

THE TRAFFICKING IN PERSONS BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Bill seeks to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime and for matters connected therewith or incidental thereto.

Part I—Preliminary

Clauses 1 to 4 would provide for the short title, commencement, interpretation and the object of the Act, respectively.

Part II—National Task Force

Clause 5 would provide for the establishment of the National Task Force to Counter Trafficking in Persons in Trinidad and Tobago (hereinafter referred to as “the Task Force”).

Clause 6 would provide for the functions of the Task Force.

Clause 7 would provide for the composition and appointment of the Task Force.

Clause 8 would provide for the Chairman of the Task Force.

Clause 9 would provide for the meetings of the Task Force.

Clause 10 would provide for members of the Task Force to declare any conflicting interests.

Part III—Counter Trafficking Unit

Clause 11 would empower the Minister to establish the Counter Trafficking Unit within the Ministry of National Security.

Clause 12 would provide the functions of the Counter Trafficking Unit.

Part IV—Entry, Search and Seizure

Clause 13 would provide for a Judge, Magistrate or Justice of the Peace to grant a warrant to a police officer named therein, to enter and search the premises specified therein and to seize any evidence of or relating to the offence under the Act if satisfied by information on oath that there is reasonable grounds for suspecting that such evidence can be found at the premises.

Clause 14 would provide for the offence of threatening, assaulting or obstructing a police officer or other workers involved in victim assistance and protection.

Part V—Criminal Offences and Related Provisions

Clause 15 would provide for section 68 of the Interpretation Act to not be applicable to certain sections.

Clause 16 would provide for the offence of trafficking in persons where a person recruits, transports, transfers, harbours or receives persons into or within Trinidad and Tobago or recruits, transports or transfers persons from Trinidad and Tobago to another jurisdiction by means of threats or the use of force or other means of coercion, abduction, fraud, deception, the abuse of power or other means of coercion, abduction, fraud, deception, the abuse of power, the abuse of a position of vulnerability, or the giving or receiving of payment of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Clause 17 would provide for the offence of inciting, organizing or directing another person to traffick in persons.

Clause 18 would provide for the offence of trafficking in children where a person recruits, transports, transfers, harbours or receives a child into or within Trinidad and Tobago or, recruits transports or transfers a child from Trinidad and Tobago to another jurisdiction for the purpose of exploitation.

Clause 19 would provide for the offence of inciting, organizing or directing another person to traffick in children.

Clause 20 would provide that during the prosecution for an offence under section 16, 17, 18 or 19, the alleged consent of the victim is not a defence. Neither is the legal age of consent or marriage a defence for those aforementioned sections. It would also provide that evidence of the victim's past sexual behaviour is inadmissible for the purpose of proving the victim's sexual predisposition or that the victims engaged in other sexual behaviour.

Clause 21 would give the Court power to impose higher sentences for aggravated circumstances, for example, if the convicted persons used a dangerous weapon.

Clause 22 would provide for the offence of unlawfully procuring, destroying, concealing, removing, confiscating or possessing any travel document or identification document belonging to another.

Clause 23 would provide for the offence of transporting a person for the purpose of exploiting that person's prostitution.

Clause 24 would provide that the Court forfeit any benefit or property of a person who has been convicted of any of the offences of trafficking in persons or trafficking in children and that the proceeds shall accrue to the Seized Assets Fund.

Clauses 25 and 26 would provide for the offences of knowingly receiving a financial benefit from trafficking in persons or knowingly receiving a financial benefit from trafficking children.

Clause 27 would provide for the offences of bodies corporate and the liability of directors, managers, secretaries or other similar officers who are associated with the offences.

Clause 28 would give the Court power to award additional penalties with respect to these offences.

Clause 29 would provide that the Court orders compensation for the victims of trafficking. In addition, it empowers the Rules Committee of the Supreme Court to make rules pertaining to the making of an order for restitution subject to the negative resolution of Parliament. In default thereof, the Judge may give directions to effect the same.

Clause 30 provides for further compensation to victims in any other court save that the Court that awards further compensation may take the first order for restitution into account when it makes a further order. Victims are also eligible under the Criminal Injuries Compensation Act, Chap. 5:31.

Clause 31 would provide that victims may offer as a defence for any immigration related or other criminal offence for which they are being prosecuted, the fact that they were compelled to engage in unlawful activities while being trafficked.

Part VI—Assistance to and Protection of Victims of Trafficking

Clause 32 would provide for the guiding principles relating to the protection, safety and the identification of victims.

Clause 33 would provide for the protection of victims of trafficking who are witnesses.

Clause 34 would provide for the protection of the privacy of victims including the provision for proceedings to be held *in camera*.

Clause 35 would provide for the victims of trafficking to be informed of their legal rights and legal processes in a language they can understand.

Clause 36 would provide for the court to ensure that there is opportunity for the presentation of the victim's views and concerns.

