

M O N T S E R R A T

NO. 7 OF 2010

PENAL CODE (AMENDMENT) ACT 2010

ARRANGEMENT OF SECTIONS

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I ASSENT

**Peter Waterworth
GOVERNOR**

DATE: 15.4.10

M O N T S E R R A T

NO. 7 OF 2010

AN ACT TO AMEND THE PENAL CODE (CAP. 4.02).

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows—

Short title

1. This Act may be cited as the Penal Code (Amendment) Act, 2010.

Interpretation

2. In this Act —

"Code" means the Penal Code, (Cap. 4.02).

Insertion of section 21A

3. The Code is amended by inserting, after section 21, the following section—

“Participation in organised criminal group

21A. (1) A person who participates, whether as a member or an associate or prospective member, in an organised criminal group, knowing that it is an organised criminal group and who—

(a) knows that his or her participation contributes to the occurrence of criminal activity; or

(b) is reckless as to whether his or her participation may contribute to the occurrence of criminal activity,

commits an offence and is liable on conviction to imprisonment for 5 years.

(2) For the purpose of this section—

(a) a group is an organised criminal group if it is a group of three or more persons who have as their objective one of the following—

(i) obtaining a material benefit from the commission of an offence that is punishable by imprisonment for a term of 2 years or more;

(ii) obtaining a material benefit from conduct outside Montserrat that, if it occurred in Montserrat, would constitute the commission of an offence that is punishable by imprisonment for a term of 2 years or more;

(iii) the commission of a serious violent offence; or

(iv) conduct outside Montserrat that, if it occurred in Montserrat, would constitute the commission of a serious violent offence; and

(b) a person obtains a material benefit, in relation to doing a thing, if he obtains, directly or indirectly, any property, pecuniary advantage or other valuable consideration of any kind for doing the thing or for taking an action that forms part of doing the thing.

(3) A group of persons is capable of being an organised criminal group for the purposes of this section whether or not—

(a) some of the persons are subordinates or employees of others;

(b) only some of the people involved in the group at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity or transaction; or

(c) the membership of the group changes from time to time.

(4) For the purposes of this section, “serious violent offence” means an offence—

(a) that is punishable by a period of imprisonment for a term of 5 years or more; and

(b) where the conduct constituting the offence involves—

(i) loss of a person's life or serious risk of loss of a person's life;

(ii) serious injury to a person or serious risk of serious injury to a person;

(iii) serious damage to property in circumstances endangering the physical safety of any person; or

(iv) perverting the course of justice, where the purpose of the conduct is to prevent, seriously hinder, or seriously obstruct the detection, investigation, or prosecution of any offence—

- (A) that is punishable by a period of imprisonment for a term of 5 years or more, and
- (B) that involved, involves, or would involve conduct of the kind referred to in any of subparagraphs (i) to (iii).”

Amendment of section 122

4. Section 122 of the Code is amended by deleting subsection (1) and substituting the following—

“(1) Subject to the provisions of this section, any person who makes an indecent assault on a woman commits an offence and is liable—

- (a) if on a girl under the age of 13 years, to imprisonment for –
 - (i) 10 years on conviction on indictment, or
 - (ii) 1 year on summary conviction; or
- (b) in any other case, to imprisonment for –
 - (i) 5 years on conviction on indictment, or
 - (ii) 6 months on summary conviction.”.

Repeal and substitution of section 138

5. Section 138 of the Code is repealed and the following substituted—

“Indecent assault on a man

138. A person who commits or attempts to commit an indecent assault on a male person commits an offence and is liable—

- (a) if on a boy under the age of 13 years, to imprisonment for—
 - (i) 10 years on conviction on indictment; or
 - (ii) 1 year on summary conviction; or
- (b) in any other case, to imprisonment for –
 - (i) 5 years on conviction on indictment; or
 - (ii) 6 months on summary conviction.”.

Insertion of Part VIII-A

6. The Code is amended by inserting, after Part VIII, the following Part—

**“PART VIII-A
EXPLOITATION OF PERSONS**

Dealing in slaves

138A. (1) A person who, within or outside Montserrat—

- (a) sells, purchases, transfers, barter, lets, hires, or in any way whatsoever deals with any person as a slave;
- (b) employs or uses any person as a slave, or permits any person to be so employed or used;
- (c) detains, confines, imprisons, carries away, removes, receives, transports, imports, or brings into any place whatsoever any person as a slave or to be dealt with as a slave;
- (d) induces a person to sell, let, or give himself, or any other person dependent on him or in his charge, as a slave;
- (e) in any case not covered by paragraph (d), induces any person to sell, let, or give any other person into debt-bondage or serfdom;
- (f) builds, fits out, sells, purchases, transfers, lets, hires, uses, provides with personnel, navigates, or serves on board any ship or aircraft for any of the purposes in paragraphs (a) to (e);
- (g) for gain or reward gives in marriage or transfers any woman to another person without her consent; or
- (h) is a party to the inheritance by any person of a woman on the death of her husband;
- (i) being a parent or guardian of any child under the age of 18 years, delivers that child to another person with intent that the child or his labour be exploited; or

(j) agrees or offers to do any of the acts mentioned in this subsection, commits an offence and is liable on conviction to imprisonment for life.

