

A BILL

entitled

TRANSNATIONAL ORGANISED CRIME ACT 2013

TABLE OF CONTENTS

1	Citation
2	Interpretation
3	Participating in a criminal organisation
4	People smuggling
5	Trafficking in persons
6	Aggravating factors in relation to migrant smuggling and trafficking in persons
7	Travel documentation offences
8	Obstruction of justice
9	Territorial application
10	General provisions as to offences
11	Consent to prosecution
12	Repatriation of victims of trafficking
13	Repatriation: Expenses
14	Commencement

WHEREAS it is expedient to enact provisions to give effect to the Palermo Convention 2004:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Transnational Organised Crime Act 2013.

Interpretation

2 (1) In this Act—

“Bermudian status” has the same meaning as in the Bermuda Immigration and Protection Act 1956;

“Convention” means the Palermo Convention 2004, as amended from time to time, as of the date this Act comes into operation;

TRANSNATIONAL ORGANISED CRIME ACT 2013

“jurisdiction” means any country or territory, and includes Bermuda;

“material benefit” includes, but is not limited to, financial, monetary or equivalent benefits and sexual gratification

“special category person” has the same meaning as in the Bermuda Immigration and Protection Act 1956.

Participating in a criminal organisation

3 (1) A person commits an offence if he—

- (a) participates in a criminal organization, knowing that it is a criminal organization; and
- (b) knows, or is reckless as to whether his participation contributes, or may contribute, to the occurrence of a serious offence against the law of a jurisdiction.

(2) A person who commits an offence against subsection (1) shall be liable on summary conviction to a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 10 years, or both.

(3) A person shall only be taken to participate in a criminal organization for the purposes of subsection (1) if he is a member, or an associate member of the organization.

(4) For the purpose of this section, a criminal organisation is a group of three or more persons who have as their objective, or one of their objectives, obtaining directly or indirectly, a material benefit from the committal of a serious offence against a law of a jurisdiction by the organization, or a member, an associate member, or a prospective member, of the organization, but does not include a group that is randomly formed for the immediate commission of a single offence.

(5) For the purpose of this section, a group of three or more persons may be a criminal organization whether or not—

- (a) some of them are subordinates or employees of other members of the group or other persons;
- (b) only some of the people involved in the group at a particular time are involved in the planning, arrangement, or execution, at that time, of any particular action, activity or transaction;
- (c) its membership changes from time to time;
- (d) the persons are present in Bermuda;
- (e) a serious offence against a law of a jurisdiction was committed by the organization or a member, an associate member, or a prospective member, of the organization, and whether a serious offence against a law of a jurisdiction was, or was intended to be, committed within or outside of Bermuda by the organization or a member, an associate member, or a prospective member, of the organization; or

TRANSNATIONAL ORGANISED CRIME ACT 2013

- (f) any person received a material benefit from the commission of a serious offence against a law of a jurisdiction by the organization or a member, an associate member, or a prospective member, of the organization.
- (6) In this section, participation in a criminal organization includes, but is not limited to including—
- (a) agreeing with another person to participate in an act that contributes, or may contribute, to the occurrence of a serious offence against a law of a jurisdiction; and
 - (b) organising, directing, taking part in, or assisting in, the commission of a serious offence against a law of a jurisdiction by the organization or a member, or an associate member of the organization.
- (7) In this section, “serious offence against a law of a jurisdiction” means—
- (a) an offence against the law of Bermuda is that is an indictable offence within the meaning of section 3 of the Criminal Code Act 1907; or
 - (b) an offence against the law of a jurisdiction other than Bermuda that, if it had been committed in Bermuda, would be an indictable offence within the meaning of section 3 of the Criminal Code Act 1907.
- (8) In criminal proceedings in relation to the alleged commission of an offence against subsection (1) by a person who participates in a criminal organization, it is not necessary to prove that—
- (a) a serious offence was committed by the organization or a member, an associate member, or a prospective member, of the organization;
 - (b) a serious offence that was, or that was intended to be, committed by the organization or a member, an associate member, or a prospective member, of the organization, was committed, or intended to be committed, in Bermuda;
 - (c) any person received a material benefit from the commission of a serious offence by the organization or a member, or an associate member of the organization; or
 - (d) the person knew the identity of any member of the criminal organization.

