

PENAL CODE (AMENDMENT) BILL, 2024

(Bill No. 11 of 2024)

**EXPLANATORY STATEMENT OF THE OBJECTS AND REASONS
FOR THE BILL**

The Bill seeks to amend the Penal Code (Cap.158) to address hate-motivated offences by introducing the element of hate as an aggravating factor to any underlying offences in the Penal Code, and by creating hate speech as a distinct offence.

The inclusion of hate as an aggravating factor aims to enhance the severity of penalties when committed due to bias or prejudice, based on the protected characteristics such as race, religious belief, disability, sexual orientation, gender identity, sex characteristics, political affiliation and HIV/Aids status.

Additionally, the inclusion of hate speech as an offence within the Penal Code (Cap. 158) provides for the intention to incite hatred towards a person or group of persons based on their protected characteristics, through various forms of communication or behaviour, if the expression is perceived to be threatening, abusive or insulting.

Dated this 1st day of July, 2024.

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

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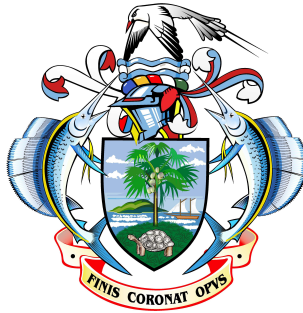
ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title
2. Amendment of section 5
3. Insertion of new Chapter VIA
4. Insertion of new section 89B

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A BILL

FOR

AN ACT TO AMEND THE PENAL CODE (CAP. 158), TO MAKE PROVISION FOR THE AGGRAVATION OF OFFENCES CAUSED BY HATE BASED ON THE VICTIM'S ACTUAL OR PERCEIVED PROTECTED CHARACTERISTICS AND TO PROVIDE FOR THE OFFENCE OF HATE SPEECH.

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Penal Code (Amendment) Act, 2024.

Amendment of section 5

2. Section 5 of the Penal Code (Cap. 158), hereinafter referred to as the “principal Act”, is amended by inserting after the definition of the word “property” the following definition —

“protected characteristics” means one or more of the following characteristics —

- (a) “race” includes colour, descent, ancestry, nationality, citizenship, ethnic or national origin;
- (b) “religious belief” includes both religious belief or lack thereof;
- (c) “disability” means physical or mental impairment of any kind;
- (d) “sexual orientation” means an individual’s capacity, or lack thereof, for physical, romantic or emotion attraction to, and intimate and sexual relations with individuals of a different gender, the same gender or multiple genders;
- (e) “gender identity” means a person’s internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. This includes an individual’s personal sense of the body which may involve altering their bodily appearance or function through medical, surgical, or other means, as well as other expressions of gender including clothing, speech and mannerisms;
- (f) “sex characteristics” means variations in the sex development of a person, which can be physical, hormonal, chromosomal or genetic, and differs to what is generally expected of ‘males’ and ‘females’;
- (g) “political affiliation” means membership, close association or any outward support for a political party;

- (h) “HIV/AIDS status” means the status of a person with regards to the Human Immuno-deficiency Virus and Acquired Immune Deficiency.

Insertion of new Chapter VIA

3. The principal Act is amended by inserting after Chapter VI the following new chapter —

“Chapter VIA

Element of hate to be considered as an aggravating factor

38A.(1) This Chapter applies where is it —

- (a) stated in the charge and information that an offence is a hate crime due to it being aggravated by hate; and
- (b) is proved that the offence is aggravated.

(2) An offence is aggravated by hate if —

- (a) at the time of committing the offence or immediately before or after doing so, the offender demonstrates hostility towards the victim of the offence, based on one or more protected characteristics or presumed protected characteristics of the victim; or
- (b) the offence is committed by reason of one or more of the victim's protected characteristics or presumed protected characteristics.

(3) It is immaterial for the purposes of subsection (2)(a) whether or not the offender's hostility is also based, to any extent, on any other factor.

(4) For the purposes of subsection (2)(b), the victim’s protected characteristic or presumed protected characteristic need not be the sole reason for committing the offence, but shall be a substantial or significant factor.

(5) For the purpose of subsection (2)(a) and (2)(b), “presumed” means presumed by the offender.

(6) Where subsection (1) applies, the Court shall for the purpose of sentencing —

- (a) state on conviction that the offence is aggravated by hate;
- (b) record the conviction in a way that shows that the offence is aggravated; and
- (c) take the aggravation into account in determining the appropriate sentence.

Insertion of new section 89B

4. The principal Act is amended by inserting after section 89A the following new section —

“ Hate speech

89B.(1) Any person who intends to incite hatred against a person or group of persons, based on their protected characteristics by —

- (a) communicating, advocating or propagating statements, whether written, spoken, or expressed in any other form, publicly or on an electronic media, that could reasonably be construed as threatening, abusive or insulting;

- (b) publishing, displaying or distributing any material that could reasonably be construed as threatening, abusive or insulting; or
- (c) behaving in a manner that could reasonably be construed as threatening, abusive or insulting,

commits an offence.

(2) A person who is convicted of an offence referred to subsection (1), shall be liable, in the case of —

- (a) a first conviction, to a fine of level 3 on the standard scale or to imprisonment for a term not exceeding two years, or to both; or
- (b) any subsequent conviction, to a fine of level 4 on the standard scale or to imprisonment for a term not exceeding three years, or to both.

(3) The provisions of subsection (1) do not apply if they are done in good faith in the course of engagement in —

- (a) any bona fide artistic creativity, performance or other form of expression, to the extent that such artistic creativity, performance or expression does not advocate hatred that constitutes incitement to cause harm, based on any protected characteristics;
- (b) any academic or scientific inquiry;
- (c) fair and accurate reporting or commentary, advertisement or notice in the public interest;
- (d) any activity where the expression, material or behaviour, as the case may be, is deemed

necessary for any other lawful purposes, including law enforcement or the investigation or prosecution of an offence; or

- (e) the bona fide interpretation and proselytizing of any religious tenet, belief, teaching, doctrine or writings, to the extent that such interpretation and proselytization does not advocate hatred that constitutes incitement to cause harm, based on any protected characteristics.

(4) For the purpose of this section “**electronic media**” means any means of communication or transmission of information that involves electronic or digital technology. This includes but is not limited to social media platforms, messaging platforms, online forums, websites, communication sent and received electronically via email services, television, radio, streaming services or podcasts.”