(2) For the purposes of this section—

“**debt-bondage**” means the status or condition arising from a pledge by a debtor of his personal services, or of the personal services of any person under his control, as security for a debt, if the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt or if the length and nature of those services are not limited and defined;

“**serfdom**” means the status or condition of a tenant who is by any law, custom, or agreement bound to live and labour on land belonging to another person and to render some determinate service to that other person, whether for reward or not, and who is not free to change that status or condition;

“**slave**” includes, without limitation, a person subject to debt-bondage or serfdom.

Dealing in people under 18 for sexual exploitation

138B. (1) A person who, within or outside Montserrat —

- (a) sells, buys, transfers, barter, rents, hires, or in any other way enters into a deal involving a person under the age of 18 years for the purpose of the sexual exploitation of the person;
- (b) detains, confines, imprisons, or carries away a person under the age of 18 years for the purpose of the sexual exploitation of the person;
- (c) removes, receives, transports, imports, or brings into a place a person under the age of 18 years for the purpose of the sexual exploitation of the person;
- (d) induces a person under the age of 18 years to sell, rent, or give himself for the purpose of the sexual exploitation of the person;

(e) induces a person to sell, rent, or give a person who is under the age of 18 years and who is dependent on him or in his charge, for the purpose of the sexual exploitation of the other person;

(f) builds, outfits, sells, buys, transfers, rents, hires, uses, provides with personnel, navigates, or serves on board a ship, aircraft or other vehicle for the purpose of doing an act stated in paragraphs (a) to (e); or

(g) agrees or offers to do an act stated in paragraphs (a) to (f),

commits an offence and is liable on conviction to imprisonment for life.

(2) It is a defence to a charge under this section if the person charged proves that he believed on reasonable grounds that the person under the age of 18 years was over the age of 18 years.

(3) For the purposes of subsection (1), sexual exploitation, in relation to a person under the age of 18, includes the following acts:

(a) taking by any means or transmission by any means of still or moving images of the person engaged in explicit sexual activities, whether real or simulated;

(b) taking by any means or transmission by any means, for a material benefit, of still or moving images of the person's genitalia, anus or breasts (whether real or simulated) for purposes other than those described in subsection (4) or (5);

(c) participation by the person in a performance or display, for reasons other than that described in subsection (4) that—

(i) is undertaken for a material benefit; and

(ii) involves the exposure of the person's genitalia, anus or breasts; or

(d) engaging the person in an activity such as employment in a bar or restaurant, that—

(i) is undertaken for a material benefit; and

(ii) involves the exposure of the person's genitalia, anus or breasts.

(4) For the purposes of subsection (3)(b) and (c), sexual exploitation, in relation to a person, does not include the recording or transmission of an artistic or cultural performance or display honestly undertaken primarily for purposes other than the exposure of body parts for the sexual gratification of viewers.

(5) For the purposes of subsection (3)(b), sexual exploitation, in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus or breasts for the following purposes:

(a) depicting a medical condition or a surgical or medical technique for the instruction or information of health professionals.

(b) honestly intending to provide medical or health education or to otherwise provide information relating to medical or health matters; or

(c) honestly intending to advertise a product, instrument, or service intended to be used for medical or health purposes.

(6) A person under the age of 18 years in respect of whom an offence against this section was committed cannot be charged as a party to the offence.

Removal of body parts of persons under 18

138C. (1) A person who, within or outside Montserrat —

(a) sells, buys, transfers, barter, rents, hires, or in any other way enters into a deal involving a person under the age of 18 years for the purpose of removing body parts from that person;

- (b) detains, confines, imprisons, or carries away a person under the age of 18 years for the purpose of removing body parts from that person;
 - (c) removes, receives, transports, imports, or brings into any place a person under the age of 18 years for the purpose of removing body parts from that person;
 - (d) induces a person under the age of 18 years to sell, rent, or give himself or herself for the purpose removing body parts from that person;
 - (e) induces a person to sell, rent, or give a person who is under the age of 18 years and who is dependent on him or in his charge for the purpose of removing body parts from that person;
 - (f) builds, fits out, sells, buys, transfers, rents, hires, uses, provides with personnel, navigates, or serves on board a ship, aircraft or other vehicle for the purpose of doing an act stated in any of paragraphs (a) to (e); or
 - (g) agrees or offers to do an act stated in any of paragraphs (a) to (f),
- commits an offence and is liable on conviction to imprisonment for life.