People smuggling

- 4 (1) A person commits an offence if he—
- (a) arranges for an unauthorised migrant to enter a jurisdiction;
 - (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or any other person; and
 - (c) knows that, or is reckless as to whether, the unauthorised migrant is an unauthorised migrant.
- (2) A person commits an offence if he—

TRANSNATIONAL ORGANISED CRIME ACT 2013

- (a) arranges for an unauthorised migrant to be brought into a jurisdiction;
 - (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or any other person;
 - (c) knows that, or is reckless as to whether, the unauthorised migrant is an unauthorised migrant; and
 - (d) knows that, or is reckless as to whether, the unauthorised migrant intends to try to enter the jurisdiction.
- (3) A person commits an offence if he—
- (a) enables a person who—
 - (i) does not possess Bermudian status;
 - (ii) is not a special category person;
 - (iii) is not a bona fide visitor to Bermuda; or
 - (iv) is not a permanent resident,
to land in, or having landed, to remain or reside, in Bermuda by the means described in section 7 or any other illegal means.
 - (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or any other person; and
 - (c) knows that the person referred to in paragraph (a) is—
 - (i) a person described in section 3(3)(a)(i) to (iv); or
 - (ii) reckless as to the knowledge that the person is a person described in section 3(3)(a)(i) to (iv).
- (4) A person who commits an offence against subsection (1), (2) or (3) shall be liable on summary conviction to a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 20 years, or both.
- (5) An offence under subsection (1) may be committed even if the unauthorised migrant in relation to whom the alleged offence occurred—
- (a) consented to the arrangement for him to enter the jurisdiction; or
 - (b) did not but attempted to enter the jurisdiction in respect of which the arrangement was made.
- (6) An offence under subsection (2) may be committed even if the unauthorised migrant in relation to whom the alleged offence occurred—
- (a) consented to the arrangement for him to be brought to the jurisdiction; or
 - (b) was not brought but was attempted to be brought to the jurisdiction in respect of which the arrangement was made.
- (7) In this section—

“arrange for an authorised migrant to be brought to a jurisdiction” includes, but is not limited to the following—

- (a) organising, or procuring, the bringing of an unauthorised migrant to a jurisdiction;
- (b) recruiting a person to be brought, as an unauthorised migrant, to a jurisdiction; or
- (c) carrying an unauthorised migrant to a jurisdiction;

“arrange for an unauthorised migrant to enter a jurisdiction” includes, but is not limited to the following—

- (a) organising or procuring the entry of an unauthorised migrant into a jurisdiction;
- (b) recruiting a person to enter, as an unauthorised migrant, into a jurisdiction; or
- (c) carrying an unauthorised migrant into a jurisdiction;

“unauthorised migrant” in relation to a jurisdiction, means a person who—

- (a) does not possess Bermudian status;
- (b) does not have the specific permission of the Immigration authorities to land in, or having landed, to remain or reside in a jurisdiction; or
- (c) does not have in his possession all of the documents required by or under the laws of the jurisdiction, to enter or to remain in the jurisdiction.

Trafficking in persons

5 (1) A person commits an offence if, for the purposes of the physical exploitation of another person, he—

- (a) recruits or arranges for the other person to enter a jurisdiction, or travel within a jurisdiction; or
- (b) arranges, organises or procures the reception, concealment or harbouring, in a jurisdiction of the other person.

