

THE COMBATING OF TRAFFICKING IN PERSONS (AMENDMENT) BILL

(No. XVII of 2023)

Explanatory Memorandum

The object of this Bill is to amend the Combating of Trafficking in Persons Act so as to consolidate the existing legal provisions for combating of trafficking in persons and to provide for a modern legal framework to address the issue of trafficking in persons more effectively.

2. The amendments to the Combating of Trafficking in Persons Act will allow for a more rigorous identification and prosecution of cases, better support to victims of trafficking in persons and the establishment of an effective institutional framework for the fight against trafficking in persons.

3. To provide for stricter penalties for persons convicted of offences relating to trafficking in persons, it is being provided that those convicted persons will no longer be eligible for remission or release on parole under the Reform Institutions Act. In addition, it is being provided that the Court will no longer have the discretion to inflict a term of imprisonment of less than 3 years for the offence of trafficking in persons.

4. The Bill further provides for matters connected, incidental and related thereto.

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10 November 2023

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To amend the Combating of Trafficking in Persons Act so as to consolidate the existing legal provisions for combating 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 (Amendment) Act 2023.

2. Interpretation

In this Act –

“principal Act” means the Combating of Trafficking in Persons Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) in the definition of “exploitation” –

- (i) in paragraph (a), by deleting the words “forced marriage” and replacing them by the words “forced marriage and debt bondage”;
- (ii) by deleting paragraph (d) and replacing it by the following paragraph –
 - (d) the illegal removal of organs and parts of a human body without a valid and informed consent given for medical purposes;
- (b) by deleting the definition “illegal means” and “inmate”;
- (c) by deleting the definition of “investigating officer” and replacing it by the following definition –

“investigating officer” means a police officer, other than an authorised officer, who is designated by the Commissioner of Police to be posted in the Unit;
- (d) in the definition of “trafficking”, by deleting paragraph (b);
- (e) in the definition of “victim of trafficking”, by deleting the words “the offence of trafficking in persons” and replacing them by the words “an offence under section 11”;
- (f) by inserting, in the appropriate alphabetical order, the following new definitions –

“authorised officer” means a police officer, not below the rank of Assistant Superintendent of Police, designated by the Commissioner of Police to act as an authorised officer under section 4(1)(b);

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

“debt bondage” means the status or condition arising from a pledge, by a debtor, of –

 - (a) his personal services; or
 - (b) those of a person under his control as security for a debt where –
 - (i) the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt; or

- (ii) the length of those services is not limited and defined;

“migrant worker” means a non-citizen who is the holder of a work permit issued under the Non-Citizens (Employment Restrictions) Act;

“resident” means a person admitted to a Centre;

“Steering Committee” means the Steering Committee for Combating of Trafficking in Persons referred to in section 4A;

“Unit” means the Combating of Trafficking in Persons Unit referred to in section 4B;

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended by deleting the words “the Children’s Act 2020, the District and Intermediate Courts (Criminal Jurisdiction) Act” and replacing them by the words “the Children’s Act 2020, the Immigration Act 2022, the Passport Act and the Police Act”.

5. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) (a) The Minister shall cause to be set up one or more Centres which shall be premises for the provision of temporary accommodation suited to the needs of victims of trafficking.

(b) The Commissioner of Police shall designate a police officer not below the rank of Assistant Superintendent of Police to be an authorised officer in charge of a Centre.

- (b) in subsection (2) –

- (i) in paragraph (a), by deleting the word “inmates” and replacing it by the word “residents”;

- (ii) in paragraph (b), by deleting the word “inmates” and replacing it by the word “residents”;

- (iii) in paragraph (c), by deleting the word “inmates” and replacing it by the word “residents”;

- (iv) in paragraph (e), by deleting the words “an inmate” and replacing them by the words “a resident”;
- (c) in subsection (3) –
 - (i) by deleting the words “an inmate” and replacing them by the words “a resident”;
 - (ii) in paragraph (a), by deleting the words “the inmate” and replacing them by the words “the resident”;
 - (iii) in paragraph (b), by deleting the words “the inmate” and replacing them by the words “the resident”;
- (d) by repealing subsection (4) and replacing it by the following section –
 - (4) The authorised officer of a Centre may grant access to the Centre to –
 - (a) the staff of the Centre, including a maintenance worker;
 - (b) the diplomatic representative of a foreign country in the case of non-citizen resident;
 - (c) a law practitioner;
 - (d) an investigating officer;
 - (e) a social worker;
 - (f) a psychologist; and
 - (g) such other person as he may authorise.
- (e) by adding the following new subsection –
 - (5) Where an investigating officer represents to an authorised officer that there are reasonable grounds to believe that a person who has been, or is, a victim of trafficking requires admission to a Centre in order to prevent interference with that person, the authorised officer may admit the person to the Centre.

