

THE TRAFFICKING IN PERSONS (PREVENTION,
SUPPRESSION AND PUNISHMENT) ACT

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SCHEDULE.

THE TRAFFICKING IN PERSONS (PREVENTION,
SUPPRESSION AND PUNISHMENT) ACT

Acts
1 of 2007,
12 of 2009
Sch.,
19 of 2013.

[1st March, 2007.]

PART I. *Preliminary*

1. This Act may be cited as the Trafficking in Persons (Pre- Short title.
vention, Suppression and Punishment) Act.

2.—(1) In this Act, unless the context otherwise requires— Interpretation.

“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 there-
from,

of sexually explicit conduct involving a child; or

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

“debt bondage” means the status or condition of a debtor 19/2013
arising from a pledge or the use by the debtor of his S. 2(a).
personal services or those of a person under his
control as security for or payment of a debt, if the
value of those services as reasonably assessed is not
applied toward the liquidation of the debt or the length
and nature of those services are not respectively
limited or defined;

“exploitation” includes—

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- (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;
- (f) keeping a person in debt bondage;

“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;

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S. 2(b).

(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.

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—

Object of Act.

(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;

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- (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 twenty years or to both such fine and imprisonment.

19/2013
S. 3(a).

(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 twenty years or to both such fine and imprisonment.

19/2013
S. 3(b).

(8A) A person commits an offence where that person conspires with any other person to commit an offence of trafficking in persons and shall be liable on conviction on indictment before a Circuit Court to a fine or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.

19/2013
S. 3(c).

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

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- (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.

Aggravating
circum-
stances.
19/2013
S. 4.

4A.—(1) Where a person is convicted of an offence under section 4, the Court shall determine whether any of the aggravating circumstances specified in subsection (2) are present in the course of committing the offence and if so, having regard to those circumstances the court may impose, in addition to the penalty prescribed under section 4, an additional term of imprisonment not exceeding ten years.

(2) The aggravating factors to be taken into account by the court are that—

- (a) the convicted person has been previously convicted for an offence under this Act;
- (b) the convicted person used, threatened to use, or caused another person to use or threaten to use—
 - (i) an offensive weapon;
 - (ii) an explosive; or
 - (iii) a biological or chemical agent;
- (c) in the course of the offence of trafficking in persons or any subsequent exploitation, the convicted person caused the victim to be exposed to a life threatening illness;
- (d) a wrongful act of a sexual nature was committed against the victim;
- (e) where the trafficking in persons occurred by means of the abuse of power or a position of vulnerability as specified in section 4(2)(d), the abuse was carried out by an adult in authority;

- (f) the offence involved serious injury to, or a grave risk of death to, another person, or caused the death of the victim or another person, including death as a result of suicide;
- (g) the victim suffers from a mental disorder or a physical disability;
- (h) the offence involved more than one victim;
- (i) the offence involved a series of criminal acts;
- (j) the offence was part of an activity of a criminal organization;
- (k) drugs, medication or an offensive weapon were used in the commission of the offence;
- (l) the victim is a child;
- (m) the convicted person is a public officer and the offence was committed while the public officer was acting or purporting to act in his official capacity;
- (n) the convicted person has been in an intimate relationship with the victim;
- (o) the convicted person has participated in a ceremony with the victim purporting to be a marriage ceremony, whether or not the result of the ceremony is a marriage that is legally valid; and
- (p) there exists any other factor that affects the relative seriousness of the offence.

(3) The factors specified in subsection (2) are in addition to any other factors or matters that are required or permitted to be taken into account by the Court under this Act or any rule of law.

(4) For the purposes of this section—

“adult in authority” means an adult who—

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- (a) is in a position of trust or authority in relation to a child;
- (b) is a person with whom a child is in a relationship of dependency; or
- (c) stands in *loco parentis* to a child;

“convicted person” means a person who has been convicted of an offence under this Act;

“criminal organization” means any gang, group, alliance, network, combination or other arrangement among three or more persons (whether formally or informally affiliated or organized and whether or not operating through one or more bodies corporate or other association)—

- (a) that has as one of its purposes the commission of one or more serious offences;
- (b) whose members individually, jointly or collectively have engaged in unlawful activity in order to obtain directly or indirectly, a financial or other material benefit or to gain power or influence;
- (c) whose members issue threats or engage in conduct to create fear and intimidation or to exert power or influence in communities, or over other persons; or
- (d) whose members utilize or operate under a common name or identifying sign, symbol, tattoo or other physical marking, colour or style of dress, or use mannerisms or graffiti or erect monuments, murals, paintings or other artwork to promote or facilitate their criminal activities;

“explosives” has the meaning assigned to it under the *Explosives (Control of Manufacture) Act*;

“mental disorder” has the meaning assigned to it in the *Mental Health Act*;

“offensive weapon” means an offensive weapon as defined in section 2(1) of the *Offensive Weapons Act* and includes a firearm as defined in section 2(1) of the *Firearms Act*;

“serious offence” means an offence for which the maximum term of imprisonment prescribed by law is a period of three years or more.

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 twenty years or to both such fine and imprisonment.

Offences by
bodies
corporate.

19/2013
S. 5.

(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.

6.—(1) Where a person is convicted of the offence of trafficking in persons, the court shall, in the same proceedings in which the person is convicted of the offence, order the person to pay restitution to the victim.

Restitution.
19/2013
S. (6)(a).

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(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 from any property of the convicted person including as far as possible property forfeited under the provisions of the *Proceeds of Crime Act* for an offence of trafficking in persons or the proceeds thereof.

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

7. [*Repealed by Act 19/2013, S.7.*]

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.

PART III. *Assistance to and Protection of Victims*

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

19/2013
S. 6(b).

19/2013
S. 7.

Immunity of
victim from
prosecution.

Protection for
victims.

(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.

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

Assistance
to victims.

- (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 by the Minister.

11. In any proceedings involving a victim who—

Proceedings
to be in
camera.

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- (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 was committed any of the offences set out in—
 - (i) section 76 of the Offences Against the Person Act (which relates to buggery); or
 - (ii) sections 3, 4, 5, 8, 9, 10, 13, 15 and 17 of the Sexual Offences Act (which relate to rape, grievous sexual assault, sexual touching, sexual grooming, sexual intercourse with person under sixteen, indecent assault and abduction),

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.

(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—

- (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*

14.—(1) Where a Justice of the Peace is satisfied by information on oath, and such further information as he may in the circumstances require, that there are reasonable grounds for suspecting that—

Powers of
search and
seizure of
evidence and
powers of
search for
victims.
19/2013
S. 8.

- (a) evidence of or relating to an offence under this Act is to be found on any premises specified in the information;
- (b) a victim is unlawfully detained for purposes of or relating to an offence under this Act in any place within the jurisdiction of the Justice of the Peace,

the Justice of the Peace may, subject to this section, act in accordance with subsection (2).

(2) The Justice of the Peace may issue a warrant authorizing the 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;

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(c) search the premises for any victim unlawfully detained for purposes of or relating to an offence under this Act; and

(d) in the case of—

(i) paragraph (b), seize any 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; and

(ii) paragraph (c), take the victim to or keep the victim in a place of safety or other lawful place, until the victim can be brought before the Justice of the Peace.

(3) The Justice of the Peace before whom the victim is brought may cause the victim to be dealt with as the circumstances may permit or require for the protection and welfare of the victim and in accordance with the proper administration of justice.

(4) 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.

Offence of threatening, obstructing, etc., constable.

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.

Regulations.

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.

Order to increase fines.

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

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

SCHEDULE [*Repealed by Act 19/2013, S. 9.*]