Clause 37 would provide for assistance to be given to victims including the granting of a work permit.

Clause 38 would provide for the granting of resident status to victims under the Immigration Act, Chap.18:01.

Clause 39 would provide for the return of victims and their accompanying dependents to their country of citizenship or residence.

Clause 40 would provide for the assistance of citizens or permanent resident victims abroad.

Clause 41 would provide for the verification of the nationality and the age of the victim.

Clause 42 would provide for the assistance to victims who are unable to prove their nationality status through ordinary means.

Clause 43 would provide for services to be provided for returned victims of trafficking.

Clause 44 would provide for special consideration to be given to child victims.

Part VII—Miscellaneous

Clause 45 would provide that the Minister lay an annual report on trafficking in Trinidad and Tobago in Parliament.

Clause 46 would provide for the Minister to make regulations subject to negative resolution of the Parliament.

Clause 47 would provide for the amendment to the First Schedule of the Criminal Injuries Compensation Act.

Clause 48 would provide for extraterritorial jurisdiction.

THE TRAFFICKING IN PERSONS BILL, 2011

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SCHEDULE

No. 15 of 2011

First Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to give effect to the United Nations Protocol
to Prevent, Suppress and Punish Trafficking in
Persons, Especially Women and Children,
Supplementing the United Nations Convention
Against Transnational Organized Crime and for
matters connected therewith or incidental thereto

BILL

AN ACT to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime and for matters connected therewith or incidental thereto

[, 2011]

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:

PART I
PRELIMINARY

- | | |
|----------------|---|
| Short title | 1. This Act may be cited as the Trafficking in Persons Act, 2011. |
| Commencement | 2. This Act comes into operation on such date as is fixed by the President by Proclamation. |
| Interpretation | <p>3. In this Act, unless the context otherwise requires—</p> <p>“abuse of a position of vulnerability” includes—</p> <ul style="list-style-type: none"> (a) such abuse that a person would reasonably believe that he has no alternative but to submit to the labour or service demanded of him; (b) taking advantage of the vulnerabilities of a person resulting from— <ul style="list-style-type: none"> (i) the person having entered the country illegally or without proper documentation; (ii) pregnancy; (iii) physical or mental disease or disability of the person, including addiction to the use of any substance; or (iv) reduced capacity to form judgments by virtue of being a child; <p>“child” means a person below the age of eighteen years;</p> <p>“child pornography” means a photograph, film, video or other visual representation, whether or not made by electronic, mechanical, artistic or other methods, that shows, for a sexual purpose—</p> <ul style="list-style-type: none"> (a) a child engaging in explicit sexual activity or conduct; |

- (b) parts of a child's body pasted to visual representations of parts of an adult's body or *vice versa*; or
- (c) parts of a child's body which have been rendered complete by computer generated images or by other methods of visual representation,

but does not include any written or visual representation produced for the purpose of education, counselling, the promotion of reproductive health or as part of a related criminal investigation and prosecution;

“coercion” means—

- (a) violent coercion; and
- (b) non-violent or psychological coercion, such as—
 - (i) threats of serious harm to or physical restraint against any person;
 - (ii) the abuse or threatened abuse of legal process; or
 - (iii) 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 against any person;

“debt bondage” means the status or condition of a person arising from his pledge to provide his personal services or those of a person under his control as security for a debt, where—

- (a) the value of those services as reasonably assessed is not applied toward the liquidation of the debt;

(b) the period during which those services are to be provided is not limited; or

(c) the nature of those services is not 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) the illicit removal of human organs;

(e) keeping a person in a state of servitude including domestic and sexual servitude;

(f) child pornography;

(g) the exploitation of the prostitution of another;

(h) engaging in any other form of commercial sexual exploitation, including, but not limited to, pimping, pandering, procuring, profiting from prostitution and maintaining a brothel;

(i) causing a person to transport illegal items within or across borders; and

(j) deriving a benefit through the abuse of another person;

“exploitation of the prostitution of others” 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 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 such removal;

“Minister” means the Minister to whom the responsibility for national security is assigned;

“national” has the meaning assigned to it under section 2 of the Immigration Act; Chap.18:01

“organized criminal group” means a combination of two or more persons, whether formally or informally organized, acting in concert through its membership or through an agent, with the aim of committing one or more of the offences established under this Act;

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

“resident” has the meaning assigned to it under section 2 of the Immigration Act;

“restitution” means financial or other compensation for the victim for damages suffered as a result of being trafficked;

“ritual purposes” means the use of a victim, the victim’s body parts or blood for the conduct of spiritual, religious or occult practices or such other ceremonies and rituals;

“Seized Assets Fund” means the Fund established under section 58 of the Proceeds of Crime Act; Chap. 11:27

“servitude” means a condition of dependency in which the labour or the 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 does not perform such labour or services, that person or another person will suffer serious harm;

