



No. of 2012

Criminal Code (Amendment) Bill 2012.

ARRANGEMENT OF CLAUSES.

1. New Division 10. – People Smuggling.
2. New Sections 206A to 206I.
 - “206A. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.”**
 - “206B. APPLICATION.”**
 - “206C. INTERPRETATION.”**
 - “206D. PEOPLE SMUGGLING.”**
 - “206E. FALSIFYING TRAVEL AND IDENTITY DOCUMENTS OR APPROVAL TO TRAVEL OR STAY.”**
 - “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.”**
3. New Division 1A. – Trafficking in Persons.
4. New Sections 208A to 208G.
 - “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.”**
5. Repeal of Sections 218 and 219.



A BILL

for

AN ACT

entitled

Criminal Code (Amendment) Act 2012.

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 10 (AMENDMENT OF PART III).

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

“Division 10. – People Smuggling.”

2. NEW SECTIONS 206A TO 206L.

The Principal Act is amended by adding after Division 10 the following new sections:

“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 (the national government), and Part XI (miscellaneous) of the ***Constitution***, namely–

- (a) the right to freedom conferred by Section 32 of the ***Constitution***; and

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- (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 the 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
- (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;

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“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 Minister responsible for national justice administration;

“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

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- (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.

“(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 OR 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; 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.”.

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“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.

“(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.”.

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3. NEW DIVISION 1A (AMENDMENT OF PART IV).

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

“Division 1A. – Trafficking in Persons.”.

4. NEW SECTIONS 208A TO 208F.

The Principal Act is amended by adding, after Division 10, the following new sections after Section 208:

“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;

“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:

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

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- (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:-

- (a) threat; or
- (b) use of force or other forms of coercion; or

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- (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 favor of persons who have been the victim of a crime set out in Sections 208C or 208D, including –

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- (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.”.

5. REPEAL OF SECTIONS 218 AND 219.

Sections 218 and 219 of the Principal Act are hereby repealed.



CERTIFICATE

I hereby certify that the *Criminal Code (Amendment) Bill 2012* (Draft of 17th February 2012) is in accordance with the National Executive Council Decision No. 49/2011 and the drafting instructions.



JOHNNY BOGOMBARI

SECOND LEGISLATIVE COUNSEL

17th February, 2012.

CRIMINAL CODE (AMENDMENT) BILL 2012

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Justice and Attorney General

This Clause states that to the extent that it regulates or restricts a qualified right as set out in the Constitution, this law is made for the purpose of giving effect to the public interest in public safety, public order and public welfare. The clause also provides that for the purpose of Section 41 of the Organic Law on Provincial Governments and Local Level Governments, the Bill relates to a matter of national interest.

Clause 206B – Application.

This Clause serves to avoid doubt that the offences created by new Division 10 will apply whether the conduct is engaged in wholly or partially in Papua New Guinea. This is in addition to Sections 12, 13 and 14 of the Criminal Code. This means that the Division has extraterritorial effect consistent with international standards.

Clause 206C – Interpretation.

This Clause defines a number of terms used in new Division 10 including the terms smuggled person and people smuggling.

The definition of smuggled person pays due regard to the status of the person under national and international law applicable in Papua New Guinea, including the 1951 Refugee Convention.

Clause 206D – People Smuggling.

This Clause criminalizes the act of people smuggling, and includes aggravating circumstances with increased penalties.

Clause 206E – Falsifying Travel or Identity Document or Approval to Travel or Stay Document.

This Clause covers acts which are commonly used by people smuggling perpetrators by criminalizing conduct, such as making, selling or possessing a fraudulent travel or identity document, a fraudulent approval to travel document or a fraudulent approval to stay document.

including international humanitarian law and international human rights law, and in particular, where applicable, the 1951 Refugee Convention.”

Clause 3 – NEW DIVISION 1A- TRAFFICKING IN PERSONS

This Clause inserts a new Division 1A entitled “Trafficking in Persons” in Part IV of the Criminal Code to criminalize acts of trafficking in persons and related issues.

