

OBJECTS AND REASONS

This Bill would give effect to the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* and for matters connected therewith.

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BARBADOS

A Bill entitled

An Act to give effect to the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* and for matters connected therewith.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Trafficking in Persons Prevention Act, 2016*.

Interpretation

2. In this Act,

“child” means a person under the age of 18 years;

“Criminal Assets Recovery Fund” means the Fund established under section 14 of the *Transnational Organized Crime (Prevention and Control) Act, 2011* (Act 2011-3) and continued under section 3 of the *Criminal Assets Recovery Fund Act, 2016* (Act 2016-);

“debt bondage” means the status or condition of a person arising from his pledge to provide his personal services or those of a person under his control as security for a debt, where

- (a) the value of those services as reasonably assessed is not applied toward the liquidation of the debt;
- (b) the period during which those services are to be provided is not limited; or
- (c) the nature of those services is not defined;

“exploitation” includes

- (a) keeping a person in a state of slavery;
- (b) subjecting a person to practices similar to slavery;
- (c) compelling or causing a person to provide forced labour or services;
- (d) keeping a person in a state of servitude, including domestic and sexual servitude;
- (e) the exploitation of the prostitution of another;

- (f) engaging in any other form of commercial sexual exploitation, including, pimping, pandering, procuring, profiting from prostitution and maintaining a brothel;
- (g) child pornography;
- (h) the illicit removal of human organs;
- (i) causing a person to transport illegal items within or across borders; and
- (j) deriving a benefit through the abuse of another person;

“illicit removal of organs” means the unlawful removal of organs, tissue or body parts from a victim irrespective of whether the victim consented to such removal;

“Minister” means the Minister responsible for legal affairs;

“offence of trafficking” means the offence of trafficking in children referred to in section 3 and the offence of trafficking in persons referred to in section 4;

“offence of trafficking in children” means the offence referred to in section 3;

“offence of trafficking in persons” means the offence referred to in section 4;

“slavery” means the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised;

“victim” means a person against whom an offence is committed or against whom an offence is alleged to have been committed under this Act.

Offence of trafficking in persons

3.(1) A person who, for the purpose of exploitation by any of the means specified in subsection (2)

- (a) recruits, transports, transfers, harbours or receives persons into or within Barbados;

(b) recruits, transports or transfers persons from Barbados to another jurisdiction; or

(c) receives or harbours persons from Barbados in another jurisdiction,

is guilty of the offence of trafficking in persons and is liable on conviction on indictment, to a fine of \$1 000 000 or to imprisonment for 25 years or to both.

(2) The means referred to in subsection (1) are

(a) threats or the use of force or other forms of coercion;

(b) abduction;

(c) fraud or deception;

(d) the abuse of power or the abuse of a position of vulnerability; or

(e) the giving or receiving of payment or benefits to achieve the consent of a person having control over another person.

(3) A person who incites or directs another person to traffic in persons is guilty of the offence of trafficking in persons and is liable on conviction on indictment, to a fine of \$1 000 000 or to imprisonment for 25 years or to both.

(4) For the purposes of subsection (1), coercion means

(a) violent coercion; or

(b) non-violent or psychological coercion, such as

(i) threats of serious harm to or physical restraint against a person;

(ii) the abuse or threatened abuse of legal process; or

(iii) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against a person.

Trafficking in children

- 4.(1) A person who for the purpose of exploitation
- (a) recruits, transports, transfers, harbours or receives a child into or within Barbados;
 - (b) receives or harbours a child from Barbados in another jurisdiction; or
 - (c) recruits, transports or transfers a child from Barbados to another jurisdiction,

is guilty of the offence of trafficking in children and is liable on conviction on indictment to a fine of \$2 000 000 or to imprisonment for life or to both.

(2) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is sufficient to establish the offence of trafficking in children.

(3) A person who incites or directs another person to traffic in children is guilty of the offence of trafficking in children and is liable on conviction on indictment, to a fine of \$2 000 000 or to imprisonment for life or to both.

Consent is not a defence and past sexual behaviour inadmissible

5.(1) In any prosecution for an offence of trafficking under this Act, the alleged consent of the victim to the intended or realized exploitation is not a defence.

(2) In any prosecution for an offence of trafficking under this Act, the legal age of consent to sex or to marriage is not a defence.

(3) In any prosecution for an offence of trafficking under this Act, evidence of a victim's past sexual behaviour is inadmissible for the purpose of proving

- (a) that the victim engaged in other sexual behaviour; or
- (b) the victim's sexual predisposition.

Unlawfully destroying or withholding travel document etc.

