

**PENAL CODE (AMENDMENT) BILL, 2021***(Bill No. 42 of 2021)***EXPLANATORY STATEMENT**

In the preparation of the revised edition of the Laws of Seychelles, the Law Revision Commissioner, in consultation with the Attorney General and on the approval of the Cabinet of Ministers, considers it desirable for this Bill to be presented to the National Assembly. This Bill is being presented to the National Assembly pursuant to section 6 of the Statute Law Revision Act, Cap. 231.

This Bill seeks to, amongst other things, repeal the concept of criminal libel/defamation; to increase the minimum age of criminal responsibility from 7 to 10 years of age; to amend and insert definitions; and to increase outdated monetary penalties.

**Criminal Libel**

Criminal defamation has a long and troubled history around the globe. In Seychelles, it is very rare for a person to be charged with criminal libel and in the last decade only one person in Seychelles was charged with the offence of criminal libel. The review of the concept of criminal libel is overdue. In fact, the Court of Appeal of Seychelles in the case of *Sullivan v Attorney General* (2014) SLR 417 took the view that:

“Since the enactment of the 1993 Constitution, there is no doubt that offences such as criminal libel . . . need to be scrupulously examined in light of the constitutional provision for the right to freedom of speech. Be that as it may, these offences have survived in this country presumably under permissible exceptions under the Constitution. It is the constitutional permissibility of these exceptions that is now in issue.”

In the contemporary era, there are adequate means and alternative legislative measures to address defamatory statements, malicious communications and anti-social behaviour rather than the more authoritarian contrivance of criminal libel. Further, cases such as *Ramkalawan v Parti Lepep* [2017] SCSC 446 and *Ernesta v Bastienne* [2020] SCCA 37 demonstrate that politicians, like any other person in Seychelles, can successfully rely on civil

defamation where their reputations are being maliciously lowered. It is also noteworthy that Seychelles has given several international undertakings in the recent past to abolish criminal libel.

### **Age of criminal responsibility**

The current law in Seychelles is that no child under the age of seven can be found guilty of a criminal offence. The law also presumes that a child between the ages of 7 and 12 is incapable of committing a crime, unless the Attorney General proves beyond reasonable doubt that, at the time of the offence, the child was well aware that his or her act was seriously wrong; this is known as the rebuttable presumption of *doli incapax*.

In comparison with other countries, the minimum age of criminal responsibility in Seychelles is low and there have been increasing calls over the years for the minimum age to be raised. It is proposed that the minimum age is increased from the age of 7 to 10 and the rebuttable presumption of *doli incapax* is kept.

It is noteworthy to clearly indicate that under section 94(1) of the Children Act, Cap. 28, no child under 14 years of age can be sentenced to a term of imprisonment. The policy of this amendment is to better protect children from the harmful effects of early criminalisation, while ensuring that any deviant behaviour of a child will be fully investigated to find out what happened and remedial measures will be taken address the child's behaviour and to minimize the risk of recurrence.

### **Miscellaneous**

The Bill also seeks to increase a few outdated monetary penalties. Further, the Bill repeals references to words such as “Justice of Peace” and “municipal council”, and updates the definition of words such as “statute” and “vessel”. In the definition of “money”, the Bill captures virtual currencies such as crypto currency.

**Dated this 14<sup>th</sup> day of September, 2021.**

**FRANK D.R. ALLY  
ATTORNEY-GENERAL**

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**PENAL CODE (AMENDMENT) BILL, 2021**

*(Bill No. 42 of 2021)*

**ARRANGEMENT OF SECTIONS**

**SECTIONS**

1. Short title
2. Amendment of section 5
3. Amendment of section 15
4. Amendment of section 35
5. Amendment of section 52
6. Amendment of section 55
7. Amendment of section 70
8. Amendment of section 76
9. Amendment of section 89A
10. Amendment of section 98
11. Amendment of section 106
12. Amendment of section 123
13. Amendment of section 167
14. Amendment of section 172
15. Amendment of section 173
16. Amendment of section 173A
17. Repeal of Chapter XVIII
18. Insertion of new section 222A
19. Amendment of section 248
20. Amendment of section 269
21. Amendment of section 299A
22. Repeal of section 305
23. Amendment of section 307
24. Amendment of section 308
25. Amendment of section 363
26. Amendment of section 365
27. Amendment of Chapter XXXVIII
28. Amendment of section 373
29. Amendment of section 374