Clause 4- NEW CLAUSES 208A TO 208G

This Clause inserts new Clauses 208A to 208G. The new Clauses are as follows:

“Clause 208A – Application.

This Clause serves to avoid doubt that the offences created by new Division 10 will apply whether the conduct is engaged in wholly or partially in Papua New Guinea. This is in addition to Sections 12, 13 and 14 of the Criminal Code. This means that the Division has extraterritorial effect consistent with international standards.

Clause 208B – Interpretation.

This Clause provides definitions of key elements of trafficking in persons. This Section also defines slavery and forced labor under exploitation and provides a non-exhaustive list of circumstances where a person may be deemed to be in a position of vulnerability.

Clause 208C – Trafficking in Persons.

This Clause criminalizes the offence of trafficking in persons where the offender intends the trafficked person to be subjected to exploitation. It includes aggravated circumstances with increased penalties.

Clause 208D – Trafficking in Persons with knowledge or recklessness.

This Clause criminalizes the offence of trafficking in persons where the offender knows, is reckless, or has reasonable grounds to believe that the trafficked person will be subject to exploitation. It includes aggravated circumstances with increased penalties.

Clause 208E – Consent of Trafficked Person not a Defence.

This Clause provides that a person charged under Section 208C or Section 208D cannot plead, as a defence that consent was given by the trafficked person. In most cases, the circumstances in which the consent was obtained or given will mean that any consent will not be available as a mitigating factor.

Clause 208F – Immunity from Criminal Prosecution.

This Clause provides that where a court is satisfied on reasonable grounds that the person is a trafficked person, she or he has immunity in respect of any offences committed as a direct consequence of being a trafficked person. To avoid doubt, a trafficked person can be prosecuted for having trafficked others or having committed any other offence under the laws of Papua New Guinea.

Clause 208G – Assistance to and Protection of Trafficked Persons

This Clause gives authority to the Minister responsible for national justice administration to cause actions to be taken to ensure that trafficked persons have access to basic rights, needs and services. To avoid doubt, nothing in this Section shall affect the status of the person under any applicable law including international humanitarian law and international human rights law, and in particular, where applicable, the 1951 Refugee Convention.”

Clause 5 - SECTION 218 (PROCURING GIRL OR WOMAN) AND SECTION 219 (PROCURING GIRL OR WOMAN BY DRUGS, ETC)

This Clause repeals Section 218 and Section 219 of the Criminal Code as the acts covered by these Sections are now criminalized by the new trafficking in persons offence.



INDEPENDENT STATE OF PAPUA NEW GUINEA

FIRST READING SPEECH

BY THE MINISTER FOR JUSTICE AND THE ATTORNEY-GENERAL ON THE DRAFT LEGISLATION TO AMEND THE CRIMINAL CODE

Mr. Speaker and members of this Honourable House, it gives me great pleasure to be able to introduce the Draft Legislation to amend the Criminal Code Act Chapter 262 to criminalize the acts of people smuggling and trafficking in persons respectively. The primary purpose of introducing this draft legislation is to get the legislature to address the issue of people smuggling and trafficking in persons in Papua New Guinea.

People smuggling and trafficking in persons are a global phenomena and highly lucrative organized crimes that flourish in the face of weak laws and penalties. Although people smuggling and trafficking in persons are separate offences, the two are closely linked. People smuggling refers to the facilitation of a person's illegal entry into another country and thus always occurs over an international border. By systematically undermining immigration laws and regulations, people smuggling is a crime against the State, and a threat to national security. In contrast, trafficking in persons is a crime against the person and involves the recruitment and movement of a person through the use of coercion and deception for the purpose of exploitation. Trafficking in persons can occur domestically, within one country, or internationally, between two or more countries. Victims of trafficking in persons are subjected to both physical and psychological abuse, which can cause long-term damage, and even result in death. Smuggled persons are highly vulnerable to fall victim to human trafficking as their illegal entry and presence in the destination country renders them highly susceptible to manipulation and exploitation. Due to the inherent link between these two offences, both people smuggling and trafficking in persons must be criminalized. Thus to provide a targeted response to each, the proposed legislation was drafted to amend the Criminal Code to include both these offences respectively.