6. New sections 4A, 4B and 4C inserted in principal Act

The principal Act is amended by inserting, after section 4, the following new sections –

4A. Steering Committee for Combating of Trafficking in Persons

(1) There shall be, for the purposes of this Act, a Steering Committee for Combating of Trafficking in Persons.

(2) The Steering Committee shall consist of –

- (a) the Secretary for Home Affairs, to be the Chairperson;
- (b) a representative of the Prime Minister's Office;
- (c) a representative of the Ministry responsible for the subject of family welfare;
- (d) a representative of the Ministry responsible for the subject of foreign affairs;
- (e) a representative of the Ministry responsible for the subject of labour;
- (f) a representative of the Ministry responsible for the subject of social security;
- (g) a representative of the Attorney-General's Office;
- (h) a representative of the Office of the Director of Public Prosecutions;
- (i) a representative of the Commissioner of Police;
- (j) the Director-General of Immigration.

(3) The functions of the Steering Committee shall be to –

- (a) coordinate the development, regular review and implementation of national policies and activities to combat trafficking in persons;
- (b) ensure coordination among the public authorities with a view to improving the effectiveness of existing policies to combat trafficking in persons;

- (b) ensure coordination with stakeholders to identify victims of trafficking in persons;
 - (c) to assess the needs and protection of victims of trafficking in person;
 - (d) collect, and cause to be analysed, statistics and other information from competent authorities to assess the effectiveness of policies and measures to combat trafficking in persons; and
 - (e) make recommendations to the Minister for legislative regulatory and policy reforms for the purpose of combating trafficking in persons.
- (4) The Steering Committee shall meet –
- (a) at least once every month; and
 - (b) at the request of the Chairperson, as often as is otherwise necessary.
- (5) In the absence of the Chairperson, the Steering Committee shall be chaired by the representative of the Prime Minister’s Office.
- (6) At any meeting of the Steering Committee, 6 members shall constitute a quorum.
- (7) (a) There shall be a Secretary to the Steering Committee who shall be a public officer to be designated by the Secretary to Cabinet and Head of the Civil Service.
- (b) The Secretary to the Steering Committee shall –
- (i) at the request of the Chairperson, convene members to attend a meeting of the Steering Committee;
 - (ii) be responsible for keeping record of minutes of proceedings of every meeting of the Steering Committee;
 - (iii) have such other duties as it may assign to him.
- (8) The Steering Committee may retain the services of –

- (a) such public officers as may be necessary, on such terms and conditions as the Secretary to Cabinet and Head of the Civil Service may approve; and
- (b) the employees of such relevant institutions as it may require in the discharge of its functions.

(9) The Steering Committee may, as and when required, co-opt any other member to form part of the Steering Committee.

(10) The Steering Committee may, in the discharge of its functions, set up such subcommittees as it deems necessary.

(11) The members of the Steering Committee, its subcommittees, and the Secretary to the Steering Committee shall be paid such fees and allowances as the Minister may approve.

4B. Combating of Trafficking in Persons Unit

(1) There shall be, within the Mauritius Police Force, a Combating of Trafficking in Persons Unit which shall be under the responsibility of the Commissioner of Police.

(2) The Unit shall consist of investigating officers and shall be headed by a police officer not below the rank of Assistant Superintendent of Police, who shall be responsible for the administrative and operational duties of the Unit.

(3) The Unit shall –

- (a) be responsible for preventing and detecting cases of trafficking and any other offence under this Act;
- (b) be responsible for investigating into, or overseeing the investigation of, cases of trafficking, including cases having international ramifications, and any other offence under this Act;
- (c) work in collaboration with other law enforcement agencies for the prevention of, detection of, and investigation into, cases of trafficking and any other offence under this Act;
- (d) carry out a risk assessment in respect of a person referred to in section 4C and make recommendations to the Director of Public Prosecutions for –

- (i) protection under section 4C; or
- (i) immunity from prosecution under section 11B.

