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ST CHRISTOPHER AND NEVIS

CHAPTER 4.40

TRAFFICKING IN PERSONS (PREVENTION) ACT

Revised Edition

showing the law as at 31 December 2009.

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Trafficking in Persons (Prevention) Act

Act No. 32 of 2008 in force 24th September 2008

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CHAPTER 4.40

TRAFFICKING IN PERSONS (PREVENTION) ACT

AN ACT to prescribe measures to prevent and combat trafficking in persons with particular regard to victims who are women and children, and to provide for related or incidental matters.

PART I – PRELIMINARY

1. Short title.

This Act may be cited as the Trafficking in Persons (Prevention) Act.

2. Interpretation.

In this Act, unless the context otherwise requires,

“abuse of a position of vulnerability” means:

- (a) such abuse that the person reasonably believes that he has no reasonable alternative but to submit to the labour or service demanded of him; and
- (b) includes taking advantage of the vulnerabilities resulting from the person having entered the country illegally or without proper documentation, pregnancy, and physical or mental disease or disability of the person, including addiction to the use of any substance, or reduced capacity to form judgments by virtue of being a child;

“child” means a person below the age of eighteen years;

“child pornography” means

- (a) the audio or visual depiction of sexually explicit conduct involving a child whether
 - (i) made or produced by electronic, mechanical or other means, or
 - (ii) embodied in a disc, tape, film or other device, electronically or otherwise, so as to be capable of being retrieved or reproduced therefrom;
- (b) any representation of the genitalia of a child, where the audio or visual depiction or representation lacks genuine literary, artistic, or scientific value.

“coercion” includes violent as well as non-violent or psychological coercion, including

- (a) threats of serious harm to or physical restraint of any person;

- (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint of any person; or
- (c) the abuse or threatened abuse of the legal process;

“debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of the persons under his or her control as a security for 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 and defined;

“exploitation” includes

- (a) keeping a person in a state of slavery;
- (b) subjecting a person to practices similar to slavery;
- (c) compelling or causing a person to provide forced labour or services;
- (d) keeping a person in a state of servitude, including sexual servitude;
- (e) the prostitution of a person or engaging in any other form of commercial sexual exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel and child pornography;
- (f) illicit removal of human organs.

“forced labour” means labour or services obtained or maintained through force, threat of force, or other means of coercion or physical restraint;

“illicit removal of human organs” means the unlawful removal of organs, tissue or body parts from a victim irrespective of whether the victim consented to it and where the removal is not a legitimate medical procedure for which proper consent has been obtained;

“Minister” means the Minister responsible for National Security;

“organised criminal group” shall have the same meaning as is set out in the Organised Crime (Prevention and Control) Act, Cap. 4.22;

“practices similar to slavery” includes, debt bondage, serfdom, forced or servile marriages and delivery of children for exploitation;

“restitution” means financial or other compensation for the victim for damages suffered during the process of being trafficked;

“servitude” means a condition of dependency in which labour or services of a person are provided or obtained by threats of serious harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if the person did not perform such labour or services, that person or another person would suffer serious harm;

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

- (a) prostitution;
- (b) the production of child pornography or other pornographic material;
- (c) any other sexual activity, as a result of being subjected to threats, 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 the powers attaching to the right of ownership are exercised;

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power or a position of vulnerability, or by the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

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

PART II – CRIMINAL OFFENCES AND RELATED PROVISIONS

3. Trafficking in persons.

(1) A person who engages in, conspires to engage in, attempts to engage in, assists another person to engage in, or organises or directs another person to engage in trafficking in persons commits an offence and is liable on indictment to imprisonment for a period of twenty years or to a fine of two hundred and fifty thousand dollars or to both such fine and imprisonment.

(2) The recruitment, transportation, harbouring, or receipt of a child, or giving of payment or benefits to obtain the consent of a person having control of a child, for the purpose of exploitation, constitutes trafficking in persons irrespective of whether any of the means described in the definition of “trafficking in persons” has been established.