Mr. Speaker, Preliminary data gathering field trips were conducted by the Department of Justice & Attorney-General between February – May 2011 to administer a survey on people smuggling and trafficking in persons in the National Capital District as well as the key land and sea border provinces of West Sepik Province, Western Province and the Autonomous Region of Bougainville. From the 100 surveys collected, the statistics indicated the following:

- over 70% of respondents indicated the lack of formal regulations and their effective implementation as major constraints in their daily work.
- Results also reflected a very low understanding of the definition of people smuggling and trafficking in persons.
- 75% of respondents indicated that the most frequent form of trafficking in Papua New Guinea was sex trafficking.
- Whilst 50% of respondents indicated that labour trafficking and domestic servitude trafficking also occurred frequently.

Although these statistics were collected from only four provinces, they are indicative of trafficking trends in Papua New Guinea. A report on the findings from the field trips have been compiled and endorsed in principle by the Secretary for Department of Justice. The Report is now being reformatted for publication. After the legislation is passed, further data collection on trafficking in Papua New Guinea will be carried out in all provinces.

The proposed legislation also corresponds with public statements including articles in the daily national newspapers which highlight concerns over people smuggling and trafficking in persons. Newspaper articles reflect major concerns over the security threat posed by movement of people across PNG's border and the thousands of irregular immigrants living in Papua New Guinea whose total number is unknown. Concern has also been raised on the implications of this population on Papua New Guinea's economy as illegal migrants do not utilize legal banking systems nor re-invest their profits in the country.

Furthermore, the proposed legislation will compliment and strengthen the Government's commitment to addressing transnational crimes and illegal entry into PNG. The proposed legislation is not only timely, but also implements Papua New Guinea's international commitments.

At the regional level, Papua New Guinea is an active party to initiatives such as the Bali Process on People Smuggling, Trafficking in Persons and related Transnational crime, the Asia Pacific Group on Money Laundering and the Pacific Immigration Directors' Conference (PIDC).

offence is in relation to a child under 18 years of age, and will be subject to life imprisonment in the case that death occurs or is likely to occur.

The penalty for trafficking in persons is higher due to the further exploitation and abuse involved. The maximum penalty for trafficking in persons is 20 years imprisonment and is increased to 25 years if the offence involves a child under the age of 18 years. If the offender subjects the victim to circumstances that result in, or are likely to result in, death, the offender is liable to life imprisonment.

Assistance to and protection of smuggled persons and victims of trafficking are provided in the proposed legislation and complies with minimum recognized regional and international standards.

The proposed legislation will crucially enhance the management of persons traveling through the country's international borders consequentially reducing the number of illegal immigrants entering and operating in Papua New Guinea. It will strengthen current initiatives by the Government to address transnational crime and directly respond to and fulfill requests for assistance raised by law enforcement and border patrol officials. The status of Papua New Guinea will also be elevated on a global scale by enacting the proposed legislation to address these crimes and fulfill international commitments and recommendations.

Mr. Speaker, with that, I now commend this draft legislation to this honourable House.



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**Hon. Dr Allan Marat LLB; LLM (with Hons.), D. Phil. CBE, MP,
MINISTER FOR JUSTICE & THE ATTORNEY GENERAL**

CRIMINAL CODE (AMENDMENT) BILL 2012

EXPLANATORY MEMORANDUM

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This Clause states that to the extent that it regulates or restricts a qualified right as set out in the Constitution, this law is made for the purpose of giving effect to the public interest in public safety, public order and public welfare. The clause also provides that for the purpose of Section 41 of the Organic Law on Provincial Governments and Local Level Governments, the Bill relates to a matter of national interest.

