

No. 1-2007

I assent,

[L.S.]

(Sgd.) Prof. B.O. Hall
Governor-General

15th February 2007

AN ACT to Make provision for giving effect to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and for matters connected therewith.

^{the date notified by the Minister.}
[~~Bringing the Act into operation~~]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I. *Preliminary*

1. This Act may be cited as the Trafficking in Persons (Prevention, Suppression and Punishment) Act, 2007, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and com-
mencement.

Interpretation.

2. In this Act, unless the context otherwise requires—

“child” means any person under eighteen years of age;

“child pornography” means—

(a) audio or visual depiction of any kind, whether—

(i) made or produced by electronic, mechanical or other means; or

(ii) embodied in a disc, tape, film or other device, whether electronically or otherwise, so as to be capable of being retrieved or reproduced therefrom,

of sexually explicit conduct involving a child; or

(b) any representation of the genitalia of a child, where such audio or visual depiction or representation lacks genuine literary, artistic, or scientific value;

“exploitation” includes—

(a) the exploitation of the prostitution of a person;

(b) compelling or causing a person to provide forced labour;

(c) keeping a person in a state of slavery or servitude;

(d) engaging in any form of sexual exploitation;

(e) illicit removal of organs;

“exploitation of the prostitution of a person” means the deriving by one person of monetary or other benefit through the provision of sexual services for money or other benefit by another person;

“forced labour” means any work or services exacted from a person by threat of penalty and for which the said person

did not offer himself to provide such work or services voluntarily;

“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;

“servitude” means a relationship of dependency in which the labour or service of a person is provided or obtained by threats of harm or death to that person or another person, or through any scheme, plan, or pattern intended to cause the person to believe that if he does not perform such labour or service he or another person will suffer harm or be killed;

“sexual exploitation” means compelling the participation of a person in—

- (a) prostitution;
- (b) the production of child pornography or other pornographic material;
- (c) any other sexual activity,

as a result of being subjected to threat, coercion, abduction, the effects of narcotic drugs, force, abuse of authority or fraud;

“sexually explicit conduct” includes actual or simulated sexual activity, such as sexual intercourse whether between persons of the same or opposite sex and whether involving genital, anal or oral sex, bestiality, masturbation, sadistic or masochistic abuse;

“slavery” means the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised by another, and includes practices similar to slavery, such as bondage and serfdom;

“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 any document used under the laws of a state to establish identity in that state;

“victim” means a person against whom the offence of trafficking in persons has been committed.

Object of Act.

3. The object of this Act is to prescribe measures to prevent and combat trafficking in persons with particular regard being had to victims who are women and children, by—

- (a) protecting and assisting victims of trafficking, having due regard to their human rights;
- (b) facilitating the efficient investigation of cases of trafficking in persons;
- (c) facilitating the just and effective punishment of individuals and organizations involved in trafficking in persons;
- (d) promoting co-operation between Jamaica and other states in order to prevent and suppress trafficking in persons and to punish offenders.

PART II. *Trafficking in persons and related Provisions*

Trafficking in persons.

4.—(1) A person commits the offence of trafficking in persons where, for the purpose of exploitation he—

- (a) recruits, transports, transfers, harbours or receives another person within Jamaica;
- (b) recruits, transports or transfers another person from Jamaica to another country; or
- (c) recruits, transports, transfers, or receives another person from another country into Jamaica,

by any of the specified means in subsection (2).

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

- (a) threat or use of force or other form of coercion;
- (b) abduction;

- (c) deception or fraud;
- (d) the abuse of—
 - (i) power; or
 - (ii) a position of vulnerability;
- (e) the giving or receiving of a benefit in order to obtain the consent of a person who has control over another person.

(3) Notwithstanding the absence of the use of any of the means specified in paragraphs (a) to (e) of subsection (2), a person who recruits, transports, transfers, harbours or receives a child for the purpose of exploitation of that child commits the offence of trafficking in persons.

(4) It shall not be a defence for a person who commits the offence of trafficking in persons that the offence was committed with the victim's consent.

(5) A person who facilitates the offence of trafficking in persons commits an offence.

(6) A person who commits the offence of trafficking in persons or who facilitates that offence is liable on conviction on indictment before a Circuit Court to a fine or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(7) A person who, for the purpose of committing or facilitating an offence under subsection (1) conceals, removes, withholds or destroys any—

- (a) travel document that belongs to another person; or
- (b) document that establishes or purports to establish another person's identity or immigration status,

is liable on conviction on indictment before a Circuit Court to a fine or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(8) Every person who receives a financial or other benefit knowing that it results from the offence of trafficking in persons commits an offence and is liable on conviction on indictment before a Circuit Court to a fine or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(9) For the purposes of this section, an offence under subsection (1) is facilitated—

- (a) where the facilitator knows that such an offence is intended to be facilitated;
- (b) whether or not the facilitator knows the specific nature of the offence that is intended to be facilitated; and
- (c) whether or not the offence was actually committed.