6.(1) A person who for the purpose of trafficking in persons or trafficking in children

- (a) acts or purports to act as another person's employer, manager, supervisor, contractor, employment agent, or solicitor of clients; and
- (b) knowingly procures, destroys, conceals, removes, confiscates, or possesses any travel document belonging to another person or document that establishes or purports to establish another person's identity or immigration status,

is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for 20 years or to both.

(2) For the purposes of subsection (1), "travel document" means any document that can be used for travel between states such as

- (a) a passport;
- (b) a visa;
- (c) a tourist card;
- (d) an airline ticket; and
- (e) any other document used under the laws of a state to establish identity in that state.

Transporting a person for the purpose of exploiting that person's prostitution

7. A person who transports or conspires to transport another person into or within Barbados or across an international border for the purpose of exploiting that person's prostitution is guilty of an offence and is liable on conviction on indictment to a fine of \$1 000 000 or to imprisonment for 25 years or to both.

Knowingly receiving financial benefit from trafficking in persons

8. A person who receives or obtains a financial or other benefit, knowing that the financial or other benefit results from the offence of trafficking in persons, is guilty of an offence and is liable on conviction on indictment, to a fine of \$1 000 000 or to imprisonment for 25 years or to both.

Knowingly receiving financial benefit from trafficking in children

9. A person who receives or obtains a financial or other benefit, knowing that the financial or other benefit results from the offence of trafficking in children, is guilty of an offence and is liable on conviction on indictment, to a fine of \$2 000 000 or to imprisonment for life or to both.

Forfeiture

10.(1) Where a person has been convicted of the offence of trafficking in persons or trafficking in children, and the court is satisfied that

- (a) any property of the person convicted was used or was intended to be used or was obtained in the course of the crime; or
- (b) any benefits were gained from the proceeds of the crime,

the court shall order that the property or benefits be forfeited and accrue to the Criminal Assets Recovery Fund.

(2) For the purposes of subsection (1) “property” includes money, valuables and other movable and immovable property.

(3) The forfeiture of property referred to in subsection (1) applies to the property of persons convicted of trafficking in persons or trafficking in children whether or not the property is located in Barbados.

Restitution

11.(1) Where a person is convicted of an offence of trafficking, the court may, in addition to any penalty imposed pursuant to this section, order that person to pay restitution to the victim.

(2) Restitution must compensate, where applicable, for any of the following:

- (a) costs of medical and psychological treatment;
- (b) costs of physical and occupational therapy and rehabilitation;
- (c) costs of necessary transportation, temporary housing and child care;
- (d) lost income;
- (e) attorney's fees and other legal costs;
- (f) compensation for emotional distress, pain and suffering;
- (g) any other losses suffered by the victim which the court considers applicable.

(3) Notwithstanding subsection (2), where the property of a person convicted under this Act is forfeited, restitution shall be paid to the victim as far as possible from that property or from the Criminal Assets Recovery Fund.

Offences of bodies corporate

12.(1) Where a body corporate is guilty of an offence under this Act, that body corporate is liable on conviction on indictment to a fine of \$5 000 000.

(2) Where a body corporate is guilty of an offence under this Act, any officer, director or agent of the company who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is liable on conviction to the punishment provided for the offence.

Additional penalties

13. Where a body corporate or its director, manager, secretary or other similar officer concerned with the management of a body corporate has been convicted of an offence under this Act, the court may, in addition to imposing the penalty prescribed for the stated offence,

- (a) revoke the business licence of the body corporate;
- (b) order that the body corporate be wound up;
- (c) forfeit the assets and properties of the body corporate to the Criminal Assets Recovery Fund; or
- (d) prohibit the body corporate from performing any further activities.

Victim may offer a defence

14. Where a victim has been compelled to engage in unlawful activities as a direct result of being trafficked, and the victim has committed any immigration-related offence or any other criminal offence for which he is being prosecuted, the victim may offer as a defence, evidence of having been compelled as a victim of trafficking to engage in such unlawful activities.

Protection and safety of victims

15. In the investigation and prosecution of offences relating to trafficking in persons, the following guiding principles shall apply:

- (a) all steps necessary to identify a victim of trafficking shall be taken;
- (b) a victim shall be given reasonable protection to prevent recapture by the traffickers and their associates;
- (c) a victim's family shall be given reasonable protection if they reside in Barbados, from threats, reprisals or intimidation by the traffickers or their associates;

- (d) a victim shall be given assistance in understanding the laws of Barbados and his rights as a victim;
- (e) a victim shall be given assistance in language interpretation and translation where necessary;
- (f) a victim shall have an opportunity to consult with an attorney-at-law or any other appropriate person or agency with respect to his rights, safety and welfare.

