. He has done this both by words, in that he told X that he could cure him, and by tricks, demonstrating that he had magical powers by supposedly finding the money. By this deceit, he has obtained 1,500 shillings for doing nothing, and has taken this money from X, to X's detriment. X was in fact deceived by Z, because he believed that Z could cure him. X would not have paid out the money but for Z's deception, which made X believe he

had magical powers. The judge finds Z guilty, and sentences him to two years in prison and a fine of 5,000 shillings.

2. Q is an old woman living in a village near a river. She is poor and has no money. One day, she takes some old clothes, smears them with chicken blood, and throws them in the river. She then tells people that she saw a small child eaten by a crocodile. The people of the village see the bloody clothes in the water and are afraid, and keep their children away from the river. Q tells people that she has power to protect children from crocodiles, and if they each pay her fifty shillings, she will give their children the proper medicine. Nobody believes her, and after a few days the children begin playing near the river again. Q again takes some old clothes, smears them with blood, and again throws them in the river, so that they will float down near the town. After a while, she goes to the village and tells the people that a small nomad boy is missing, and his brother is looking for him. Several people report having seen bloody clothes in the river, and Q replies that the crocodiles must have eaten him. The next day, Q goes to B's house and asks for fifty shillings as payment to guarantee the safety of B's children from the crocodiles. B decides to pay in order to be safe. Q then gives each of B's children a small stick with a chicken feather tied to it. Q also receives fifty shillings from C and D for the same protection. The station commander hears about Q's conduct and knows that she does not have any power at all to protect against crocodiles. After a brief investigation, it is discovered that Q threw the bloody clothes into the river to scare people, and she is arrested and charged with violating Article 496(2b).

Q is guilty as charged. She has by deceit and trickery convinced B, C, and D that she has power to protect their children from crocodiles. She told them that she had this power, and they believed her, although in fact she of course did not have any such power. She has obtained a wrongful gain from these people. The cheating is aggravated because Q induced B, C, and D to make the payments out of fear of danger to their children from crocodiles, when in fact no such danger existed. It was an imaginary danger which Q produced by throwing bloody clothes into the river to give the impression that crocodiles were eating children near the village.

Note the difference between this type of aggravated cheating and extortion. Q has not threatened B, C, or D with harm to their children if they don't pay her fifty shillings. The danger of their children's being eaten by crocodiles is a possible one, not a certainty. If this were a case of extortion, Q would have threatened to throw B's son in the river and kill him unless B paid Q fifty shillings. In such a case, the danger is clear and certain. In the case of aggravated cheating, there was no such threat,

and B, C, and D merely decided that, given the circumstances (which Q had manufactured as a trick), they had better buy protection for their children in order to be safe from possible accidents in the future.

Article 497 Fraudulent Insolvency

1. Whoever,
(a) by concealing his state of insolvency,
(b) contracts an obligation
(c) with the intention of not performing it,
shall be punished,
(d) in the event of the obligation not being performed, and
(e) on the complaint of the party injured,
with imprisonment up to two years or with a fine up to Sh. So. 5,000.

2. The performance of the obligation before conviction shall extinguish the crime.

Explanation:

Article 497 makes it a crime for businessmen to fraudulently obtain money or conclude business obligations by concealing the fact that they are insolvent or have no money. The prosecution must prove two elements: (1) that the accused concealed the fact that he had no money; and (2) that the accused had no intention of performing the obligation —that is, repaying the money—at the time he concluded the transaction. Note that the offense is punishable only if the obligation is not in fact performed and if the injured party has filed a complaint. Although the article normally will apply to businessmen, it also covers all business transactions conducted by ordinary people in the course of their normal affairs.

Paragraph 2 provides that if the accused performs the obligation prior to conviction, even though he has already been charged, that performance extinguishes the crime.

Example:

X is an Adenese citizen who comes to Hargeisa to visit relatives. While he is in Hargeisa, he decides to rent a car from a Somali businessman. X has absolutely no money at all. He just has a return plane ticket on Somali Airlines to Aden. X rents a car for ten days. It is his intention to abandon the car somewhere in town on the day he is to leave, and escape on Somali Airlines before the Somali businessman can catch him. After X has rented the car, the businessman learns that X doesn't have any money at all, and begins to worry about being paid for the rental. He

follows X around Hargeisa, sees him abandon the car near the airport, and reports the matter to the police. Later, he files an official complaint. X is arrested before he can leave on the plane, and charged with violating Article 497. The day of the trial, X's relatives pay the businessman the amount of money owed for the rental of the car.

X is guilty as charged, but the crime has been extinguished by the payment of the money owed. X has concealed the fact that he has no money at all from the businessman. At the time he rented the car, he did not intend to pay the money, but instead hoped to leave the country on Somali Airlines before he could be caught. Therefore, all of the elements of the crime have been fulfilled, and X could be convicted of FRAUDULENT INSOLVENCY. However, since the amount of money owed was paid before X's conviction, the crime is extinguished and X cannot be punished.

Note that X's offense would be CHEATING instead of FRAUDULENT ISOLVENCY if X had done something to deceive the businessman into thinking he had money. If, for example, X had shown a forged letter stating that he had a large sum of money in a bank account in Aden, he would have led the businessman into thinking he was rich, deceived him, and thus come under Article 496.

Article 498 Issuing Checks Which Will Not Be Honored

Whoever,
(a) issues a check
(b) when he has no funds or
(c) when the funds are not sufficient, or
(d) withdraws wholly or in part the funds after issuing the check, so that the availability of funds becomes insufficient to honor the check,
shall be punished, where the act does not constitute a more serious offense, with a fine up to Sh. So. 2,000.

Explanation:

Checks represent money in a bank. If a person issues a check when he has no money in the bank, or not enough money, or, after issuing the check, he withdraws the money so that there are not enough funds to honor the check, he has committed an offense under this article. The prosecution must show that the accused committed the act knowingly and willfully. If a person makes a mistake in calculating how much money he has in his bank account and then issues a check for an amount greater than the amount of money he actually has, this is not an offense under Article 498. He has not intentionally issued a check that will not be honored or cashed.

Example:

X is a teacher. He has a bank account with the Somali National Bank which amounts to 780 shillings. X wants to buy a used car from Y for 1,000 shillings. Y agrees to sell, but only if X pays him in cash or by check. He will not allow X to owe him part of the price of the car. X writes a check for 1,000 shillings, hoping to be able to obtain the additional 220 shillings' shortage before Y cashes the check. Y gives X the car. The next day, Y goes to the bank to cash X's check and discovers that X has only 780 shillings in his account. Y immediately informs the police, who arrest X and charge him under Article 498.

X is guilty as charged. He has issued a check when he had insufficient funds in his bank account to cover it. He gave a check for 1,000 shillings, knowing he had only 780 shillings in his account. The judge sentences X to pay a fine of 500 shillings.

Article 499 Fraudulent Destruction of One's Own Property and Fraudulent Self-Mutilation

1. Whoever,
(a) for the purpose of securing for himself or another
(b) the amount of an insurance against accidents,
(c) destroys, disperses, spoils, or conceals
(d) any property belonging to himself,
shall be punished with imprisonment from six months to three years and with a fine up to Sh. So. 10,000.

2. Whoever,
(a) with the aforesaid object,
(b) causes hurt to himself, or
(c) renders more serious the consequences of a hurt resulting from an accident,
shall be liable to the same punishment.

3. Where the offender attains his object, the punishment shall be increased.

4. The provisions of this article shall also apply if
(a) the act is committed abroad,
(b) to the prejudice of a Somali insurer carrying on business in the territory of the State;
but the crime shall be punishable on the complaint of the party injured.

Explanation:

Insurance is a plan to compensate people when they are injured or when their property is destroyed. A person pays an annual fee for the

insurance, and when an accident occurs, he can claim up to a certain amount for the damage or injury caused. At present, there is very little insurance in Somalia. Personal injuries are covered by the traditional *dia* system. Some property insurance does exist, mainly on vehicles.

Article 499 is designed to protect insurance companies from false claims by persons who want to receive compensation for injury or damage which they themselves have caused. Paragraph 1 applies to property damage. The prosecution must prove that the accused acted for the purpose of receiving the insurance for his own benefit or the benefit of another. It must also prove that the accused caused the damage to his own property. Note that the punishment is both a fine and imprisonment.

Paragraph 2 applies the same rule to personal injury. The prosecution must prove that the accused injured himself or made injuries caused by an accident worse in order to obtain insurance benefits.

Paragraph 3 makes it an aggravating circumstance if the accused actually obtains the insurance benefits as a result of the damage or injury he himself has caused. Thus, according to Article 118, the punishment prescribed may be increased by up to one-third.

Paragraph 4 provides that the article shall apply to such fraudulent acts of destruction committed abroad if the insurer is a Somali company practicing in Somalia. However, the company must file an official complaint for prosecution to be initiated.

Example:

X is the owner of a car-rental agency in Mogadishu. He rents a very old Fiat to Y, a foreigner who has come to Somalia as a tourist. X has all his cars insured for property damage or theft up to the value of 15,000 shillings. The Fiat X has rented to Y is, at most, worth 2,000 shillings. The night after X has rented the car to Y, X goes to Y's hotel, where the car is parked. Making sure that no one is watching, X then smashes the windshield and motor with a heavy hammer, causing extensive damage. When Y wakes up the next morning and finds the car damaged, he reports the matter to the police and to X. X informs his insurance company that the car has been damaged, and the Fiat Company in Mogadishu estimates that it will cost 8,000 shillings to fix the car so that it will run again. By damaging his own car, X thus hopes to get his old Fiat fixed so that it will be almost like new again. The police investigate the incident, and eventually arrest X for causing the damage to his own car. X is charged under Article 499.

X is guilty as charged. He has acted for the purpose of obtaining insurance money against accidental damage. He has deliberately caused the

damage himself by smashing the car with a hammer, thus destroying his own property. The judge sentences X to six months in prison and a fine of 5,000 shillings. Note that Paragraph 3 does not apply, because X had not been paid the money owed by the insurance company before his crime was discovered.

Article 500 Undue Influence on Persons under Disability

Whoever,

(a) in order to secure a gain for himself or another,

(b) taking advantage of the needs, passions, or inexperience of a person under fourteen years of age, or

(c) taking advantage of the state of mental infirmity or deficiency of another, although the latter is not interdicted or declared to be a person under disability,

(d) induces him to do any act which has any legal effect

(e) detrimental to him or another,

shall be punished with imprisonment from two to six years and with a fine from Sh. So. 2,000 to 20,000.

Explanation:

This article applies to acts of undue influence on minors—that is, persons under fourteen years of age—or persons suffering from mental infirmity. In the case of mentally disabled persons, the article specifically provides that such persons do not have to be adjudged mentally deficient prior to the commission of the offense. The judge must decide in each case whether the person was so mentally deficient that another person could take advantage of him.

The phrase "undue influence" means more than normal influence over a person. Generally, minors or persons who are mentally deficient are easily persuaded by a person in a position of power over them to do something they would not do if left alone. The undue influence must result in the victim's performing some act having a legally binding consequence which is against the victim's interests or the interests of another person. If the undue influence does not produce an act having legal effect, then no offense has been committed within the meaning of this article.

Example:

X is an eighty-five-year-old man, the father of B, C, D, and Q. He is very ill and must be taken care of constantly. His son B lives with him in his house in Mogadishu. C, D, and Q, the other children, are living in

the Northern Regions. B constantly tells his father that the other children are no good and are just waiting for him to die so that they can get his property. He persuades his father that B is the only one who really cares about him. B asks his father to change his will and leave all of the property to B. X's mind has been poisoned by the evil thoughts of his son, and he changes the will and registers it in the Qaadi Court, leaving all of his property to B. Shortly thereafter, the old man dies, and B claims all of the property. C, D, and Q contest the will, claiming that B somehow got their father to change it in his favor instead of dividing the property equally. X's servants tell C and D that B constantly told their father how bad the other children were, and how only B deserved the property. C reports the matter to the police, who investigate, and then arrest B, charging him with violating Article 500.

B is guilty as charged. He has acted for the purpose of obtaining all of X's property for himself, and leaving nothing for C, D, and Q. To accomplish this purpose, he has exercised undue influence over X, by taking advantage of his mental infirmity. X was a very old man, completely helpless and totally dependent upon B. His mind was weakened because of his age, and he was easily persuaded by any person close to him. As a result of B's influence, X changed his will, thus performing an act having a legal effect which was harmful to C, D, and Q because it deprived them of a share of their father's property. The judge finds that X was mentally deficient as a result of his age, and sentences B to imprisonment for two years and a fine of 4,000 shillings.

Article 501 Usury

1. Whoever,
(a) other than in the cases referred to in the preceding article,
(b) taking advantage of the state of need of another,
(c) causes that person,
(d) in consideration of a loan of money or other movable property,
(e) to give or promise him, under any form whatsoever, for himself or another,
(f) usurious interest or other benefits,
shall be punished with imprisonment up to two years and with a fine from Sh. So. 1,000 to 20,000.
2. Whoever,
(a) other than in the cases referred to in the preceding paragraph,
(b) obtains for a person in a state of need
(c) a sum of money or other movable property,
(d) by securing a gift or promise to himself or another

(e) of a usurious reward as the price of the negotiation,
shall be liable to the same punishment.

Explanation:

Usury is the practice of charging a very high rate of interest for the money lent to another. The article does not define what is a "usurious interest," and therefore the judge must decide in each case, basing his decision on local custom and practice. Article 501 does not apply to cases within Article 500. Undue influence can be exercised over a person in need if that person is mentally deficient or a minor. Generally, if the victim is in one of these two categories, the offense comes under Article 500. If it does not fit under that article, then Article 501 applies.

To make out a case of usury, the prosecution must show that the accused took advantage of the state of need of the victim by lending him money or other property in return for which the victim promises or pays a usurious interest for the loan. The article applies to all persons, and therefore there is no need to prove that the victim was a minor or a mentally deficient person. It is enough if he was in economic difficulty and needed money.

Paragraph 2 applies the same punishment if the accused charged a usurious reward for negotiating the loan on behalf of the victim, even though the actual interest rate charged by the lender is not usurious. Thus, the paragraph covers the person who acts as the middleman who brings the borrower and the lender together to make the deal.

Example:

X is a Somali businessman in Mogadishu. He decides to build a tomato-paste factory outside the city, and purchases expensive equipment from Italy for the plant. He has enough money to pay for the machinery, build the factory, and transport the equipment to Mogadishu. After he has spent all of this money and concluded the necessary business transactions, the Suez Canal is closed. The Italian company informs him that transportation to Mogadishu will now cost an additional 200,000 shillings, and unless X pays this in advance, they cannot ship any machinery. If X does not receive the machinery, his factory will never open, and he will lose all of the money he has invested in the plant. He applies to several banks, but they refuse to lend him the money. Y, another businessman, hears about X's need for funds, and offers to lend X the 200,000 shillings if X will promise to pay back that amount plus 100,000 shillings as the charge for the use of the money for one year. X realizes that the interest rate is extremely high but, faced with economic ruin, he agrees to it. The

machinery is shipped to Mogadishu, and X opens his factory. He then consults a lawyer, who advises him not to pay the interest of 100,000 shillings but instead to report the matter to the police. X does so, and Y is arrested and charged with violating Article 501.

Y is guilty as charged. He has taken advantage of the extreme financial need of X. He has forced X to promise to pay 100,000 shillings interest in consideration for a loan of 200,000 shillings for one year. The judge hears evidence about the normal interest rates for loans in Mogadishu, and decides that this rate is a usurious one. He finds Y guilty, and sentences him to imprisonment for six months and a fine of 20,000 shillings.