Offences by
bodies
corporate.

5.—(1) Subject to subsection (2), where a body corporate commits an offence against this Act, every director, manager, secretary or other similar officer concerned with the offence is liable on conviction on indictment before a Circuit Court to a fine or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(2) A director, manager, secretary or other similar officer concerned with the management of a body corporate shall not be liable for an offence against this Act unless the court is satisfied—

- (a) that the offence was committed with his connivance; or
- (b) he had not exercised all such diligence to prevent the commission,

having regard to the nature of functions in that capacity and to all the circumstances.

(3) A body corporate which commits an offence against this Act is liable on conviction on indictment before a Circuit Court to a fine.

Restitution.

6.—(1) Where a person is convicted of the offence of trafficking in persons the court may order that person to pay restitution to the victim.

(2) Restitution shall 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) Restitution shall be paid to the victim—

- (a) upon the conviction of the accused;
- (b) as far as possible, from any property forfeited under section 7 or the proceeds thereof.

(4) The absence of the victim from the proceedings shall not prejudice the victim's right to receive restitution.

7.—(1) All property of persons convicted of the offence of trafficking in persons that was used or obtained in the course of the crime, or benefits gained from the proceeds of the crime shall be liable to be forfeited to the Crown in the manner specified in the Schedule.

Forfeiture.

Schedule.

(2) Where any such property as described in subsection (1) is located in a foreign country it shall be subject to forfeiture to the extent that it can be retrieved by the Government of Jamaica.

8. Where a person provides evidence that he is a victim he shall not be liable to prosecution for any offence against the laws relating to immigration or prostitution, that is a direct result of the offence of trafficking in persons committed against him.

Immunity of victim from prosecution.

PART III. *Assistance to and Protection of Victims*Protection
for victims.

9.—(1) The Government shall take all reasonable steps to identify victims in Jamaica.

(2) When victims are identified the appropriate authorities shall provide reasonable protection to the victims and to prevent their being recaptured, intimidated or becoming the object of reprisal by traffickers and their associates.

Assistance to
victims.

10.—(1) The Government shall take appropriate steps to assist victims where practicable and such assistance may include—

- (a) assistance in understanding the laws of Jamaica and their rights as victims;
- (b) assistance in obtaining any relevant documents and information to assist with legal proceedings;
- (c) assistance in replacing or providing passports and other travel documents necessary for the victim to return to his country;
- (d) assistance in language interpretation and translation where necessary;
- (e) assistance in meeting expenses related to criminal proceedings against the traffickers;
- (f) the provision of safe shelters and assistance to cover living expenses.

(2) The Government in consultation with approved non-governmental organizations and agencies shall establish and carry out programmes and initiatives to support victims by assisting in the integration, reintegration or resettlement, as the case may be, of such persons.

(3) For the purposes of this section, an approved non-governmental organization or agency refers to an organization or agency being a corporation or an association of persons whether or not resident in Jamaica, which is approved for the purposes of this section by order made by the Minister.

Proceedings
to be in
camera.

11. In any proceedings involving a victim who—

- (a) is a child;

- (b) has been traumatized by the experience of exploitation;
- (c) is mentally or physically challenged; or
- (d) is a person against whom any of the offences set out in sections 44, 48, 50, 53, 55, 56, 57, 64 and 76 of the Offences Against the Person Act (being offences relating to indecent assault, carnal abuse, abduction, rape, buggery and prostitution) was committed,

the court shall order that such proceedings be held in camera.

12.—(1) The Minister shall establish a system to effect the return of victims to their country of citizenship or to a country in which the victim holds permanent residency.

Return of victims to home country, etc.

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

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

13.—(1) Where the victim is a person who does not have the right to remain or reside in Jamaica, an immigration officer shall, subject to the provisions of this section, grant the victim the appropriate visas or other required authorization to allow him to remain in Jamaica for the duration of time necessary to carry out, where feasible, the—

Immigration regime for victims.

- (a) process of identifying the victim or verifying his identity and nationality;
- (b) activities necessary to find accommodation for and other assistance to the victim;
- (c) criminal prosecution against the persons who have committed or facilitated the commission of the offence of trafficking in persons;
- (d) investigations necessary to prosecute the offence of trafficking in persons or facilitating the offence and other legal and administrative activities.

(2) The Minister may, where he considers it justified in the circumstances appropriate to do so, cancel at any time the visas or other documents which permit the victim to remain in Jamaica

PART IV. *Prevention of Trafficking in Persons*

Entry, search
and seizure.

14.—(1) Subject to subsection (3), where a Judge 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, he may issue a warrant in accordance with subsection (2).

