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TUESDAY 18TH APRIL, 2023

THE OFFICIAL GAZETTE 18TH APRIL, 2023
LEGAL SUPPLEMENT – C

BILL No. 6 of 2023

Tuesday 18th April, 2023

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

18th April, 2023

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 6 of 2023

THE COMBATING OF TRAFFICKING IN PERSONS BILL 2023

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FIRST SCHEDULE
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A BILL
Intituled

AN ACT to provide comprehensive measures to combat trafficking in persons and for connected matters.

A.D.2023 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Combating of Trafficking in Persons Act 2023.

(2) This Act shall come into force on such day as the Minister may, by order, appoint, and different days may be appointed by the Minister for different provisions of this Act.

Interpretation.

2. In this Act –

"abuse of position of vulnerability" means taking advantage of the vulnerabilities of a person by causing that person to believe that there is no reasonable alternative but to submit to the labour or service demanded of the person, and includes taking advantage of the vulnerabilities resulting from the person having entered the country illegally or without proper documentation, pregnancy, any 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;

Cap. 46: 07 "Agency" means the Childcare and Protection Agency established by section 3 of the Childcare and Protection Agency Act;

Cap. 46:06 "best interests of the child" shall have the same meaning contemplated by the Convention on the Rights of the Child and section 5 of the Protection of Children Act;

"child" means any person under the age of eighteen years;

"child pornography" means any audio or visual depiction, including any film, video, digital image, computer or social networks generated or modified image, animation or text, of –

(i) a child engaging in real or simulated explicit sexual activity or conduct;

(ii) a child in a sexually explicit pose;

(iii) parts of a child's body pasted, for sexual purposes, to visual representations of parts of an adult's body or vice versa,

but does not include any visual representation of a child's body produced or reproduced for the purpose of education, counselling or promotion of reproductive health or as part of a criminal investigation and prosecution or civil proceedings or in a lawful performance of a person's profession, duties and functions and does not require proof of the actual identity of a child;

"coercion" includes violent as well as some forms of non-violent or psychological coercion, including –

(a) threats of serious harm or physical restraint against 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 against any person;
(c) the abuse or threatened abuse of the legal process; or
(d) psychological pressure or stress, as determined by a psychologist;

"debt bondage" means the status or condition of a debtor where that debtor is forced to pay off a loan by working for an agreed-upon or unclear period of time for little or no salary and the work performed to pay off the debt greatly exceeds the worth of the initial loan, includes excessive recruitment fees or changing terms of employment, so that victims may be expected to work at a job for which they did not sign up, or for far less than was agreed upon;

"exploitation" means –

(a) keeping a person in a state of slavery;
(b) subjecting a person to practices similar to slavery;
(c) recruitment for forced begging;
(d) compelling or causing a person to provide forced labour or services;
(e) keeping a person in a state of servitude, including sexual servitude;
(f) exploitation of the prostitution of another;
(g) engaging in any form of commercial sexual exploitation, including pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child pornography;
(h) using, procuring or offering a child for the production or trafficking of narcotics or psychotropic substances;
(i) illicit removal of human organs; and
(j) illegal adoption;

"exploitation of the prostitution of another" means the gain by one person of monetary or other benefit through the provision of sexual services for money or other benefit by another person;

"forced begging" means a type of begging in which a person is forced to beg through psychological or physical coercion or restraint;

"forced or servile marriage" means a marriage that takes place without the consent of or against the will of one or both parties and is brought about by the use of physical, psychological, emotional, financial or sexual abuse including that person being held captive unlawfully, assaulted and raped or threatened with serious harm or physical restraint;

"illicit removal of human organs" means the unlawful removal of human organs, tissues, or other body parts from a victim through no legitimate medical procedures for which proper consent shall be obtained whether or not the victim consented to the removal;

"Ministerial Task Force" means the inter-agency task force established by the President under section 41;

"organised criminal group" means a structured group of three or more persons, whether transnationally or locally, who may or may not be relatives of a victim of trafficking, existing for a period of time and acting in concert with the aim of committing one or more offences established in this Act in order to obtain, directly, or indirectly a financial or other material benefit;

"persons with disabilities" means persons with a physical or mental impairment caused by the limitations of the body structure or one or more bodily functions that restrict the ability to perform ordinary day-to-day life activities;