Clause 206B – Application.

This Clause serves to avoid doubt that the offences created by new Division 10 will apply whether the conduct is engaged in wholly or partially in Papua New Guinea. This is in addition to Sections 12, 13 and 14 of the Criminal Code. This means that the Division has extraterritorial effect consistent with international standards.

Clause 206C – Interpretation.

This Clause defines a number of terms used in new Division 10 including the terms smuggled person and people smuggling.

The definition of smuggled person pays due regard to the status of the person under national and international law applicable in Papua New Guinea, including the 1951 Refugee Convention.

Clause 206D – People Smuggling.

This Clause criminalizes the act of people smuggling, and includes aggravating circumstances with increased penalties.

Clause 206E – Falsifying Travel or Identity Document or Approval to Travel or Stay Document.

This Clause covers acts which are commonly used by people smuggling perpetrators by criminalizing conduct, such as making, selling or possessing a fraudulent travel or identity document, a fraudulent approval to travel document or a fraudulent approval to stay document.

including international humanitarian law and international human rights law, and in particular, where applicable, the 1951 Refugee Convention.”

Clause 3 – NEW DIVISION 1A- TRAFFICKING IN PERSONS

This Clause inserts a new Division 1A entitled “Trafficking in Persons” in Part IV of the Criminal Code to criminalize acts of trafficking in persons and related issues.

Clause 4- NEW CLAUSES 208A TO 208G

This Clause inserts new Clauses 208A to 208G. The new Clauses are as follows:

“Clause 208A – Application.

This Clause serves to avoid doubt that the offences created by new Division 10 will apply whether the conduct is engaged in wholly or partially in Papua New Guinea. This is in addition to Sections 12, 13 and 14 of the Criminal Code. This means that the Division has extraterritorial effect consistent with international standards.

Clause 208B – Interpretation.

This Clause provides definitions of key elements of trafficking in persons. This Section also defines slavery and forced labor under exploitation and provides a non-exhaustive list of circumstances where a person may be deemed to be in a position of vulnerability.

Clause 208C – Trafficking in Persons.

This Clause criminalizes the offence of trafficking in persons where the offender intends the trafficked person to be subjected to exploitation. It includes aggravated circumstances with increased penalties.

Clause 208D – Trafficking in Persons with knowledge or recklessness.

This Clause criminalizes the offence of trafficking in persons where the offender knows, is reckless, or has reasonable grounds to believe that the trafficked person will be subject to exploitation. It includes aggravated circumstances with increased penalties.

Clause 208E – Consent of Trafficked Person not a Defence.

This Clause provides that a person charged under Section 208C or Section 208D cannot plead, as a defence that consent was given by the trafficked person. In most cases, the circumstances in which the consent was obtained or given will mean that any consent will not be available as a mitigating factor.

Clause 208F – Immunity from Criminal Prosecution.

This Clause provides that where a court is satisfied on reasonable grounds that the person is a trafficked person, she or he has immunity in respect of any offences committed as a direct consequence of being a trafficked person. To avoid doubt, a trafficked person can be prosecuted for having trafficked others or having committed any other offence under the laws of Papua New Guinea.

Clause 208G – Assistance to and Protection of Trafficked Persons

This Clause gives authority to the Minister responsible for national justice administration to cause actions to be taken to ensure that trafficked persons have access to basic rights, needs and services. To avoid doubt, nothing in this Section shall affect the status of the person under any applicable law including international humanitarian law and international human rights law, and in particular, where applicable, the 1951 Refugee Convention.”

Clause 5 - SECTION 218 (PROCURING GIRL OR WOMAN) AND SECTION 219 (PROCURING GIRL OR WOMAN BY DRUGS, ETC)

This Clause repeals Section 218 and Section 219 of the Criminal Code as the acts covered by these Sections are now criminalized by the new trafficking in persons offence.