(2) A warrant issued under subsection (1) may authorize a constable named therein to enter the premises specified therein, 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;
- (c) seize property found in the course of the search that the constable believes, on reasonable grounds, to be evidence of or relating to an offence under this Act.

(3) A warrant shall not be issued under this section unless the informant or some other person has given the Judge, on oath, such further information as the Judge may require concerning the grounds on which the issue of the warrant is sought.

- (4) A warrant issued under this section shall include—
 - (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the trafficking offence;
 - (b) a description of the kind of property to be seized;
 - (c) the time, not being later than fourteen days, upon the expiration of which the warrant ceases to have effect; and
 - (d) a statement as to whether entry is authorized to be made at any time of the day or night, or during the specified hours of the day or night.

(5) For the purposes of this section “an offence under this Act” refers to an offence which has been committed or is about to be committed.

15. Any person who threatens, assaults, or obstructs a constable acting in the execution of his duty under this Act commits an offence and is liable on summary conviction in a Resident Magistrate’s Court to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a period not exceeding six months.

Offence of threatening obstructing, etc., constable.

16. The Minister may make regulations for carrying into effect the objects and purposes of this Act either generally or in relation to any particular case.

Regulations.

17.—(1) The Minister may by Order published in the *Gazette* increase the fines provided under this Act.

Order to increase fines.

(2) An Order under subsection (1) shall be subject to affirmative resolution.

SCHEDULE

(Section 7)

Procedure
upon
forfeiture.

1.—(1) Where a constable has reasonable cause to suspect that any article, vehicle or other property is being used or has been used in the commission of an offence against this Act, the constable may without warrant search the property, and if it appears that the property is being used or has been used for the commission of any offence as aforesaid, the constable may seize and detain the property.

(2) Where any property is seized pursuant to this paragraph and—

- (a) any person is convicted of an offence under this Act;
- (b) the Court is satisfied that—
 - (i) the person owns the property used in the commission of the offence;
 - (ii) the owner permitted it to be used; or
 - (iii) the circumstances are otherwise such that it is just to do so,

the Court shall, upon the application by the Director of Public Prosecutions, order the forfeiture of the property.

(3) On the application of the Director of Public Prosecutions before a Judge in Chambers, the Judge may make an order in accordance with sub-paragraph (4), notwithstanding that the conditions mentioned in sub-paragraph (2) have not been satisfied.

(4) The Judge may order the forfeiture of the property if the Judge is satisfied that—

- (a) the property has been abandoned;
- (b) the circumstances in which the property was seized give reasonable cause to suspect that it was being used or has been used for the purpose of committing an offence against this Act,

and it is otherwise just to do so.

Procedure
regarding
application
for forfeiture.

2.—(1) Where the Director of Public Prosecutions intends to apply to the Court for an order of forfeiture under paragraph 1(3) he shall, subject to sub-paragraph (2) give to any person who, to his knowledge, was at the time of the seizure, the owner thereof, notice of the seizure and the intention to apply for forfeiture and grounds thereof.

(2) Notice shall not be required under sub-paragraph (1) if the seizure under paragraph (1) was made in the presence of the owner or his servant or agent.

(3) Where the Director of Public Prosecutions is unable to ascertain the owner of or any person having an interest in any property to which this section applies, he shall publish a notice in a daily newspaper circulating in Jamaica regarding the intention to apply to a Resident Magistrate for an order for forfeiture, not less than thirty days prior to the application

(4) Any person having a claim to any property seized under this Act may appear at the hearing of the application for forfeiture and show cause why such an order should not be made.

(5) Where, on the hearing of an application for forfeiture pursuant to paragraph 1(3), no person appears before the Court to show cause as mentioned in sub-paragraph (4), the Court shall presume that the property has been abandoned.

(6) If, upon the application of a person prejudiced by an order made under paragraph (1), (2) or (3), the Court is satisfied that it is just in the circumstances of the case to revoke the order, the Court may—

- (a) revoke such order upon such terms and conditions, if any, as it deems appropriate; and
- (b) without prejudice to the generality of paragraph (a), require such person to pay in respect of storage, maintenance, administrative expenses, security and insurance of the property, such amount as may be charged by the person in whose custody the property was kept.

(7) An application to the Court under sub-paragraph (6) for the revocation of an order shall be made within thirty days of the date of the order or such longer period not exceeding six months after the date of the order as the Court may allow.

Passed in the Honourable House of Representatives this 5th day of December, 2006, with one (1) amendment.

SHARON HAY-WEBSTER
Acting Speaker.

Passed in the Senate this 26th day of January, 2007, with one (1) amendment.

SYRINGA MARSHALL-BURNETT, C.D.
President.

On the 30th day of January, 2007 the House of Representatives agreed to the amendment made by the Senate.

MICHAEL PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.