(4) The Commissioner of Police may, where it considers it expedient to do so, retain the services of an independent professional or specialised agency from Mauritius or overseas for such specific purpose as the Unit may require.

(5) Notwithstanding subsection (3), the Commissioner of Police may assign any other police duty to an investigating officer of the Unit.

4C. Witness protection

(1) Any person who is a potential witness in an investigation into, or a prosecution for, an offence under section 11, and who believes that giving evidence might expose him or his family to any retaliation, intimidation or threat which may jeopardise his or his family's safety or security, may make an application to the Commissioner of Police, through the Unit, for his or his family's protection until such time as may be required and approved by the Commissioner of Police.

(2) A request made under subsection (1) may be approved by the Commissioner of Police subject to a proper risk assessment being carried out by the Unit and after consultation with the Director of Public Prosecutions.

7. Section 6 of principal Act repealed and replaced

Section 6 of the principal Act is repealed and replaced by the following section –

6. Victim allowed to remain in Mauritius

Where a victim of trafficking is required as a witness in connection with a Court case relating to trafficking, the Minister may, notwithstanding any other enactment, allow the victim to remain in Mauritius until the disposal of the case.

8. Section 9 of principal Act amended

Section 9 of the principal Act is amended –

- (a) by numbering the existing provision as subsection (1);
- (b) in the newly numbered subsection (1) –

- (i) by deleting the words “a permanent resident of Mauritius” and replacing them by the words “non-citizen resident of Mauritius”;
 - (ii) in paragraph (e), by deleting the words “permanent resident of Mauritius” and replacing them by the words “non-citizen resident of Mauritius”;
 - (iii) in paragraph (f), by deleting the words “all entry into Mauritius, where the victim of trafficking –” and replacing them by the words “allow the entry into Mauritius of a victim of trafficking, where the victim –”;
- (c) by adding the following new subsection –
- (2) In this section –

“non-citizen resident of Mauritius” means a non-citizen who is issued with a permit under the Immigration Act 2022.

9. New sections 10A, 10B, 10C and 10D inserted in principal Act

The principal Act is amended by inserting, after section 10, the following new sections –

10A. Entry, inspection and search

(1) Where a Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence has been or may be committed under this Act and that there is reasonable ground to believe that evidence relating to that offence may be found at the premises specified in the information, he may grant a warrant authorising an investigating officer, at any time, within one month from the date of the warrant, to enter, with assistances and if need be, by force, the premises specified in the warrant and carry out any of the actions specified in subsection (2).

(2) For the purpose of subsection (1), an investigating officer may, upon entering the premises specified in the warrant –

- (a) inspect and search the premises;
- (b) search any person found on the premises the investigating officer reasonably believes to be in possession of any object or document likely to be

relevant to an investigation into the commission of an offence under this Act;

- (c) detain any person found on the premises until such time as the search of the premises is completed;
- (d) require the owner of the premises or his agent, or the occupier of the premises to produce any record, document or licence;
- (e) make any plan, take any photograph or make any audio or video recording;
- (f) secure any object, document or other property found on the premises that the investigating officer reasonably believes to be evidence of, or relevant to, an offence under this Act;
- (g) require the owner of the premises or his agent, the occupier of the premises, any person employed by the owner, agent or occupier, or any other person on the premises, to give to the investigating officer all reasonable assistance and to answer all reasonable questions either orally or in writing.

(3) Where, upon entry into any premises specified in a warrant under subsection (1), it is found that such premises are equipped with such unusual or unusually numerous contrivances or means as are calculated to prevent or obstruct an entry or to enable persons therein to observe or ascertain the approach of any person, or to give alarm or facilitate escape from such premises, or if all doors, windows and means of entry are so bolted or obstructed that, even with the use of force, access to the premises is abnormally delayed, it shall be presumed, unless the contrary is proved, that the premises are used for the commission of an offence under this Act and that the owner or occupier, if any, of the premises has facilitated such use of the premises.

(4) Where, upon entry into any premises specified in a warrant under subsection (1) –

- (a) victims of trafficking or articles in connection with trafficking are found therein;
- (b) any person is seen to escape from the premises on the approach or entry of a police officer; or

- (c) any person having authority under the search warrant to enter such premises is unlawfully prevented from or obstructed or delayed in entering or approaching the premises,

it shall be presumed, unless the contrary is proved, that the premises are used for the purpose of trafficking in persons.