Article 502 Misappropriation

1. Whoever,
(a) in order to secure for himself or another a wrongful gain,
(b) appropriates money or any movable property
(c) belonging to another
(d) of which he comes into possession,
(e) under any title whatsoever,
shall be punished,
(f) on the complaint of the party injured,
with imprisonment up to three years and with a fine up to Sh. So. 10,000.
2. Where
(a) the act is committed
(b) in respect of properties held by way of necessary deposit,
the punishment shall be increased.
3. Proceedings shall be initiated by the State where
(a) the circumstances specified in the preceding paragraph or
(b) any of the circumstances specified in letter m of Article 39 exist.

Explanation:

This article applies to everyone except the lawful owner of the property, who, of course, cannot misappropriate that which belongs to him. The accused must have acted for the purpose of obtaining a wrongful gain for himself or another. The crime can be committed only with regard to money or other movable property. The key element is that the accused must have possession of such property under any claim of title. The phrase "claim of title" means some legal justification for possession of the property involved. Thus, if the accused is custodian of the property, or holds it for a friend, or is appointed by a court to possess such property on behalf of another, or is the guardian of a minor, he has some title to

possess the property and comes within the terms of this article. Note that prosecution can be initiated under Paragraph 1 only if the party injured has filed a formal complaint.

Paragraph 2 makes it an aggravating circumstance for the accused to commit the crime against property held as a result of necessary deposit. A "necessary deposit" means property deposited somewhere as the result of a catastrophe or disaster such as fire, flood, or earthquake. Thus, if, as a result of a terrible fire in a large town, a person is forced to leave his property in the storehouse of another, and that person illegally sells the property and keeps the money, Paragraph 2 of this article applies, and the punishment is increased up to one-third, according to Article 118.

If the case arises under Paragraph 2, the state may initiate proceedings without a formal complaint by the injured party. In addition, if the accused has committed the crime:

(a) with abuse of authority;
(b) as a result of a domestic relationship;
(c) with abuse of one's position in an office; or
(d) in connection with performance of work, or dwelling together, or extending or receiving hospitality,

prosecution can also be initiated by the state. These are the conditions established in Article 39(m), correctly lettered 39(k).

Example:

X is a Somali citizen. He decides to make the pilgrimage to Mecca, and leaves his car with Y, a good friend. He tells Y that he can use the car if he likes, but that he wants it returned when he comes back from Saudi Arabia. X then leaves Mogadishu, and Y keeps the car in the compound surrounding his house. Z, a foreigner residing in Somalia, has need of a car and, thinking that Y is the owner, offers to buy it. Y agrees to sell the car for Z's price, contrary to X's instructions that he is only to use the car. Y takes the money and has it deposited in an Adenese bank. X returns from his pilgrimage and demands to know where his car is. Y tells him that he sold it for a very good price, but that he has lost the money. X doesn't believe him, and reports the matter to the police. Following an investigation, X files a formal complaint with the police, and Y is arrested and charged with violating Article 502.

Y is guilty as charged. He has acted for the purpose of obtaining a wrongful gain for himself. He has appropriated X's car, which is movable property, by selling it to Z, and keeping the money which rightfully belongs to X. He had possession of the car under legal right, because X had given him the car to keep until X returned from Mecca. X has filed

a formal complaint with the police, so prosecution could be initiated. The judge sentences Y to one year in prison and a fine of 10,000 shillings.

Article 503 Misappropriation of Articles Lost, Treasure Trove, or Articles Obtained through Error or Chance

1. Imprisonment up to one year or a fine from Sh. So. 300 to 3,000 shall be imposed, on the complaint of the party injured, on any person who:

(a) having found money or any movable property lost by others, appropriates it without observing the directions of the civil law regarding the acquisition of ownership of movable properties found;

(b) appropriates movable properties of which he has come into possession through the mistake of another or by chance;

(c) having found a treasure, appropriates, wholly or in part, the share due to the owner of the land.

2. In the cases referred to in letters a and b of the preceding paragraph, if the offender knew the owner of the property which he appropriated, the punishment shall be imprisonment up to two years and a fine up to Sh. So. 3,000.

Explanation:

Article 503, unlike the preceding one, deals with movable property not possessed as the result of any title, as required by Article 502, but lost property, treasure, or property obtained through error or chance. Prosecution cannot be initiated without a formal complaint by the injured party.

Subparagraph a of Paragraph 1 makes it a crime for a person who has found money or other movable property lost by another to appropriate it for himself without first observing the provisions of the Civil Code regarding the acquisition of found property. In the south, the relevant provisions of the civil law are Articles 922 to 947 of the Civil Code. The provisions of both of these laws prescribe the rules to be followed by the finder of movable property before he can claim such property for himself.

Subparagraph b makes it a crime for a person to appropriate movable property which he has obtained through the mistake of another or by chance. An example of obtaining property by mistake would be a person's taking a package or bundle left behind on a truck or bus by a person who has either forgotten it or thinks it belongs to someone else.

Subparagraph c applies to persons who find treasure. The Civil Code in force in the Southern Regions requires such person to share the treasure found with the owner of the land.

Paragraph 2 provides a heavier punishment where the accused actually knows who the person is who owns the property appropriated. The punishment is both a fine and imprisonment, whereas under Paragraph 1 it is a fine or imprisonment.

Example:

X is a resident of a town. He is walking down the street when he sees Y's wallet drop from his pants pocket. Y continues down the street unaware that he has lost his wallet. X follows and picks it up and takes it home with him. Inside, he discovers 450 shillings. X keeps the money for himself and leaves the wallet on the table of his house, intending to throw it away later. Y reports to the police that he has lost his wallet, and inquiries are made. The police search X's house and find Y's empty wallet. X is arrested and charged with violating Article 502(2).

X is guilty as charged. He has found money lost by Y, and appropriated it for himself without going through the formalities required by the civil law. The case comes under Paragraph 2, because X knew that Y was the owner of the wallet, and didn't call out to tell Y that he had dropped it. Instead, he let Y continue walking, and kept the wallet and the money for himself. The judge sentences X to three months in prison and a fine of 300 shillings.

Article 504 Receiving

1. Whoever,

(a) other than in the cases of participating in the crime,

(b) for the purpose of securing for himself or another a wrongful gain,

(c) knowing that it is a stolen property,

(d) purchases, receives, or conceals

(e) money or property in respect of which a crime has been committed, or

(f) in any manner takes part in causing them to be purchased, received, or concealed,

shall be punished with imprisonment up to six years or with a fine up to Sh. So. 20,000.

2. The provisions of this article shall also apply when the crime in respect of the money or property was committed by a person not chargeable or punishable.

Explanation:

Article 504 deals with receiving stolen property, although it also covers hiding or purchasing such property. The accused under this article must not be a person who has participated in the actual crime. Thus, if a person steals radios from a store, he is guilty of THEFT, and cannot be

charged with the offense of concealing stolen property in his house. The essential element the prosecution must prove is that the accused knew that the property he was purchasing, receiving, or concealing was stolen property. The prosecution must also show that the accused bought the property in order to obtain a wrongful gain for himself. Usually, stolen property is sold for much less than its actual value. Thus, the person who buys it at a cheap price can sell it at a higher one and make a large profit. The evidence as to the price the accused paid for the property is indicative of the intention to obtain a wrongful gain. Finally, the property must be the result of a crime committed, which will normally be a theft.

Paragraph 2 applies to those few cases where the thief cannot be charged or punished. In such cases, the person who receives the stolen property is still liable under Article 504. Thus, if a twelve-year-old boy steals a radio, he cannot be punished, according to Article 59 of the Penal Code, because he is under fourteen years of age. If he sells the radio, the purchaser has received stolen property and is subject to the punishment under Article 504, regardless of the fact that the boy cannot be charged for theft.

Example:

X is a businessman. He runs a small garage and car-repair shop. Y is a well-known thief. He has never been caught, but he has a reputation in the town for being a thief. One evening, Y comes to X's shop with two car batteries, assorted car tools, three tires, a small car radio, shock absorbers, spark plugs, gas caps, and a fan belt. He offers to sell all this to X for 400 shillings. X knows that if he bought all of these supplies from a car-supply store, they would cost at least 1,000 shillings. He also knows that the parts come from different types of cars and that there have been a series of car thefts in town. However, because he wants to use these parts in his business and sell them for a big profit when he repairs cars, he gives Y 400 shillings in return for the parts. The next day, Y is caught by the police while stealing the tires off a parked car. He admits to having committed three earlier thefts of car parts, and states that he sold the stolen parts to X. The police go to X's shop, find the stolen parts, and arrest X, charging him with violating Article 504.

X is guilty as charged. He has not participated in the crime of theft, but he knew that the car parts were stolen and bought them anyway. Y had the reputation of being a thief. It was common knowledge that there had been a series of car thefts in town recently. The parts all came from different cars, and a person not in the car-repair business would not have possession of car parts from different makes of automobiles. In addition, the price of the parts was way below their worth and should have made

X suspicious. X bought the parts in order to make a profit when he used them to repair cars, and thus sought to obtain a wrongful gain. Y admitted that he stole the parts, and therefore they were the result of a crime committed. The judge sentences X to one year and a fine of 10,000 shillings.

BOOK III CONTRAVENTIONS

As explained in the introduction to Book I, the Penal Code is divided into three books. The first book involves general principles applicable to all offenses, the second deals with crimes, and the third deals with contraventions. Both crimes and contraventions are considered to be "offenses" —that is, violations of the law. Contraventions, however, are less serious than crimes. The following sixty articles define the contraventions of the Penal Code.

PART I CONTRAVENTIONS RELATING TO PUBLIC ORDER AND PUBLIC TRANQUILLITY

Article 505 Non-Observance of Orders of the Authorities

Whoever
(a) fails to observe
(b) an order lawfully given by any public authority,
(c) in the interests of justice, public security, public order, or hygiene, shall be punished, where the act does not constitute a more serious offense, with imprisonment up to three months or with a fine up to Sh. So. 3,000.

Explanation:

Article 505 involves failure to observe orders of public authorities. The prosecution must show that such an order was lawful. There is no obligation on the part of members of the public to observe unlawful orders. In addition, the prosecution must show that the order was given in the interests of justice, public security, public order, or hygiene. Thus, the article covers orders concerning demonstrations, parades, sequestration of camels, and the pollution of water or wells and other health measures. A public authority is any member of the police force, Illalos, municipal police, the Army in the exercise of its proper functions, district commissioners, judges, regional governors, officials of the Ministry of Interior, and any other member of the public administration.

Note that the punishment is either a fine or imprisonment. Article 505 establishes only the maximum penalties. The minimum penalties are

prescribed by Article 98 (five days imprisonment) and Article 99 (a fine of not less than two shillings). The contravention is punishable only if the facts do not indicate that a more serious offense has been committed.

Example:

X is a member of the Veterinary Service of the Livestock Development Agency. He is stationed near Berbera in order to check cattle for diseases before export. Y brings four hundred head of cattle to the veterinary station for examination. X finds that two of the cattle are sick with a cattle disease, and he has these two animals killed. He orders that the others be placed in an area and held for fourteen days to see if they are also sick. Instead of putting his cattle in this quarantine area, Y drives them to Berbera for loading on ships going to Aden. The port officer refuses to let Y load the cattle, because he does not have the necessary health certificate from the veterinary officer, and he reports the matter to the police. The cattle are returned to the veterinary station, and Y is charged with violating Article 505.

Y is guilty as charged. He has failed to observe an order of a veterinary officer, who is a public authority. The order was lawful, as the veterinary officer is empowered to inspect and quarantine animals intended for export and to enforce health standards concerning them. The order concerned a matter of hygiene, because diseased animals can cause human sickness if the meat is eaten. Y failed to keep the animals at the veterinary station as ordered, and instead tried to ship them out of the country. The judge sentences Y to a fine of 3,000 shillings. However, after considering Y's financial status, the judge determines that such a sentence is inadequate and, under the powers granted him by Article 99, increases the fine up to 6,000 shillings.

Article 506 Refusal to Give Particulars Regarding One's Personal Identity

Whoever,
(a) on being requested by a public officer
(b) in the performance of his duties,
(c) refuses to give particulars regarding his personal identity, status, or other personal capacity,
shall be punished with imprisonment up to one month or with a fine up to Sh. So. 1,000.

Explanation:

Article 506 applies to refusals with regard to requests by public officers. A "public officer" is defined in Article 240(a). The request must be in

the performance of the duties of the public officer. In addition, the accused must have refused to give information concerning his identity, status, or capacity. The punishment is either a fine or imprisonment, but not both.

Example:

X is a truck driver, bringing a load of bananas to Mogadishu. It is nighttime, and as he approaches Mogadishu, he is stopped by members of the traffic police for driving without lights. The police ask X for his license and papers indicating that he is authorized to drive the truck. X refuses to give the police his license or to answer questions about whom he is employed by and how long he has been driving trucks. Instead, he slams the door of the cab of the truck, and drives off as fast as he can, before the traffic police can stop him. They take his license-plate number, however, and later in the evening the truck is located and X is arrested. Among other things, he is charged with violating Article 506 of the Code.

X is guilty as charged. He had been requested by members of the traffic police, who are public officers within the meaning of Article 240(a), to produce his license and answer questions about his driving and who employed him. These are matters concerning his personal identity, his status as a driver, and his capacity as an employee of someone else. The traffic police were acting in the course of their duties—inspecting the traffic entering Mogadishu. The judge sentences X to a fine of 1,000 shillings.

Article 507 Refusal to Lend Assistance on the Occasion of a Riot

1. Whoever,
(a) on the occasion of a riot or a public disaster or a common danger, or
(b) during the commission of an offense,
(c) refuses, without just reason,
(d) to lend aid or assistance or to give the information or particulars requested of him
(e) by a public officer or by a person entrusted with a public service in the performance of the duties or the service,
shall be punished with imprisonment up to three months or with a fine up to Sh. So. 3,000.
2. Where
(a) the offender supplies
(b) inaccurate information or particulars,
he shall be punished with imprisonment from one to six months or with a fine from Sh. So. 300 to 6,000.

Explanation:

This contravention can be committed only at the time of a riot; a public disaster, such as a flood or fire; a common danger, such as the possibility of an outbreak of an epidemic; or the commission of an offense. At such times, a public officer or a person entrusted with a public service (as defined in Article 240[b]) may request assistance or aid in putting down the riot, or acting at the site of a disaster, or preventing the common danger, or stopping the commission of an offense. Under such circumstances, he may request certain information concerning a person's capacity, status, or identity. If such a request for assistance or information is within the performance of his duties, a member of the public cannot refuse his requests without just reason. The phrase "just reason" is purposely not defined, to allow the judge discretion to determine whether the accused acted properly in each case. If the accused had a weak heart, for example, and refused a policeman's request to assist in overpowering three robbers, he would have refused with just reason.

Paragraph 2 provides that if the accused is requested to give information according to Paragraph 1, and he gives false information as to his identity, status, or capacity, he is subject to the severer penalty specified.

Example:

X is a policeman assigned to patrol an area near Parliament during a demonstration. A riot breaks out, and several people are badly injured. X finds Y lying in the street, bleeding heavily from severe head wounds. He orders Z, who is driving by in his car, to stop and take Y to the General Hospital. Z refuses to take Y, because he doesn't want to get blood on the seats of his new car, and X finds another vehicle instead. X reports the incident, and Z is arrested and charged with violating Article 507.

Z is guilty as charged. The policeman is a public officer. He made a request in the performance of his duty in the course of a riot. Z refused X's request for assistance and aid without just reason. The judge sentences Z to a fine of 1,000 shillings.