"practices similar to slavery" means the economic exploitation of another person on the basis of an actual relationship of dependency or coercion, in combination with a serious and far-reaching deprivation of fundamental civil rights, and shall include, in general, debt bondage, serfdom, forced or servile marriages and delivery of children for exploitation;

"purposes of exploitation" includes exploiting the prostitution of others, sexual exploitation, forced labour, forced begging, forced or servile marriage, illicit removal of human organs, slavery or practices similar to slavery;

"receipt" means the collection or acceptance of a person by another for trafficking purposes;

"restitution" means financial compensation or other compensation paid to the victim for damages suffered during the process of being trafficked;

"servitude" means a condition of dependency in which the 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;

"sexual exploitation" means the obtaining of financial, social, political or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic material;

"sexually explicit conduct" includes actual or simulated sexual activity, including 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;

"trafficker" means a person, group or agency that engages in trafficking in persons;

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

"transfer" means the act of physically handing over a person to another for the purpose of trafficking;

"transportation" means the voluntary transporting of another by any means for the purpose of trafficking;

"travel documents" means any document that can be used for travel between States including –

(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;

"Unit" means the Counter-Trafficking in Persons Unit responsible for the protection of victims of trafficking in persons established under section 18(1);

"victim" means any person against whom the offence of trafficking in persons or any other offence under this Act has been committed.

Object of the Act.

3. The object of this Act is to prescribe measures to combat trafficking in persons including children, by –

(a) protecting and assisting victims of trafficking, having due regard to their human rights;

(b) facilitating the efficient investigation of cases of trafficking in persons and the prosecution thereafter;

(c) facilitating the just and effective punishment of individuals and organisations involved in trafficking in persons; and

(d) promoting partnership and cooperation between Guyana and other States in order to prevent and suppress trafficking in persons and to punish offenders.

PART II

CRIMINAL OFFENCES AND RELATED PROVISIONS

Trafficking in persons.

4. (1) A person who engages in or conspires to engage in, or attempts to engage in, or assists another person to engage in, organises or directs another person to engage in trafficking in persons commits an offence and is liable –

(a) on summary conviction –

(i) to imprisonment for five years;

(ii) to forfeiture of property under section 8; and

(iii) to be ordered to pay full restitution to the victim under section 7; and

(b) on conviction on indictment –

(i) to life imprisonment;

(ii) to forfeiture of property under section 8; and

(iii) to be ordered to pay full restitution to the victim under section 7.

(2) The recruitment, transportation, transfer, harbouring or receipt of any child or the giving of payments or benefits to obtain the consent of a person having control of a child for the purpose of exploitation shall constitute trafficking in persons irrespective of whether any of the means described in the definition of "trafficking in persons" in section 2 has been established.

(3) A person who counsels, procures, or commands any other person to commit an offence under this section, commits an offence and is liable

(a) to be indicted either as an accessory before the fact to the principal offence together with the principal offender or after the conviction of the principal offender; or

(b) to be indicted of the substantive offence, whether the principal offender has or has not been previously convicted, or is not amenable to justice,

and may be punished in the same manner as any accessory before the fact to the same offence may be punished if convicted as an accessory.

(4) A person who exploits a child by using, procuring or offering that child for the production or trafficking of narcotics, commits an offence and is liable on summary conviction to a fine of one million dollars and imprisonment for five years.

(5) Notwithstanding anything contained in any other law, any person who-

(a) attempts to commit;

(b) conspires with any other person to commit; or

(c) solicits, incites, aids, abets or counsels or attempts to solicit, incite, aid, abet or counsel any other person to commit,

any offence under this Act may be charged with, tried, convicted and punished in all respects as if that person was a principal offender.

Unlawful withholding of identification papers.

5. (1) Any person who for the purpose of trafficking in persons, and acting or purporting to act as another person's employer, manager, supervisor, contractor, employment agent, or solicitor of clients such as a pimp, 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

summary conviction to a fine of one million dollars together with imprisonment for five years.

(2) Where a fine under subsection (1) is not paid by a person convicted under that subsection, that person is liable to an additional term of imprisonment for six months.

Transportation of a person for the purpose of exploiting that person prostitution.

