

No. 30 of 2013.

Criminal Code (Amendment) Act 2013.

Certified on: 07/04/2014



No. of 2013.

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ARRANGEMENT OF SECTIONS.

1. New Division III.10. – People Smuggling.
 - “206A. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.”
 - “206B. APPLICATION.”
 - “206C. INTERPRETATION.”
 - “206D. PEOPLE SMUGGLING.”
 - “206E. FALSIFYING TRAVEL OR IDENTITY DOCUMENTS OR APPROVAL TO TRAVEL OR STAY DOCUMENTS.”
 - “206F. CONSENT OF SMUGGLED PERSON NOT A DEFENCE.”
 - “206G. IMMUNITY FROM CRIMINAL PROSECUTION.”
 - “206H. ORDERS FOR EXPENSES.”
 - “206I. ASSISTANCE TO AND PROTECTION OF SMUGGLED PERSONS.”

2. New Division IV.1A. – Trafficking in Persons.
 - “208A. APPLICATION.”
 - “208B. INTERPRETATION.”
 - “208C. TRAFFICKING IN PERSONS.”
 - “208D. TRAFFICKING IN PERSONS WITH KNOWLEDGE OR RECKLESSNESS.”
 - “208E. CONSENT OF TRAFFICKED PERSON NOT A DEFENCE.”
 - “208F. IMMUNITY FROM CRIMINAL PROSECUTION.”
 - “208G. ASSISTANCE TO AND PROTECTION OF TRAFFICKED PERSONS.”

3. Repeal of Sections 218 and 219.



No. of 2013.

AN ACT

entitled

Criminal Code (Amendment) Act 2013.

Being an Act to amend the *Criminal Code Act* (Chapter 262) to add provisions relating to people smuggling and trafficking in persons and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. **NEW DIVISION III.10 (PEOPLE SMUGGLING).**

The Principal Act is amended in Part III by adding a new division and heading after Division 9 as follows:

“Division 10. – People Smuggling.

“206A. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.A (*basic rights*), III.3.B (*fundamental rights*), III.3.C (*qualified rights*), Subdivision VI.2.D (*powers, privileges and procedures*), and Part XI (*miscellaneous*) of the *Constitution*, namely –

- (a) the right to freedom conferred by Section 32 of the *Constitution*; and
- (b) the freedom from inhuman treatment conferred by Section 36 of the *Constitution*; and
- (c) the right to liberty of the person conferred by Section 42 of the *Constitution*; and
- (d) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (e) the freedom from forced labour conferred by Section 43 of the *Constitution*; and
- (f) the consent of Papua New Guinea to be bound as a party to a treaty conferred by Section 117 of the *Constitution*; and

Criminal Code (Amendment)

(g) the prohibition of slavery, and the slave trade in all their forms, and all similar institutions and practices conferred by Section 253 of the *Constitution*, is a law that is made for the purpose of giving effect to the public interest in public safety, public order and public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

“206B. APPLICATION.

To avoid doubt, the offences or the acts constituting the offences in this Division apply –

- (a) if they occur wholly in Papua New Guinea; or
- (b) if they occur in Papua New Guinea but a part of their preparation, planning, direction or facilitation takes place outside Papua New Guinea; or
- (c) if they occur outside Papua New Guinea but a part of their preparation, planning, direction or facilitation takes place in Papua New Guinea; or
- (d) if they occur in Papua New Guinea and have effects in Papua New Guinea as well as outside Papua New Guinea; or
- (e) if they occur outside Papua New Guinea and have effects overseas as well as in Papua New Guinea.

“206C. INTERPRETATION.

For the purposes of this Division –

“approval to stay document” means an entry permit;

“approval to travel document” means a visa and includes letters issued by the Chief Immigration Officer;

“document” includes an electronic record;

“fraudulent travel identity, approval to stay or approval to travel document” means any document that entails a person’s travel, entry, and residence into a country and that –

- (a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a country; or
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being improperly used by a person other than the rightful holder;

“Minister” means the Minister responsible for national justice administration;

Criminal Code (Amendment)

“people smuggling” means the intentional facilitation of a person’s unlawful entry into any country, including Papua New Guinea, in order to obtain a benefit, knowing or being reckless as to the fact that the person’s entry is unlawful;

“smuggled person” means any person who is the subject of an act of people smuggling with due regard to the status of the person under any applicable law;

“travel or identity document” means passports or entry permits and includes certificates of identity and emergency travel documents recognized by the International Civil Aviation Organization;

“unaccompanied person” means a person under 18 years of age at the time of the offence who is not traveling with either a parent or a legal or customary primary care giver;

“unlawful entry” means an entry into the country which is expressly or impliedly prohibited under any applicable law of that country.

“206D. PEOPLE SMUGGLING.