Article 508 Formation of Armed Bodies Not Intended for the Commission of Offenses

Whoever,
(a) without authorization,
(b) forms an armed body
(c) not intended for the commission of offenses,
shall be punished with imprisonment up to one year.

Explanation:

This article applies only to those who form an armed body, not to those who participate in it. However, the armed body must be formed for a purpose other than the commission of offenses. If it is intended to carry out crimes such as robbery or banditry, Article 508 does not apply. Besides showing the purpose of the organization, the prosecution must also prove that the armed body was formed without proper authorization from the competent authorities.

Example:

X and Y are former members of the police force. They have left the force after twenty years of service. They decide to form a Police Veterans' Association and drill with rifles once a month. About forty men join, but X and Y fail to obtain necessary authority for their association. One day, they are practicing drill with Enfield 303s when an on-duty policeman notices their activities. He reports the matter, and X and Y are arrested and charged with violating Article 508.

X and Y are guilty as charged. The purpose of the Police Veterans' Association was to drill and maintain the *esprit de corps* of veterans of the police force. It was not intended to carry out offenses. However, it is an unauthorized armed body, and is thus within the article. The judge exercises his discretion under Article 99, and sentences each man to imprisonment for five days, the minimum sentence for a contravention, and then converts the sentence to a fine, according to Article 112 of the Code.

Article 509 Seditious Cries and Manifestations

Whoever,

(a) at a meeting not to be deemed private according to letter c of Paragraph 4 of Article 209, or

(b) in a public place or a place open or exposed to the public,

(c) makes seditious manifestations or utters seditious cries,

shall be punished, where the act does not constitute a more serious offense, with imprisonment up to one year.

Explanation:

Article 509 applies to meetings which are not private, or which are held in public places and places open or exposed to the public. A non-private meeting is defined in Article 209(4c) as:

> a meeting which, owing to the place in which it is held, or the number of the persons present, or its purpose or object, has the character of a meeting which is not private

(see explanation under Article 209). A "public place" is a street, square, beach, public garden, or park. A "place open to the public" is a restaurant, tea shop, movie theater, or other such place. A "place exposed to the public" is a place visible to members of the public, even though it is private property. Thus, a room of a person's house could be a place exposed to the public if there was a street next to the window of that room.

Besides showing that the contravention occurred in one of the places mentioned above, the prosecution must also show that the accused uttered seditious cries or in any other way showed himself engaged in seditious activities. "Sedition" is an act which tends to create a disturbance among the people of the nation, and it involves the possibility of danger to public order and security.

Example:

X is a former employee of the government who has been fired for his poor work. He is unemployed and angry. One evening, while he is sitting in the center of town in Mogadishu, he becomes especially mad at the way the government has treated him. He stands on the street corner yelling, "Down with the government!" and "Kill all the Ministers!" X is arrested and charged with violating Article 509 of the Code.

X is guilty as charged. He has made seditious statements. By calling for the downfall of the government and shouting that all Ministers should be killed, X has done something which creates a disturbance. While there is no real danger of public disorder or insecurity as a result, still his statements are of the type which could involve a threat to public order and security. X has made the statements in a public place—a street corner in the center of Mogadishu. The judge sentences X to two months in prison.

Article 510 Seditious Assembly

1. Whoever

(a) takes part in a seditious assembly

(b) of ten or more persons,

shall be punished,

(c) for the act of such participation,

with imprisonment up to one year.

2. Where

(a) the person who takes part in the assembly

(b) is armed,

the punishment shall be imprisonment for not less than six months.

3. Whoever,

(a) before an order given by any public authority, or

(b) in compliance therewith,
(c) withdraws from the assembly,
shall not be punishable.

Explanation:

Article 510 punishes those persons who participate in seditious assemblies. A "seditious assembly" is a meeting for the purpose of committing the acts defined in the preceding article as sedition. The assembly must consist of ten or more persons. If fewer than that number attend, there is no violation under Article 510. If Article 510 is read together with Article 98, which establishes the minimum penalty for contraventions, the penalty is imprisonment from five days to one year for violations within Paragraph 1 of the article.

Paragraph 2 provides that if the accused carries arms while taking part in the seditious assembly, the minimum penalty shall be six months. The maximum penalty, as established by Article 98, is three years.

Paragraph 3 provides that if a person withdraws from the assembly before the assembly is ordered to disband by a public authority, or obeys such an order of a public authority and withdraws from the assembly, he shall not be punished.

Article 511 Cries or News Capable of Disturbing Public or Private Tranquillity

Whoever,
(a) for the purpose of selling or distributing papers or drawings
(b) in a public place or a place open or exposed to the public,
(c) announces or shouts news,
(d) whereby public or private tranquillity may be disturbed,
shall be punished with a fine up to Sh. So. 1,000.

Explanation:

Article 511 involves acts which disturb the rights of the public or of private persons to peace and quiet. The prosecution simply has to show that the accused, by trying to sell newspapers or drawings, shouted in such a loud voice and so frequently that he disturbed or was likely to disturb members of the public or private persons. The act must be committed in a public place, a place open to the public, or a place exposed to the public. Finally, the purpose of such an act must have been to sell or distribute newspapers or drawings.

Note that this article is different from Article 328, Publication or Circulation of False, Exaggerated, or Tendentious News Capable of Disturbing Public Order. The purpose of that article is to prevent the

spreading of false, exaggerated, or biased reports which arouse feelings of hatred and are likely to lead to violence, public disorder, or panic (see explanation under Article 328). In the cases arising under Article 511, however, the prosecution does not have to show any element of falseness, exaggeration, or prejudice in the news stories being advertised. The article is designed solely to prevent disturbances of peace and quiet by persons advertising in a loud and noisy manner.

Article 512 Disturbing the Occupations or the Repose of Individuals

1. Whoever,
(a) by shouting or noises, or by the misuse of sound-producing instruments or acoustic signals, or
(b) by causing or not hindering loud noises from animals,
(c) disturbs the occupations or the repose of individuals, or public performances, gatherings, or entertainment,
shall be punished with imprisonment up to three months or with a fine up to Sh. So. 3,000.

2. A fine from Sh. So. 1,000 to 5,000 shall be imposed on a person who exercises a noisy profession or craft in defiance of any prohibition contained in any provision of law or order of the authorities.

Explanation:

The preceding article applied only to acts likely to disturb the peace and quiet of persons caused by those trying to sell or distribute newspapers or drawings. Article 512, on the other hand, applies to any acts which disturb individuals, public performances, gatherings, or entertainment. In other words, the prosecution does not have to show the purpose of the person who created the disturbance. He has to show only that the accused created the disturbance in one of the ways prohibited by Paragraph 1. These are by shouting or making noises of any type (such as blowing a car horn), misusing sound-producing equipment (such as radios, tape recorders, record players, or musical instruments), or causing animals, such as donkeys, to make loud noises, or not preventing them from doing so.

Paragraph 2 increases the penalty where the accused has practiced a noisy profession, such as playing a band instrument, in violation of a prohibition of the law or contrary to an order of the authorities.

Example:

X is the head of an orchestra which plays in a night club in Mogadishu. Every afternoon from four until six o'clock, he and his band practice in

X's house. Y, who lives next door, complains to X that he cannot stay at home any longer because the noise from the musical instruments is so great. He asks X to practice his music somewhere else, but X refuses. Y then complains to the police, who investigate and arrest X, charging him with violating Article 512.

X is guilty as charged. He has disturbed Y in his home by means of noises from his musical instruments and those of his band. The judge sentences X to a fine of 300 shillings and orders him to find another place to practice.

Article 513 Molestation or Disturbance of Individuals

Whoever,
(a) in a public place or a place open to the public, or
(b) by means of the telephone,
(c) wantonly or with any improper motive,
(d) causes molestation or disturbance to anyone,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 5,000.

Explanation:

This article applies to acts of molestation or disturbance. This means that the accused has committed an act which annoys, bothers, or offends another. The prosecution must show that the act was committed wantonly —that is, for no reason or for improper reasons. The act must be committed in a public place or a place open to the public. In addition, the molestation or disturbance may be committed by telephone.

Example:

Z, a resident of Chismayo, goes to the local cinema to see a movie. He sits down behind B, and makes an obscene remark. Throughout the movie, Z continues to make obscene suggestions to B.

Z has committed a violation of Article 511. He has improperly made obscene suggestions to B, disturbing him. The act was committed in a place open to the public—a cinema theater. The judge sentences Z to a fine of 25 shillings.

Article 514 Abusing the Credulity of the Public

Whoever,
(a) in public,
(b) seeks by any kind of imposture,
(c) even though done for no reward,

(d) to abuse the credulity of the public,
shall be punished,
(e) where the act is capable of resulting in the disturbance of the public order,
with imprisonment up to three months or with a fine up to Sh. So. 10,000.

Explanation:

The phrase "abusing the credulity of the public" means performing some act by which the public is fooled into believing to be true something which is obviously not. The offense must be committed in public, with the purpose of misleading a number of people. The act itself must be capable of causing a disturbance of the public order.

Example:

X, a resident of Mogadishu, travels to another town. He is carrying two suitcases full of bottles containing a reddish liquid. After arriving in the town, he stands in the main street and tells the people that the liquid in the bottles will cure any disease that they may have and protect them from future illness. Actually, the bottles contain nothing but colored water which is harmless. X offers to sell each bottle for five shillings. Before anyone can buy them, the police arrive, listen to what X is saying, obtain a warrant, and arrest X. Among other charges, he is accused of violating Article 514.

X is guilty as charged. He has committed the act in a public place. He has abused the credulity of the public by trying to sell colored liquid as a cure for diseases. His acts are capable of causing a disturbance of the public order. The judge sentences X to imprisonment for one month.

Article 515 Wrongful Exercise of the Typographic Art

Whoever,
(a) without a license from the authorities, or
(b) without observing the directions of the law,
(c) exercises the typographic, lithographic, photographic, or any other art for printing or for mechanical or chemical reproduction in several copies,
shall be punished with imprisonment up to six months or with a fine from Sh. So. 300 to 5,000.

Explanation:

This article applies to persons who illegally practice the profession of printing or reproducing material. The acts prohibited are practicing these

professions without the proper licenses from the competent authorities, or practicing the profession without observing the provisions of the law. The present law of the Republic is unclear with relation to the newspaper profession, and thus the rights and duties of persons engaged in such a profession require clarification.

Article 516 Wrongful Sale, Distribution, or Posting of Papers or Drawings

1. Whoever,
(a) in a public place or a place open to the public,
(b) sells or distributes or in any manner places in circulation
(c) papers or drawings,
(d) without having obtained the authorization required by the law,
shall be punished with a fine up to Sh. So. 500.
2. Whoever,
(a) without a license from the authority,
(b) in a public place or a place open or exposed to the public,
(c) affixes papers or drawings, or
(d) makes use of luminous or acoustic means for making communications to the public, or
(e) in any way puts up inscriptions or drawings,
shall be liable to the same punishment.

Explanation:

This article applies to two types of contraventions: (1) selling or distributing papers or drawings; and (2) posting papers or drawings or using light or sound to communicate with the public. The punishment is the same for either offense, but the elements necessary to prove the charge differ slightly. The sale or distribution of papers or drawings must take place in a public place (such as the street) or a place open to the public (such as a restaurant). Such distribution or sale must also take place without the necessary authorization required by law.

In cases involving posting of papers or notices, or communicating by means of electric signs or loudspeakers, the act must be committed in a public place or a place open or exposed to the public. Thus, the act must be committed in either a street, a restaurant, or a private place which is exposed to the public. The prosecution must show that the accused acted without the necessary authorization from the proper authorities.

Note that Articles 515 and 516 both refer to authorization required by law. The Penal Code is based on the Italian Penal Code, which contains the same statements. Under the Italian legal system, a whole series of

laws deals with regulations, requirements, and licenses for such activities. Under the Somali legal system, frequently such laws either have not been passed or do not apply to the entire country. Thus, the reference may be to nonexistent laws or regulations. In Italy, these two articles, for example, would be governed by the Italian Press Law. No such law exists in Somalia at this time.

Article 517 Destruction or Defacement of Posters

1. Whoever
(a) detaches, tears, or in any manner renders unserviceable or illegible
(b) posters or drawings
(c) which have been affixed by the authorities,
shall be punished with a fine up to Sh. So. 3,000.
2. In the case of papers or drawings which private individuals have caused to be affixed in the places and in the manner allowed by law or the authorities, the punishment shall be a fine up to Sh. So. 1,000.

Explanation:

Article 517 deals with acts of ripping, tearing, destroying, or defacing posters or drawings placed by public authorities or by private persons. The penalty is greater for committing such acts against posters or drawings affixed by public authorities than it is for committing acts against those affixed by private persons authorized by law. The fine for destroying or defacing posters of public authorities is a fine up to 3,000 shillings; the penalty for the same act committed against lawfully affixed private posters (such as funeral notices) is a fine up to 1,000 shillings. Generally, provisions regarding the posting of notices or drawings will be contained in municipal regulations.

Example:

The government announces that the President of a foreign country will visit Somalia in the near future. Various private organizations prepare posters to put up on buildings welcoming the foreign leader. One society in Mogadishu, after having obtained the proper authority to do so, places posters with a photograph of the foreign President on many buildings around the center of town. X, a resident of Mogadishu, who dislikes the foreign leader, goes around ripping these posters off, and tearing out the part around the President's eyes. He is seen by a policeman, arrested, and charged with violating Article 517.

X is guilty as charged. He has destroyed and defaced posters which had been placed on buildings by private persons in accordance with

proper authorization from the authorities. The judge sentences X to a fine of 150 shillings.

Article 518 Unauthorized or Prohibited Business Agencies and Public Trading Concerns

1. Whoever,
(a) without a license from the authorities, or
(b) without a prior declaration to the latter,
(c) when such licenses or declarations are required,
(d) opens or conducts business agencies or public establishments or concerns, or
(e) against payment affords lodging to persons or receives them as boarders or as patients for treatment,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 5,000.

2. Where the license has been refused, revoked, or suspended, the punishments of imprisonment and a fine shall be imposed together.

3. Where
(a) the permit has been obtained
(b) and there is a failure to comply with the other directions of the law or the authorities,
the punishment shall be imprisonment up to three months or a fine up to Sh. So. 3,000.

Explanation:

Article 518 applies to two types of businesses: (1) business agencies—that is, agencies which act for others as intermediaries; and (2) public establishments or concerns, such as hotels, restaurants, bars, stores selling wine or other alcoholic beverages, or places run as private hospitals. The law requires each person who runs such an establishment first to obtain a license or to declare before the proper authorities his intention to run such an establishment. It is an offense under Article 518 to conduct such a business without this authorization or declaration.

Paragraph 2 prescribes a heavier penalty where the accused has been refused a license, or has had it revoked or suspended, and continues to conduct his business anyway. In such cases, the punishment is both fine and imprisonment.

Paragraph 3 prescribes a lesser penalty where the accused has lawfully obtained the license and then conducts his business in a manner contrary to the provisions of law.

Example:

All restaurants in the Republic which serve alcoholic beverages must have a license to do so. X is a resident of Mogadishu. He is running a small restaurant and serving non-alcoholic beverages. In order to attract more customers, X decides to serve alcoholic beverages, but to avoid the cost of a license, he decides to run his restaurant without one. One night, while he is serving alcoholic beverages, a plainclothes detective of CID notices that X has no license to sell such drinks. He reports the matter, the restaurant is investigated, and X is arrested and charged with violating Article 518(1).

X is guilty as charged. The law requires that he have a license to run a restaurant selling alcoholic beverages. He has conducted such a business without obtaining a license. The judge sentences X to a fine of 500 shillings.