6. (1) A person who knowingly transports or conspires to transport, or attempts to transport or assists another person engaged in transporting any person in Guyana or across an international border for the purpose of exploitation of the prostitution of another person, including a child, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of not less than one million dollars nor more than five million dollars and imprisonment for a term not exceeding five years, but the presence of any one of the following aggravating factors resulting from acts of the defendant can permit a longer sentence not exceeding an additional five years together with forfeiture of the conveyance used for transporting the victim –

(a) transporting two or more persons at the same time;

(b) permanent or life-threatening bodily injury to a person transported;

(c) transportation of a child; or

(d) transporting as part of the activity of an organised criminal group.

Restitution.

7. (1) Where a person is convicted of trafficking in persons under this Act, the court shall order that person to pay restitution to the victim and shall be guided by information provided by the Unit or any other agency or person, pursuant to the list set out in the Second Schedule.

Second Schedule

(2) Restitution shall compensate the victim 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 childcare or the movement of the victim to a temporary safe residence;

(d) lost income and due wages pursuant to the Labour Act and any labour laws or regulations contained in the laws of Guyana;

Cap. 98:01

(e) attorney's fees and other costs such as victim advocate and other legal costs;

(f) compensation for emotional distress, pain and suffering; and

(g) any other costs or losses suffered by the victim as a direct result of being trafficked and reasonably assessed by the court.

(3) Restitution shall be paid to the victim promptly on or before a date specified by the court upon the conviction of the accused with the proceeds from any property forfeited under section 8 applied first to the payment of restitution.

(4) Prior to sentencing of the accused, the court may hear evidence to determine the amount of restitution to be paid to a victim.

(5) The absence of the victim from the proceedings shall not prejudice the victim's rights to receive restitution, neither shall the immigration

status nor the return of the victim to the victim's home country or normal place of residence in Guyana.

(6) Where a public officer commits an offence under this Act and that offence was carried out under the actual or apparent authority of the State, the court may order the State to pay restitution to the victim.

(7) An order for restitution to be paid to a victim by the State under subsection (6) may include payment for or towards all or any of the items under subsection 2.

(8) The procedure as set out in section 49 of the Summary Jurisdiction (Petty Debt) Act as it relates to the execution upon immovable property shall apply, if necessary.

Cap. 7:01

Forfeiture.

8. (1) All property, including money, valuables and other movable and immovable property, of a person convicted 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 as part of benefits gained from the crime shall be forfeited to the State.

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

(3) As far as practicable, the agencies with responsibility for matters related to trafficking in persons shall collaborate for the purpose of determining any assets for forfeiture.

(4) The provisions of sections 203, 204, 205, 206 and 209 of the Criminal Law (Procedure) Act, as they apply in relation to the seizure and

Cap. 10:01

attachment of property being the proceeds of an indictable offence, shall apply *mutatis mutandis* in relation to the seizure and attachment of all property of a person convicted under this Act being the proceeds of a summary or indictable conviction offence.

Sentencing guidelines including aggravated circumstances on indictment and summary conviction.

9. (1) As factually appropriate, the following adjustments to the sentence of a person convicted on indictment for trafficking in persons may apply -

(a) if the convicted person used, threatened use, or caused another to use or threaten use of a dangerous weapon, two years may be added to the sentence;

(b) if a victim suffers a serious bodily injury, or if the convicted person commits a sexual assault against a victim, five years may be added to the sentence;

(c) if the victim was a child at the time of the offence, five years may be added to the sentence;

(d) if, in the course of trafficking or subsequent exploitation, the convicted person recklessly caused a victim to be exposed to a life threatening illness, or if the convicted person intentionally caused a victim to become addicted to any drug or medication, five years may be added to the sentence;

(e) if a victim 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;

(g) if trafficking was part of the activity of an organised criminal group and the convicted person organised the group or directed its activities, five years may be added to the sentence;

(h) if the trafficking occurred as the result of abuse of power or position of authority, including a parent or guardian, teacher, religious or spiritual leader, children's club leader, or any other person who has been entrusted with the care or supervision of a child, four years may be added to the sentence; or

(i) where the death of the victim or another person occurs, including death as a result of suicide, ten years may be added to the sentence.

