

THE COMBATING OF TRAFFICKING IN PERSONS BILL
(No. III of 2009)

Explanatory Memorandum

The objects of this Bill are to –

- (a) give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons;
- (b) prevent and combat trafficking in persons; and
- (c) protect and assist victims of trafficking.

10 April 2009

DR. N. RAMGOOLAM
Prime Minister,
Minister of Defence and Home Affairs

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A BILL

To give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in persons

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Combating of Trafficking in Persons Act 2009.

2. Interpretation

In this Act –

“Centre” means a Centre for victims of trafficking set up under section 4;

“exploitation” includes –

- (a) all forms of slavery or practices similar to slavery, including forced marriage;
- (b) sexual exploitation;
- (c) forced labour; and
- (d) the illegal removal of body organs;

“forced labour” means labour or services obtained or maintained through threats, the use of force, intimidation or other forms of coercion, or physical restraint;

“inmate” means a person admitted to a Centre;

“investigating officer” means –

- (a) a police officer; or
- (b) a public officer designated as such by the Minister for the purposes of this Act;

“Minister” means the Minister to whom responsibility for the subject of home affairs is assigned;

“sexual exploitation” means obtaining financial or other benefits through the involvement of another person in prostitution or in other kinds of sexual services, including pornographic acts or the production of pornographic materials, as a result of subjecting another person to one of the means listed in paragraph (a) of the definition of “trafficking”;

“slavery” means the exercise of any or all of the powers attaching to the right of ownership over a person;

“trafficking” means –

- (a) the recruitment, sale, supply, procurement, capture, removal, transportation, transfer, harbouring or receipt of a person –
 - (i) by the use of threat, force, intimidation, coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability; or
 - (ii) by the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
- (b) the adoption of a person facilitated or secured through illegal means,

for the purpose of exploitation;

“United Nations Protocol” means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons;

“victim of trafficking” means a person who is a victim of the offence of trafficking in persons.

3. Application of Act

This Act shall be in addition to, and not in derogation from, the Child Protection Act.

4. Centres for victims of trafficking

- (1) The Minister shall –
 - (a) cause to be set up one or more Centres which shall be premises for the provision of temporary accommodation suited for the needs of victims of trafficking admitted to them;
 - (b) designate an investigation officer to be in charge of each Centre.
- (2) Every Centre –
 - (a) shall secure the safety of its inmates against any risk of retaliation;
 - (b) shall provide counselling and rehabilitation services to its inmates;
 - (c) shall facilitate the integration of its inmates into their families;
 - (d) may offer facilities aimed at providing education, skills development and training;
 - (e) shall, where necessary, provide reception, care and other facilities for a child who is in the care and custody of an inmate.
- (3) The officer in charge of a Centre shall, on the admission of an inmate, make an assessment to determine –
 - (a) the risks to the safety of the inmate and of any child in his care and custody;
 - (b) the immediate and long term needs of the inmate.
- (4) A Judge in Chambers may, on the application of an investigating officer, order that an adult shall be admitted to a Centre for such period as he may determine.

5. Country of origin or destination

- (1) The Minister may, by Order, declare a country as a country of –

- (a) origin from which persons are being trafficked to Mauritius; or
- (b) destination to which persons present in Mauritius are being trafficked.

(2) The Minister shall take steps for the setting up, with the assistance of one or more investigating officers and such authorities as he thinks fit, of a screening mechanism to determine whether persons who travel to Mauritius from a country referred in subsection (1)(a) or persons who travel from Mauritius to a country referred to subsection (1)(b) are victims of trafficking.

6. Suspension of deportation

(1) Notwithstanding any other enactment, the Minister may allow a victim of trafficking who is a non-citizen, regardless of his status, to remain in Mauritius for a non-renewable period not exceeding 42 days.

(2) The non-renewable period referred to in subsection (1) shall not depend upon the willingness of a victim of trafficking to co-operate with investigating officers and prosecuting authorities in the investigation and prosecution of a case of trafficking.