Article 519 Public Performances or Entertainments without License

1. Whoever,
(a) without a license from the authorities,
(b) in a public place or a place open or exposed to the public,
(c) gives performances or entertainments of any nature whatsoever, or
(d) opens clubs or dancing or concert halls,
shall be punished with a fine from Sh. So. 100 to 5,000.

2. Where
(a) the license has been refused, revoked, or suspended,
the punishment shall be imprisonment up to one month.

Explanation:

Articles 44 through 49 of the Public Order Law (Law No. 21 of 26 August 1963) contain regulations concerning public entertainment. Article 44 requires that all public theatrical performances and cinema shows be authorized prior to exhibition by a commission established under Article 45.

Article 519 provides that if public performances or entertainments are given without a license from the authorities, then the person shall be punished with a fine from 100 to 5,000 shillings. The article also prohibits the opening of dance halls, concert halls, and clubs without proper authorization.

The contravention defined and prohibited by Article 519 is also defined and prohibited by Articles 44, 45, and 49 of the Public Order Law. According to Article 13 of the Penal Code (MATTER GOVERNED BY MORE

THAN ONE PENAL LAW OR BY MORE THAN ONE PROVISION OF THE SAME PENAL LAW), the special law prevails over the general law. In this case, the Penal Code is a general penal law and the Public Order Law is a special one, dealing, among other things, with the authorization to give public performances or entertainments. The Public Order Law prescribes its own punishments for conducting such activities without a license. Thus, a person accused of such an act would be punished under the relevant articles of the Public Order Law rather than under Article 519 of the Penal Code.

Article 520 Wrongful Performance of Acts Intended for Reproduction by the Cinematograph

1. Whoever
(a) causes to be performed
(b) in a public place or a place open or exposed to the public
(c) acts intended for reproduction by the cinematograph,
(d) without having given prior notice thereof to the authorities,
shall be punished with a fine from Sh. So. 1,000 to 5,000.
2. Whoever
(a) manufactures, introduces into the territory of the State, or exports, or in any manner deals in cinematographic films,
(b) without having given prior notice thereof to the authorities,
shall be liable to the same punishment.
3. Where
(a) any of the acts referred to in the foregoing provisions
(b) is committed in defiance of the prohibition of the authorities,
the punishment shall be imprisonment up to one month.

Explanation:

Article 50 of the Public Order Law prohibits anyone from shooting film for a motion picture in a public place without having given notice to the District Commissioner territorially competent. Article 520 of the Penal Code also prohibits persons from performing acts in a public place for the purpose of recording such acts on motion-picture film without prior notice to the authorities. To the extent that Article 50 and Article 520 cover the same offense, the provision of the Public Order Law prevails over the Penal Code article.

In addition, Paragraph 2 of Article 520 provides that the manufacture, introduction, and export of motion-picture films are prohibited without prior notice to the authorities. This paragraph involves a matter not treated by Article 50 of the Public Order Law, and therefore has force and effect.

Paragraph 3 imposes a more serious punishment where the accused has violated Paragraph 2 in defiance of a prohibition by the authorities.

Article 521 Wrongful Theatrical or Cinematographic Performances

1. Whoever
(a) recites in public dramas or other works, or
(b) gives in public theatrical representations of any kind,
(c) without first having given information thereof to the authorities,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 3,000.
2. Whoever
(a) causes to be shown in public
(b) cinematographic films
(c) which have not been previously submitted for censorship to the authorities
shall be liable to the same punishment.
3. Where the act is committed in defiance of the prohibition of the authorities,
the punishments of fine and imprisonment shall be imposed together.
4. The act shall be deemed to be committed in public where any of the circumstances referred to in letters b and c of Paragraph 4 of Article 209 exists.

Explanation:

Paragraph 1 of Article 521 concerns the performance of public dramas or other shows. This same matter is covered by Articles 44 and 45 of the Public Order Law, and thus is regulated by that law. Paragraph 2, dealing with the showing of films without submitting them for censorship, is also covered by Articles 44 and 45, and the penalties are provided by Article 46. Therefore, the Public Order Law governs in this case as well.

Article 522 Wrongful Exercise of Itinerant Callings

1. Whoever
(a) carries on an itinerant calling
(b) without a license from the authorities or
(c) without observing the other regulations prescribed by the law.
shall be punished with imprisonment up to two months or with a fine from Sh. So. 50 to 1,000.
2. A parent or guardian who
(a) employs in itinerant callings
(b) a young person under the age of fourteen years

(c) without having obtained a license or observed the other provisions of the law

shall be liable to the same punishment.

3. The punishment shall be imprisonment from one to four months or a fine from Sh. So. 100 to 2,000 and police surveillance may be ordered:

(a) where the act is committed in defiance of the prohibition of the authorities;

(b) where the person who carries on, without authorization, the itinerant calling has previously been sentenced to a detentive punishment for a crime which is not committed with culpa.

Explanation:

An "itinerant calling" is a business which involves traveling from one area to another; a traveling salesman, for example, follows an itinerant calling. In Italy, this type of business is licensed and regulated. Article 669 of the Italian Penal Code, the counterpart of Article 522 of the Somali Penal Code, thus provides for the carrying on of such itinerant callings without a license from the authorities or in violation of the regulations provided by law. In Somalia, traveling salesmen who journey through regions or districts on a regular basis, selling goods to individual customers, are rare. Although it is difficult to state with certainty, laws and regulations licensing traveling salesmen do not seem to exist in Somalia. The Public Order Law contains no provisions regulating such activities. Therefore, Article 522 has no application in Somalia until such laws regulating itinerant callings come into effect.

Article 523 Begging

1. Whoever,

(a) not being a person in a position of grave need,

(b) begs in a public place or a place open to the public

shall be punished with imprisonment up to three months.

2. The punishment shall be imprisonment from one to six months where

(a) the act is committed in a repugnant or vexatious manner, or

(b) by a pretended deformity or disease, or

(c) by the use of fraudulent means in order to excite the compassion of others.

Explanation:

Begging is illegal in Somalia if performed by a person not in great need or in a fraudulent way. There is no standard for judging whether a person is in grave need or not. It is up to the police first and then the judge to determine whether such need exists. Generally, people who are diseased

or ill, or who have inadequate means of support, or who are extremely old and feeble will come within the meaning of "in grave need." If a person is not "in grave need," his begging is illegal only if it is committed in a public place (such as a street) or a place open to the public (such as a restaurant).

Paragraph 2 prohibits begging by fraudulent means or in a bothersome or annoying way. It is illegal for a person to pretend that he has a deformity or disease in order to obtain alms, and it is also illegal for the beggar to use fraudulent means to induce the person to give him money.

Example:

X is a young man living in Mogadishu. He meets a foreigner in the street and tells him that he used to be employed by a construction company in Chismayo but has since lost his job, that he has no family in Mogadishu, that his mother and brother, both from Kenya, are in Chismayo and his mother is very sick, and that he needs just enough money to reach Chismayo by bus, where he will get a job. The foreigner gives X five shillings. Three weeks later, the foreigner sees X in the street asking another man for money for the same reason. Annoyed at having been fooled, the foreigner reports the matter to the police. After an investigation, X is charged with violating Article 523(2).

X is guilty as charged. He is not a person in grave need. He has committed the act of begging by the use of fraudulent means. He has pretended to have lost his job, and he has lied when he stated he had a sick mother and brother in Chismayo. At the time he took the money from the foreigner, he had no intention of going down to Chismayo at all. He told these stories in order to induce the foreigner to give him money. The judge sentences X to two months in prison.

PART II CONTRAVENTIONS CONCERNING PUBLIC SAFETY

Article 524 Failure to Exercise Custody and Detentive Control of Animals

1. Whoever

(a) leaves at large, or

(b) does not guard with due precautions,

(c) dangerous animals in his possession, or

(d) entrusts their care to an inexperienced person,

shall be punished with imprisonment up to three months or with a fine up to Sh. So. 3,000.

2. The same punishment shall be imposed on anyone who:

(a) in open places, leaves unattended animals which are used for drawing, carrying, or racing or in any manner leaves them unguarded, even though they are not let loose, or tethers them or drives them in such a manner as to endanger public safety, or entrusts them to an inexperienced person;

(b) excites or frightens animals in such a manner as to imperil the safety of individuals.

Explanation:

This article applies to two types of animals—dangerous animals, covered by Paragraph 1, and animals used for drawing, carrying, or racing, covered by Paragraph 2.

Paragraph 1 does not define what a dangerous animal is, and therefore it is up to the judge to make such a determination in each individual case. Generally, a dangerous animal would be a wild animal—such as a cheetah or a lion—which has been captured and is being kept for some reason. The prosecution must show that the accused either left such an animal free to roam about or did not guard him carefully or entrusted the care of the animal to a person who was not experienced enough to handle it.

Paragraph 2 applies the same punishment as the first paragraph to offenses committed with regard to animals used for drawing, carrying, or racing. This would include camels, oxen, cattle, donkeys, and horses. It would not include goats and sheep. The paragraph prohibits persons from leaving such animals unattended in open places, or leaves them unguarded, or leaves them with a person who is inexperienced, or tethers or drives them in such a manner as to endanger public safety. These acts would generally be committed by a person who possesses or owns such animals. Subparagraph b of Paragraph 2 provides that it is a contravention under this article to excite or frighten an animal so as to imperil the safety of individuals.

Examples:

1. Z is a foreigner residing in Somalia. He has a pet lion of about eleven months which he lets roam around the yard of his house. One day, B, a small boy, drives a herd of goats near Z's house. The lion hears and smells the goats, jumps the wall, and chases the boy and the goats around the street. Z returns at this time, calls the lion, and goes back into his compound. B tells his father, Q, what happened, and Q complains to the police that a lion shouldn't be allowed to roam the streets and terrify boys and animals. The police investigate, and Z is arrested and charged with violating Article 524(1).

Z is guilty as charged. He possessed a lion, which is a dangerous animal. He did not guard it carefully or tie it up, so that it escaped from Z's compound into a public street. The judge sentences Z to a fine of 500 shillings.

2. X is a nomad living outside Mogadishu. He decides to drive his herd of about three hundred camels in all to the slaughterhouse near the ocean. To get there, he must drive the camels through Mogadishu. X is in a hurry to get the camels to the slaughterhouse, so he drives them at a run through the street in front of an elementary school. There are many small children standing around waiting to go to class. They all scatter and run as the herd of camels runs through the street. Y, the father of one of the boys, sees what has happened and reports the matter to the police. They investigate, and X is arrested and charged with violating Article 524(2a).

X is guilty as charged. The animals concerned are camels, which come within the definition of Subparagraph a of Paragraph 2, because camels are usually used for carrying burdens or drawing water. X has driven them in such a manner as to endanger public safety. By running them through a crowded street, X endangered the health of the boys waiting to go to class. The judge sentences X to a fine of 100 shillings.

Article 525 Failure to Place or Removal of Signals or Means of Protection

1. Whoever

(a) omits to place the signals or measures of protection prescribed by the law or the authorities

(b) to avoid danger to persons in a place of public transit, or

(c) removes the aforesaid signals or protections, or

(d) extinguishes lamps placed as signals,

shall be punished with imprisonment up to three months or with a fine up to Sh. So. 5,000.

2. Where

(a) the act does not constitute a more serious offense,

(b) the same punishment shall be imposed

(c) on any person who removes devices or signals other than those specified in the foregoing provision and

(d) intended for a public service or a service of public necessity, or

(e) extinguishes lamps used for public lighting.

Explanation:

Paragraph 1 of this article applies to signals used in places of public transit to avoid danger to persons. The prosecution must show that the

accused failed to place such signals, removed them, or extinguished them. Normally, such signals would be those connected with a railroad, warning cars that a train is coming. However, traffic lights and other road signs used to warn and protect the public also come within the terms of this paragraph.

Paragraph 2 applies to the removal or destruction of devices other than those covered by the first paragraph, which are intended for a public service or a service of public necessity. Such signals would be signs indicating pharmacies or hospitals.

Article 526 Dangerous Throwing of Articles

Whoever,
(a) in a place of public transit, or
(b) in a private place used jointly with or by others,
(c) throws or pours matter capable of injuring, soiling, or molesting persons, or
(d) in cases not permitted by law,
(e) causes the emission of gas, steam, or smoke
(f) likely to cause the above results,
shall be punished with imprisonment up to one month or with a fine up to Sh. So. 2,000.

Explanation:

The contravention contained in this article can be committed only in a place of public transit, such as the street, or in a private place used jointly with others, such as a compound or yard shared by several houses. The article prohibits persons from throwing or pouring matter which could cause injury to another person, or soil or bother another. In addition, the article applies to acts which cause the escape of gas, steam, or smoke, where such activities are not allowed by law.

Example:

X is a resident of a two-story building. X's building is in the same compound as Y's. Y frequently sits outside in the yard playing *shah* with his friends. One day, X is in his kitchen and finds a pail full of dirty water. He throws the water out the window, and it lands on Y and his friends, getting them wet and dirty. Y yells at X, but X, instead of apologizing, replies with an insult and goes away. Y reports the matter to the police. X is arrested and charged with violating Article 526.

X is guilty as charged. He has committed the act in a private place used jointly with others—his yard. He has poured or thrown dirty water on Y and his friends, thus soiling their clothing. The judge sentences X to a fine of 75 shillings.

Article 527 Dangerous Placing of Articles

Whoever,
(a) without due precautions,
(b) places or suspends articles which,
(c) by falling in a place of public transit or a private place used jointly with or by others,
(d) may injure, soil, or molest persons,
shall be punished with a fine up to Sh. So. 1,000.

Explanation:

Article 527 is similar to the preceding one, but it applies to putting things where they may fall and injure someone. The thing does not actually have to fall, but it must be where it could fall and hurt someone. The act must be committed in a place such as a courtyard or a public street. The prosecution must show that the accused did not take the precautions he should have.

Example:

Z is a foreigner living in Mogadishu. She lives with her husband on the top floor of a two-story house overlooking a public street. Z is fond of growing flowers, and has two large clay pots filled with earth and flowers. She places them outside the window so that they can get more light and water. One day, while many people are passing in the street below, a strong wind blows a pot off the windowsill, and it smashes on the pavement, just missing Y. Y complains to the police, who investigate and charge Z with violating Article 527.

Z is guilty as charged. She has placed an object over a place of public transit—the street. By falling, the flowerpot could have injured people walking beneath Z's window. Z did not take due care in placing the pot on the windowsill, because she didn't tie or try to fasten it in anyway to the building. The judge sentences Z to a fine of 100 shillings.

Article 528 Collapse of Buildings or Other Constructions

1. Whoever
(a) has taken part in the planning or work relating to a building or other construction
(b) which subsequently collapses
(c) through his fault
shall be punished with a fine of not less than Sh. So. 1,000.

2. Where the act results in danger to individuals, the punishment shall be imprisonment up to six months or a fine of not less than Sh. So. 3,000.

Explanation:

This article concerns faulty planning or construction of buildings or other structures. The prosecution must prove that the accused was responsible for the mistake which caused the building or structure to collapse. The accused must have either worked on or planned the building. The penalty, under Paragraph 1, is a fine of at least 1,000 shillings. According to Article 99(1), the maximum fine for a contravention is 10,000 shillings, which is therefore also the maximum for violations of this article.

Paragraph 2 increases the penalty if the act of the accused resulted in a danger to human beings.

Example:

X is the mason in charge of building a two-story house in Mogadishu. He directs the other workmen to put in the foundation and start the columns. X fails to test the ground on the site, which is soft, and when the house is almost completed, the weight of the building causes the soft ground to give way. The house thus tilts at an angle and finally collapses. No one is injured. X is charged with violating Article 528.