“sex tourism” means trips organized for profit from—

(a) within the tourism sector; or

(b) outside that sector but using its structures and networks,

to facilitate sexual activity with trafficked persons;

“sexual activity” means an activity which a reasonable person would consider that—

(a) whatever its circumstances or any person’s purpose in relation to it, it is, because of its nature, sexual; or

(b) because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual;

“sexual exploitation” means compelling a person to engage in—

(a) prostitution;

(b) the production of child pornography or other pornographic material; or

(c) any other sexual activity,

by means of threat, coercion, abduction, the effects of drugs, force, fraud or abuse of power;

“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 relation to persons, means the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power, the abuse of a position of vulnerability or 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;

“trafficking in children” means the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, irrespective of the means used so long as the purpose is the exploitation of the child;

“Task Force” means the National Task Force Against Trafficking in Persons established under section 5;

“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
- (e) any other document used under the laws of a State to establish identity in that State; and

“victim” means a person against whom an offence is committed or against whom an offence is alleged to have been committed under this Act.

Object of the Act

4. The object of the Act is to prescribe measures to prevent and combat trafficking in persons including children, by—

- (a) protecting and assisting victims of trafficking;
- (b) facilitating the efficient investigation of cases of trafficking in persons;
- (c) facilitating the prosecution of individuals and organizations involved in trafficking in persons; and
- (d) promoting cooperation between Trinidad and Tobago and other States in order to prevent and suppress trafficking in persons and to punish offenders.

PART II NATIONAL TASK FORCE

Establishment of the Task Force

5. There shall be established a Task Force to be known as the “National Task Force Against Trafficking in Persons”.

Functions of the Task Force

6.(1) The functions of the Task Force shall be as follows:

- (a) to monitor and give directions, both general and specific, to the Counter Trafficking Unit;
- (b) to develop plans in consultation with representatives of civil society to provide victims of trafficking with appropriate housing, employment, educational, and training opportunities and psychological counselling, legal assistance or legal information and medical assistance in a language the victim can understand;
- (c) to co-ordinate the effective implementation of the national counter trafficking plan for the prevention of trafficking in persons and children;

- (d) to co-ordinate the collection and sharing of trafficking data among government agencies in a manner which respects the privacy of victims of trafficking;
- (e) to co-ordinate the sharing of information between agencies for the purpose of determining whether individuals entering Trinidad and Tobago with travel documents belonging to other persons or without travel documents are perpetrators of the offences involving trafficking in persons or trafficking in children, and for the purpose of detecting organized criminal groups engaged in trafficking;
- (f) to identify and engage in efforts to facilitate cooperation with foreign countries, particularly those which are a significant source of victims, transit locations, or destinations of victims by liaising with counterpart organizations in those countries;
- (g) to strengthen bilateral, multilateral, local and regional capacities to assist trafficking victims, prevent trafficking, prosecute traffickers, and to enhance cooperative efforts between destination countries and countries of origin and assist in the appropriate reintegration of victims of trafficking;
- (h) to establish policies to enable Trinidad and Tobago to work with non-governmental organizations and other elements of civil society to prevent trafficking and provide assistance to victims;
- (i) to measure and evaluate the progress of Trinidad and Tobago in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and

prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking;

(j) to evaluate all public awareness programmes to ensure their effectiveness; and

(k) to prepare the quarterly and annual reports of the activities of the Task Force and submit them to the Minister.

(2) In formulating and developing plans under subsection (1)(b) and (1)(c) to provide services to victims, and in delivering such services, all plans shall take into account the age, gender and special needs of the victims and accompanying dependent children.

Composition and
appointment of the
Task Force

7.(1) The Task Force shall comprise the Attorney General, the Ministers responsible for Foreign Affairs, Labour, Social Development, National Security and Justice.

(2) The Task Force shall also comprise other appropriate senior government officials including officials with responsibility for law enforcement, immigration, social development and appropriate non-governmental organizations and other persons with the relevant expertise, who shall be appointed by the President and who shall hold office for two years but may be eligible for reappointment.

Chairman of the
Task Force

8. There shall be a Chairman of the Task Force appointed by the President from among the members who comprise the Task Force under section 7(1).

Meetings

9.(1) The Task Force shall regulate its own procedures and shall meet at least once every quarter and at such other times as may be expedient or necessary and at such time and on such days as the Task Force may determine.

(2) The Chairman may request that a special meeting of the Task Force be convened.

(3) The Chairman shall preside at all meetings of the Task Force, but where he is absent, the members present shall appoint a Chairman to preside at the meeting.

(4) The Task Force shall select a Secretary from amongst the membership.

(5) The Secretary shall keep minutes of each meeting which shall be confirmed by the members of the Task Force at the subsequent meeting.

(6) A copy of the confirmed minutes of each meeting prepared by the Secretary, shall be submitted to the Chairman.