(2) As factually appropriate, the court shall take into consideration when sentencing a person convicted of trafficking in persons summarily the following aggravated circumstances –

(a) if the convicted person used, threatened use, or caused another to use or threaten use of a dangerous weapon;

(b) if a victim suffers a serious bodily injury, or if the convicted person commits a sexual assault against a victim;

(c) if the victim was a child at the time of the offence;

(d) if, in the course of trafficking or subsequent exploitation, the convicted persons recklessly caused a 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;

(e) if a trafficked person suffers a permanent or life threatening injury;

(f) if the trafficking was part of the activity of an organised criminal group;

(g) if the trafficking was part of the activity of an organised criminal group and the convicted person organised the group or directed its activities;

(h) if the trafficking occurred as the result of abuse of power or position of authority, including a parent or guardian, teacher, religious or spiritual leader, children's club leader, or any other person who has been entrusted with the care or supervision of the child;

(i) where the death of the victim or another person, including death as a result of suicide occurs; or

(j) if the convicted person is a repeat offender.

(3) In this section –

"dangerous weapon" means-

(ii) an instrument capable of inflicting death or serious bodily injury; or

(iii) 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 immunodeficiency virus and tuberculosis;

"permanent or life-threatening bodily injury" means injury involving a 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 and includes maltreatment to a life-threatening degree, such as by denial of food or medical care that results in substantial impairment of function;

"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 including surgery hospitalisation or physical rehabilitation;

"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 child that constitutes statutory rape in accordance with the Sexual Offences Act.

Cap. 8:03

Consent of past sexual behaviour or history of victim irrelevant.

10. (1) In a prosecution for trafficking in persons under section 4, the alleged consent of a person in the intended or realised exploitation is irrelevant if any of the means or circumstances set out in the definition of "trafficking in persons" under section 2 is established.

(2) In a prosecution for trafficking in persons under section 4, evidence of a victim's past sexual behaviour is irrelevant and inadmissible for the purpose of providing that the victim engaged in other sexual behaviour, or to provide the victim's sexual predisposition.

Legal age of consent to sex not defence.

11. The age of consent to sex or the legal age of marriage shall not be used as a defence to trafficking in persons.

Victim immunity from prosecution.

12. A victim shall not be criminally liable for any immigration-related offence, prostitution or any other criminal offence committed by that person that was a direct result from being trafficked.

Offence by body corporate.

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

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

(3) Where a body corporate or its director, manager, secretary, agent or any other officer concerned with the management of the 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 the body corporate's business licences;

(b) order that the body corporate be wound up;

(c) forfeit the assets and properties of the body corporate; or

(d) prohibit the body corporate from performing any further activities.

(4) In this section "director" in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Receiving financial or other benefit knowing that it is as a result of trafficking in persons.

14. (1) 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 summary conviction to a fine of five hundred thousand dollars and to imprisonment for three years.

(2) A person who receives or obtains a financial or any other benefit, knowing that it results from the offence of trafficking in persons where the victim was a child at the time the offence was committed commits an offence and is liable on summary conviction to a fine of one million dollars and to imprisonment for five years.

Entry, search and seizure.

15. (1) Subject to subsection (3), where a magistrate is satisfied by information given on oath that there are reasonable grounds for suspecting that evidence relating to an offence under this Act is to be found on any premises specified in the information, a magistrate may issue a warrant in accordance with subsection (2).

(2) A warrant issued under subsection (1) may authorise a law enforcement officer named in the warrant to enter the premises specified in the warrant, with any assistance and by the use of 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 officer believes, on reasonable

grounds, to be evidence relating to an offence under this Act.

(3) A magistrate may require further information given on oath from any other person concerning the grounds on which the issue of the warrant is sought before issuing a warrant.

(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 under this Act;

(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 during specified hours of the day or night.

(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.

Offence of threatening, obstructing, etc. a law enforcement officer.

16. Any person who-

(a) assaults any person with intent to resist or prevent the lawful apprehension or detention of himself or herself, or of any other person, or to rescue anyone from lawful custody;

(b) assaults, obstructs, or resists any peace officer acting in the execution of his or her duty, or any person acting in aid of that officer, or

(c) assaults, obstructs, or resists any person acting in the lawful execution of any process issued out of a magistrate's court against any movable or immovable property, or with intent to rescue any movable property taken under that process or under any lawful distress,

shall be liable to a fine of not less than five hundred thousand dollars nor more than one million dollars or to imprisonment for eighteen months.

Jurisdiction.

17. A court in Guyana 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 Guyana;

(b) by a citizen of Guyana anywhere; or

(c) by a person on board a vessel or aircraft registered in Guyana.

PART III

RESPONSIBLE UNITS FOR PROTECTING VICTIMS OF TRAFFICKING IN PERSONS, POWERS AND FUNCTIONS

Establishment of the Counter-Trafficking in Persons Unit and role of Guyana Police Force.

