

No. 34 of 2016.

Criminal Code (Amendment) Act 2016.

Certified : 13 DEC 2016



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ARRANGEMENT OF SECTIONS.

1. Territorial Application of the Code (Amendment of Section 12).
2. New Section 63A.

“63A. INCITING UNLAWFUL UNREST AND RIOT USING ICT.”

3. New Division V.10.

“Division 10. - Criminal Defamation.

362A. INTERPRETATION.

362B. UNLAWFUL PUBLICATION OF DEFAMATORY MATTER.

362C. DEFENCES.

362D. LIABILITY OF PROPRIETOR, PUBLISHER AND EDITOR OF PERIODICALS.

362E. ABSOLUTE PROTECTION - PETITIONS, OFFICIAL REPORTS AND MATTERS OF PUBLIC INTEREST.”

4. Interpretation for this Division (Amendment of Section 508A).
5. Crime of Money Laundering (Amendment of Section 508B).
6. Crime of dealing with property reasonably suspected to be criminal property (Amendment of Section 508C).



No. of 2016.

An Act

entitled

Criminal Code (Amendment) Act 2016,

Being a law to amend the *Criminal Code Act* (Chapter 262) to -

- (a) expand the jurisdiction of the application of the *Criminal Code Act* (Chapter 262); and
 - (b) criminalise the act of using electronic systems or devices to incite unlawful assemblies or riots; and
 - (c) criminalise the act of defamation; and
 - (d) include the use of ICTs as a means in which the offence of money laundering can be committed,
- 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 on advice.

1. TERRITORIAL APPLICATION OF THE CODE (AMENDMENT OF SECTION 12).

Section 12 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

- “(1) This Act applies to an act or acts done or an omission or omissions made -
- (a) in the territory of Papua New Guinea; or
 - (b) on a land, air and sea vessel registered in Papua New Guinea; or
 - (c) by a national of Papua New Guinea outside the territory of Papua New Guinea, if the person’s conduct would also constitute an offence under a law of the country where the offence was committed.”.

2. NEW SECTION 63A.

The Principal Act is amended by inserting, immediately after Section 63, the following new section:

“63A. INCITING UNLAWFUL UNREST AND RIOT USING ICT.

- (1) A person who uses an electronic system or device intentionally and without lawful excuse or justification or recklessly, to incite any form of unlawful assembly or riot, is guilty of a crime.

Criminal Code (Amendment)

- Penalty: (a) imprisonment for a term not exceeding ten years; or
(b) a fine not exceeding K50,000.00; or
(c) prohibition from accessing and using ICTs or electronic systems or devices for a term not exceeding 12 years; or
(d) all of (a), (b) and (c).

(2) For the purpose of this section, “device”, “electronic system or device” and “ICT” have the same meaning as “device”, “electronic system” and “ICT” in Section 2 of the *Cybercrime Code Act 2016*.”.

3. NEW DIVISION V.10.

Part V of the Principal Act is amended by adding, immediately after Division 9, the following new division:

“Division 10. - Criminal Defamation.

362A. INTERPRETATION.

For the purposes of this Division, unless the contrary intention appears -
“periodical” includes a newspaper, review, magazine or other writing published periodically;

“publication” means making publicly available defamatory material to persons other than the defamed person through -

- (a) spoken words or audible sounds; or
(b) words intended to be read by sight or touch; or
(c) signs, signals, gestures or visible representations;

“public body” means -

- (a) a body, authority or instrumentality (corporate or unincorporated) established by or under an Act or a Constitutional Law; and
(b) a body, authority or instrumentality incorporated under the *Companies Act 1997*, established for government purposes;

“public meeting” means a meeting lawfully held for a lawful purpose, and for -

- (a) the furtherance or discussion in good faith of a matter of public concern; or
(b) the advocacy of the candidature of a person for a public office,

whether admission to the meeting is open or restricted;

“defamatory material” means an imputation whether directly expressed or by insinuation, innuendo or irony, that concerns a person or a member of his family, whether living or dead, which is likely to -

- (a) injure the reputation of a person; or
(b) injure the profession or trade of a person; or
(c) inducing other people to shun, avoid, ridicule or despise a person.

Criminal Code (Amendment)

362B. UNLAWFUL PUBLICATION OF DEFAMATORY MATTER.

(1) A person who unlawfully publishes defamatory matter concerning another person, is guilty of a crime.

Penalty: Subject to Section 362, imprisonment for a term not exceeding 10 years or a fine not exceeding K10,000.00, or both.

(2) Where the offence is committed with the knowledge that the published defamatory material is false, the offender, is guilty of a crime.

Penalty: Subject to Section 362, imprisonment for a term not exceeding 15 years or a fine not exceeding K25,000.00, or both.

(3) A person who publishes, or directly or indirectly threatens to publish, or directly or indirectly offers to prevent the publication of, defamatory material concerning another person, with intent -

(a) to extort from that other person or any other person; or

(b) to induce a person to give or confer or procure, or to attempt to procure, to, upon or for a person, any property or benefit of any kind,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 25 years or a fine not exceeding K50,000.00, or both.