10. Any member of the Task Force, including the Chairman, whose interest is likely to be directly affected by a decision or determination of the Task Force on any subject matter, shall declare his interest in the subject matter and shall not be present or take part in the meeting when the particular subject matter is being deliberated.

PART III

COUNTER TRAFFICKING UNIT

11.(1) There shall be established a Counter Trafficking Unit within the Ministry responsible for national security, which shall be headed by a Director appointed by the President and who shall hold office for three years but may be eligible for reappointment.

(2) There shall be a Deputy Director appointed by the President and who shall hold office for three years but may be eligible for reappointment.

(3) The Director and Deputy Director of the Counter Trafficking Unit shall be persons who possess qualifications and experience in international relations, management or security.

(4) The Counter Trafficking Unit shall comprise suitably qualified and experienced public officers, and other persons as set out in the Schedule, and who shall possess the required competencies specified therein.

(5) The Minister may designate—

- (a) a police officer;
- (b) an immigration officer; or
- (c) any other person,

to be an “authorized officer”.

(6) The Counter Trafficking Unit shall be assisted by “authorized officers”.

(7) The Minister may, by Order subject to negative resolution of Parliament, amend the Schedule according to the purposes of the Act.

Functions of the
Counter Trafficking
Unit

12. The functions of the Counter Trafficking Unit are as follows:

- (a) to efficiently, effectively and proactively investigate matters pertaining to trafficking;
- (b) to conduct and coordinate the screening and interviewing of persons in order to identify possible victims of trafficking as well as persons believed to be traffickers;
- (c) to gather evidence in relation to trafficking offences and any offence under this Act so as to secure convictions against traffickers;
- (d) to be responsible for the day-to-day operations of the counter-trafficking response of the Government of the Republic of Trinidad and Tobago;
- (e) to operate a hotline for the reporting of possible cases of trafficking in persons;
- (f) to receive information from governmental, non-governmental, and other sources in relation to trafficking activities within the Republic of Trinidad and Tobago or involving nationals of Trinidad and Tobago, wherever situated;

- (g) to receive, analyse and investigate all reports of possible cases of trafficking in persons;
- (h) where necessary, to refer possible cases of trafficking in persons to appropriate governmental agencies, civil society or international organizations for requisite action, such as further investigation, institution of prosecutions, communication with foreign embassies or high commissions, and support for victims;
- (i) to liaise with appropriate governmental agencies, civil society or international organizations in providing assistance to and safeguarding victims once identified;
- (j) to liaise with appropriate governmental agencies, civil society or international organizations for a report on the progress and eventual outcome of every case;
- (k) to receive, collate and analyse information received from all sources that have screened and interviewed possible trafficking victims and traffickers;
- (l) to conduct research and collect and analyse data into the trends and patterns of trafficking in persons and the numbers of persons engaged therein as perpetrators and those who are identified as victims of trafficking;
- (m) to create a database containing information from all cases involving trafficking;
- (n) to prepare and furnish monthly reports to the Minister;
- (o) to do such other things as may be delegated to it by the Task Force;

- (p) to prepare and implement public awareness programmes with respect to—
- (i) educating citizens and visitors to Trinidad and Tobago about sex tourism;
 - (ii) warning citizens and visitors to Trinidad and Tobago that travelling to another country to engage in sex with a minor or a trafficked person may be a crime in the destination country or in the home country or may constitute abuse;
 - (iii) educating potential victims of trafficking and their families of the risk of victimization; and
 - (iv) discouraging the demand that foster the exploitation of persons, especially women and children, that leads to trafficking;
- (q) to prepare and disseminate educational materials to inform victims of trafficking in Trinidad and Tobago of their rights, the measures in place for their safety, recovery and safe return to their home countries or places of residence in Trinidad and Tobago and how to contact appropriate law enforcement agencies; and
- (r) such other activities related to the effective implementation of this Act.

PART IV ENTRY, SEARCH AND SEIZURE

Warrant

13.(1) Where a Judge, Magistrate, Clerk of the Peace or Justice of the Peace is satisfied by information on oath that there are reasonable grounds for suspecting that evidence of or relating to an offence under this Act is to be found on any premises specified in the information,

the Judge, Magistrate, Clerk of the Peace or Justice of the Peace may issue a warrant in accordance with subsection (2).

(2) A warrant issued under subsection (1) may authorize a police officer 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; and
- (c) seize any article, vehicle or property found in the course of the search that the police officer believes, on reasonable grounds, to be evidence of or relating to an offence under this Act.

(3) A warrant issued under this section shall include a statement of the purpose for which the warrant is issued, and a reference to the nature of the offence of trafficking.

(4) 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. A person who threatens, assaults or obstructs a police officer acting in the execution of his duty under this Act, or who threatens, assaults or obstructs a social worker, shelter worker, case management worker or any worker who is involved in the provision of assistance and protection to a victim, commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for three years.