X is guilty as charged. He has taken part in the construction and planning of the building, as the mason in charge. He failed to notice that the soil was soft and weak, and thus is at fault for building the house on this spot and causing it to collapse. There was no danger to human life, and Paragraph 2 does not apply. X is sentenced to a fine of 1,000 shillings.

Article 529 Failure to Perform Work on Buildings or Constructions Which Threaten to Collapse

1. The owner of a building or construction which threatens to collapse, or the person who is obliged on the former's behalf to preserve or watch over the building or construction, who fails to provide the work necessary to abate the danger, shall be punished, where the act does not constitute a more serious offense, with a fine of not less than Sh. So. 1,000.

2. Whoever,

(a) being under the same obligation,

(b) fails to abate a danger caused by a collapsed building or construction,

is liable to the same punishment.

3. If

(a) any person

(b) is endangered in consequence of the acts provided for in the preceding provisions,

the punishment shall be imprisonment up to six months or a fine of not less than Sh. So. 3,000.

Explanation:

This article applies to only two categories of persons: (1) owners of buildings or other constructions; and (2) persons responsible for reporting to the owners and watching over the buildings and constructions. If the accused is not in one of these two categories, then the article does not apply to his action. The article punishes those persons who do not correct and lessen the danger of collapse by the building or construction. The penalty is a fine of not less than 1,000 or more than 10,000 shillings.

Paragraph 2 applies to the danger existing when the building or construction has already collapsed. Such danger may arise from partially standing walls or columns or piles of stones. The penalty is the same if the owner or person responsible to the owner does not correct or lessen the danger.

Paragraph 3 increases the penalty where any person is endangered by the situation described in Paragraphs 1 and 2.

Example:

Assume the same facts as in the example under the preceding article. Y is the owner of the house being built. He passes by one day, and sees that the mason has made a mistake, and that the building is leaning at a terrible angle and will fall very soon. Y decides to do nothing, reasoning that the building has already cost him too much money. When the building collapses, Y is also arrested and charged with violating Article 529.

Y is guilty as charged. He has failed to make the necessary repairs or to take the necessary action to prevent the building from collapsing, or to tear it down so that there would be no danger. He is the owner of the building, and thus within the terms of Article 529. The judge sentences Y to a fine of 2,500 shillings.

Article 530 Unlawful Manufacture of and Trade in Explosive Materials

Whoever,

(a) without a license from the authorities or

(b) without the prescribed precautions,

(c) manufactures, or introduces into the State, or holds in stock, or sells or transports

(d) explosive materials or substances intended for the composition or manufacture of the same,

shall be punished with imprisonment up to six months and with a fine up to Sh. So. 2,000.

Explanation:

The unlawful manufacture and trade in explosive materials is governed by Articles 35 and 36 of the Public Order Law (Law No. 21 of 26 August 1963). Therefore, according to Article 13 of the Penal Code, the provisions of the Public Order Law prevail over the provisions of the Penal Code and Article 530 does not apply.

Article 531 Failure to Declare Explosive Materials

1. Whoever

(a) omits to declare to the authorities

(b) that he holds explosive materials of any description, or

(c) inflammable materials which are dangerous owing to their quality or quantity,

shall be punished with imprisonment up to four months or with a fine up to Sh. So. 3,000.

2. Whoever,

(a) having knowledge that in a place inhabited by him

(b) there are explosive materials,

(c) fails to declare the same to the authorities,

shall be liable to a fine up to Sh. So. 2,000.

3. In the event of infringement of an order lawfully given by the authorities to hand over, within the prescribed period, the explosive materials, the punishment shall be imprisonment from one month to one year or a fine from Sh. So. 300 to 5,000.

Explanation:

The Public Order Law applies only to provisions with regard to trading in or importing or exporting explosive materials. It contains no provisions with regard to the reporting of possession of explosive materials or inflammable substances. Therefore, Article 531 has application. Paragraph 1 of that article requires that all persons report possession of explosive or inflammable materials to the authorities. The inflammable materials covered by this article are only those which by reason of their quantity or quality are dangerous. Thus, large quantities of gasoline would be a dangerous inflammable substance, but a small bottle of kerosene would not be.

Paragraph 2 applies to those persons who live in places where explosive materials are stored. Note that this paragraph does not apply to inflammable materials and does not apply to the person who possesses explosives. He is covered by Paragraph 1. It applies instead to the person who lives in a house where another stores or possesses such explosives and who fails to inform the authorities that explosives are stored there.

Paragraph 3 prescribes a more serious penalty where the accused has acted after an order by the competent authorities to hand over the explosives.

Example:

X is a Somali citizen residing in Chismayo. A foreign construction company is concluding its operations in the city and selling its equipment. X buys three large wooden boxes of tools and motor spare parts. By mistake, one of the crates he receives is full of dynamite. X decides to keep the dynamite and sell it privately for a large profit. A neighbor of X's informs the police that X is keeping dynamite in his house. The police investigate, and arrest X, charging him with violating Article 531 of the Code.

X is guilty as charged. He has failed to declare to the authorities that he possesses explosive materials. If he had sold the dynamite and then been arrested, his act would have come within Article 530, not Article 531(1). The judge sentences X to the full fine of 3,000 shillings.

Article 532 Aggravating Circumstances

The punishment for the contraventions referred to in the two preceding articles shall be increased where:

(a) the act is committed by any of the persons to whom the law prohibits the grant of a license, or

(b) where the same has been refused or withdrawn.

Explanation:

This article provides that the punishment under Articles 530 and 531 shall be increased if the relevant law prohibits a person from receiving a license to manufacture or trade in explosive materials, or if the accused has been refused such a license or the license has been withdrawn. The increased punishment applies if the accused has committed a violation under Article 530 or 531.

Article 35 of the Public Order Law determines who may be issued a license under that law for dealing in explosive materials. Generally, no one may carry on such activities without authorization from the Minister

of Interior. Therefore, if a person is refused such authorization or the license is revoked, and he then sells, deals in, imports, exports, or possesses explosive materials, he is punishable under the article be violated (either Article 530 or Article 531) and subject to the increased penalty under Article 532.

Article 118 provides that the increase in punishment shall be up to one-third of the punishment imposed for the offense.

Article 533 Unlawful Opening of Places of Public Show or Entertainment

Whoever
(a) opens or keeps open
(b) places of public show, entertainment, or resort,
(c) without having observed the regulations of the authorities for the protection of public safety,
shall be punished with imprisonment up to six months and with a fine of not less than Sh. So. 1,000.

Explanation:

This article, unlike Article 519, does not apply to presenting public shows or entertainments without the proper licenses. The article assumes that the place is properly licensed but is being run contrary to the regulations concerning the protection of public safety. Such regulations will generally be issued by municipal authorities and will cover health standards, sanitation, fire prevention, and other such matters. Article 533 prescribes the punishment for a person who opens or keeps open places of public show, entertainment, or resort (such as night clubs or hotels) without observing such regulations. Note that the penalty is both fine and imprisonment.

Example:

X is the owner of a night club. The municipal regulations provide that every night club must have at least two exits on opposite sides of the building for escape by members of the public in the event of fire. X's night club has only one narrow door, and this is observed by the municipal police, who report the matter. X is charged with violating Article 533.

X is guilty as charged. He is running a place of public show or entertainment—a night club. He has not observed the municipal regulations with regard to fire exits. The judge sentences X to one month in prison and a fine of 1,000 shillings.

PART III CONTRAVENTIONS CONCERNING THE PREVENTION OF CERTAIN CLASSES OF OFFENSES

Article 534 Unauthorized Entry into Places Where Admittance Is Forbidden in the Military Interest of the State

Whoever
(a) enters places,
(b) access to which is prohibited in the military interest of the State,
shall be punished, where the act does not constitute a more serious offense, with imprisonment from three months to one year, or with a fine from Sh. So. 3,000.

Explanation:

Article 534 applies simply to entry into areas into which entry is prohibited in the military interests of the state. Such areas will normally be army bases and military training areas. The prosecution has only to show that the accused entered the area. No motive has to be proven. If the facts show that the accused entered for purposes of espionage, is in possession of tools or equipment used for espionage, and has entered the area secretly or by deception, then the act is a more serious offense and is punishable under Article 203 instead (see explanation under that article).

Example:

X is a Somali citizen living in Mogadishu. He frequently drives north of the city, passing an area described as a military zone, marked by large signs stating that entry is prohibited. One day, X becomes curious about what is in this zone. He drives his Land Rover into the area and is immediately caught and turned over to civilian authorities for prosecution. X is charged with violating Article 534.

X is guilty as charged. He has entered an area to which entry is prohibited in the military interests of the state. That is all that has to be proven. X had no motive of espionage, and did not enter secretly with the intention of spying. He was just curious. The judge sentences him to a fine of 3,000 shillings.

Article 535 Holding of Illegal Measures or Weights

1. Whoever,
(a) in the exercise of commercial activities, or
(b) in an establishment for sale open to the public,

(c) holds measures or weights different from those prescribed by law, or

(d) employs measures or weights without observing the directions of the law,

shall be punished with a fine from Sh. So. 100 to 2,000.

2. Where

(a) the offender

(b) has previously been convicted in respect of crimes against property, public faith, or public economy, industry, or commerce, or other crimes of the same nature,

he may be placed under police surveillance.

Explanation:

Generally, the law requires persons engaged in business to use verified and marked weights and measures, to ensure that the public will not be cheated. Article 535 provides that the accused must commit the act in the exercise of commercial activities or in running a place for sale open to the public. This will include all types of stores, wholesale places, garages, and markets. The only other element the prosecution must prove is that in the exercise of this business the accused used weights or measures without observing the directions of the law (using unmarked weights, for example).

Paragraph 2 gives the judge discretion to order police surveillance where the accused has previously been convicted of crimes against property (Articles 480 to 504); against public faith (Articles 348 to 386); or against the national economy, industry, or commerce (Articles 387 to 397).

Note that, under Article 183(2b) (see explanation), the judge must order the confiscation of the weights and measures involved.

A violation of Article 535 differs from a violation of Article 364, Use or Possession of Measures or Weights with False Stamp, in that, to prove the latter offense, the prosecution must show that the weights or measures were counterfeited or altered, which means that originally they were true and legal weights and measures. The offense under Article 535 is not for the use of counterfeit or altered weights or measures. The offense is merely possessing weights or measures which are different from those allowed by law.

Article 536 Refusal of Coins Which Are Legal Tender

Whoever

(a) refuses to receive,

(b) for their value,

(c) coins which are legal tender in the State,

shall be punished with a fine up to Sh. So. 300.

Explanation:

The state is responsible for manufacturing and issuing money, which is then the legally accepted money in the country. Each coin or bill has a certain value. Article 536 makes it a contravention to refuse to accept the legal money of the nation for the amount it is worth. Although the word "coin" is used, this includes all money—both coins and bills.

Example:

X is a Somali from Aden who has set up a store in Hargeisa. X is used to being paid only in dollars, pounds, or francs, or currencies based on them. Once in Somalia, he refuses to accept Somali money in payment, and insists on being paid in dollars, pounds, or francs. People get annoyed with this demand, and report X. X is charged under Article 536.

He is guilty as charged. The money offered him in payment for his goods was lawful Somali currency. He has refused to accept this money and has instead insisted upon payment in dollars, pounds, or francs. The judge sentences X to the maximum fine of 300 shillings.

Article 537 Failure to Deliver Up Coins Recognized as Counterfeit

Whoever,

(a) having received as genuine

(b) counterfeit or altered coins

(c) to an aggregate value of not less than Sh. So. 20,

(d) does not deliver them up to the authorities within three days from the date on which he becomes aware of the falsity or alteration, together with a statement of the source if he knows the same,

shall be punished with a fine up to Sh. So. 2,000.

Explanation:

The crime of counterfeiting is very harmful to the economy of the nation, and it is important that the offenders be caught quickly and the false money seized. Therefore, Article 537 makes it a contravention not to report to the authorities the receipt of counterfeit or altered money worth more than 20 shillings and to turn the false money over to such authorities. The article gives a person three days from the time he learns that he has received counterfeit or altered money to act. The punishment for violating the article is only a fine.

Example:

X is a businessman. He receives 350 shillings in payment for some rice he has sold to Y, another Somali citizen. One week later, he discovers that the money is counterfeit. Instead of reporting it, he keeps the money for another five days, trying to find someone he can give it to in return for either goods or real money. Finally, unable to pass the counterfeit money himself, X reports the matter to the police. By this time, Y has left the country. The police investigate, and discover that X did not report the matter within three days after discovering that the money was counterfeit. X is charged with violating Article 537.

X is guilty as charged. He has received counterfeit money valued at 350 shillings, thinking it was genuine money. He did not turn the money over to the police or report that Y had given him counterfeit money within three days of discovering that it was counterfeit. Therefore, the judge sentences him to a fine of 100 shillings.

Article 538 Unauthorized Publication of Documents or Information Relating to Criminal Proceedings

Whoever,
(a) where prohibited by law,
(b) publishes, wholly or in part,
(c) even by way of a summary,
(d) deeds or documents forming part of a criminal proceeding, or
(e) names of judges with a statement of the individual votes attributed to them in the deliberations held in a criminal case,
shall be punished with a fine up to Sh. So. 1,000.

Explanation:

This article is designed to protect the fairness and secrecy of criminal proceedings. It prohibits the publication of documents relating to a criminal trial, such as confessions, statements by the accused or witnesses, and any other documentary evidence where such publication is prohibited by law. In addition, where the law prohibits it, publication of the names of judges, together with a statement of how they voted in a given criminal case, is also punished under this article. According to Article 86 of the Criminal Procedure Code, no mention may be made of the way in which any individual vote was cast in a criminal proceeding. If such mention is made in the decision of the court itself, the decision is null and void. Therefore, the provisions of the Criminal Procedure Code prohibit the publication of the way in which an individual judge has voted, and a person making such publication comes within Article 538 and is subject to a fine up to 1,000 shillings.

Article 539 Failure to Keep Arms in Custody

A person shall be punished with a fine up to Sh. So. 1,000 even though he has a license to carry arms, where he:
(a) delivers arms to, or allows them to be carried by, a person below fourteen years of age, or anyone incapable or inexperienced in the handling of arms;
(b) neglects to adopt, in keeping arms, precautions sufficient to prevent any of the persons mentioned in the preceding letter from easily acquiring possession of them;
(c) carries a loaded gun in a place where there is an assembly or throng of people.

Explanation:

Article 539 applies to persons who have a license to carry and possess firearms as well as to those who do not. Articles 21 through 33 of the Public Order Law pertain to authorizations for arms and other weapons.

Article 539 can be violated in one of three ways:

(1) the accused has given or permitted children under fourteen or persons incapable (insane) or inexperienced (women) to carry arms;
(2) the accused has failed to take the necessary precautions to prevent children and incapable or inexperienced people from getting possession of arms;
(3) the accused has carried a loaded gun in any place where there is an assembly or throng of people, such as an airport, marketplace, public street, theater, or movie house.

The article applies only to any of the three situations mentioned above. If a child under fourteen years of age injures or kills someone as a result of the accused's negligence in permitting him to get a rifle, that will be another offense under a different article of the Code.

Example:

X is a policeman. He comes home from the station one night and leaves his rifle in the dining room. X's ten-year-old son, B, sees the rifle and picks it up. He carries it outside and starts walking down the main street, aiming the rifle at trees, goats, people, and the moon. One man stops B, takes the rifle away from him, and brings it back to X's house. Many people have seen or heard of B's action, and the next day, after an investigation, X is charged with violating Article 539.

X is guilty as charged. The article applies to him even though he is authorized, as a member of the police force, to possess a rifle. He has negligently let his young son get his rifle by leaving it around the house where B could pick it up, instead of storing it in a safe place. B is a child under fourteen years of age and thus within the terms of Paragraph a. The judge sentences X to a fine of 150 shillings.