(2) Where the person physically exploited or intended to be physically exploited is aged 18 years or more, a person only commits an offence against subsection (1) if the recruitment, arrangement, organisation or procurement is by means of any of the following—

- (a) the threat or use of force or other forms of coercion;
- (b) abduction;
- (c) fraud or deception;
- (d) the abuse of power or of a position of vulnerability;

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

(3) A person who commits an offence against subsection (1) shall be liable on summary conviction to a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 20 years, or both.

(4) An offence against subsection (1) shall be committed even if the person physically exploited or intended to be physically exploited—

(a) did not in fact enter, or travel within, the jurisdiction; or

(b) was not in fact received, concealed, or harboured, in the jurisdiction.

(5) An offence against subsection (2) may be committed in respect of a person aged 18 years or more even if steps in the process by which the person entered, or was to enter, the jurisdiction, or travelled, or was to travel, within the jurisdiction, did not involve means described in subsection (2).

(6) In this section, any reference to the physical exploitation of a person means any of the following—

(a) the use of the person for sexual purposes;

(b) the removal of a body part from the person, unless for the benefit (other than the financial, monetary, or equivalent, benefit) of the person; or

(c) the use of the person in forced labour or services, slavery or practice similar to slavery, or servitude.

(7) Subsection (6)(a) includes, but is not limited to including, any of the following—

(a) the taking, or transmission, by any means, of an image of the person engaged in real or simulated sexual activities;

(b) the taking, or transmission, by any means, of images of the person's genitalia, anus, or breasts, for the purpose of obtaining, directly or indirectly, a material benefit for the person or any other person; or

(c) the person's participation, for the purpose of obtaining, directly or indirectly, a material benefit for the person or any other person, in a performance or display, or other employment, that involves the exposure of the person's genitalia, anus or breasts.

(8) Subsection (6)(a) does not include—

(a) the taking, in good faith, for purposes primarily other than the exposure of body parts of the person for the sexual gratification of a viewer, of an image of the person as part of an artistic or cultural performance or display;

(b) the taking or transmission of an image of the person for the purpose of—

(i) depicting, for the instruction or information of health professionals, a medical condition or a surgical or medical technique;

- (ii) providing medical or health education;
- (iii) providing information relating to medical or health matters; or
- (iv) advertising a product, instrument, or service, intended to be used for medical or health purposes.

Aggravating factors in relation to migrant smuggling and trafficking in persons

6 (1) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against sections 4 and 5, the court shall take into account—

- (a) whether bodily harm or death (whether to or of a person in respect of whom the offence was committed or some other person) occurred during the commission of the offence;
- (b) whether the life or safety of any person in respect of whom the offence was committed was endangered or likely to be endangered;
- (c) whether the offence was committed for the benefit of, at the direction of, or in association with, a criminal organisation within the meaning of section 3;
- (d) whether a person in respect of whom the offence was committed was subject to inhuman or degrading treatment as a result of the commission of the offence; and
- (e) if during the relevant criminal proceedings the person was convicted of the same offence in respect to two or more people, the number of people in respect of whom the offence was committed.

(2) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 5, a court shall also take into account—

- (a) whether a person in respect of whom the offence was committed was also subject to other exploitation (including but not limited to physical exploitation of the other person, within the meaning prescribed in section 5 as a result of the commission of the offence);
- (b) the age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years; and
- (c) whether the person committed the offence, or took actions that were part of the offence, for material benefit.

(3) For the avoidance of doubt, this section does not limit the matters to which a court may have regard when determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence under sections 4 and 5.

TRANSNATIONAL ORGANISED CRIME ACT 2013

Travel documentation offences

7 (1) A person commits an offence if he forges, or falsifies, a travel document that he knows, or has reason to suspect, is intended to be used in the course of, or for purposes related to, the commission of an offence against section 4 by any person.