10B. Powers of investigation

(1) Where, on application by an investigating officer, the Judge in Chambers is satisfied that there is reasonable ground to suspect that an offence under this Act has been or is likely to be committed, he may issue a warrant authorising the investigating officer to –

- (a) tap or place under surveillance, for a period not exceeding 6 months, the telephone lines used by persons suspected of participation in the offence;
- (b) have access to any computer system used by persons suspected of participation in the offence and place these persons under surveillance;
- (c) place any bank account suspected of being used for operations related to the offence under surveillance;
- (d) have access to all bank, financial and commercial records that may reasonably concern transactions relating to the offence.

(2) Notwithstanding any other enactment, no person shall, on grounds of professional secrecy or otherwise, refuse to comply with the requirements of a warrant issued under subsection (1).

10C. Arrest without warrant and detention

(1) Notwithstanding section 4 of the District and Intermediate Courts (Criminal Jurisdiction) Act, an investigating officer may, without warrant, arrest any person who has committed, attempts to commit, or is reasonably suspected of having committed or attempted to commit, an offence under this Act, where that investigating officer has reasonable grounds to believe that the person will abscond or where the name and address of that person cannot be immediately be ascertained.

(2) An investigating officer may seize and detain any money, material, equipment, article, document or other movable property found in possession or control of a person arrested with or without a warrant for

an offence under this Act, where such money, material, equipment, article, document or other movable property is reasonably suspected of being, having been, or intended to be used in connection with the offence.

10D. Acts deemed lawful

(1) Notwithstanding section 5 of the Immigration Act 2022, a person who has, or who is suspected to have, committed an offence under this Act may be admitted to, and remain in, Mauritius for the purpose of enabling the Unit to discharge its functions under section 4B(3).

(2) Subject to subsection (3), nothing in this Act shall render unlawful the act of an investigating officer who, in the discharge of his duties in connection with the detection of an offence under this Act, offers to buy or sell, transports, transfers, harbours, or receives a person for the purpose of exploitation.

(3) For the purpose of subsection (2), an investigating officer shall not offer to buy or sell, transport, transfer, harbour, or receive a person for the purpose of exploitation, unless he is authorised in writing by, and acts under the supervision of, the officer heading the Unit.

(4) Any act performed by an investigating officer under this section shall afford no defence to any person charged with an offence under this Act.

10. Section 11 of principal Act amended

Section 11 of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

(1) Any person who recruits, sells, supplies, procures, captures, removes, transports, transfers, harbours or receives another person –

(a) by the use of threat, force, intimidation, coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability; or

- (b) by the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over that person,

for the purpose of exploitation, shall commit an offence.

- (b) by inserting, after subsection (1), the following new subsections –

(1A) Any person or employer who –

- (a) sells, supplies, delivers or transfers, to another person or employer;
- (b) harbours; or
- (c) receives from another employer,

a migrant worker for the purpose of exploitation, shall commit an offence.

(1B) Any person who allows any of the acts specified in subsection (1) shall commit an offence.

(1C) It shall not be a defence to any prosecution under subsections (1), (1A) and (1B) that the offence was committed with the consent of the victim and, in case of minor, with his knowledge.

(1D) Where the victim of an offence under subsection (1) is a child, it shall not be necessary in a prosecution for that offence to aver in the information, or to prove, the matters specified in subsection (1)(a) or (b).

11. New sections 11A and 11B inserted in principal Act

The principal Act is amended by inserting, after section 11, the following new sections –

11A. Assistance to victims of trafficking in persons

(1) Subject to subsection (2), any person who is victim of trafficking, or provides evidence of being or having been the victim of trafficking, shall be provided with such financial and legal assistance as may be prescribed.

(2) The Commissioner of Police may refer a victim of trafficking to the Minister to whom responsibility for the subject of employment is

assigned and the Minister may issue the victim with a work permit under the Non-Citizens (Employment Restrictions) Act.

11B. Non-punishment of victims of trafficking in persons

Any person, in relation to whom there is evidence, or who provides evidence, that he is a victim of trafficking, shall, with the consent of the Director of Public Prosecutions, not be prosecuted for an offence under this Act or under any other enactment.

12. New section 12A inserted in principal Act

The principal Act is amended by inserting, after section 12, the following new section –

12A. Illegal adoption or custody of a child

(1) Any person who adopts a child, or obtains the custody of a child, where such adoption or custody has been facilitated or secured through illegal means shall commit an offence.