4. Withholding of identification papers.

Any person who for the purpose of trafficking in persons, and acting or purporting to act as another person’s employer, manager, contractor, supervisor, employment agent, pimp or solicitor of clients, knowingly procures, destroys, conceals, removes, confiscates, or possesses any passport, immigration document, or other government identification document, whether actual or purported, belonging to another person, commits an offence and shall be liable on indictment to imprisonment for twenty years or to a fine of two hundred and fifty thousand dollars or to both.

5. Transporting a person.

(1) Whoever knowingly transports or conspires to transport or attempts to transport or assists another person engaged in transporting any person into Saint Christopher and Nevis, within Saint Christopher and Nevis itself, or across a regional or international border for the purposes of exploiting a person for the purpose of prostitution commits an offence and shall be liable on indictment to imprisonment for a term of ten years or to a fine of one hundred thousand dollars or to both.

(2) In determining an appropriate sentence upon conviction of a person pursuant to subsection (1), the court shall have regard to the presence of any of the aggravating factors resulting from acts of the defendant as are set out in the Schedule.

6. Restitution.

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

(2) Restitution shall be paid to the victim having regard to the following considerations

- (a) upon the conviction of the accused;
- (b) as far as possible, from any property forfeited under section 7 or the proceeds thereof;
- (c) the absence of the victim from the proceedings shall not prejudice the victim's rights to receive restitution.

(3) The restitution referred to in subsection (1) shall compensate the victim, 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; and
- (g) any other losses suffered by the victim which the court considers applicable.

7. Forfeiture.

(1) All property, including but not limited to money, valuables and other movable and immovable property, of persons convicted of the crime of trafficking in persons under this Act that was used or intended to be used, or was obtained in the course of the crime, or benefits gained from the proceeds of the crime, shall be forfeited to the State.

(2) Overseas assets of persons convicted of trafficking in persons may also be subject to forfeiture to the extent that they can be retrieved by the Government.

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8. Aggravated circumstances.

As appropriate, the court may take into account conditions as are set out in the Schedule for adjustments to the sentence of a person convicted on indictment of the crime of trafficking in persons.

9. Prosecution.

In the prosecution for trafficking of any person under section 3

- (a) the alleged consent of the victim to the intended or realised exploitation is irrelevant once any of the means or circumstances set forth in the definition of “trafficking in persons” is established;
- (b) any evidence of a victim’s past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the victim was engaged in other sexual behaviour or to prove the victim’s sexual predisposition;
- (c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be regarded as trafficking in persons even if this does not involve any of the means specified in the definition of “trafficking in persons”;
- (d) the legal age of consent to sex or to marriage shall not be a defence to trafficking in persons.

10. Victim not liable for offence.

A victim of trafficking in persons is not criminally liable for an immigration offence that is committed by the victim as a direct result of being trafficked.

11. Offence of body corporate.

Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager or secretary or other officer of the body corporate or a person who was purporting to act in such capacity, then that person, as well as the body corporate, commits an offence and shall be liable to be proceeded against and punished in the same manner as if the person were guilty of the first-mentioned offence.

12. Knowingly receiving a benefit.

Every person who receives a financial or other benefit knowing that it derives from the offence of trafficking in persons commits an offence and is liable on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for ten years or to both such fine and imprisonment.

13. Warrant.

(1) Subject to subsection (3), where a Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that evidence of or relating to an offence

under this Act to be found on premises specified in the information, the Magistrate may issue a warrant in accordance with subsection (2).

(2) A warrant issued under subsection (1) may authorise an officer to enter the premises specified therein, with such assistance and by the use of such force as is necessary and reasonable to enter upon the premises, search for evidence of or relating to an offence under this Act and to seize any article, vehicle or property found in the course of the search that the constable believes, on reasonable grounds, to be evidence of or relating to an offence under this Act.

(3) A magistrate may, before issuing a warrant, require further information from the informant or other relevant person concerning the grounds on which the issue of the warrant is sought.