18. (1) There is established a Unit, within the Ministry responsible for human services and social security, to be known as the Counter-Trafficking in Persons Unit.

(2) The Unit shall be subject to the overall supervision of the Director of Social Services and shall engage in full collaboration with the Ministerial Task Force for the purposes of this Act.

(3) The Ministerial Task Force, together with the Unit, shall be responsible for the protection and assistance of victims of trafficking in persons which responsibility shall include the continual sensitisation of the relevant authorities to ensure adherence and the development of the national referral mechanism set out in the First Schedule as may become necessary, to ensure proper identification, referral and protection of victims and that adequate assistance is given to victims while protecting their human rights.

First Schedule

(4) The Guyana Police Force, through its Trafficking in Persons Unit, shall provide assistance as necessary to facilitate the protection of victims as requested by the Ministerial Task Force and the Unit and as otherwise provided for in this Act, and shall have appropriately trained officers at all levels of and in stations throughout Guyana.

(5) The Ministry responsible for human services and social security in collaboration with the Ministry responsible for home affairs shall have overall responsibility for transport of victims of trafficking to and from court and for provision of security of victims of trafficking while in shelters and for security of shelters.

(6) The Unit, together with the Ministerial Task Force and in keeping with other initiatives as provided for in this Act, shall oversee and monitor all matters related to the protection and assistance of victims including the use of established protocols and shall submit an Annual Report to Cabinet which shall include statistical data collected on trafficking, within four months of the end of the previous reporting period.

Case management.

19. (1) The court shall, where necessary, give guidance on the management of the proceedings to engage its attention for an offence under this Act.

(2) The court may decide whether a case may be heard expeditiously and shall take into consideration exigent circumstances including length of time that the victim is in a shelter, the victim being a foreign national, that a child is involved as an alleged victim or witness, or any other circumstance the court may deem relevant.

Role of Childcare and Protection Agency and child victims and witnesses.

20. (1) The Childcare and Protection Agency shall be responsible for and collaborate with the Unit on matters related to child victims in this Act.

(2) In addition to any other guarantees provided for in this Act –

(a) child victims, especially infants, shall be given special care and attention;

(b) when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the victim shall be presumed to be a child and shall be treated as a child, pending verification of the victim's age;

(c) assistance to child victims shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care;

(d) if the victim is an unaccompanied child the Childcare and Protection Agency in collaboration with the Unit, shall make the appropriate application before the court to-

(i) appoint a legal guardian to represent the interests of the child;

(ii) take all necessary steps to establish the child's identity and nationality; and

(iii) make every effort to locate the child's family when this is in the best interest of the child;

(e) information may be provided to child victims through their legal guardian or, where the legal guardian is the alleged offender, any other support person;

(f) child victims shall be provided with information in a language that the child uses and understands and in a manner that aids the child in understanding the information provided;

(g) in the case of a child victim or witness, interviews, examinations and other forms of investigation shall be conducted by specially trained professionals appointed by the Unit in collaboration with the Guyana Police Force and the Director of Public Prosecutions in a suitable environment, in a language that the child uses and understands and in the presence the child's parents, legal guardian or a support person; and

(h) in the case of child victims and witnesses, court proceedings shall always be conducted away from the presence of the public including the media and in instances where the child is testifying by audio visual link the child victim or witness shall always give evidence out of sight of the accused.

Protection for the safety of victims, including identification of victims.

21. (1) Investigative, prosecutorial, and other appropriate authorities shall take all steps necessary to identify victims of trafficking.

(2) When a victim is identified, the authorities shall provide reasonable protection to that victim to prevent recapture by a trafficker or any associate or agent of the trafficker, secure the victim and the victim's family if they reside in Guyana from any threat, reprisal or intimidation by the trafficker or associate or agent of the trafficker, and ensure the victim has an opportunity

to consult with a victim's advocate or other appropriate person to develop a safety plan.

(3) Law enforcement officials and other investigative officers shall follow the guidelines as specified in subsection (1) and any other protocols established for law enforcement official including police and prosecutors in relation to trafficking in persons.

Witness protection.

22. Victims of trafficking who are witnesses or potential witnesses and any other witness or potential witness of trafficking in persons, may be eligible to be a participant in any applicable witness protection programme for victims of organised 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.