(2) A person commits an offence if, without reasonable excuse—

- (a) knowing a travel document to be forged, or false, he—
 - (i) uses it, deals with it, or acts upon it, as if it were genuine; or
 - (ii) causes another person to use it, deal with it, or act upon it, as if it were genuine,
in the course of, or for purposes related to, the commission of an offence against section 4 by any person;
- (b) he has in his possession, or under his control, a travel document that he knows or has reason to suspect—
 - (i) is a forged or false travel document; and
 - (ii) is intended to be used in the course of, or for purposes related to, the commission of an offence against section 4 by any person;
- (c) he sells, hires, lends, gives or otherwise disposes of to another person, a travel document that he knows or has reason to suspect—
 - (i) is a forged or false travel document; and
 - (ii) is intended to be used in the course of, or for purposes related to, the commission of an offence under section 4 by any person; or
- (d) he—
 - (i) makes, uses, has in his possession, or disposes of to another person, any paper or other material that he knows is specially provided by the proper authorities of a jurisdiction for any purpose related to travel documents of the jurisdiction; and
 - (ii) knows or has reason to suspect that the paper or other material is intended to be used in the course of, or for purposes related to, the commission of an offence under section 4 by any person.

(3) A person who commits an offence against subsections (1) or (2) shall be liable on summary conviction to a fine of \$50,000 or to imprisonment for 5 years, or both; and on conviction on indictment to a fine of \$100,000 or imprisonment for 10 years, or both.

(4) In this section—

“document” includes a thing that is, or intended to be—

- (a) attached to a document; or
- (b) stamped or otherwise signified on a document;

“forge” includes the following—

- (a) to make a copy of an existing document or writing with the intention of representing it to be the original document or writing;
- (b) to alter an existing document or writing with the intention of representing the altered document or writing to be the original document or writing;
- (c) to make a document or writing that purports to be made or issued by or on behalf of a person who did not make or issue it or authorise its making or issue, or who does not exist, with the intention of representing it was made or issued by or on behalf of that person; or
- (d) to make a document or writing that falsely purports to be made at a particular place or time, or before or witnessed by a particular person, with the intention of representing that such particulars are true;

“travel document” includes an identification document.

Obstruction of justice

8 (1) A person commits an offence if, for the purpose of—

- (a) inducing false testimony;
- (b) interfering with the giving of testimony; or
- (c) interfering with the production of evidence,
 - in relation to proceedings in respect of an offence under a section of this Act, he—
 - (i) uses physical force or threats against;
 - (ii) intimidates or attempts to intimidate; or
 - (iii) promises or offers a benefit to,
 - a witness, a judicial officer, a police officer, or an immigration officer who takes part in or engages in activities in respect of the proceedings.

(2) A person who commits an offence under subsection (1) shall be liable on summary conviction to fine of \$50,000 or to imprisonment for five years, or both; and on conviction on indictment to a fine of \$100,000 or imprisonment for ten years, or both.

(3) For the avoidance of doubt in subsection (1), a reference to proceedings in respect of an offence against a provision under this Act includes proceedings in respect of an offence, against a provision of another enactment, of—

- (a) attempting to commit an offence against a provision under this Act;
- (b) aiding and abetting, counselling or procuring the commission of an offence against a provision under this Act; or
- (c) conspiring or inciting another person to commit an offence against a provision under this Act.

TRANSNATIONAL ORGANISED CRIME ACT 2013

Territorial application

9 (1) Proceedings for an offence against a provision of this Act by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Bermuda, if the person—

- (a) is a resident or national of Bermuda;
- (b) (not being a resident or national of Bermuda) has been found in Bermuda and has not been extradited; or
- (c) is a—
 - (i) body corporate incorporated in Bermuda; or
 - (ii) partnership established in Bermuda.

(2) Proceedings for an offence against a provision under this Act (including an offence against any provision referred to in another subsection of this section) by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Bermuda, if a person in relation to whom the offence is alleged to have been committed—

- (a) is in lawful possession of permission to be in Bermuda; or
- (b) has been found in Bermuda.

(3) Proceedings for an offence under section 3 by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Bermuda, if subsection (4) applies to that person.