Privacy of victims

16.(1) In a prosecution for trafficking under this Act, the identity of the victim and the victim's family shall be kept confidential by ensuring that names and identifying information of the victim and the victim's family are not released to any member of the public or published in the press or media.

(2) A hearing under this section shall be held *in camera* unless the court otherwise directs.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$100 000.

Information for victims

17. The Minister shall ensure that, as appropriate, a victim of trafficking is informed of his legal rights as well as the progress of court and administrative proceedings in a language that the victim can understand; and such information shall include,

- (a) proceedings involving the criminal offenders;
- (b) proceedings for the return of the victim to his country of citizenship or lawful residence; and
- (c) procedures for seeking legal immigration status for the victim under the *Immigration Act*, Cap. 190.

Assistance to victims

18.(1) A victim of trafficking who is not a national of Barbados and the victim's accompanying dependent children may receive for the duration of their stay in Barbados, such benefits as may be determined by the appropriate Minister responsible for the relevant benefit; and those benefits may include

- (a) appropriate housing;
- (b) education and training opportunities;
- (c) psychological counselling;
- (d) legal assistance and legal information; and
- (e) assistance in obtaining any relevant documents and information to assist with legal proceedings;
- (f) the provision of safe shelter;
- (g) assistance to cover living expenses; and
- (h) medical assistance.

(2) In the absence of exigent circumstances, a victim of trafficking, when identified as such, shall not be housed in a prison or other detention facility for accused persons or convicted criminals.

(3) A child victim of trafficking, when identified as such, shall not be housed in a prison or other detention facility for accused or convicted criminals under any circumstances.

Immigration regime for victims

19. The Minister responsible for immigration may provide a victim of trafficking and any accompanying dependent children with appropriate permits or other required authorization to allow them to remain and work in Barbados for the duration of the criminal prosecution against the traffickers.

Return of victims to home country

20.(1) The Minister shall establish a system to effect the return of a victim to his country of citizenship or to a country in which the victim holds permanent residence.

(2) The system established under subsection (1) shall take into account

- (a) the safety of the victim while in Barbados;
- (b) the safe return of the victim without undue delay; and
- (c) the wishes of the victim as to the choice of country to which he is to be sent.

Special considerations for child victims

21. In implementing any provision of this Act, special consideration shall be given to a trafficking victim who is a child in a manner that is in the child's best interests and appropriate to the situation.

Jurisdiction

22. A court in Barbados shall have the jurisdiction to try an offence under this Act where the act constituting the offence has been carried out

- (a) wholly or partly in Barbados;
- (b) by a national of Barbados, whether in Barbados or elsewhere; or
- (c) by a person on board a vessel or aircraft that is registered in Barbados.

Extradition

23.(1) Where a person who has committed or is alleged to have committed an offence under this Act is present in Barbados and it is not intended to extradite that person, the Director of Public Prosecutions shall prosecute the offender for the offence where the direction of the Attorney-General to do so is given under paragraph (b) of section 79A(2) of the Constitution.

(2) Notwithstanding the provisions of this Act, no person shall be extradited pursuant to this Act where the Government of Barbados has substantial grounds for believing that a request for extradition for an offence under this Act has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would be prejudicial to that person's rank or status for any of those reasons.

Mutual legal assistance

24. The *Mutual Assistance in Criminal Matters Act*, Cap. 140A shall apply to this Act in relation to an offence under this Act as if the offence were a serious offence within the meaning of section 2 of that Act.

Warrant

25.(1) Where a Judge, Magistrate or Justice of the Peace is satisfied by information on oath that there are reasonable grounds for suspecting that evidence of or relating to an offence under this Act is to be found on any premises specified in the information, the Judge, Magistrate or Justice of the Peace may issue a warrant in accordance with subsection (2).

(2) A warrant issued under subsection (1) may authorize a police officer named in the warrant to enter the premises specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable to

- (a) enter upon the premises;
- (b) search the premises for evidence of or relating to an offence under this Act; and
- (c) seize and search any article, vehicle or property found in the course of the search that the police officer believes, on reasonable grounds, to be evidence of or relating to an offence under this Act.

Obstructing police officers and other officials

26. A person who

- (a) threatens, assaults or obstructs a police officer, a member of the Barbados Coast Guard or an immigration officer acting in the execution of his duty under this Act; or
- (b) threatens, assaults or obstructs a social worker, shelter worker, case management worker or any other worker who is involved in the provision of assistance and protection to a victim,

is guilty of an offence and is liable on summary conviction to a fine of \$20, 000 or to imprisonment for 3 years or to both.