Offence of threatening, assaulting or obstructing a police officer or other workers involved in victim assistance and protection

PART V

CRIMINAL OFFENCES AND RELATED PROVISIONS

15. Section 68(2) of the Interpretation Act does not apply to the penalties prescribed in sections 16, 17, 18 and 19.

Section 68 of the Interpretation Act not applicable
Chap. 3:01

Trafficking in persons

16. A person who, for the purpose of exploitation—

- (a) recruits, transports, transfers, harbours or receives persons into or within Trinidad and Tobago; or
- (b) recruits, transports or transfers persons from Trinidad and Tobago to another jurisdiction,

by means of—

- (i) threats or the use of force or other forms of coercion;
- (ii) abduction;
- (iii) fraud or deception;
- (iv) the abuse of power or the abuse of a position of vulnerability; or
- (v) the giving or receiving of payment or benefits to achieve the consent of a person having control over another person,

commits the offence of trafficking in persons and is liable on conviction on indictment, to a fine of not less than five hundred thousand dollars and imprisonment of not less than fifteen years.

Inciting, organizing or directing another person to traffick in persons

17. A person who, for the purpose of exploitation, incites, organizes or directs another person to—

- (a) recruit, transport, transfer, harbour or receive persons into or within Trinidad and Tobago; or
- (b) recruit, transport, transfer, harbour or receive persons from Trinidad and Tobago to another jurisdiction,

by means of—

- (i) threats or the use of force or other forms of coercion;
- (ii) abduction;
- (iii) fraud, deception;

- (iv) the abuse of power or the abuse of a position of vulnerability; or
- (v) the giving or receiving of payment or benefits to achieve the consent of a person having control over another person,

commits the offence of trafficking in persons and is liable on conviction on indictment, to a fine of not less than five hundred thousand dollars and imprisonment of not less than fifteen years.

18.(1) A person who recruits, transports, transfers, ^{Trafficking in children} harbours or receives a child into or within Trinidad and Tobago or, recruits, transports or transfers a child from Trinidad and Tobago to another jurisdiction for the purpose of exploitation, commits the offence of trafficking in children and is liable on conviction on indictment, to a fine of not less than one million dollars and imprisonment of not less than twenty years.

(2) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is sufficient to establish the offence of trafficking in children.

19. A person who, for the purpose of exploitation, ^{Inciting, organizing or directing another person to traffick in children} incites, organizes or directs another person to—

- (a) recruit, transport, transfer, harbour or receive a child into or within Trinidad and Tobago; or
- (b) recruit, transport or transfer a child from Trinidad and Tobago to another jurisdiction,

commits the offence of trafficking in children and is liable on conviction on indictment, to a fine of not less than one million dollars and imprisonment of not less than twenty years.

20.(1) In any prosecution for an offence of trafficking ^{Consent is not a defence and past sexual behaviour inadmissible} under sections 16, 17, 18 or 19, the alleged consent of the victim to the intended or realized exploitation is not a defence.

(2) In any prosecution for an offence of trafficking under section 16, 17, 18 or 19, the legal age of consent to sex or to marriage is not a defence.

(3) In any prosecution for an offence of trafficking under section 16, 17, 18 or 19, evidence of a victim's past sexual behaviour is inadmissible for the purpose of proving—

- (a) that the victim engaged in other sexual behaviour; or
- (b) the victim's sexual predisposition.

Power of the Court to impose higher sentences for aggravated circumstances

21.(1) Notwithstanding the penalty imposed under section 16, 17, 18 or 19, where a person is convicted under any of those sections and there is the presence of any of the following aggravating circumstances resulting from acts of the convicted person:

- (a) the convicted person used, threatened to use, or caused another to use or threaten to use, a dangerous weapon;
- (b) the trafficked person suffered a serious bodily injury, or permanent or life-threatening injury;
- (c) in the course of trafficking or subsequent exploitation, the convicted person caused the trafficked person to be exposed to a life-threatening illness, or the convicted person caused the trafficked person to become addicted to any drug;
- (d) a sexual assault was committed against the trafficked person;
- (e) the trafficking was part of the activity of an organized criminal group;
- (f) the trafficking was part of the activity of an organized criminal group and the convicted person organized the group or directed its activities; and

- (g) the trafficking occurred as the result of abuse of power or abuse of a position of vulnerability, including abuse by a parent or guardian, teacher, the leader of any children’s club or other group, or any other person who had been entrusted with the care or supervision of the child,

the Court may impose an additional term of imprisonment of up to fifteen years.

(2) In this section—

“dangerous weapon” means—

- (a) an instrument capable of inflicting death or serious bodily injury; or
- (b) 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;

“life-threatening illness” means any illness that involves a substantial risk of death, and includes Human Immuno Deficiency Virus Infection (HIV/AIDS) and tuberculosis;

“permanent or life-threatening injury” means—

- (a) 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;
- (b) a disfigurement that is likely to be permanent; or
- (c) maltreatment to a life-threatening degree, such as by denial of food or medical care that results in substantial impairment of function of the body or mind;

“serious bodily injury” means–

- (a) injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty; or
- (b) injury requiring medical intervention such as surgery, hospitalization or physical rehabilitation; and

“sexual assault” means–

- (a) the engagement of another person in a sexual act by a person–
 - (i) using force against that other person;
 - (ii) threatening or placing that person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or
- (b) the engagement by a person in a sexual act with–
 - (i) an incapacitated person; or
 - (ii) a person who cannot express consent.

