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I assent.

(L.S.)

GEORGE ABELA  
President

17th July, 2009

**ACT No. XI of 2009***AN ACT further to amend the Criminal Code, Cap. 9.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

**1.** The short title of this Act is the Criminal Code (Amendment) Act, 2009, and this Act shall be read and construed as one with the Criminal Code, hereinafter referred to as "the Code".

Short title.

Cap. 9.

**2.** Article 82A of the Code shall be amended as follows:

Amendment of  
article 82A of  
the Code.

(a) in sub-article (1) thereof, for the words "racial hatred" wherever they occur there shall be substituted the words "violence or racial hatred"; and

(b) for sub-article (2) thereof there shall be substituted the following:

"(2) For the purposes of the foregoing subarticle "violence or racial hatred" means violence or hatred against a group of persons in Malta defined by reference to colour, race, religion, descent, nationality (including citizenship) or ethnic or national origins or against a member of such a group."

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Addition of new  
articles 82B to  
82F to the Code.

**3.** Immediately after article 82A of the Code there shall be inserted the following new articles:

"Condoning,  
denying or  
trivialising  
genocide, etc.,  
against a group.

**82B.** Whosoever publicly condones, denies or grossly trivialises genocide, crimes against humanity and war crimes directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner -

(a) likely to incite to violence or hatred against such a group or a member of such a group;

(b) likely to disturb public order or which is threatening, abusive or insulting,

shall, on conviction, be liable to imprisonment for a term from eight months to two years:

Provided that for the purposes of this article "genocide", "crimes against humanity" and "war crimes" shall have the same meaning assigned to them in article 54A.

Condoning,  
denying or  
trivialising  
crimes against  
peace against a  
group.

**82C. (1)** Whosoever publicly condones, denies or grossly trivialises crimes against peace directed against a group of persons defined by reference to race, colour, religion, descent or national or ethnic origin or against a member of such a group when the conduct is carried out in a manner -

(a) likely to incite to violence or hatred against such a group or a member of such a group; or

(b) likely to disturb public order or which is threatening, abusive or insulting,

shall, on conviction, be liable to imprisonment for a term from eight months to two years.

(2) For the purposes of this article a crime against peace means conduct consisting in:

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(a) the planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances

(b) participation in a common plan or conspiracy for the accomplishment of any of the acts referred to in paragraph (a).

Aiding, abetting or instigating offences under articles 82A to 82C.

82D. Whosoever aids, abets or instigates any offence under articles 82A to 82C, both inclusive, shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated.

Applicability of articles 121D, 208B(5), 248E(4) and 328K of the Code.

82E. (1) The provisions of articles 121D, 208B(5) and 248E(4) shall apply *mutatis mutandis* to an offence under articles 82A to 82D, both articles inclusive.

(2) The provisions of article 328K shall also apply *mutatis mutandis* to any offence under articles 82A to 82D, both articles inclusive, as if the reference to article 328J in article 328K were a reference to article 121D."

4. Immediately after article 83A of the Code there shall be inserted the following new heading and new article:

Addition of new heading and new article 83B to the Code.

**"GENERAL PROVISION APPLICABLE TO  
OFFENCES WHICH ARE RACIALLY AGGRAVATED  
OR MOTIVATED BY XENOPHOBIA**

General provision.

83B. The punishment established for any offence shall be increased by one to two degrees when the offence is racially or religiously aggravated within the meaning of sub-articles (3) to (6), both inclusive, of article 222A or is motivated, wholly or partly, by xenophobia."

5. Article 222A of the Code shall be amended as follows:

Amendment of article 222A of the Code.

(a) in sub-article (2) thereof, for the words "racially or religiously aggravated" there shall be substituted the words "racially or religiously aggravated or motivated, wholly or partly, by xenophobia";

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(b) in sub-article (3) thereof:

(i) for the words "racially or religiously aggravated" there shall be substituted the words "racially or religiously aggravated or motivated by xenophobia";

(ii) in paragraphs (a) and (b) thereof, for the word "hostility" wherever it occurs there shall be substituted the words "hostility, aversion or contempt"; and

(c) in sub-article (6) thereof, for the word "race," there shall be inserted the words "race, descent,".

Amendment of  
article 328C of  
the Code.