7. Temporary residence

(1) Notwithstanding any other enactment, a visitor's permit may, subject to the prescribed conditions, be issued by the Minister to a victim of trafficking who –

- (a) is present in Mauritius;
- (b) has agreed to co-operate with investigating officers and prosecuting authorities in the investigation and prosecution of a case of trafficking; and
- (c) is placed in the care of a Centre or of any other authorised person, organisation or institution.

(2) A visitor's permit referred to in subsection (1) may be issued to a victim of trafficking regardless of –

- (a) his status; or

- (b) whether a non-renewable period contemplated in section 6(1) was granted or has expired.

(3) The Minister may, on humanitarian grounds, extend a visitor's permit, taking into account the likelihood that the holder of the permit may be harmed, killed or trafficked again if returned to his country of origin or the country from which he has been trafficked.

8. Repatriation of victims of trafficking

(1) No victim of trafficking, who is a non-citizen, may, unless he agrees to the proposed course of action, be returned to his country of origin or the country from which he has been trafficked without due consideration being given to –

- (a) his safety during the repatriation process;
- (b) his safety in the country to which he is to be returned; and
- (c) the possibility that he may be harmed, killed or trafficked again.

(2) Where a decision has been made to return a person who is a victim of trafficking to his country of origin or the country from which he has been trafficked –

- (a) the Minister shall take steps to obtain information relating to an institution or organisation which renders assistance to victims of trafficking in the country to which the person is to be returned and which is willing to provide assistance to that person; and
- (b) the person shall, in the prescribed manner, be informed of any arrangements which have been made for his reception in the country to which he is to be returned.

9. Return of victims of trafficking to Mauritius

Where a victim of trafficking is a citizen or a permanent resident of Mauritius and is to be returned to Mauritius, the Minister shall –

- (a) where the victim is a minor and it is in his interest to do so, designate an adult, at State expense, to escort the minor home;
- (b) facilitate and accept the return of the victim;
- (c) where necessary, take measures to secure the reception of the victim at a Mauritian port of entry;
- (d) issue such travel document or other authorisation as may be necessary to enable the victim to return;
- (e) at the request of another State which is a party to the United Nations Protocol or to any other agreement relating to trafficking in persons to which Mauritius is a party, verify that a person who is a victim of trafficking is a citizen or permanent resident of Mauritius;
- (f) on entry into Mauritius, where the victim of trafficking –
 - (i) is a minor, refer him to the Child Development Unit;
 - (ii) is an adult, refer him to a Centre,
 for such assistance as may be appropriate.

10. Legitimacy and validity of document

The Minister shall, at the request of another State which is a party to the United Nations Protocol or to any other agreement relating to trafficking in persons to which Mauritius is a party, verify within a reasonable time the legitimacy and validity of a travel or identity document issued or purported to have been issued by Mauritius and suspected of being used for the offence of trafficking.

11. Trafficking in persons

(1) (a) Any person who trafficks another person or allows another person to be trafficked shall commit an offence.

(b) It shall not be a defence to a charge under paragraph (a) that a person who is a victim of trafficking, or a person having control or authority over a minor who is a victim of trafficking, has consented to the act which was intended to constitute trafficking.

(2) Any person who knowingly -

- (a) leases a room, house, building or establishment or subleases or allows it to be used, for the purpose of harbouring a victim of trafficking; or
- (b) advertises, publishes, prints, broadcasts, distributes, or causes the advertisement, publication, broadcast or distribution of, information which suggests or alludes to trafficking by any means, including the use of the internet or other information technology,

shall commit an offence.

(3) (a) Every internet service provider operating in Mauritius shall be under a duty to report to the Police forthwith any site on its server which contains information in contravention of subsection (2)(b).

(b) Any internet service provider who fails to comply with paragraph (a) shall commit an offence.

(4) Any person who knowingly benefits, financially or otherwise, from the services of a victim of trafficking or uses, or enables another person's usage of, the services of a victim of trafficking shall commit an offence.

12. Possession or concealment of document

Any person who, without good cause, has in his possession, destroys, confiscates, conceals or tampers with any actual or purported identification document, passport or other travel document of a victim of trafficking shall commit an offence.

13. Reporting of trafficking

(1) Any person who believes that a person is a victim of trafficking shall forthwith report the matter to the Police.