Protection for the privacy of victims including proceedings held *in camera*.

23. (1) Interviews with or questioning of the victim or witness during criminal judicial or administrative proceedings shall take place with due respect for the victim's or witness' privacy, and away from the presence of the public and media.

(2) The results of any medical examination of a victim of trafficking in persons shall be treated confidentially and shall only be used for the purpose of the criminal investigation and prosecution, and the care of the victim in keeping with necessary protocols.

(3) In a prosecution for trafficking in persons under this Act or the unlawful withholding of identification documents or otherwise use of those documents, the identity of the victim and the victim's family shall be kept confidential by ensuring that names and identifying information including photographs of the victim and victim's family are not released to the public,

including by the defendant and any media personnel who may be aware of the case related to the victim.

(4) A hearing under this section shall always be conducted away from the presence of the public including the media and in instances where the victim is testifying by audio visual link, the victim or witness shall always give evidence out of sight of the accused.

(5) A person who commits a breach of the confidentiality enjoined by this section commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to a term of imprisonment not exceeding six months.

Information for victims.

24. The Minister responsible for home affairs shall, through appropriate mechanism of the Ministry responsible for home affairs, inform victims of trafficking, in a language that they use and can understand, of their legal rights and the progress of relevant court and administrative proceedings, as appropriate, including prosecution of the criminal offenders, proceedings for the return of the victims to their country of citizenship or lawful residence, and procedures for seeking legal immigration status under section 27.

Opportunity for presentation of victim's views and concerns.

25. (1) The court shall provide an opportunity to a victim of trafficking, if the victim desires it, to present the victim's views and concerns at appropriate stages of criminal proceedings against traffickers, in a manner not prejudicial to the rights of the defendant.

(2) An interpreter who speaks a language the victim understands shall be made available to the victim during the course of all legal proceedings.

(3) At the conclusion of the proceedings and after the rendering of the verdict but prior to sentencing, the victim shall be permitted to make a Victim Impact Statement.

(4) The Unit and the prosecutor shall inform the victim that the victim may make a statement under subsection (3) and shall accordingly provide assistance to the victim in the preparation of that statement.

(5) The Victim Impact Statement may be presented by the victim to the court, in person or by the use of an audio visual link, or it may be presented by the prosecutor to the court.

(6) A Victim Impact Statement may be in writing and signed or marked by the victim or may be recorded in an alternative manner, including photographs or drawings to assist the court in understanding the impact of the offence on the victim.

(7) A Victim Impact Statement may include –

(a) information about how the offence has affected the victim;

(b) the victim's views about the offence committed on the victim; and

(c) information on how the offender's actions have affected the victim.

Assistance to victims.

26. (1) The Minister responsible for home affairs in collaboration with the Ministers responsible for labour and human services and social security may, subject to availability of resources and government policies, develop measures, in consultation with non-governmental organisations and other representatives of civil society, for the provision of appropriate services, from

governmental and non-governmental sources, for victims of trafficking and dependent children accompanying those victims, including -

(a) appropriate housing, taking into account the person's status as a victim of crime and including safe conditions for sleeping, food and personal hygiene;
(b) psychological counselling in a language the victim uses and can understand;
(c) medical assistance as appropriate in a language the victim uses and can understand;
(d) employment, educational, and training opportunities;
(e) legal assistance whether through the Guyana Legal Aid Clinic or other appropriate mechanism and legal information in a language the victim understands; and
(f) any other support, as required, until conclusion of the trial for victims which shall be based on a needs assessment conducted by the Unit.

(2) Victims of trafficking may be eligible to work and to receive a work permit.

(3) Victims of trafficking and any accompanying dependent children may be entitled to receive social benefits for the duration of the victim's stay in Guyana as may be determined by the Minister responsible for human services and social security.

(4) The Minister responsible for human services and social security shall establish secure and residential facilities for adult victims specialised according to the different purposes of trafficking in persons, and similar but separate facilities for child victims.

(5) Residence in shelters or other facilities established under this section may be a voluntary option offered to the victims, and victims may decline to stay in these shelters or facilities.

(6) Victims may have the option to communicate with and receive visits from family, friends and their attorney-at-law at a location designated by the Ministry responsible for human services and social security.

(7) An identified victim of trafficking shall not be housed in a prison or other detention facility for accused or convicted persons as a result of their status as victims or immigration status.