**6.** Article 328C of the Code shall be amended as follows:

(a) the present provision thereof shall be renumbered as subarticle (1) thereof;

(b) immediately after subarticle (1) thereof as renumbered there shall be added the following new subarticles:

"(2) Whosoever, knowingly -

(a) publicly provokes the commission of an act of terrorism;

(b) recruits or solicits another person to commit an act of terrorism;

(c) trains or instructs another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing an act of terrorism,

shall be liable to the same punishment laid down in article 328A(3).

(3) Whosoever contributes to the commission of an offence mentioned in article 328C(2) by a group of persons acting with a common design, knowing that the contribution will further the group's criminal activity or criminal purpose to commit any such offence, shall be liable to the same punishment laid down in article 328B(3)(b).

(4) For the commission of an offence under this article it shall not be necessary that an act of terrorism be

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actually committed."

7. Immediately after Sub-title IVA of Title IX of Part II of Book First of the Code there shall be inserted the following:

Insertion of new sub-title to the Code.

**"Sub-title IVB  
OF PIRACY**

Definition of piracy.

328N.(1) For the purposes of this sub-title "piracy" means any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State

(b) any of the acts referred to in paragraph (a) committed by the crew or passengers of a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft;

(c) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(d) any act of inciting or of knowingly facilitating an act described in subparagraph (a) or (b) or (c).

(2) For the purposes of this Title, a ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in subarticle (1) or if the ship or aircraft has been used to commit any such act and the ship or aircraft remains under the control of the person guilty of that act.

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(3) Any person guilty of piracy under this article shall be liable:

(a) where the offence consists in any of the acts referred to in paragraphs (a) and (b) of subarticle (1) when accompanied with the loss of life of any person, to the punishment of imprisonment for life;

(b) where the offence consists in any of the acts referred to in paragraphs (a) and (b) of subarticle (1) when not accompanied with the loss of life of any person, to the punishment of imprisonment not exceeding thirty years;

(c) where the offence consists in any act referred to in paragraph (c) of subarticle (1), to the punishment of imprisonment for a term not exceeding eight years;

(d) where the offence consists in any act referred to in paragraph (d) of subarticle (1), to the punishment laid down for the act incited or facilitated.

Jurisdiction.

328O.(1) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this article where the offence is committed:

(a) by any citizen of Malta or permanent resident in Malta;

(b) by any person while on board any ship, vessel or aircraft belonging to Malta;

(c) by any person against any ship, vessel or aircraft belonging to Malta or against the person or property of any citizen of Malta or permanent resident in Malta.

(2) For the purposes of this article a ship, vessel or aircraft shall be deemed to belong to Malta in the same circumstances mentioned in article 5(2)."



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**8.** Immediately after article 337G of the Code there shall be added the following new article:

Addition of new article 337H to the Code.

"Applicability of articles 121D, 208B(5), 248E(4) and 328K of the Code.

337H.(1) The provisions of articles 121D, 208B(5) and 248E(4) shall apply *mutatis mutandis* to any offence under this sub-title.

(2) The provisions of article 328K shall also apply *mutatis mutandis* to any offence under this sub-title as if the reference therein to article 328J were a reference to article 121D."

**9.** Paragraph (z) of article 338 of the Code shall be amended as follows:

Amendment of article 338 of the Code.

(a) for the words "his or her spouse" therein there shall be substituted the words "a person" and for the words "the spouse and, or, the children" therein there shall be substituted the words "that person";

(b) in the proviso to the paragraph, for the words "six months;" therein there shall be substituted the words "six months:" and immediately thereafter there shall be inserted the following new proviso:

"Provided further that where the offender is a recidivist in a contravention under this paragraph the offender shall be liable to the punishment of detention not exceeding three months or a fine (*multa*) not exceeding two hundred euro or imprisonment for a term not exceeding two months;".

**10.** In subarticle (2) of article 579 of the Code for the words "and imprisonment." there shall be substituted the words "and imprisonment and the sum stated in the bail bond may be forfeited to the Government of Malta."

Amendment of article 579 of the Code.

**11.** In subarticle 5 of article 649 of the Code, for the words "the magistrate shall comply" there shall be substituted the words "the magistrate shall, as nearly as may be, conduct the proceedings as if they were an inquiry relating to the in genere but shall comply".

Amendment of article 649 of the Code.

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Passed by the House of Representatives at Sitting No. 140 of the  
14th July, 2009.

LOUIS GALEA  
*Speaker*

PAULINE ABELA  
*Clerk to the House of Representatives*