National Task Force

27.(1) There shall be established a Task Force to be known as the “National Task Force Against Trafficking in Persons”.

(2) The functions of the Task Force shall be

- (a) to establish policies and develop a national plan of action, for the purposes of
 - (i) the prevention of trafficking in persons and trafficking in children;
 - (ii) the identification of victims of trafficking and the provision of assistance to and protection of those victims;
 - (iii) the prosecution of traffickers;
 - (iv) the repatriation of victims; and
- (b) to co-ordinate the implementation of the national plan in partnership with non-governmental organizations, inter-governmental organizations and other States.

- (3) The Minister shall appoint such number of persons as he thinks fit from appropriate organizations and Ministries to be members of the Task Force.
- (4) The Minister shall appoint a member to be the Chairman of the Task Force.
- (5) The Task Force shall meet at such times and on such days as the Task Force may determine.
- (6) The Chairman shall preside at all meetings of the Task Force, but where he is absent, the members present shall appoint a Chairman to preside at the meeting.
- (7) The Task Force shall regulate its own procedure.

Amendment of the Extradition Act, Cap. 189

28. The *Extradition Act*, Cap. 189 is amended in the Schedule by deleting paragraph 39 and substituting the following:

“39. Offences under the *Trafficking in Persons Prevention Act, 2016* (Act 2016-).”

Amendment of the Defence Act, Cap. 159

29. The Third Schedule to the *Defence Act, Cap. 159* is amended by adding the following at the end thereof:

“17. *Trafficking in Persons Prevention Act, 2016* (Act 2016-)”.

Repeal of Act 2011-3

30. The *Transnational Organized Crime (Prevention and Control) Act, 2011* (Act 2011-3) is repealed.

Read three times and passed the House of Assembly this
day of _____, 2016.

Speaker

Read three times and passed the Senate this _____ day of
_____, 2016.

President

Trafficking in Persons Prevention Bill, 2015

EXPLANATORY MEMORANDUM

SUMMARY

The purpose of this Bill is to repeal the *Transnational Organized Crime (Prevention and Control) Act, 2011* (Act 2011-3) in order to make fuller provision for the prevention of the trafficking in persons and the implementation of the United Nations ***Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime.***

The Bill broadens the scope of the offences by creating an offence where trafficking in persons takes place within the country and creates a special offence with heavier penalties in relation to the trafficking of children.

The Bill now makes extensive provision for the protection of victims and the treatment of victims. Certain privileges relating to immigration matters and legal proceedings are granted to victims. Special provision is made for the treatment of victims who are children.

This Bill is related to the *Immigration Amendment (No.) Bill, 2015* and the *Criminal Assets Recovery Fund Bill, 2015* which also make better provision for other aspects of the *Convention Against Transnational Organized Crime*. The first mentioned Bill will provide for the offence of the smuggling of persons on the repeal of the *Transnational Organized Crime (Prevention and Control) Act*. The amendment to the *Immigration Act* reflects the fact that the offences created are essentially immigration offences and that prevention lies in strong border control.

The *Criminal Assets Recovery Fund Bill, 2015* will provide on the repeal of the *Transnational Organized Crime (Prevention and Control) Act, 2011* for the continuation of the Criminal Assets Recovery Fund in which confiscated proceeds of crime are

deposited. Providing for these matters in a separate Bill emphasizes the fact that the Fund relates to all proceeds of crime and not only to transnational organized crime.

The Bill makes no specific reference to organized criminal groups within the meaning of Article 5 of the Convention as the general law will apply. The offences in the Bill will apply not only to individuals but also where two or more persons are acting in concert (also referred to as “joint criminal enterprise”). In particular, the law relating to conspiracy, inchoate offences and accomplices will apply. The Bill also makes specific provision for the important inchoate offence of incitement and the secondary offence of receiving financial benefit from the offence of trafficking in persons.

Clause 1: Short title

This clause provides for the short title.

Clause 2: Interpretation

This clause provides definitions for the terms used in the Bill. In particular, the term “exploitation” is widely defined in accordance with Article 3 (a) of the Protocol to include slavery, sexual servitude, prostitution, child pornography and the illicit removal of organs.

The term “child” carries the same definition as the Protocol. That term is defined in Article 3 (d) of Protocol.

Clause 3: Offence of trafficking in persons

This clause specifies the elements of the offence of trafficking in persons, including the inchoate offence of inciting another to commit the offence. Despite the narrow scope of application in Article 4 of the Protocol, the offence created in this clause need not be transnational in nature or involve an organized criminal group. The clause therefore follows Article 34 (2) of the Convention which requires that offences should be “established in domestic law independently of the transnational nature or the involvement of an organized criminal group”. The offence is therefore committed whether the act is committed by an individual or by several persons acting in concert.