(3) Notwithstanding the penalty imposed under section 18 or 19, where a person is convicted under any of those sections and he engages in sexual intercourse with a child who is under the age of 12 years, the Court may impose a term of imprisonment for the remainder of his natural life.

(4) For the purposes of subsection (3) “sexual intercourse” has the meaning assigned to it under section 25 of the Sexual Offences Act.

Chap.11:28

Unlawfully procuring, destroying, concealing, removing, confiscating or possessing any travel document or identification document belonging to another

22. A person who, for the purpose of trafficking in persons or trafficking in children and acting or purporting to act as another person’s employer, manager, supervisor, contractor, employment agent, or solicitor of clients, and who knowingly procures, destroys, conceals, removes,

confiscates, or possesses any travel document, or other government identification document, whether actual or purported, belonging to another person, commits an offence and is liable on conviction on indictment to a fine of three hundred and fifty thousand dollars and imprisonment for twelve years.

23.(1) A person who transports or conspires to transport another person into or within Trinidad and Tobago or across an international border for the purpose of exploiting that person's prostitution commits an offence and is liable on conviction on indictment to a fine of three hundred and fifty thousand dollars and to imprisonment for twelve years.

(2) Notwithstanding subsection (1), where a person is convicted under subsection (1) and there is the presence of the following aggravating factors resulting from acts of the convicted persons:

- (a) transporting two or more persons at the same time;
- (b) causing permanent or life-threatening bodily injury to the person transported;
- (c) transporting of a child or children; or
- (d) transporting as part of the activity of an organized criminal group,

the Court may impose an additional term of imprisonment of up to twenty years and order that the conveyance used for transporting the victim be forfeited by the State.

24.(1) Where a person has been convicted of the offence of trafficking in persons or trafficking in children, and the Court is satisfied that any property, including but not limited to money, valuables and other movable and immovable property of the person convicted was used or intended to be used or was obtained in the course of the crime or any benefits were gained from the proceeds of the crime, the Court shall order that the property or benefit be forfeited to the State to accrue to the Seized Assets Fund.

(2) Overseas assets of persons convicted of trafficking in persons or trafficking in children shall also be subject to forfeiture.

(3) Any property to be forfeited to the State under this section, shall be forfeited in accordance with the Proceeds of Crime Act.

Chap. 11:27

Knowingly receiving
financial benefit from
trafficking in persons

25. A person who receives or obtains 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 to a fine of four hundred thousand dollars and to imprisonment for fifteen years.

Knowingly receiving
financial benefit from
trafficking in children

26. A person who receives or obtains a financial or other benefit, knowing that it results from the offence of trafficking in children commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for twenty years.

Offences of bodies
corporate

27.(1) A body corporate which commits an offence against this Act is liable on conviction on indictment to a fine of five million dollars.

(2) Where a company commits an offence under this Act, any officer, director or agent of the company who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is liable on conviction to the punishment provided for the offence.

Additional penalties

28.(1) Where a body corporate or its director, manager, secretary or other similar officer concerned with the management of a body corporate has been convicted of an offence under this Act, the Court shall have the power, in addition to the power to impose the penalties prescribed for the stated offence to—

- (a) revoke business licences;
- (b) order that the body corporate be wound up;
- (c) forfeit the assets and properties of the body corporate to the Seized Assets Fund; and
- (d) prohibit the body corporate from performing any further activities.

29.(1) Where a person is convicted of the offence of trafficking in persons or trafficking in children, the Court may, in accordance with Rules made under subsection (4), order that compensation be paid to the victim by the person convicted or out of the proceeds of any property forfeited under section 24.

Compensation for victims and rules of court relating thereto

(2) Compensation shall be adequate and 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; and
- (h) where the victim is not a national of or resident in Trinidad and Tobago, the cost of returning that person to the country of origin or residence or such third country which will accept his entry.

(3) Compensation payable under this section shall be paid to the victim as soon as practicable after the making of an order under subsection (1) and in addition to any other remedy or penalty in relation to the offence.

(4) The Rules Committee of the Supreme Court may, subject to negative resolution of Parliament, make rules with respect to the making of an order for restitution under subsection (1) and any other procedure for giving effect to the Order.

(5) Where there are no rules made by the Rules Committee of the Supreme Court with respect to the making of an order for restitution under subsection (1) and any other procedure for giving effect to the Order, the Judge may give directions to effect the same.