(8) An identified child victim of trafficking shall not be housed in a prison or other detention facility for accused or convicted criminals under any circumstances.

(9) The authorities mentioned under subsection (1) shall take into account the age, gender and special needs of victims and accompanying dependent children when formulating measures to provide services to them and in delivering any services under this section.

(10) The measures developed in accordance with subsection (1) shall be submitted for approval to the Cabinet and the authorities shall also undertake periodic reviews of the measures and their implementation to ensure compliance with the requirements of this section and to ensure that all victims are treated with respect for their human rights.

Immigration status of victims.

27. (1) The Minister responsible for home affairs may provide victims of trafficking and accompanying dependent children with appropriate visas or other required authorisation to permit them to remain in Guyana for the duration of a criminal prosecution against traffickers:

Provided that the victim is willing to comply with the reasonable requests, if any, to assist in the investigation or prosecution of the traffickers.

(2) Any decision to return a victim of trafficking in persons shall be considered in light of the principle of *non-refoulement* and done only after an assessment of the victim's circumstances has been done.

(3) Victims of trafficking and dependent children accompanying the victim may be eligible to remain lawfully in Guyana in the manner prescribed in the Immigration Act.

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(4) A victim's spouse and children, and in the case of child victims, the parents or guardian, and the child victims' siblings, may be eligible to join the victim in Guyana as part of the victim's initial application to remain legally in Guyana under the preceding subsections.

Assistance for citizen or permanent resident victims abroad.

28. (1) The Minister responsible for foreign affairs, through Guyana's diplomatic missions and consular offices, where reasonably practicable, shall offer assistance to citizens of Guyana or persons who were granted permission to remain in Guyana and who are victims or potential victims of trafficking in persons located abroad, including -

(a) assistance in understanding the laws of the foreign country to which they have been trafficked, including their rights as victims, options for reporting the crime, and opportunities for seeking restitution or other benefits that are available under the laws of that country;

(b) assistance in obtaining emergency services, including medical care and counselling;

(c) at the request of either the victim or the appropriate authorities in the other country, replacement or provision of passports and other travel documents necessary for the victim to return to Guyana without undue or unreasonable delay; and

(d) material assistance in returning to their last place of residence in Guyana.

(2) The Minister responsible for foreign affairs, through Guyana's diplomatic missions and consular offices, shall publish and disseminate information on the rights of victims of trafficking under the laws of Guyana and the country or countries for which the diplomatic mission has responsibility both to the appropriate authorities in that country and to possible victims of trafficking who are citizens of Guyana.

(3) In the case of diplomatic missions and consular offices of countries of destination of trafficking victims, the information shall be provided to the appropriate authorities and to potential trafficking victims who are citizens of Guyana or lawful residents of the country for which the mission or office has responsibility.

(4) Diplomatic missions of Guyana shall appoint an officer to be responsible for implementing and supervising measures ensuring the provision of services required under this section.

(5) The Minister responsible for foreign affairs, in cooperation with other appropriate authorities, shall develop measures as are reasonably convenient for the safe, orderly return without undue or unreasonable delay of citizens or persons holding residency in Guyana.

Verification of citizenship, permanent resident status and age.

29. (1) Upon request by the appropriate authority or representative of another State, the Minister responsible for home affairs shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is a citizen of Guyana, or has been granted permission to remain in Guyana legally.

(2) Upon request by the appropriate authority or representative of another State, the Minister responsible for home affairs shall, without unreasonable delay, verify –

(a) the age of a person who is a victim of trafficking in persons and who is suspected of being a child; and

(b) whether the victim is a citizen of Guyana or has any other immigration status in Guyana.

(3) The Minister responsible for home affairs shall designate an appropriate officer to deal with requests made under this section.

Collaboration of Ministries for return of victims to country of citizenship or residence.

30. (1) The Ministries responsible for home affairs and foreign affairs in collaboration with other appropriate authorities and non-governmental organisations may, subject to availability of resources and government policies, develop measures for the safe return of victims to their place of residence, country of citizenship or a country in which they hold lawful residency.

(2) Measures developed under subsection (1) shall take into account the rights of victims to remain in Guyana legally under section 27, or remain in Guyana during the criminal proceedings against the trafficker, and other rights guaranteed under other applicable laws.

Victims unable to prove citizenship status through ordinary means.