(2) Any person who acts as intermediary for the purpose of an adoption or a custody of a child where such adoption or custody has been facilitated or secured through illegal means shall commit an offence.

(3) in this section –

“illegal means” includes payment or other form of compensation.

13. Section 13A of principal Act amended

Section 13A of the principal Act is amended –

(a) in paragraph (b), by deleting the word “illness” and replacing it by the words “illness or injury”;

(b) by inserting, after paragraph (b), the following new paragraph –

(ba) the victim suffered a life-threatening illness or injury as a result of the acts or omissions of the offender;

14. New sections 13B, 13C and 13D inserted in principal Act

The principal Act is amended by inserting, after section 13A, the following new sections –

13B. Investigation disclosing other offences

Where an investigation into an offence under this Act discloses evidence of another offence under any other enactment, the investigation of which is carried out by an investigating agency other than the Unit, the Commissioner of Police shall refer the investigation of that other offence to the other investigating agency.

13C. Prosecution

No prosecution shall be instituted under this Act except on an information filed with the consent of the Director of Public Prosecutions.

13D. Participation of victim in sentencing hearing

(1) Where a person has been convicted for an offence under this Act, the Court shall allow a victim, if he so desires, to make a statement, whether in writing or orally, at the hearing on sentence under section 132A of the Criminal Procedure Act, in relation to the impact which the offence had on him and his family, as well as any loss which he has suffered as a result of being a victim of that offence.

(2) The Court may take into consideration a statement under subsection (1) for the purpose of sentencing the person convicted of an offence under this Act and for the purpose of awarding compensation under section 16.

15. Section 14 of principal Act amended

Section 14 of the principal Act is amended –

- (a) in subsection (2), by deleting the words “section 12” and replacing them by the words “any section, other than section 11, of this Act”;
- (b) by repealing subsection (2A) and replacing it by the following subsection –

(2A) Where an aggravating circumstance specified in section 13) exists, any person who is convicted of an offence under –

- (a) section 11 shall be liable to penal servitude for a term not exceeding 20 years; or
- (b) any section, other section 11, of this Act shall be liable to imprisonment for a term not

exceeding 10 years and to a fine not exceeding 200,000 rupees.

- (c) in subsection (3), by deleting the words “Part X of the Criminal Procedure Act” and replacing them by the words “sections 150 and 151 and Part X of the Criminal Procedure Act”.

16. Section 15 of principal Act amended

Section 15 of the principal Act is amended by inserting, after subsection (1), the following new subsections –

(1A) Any offence committed in a country outside Mauritius as specified in subsection (1) is, for the purpose of determining the jurisdiction of a Court to try the offence, deemed to have been committed –

- (a) at the place where the accused is ordinarily resident; or
- (b) at the accused person’s principal place of business.

(1B) Sections 152 and 153 of the Criminal Procedure Act shall not apply for a conviction for an offence under section 11.

17. Section 20 of principal Act amended

Section 20 of the principal Act is amended, in subsection (2), by inserting, after paragraph (a), the following new paragraphs –

- (aa) provide for the registration, operation, supervision and control of facilities and services for victims of trafficking, excluding public and private health institutions;
- (ab) provide for mechanisms governing financial and legal assistance to victims of trafficking; and

18. Consequential amendments

(1) The Courts Act is amended –

- (a) in section 161, by inserting, in the appropriate alphabetical order, the following new definition –

“sexual offence case” means a case in which an accused is being prosecuted for the offence of rape, attempt upon

chastity or illegal sexual intercourse in breach of section 249 of the Criminal Code;

- (b) in section 161B, in subsection (1), by deleting the words “any witness in relation to an offence under the Dangerous Drugs Act or a financial crime offence as defined in sections 41A(5) and 80D(5) or an offence under the Piracy and Maritime Violence Act” and replacing them by the words “a complainant in a sexual offence case or a witness in relation to an offence under the Dangerous Drugs Act or a financial crime offence as defined in sections 41A(5) and 80D(5), an offence under the Piracy and Maritime Violence Act or an offence under the Combatting of Trafficking in Persons Act”.

(2) The Reform Institutions Act is amended, in section 51A, by adding the following new paragraph, the full stop at the end of paragraph (c) being deleted and replaced by the words “; or” and the word “or” at the end of paragraph (b) being deleted –

- (d) an offence of trafficking in persons under section 11 of the Combatting of Trafficking in Persons Act.

19. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.