Further
compensation for
victims

30.(1) Notwithstanding any other law to the contrary, where a person is convicted of an offence of trafficking, the victim may also apply to the Court for compensation, and the Court shall order that the convicted person pay compensation to the victim.

(2) Victims of trafficking are also eligible to apply for relief under section 29 of the Criminal Injuries Compensation Act.

(3) Where an order for compensation to the victim is made in a Court and the victim seeks further compensation in another Court, the Court that awards further compensation shall take into account the amount of compensation already ordered where the Court makes a further order.

(4) The return of the victim to the victim's home country, normal place of residence in Trinidad and Tobago, or other absence of the victim from the jurisdiction, shall not prejudice the victim's right to receive compensation or restitution.

Victim may offer a
defence

31. Where a victim has been compelled to engage in unlawful activities as a direct result of being trafficked and he has committed any immigration-related offence, or any other criminal offence for which he is being prosecuted, he may offer as a defence, evidence of having been compelled as a victim of trafficking to engage in such unlawful activities.

PART VI

ASSISTANCE TO AND PROTECTION OF VICTIMS OF TRAFFICKING

Guiding principles
relating to the
protection and safety
of victims and the
identification of
victims

32. In the investigation and prosecution of offences relating to trafficking in persons, the following guiding principles shall apply:

(a) all steps necessary to identify the victims of trafficking shall be taken;

- (b) a victim of trafficking shall be given reasonable protection to prevent recapture, and to secure him from threats, reprisals and intimidation by the traffickers and their associates;
- (c) where the victim's family resides in Trinidad and Tobago, they shall be given reasonable protection to secure the family from threats, reprisals or intimidation by the traffickers or their associates; and
- (d) the victim shall have an opportunity to consult with an attorney-at-law or other appropriate persons or agency with respect to his rights, safety and welfare.

33.(1) Victims of trafficking who are witnesses or Witness protection potential witnesses shall be eligible for applicable witness relocation and protection programmes for victims of organized criminal activity or other serious offences, if it is determined that an offence involving a crime of violence directed at the witness or potential witness is likely to be committed.

(2) The programmes referred to in subsection (1) may include—

- (a) relocation;
- (b) new identity and documents establishing identity;
- (c) new residence;
- (d) work permits; or
- (e) protection of confidentiality of identity and location.

34.(1) In a prosecution for trafficking under this Act, Protection of the privacy of victims, including proceedings held in camera the identity of the victim and the victim's family shall be kept confidential by ensuring that names and identifying information of the victim and the victim's family are not released to any member of the public or published in the press or media.

(2) A hearing under this section shall be held *in camera* unless the Court otherwise directs.

(3) A person who commits a breach of confidentiality under this section is liable on summary conviction to a fine of one hundred thousand dollars.

Information for
victims

35. The Minister shall cause victims of trafficking to be informed, in a language that they can understand, of their legal rights and the progress of court and administrative proceedings, as appropriate, including but not limited to—

- (a) proceedings involving the criminal offenders;
- (b) proceedings for the return of the victims to their country of citizenship or lawful residence; and
- (c) procedures for seeking legal immigration status under the Immigration Act.

Opportunity for the
presentation of the
victim's views and
concerns

36. Upon conviction of a person for an offence of trafficking under this Act, the Court may provide an opportunity to the victim of trafficking, if the victim desires it, to present his views and concerns in a manner not prejudicial to the rights of the convicted person.

Assistance to victims

37.(1) Victims of trafficking who are not nationals of Trinidad and Tobago and their accompanying dependent children may receive such social benefits for the duration of their stay in Trinidad and Tobago as may be determined by the Minister to whom the responsibility for social development has been assigned.

(2) Victims may have the option to communicate with and receive visits from family and friends.

(3) In the absence of exigent circumstances, victims of trafficking, once identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals.

(4) Child victims of trafficking, once identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals under any circumstances.

38. The Minister may provide victims of trafficking and accompanying dependent children with appropriate permits or other required authorization to allow them to remain and work in Trinidad and Tobago for the duration of the criminal prosecution against the traffickers. Immigration status of victims

39.(1) Where victims of trafficking do not remain in Trinidad and Tobago, the Minister and the Minister to whom responsibility for foreign affairs has been assigned shall facilitate the safe return of the victims of trafficking and any accompanying dependants to their countries of citizenship or lawful residence. Return of victims and accompanying dependants to country of citizenship or lawful residence

(2) In giving effect to subsection (1), the Ministers may consult with such non-governmental organizations and international organizations as they deem fit.

40. The Minister to whom responsibility for foreign affairs has been assigned, through Trinidad and Tobago's diplomatic missions and consular offices abroad, where practicable, shall – Assistance for victims abroad who are nationals or permanent residents

- (a) offer consular assistance, including the provision of necessary travel documents to nationals and residents of Trinidad and Tobago who are abroad and have been identified as victims of trafficking; and
- (b) disseminate information to nationals and residents of Trinidad and Tobago who are abroad and have been identified as victims of trafficking on the rights of victims of trafficking under the laws of Trinidad and Tobago and the laws of the country to which the missions are accredited.