(4) A warrant issued under this section shall include

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the offence of trafficking;
- (b) a description of the kind of article, vehicle or property to be seized;
- (c) the time, not being later than fourteen days, upon the expiration of which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorised to be made at any time of the day or night, or is limited to specified hours.

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

14 Threatening obstructing, etc., an officer.llz]
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. Any person who threatens, assaults, or obstructs a police officer acting in the execution of his duty under this Act commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a period of two years.

15. Jurisdiction.

A court in Saint Christopher and Nevis shall have the jurisdiction to try an offence under this Act where the Act constituting the offence has been carried out

- (a) wholly or partly in Saint Christopher and Nevis;
- (b) by a citizen of Saint Christopher and Nevis in any other State;
- (c) by a person on board a vessel or aircraft registered in Saint Christopher and Nevis.

PART III – ASSISTANCE AND PROTECTION OF VICTIMS OF TRAFFICKING

16. Protection of victims.

(1) In the investigation and prosecution of offences relating to trafficking in persons, the following guiding principles shall apply:

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- (a) all steps necessary to identify the victims of the trafficking shall be taken;
- (b) measures to ensure the reasonable protection of a victim of the trafficking shall be taken to prevent recapture, secure the victim from threats, reprisals and intimidation by the traffickers and their associates;
- (c) measures shall be taken to ensure the reasonable protection of the victim's family, if it resides in Saint Christopher and Nevis, from threats, reprisals or intimidation by the traffickers or their associates; and
- (d) ensuring that the victim has an opportunity to consult with a victim's advocate or other appropriate person to develop a safety plan.

(2) The law enforcement officials including police officers, immigration officers and other investigative officers are to operate in compliance with the guidelines specified in subsection (1).

17. Protection of victim's identity.

(1) In a prosecution for trafficking in persons under this Act or unlawful use of documents under section 4, the identity of the victim and the victim's family should be kept confidential by ensuring that names and identifying information of the victim and the victim's family are not released to the press or the public, including by the defendant.

(2) A hearing under this section shall be held in camera if the court so orders.

(3) A person who commits a breach of the confidentiality enjoined by this section commits an offence and shall be liable on summary conviction to six months imprisonment or to a fine of two thousand dollars.

18. Assistance to victims.

The Minister on the advice of Cabinet, and in consultation with the relevant non-governmental organisations and other representatives of civil society shall develop a plan, for the provision of appropriate services, from governmental and non-governmental sources, for victims of trafficking and dependent children accompanying the victims.

19. Child victims.

(1) Child trafficked victims may be provided with appropriate services, which may include understanding of their rights, privacy, housing, care and age appropriate support and rights as is applicable to the particular circumstances of each case.

(2) Special programmes shall be developed to accommodate child witnesses including, where necessary and possible

- (a) taking the testimony of a minor outside the traditional court setting or by video;
- (b) taking the testimony of a minor in the presence of a parent, legal guardian, foster parent, psychologist or social worker;

(3) Whenever safe and practicable, reasonable measures may be taken to reunite a child with his family members in Saint Christopher and Nevis or in his country of origin.

PART IV – COMMERCIAL TRANSPORTATION PROVIDERS

20. Commercial regional, international transportation.

(1) Subject to the Immigration Act, Cap. 6.02, and the Civil Aviation Act, Cap. 8.03 a regional or international commercial transportation provider shall be responsible for ensuring that a passenger travelling into or outside of Saint Christopher and Nevis possesses the necessary travel documents to enter Saint Christopher and Nevis or leave from the State for other destination country and any transit countries.

(2) Where a regional or international commercial transportation provider knowingly or recklessly transports a victim of trafficking into or from Saint Christopher and Nevis, the provider shall be liable for costs associated with providing accommodation and meals for the victim and accompanying children for the duration of the victim's stay within Saint Christopher and Nevis as well as for the cost of returning the person to his initial point of embarkation.