362C. DEFENCES.

(1) It is a defence to a charge of an offence under this Division to prove that the defamatory publication -

(a) is true and was made for the benefit of the public; or

(b) constitutes fair comment.

(2) It is a defence to a charge of an offence under this Division if the defamatory publication was made in good faith; and

(3) The burden of proof of the absence of good faith is on the party alleging the absence.

(4) It is a defence in the case of spoken defamatory words or slander that the publication was made on an occasion when and in circumstances in which, the person defamed was not likely to be injured by the publication.

(5) For the purposes of this Division, whether the defences of truth and public benefit, fair comment or good faith, are available to the offender, is a question of fact.

Criminal Code (Amendment)

362D. LIABILITY OF PROPRIETOR, PUBLISHER AND EDITOR OF PERIODICALS.

(1) Where a proprietor, publisher, or editor of a periodical is charged with the unlawful publication in the periodical of defamatory matter, it is a defence to prove that the matter complained of was inserted in the periodical without his knowledge and without negligence on his part.

(2) General authority given to the person who actually inserted the defamatory matter to manage or conduct the periodical as editor or otherwise, and to insert in the periodical what in his discretion he considers fit, is not negligence within the meaning of this section, unless it is proved that the proprietor, publisher or editor, when giving the general authority, meant it should extend to and authorise the unlawful publication of defamatory matter, or continued the general authority knowing that it had been exercised by unlawfully publishing defamatory matter in a number or part of the periodical.

362E. ABSOLUTE PROTECTION - PETITIONS, OFFICIAL REPORTS AND MATTERS OF PUBLIC INTEREST.

(1) For the purposes of this Division -

(a) a person is not criminally liable for defamation for -

- (i) presenting a petition to the Parliament of defamatory matter contained in the petition; or
- (ii) publishing defamatory matter -
 - (A) in the course of a proceeding held before or under the authority of a Court; or
 - (B) in the course of an inquiry made under a law or the authority of the Head of State, acting on advice, or the Parliament; or
 - (C) in an official report made by him of the result of an inquiry under Subparagraph (ii)(B) where he is the person appointed to hold the inquiry; or

(b) it is lawful to publish in good faith for the information of the public -

- (i) a fair report of the proceedings of the Parliament or of a Committee of the Parliament; or
- (ii) a copy of, or an extract from or abstract of, a paper published by order of or under the authority of the Parliament; or
- (iii) a fair report of the public proceedings of a Court, whether the proceedings are preliminary, interlocutory or final, or of the result of any such proceedings, unless -
 - (A) in the case of ongoing proceedings, the publication has been prohibited by the Court; or

Criminal Code (Amendment)

- (B) in any case the matter published is blasphemous or obscene, or publication is prohibited by law; or
- (iv) a fair report of the proceedings of an inquiry held under a law, or by or under the authority of the Head of State, acting on advice, or an extract from or abstract of, an official report made by the person by whom the inquiry was held; or
- (v) a notice or report issued by or at the request of a public body; or
- (vi) a fair report of the proceedings of a public meeting, so far as the matter published relates to matters of public concern.

(2) A publication is made in good faith for the information of the public if the person by whom it is made is not actuated in making it by ill-will to the person defamed or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the publication of news.

(3) In the case of a publication of a report of the proceedings of a public meeting in a periodical, it is evidence of want of good faith for the purposes of this Division if the proprietor, publisher or editor has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish it.”.

4. INTERPRETATION FOR THIS DIVISION (AMENDMENT OF SECTION 508A).

Section 508A of the Principal Act is amended by adding, immediately after the definition of “criminal property”, the following new definitions:

““device” has the same meaning as the word ‘device’ in Section 2 of the *Cybercrime Code Act 2016*;

“electronic system or device” has the same meaning as the word ‘electronic system’ in Section 2 of the *Cybercrime Code Act 2016*;”.

5. CRIME OF MONEY LAUNDERING (AMENDMENT OF SECTION 508B).

Section 508B of the Principal Act is amended in Subsection (3) -

- (a) by deleting the full-stop at the end of Paragraph (k) and replacing it with “; and”; and
- (b) by adding, after Paragraph (k), the following new paragraph and full-stop:

“(l) using an electronic system or device to do any of (a) to (k).”.

6. CRIME OF DEALING WITH PROPERTY REASONABLY SUSPECTED TO BE CRIMINAL PROPERTY (AMENDMENT OF SECTION 508C).

Section 508C of the Principal Act is amended in Subsection (2) -

- (a) by deleting the full-stop at the end of Paragraph (k) and replacing it with “; and”; and

Criminal Code (Amendment)

(b) by adding, after Paragraph (k), the following new paragraph and full-stop:

“(l) using an electronic system or device to do any of (a) to (k).”.

I hereby certify that the above is a fair print of the *Criminal Code (Amendment) Act 2016* which has been made by the National Parliament.


Acting Clerk of the National Parliament.

13 DEC 2016

I hereby certify that the *Criminal Code (Amendment) Act 2016* was made by the National Parliament on 11 August 2016.


Acting Speaker of the National Parliament.

13 DEC 2016