**PENAL CODE (AMENDMENT) BILL, 2021**

*(Bill No. 42 of 2021)*



**A BILL**

**FOR**

**AN ACT to amend the Penal Code, Cap. 158, to amongst other things, repeal criminal libel; to increase the minimum age of criminal responsibility from 7 to 10 years of age; to introduce the offence of bomb hoax; and to provide for matters connected therewith or incidental thereto.**

**ENACTED** by the President and the National Assembly.

**Short title**

1. This Act may be cited as the Penal Code (Amendment) Act, 2021, and shall be read and construed as one with the Penal Code, Cap. 158, which as amended, is hereinafter referred to as the “Code”.

**Amendment of section 5****2.** Section 5 of the Code is amended —

- (a) in the definition of “money” by inserting immediately after the words “banks notes,” the words “virtual currency,”;
- (b) in the definition of “person employed in the public service” by repealing the words “(i) Justice of the Peace;”;
- (c) by repealing the definitions of “statute” and “vessel”;
- (d) by inserting in the proper alphabetical order, the following new definitions —

“**harbour**” includes supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or assisting a person in any way to evade apprehension;

“**slavery**” means the status or condition of a person over whom any or all of the powers attaching to the right ownership are exercised, and slave is construed accordingly;

“**statute**” includes —

- (a) an Act made under article 86 of the Constitution; and
- (b) any Act, Decree or Order in Council having effect as part of the laws of Seychelles by virtue of section 15 of the Constitution of the Republic of Seychelles Decree, 1979, or any other written law; and
- (c) any statutory instrument or subsidiary legislation in force;

“**vessel**” means every description of vessel in navigation, whether self-propelled or not, and includes aircraft, barges, jet skis, seaplanes and other similar craft and vessels;

“**virtual currency**” means a digital representation of value in money or money’s worth that can be digitally traded and functions as a medium of exchange, a unit of account or store of value, regardless of whether it is legal tender in any country or territory including Seychelles;”

### **Amendment of section 15**

3. Section 15 of the Code is amended by repealing the words “seven years” and substituting therefor the words “10 years”.

### **Amendment of section 35**

4. Section 35 of the Code is amended by inserting immediately after the words “with a fine” the words “of level 3 on the standard scale”.

### **Amendment of section 52**

5. Section 52 of the Code is amended by repealing the words “a fine not exceeding Rs 500” and substituting therefor the words “a fine of level 2 on the standard scale”.

### **Amendment of section 55**

6. Section 55 of the Code is amended —

- (a) in subsection (1) by repealing the words “a fine not exceeding Rs 1, 000” and substituting therefor the words “a fine of level 3 on the standard scale”;
- (b) in subsection (2) by repealing the words “a fine not exceeding Rs 500” and substituting therefor the words “a fine of level 2 on the standard scale”.

### **Amendment of section 70**

7. Section 70 of the Code is amended by repealing the following words —

- (a) “peace officer, and any”;

- (b) “authorized in writing by a peace officer;”;
- (c) “For the purposes of this section, the expression “peace officer” means any magistrate or any police officer not below the rank of sergeant.”

### **Amendment of section 76**

8. Section 76 of the Code is amended by repealing the words “a Justice of Peace within the area of his jurisdiction,” and substituting therefor the word “or”.

### **Amendment of section 89A**

9. Section 89A(1) of the Code is amended by inserting immediately after the words “imprisonment for seven years” the words “or a fine of level 5 on the standard scale”.

### **Amendment of section 98**

10. Section 98 of the Code is amended in by repealing the words “or a Justice of the Peace”.

### **Amendment of section 106**

11. Section 106 of the Code is amended by inserting immediately after the words “intent to mislead any” the words “court or”.