Article 540 Dangerous Ignitions and Explosions

1. Whoever,
(a) without a license from the authorities,
(b) in an inhabited place or in proximity thereto,
(c) or along a public road or in the direction of the same,
(d) discharges firearms, ignites fireworks, throws squibs, or sends up air balloons with flames, or in general makes dangerous ignitions or explosions,
shall be punished with a fine up to Sh. So. 1,000.
2. Where
(a) the act
(b) is committed in a place where people are assembled,
the punishment shall be imprisonment up to one month.

Explanation:

Article 540 applies to all types of dangerous explosions or ignitions. The key element is to prove that the explosion or ignition, if it is not defined by the article, is dangerous. The article attempts to list some of the types of dangerous explosions or ignitions, such as fireworks, but the list is not exclusive. The article applies to all such dangerous acts. The act of lighting or exploding must take place either in or near an inhabited place, such as in a house or in a public road or alongside it.

The article applies to persons who light or explode dangerous items without a license. Generally, the use of fireworks or explosive substances must be licensed by the District Commissioner, according to Article 39 of the Public Order Law.

Paragraph 2 simply prescribes a punishment of imprisonment instead of a fine where the act is committed in a place where people are assembled, such as a meeting hall, airport, or movie theater.

Example:

X and Y are two boys living in Hargeisa. They find a large crate, which has fallen off a truck, on a road outside of town. Upon opening the crate, they discover it filled with rockets, flares, and firecrackers. X and Y light

many of the firecrackers, causing loud explosions, fire the flares into the sky, and shoot off the rockets. The noise and light attract attention in the town, and the police are sent out to invesigate. They confiscate the remaining fireworks, and bring X and Y to the station. After a brief investigation, the two boys are charged with violating Article 540 of the Penal Code.

Both are guilty as charged. Neither of them had any license from the authorities. They set off fireworks, rockets, and flares on or next to a public road. Fireworks are defined as dangerous by Article 540, and rockets and flares are the type of thing which should be included in the article because their ignition is also dangerous. The judge sentences X and Y to a fine of 100 shillings each.

Article 541 Arms

For the purposes of penal law "arms" means:
(a) firearms and any other arms which are intended to cause injury to persons;
(b) any instruments of attack, which are forbidden to be carried or which can be carried only for justifiable reasons;
(c) bombs, any machine or case containing explosive materials, and asphyxiating or blinding gas.

Explanation:

Article 541 is merely a definition of arms for purposes of the penal law. The definition is slightly different from the one contained in Article 21 of the Public Order Law, which applies only to the provisions of the Public Order Law.

"Firearms" are rifles or any other weapons which fire a projectile in shell form. "Any other arms" would include any other type of gun, such as a shotgun or a hunting rifle.

"Any instruments of attack" includes spears, knives, swords, sticks, and bows and arrows. Note that the definition applies only if such weapons of attack are forbidden to be carried or may be carried solely for justifiable reasons. Article 29 of the Public Order Law gives the District Commissioner the power to issue licenses for the carrying of pointed or edged weapons in towns or villages. Thus, instruments of attack will include knives, spears, swords, and arrows. It will not include sticks.

"Bombs, any machine or case containing explosive materials, and asphyxiating or blinding gas" includes hand grenades, mortar shells, gas bombs, and rockets. Note that the contents of the bomb, such as explosive gunpowder, by itself, outside of the case or bomb, is not within the

definition. Ammunition can be considered to be included in the definition, because it is a case containing explosive material.

Article 542 Unjustified Possession of Altered Keys or Pick-Locks

Whoever,

(a) having been convicted for crimes actuated by motives of wrongful gain, or

(b) for contraventions relating to the prevention of crimes against property, or

(c) of begging, or

(d) having been admonished or subjected to a measure of personal security,

(e) is apprehended in possession of altered or false keys, or genuine keys or instruments suitable for opening or forcing locks,

(f) without being able to prove the purpose for which he has them,

shall be punished with imprisonment from six months to two years.

Explanation:

Possession of altered keys, or a large number of genuine keys, or instruments which can be used for forcing or picking locks, is an indication that the person is a thief who uses these keys to enter private homes, cars, or stores to steal goods. Article 542 punishes a person for the mere possession of such instruments, regardless of whether he has committed a theft or not. The prosecution does not have to prove that the accused used such keys or instruments to commit a theft. It is enough to prove that the accused was in possession of such keys or instruments. The accused must be unable to show that he has a legitimate purpose for possessing the keys or instruments. For example, if the accused is a locksmith, whose business it is to make locks for doors, he would have a justifiable reason for possessing tools which force doors and a large number of keys.

In addition, the prosecution must show that the accused is a certain kind of person. Possession of such instruments or keys by a person who has been convicted of a crime for wrongful gain, such as THEFT or ROBBERY, for a contravention relating to crimes against property, such as this very article, or for begging, or who has been subjected to personal security measures, such as police surveillance, is punishable under this article. Possession by a person who has not been convicted of any of the above offenses is not a violation of Article 542. Thus, if a suspicious-looking person is arrested for carrying a large number of altered keys, he is not subject to Article 542 unless it can be shown that he was formerly convicted of a crime specified in the article. The punishment is imprisonment from six months to two years.

Example:

X is an unemployed person living in Hargeisa. He has formerly been convicted of theft and has served a period in prison. He has a large number of keys of all types in his pocket, as well as a narrow iron bar, a screwdriver, and a thin wire. X is surprised by a police patrol while he is walking near the yard of a private house at two in the morning. He is brought to the station for questioning, searched, and found to possess the keys and instruments. X denies that he has broken into any house, and in fact no theft is reported. The police bring X before the judge the next morning, charging him with violating Article 542.

X is guilty as charged. He has no purpose in possessing all the keys and instruments other than to use them for breaking or picking locks. He was found in possession of these keys and instruments. He had formerly been convicted for a crime motivated by wrongful gain—that is, THEFT. The judge sentences X to imprisonment for six months.

Note that X has not committed the acts necessary to prove attempted theft. He had not yet selected a house to break into, and had made no effort to force a door or window or pick a lock.

Article 543 Unjustified Possession of Valuables

Whoever,

(a) being in any of the personal conditions referred to in the preceding article,

(b) is apprehended in possession of money or articles of value, or other articles not in keeping with his status,

(c) and without being able to show legitimate possession thereof,

shall be punished with imprisonment from three months to one year.

Explanation:

This article applies to persons who have been convicted of the offenses mentioned in Article 542 (crimes motivated by wrongful gain, contraventions relating to the prevention of crimes against property, begging) or subject to personal security measures. The prosecution must show that the person has been caught with money, valuable articles, or articles which a person of that status would not normally have, in his possession. In addition, it must be shown that the accused had no legitimate justification for such possession, such as having bought it. The punishment is imprisonment from three months to one year.

Article 544 Unjustified Possession of Animals

Whoever

(a) is found in possession of

(b) camels, cattle, or mules
(c) which may be suspected to have been stolen,
(d) and is not able to justify the legitimacy of the possession thereof,
shall be punished with imprisonment up to one year or with a fine up to Sh. So. 1,000.

Explanation:

This article is the counterpart of the preceding one. It applies to persons found in possession of camels, cattle (which includes all domesticated animals, such as goats, sheep, and cows) and mules or donkeys. There is no requirement that the accused must be a person who has formerly been convicted of any of the offenses mentioned in Article 542. The prosecution must show that the camels, cattle, or donkeys are suspected to have been stolen, and that the accused cannot justify the legitimacy of his possession. The accused is thus convicted for the unjustified possession of such animals, not for the act of committing the theft. If he is convicted of theft, he cannot be convicted under this article.

Example:

A District Commissioner is informed that a party from one tribe has crossed the border and raided a village about twenty kilometers away, killing one person and taking about one hundred camels. A police patrol is sent out to investigate. They cannot find the persons who committed the crime, but the people in the village say that the men moved toward the interior of the Republic instead of crossing the border again. The police try to follow the tracks of the stolen camels. About fifteen kilometers east of the village, they come across three men, X, Y, and Z, guarding a herd of one hundred camels. They ask the men about the brands on the various camels, the name of each animal, the age and sex of the camels, and they ask where the men are from, and how they got the camels. The men say that the camels belong to their tribe, but they cannot identify the brand on some of the camels and seem not to know how many males and females there are in the herd. The police become suspicious and arrest X, Y, and Z and seize the camels. The villagers are able to identify all one hundred as those taken from them, but cannot identify X, Y, and Z as the men who took them. The three defendants refuse to say where they got the camels, other than that they belong to their tribe. They are charged with violating Article 544.

All three are guilty as charged. They were found in possession of camels. The police had reason to suspect that the camels were stolen. There had been a raid nearby, the looters had been seen to move in the

direction of the place where the defendants were found, the number of camels stolen and the number of camels in their possession were the same, and the villagers identified the camels as the ones taken. The accused cannot justify their possession. The judge sentences them to imprisonment for six months.

Note that Article 544 was used in this case because no charge of theft could have been proven. The villagers could not identify the three accused men as the looters, and the men were guilty only of possession of stolen property. Yet the defendants are not guilty of RECEIVING, under Article 504, because the prosecutor cannot show that they knew the camels were stolen property when they received them. Indeed, there is no evidence to show that they bought the camels from anyone. Therefore, the charge under Article 544 is the best one possible under the circumstances.

Article 545 Failure to Declare Articles Which Are Stolen Property

Whoever,
(a) having received
(b) money or purchased or in any manner
(c) come into possession of articles which are stolen property,
(d) without being aware of the source thereof,
(e) fails,
(f) after obtaining knowledge of the same,
(g) to declare them immediately to the authorities,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 5,000.

Explanation:

This article applies only to the failure to declare possession of stolen property to the authorities. The prosecution must show that the accused came into possession of such property at a time when he did not know the property was stolen, but that subsequently, when he discovered that the property was stolen, he failed to report this to the authorities. The accused is then liable to imprisonment up to six months or a fine up to 5,000 shillings.

Note that this article is also different from Article 504, RECEIVING. To obtain a conviction under Article 504, the prosecution must prove that the accused knew that the property was stolen at the time he received it.

Example:

X is a resident of Chismayo. Y, a friend of his, returns from Aden and steals a radio from Z, another resident of Chismayo. Y offers to sell the

radio to X, telling him that he brought it back from Aden with him. X believes him, and buys it for 350 shillings. About two days later, X is in a tea shop with Z, and learns that Z's radio has been stolen. From Z's description, X realizes that he has bought Z's stolen radio. X says nothing to the authorities, because he knows he will lose his 350 shillings if he reports the possession of a stolen radio. As a result of an investigation, the police arrest Y, who confesses that he stole the radio and sold it to X. The police recover the radio from X and return it to Z, who tells them that he had told X about the stolen radio. The police then charge X with violating Article 545.

X is guilty as charged. He has received stolen property—the radio belonging to Z. At the time he received it, he did not know that it was stolen, because he believed Y's story that he had brought it back from Aden. He later found out that it had been stolen from Z, when Z told him about the theft and described the radio taken. At this point, X should have reported to the police that he had bought a stolen radio from Y, and the police then could have questioned Y and arrested him for theft. Instead, X kept quiet, because he knew that he would have to give the radio back to Z, the proper owner, and would probably lose the 350 shillings he had paid Y. The judge sentences X to a fine of 500 shillings.

Article 546 Sale or Delivery of Keys or Pick-Locks to an Unknown Person

Whoever
(a) manufactures
(b) keys of any description,
(c) at the request of a person other than the owner or possessor of the place or object for which the keys are intended, or of an agent of the said person, or,
(d) in the exercise of the craft of blacksmith, or other similar craft,
(e) delivers or sells to any person whatsoever
(f) pick-locks or other instruments suitable for opening or forcing locks,
shall be punished with imprisonment up to six months and with a fine from Sh. So. 100 to 1,000.

Explanation:

This article is designed to prevent the manufacture and sale of keys, pick-locks, and other such instruments which can be used for the purpose of entering homes to commit thefts or robberies. The contravention can be committed in two ways: (1) by a person who manufactures keys for a person other than the owner, his agent, or the possessor of the building

where the keys will be used; and (2) by a blacksmith or a person engaged in a similar business, such as a locksmith, who delivers or sells pick-locks or other such instruments to any person whatsoever. In either case, the punishment is imprisonment up to six months and a fine from 100 to 1,000 shillings.

Article 547 Unauthorized Opening of Places or Objects

Whoever,
(a) in the exercise of the craft of blacksmith, or other similar craft,
(b) opens locks or other similar devices affixed for the protection of a place or object,
(c) at the request of a person not known to him as the owner or possessor of the place or object, or as an agent of these persons,
shall be punished with imprisonment up to three months and with a fine up to Sh. So. 2,000.

Explanation:

Under Article 546, the prosecution must show that the accused, at the time he manufactured the keys, knew that the person he was doing this for was not the owner, agent of the owner, or possessor of the place for which the keys were to be used. The prosecution can prove this knowledge in one of two ways—by showing either that the accused knew criminally that the person was not the owner or other such person, or that his ignorance was caused by negligence and he should have known that the person was not the owner.

Article 547 requires the accused actually to have known that the person was not the owner, agent of the owner, or possessor of the premises. The different wording of Article 547 seems to imply that the accused cannot be convicted for negligently not knowing that the person was a thief or was not the owner of the house. It must be shown that the accused positively knew the person to be someone other than the owner of the property, the tenant, or an agent of the owner. Article 547 differs from the preceding one also in that it applies to the opening of locks or other similar devices rather than to the manufacture or sale of keys, pick-locks, and other such instruments. In addition, the offense can be committed only by a blacksmith or a person engaged in a similar trade.

Example:

X is a resident of Mogadishu. He is a locksmith, who repairs locks and makes keys, latches, and other devices of security, as well as door hinges and bolts. One day, Y brings a large locked chest to X's shop. Y tells X

that the chest belongs to Y's wife, and that she has lost the key and all of her jewelry is kept inside. Y asks X to open the chest. X recognizes the chest as one he has seen in Z's house. He knows that the chest belongs to Z and not Y. However, Y has offered him 100 shillings to open it. X works the lock with a key and a piece of wire until it opens. Y gives him 100 shillings and takes the chest. Z has reported the theft of the chest to the police, who finally arrest Y. Y confesses to the theft, and states that X opened the lock for him. X is arrested and charged with violating Article 547.

X is guilty as charged. He is a person engaged in the business of a locksmith. He has opened the lock on a chest for Y, knowing that Y was not the owner of the chest, or its lawful possessor. By opening the chest, he enabled Y to obtain the jewelry that he had stolen from Z. The judge sentences X to three months in prison and a fine of 500 shillings.

Article 548 Purchase of Articles Suspected to Be Stolen Property

1. Whoever
(a) purchases or receives, under any pretext whatsoever,
(b) articles which, by their quality, or by the condition of the person who offers them, or by the amount of their price,
(c) may be suspected to be stolen property
(d) without first ascertaining whether or not the person from whom the property is purchased or received had lawful possession,
shall be punished with imprisonment up to six months or with a fine of not less than Sh. So. 100.

2. Whoever
(a) endeavors to have any of the above-mentioned articles bought by another,
(b) or receives them in any manner whatsoever,
shall be subject to the same punishment.

Explanation:

Article 548 punishes a person for purchasing or receiving property which he suspects or should suspect to be stolen. Paragraph 1 places the burden on the accused to first ascertain from the seller whether he legitimately possesses such property where there are reasonable grounds to suspect that the property has been stolen. The paragraph indicates the various ways such suspicions can arise. If the articles offered for sale are extremely valuable, like a large quantity of gold, or an expensive car, or if the condition or status of the person offering to sell the property indicates that he is poor and could hardly be reasonably expected to possess

such property, or if the price is exceptionally low in relation to the value of the property, then the accused should have been aware that the property was most likely stolen and that the seller is not the lawful owner.