(2) It is a defence to a charge under this section if the person charged proves that he believed on reasonable grounds that the person under the age of 18 years was of over the age of 18 years.

(3) A person under the age of 18 years in respect of whom an offence against this section was committed cannot be charged as a party to the offence.

Engagement of persons under 18 in forced labour

138D. (1) Any person who, within or outside Montserrat —

- (a) sells, buys, transfers, barter, rents, hires, or in any other way enters into a deal involving a

person under the age of 18 years for the purpose of the engagement of the person in forced labour;

(b) engages a person under the age of 18 years in forced labour;

(c) permits a person under the age of 18 to be engaged in forced labour;

(d) detains, confines, imprisons, or carries away a person under the age of 18 years for the purpose of the engagement of the person in forced labour;

(e) removes, receives, transports, imports, or brings into any place a person under the age of 18 years for the purpose of the engagement of the person in forced labour;

(f) induces a person under the age of 18 years to sell, rent, or give himself or herself for the purpose of engaging in forced labour;

(g) induces a person to sell, rent, or give a person who is under the age of 18 years and who is dependent on him or in his or her charge for the purpose of the engagement of the person in forced labour;

(h) builds, fits out, sells, buys, transfers, rents, hires, uses, provides with personnel, navigates, or serves on board a ship, aircraft or other vehicle for the purpose of doing an act stated in any of paragraphs (a) to (g); or

(i) agrees or offers to do an act stated in any of paragraphs (a) to (h),

commits an offence and is liable on conviction to imprisonment for life.

(2) It is a defence to a charge under this section if the person charged proves that he believed on reasonable grounds that the person under the age of 18 years was over the age of 18 years.

(3) A person under the age of 18 years in respect of whom an offence against this section was committed cannot be charged as a party to the offence.

Insertion of Part XIV-A

7. The Code is amended by inserting, after Part XIV, the following Part—

“PART XIV-A
SMUGGLING AND TRAFFICKING IN PEOPLE

Interpretation

202A. For the purpose of sections this Part—

“**act of coercion against the person**” includes—

- (a) abducting the person;
- (b) using force in respect of the person;
- (c) harming the person;
- (d) threatening the person (expressly or by implication) with the use of force in respect of, or the harming of, the person or some other person;

“**act of deception**” includes a fraudulent action;

“**arranges for an unauthorised migrant to be brought to a state**” includes—

- (a) organises or procures the bringing to a state;
- (b) recruits for bringing to a state;
- (c) carries to a state;

“**arranges for an unauthorised migrant to enter a state**” includes—

- (a) organises or procures the entry into a state;
- (b) recruits for entry into a state;
- (c) carries into a state;

“**document**” includes a thing that is or is intended to be—

- (a) attached to a document; or
- (b) stamped or otherwise signified on a document;

“**harming of a person**” means causing harm of any kind to the person and, in particular, includes—

- (a) causing physical, psychological or financial harm to the person;
- (b) sexually mistreating the person; or
- (c) causing harm to the person’s reputation, status or prospects;

“**unauthorised migrant**”, in relation to a state, means a person who is neither a citizen nor belonger of the state, howsoever called, nor in possession of all the documents required by or under the law of the state for the person’s lawful entry into the state.”

Smuggling migrants

202B. (1) A person who arranges for an unauthorised migrant to enter Montserrat or any other state, if he or she—

- (a) does so for a material benefit; and
- (b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant, commits an offence.

(2) A person who arranges for an unauthorised migrant to be brought to Montserrat or any other state, if he or she—

- (a) does so for a material benefit;
- (b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant; and
- (c) either—
 - (i) knows that the person intends to try to enter the state; or

(ii) is reckless as to whether the person intends to try to enter the state, commits an offence.

(3) A person who commits an offence under this section is liable on indictment to imprisonment for 20 years, a fine of \$500,000 or both.

Trafficking in people by means of coercion or deception

202C. (1) A person who—

(a) arranges the entry of a person into Montserrat or any other State by an act of coercion against the person, an act of deception of the person or both; or

(b) arranges, organises or procures the reception, concealment or harbouring in Montserrat or any other State of a person, knowing that the person's entry into Montserrat or that State was arranged by an act of coercion against the person, an act of deception of the person or both,

commits an offence and is liable on conviction to imprisonment for 20 years, a fine of \$500,000 or both.

(2) Proceedings may be brought under this section even if the person coerced or deceived—

(a) did not in fact enter Montserrat or the State concerned; or

(b) was not in fact received, concealed, or harboured in Montserrat or the State concerned.