PART V – MISCELLANEOUS

21. Minister to appoint task force.

(1) The Minister may by Order appoint an inter-agency task force to develop and implement a National Plan for combating trafficking in persons.

(2) Where a task force is appointed pursuant to subsection (1) the functions of the task force shall include:

- (a) development of a national plan to aid in combating trafficking in persons and related activities;
- (b) coordinate the implementation of the plan;
- (c) collect, coordinate and share information on trafficking data between agencies in order to determine whether persons crossing the borders or attempting to cross the borders of Saint Christopher and Nevis are perpetrators or potential victims of trafficking in persons;
- (d) identify and engage in efforts to facilitate cooperation with foreign countries to ensure proper monitoring and policing of borders and to facilitate useful exchange of information concerning trafficking in persons;
- (e) coordinate and provide training for law enforcement, immigration and other relevant officials in addressing the goals of this Act;
- (f) in conjunction with non-governmental organisations and relevant government agencies to prepare and disseminate public awareness materials on discouraging trafficking in persons and to educate potential victims and their families.

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22. Trafficking in persons extraditable Offence.

The act of trafficking in persons shall be deemed to be an extraditable offence and included in the list of crimes under the Extradition Act.

23. Regulations.

The Minister may make Regulations to further give effect to the provisions of this Act.

24. Act to bind Crown.

This Act binds the Crown.

SCHEDULE

(Section 8)

- A. Aggravating Factors that may increase the Sentence of a Person Convicted of Trafficking in Persons
- (a) the transportation of two or more persons at the same time;
 - (b) permanent or life-threatening bodily injury to the person transported;
 - (c) transportation of one or more children;
 - (d) transportation as part of the activity of an organised criminal group.
- B. Conditions to be Considered by the Court in Adjusting the Sentence in Trafficking in Persons (section 8)
- 1. (a) If the convicted person used, threatened to use, or caused another to use or threaten to use a dangerous weapon, two years may be added to the sentence;
 - (b) If a trafficked person suffers a serious bodily injury, or if the convicted person commits a sexual assault against the trafficked person, five years may be added to the sentence;
 - (c) If the trafficked person had not attained the age of eighteen years of age, five years may be added to the sentence;
 - (d) If, in the course of trafficking, or subsequent exploitation, the convicted person recklessly caused the trafficked person to be exposed to a life threatening illness, or if the convicted person intentionally caused a trafficked person to become addicted to any drug or medication, five years may be added to the sentence;
 - (e) If a trafficked person suffers a permanent or life threatening injury, ten years may be added to the sentence;
 - (f) If the trafficking was part of the activity of an organised criminal group, three years may be added to the sentence; or

- (g) If the trafficking occurred as the result of an abuse of power or a position of authority, including but not limited to a parent or guardian, teacher, children’s club leader, or any other person who has been entrusted with the care or supervision of the child, four years may be added to the sentence.
2. In this paragraph,
- (a) “dangerous weapon” means
 - (i) an instrument capable of inflicting death or serious bodily injury; or
 - (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but closely resembles such an instrument, or is used in such a way that it creates the impression that the object is an instrument capable of inflicting death or serious bodily injury;
 - (b) “life-threatening illness” means any illness that involves a substantial risk of death, and included Human Immuno Deficiency Virus Infection (HIV/AIDS) and tuberculosis;
 - (c) “permanent or life-threatening bodily injury” means injury involving a substantial risk of death, loss or substantial impairment of the function of a bodily member, organ or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. Maltreatment to a life-threatening degree, such as by denial of food or medical care that results in substantial impairment of function, constitutes life-threatening bodily injury;
 - (d) “serious bodily injury” means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty; or requiring medical intervention such as surgery, hospitalisation, or physical rehabilitation;
 - (e) “sexual assault” means causing another to engage in a sexual act by using force against that person, threatening or placing that person in fear that any person will be subjected to death, serious bodily injury, or kidnapping, and engaging in a sexual act with an incapacitated person, or a person who cannot express consent or with a minor that constitutes statutory rape.