Paragraph 2 applies the same punishment to persons who attempt to have the property bought by another or receive it in any manner whatsoever, such as a gift.

In sum, there are three articles of the Code that deal with the receipt or purchase of stolen property. Article 504, Receiving, makes it a crime for a person to knowingly receive, purchase, or conceal stolen property for the purpose of obtaining a wrongful gain. The prosecution must prove that the accused knew that the property was stolen at the time he received, purchased, or concealed it. Article 545, Failure to Declare Articles Which Are Stolen Property, applies to persons who receive or purchase stolen property in good faith, subsequently discover that it has been stolen, and fail to report the matter to the police. Article 548, Purchase of Articles Suspected to Be Stolen Property, applies to persons who purchase or receive property which may be suspected to have been stolen. The prosecution does not have to prove that the accused knew at the time he obtained the property that it was stolen property. It is enough to show that the accused should have suspected that it was stolen property but made no effort to determine if the seller was in legal possession of the property.

Example:

X is a resident of Mogadishu. Y comes to his house one day and says that a friend of Y's is leaving the country and wants to sell his household goods, including his furniture and a radio. X is interested in buying the radio, and goes with Y to see Y's friend, Z. Z's house is a very poor one, with little furniture. Z explains this by saying that he has already sold most of the furniture. The radio is a brand-new one, and Z asks X to pay 500 shillings for it, although it is worth about 1,200 shillings. X asks Z why he doesn't take the radio with him when he leaves the Republic, and Z replies that he would rather sell it to a friend than carry it. X promises to return the next night if he decides to buy the radio. The next day, X meets D in the street. D says he heard that Z had a job with a company in the city. X says that was strange because Z said he was leaving the country. That night, X returns and buys the radio from Z. Shortly thereafter, Z is arrested for theft, and confesses to having sold the stolen radio to X. After an investigation, X is charged with violating Article 548.

X is guilty as charged. He has purchased a stolen radio, and this property might have been suspected to have been stolen. The price was lower than its actual worth, and the radio had not been used so much

that the price of 500 shillings justified the sale of a 1,200-shilling radio. Z's house was poor, which indicated that Z probably could not afford to buy a 1,200-shilling radio. Z had told X that he was leaving the Republic, and yet D told X that Z had a job in the city. Therefore, X should have been suspicious about the radio, and there were grounds to believe that the radio had in fact been stolen. The judge sentences X to a fine of 100 shillings.

Article 549 Failure to Retain in Custody or Unauthorized Custody of Persons of Unsound Mind or Minors in Asylums or Reformatories

1. Whoever,
(a) without an order or authorization from the authorities,
(b) receives in an establishment for treatment a person declared to be of unsound mind, or
(c) receives a person under age in a public reformatory,
shall be punished with a fine from Sh. So. 300 to 3,000.
2. The same punishment shall apply whenever,
(a) no order or authorization being required,
(b) anyone receives in an establishment for treatment
(c) a person of unsound mind, and
(d) fails to give notice to the police authorities.
3. Whoever,
(a) without complying with the provisions of law,
(b) discharges from one of the above-mentioned establishments
(c) a person who is lawfully lodged therein,
shall be liable to imprisonment up to six months or to a fine from Sh. So. 300 to 5,000.

Explanation:

This article deals with the unauthorized admission, treatment, or release of persons from insane asylums. The state, in protecting its citizens, has an interest in knowing who has been admitted to an asylum and when he has been released. It also has a duty to protect people from illegal detention in an asylum or public reformatory.

Paragraph 1 makes it an offense to receive a person in an asylum or a public reformatory without the proper authorization from the authorities. Thus, a person cannot be sent to an asylum merely because his relatives claim that he is insane. Normally, a judge in a court first adjudges the person insane and then orders his detention in an asylum. The director or person in charge of the asylum then admits the person on the basis of a court order.

Paragraph 2 makes it an offense if, where no court order is necessary, a person admits another to an asylum and then fails to notify the police authorities. Such a situation may arise where the insane person has been admitted not because he has committed a criminal act but because his relatives have taken him to a doctor who has found him to be suffering from some mental disease. In such a case, the director or person in charge of the asylum must inform the police of the district that a person has been admitted to the asylum.

Paragraph 3 applies to both public reformatories and insane asylums. It places a burden on the director or person in charge of the asylum or reformatory to discharge persons from the establishment in accordance with the provisions of law. This normally will require informing the competent police authorities. The purpose of this is to give the public authorities notice, so that they can watch the person after his release and make sure he does not commit any other crimes or endanger the members of the public. Note that the penalty under Paragraph 3 is either a fine or imprisonment, whereas the penalty under Paragraphs 1 and 2 is only a fine.

Article 550 Failure to Retain in Private Custody or Unauthorized Private Custody of Persons of Unsound Mind

1. Whoever,
(a) other than in the case referred to in Paragraph 2 of the preceding article,
(b) without authorization
(c) receives in custody
(d) persons of unsound mind,
shall be punished with imprisonment up to three months or with a fine from Sh. So. 100 to 2,000.
2. Whoever fails to observe the obligations inherent in the custody of the persons referred to in the foregoing provision
shall be liable to the same punishment.

Explanation:

Article 550, unlike the preceding article, applies to private homes as distinguished from hospitals, asylums, or other public mental institutions. Paragraph 1 makes it an offense to receive a person of unsound mind for purposes of custody in a private home without authorization.

Paragraph 2 makes it an offense to fail to observe the obligations inherent in the custody of such persons. These obligations are good care of the person being detained, care in making sure that the person does

not escape and thus endanger members of the public, and treatment of the person detained so that he will eventually be cured.

Example:

X is the father of a seventeen-year-old boy, Y. Y is frequently subject to fits and behaves in a crazy manner. X has taken his son to several doctors, all of whom have advised him to have the boy committed to a mental institution. X does not want to do this. He asks his brother, Z, to take the boy to live with him in the interior. Z agrees to do so, and X feels that nobody will know or be hurt by this, since Z lives far away from other people. One day, while Y is living with Z, he wanders away from Z's home. He sees a camel boy nearby, and begins throwing rocks at the boy, thinking the boy is a dog. The boy runs away, and returns later with his father. They see that Y is crazy, and leave him alone, but the father reports the matter to the police. Both Y and Z are taken into custody. Z is charged with violating Article 550.

Z is guilty as charged. He has taken custody of Y, a person of unsound mind. He has violated Paragraph 2 by failing to take care of Y so that he is not a danger to others. The judge sentences Z to a fine of 150 shillings.

Article 551 Failure to Notify the Authorities of the Escape or Flight of Persons of Unsound Mind or Minors

1. A public officer or a person belonging to the staff of an establishment for the execution of punishments or security measures, or of an establishment for treatment, or of a public reformatory, who
(a) omits to give immediate notice to the police authorities
(b) of the escape or flight of a person detained or lodged there,
shall be punished with a fine from Sh. So. 100 to 2,000.

2. The same provision shall apply to any person to whom, by law or order of the authorities, a person has been entrusted for the purpose of custody or supervision.

Explanation:

This offense can be committed only by a public officer or a person on the staff of a prison, hospital, nursing home, lunatic asylum, or reformatory. The article requires the public officer or person on the staff of such an institution to immediately inform the police when a person detained in the institution has escaped or fled.

Paragraph 2 applies to persons who have lawful custody or supervision of the escaped person, even though such custody is not in one of the

institutions listed above. Thus, if a prison guard fails to report the escape of a prisoner he is transporting from a police station to the Central Prison in Mogadishu, he comes within the terms of this article.

Article 552 Failure to Declare Dangerous Mental Infirmities

1. Whoever,
(a) in the exercise of a medical profession,
(b) having attended or examined a person of unsound mind
(c) who proves or is suspected to be dangerous to himself or to others,
(d) fails to give information of the case to the judicial authorities,
shall be punished with a fine from Sh. So. 300 to 3,000.

2. The same provision shall apply where the person attended or examined is afflicted by chronic intoxication caused by alcohol or stupefying substances.

Explanation:

The contravention under this article can be committed only by a person in the exercise of the medical profession, such as a doctor, a nurse, or a dresser. The examination by the doctor, nurse, or dresser must show that the person is of unsound mind and dangerous either to himself or to others. It is enough if the doctor suspects that the patient is dangerous to himself or to others. The medical examination does not have to show this positively. The doctor must then report this fact to the judicial authorities.

Paragraph 2 provides that the article shall also apply to persons who are afflicted with chronic intoxication caused by alcohol or narcotics.

Example:

Q is a doctor in Hargeisa. B brings his seventeen-year-old son, C, to his office for an examination. B explains that the boy has been having fits, and one time tried to kill himself. Q examines the boy, and concludes that he is mentally ill. He recommends that B send the boy to the mental institution in Berbera. B says that he would prefer to send the boy to live with his uncle in the interior, where he wouldn't get into trouble and would receive better care. He asks Q not to inform the authorities, and says that he will make sure that the boy is well taken care of. Q agrees. The father takes C by truck to a nearby town. As the boy gets off the truck, he has one of his fits and runs madly about the street. Before his father can restrain him, people grab him and the matter is reported to the police. After a brief investigation, it is discovered that B was taking C to his brother's house to avoid having the boy committed to a mental

institution. B confesses that Q, a doctor in Hargeisa, had found the boy mentally unfit. The police in Hargeisa charge Q with violating Article 552.

Q is guilty as charged. He is a member of the medical profession. He has examined C and found him to be of unsound mind. He also knows that C is dangerous to himself, because C tried to kill himself once before. Q failed to report the case to the judicial authorities, and instead let B take his son to live with the boy's uncle. This was a danger both to the boy and to members of the public. The judge sentences Q to a fine of 500 shillings. Note that although the doctor is guilty of a contravention involving his profession, the accessory penalty of suspension from his profession does not apply, because the punishment does not involve imprisonment for one year or more (see Article 107).

PART IV CONTRAVENTIONS RELATING TO MORALS AND DECENCY

Article 553 Conduct of Games of Chance

Whoever,

(a) in a public place or a place open to the public, or in private clubs of any kind,

(b) holds or facilitates the conduct of a game of chance,

shall be punished with imprisonment from three months to one year and with a fine of not less than Sh. So. 2,000.

Explanation:

Games of chance are defined in Article 556 as:

. . . those which are played with the object of gain and in which success or failure is entirely or nearly entirely dependent on chance.

A game of chance will thus include card games, dice, and roulette if such games are played for money. The key element in determining whether a game is one of chance or not is whether any skill is involved. If skill, rather than chance or luck, determines the outcome of the game, then it is not a game of chance, and to play it, even for money, is not gambling. If two players on different soccer teams bet on the outcome of a game, the game itself is not a game of chance, even though a bet has been made. Soccer involves skill, and the team with the better players will win.

Article 553 makes it a crime to conduct games of chance, or to assist in their being played, in a public place (a park or a street), a place open to the public (a restaurant or a theater) or in private clubs of any kind

(the Hargeisa Club, the Officer's Club, or the Civil Servants' Club, for example).

Example:

X is the owner of a night club in Mogadishu. Business has been bad lately, and X is looking for a way to attract more customers. He decides to hold a Gambling Night, at which he will have a roulette wheel, card tables, and dice. He hopes to attract a lot of people and serve drinks and food. He advertises in the local newspapers, and many people come to the club. While people are there gambling, the police come with an order from the competent judge to close the club and seize the gambling equipment. X is arrested and charged under Article 553.

X is guilty as charged. He has conducted games of chance. Cards, roulette, and dice are games of chance. He has done so in a place open to the public. The judge sentences X to imprisonment for six months and a fine of 4,000 shillings.

Article 554 Aggravating Circumstances

The punishment for the offense referred to in the preceding article shall be doubled:

(a) where the offender has established or kept a gaming house;

(b) where the act is committed in a public establishment;

(c) where heavy stakes are engaged in the game;

(d) where among the persons who take part in the game there are persons under the age of fourteen years.

Explanation:

Article 554 merely specifies the aggravating circumstances for the offense under Article 553. A "gaming house" is defined in Article 556(b) as:

. . . a place where people meet for the purpose of games of chance, even though the object of the game is disguised in any form whatsoever.

Thus, the night club in the preceding example, would not be a "gaming house." It is primarily a night club, where people can eat, drink, and dance. The owner held games of chance there one night, but this does not alter the basic nature of the club.

Article 554 makes it an aggravating circumstance if the games of chance have been conducted in a public establishment. A "public establishment" would be a building belonging to the administration, as opposed to a private building used by private persons for their own pur-

poses. If the stakes are heavy—that is, if a lot of money is being bet on the games—this too is an aggravating circumstance, punishable with an increased penalty. The same is true if persons under the age of fourteen take part in the games.

Article 554 provides that the punishment shall be doubled if any of the aggravating circumstances listed occur. Thus, the penalty for an offense committed under Article 553 with an aggravating circumstance included in Article 554 is imprisonment from six months to two years and a fine of not less than 4,000 shillings. If more than one aggravating circumstance under Article 554 occurs, then the rules of Article 117(2) apply (see explanation under that article).

Example:

X is the owner of a restaurant. Downstairs in the basement, he runs a secret gambling house. One night, while the gambling is in progress, the place is raided by the police, acting on information received from an informer. The police find that the people who were gambling were betting 500 to 1,000 shillings on each throw of the dice. Besides the people playing, X is arrested and charged under Articles 553 and 554(a) and (b).

X is guilty as charged. He was holding games of chance in a place open to the public, in violation of Article 553. He has committed that offense with two aggravating circumstances:

(1) he has established a gaming house in the basement of his restaurant; and

(2) he has conducted games of chance where heavy stakes—500 to 1,000 shillings per throw of the dice—were involved.

The judge therefore sentences X to three months in prison and a fine of 2,000 shillings under Article 553. Then he doubles the sentence, according to Article 554, for the aggravating circumstance of establishing a gaming house, and sentences X to six months in prison and a fine of 4,000 shillings. Then he doubles that sentence again, according to Paragraph 2 of Article 117, for the aggravating circumstance of conducting a game of chance where heavy stakes are involved, and sentences X to a total of one year in prison and a fine of 8,000 shillings.

Article 555 Participation in Games of Chance

1. Whoever,

(a) in a public place or a place open to the public, or in private clubs of any kind,

(b) without having been a party to the contravention referred to in Article 553,

(c) is apprehended while taking part in a game of chance,

shall be punished with imprisonment up to six months or with a fine up to Sh. So. 5,000.

2. The punishment shall be increased:

(a) where the offense is detected by surprise inspection in a gaming house or in a public establishment;

(b) where the game is played for high stakes.

Explanation:

Article 555 punishes persons for participating in games of chance. It does not apply to the persons who are running or organizing the games. The prosecution must show that the person participated in the game in a public place, a place open to the public, or a private club. The accused must be caught while taking part in the game—that is, he must be apprehended *in flagrante delicto*, within the meaning of Article 37 of the Criminal Procedure Code. The person who participated in the game of chance cannot be charged under this article if his participation is known to the police merely because other people witnessed his action. The penalty for violations under Article 555 is imprisonment up to six months or a fine up to 5,000 shillings. Note that the penalty is either a fine or imprisonment, not both.

Paragraph 2 describes as aggravating circumstances two of the circumstances already discussed in relation to Article 554. The punishment is increased, but since no amount is specified, the increase must be in accordance with Article 118.