Clause 4: Trafficking in children

In accordance with the Article 3 (c) of the Protocol a stricter offence is created in relation to the trafficking in children.

Clause 5: Consent is not a defence and past sexual behaviour inadmissible

This clause complies with Article 3 (b) of the Protocol by providing that the consent of a victim to exploitation should not be a defence to the charge of trafficking in persons.

Clause 6: Unlawfully destroying or withholding travel document etc.

This clause creates a special offence in relation to destroying or withholding travel documents as this is a common means of securing the exploitation of persons.

Clause 7: Transporting a person for the purpose of exploiting that person's prostitution

This clause creates a special offence in relation to sexual exploitation as a means of preventing this type of exploitation.

Clause 8: Knowingly receiving financial benefit from trafficking in persons

This clause creates an offence for the purpose of punishing accomplices and accessories to the offence of trafficking in persons.

Clause 9: Knowingly receiving financial benefit from trafficking in children

This clause creates a special offence with heavier penalties where financial benefit is derived from trafficking in children.

Clause 10: Forfeiture

This clause implements Articles 12, 13 and 14 of the Convention by providing for a regime of forfeiture and the disposal of the funds so forfeited.

Clause 11: Restitution

This clause makes provision for restitution to be made to victims in appropriate circumstances and in particular it implements Article 14 (2) of the Convention.

Clause 12: Offences of bodies corporate

This clause supplements the general law relating to the prosecution of corporate bodies in accordance with Article 10 of the Convention and provides for the imposition of heavy penalties where an offence is committed under the Act.

Clause 13: Additional penalties

This clause provides for action to be taken to close businesses which are involved in the commission of offences under the Act.

Clause 14: Victim may offer a defence

This clause in accordance with Article 6 (2) gives a victim of trafficking the right to give evidence to prove that he or she was not complicit in the offence of trafficking but was genuinely exploited.

Clause 15: Protection and safety of victims

This clause implements Article 6 of the Protocol by making provision for the protection of victims of trafficking from recapture and reprisals.

Clause 16: Privacy of victims

This clause provides for hearings to be held *in camera* and gives victims the right to have their identity protected in accordance with Article 6 (1) of the Protocol.

Clause 17: Information for victims

This clause in accordance with Article 6 (2) makes provision for pertinent information to be given to victims in relation to their immigration status and any legal proceedings that may be undertaken.

Clause 18: Assistance to victims

This clause implements Article 6 (3) to (5) of the Protocol by making provision for financial, social and legal assistance to be granted to victims of trafficking.

Clause 19: Immigration regime for victims

This clause provides for immigration leniency to be provided to victims of trafficking in accordance with Article 7 of the Protocol.

Clause 20: Return of victims to home country

This clause provides for a repatriation regime in accordance with Article 8 of the Protocol.

Clause 21: Special considerations for child victims

This clause requires that special consideration be given to child victims in accordance with Article 6 (4) of the Protocol.

Clause 22: Jurisdiction

This clause provides for the circumstances in which Barbados will exercise jurisdiction over person involved in trafficking in persons. This jurisdiction is consistent with Article 15 of the Convention.

Clause 23: Extradition

This clause generally restates the law applicable to extradition. It is consistent with Article 16 of the Convention.

Clause 24: Mutual legal assistance

This clause makes it clear that that the *Mutual Assistance in Criminal Matters Act, Cap. 140A* applies to the offence of trafficking in persons. This provision implements Article 18 of the Convention.

Clause 25: Warrant

This clause would facilitate the conduct of investigations and strengthen enforcement.

Clause 26: Obstructing police officers and other officials

This clause creates an offence in relation to obstruction and so facilitates the administration and enforcement of the Act.

Clause 27: National Task Force

This clause formally establishes the National Task Force Against Trafficking in Persons. The Task Force will develop policies and establish best practices to prevent and control trafficking in Persons. The Task Force will also be responsible for public awareness strategies in accordance with Article 31 of the Protocol.

Clause 28: Amendment of the Extradition Act Cap. 189

This clause makes a consequential amendment to the *Extradition Act* by applying that Act to this Bill.

Clause 29: Amendment of the Defence Act Cap. 159

This clause makes a consequential amendment to the *Defence Act* by applying the provisions of that Schedule to this Bill.

Clause 30: Repeal of Act 2011-3

This clause provides for the repeal of the *Transnational Organized Crime (Prevention and Control) Act, 2011*.