### **Amendment of section 123**

12. Section 52 of the Code is amended by repealing the word “Legislature” and substituting therefor the words “National Assembly”.

### **Amendment of section 167**

13. Section 167(4) of the Code is amended by repealing the words “, and is liable to a fine of Rs50 for the first offence, and for each subsequent offence to a fine of Rs.250” and substituting therefor the words “a fine of level 1 on the standard scale”.



**Amendment of section 172**

14. Section 172 of the Code is amended by repealing the words “a fine of Rs. 1, 000” and substituting therefor the words “a fine of level 3 on the standard scale”.

**Amendment of section 173**

15. Section 173 of the Code is amended by repealing the words “a fine not exceeding Rs. 1, 000” and substituting therefor the words “a fine of level 2 on the standard scale”.

**Amendment of section 173A**

16. Section 173A of the Code is amended by repealing the words “a fine of Rs. 1, 000” and substituting therefor the words “a fine of level 2 on the standard scale”.

**Repeal of Chapter XVIII**

17. Sections 184, 185, 186, 187, 188, 189, 190 and 191 of the Code are repealed.

**Insertion of new section 222A.**

18. The principal Act is amended by inserting immediately after section 222 the following as section 222A. —

**“Bomb hoax**

**222A.**(1) A person who —

- (a) places any article, item or substance in any place; or
- (b) dispatches any article, item or substance by post or any other means of sending things from one place to another,

with the intention, in either case, of inducing in some other person a belief that the article, item or substance is likely to

explode or ignite and thereby cause personal injury or damage to property commits an offence.

(2) A person who communicates any information which that person knows or believes to be false to another person with the intention of inducing any person a false belief that a bomb or other thing liable to explode or ignite is present in any place or location commits an offence.

(3) For an offence under subsection (1) or (2) it is not necessary for the offender to have any particular person in mind as the person in whom the offender intends to the belief.

(4) A person who commits an offence under this section is liable to a fine of level 4 on the standard scale or to imprisonment for 5 years.”

### **Amendment of section 248**

**19.** Section 248 of the Code is amended by repealing the words “a fine of Rs. 5, 000” and substituting therefor the words “a fine of level 2 on the standard scale”.

### **Amendment of section 269**

**20.** Section 269 of the Code is amended by repealing the words “its value exceeds Rs60” and substituting therefor the words “its value exceeds SCR 100, 000”.

### **Amendment of section 299A**

**21.** Section 299A of the Code is amended by repealing the words “a fine of Rs50, 000” and substituting therefor the words “a fine of level 4 on the standard scale”.

### **Repeal of section 305**

**22.** Section 305 of the Code is repealed.

**Amendment of section 307**

23. Section 307 of the Code is amended by repealing the words “a fine not exceeding ten thousand rupees” and substituting therefor the words “a fine of level 2 on the standard scale”.

**Amendment of section 308**

24. Section 308 of the Code is amended by repealing the words “a fine not exceeding ten thousand rupees” and substituting therefor the words “a fine of level 2 on the standard scale”.

**Amendment of section 363**

25. Section 363(2) of the Code is amended —

- (a) by repealing the words “, magistrate or Justice of the Peace” and substituting therefor the words “or magistrate”;
- (b) by repealing the words “, magistrate or Justice of the Peace within his district” and substituting therefor the words “or magistrate”.

**Amendment of section 365**

26. Section 365 of the Code is amended by repealing the words “a fine Rs.650” and substituting therefor the words “a fine of level 2 on the standard scale”.

**Amendment of Chapter XXXVIII**

27. Sections 372(2), 374 and 375 of the Code are amended by repealing the words “municipal council or board”, wherever they appear, and substituting therefor the words “public authority”.

**Amendment of section 373**

28. Section 373 of the Code is amended by repealing the words “a fine not exceeding Rs.10, 000” and substituting therefor the words “a fine of level 3 on the standard scale”.

**Amendment of section 374**

**29.** Section 374 of the Code is amended by repealing the words “a fine of Rs.10, 000” and substituting therefor the words “a fine of level 7 on the standard scale”.