(3) Proceedings may be brought under this section even if parts of the process by which the person coerced or deceived was brought or came to or towards Montserrat or the State concerned was accomplished without an act of coercion or deception.

Aggravating factors

202D. (1) When determining the sentence to be imposed on, or otherwise of dealing with, a person convicted of an offence under section 202B or 202C, a court shall take the following into account:

- (a) whether bodily harm to or death of a person in respect of whom the offence was committed, or some other person, occurred during the commission of the offence;
- (b) whether the offence was committed for the benefit of, at the direction of, or in association with, an organised criminal group within the meaning of section 21A;
- (c) whether a person in respect of whom the offence was committed was subjected to inhumane or degrading treatment as a result of the commission of the offence; and
- (d) if the person was convicted of the same offence in respect of two or more persons, the number of persons in respect of whom the offence was committed.

(2) In addition to the factors referred to in subsection (1), when determining the sentence to be imposed on, or otherwise dealing with, a person convicted of an offence against section 202B, a court shall take the following into account:

- (a) whether a person in respect of whom the offence was committed was subjected to exploitation (for example, sexual exploitation, a requirement to undertake forced labour or the removal of body parts) as a result of the commission of the offence;
- (b) the age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years;

(c) whether the person convicted committed the offence, or took actions that were part of it, for a material benefit.

(3) For greater certainty this section does not limit the matters that a court may take into account when determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 202B or 202C.

Attorney General’s consent to prosecutions required

202E. (1) Proceedings for offences against 202B or 202C shall not be commenced in any court in Montserrat without the consent of the Attorney General.

(2) If it is alleged that a person has committed an offence under sections 202B or 202C, the person may be arrested, a warrant may be issued and executed for the person’s arrest or the person may be remanded in custody or released on bail even though the Attorney General’s consent under subsection (1) has not been obtained.

Insertion of Part XIV-B

8. The Code is amended by inserting, after Part XIV-A, the following Part:

“PART XIV-B
TERRORISM

Hostage-taking

202F. (1) A person who, whether in or outside Montserrat, seizes or detains any person (in this section called the “hostage”) without his consent, or with his consent obtained by fraud or duress and threatens to kill, injure or continue to detain the hostage in order to compel a State, international intergovernmental organisation or any other person to do or abstain from doing an act as a condition, whether express or implied, for the release of the hostage commits an offence and is liable on conviction to imprisonment for life.

(2) A person shall not be convicted of an offence under subsection (1) if—

- (a) the seizure or detention of the person referred to in subsection (1) takes place in Montserrat;
- (b) the alleged offender and the hostage are belongers of Montserrat; and
- (c) the alleged offender is in Montserrat.”

Schedule 1 amended”

9. Schedule 1 to Code is amended—

- (a) by inserting before the item beginning with the words “ 36 – treason” the following item—

“

Penal Code Section	Nature of Offence	Maximum Punishment	Whether Arrestable without warrant	Whether triable
21A	Participation in organised criminal group— (a) under subsection (1) (b) under subsection (2) (c) under subsection (4)	5 years 2 years 5 years or more	A A A	

”;

- (b) by deleting the item beginning with the words item section 122 and substituting the following item—

“

Penal Code Section	Nature of Offence	Maximum Punishment	Whether Arrestable without warrant	Whether triable
122	Indecent assault on a women (a) under 13 years— (i) on conviction on indictment (ii) on summary conviction (b) in other case— (i) on conviction on indictment (ii) on summary conviction	10 years 1 year 5 years 6 months	A A	 S S

”;

- (c) by deleting the item beginning with the words “section 138” and substituting the following items—

Penal Code Section	Nature of Offence	Maximum Punishment	Whether Arrestable without warrant	Whether triable
138	Indecent assault on a male person— (a) under 13 years: (i) on conviction on indictment (ii) on summary conviction (b) in other case: (i) on indictment (ii) on summary conviction	10 years 1 year 5 years 6 months	A	S S
138A.	Dealing in slaves	life	A	
138B.	Dealing in people under 18 for sexual exploitation	life	A	
138C.	Removal of body parts of persons under 18	life	A	
138D.	Engagement of persons under 18 in forced labour	life	A	

”; and

- (d) by inserting after the item beginning with the words “section 202” the following items—

Penal Code Section	Nature of Offence	Maximum Punishment	Whether Arrestable without warrant	Whether triable
202B	Smuggling migrants	20 years, a fine of \$500,000 or both.	A	
202C.	Trafficking in people by means of coercion or deception	20 years, a fine of \$500,000 or both.	A	
202F.	Hostage-taking	life	A	

”.

T. Bodkin
SPEAKER

Passed by the Legislative Council this 16th day of March, 2010.

Judith Jeffers
CLERK OF COUNCILS