41.(1) Upon a request by a competent authority of another State, the Minister shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking is a national of, or has resident status in, Trinidad and Tobago. Verification of nationality and age of victim

(2) A request made under subsection (1) may include a request for the verification of –

- (a) the name and age of a person who is a victim of trafficking in persons and who is suspected of being a minor; and
- (b) any other immigration status the victim may have in Trinidad and Tobago.

(3) The Minister shall designate an officer to deal with requests made under this section.

Assistance to victims who are unable to prove their resident status through ordinary means

42.(1) The Minister may make a determination as to the right of victims of trafficking abroad to return to Trinidad and Tobago, where those victims claim to be citizens or persons who have resident status in Trinidad and Tobago but whose identity cannot be verified through ordinary means and who have demonstrated significant connections to Trinidad and Tobago.

(2) Victims of trafficking abroad, referred to in subsection (1), may seek to satisfy the Minister of their right to return to Trinidad and Tobago, by demonstrating significant connections to this country through such factors including–

- (a) place of birth;
- (b) presence of family members;
- (c) significant knowledge of specific geographical areas and neighbourhoods;
- (d) long-term residence in Trinidad and Tobago;
or
- (e) any other means.

(3) Where the Minister has determined that an individual is eligible to re-enter Trinidad and Tobago under this section, the diplomatic mission abroad shall issue a travel document, permitting entry.

(4) Victims may apply to the High Court for a review of an adverse determination.

43. Victims of trafficking who return from abroad shall have access to educational and training programmes provided by any governmental or private entity without being differentiated from other participants on the basis of having been trafficked. Services for returned victims of trafficking

44.(1) Assistance in this Part shall be provided by the Counter Trafficking Unit to trafficking victims who are children in a manner that is in the child's best interest and appropriate to the child's situation. Special consideration to be given to child victims

(2) The Counter Trafficking Unit shall liaise with the appropriate agencies to provide victims who are children with services, which may include the understanding of their rights, privacy, housing, care and appropriate support.

(3) Special programmes shall be developed by the Counter Trafficking Unit for child victims, including—

- (a) arrangements, whenever safe and possible, for children to be reunited with their family members in Trinidad and Tobago or in their country of origin; and
- (b) arrangements to facilitate the provision of special mental and physical medical care tailored to children's needs.

PART VII

MISCELLANEOUS

45.(1) The Minister shall, within three months after the end of each year, cause a copy of the annual report on trafficking in Trinidad and Tobago to be laid in the Parliament. Minister to lay annual report in Parliament

(2) The report referred to in subsection (1) shall include—

- (a) the number of victims identified;
- (b) the number of investigations initiated;
- (c) the number of persons arrested;

(*d*) the number of prosecutions commenced and the outcome; and

(*e*) any other pertinent matter which the Minister considers necessary.

Regulations

46. The Minister may make Regulations, subject to negative resolution of Parliament, for giving effect to the purposes of this Act.

First Schedule
of the Criminal
Injuries
Compensation Act
amended Chap. 5:31

47. The First Schedule of the Criminal Injuries Compensation Act is amended by—

(*a*) deleting the full stop after the words “Sexual Offences Act” and substituting a semi-colon; and

(*b*) inserting after item (*h*) the following item:

“(i) offences under the Trafficking in Persons Act, 2011.”.

Jurisdiction

48. A Court in Trinidad and Tobago 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 Trinidad and Tobago;

(*b*) by a national of Trinidad and Tobago anywhere; or

(*c*) by a person on board a vessel or aircraft registered in Trinidad and Tobago.

SCHEDULE

[Section 11(4)]

1. The Counter Trafficking Unit shall include—

(*a*) authorized officers;

(*b*) social workers;

(*c*) communications specialists;

(*d*) administrative staff;

(*e*) an attorney-at-law; and

(*f*) such other officers that are necessary for the carrying out of the purposes of the Act.

2. The competencies of the personnel of the Counter Trafficking Unit referred to in paragraphs 1(a) to (d) shall include—

- (a) investigative, interviewing and other interviewing skills specially pertaining to—
 - (i) interviewing of suspects;
 - (ii) interviewing of vulnerable witnesses; and
 - (iii) victim interviewing;
- (b) understanding and recognizing victim traumatic stress disorder and referral of victims to appropriate agencies;
- (c) victim identification, assistance and protection;
- (d) evidence gathering;
- (e) intelligence gathering and cooperation; and
- (f) fluency in a language other than English.

Passed in the House of Representatives this day
of , 2011.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2011.

Clerk of the Senate

I confirm the above.

President of the Senate

FIRST SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime and for matters connected therewith or incidental thereto

Received and read the

First time

Second time

Third time