(2) The identity of a person who makes a report under subsection (1) shall not be disclosed, unless a Judge in Chambers otherwise orders.

14. Penalties

(1) Any person who commits an offence under section 11 shall, on conviction, be liable to penal servitude not exceeding 15 years.

(2) Any person who commits an offence under section 12 shall, on conviction, be liable to imprisonment not exceeding 5 years and to a fine not exceeding 100,000 rupees.

(3) The Community Service Order Act, Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (1).

15. Jurisdiction

(1) Any person who commits an act outside Mauritius which would have constituted an offence under this Act, had it been committed in Mauritius, regardless of whether the act constitutes an offence at the place of its commission, shall commit an offence, where the person –

- (a) is a citizen of Mauritius;
- (b) is ordinarily resident in Mauritius;
- (c) is arrested in the territory of Mauritius, or in its territorial waters or on board a ship or aircraft registered or required to be registered in Mauritius at the time the offence is committed; or
- (d) is a legal person under any law of Mauritius.

(2) Notwithstanding section 114(2) of the Courts Act and section 72(5) of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try any offence under this Act and may impose any penalty provided by this Act.

16. Compensation to victim of trafficking

(1) The Court before which a person is convicted of an offence under section 11 may, in addition to any penalty which it may impose in respect of the offence, order the person convicted to pay appropriate compensation to a victim of the offence for –

- (a) damage to, or loss or destruction of, property, including money;
- (b) physical, psychological or other injury; or
- (c) loss of income or support,

resulting from the commission of the offence.

(2) An order made under subsection (1) may award compensation not exceeding 500,000 rupees.

(3) Where the Court orders compensation under subsection (1), it shall determine the time within which payment is to be made and the method of payment.

(4) In assessing the compensation which a person may be ordered to pay, the Court shall consider the means of the offender.

(5) The Court may, where it thinks fit, suspend the sentence imposed for the offence on condition of the payment of appropriate compensation to the victim of the offence.

(6) Where the amount of damage, injury or loss suffered exceeds an award made under subsection (1), the victim may recover the excess by means of a civil action.

17. Payment of compensation

(1) Where a person is ordered to pay compensation, the Court may in its discretion enforce the payment of compensation –

- (a) by allowing the person to pay compensation on such conditions and in such instalments at the intervals it deems fit;
- (b) where the amount expected to be recovered will be sufficient to cover, in addition to the amount of compensation, the costs and expenses involved, by attachment and sale of any property belonging to the person.

18. Failure to pay compensation

(1) Where a Court has ordered a person to pay compensation and suspended a sentence pursuant to section 16(5) and the compensation is not paid in full or recovered in full, the Court which made the order may –

- (a) summon the person to appear before it; or
- (b) issue a warrant directing that the person be arrested and brought before the Court.

(2) When a person referred to in subsection (1) is brought before the Court, it may, unless the amount due is paid or recovered forthwith, reimpose the sentence which has been suspended, or such lesser sentence as the Court thinks fit taking into account the amount of compensation already paid or recovered.

19. Compensation to State

The Court may –

- (a) in addition to any sentence imposed in respect of an offence under section 11 and to any order for compensation to a victim made under section 16; and
- (b) on application made on behalf of the State,

make an order for payment to the State of an amount in compensation for expenses incurred, or reasonably expected to be incurred, in connection with the care, accommodation, transportation and repatriation of the victim of the offence.

20. Regulations

(1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit.

(2) Without prejudice to the generality of his power under subsection (1), the Minister may, by regulations –

- (a) provide for the levying and payment of fees and charges;
- (b) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

21. Consequential amendment

The Child Protection Act is amended, in section 13A –

- (a) by repealing subsection (7) and replacing it by the following subsection –

(7) Where the Court finds that a person who has parental responsibility and rights in respect of a minor has committed an offence under this section in relation to that minor, it may –

- (a) suspend the parental responsibilities and rights of that person; and
- (b) order the minor to be admitted to a place of safety,

for such period as it thinks fit.

- (b) by adding, after subsection (7), the following new subsection –

(8) In this section, “exploitation” has the same meaning as in the Combating of Trafficking in Persons Act 2009.

22. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