Example:

In the example under the preceding article, B, C, and D are caught by the police in the raid on X's gambling house. When the police enter the gambling room, B, C, and D are at the roulette table. All three have placed bets. The stakes, though, were not high. B, C, and D are charged with violating Article 555(1) and (2a).

They are all guilty as charged. They were in a place open to the public. They were not parties to the violation of Article 553, in that they were not holding or assisting in conducting games of chance. They were merely participants in the game. They were caught *in flagrante delicto* while taking part in the game of roulette. They violated Article 555 with the aggravating circumstance described in Paragraph 2(a), by being caught in a gaming house by a surprise inspection. The judge sentences each of them to three months in prison and a fine of 3,000 shillings, and then increases the sentence by one-third, according to Article 118, to four months in prison and a fine of 4,000 shillings.

Article 556 Essential Elements of a Game of Chance; Gaming House

For the purposes of the preceding provisions:

(a) games of chance are those which are played with the object of gain and in which success or failure is entirely or nearly entirely dependent on chance;

(b) a gaming house is a place where people meet for the purpose of games of chance, even though the object of the game is disguised in any form whatsoever.

Explanation:

The definitions contained in these two paragraphs have been described in the explanations under Articles 553 and 554.

Article 557 Confiscation

In the cases referred to in Articles 553, 554, and 555, an order shall be made for the confiscation of the money staked on the game and of the implements or objects intended for the same.

Explanation:

Article 557 applies to contraventions committed in violation of Articles 553, Conduct of Games of Chance, 554, Aggravating Circumstances, and 555, Participation in Games of Chance. In all such cases, the money being bet on the games of chance and the things used in playing the games shall be confiscated upon conviction of the accused. Thus, in the example under Article 555, the money on the roulette table in X's gaming house will be confiscated, as well as the roulette wheel, cards, and dice needed in the games.

Article 558 Unlawful Holding of Games Not of Chance

1. Whoever,

(a) being authorized to keep a billiards room,

(b) permits the playing of a game which is not a game of chance,

(c) but is nevertheless forbidden by the authorities to be played there,

shall be punished with a fine up to Sh. So. 1,000.

2. In the cases referred to in letters c and d of Article 554, the punishment shall be imprisonment up to three months or a fine from Sh. So. 500 to 5,000.

3. In the case of a person who is apprehended while taking part in the game, the punishment shall be a fine up to Sh. So. 500.

Explanation:

This article applies only to games which do not involve chance. In other words, it applies to games involving some degree of skill as opposed to pure luck. The game must be played in a place where billiards is authorized to be played. Such places are frequently centers for young men, who may get into trouble by gambling or playing other, forbidden games. The games forbidden to be played in a billiard hall may be covered by municipal regulations or by orders of the District Commissioner or Regional Governor. Paragraph 1 applies only to the person who owns or keeps a billiard hall and permits these forbidden games to be played. It does not apply to the participants in the game.

Paragraph 2 provides a heavier punishment where the owner or proprietor has permitted the forbidden game to be played with heavy stakes or by a person under the age of fourteen. Paragraph 3 provides the punishment for persons caught in the act of playing the forbidden game.

Article 559 Blasphemy and Offensive Acts toward the Dead

1. Whoever

(a) publicly blasphemes,

(b) with invectives or insulting words,

(c) the Deity or the symbols or the persons venerated in the religion of the State,

shall be punished with a fine from Sh. So. 100 to 3,000.

2. Whoever

(a) publicly commits

(b) any offensive acts toward the dead,

shall be subject to the same punishment.

Explanation:

Article 559 involves two offenses—blasphemy and offensive acts toward the dead. Blasphemy is covered in Paragraph 1. It consists of a public act of insulting words or invective (words accompanied by aggressive or violent gestures) against the Deity or the symbols of the state religion, or against persons venerated in the state religion (such as learned sheikhs). Note that if the public act is directed against the religion itself, it comes under Article 313.

Paragraph 2 covers offensive acts toward the dead. Such offensive acts consist of words or gestures which are offensive in nature but are not so serious as to come under Article 317, Bringing into Contempt Dead Bodies. An example of an offensive act toward the dead would be to

curse the dead person and publicly declare that his bones should be fed to the hyenas. Article 317, on the other hand, applies to acts committed against the dead body itself, such as acts of mutilation. Article 559 is really directed toward acts against the memory of the deceased.

Example:

X is a resident of Mogadishu. One day, he gets into an argument in a tea shop with Y, a religious man, who in the course of the discussion claims that the Koran supports his side of the argument. X gets very angry, and declares in a loud voice that the Koran is nothing but lies, that Muhammed was a liar himself, and that Allah must be a stupid god if he has followers and believers like Y. Y is shocked by what X has said. He reports the matter to the police, who investigate, take statements from other people in the tea shop, and arrest X, charging him with violating Article 559.

X is guilty as charged. He has used insulting words in public. The words were of a blasphemous nature; he called Muhammed a liar, claimed that the Koran was composed of lies, and was derogatory of Allah himself. The judge sentences X to pay a fine of 500 shillings.

Article 560 Trade in Writings, Drawings, or Other Articles Contrary to Public Decency

Whoever
(a) exhibits to the public view or,
(b) in a public place or a place open to the public,
(c) offers for sale or distributes writings, drawings, or any other figurative object
(d) offensive to public decency,
shall be punished with a fine from Sh. So. 100 to 1,000.

Explanation:

Article 560 is designed to protect public decency. Under the Italian penal system, "public decency" means something different from the concept of obscenity. "Public decency" refers to the moral and social rules that are generally accepted by members of the public at large. "Obscenity," on the other hand, involves something sexual, or having to do with sex. An obscene act will always also offend public decency, but an act offensive to public decency is not necessarily an obscene one. Article 560 applies only to acts of selling, distributing, or displaying to the public view offensive representations. The phrase "displaying to the public view" means permitting people to see the offensive writing or drawing.

There is no need to prove that many persons saw it. It is enough if the prosecution shows that such a display took place in an area where the public could see it. The judge will have to determine in each case whether the act the defendant is accused of offends the prevailing concepts of public decency.

Article 561 Acts Contrary to Public Decency; Foul Language

1. Whoever,
(a) in a public place or a place open or exposed to the public,
(b) performs acts contrary to public decency,
shall be punished with imprisonment up to one month or with a fine up to Sh. So. 2,000.
2. Whoever,
(a) in a public place or a place open to the public,
(b) uses language contrary to public decency,
shall be liable to a fine up to Sh. So. 500.

Explanation:

The contravention under this article can be committed only in a public place (a street or park, for example), a place open to the public (a restaurant or tea shop), or a place exposed to the public (a private home with open windows facing a public street). Paragraph 1 applies to acts contrary to public decency. This will include all acts other than exhibiting, selling, or distributing writings or drawings offensive to public decency, which are covered by the preceding article. Paragraph 1 would thus include gestures, motions, and other acts.

Paragraph 2 applies only to acts committed in a public place or a place open to the public. It does not cover places exposed to the public. This paragraph makes it an offense to use language contrary to public decency. Generally, such offensive language will be obscene language. If, instead of foul language, an obscene act is committed, this comes under Article 402. The Supreme Court, in the case of *Haji Abdirahman Mohamed Hassan* v. *State* (Criminal Appeal No. 3 of 1963), has defined what is meant by obscene language. This definition was made in relation to Rule 55(5) of the Township Rules, in force in the Northern Regions, and should be valid for determining what is obscene language within the meaning of Article 561. The Supreme Court held that:

> . . . the words uttered should by themselves indicate obscenity; and that it is not left to the imagination . . . to conjure up an inference which is not warranted by the words *per se*. (Somali Law Reports [Hargeisa and Burao Regions], 1964–65, p. 167.)

The Court then held that the words in the case concerned, "their wives are divorced from them," were not by themselves obscene and that therefore no violation of Rule 55(5) had been made out.

Article 562 Cruelty to Animals

1. Whoever
(a) uses cruelty to animals or,
(b) without necessity, subjects them to excessive labor or to torture, or
(c) employs them in work for which they are unsuitable owing to illness or age,
shall be punished with a fine up to Sh. So. 3,000.
2. Whoever,
(a) even though solely for scientific or educational purposes,
(b) in a public place or a place open or exposed to the public,
(c) subjects living animals to experiments of such a nature as to arouse disgust,
shall be liable to the same punishment.
3. The punishment shall be increased where the animals are employed in games or public shows entailing torture or cruelty.

Explanation:

This article is designed to prevent cruelty to animals by persons insensitive to concepts of humanity and common decency. Paragraph 1 prohibits the use of cruelty or torture as well as the employment of sick or old animals in heavy labor or excessive work. Cruelty would be an act of starving an animal or letting it die of thirst. Torture would be inflicting pain on an animal, such as burning it to see how it will react.

Paragraph 2 applies to experiments performed on animals in public places, places open to the public, and places exposed to the public. If an experiment is of such a nature as to arouse disgust, then it cannot be performed in any of the above places, even for scientific or research purposes. The article does not prohibit scientific experiments; it merely requires that they be performed in a place where the public will not see them.

Paragraph 3 provides for an increased punishment, according to Article 118, where the cruelty or torture of animals is inflicted in games or public shows. Thus, if a circus owner charged members of the public five shillings to throw ten stones at a moving donkey in order to win a prize, he would be subject to conviction under Article 562, with an increased penalty under Paragraph 3.

Example:

X is the owner of a donkey cart in Mogadishu. He has a very old donkey, who can no longer pull heavy loads. X decides it is wasteful to continue to feed and keep this donkey. He leaves his cart at a friend's house, and releases the donkey in front of Y's home. X then goes off to buy another donkey and bring it back to town. X's old donkey stands around in front of Y's home for most of the day, and finally drops from lack of food. The donkey dies during the night. Y asks the municipal government to take the dead donkey away, but after two days they still have not done it, and the donkey has begun to smell. Y is very angry with X for leaving his donkey to die in front of Y's house. When X returns to Mogadishu, Y reports him to the police. After an investigation, X is charged with violating Article 562(1).

X is guilty as charged. He has acted cruelly toward the donkey by abandoning it to die from lack of food and water after it is no longer of any use to him. The judge sentences X to a fine of 150 shillings.

PART V CONTRAVENTIONS AGAINST PUBLIC HEALTH

Article 563 Treatment Capable of Depriving Another of Consciousness or Will

1. Whoever
(a) puts another person,
(b) with the latter's consent,
(c) in a state of stupefaction or hypnotism, or
(d) subjects him to a treatment which deprives him of his consciousness or will,
shall be punished, where
(e) the act results in danger to the person's safety,
with imprisonment from one to six months or with a fine from Sh. So. 300 to 5,000.
2. This provision shall not apply where
(a) the act is committed for a scientific or curative purpose
(b) by a person practicing a medical profession.

Explanation:

This article applies only if the person subjected to the narcotic, hynotism, or other such treatment has consented to take the narcotic or to submit to hypnotism or the treatment. The prosecution must show that the accused gave the victim the narcotic or treatment and that the act of giving the person the narcotic or treatment resulted in a danger to the person's safety. If death or injury resulted, then the act will come

under DEATH CAUSED BY NEGLIGENCE (Article 445) or HURT CAUSED BY NEGLIGENCE (Article 446). Note that the punishment is either a fine or imprisonment, not both.

Paragraph 2 provides that the article shall not apply where the narcotic, treatment, or hypnotism is given for a scientific or curative purpose by a person practicing medicine. If a doctor gives a friend a narcotic for no other purpose than to satisfy the friend's need for drugs, then this article will apply, because the narcotic was not given for a curative or scientific purpose.

Example:

X, a Somali citizen, has recently returned from Dar-es-Salaam. He has brought with him a large quantity of hashish. X invites his friend, Y, over to his house one night, and asks Y if he wants to smoke hashish. Y is eager to try it, and agrees. X gives him a large quantity, and the two of them sit around smoking and waiting for it to take effect. When Y is under the influence of the narcotic, he goes outside and starts walking down the street. He does not see any cars or trucks, because the drug has made him oblivious of things around him. As he is crossing the street, he is almost hit by a truck. A policeman comes up and, after talking to Y awhile, sees that he is under the influence of some drug and is unable to understand what is happening around him. Y is taken to the station. The next morning, Y recovers and tells the police that he was at X's house but that is the last thing he can remember. The police question X, and charge him with violating Article 563, among other things.

X is guilty as charged. He has given Y a narcotic substance. Y had consented to take hashish. The act resulted in danger to Y's safety, because it made him unaware of things going on around him. Thus, he could have been killed by the truck if the driver had not stopped in time, because his brain was not clear and he simply didn't understand the need to watch for vehicles when crossing streets. The judge sentences X to pay a fine of 700 shillings.

Article 564 Abuse of Stupefying Substances

Whoever,
(a) in a public place or a place open to the public, or in private clubs of any kind,
(b) is apprehended in a state of serious mental unbalance
(c) owing to the use of stupefying substances,
shall be punished with imprisonment up to six months or with a fine up to Sh. So. 2,000.

Explanation:

The contravention under this article can be committed only in public places, places open to the public, or private clubs. The accused must be caught *in flagrante delicto* in a state of serious mental unbalance due to the use of narcotics. The punishment is either imprisonment or a fine.

Example:

In the example under the preceding article, Y was apprehended in a public street in a state of serious mental unbalance. This was due to the large quantity of hashish he had taken. The judge sentences Y to a fine of 500 shillings.

Article 565 Supply of Poisonous or Harmful Substances to Minors

Whoever,
(a) being authorized to sell or trade in medicinal products,
(b) delivers to a person under the age of fourteen years
(c) poisonous or stupefying substances,
(d) even on a medical prescription,
shall be punished with a fine up to Sh. So. 5,000.

Explanation:

This contravention can be committed only by a person authorized to sell or trade in medicinal supplies. If an unauthorized person sells narcotics to another, this is not a violation under Article 565. The accused must give either a poisonous substance (such as arsenic) or a narcotic to a person under fourteen years of age. There is no violation if the person is over fourteen. The article applies even if the poisonous substance or narcotic is given to a child under fourteen years of age on the prescription of a doctor.

Example:

X is a resident of Mogadishu. He regularly buys from a pharmacy a poison for use in killing rats. Y is X's thirteen-year-old son. He has been beaten by Z, a neighbor of his father's, and decides to get revenge by poisoning Z's cattle. Y goes to the pharmacy in Mogadishu and tells the clerk that he is the son of X and that his father has asked him to buy the usual amount of poison. The clerk sells him the poison. Y takes it, but he is caught before he can poison Z's cattle. After being questioned, Y admits that he bought the poison from the clerk in the pharmacy in

Mogadishu. The police investigate, and charge the clerk with violating Article 565.

The clerk is guilty as charged. He sold Y a poisonous substance. Y was under fourteen years of age. The prosecution argues that the clerk should have known that Y was under fourteen and he is therefore guilty of the contravention as charged. The judge sentences the clerk to a fine of 500 shillings.

NOTE ON AUTHOR

After graduating from City College of New York, Martin R. Ganzglass secured his Bachelor of Laws degree from Harvard Law School. For two years he worked for the Appellate Division of the National Labor Relations Board. Then he and his wife Evelyn volunteered for duty in the Peace Corps and were assigned to the Somali Democratic Republic. There Mr. Ganzglass first served as legal assistant to the Ministry of Justice and Religious Affairs, following which he worked as legal adviser to the Somali National Police Force, for which he provided legal advice on the prosecution of criminal cases, drafted laws, taught courses to judges and police, and helped to establish a legal library.

During their two years in East Africa, he and his wife traveled extensively in Somalia and also visited Uganda, Kenya, and Tanzania.

Upon his return to the United States, Mr. Ganzglass became an associate of the New York City law firm of Delson & Gordon, in whose Washington, D.C., office he now practices.

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