(4) This subsection applies to a person if the criminal organization, within the meaning of section 3, in which the person is alleged to have participated is alleged to have as its objective (or one of its objectives) the obtaining of material benefits by the commission in Bermuda of an offence under a provision of law, in Bermuda, that is an indictable offence under section 3 of the Criminal Code 1907.

(5) Proceedings for an offence under section 4(1) by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Bermuda, if the act or omission is alleged to relate to arranging for a person to enter Bermuda.

(6) Proceedings for an offence under section 4(2) by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Bermuda, if the act or omission is alleged to relate to arranging to bring a person to Bermuda.

(7) Proceedings for an offence under section 5 by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Bermuda, if the act or omission is alleged to relate to arranging for a person to enter Bermuda or travel within Bermuda.

General provisions as to offences

10 (1) Where an offence against any provision under this Act committed by a Bermuda partnership or a Bermuda body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

TRANSNATIONAL ORGANISED CRIME ACT 2013

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,
the person shall be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to acts and defaults of a member in connection with his functions as if he were a director of the body corporate.

(3) Section 9 shall apply to proceedings for an offence that is an offence by virtue of subsection (1) as it would apply to proceedings for the principal offence.

Consent to prosecution

11 A prosecution in Bermuda for an offence under this Act may only be brought by, or with the consent of, the Director of Public Prosecutions.

Repatriation of victims of trafficking

12 (1) When a victim of trafficking who is an unauthorized migrant requests to return to his country of origin or the country in which he had the right of permanent residence at the time he was trafficked, the relevant Bermuda authorities shall facilitate such return, including arranging for the necessary travel documents, without undue delay and with due regard for his rights and safety.

(2) When, upon the decision of the relevant Bermuda authorities a victim of trafficking in persons who is an unauthorized migrant, is returned to the jurisdiction of which he is a national or in which he had the right of permanent residence at the time he was trafficked, the relevant Bermuda authorities shall ensure that such return shall be with due regard for his safety and for the status of any legal proceedings related to the fact that the person is a victim of trafficking.

(3) Any decision to return a victim of trafficking in persons to his country shall be considered in light of the principle of non-refoulement and of the prohibition of inhumane or degrading treatment.

(4) In this section—

“non-refoulement” means the principal of international law which forbids the rendering or the handing over of a true victim of persecution to their persecutor (inclusive of a state persecutor).

Repatriation: Expenses

13 Any expenses incurred by the relevant Bermuda authorities, in connection with the repatriation of victims or witnesses of trafficking of persons, shall be defrayed out of money provided by the Legislature.

TRANSNATIONAL ORGANISED CRIME ACT 2013

Commencement

14 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and different days may be appointed for different provisions.

TRANSNATIONAL ORGANISED CRIME BILL 2013

EXPLANATORY MEMORANDUM

This Bill seeks to enact provisions to give effect to the Palermo Convention 2004.

Clause 1 is the citation.

Clause 2 sets out definitions.

Clause 3 creates the offence and penalties for participating in a criminal organization.

Clause 4 creates the offence and penalties for people smuggling.

Clause 5 creates the offence and penalties for trafficking in persons.

Clause 6 sets out aggravating factors to be considered in relation to migrant smuggling and trafficking in persons.

Clause 7 creates the offence and penalties for forging or falsifying travel documents.

Clause 8 creates the offence, in relation to transnational organised crime, the offence of obstruction of justice and penalties for the same.

Clause 9 sets out the territorial application of this Bill.

Clause 10 sets out the general provisions as to offences, in relation to partnerships and body corporates.

Clause 11 provides that the consent of the DPP is required for the purpose of any prosecution of an offence under this Act.

Clause 12 sets out the conditions by which a victim of trafficking can repatriated from Bermuda.

Clause 13 mandates that any expenses incurred by relevant Bermuda authorities, in connection with the repatriation of victims or of witnesses of trafficking in persons, is to be defrayed out of money provided by the Legislature.

Clause 14 is the commencement provision.