- (1) A person who –
- (a) intentionally facilitates the unlawful entry of another person into any country, including Papua New Guinea, in order to obtain a benefit; or
 - (b) facilitates the unlawful entry of another person into any country including Papua New Guinea, in order to obtain a benefit, either knowingly or being reckless as to the fact that the person’s entry is unlawful; or
 - (c) facilitates the unlawful presence of another person in any country, including Papua New Guinea, with the intention, knowledge or reckless disregard of enabling people smuggling,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

(2) If the offence is committed in relation to an unaccompanied person, the offender is liable to imprisonment for a term not exceeding 20 years.

(3) If the offender subjects the person to –

- (a) cruel, inhuman or degrading treatment, including exploitation; or
- (b) circumstances that result in or are likely to result in, grievous bodily harm or serious psychological or psychiatric damage, or harm,

the offender is liable to imprisonment for a term not exceeding 20 years.

Criminal Code (Amendment)

(4) If the offender subjects the person to circumstances that result in, or are likely to result in, the death of that person, the offender is liable, subject to Section 19, to imprisonment for life.

(5) A benefit for the purposes of this section means a financial benefit.

“206E. FALSIFYING TRAVEL AND IDENTITY DOCUMENTS OR APPROVAL TO TRAVEL OR STAY DOCUMENTS.

A person who, for the purpose of committing a crime set out in Section 206D, makes or utters or obtains or gives or sells or possesses a fraudulent –

- (a) travel or identity document; or
- (b) approval to travel document; or
- (c) approval to stay document,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

“206F. CONSENT OF SMUGGLED PERSON NOT A DEFENCE.

It is not a defence to a charge under Section 206D or 206E that the smuggled person consented to any acts under those sections.

“206G. IMMUNITY FROM CRIMINAL PROSECUTION.

(1) Subject to Subsection (2), a smuggled person is not liable for prosecution in respect of –

- (a) being the subject of people smuggling; or
- (b) any offence that is a direct consequence of being smuggled.

(2) The immunity from criminal prosecution set out on Subsection (1) applies if the court is satisfied on reasonable grounds that the person is a smuggled person.

“206H. ORDERS FOR EXPENSES.

(1) When a person is convicted of an offence under Sections 206D or 206E, in addition to any sentence that is passed on the offender, the court may order –

- (a) the offender to pay to the State an amount equal to the expense incurred or to be incurred by the State in connection with the care, maintenance and removal of the smuggled person from Papua New Guinea; and
- (b) that any property or money of the offender that has been seized in connection with the offence be forfeited to the State.

Criminal Code (Amendment)

(2) This section does not affect the operation of the *Criminal Law (Compensation) Act 1991* or the *Proceeds of Crime Act 2005*.

“206I. ASSISTANCE TO AND PROTECTION OF SMUGGLED PERSONS.

In implementing the provisions under this Division, the Minister may cause all appropriate measures to be taken in favor of persons who have been the subject of people smuggling, including –

- (a) protecting the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; and
- (b) respecting the special needs of women and children; and
- (c) facilitating, without undue or unreasonable delay, the return to a country where the person was a citizen or a permanent resident or had the right of lawful presence at the time of entry into the receiving country, with due regard for the safety, the dignity, and the status of the person under any applicable law.”.

2. NEW DIVISION IV.1A (TRAFFICKING IN PERSONS).

The Principal Act is amended in Part IV by adding a new division after Section 208 as follows:

“Division 1A. – Trafficking in Persons.

“208A. APPLICATION.

To avoid doubt, the offences or the acts constituting the offences in this Division apply –

- (a) if they occur wholly in Papua New Guinea; or
- (b) if they occur in Papua New Guinea but a part of their preparation, planning, direction or facilitation takes place outside Papua New Guinea; or
- (c) if they occur outside Papua New Guinea but a part of their preparation, planning, direction or facilitation takes place in Papua New Guinea; or
- (d) if they occur in Papua New Guinea and have effects in Papua New Guinea as well as outside Papua New Guinea; or
- (e) if they occur outside Papua New Guinea and have effects overseas as well as in Papua New Guinea.

“208B. INTERPRETATION.

For the purposes of this Division –

“exploitation” means the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs;

Criminal Code (Amendment)

“forced labour” means all work or services which are exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily;

“position of vulnerability” means a situation in which a person has no real or acceptable alternative but to submit to the abuse involved which may result from, but is not limited to, the following circumstances:

- (a) a person entering or residing in Papua New Guinea with fraudulent travel or identity documents or fraudulent approval to stay or approval to travel documents or irregular work permit; or
- (b) a person fleeing a country as a consequence of a war or conflict or under well-founded fear of persecution; or
- (c) a person being internally displaced, relocated or resettled as a result of a conflict, situations of generalized violence, natural disasters or other environmental factors; or
- (d) a person being subject to domestic or gender-based violence; or
- (e) a person whose extreme living conditions limits or denies access to essential public services; or
- (f) any physical or mental disease or disability of a person, including addiction to the use of any substance; or
- (g) a person who is infected by Human Immunodeficiency Virus (HIV) or has Acquired Immune Deficiency Syndrome (AIDS); or
- (h) any other socio-economic or cultural factors that may impair or hinder a person’s capacity to form judgments;

“slavery or practices similar to slavery” means the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised and includes, but is not limited to, the following:

- (a) the selling, bartering or buying of a person without that person’s consent for value received or other consideration; or
- (b) the selling, bartering or buying of a person under the age of 18 against the best interest of that person, for value received or other consideration; or
- (c) the status of debt bondage intended as the condition of a person who has no real or acceptable alternative but to provide labour or

Criminal Code (Amendment)

personal services or those of a person under his control to repay a debt, if the value of those services or labour, as reasonably assessed, is not applied towards the liquidation of the debt or the length and nature of those services or labour are not limited and proportionate to the debt; or

- (d) the status of domestic servitude intended as the condition of a person who is forced, by physical or psychological coercion, to work without any real financial reward, deprived of liberty and in a situation contrary to human dignity;

“trafficked person” means any person who is the victim of a crime set out in Sections 208C or 208D.

“208C. TRAFFICKING IN PERSONS.

(1) Any person who recruits, transports, transfers, conceals, harbours or receives any person by –

- (a) threat; or
- (b) use of force or other forms of coercion; or
- (c) abduction; or
- (d) fraud; or
- (e) deception; or
- (f) use of drugs or intoxicating liquors; or
- (g) the abuse of office; or
- (h) the abuse of a relationship of trust, authority or dependency; or
- (i) the abuse of a position of vulnerability; or
- (j) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,

with the intention that the other person will be subject to exploitation, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 20 years.

(2) If the offence is committed in relation to a person who is under 18 years of age at the time of the offence, the offender is liable to imprisonment for a term not exceeding 25 years.

(3) If the offender subjects the person to circumstances that result in, or are likely to result in, the death of that person, the offender is liable, subject to Section 19, to imprisonment for life.

“208D. TRAFFICKING IN PERSONS WITH KNOWLEDGE OR RECKLESSNESS.

(1) A person who recruits, transfers, conceals, harbours or receives any person by –

Criminal Code (Amendment)

- (a) threat; or
- (b) use of force or other forms of coercion; or
- (c) abduction; or
- (d) fraud; or
- (e) deception; or
- (f) use of drugs or intoxicating liquors; or
- (g) the abuse of office; or
- (h) the abuse of a relationship of trust, authority or dependency; or
- (i) the abuse of a person of vulnerability; or
- (j) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,

knowing, having reasonable grounds to believe, or being reckless as to the fact that the other person will be subject to exploitation, is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years.

(2) If the offence is committed with relation to a person under 18 years of age at that time of the offence, the offender is liable to imprisonment for a term not exceeding 20 years.

(3) If the offender subjects a person to circumstances that result in, or are likely to result in, the death of that person, the offender is liable, subject to section 19, to life imprisonment.

“208E. CONSENT OF TRAFFICKED PERSON NOT A DEFENCE.

It is not a defence to a charge under Sections 208C or 208D that the trafficked person consented to any acts under those sections.

“208F. IMMUNITY FROM CRIMINAL PROSECUTION.

(1) Subject to Subsection (2), a trafficked person is not liable to be prosecuted in respect of any offences, including the person's involvement in prostitution, that is a direct consequences of being trafficked.

(2) The immunity from criminal prosecution set out in Subsection (1) applies, if the court is satisfied on reasonable grounds that -

- (a) the person is a trafficked person; and
- (b) the offence is a direct consequence of the person being trafficked.

“208G. ASSISTANCE TO AND PROTECTION OF TRAFFICKED PERSONS.

In implementing the provisions under this Division, the Minister may cause all appropriate measures to be taken in favour of persons who have been the victim of a crime set out in Sections 208C or 208D, including -

Criminal Code (Amendment)

- (a) protecting the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; and
- (b) protecting the physical safety of the persons at all times; and
- (c) providing medical, psychological and material assistance; and
- (d) respecting the special needs of women and children; and
- (e) making arrangements for the ongoing presence of persons in Papua New Guinea on humanitarian grounds or in respect of the status of the persons under any applicable law, where the persons are not citizens of Papua New Guinea; and
- (f) making arrangements for the ongoing presence, and integration into society, of persons in a place in Papua New Guinea of their choice, where the persons are citizens of Papua New Guinea; and
- (g) facilitating the return to a country where the person was a citizen or a permanent resident at the time of entry into the receiving country, with due regard for the safety, dignity, physical and psychological conditions of the person and the status of the person under any applicable law.”.

3. REPEAL OF SECTIONS 218 AND 219.

Sections 218 and 219 of the Criminal Code are repealed.

I hereby certify that the above is a fair print of the *Criminal Code (Amendment) Act 2013* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Criminal Code (Amendment) Act 2013* was made by the National Parliament on 19th July, 2013, by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.