31. (1) Victims of trafficking in persons abroad who claim to be citizens of Guyana or persons permitted to remain lawfully in Guyana, but whose identity cannot be verified through ordinary means, can establish their

right to return to Guyana by demonstrating significant connections to Guyana through any of the following factors –

(a) place of birth;

(b) presence of family members;

(c) presence of friends;

(d) significant knowledge of specific geographical areas or neighbourhoods;

(e) long-term residence in this country; or

(f) any other means.

(2) Determinations under this section shall be made with due concern for compassion and justice to victims.

(3) The list of factors in subsection (1) is not exhaustive and not every factor is required to make a determination under this section.

(4) The fact that the victim would not be eligible for citizenship based on any finding under this section shall not be a bar to re-entry.

(5) Diplomatic missions abroad shall assign a specified diplomat to make determinations under this section.

(6) Where it has been determined that an individual is eligible to re-enter Guyana under this section, the diplomatic mission abroad shall issue a certificate of identity, permitting re-entry.

(7) Victims may apply to the High Court for a review of any adverse determination under this section.

Services for returned victims of trafficking.

32. As far as it is reasonably practicable, 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.

Special considerations and appropriate implementation for child victims.

33. (1) The assistance in this Part shall be provided to victims of trafficking who are children in a manner that is in the child's best interests and appropriate to a child.

(2) Child victims shall be provided with appropriate services, which may include understanding of their rights in their own preferred language, privacy, housing, care and age-appropriate support and rights as specified in this Part.

(3) Special measures shall be developed to accommodate child witnesses including-

(a) testimony of a child conducted outside a court setting including by skype, zoom or any other appropriate platform;

(b) all testimony and court proceedings shall take place with a parent, legal guardian, or social worker present;

(c) examination of a child witness through an intermediary;

(d) use of anatomically correct dolls in the taking of evidence;

(e) whenever safe and possible, children shall be reunited with family members in Guyana or in any other country;

(f) special mental and physical medical care tailored to children's needs;

(g) special mental, physical, medical and other care as appropriate for and tailored to persons with disabilities; and

(h) upon return to Guyana, or a child's victims who is present in Guyana, shall be guaranteed education which shall at least match the general standard of education in Guyana and care shall be taken to ensure missed education is accessed.

(4) Notwithstanding the provision of section 73A of the Evidence Act, and in recognition of vulnerabilities of child victims of trafficking, such victims shall be permitted by the court to testify by way of audio visual link.

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PART IV
INVESTIGATION AND COURT PROCEDURE

Mandatory record keeping and investigation.

34. (1) Where an offence under this Act is reported to the police, or the police, by virtue of certain actions, become informed of an offence under this Act, the police shall, in every case record the report or make a record, as the case may be, and conduct an investigation.

(2) Within one month of a complaint being made or information being received, as provided for under subsection (1), the file relating to the report or information shall be sent to the Director of Public Prosecutions for advice before any charge is instituted.

(3) Failure to comply with subsection (2) constitutes neglect of duty by the investigating rank and that investigating rank shall be liable to answer disciplinary charges in accordance with the Police (Discipline) Act.

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(4) A person who makes a false complaint to the police may, on the advice of the Director of Public Prosecutions, be charged for the offence of making a false complaint and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for three years.

Complaint not to be repeated in presence of accused; obstruction by parent of a child prohibited.

35. (1) Where a report is made of an offender under this Act or information is otherwise obtained by the police, at no point during the investigation shall the complainant be required to recount the complaint or any part of it, in the presence of the accused unless the complainant is so willing to recount the complaint or any part of it.

(2) The complainant shall not be required to view or be in the presence of any person referred to in the complaint as having perpetrated any offence under this Act except for the purposes of an identification parade and then only –

(a) by way of audio visual link;

(b) by way of a two-way mirror; or

(c) in any other manner sensitive to the complainant's well-being.

(3) Confrontations between the victim and the accused or any person acting on behalf of the victim or accused are prohibited.

(4) A parent of a child victim of trafficking who attempts to prevent the child from making a complaint commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars.

Paper Committals.

36. Where a person is charged with an indictable offence under this Act, there shall be no oral preliminary inquiry, but instead a paper committal shall be held in accordance with the procedure *mutatis mutandis* as set out in the First Schedule of the Sexual Offences Act.

Cap. 8:03

PART V

MISUSE OF TRANSPORTATION

Responsibility of transportation companies or individuals.

37. (1) Transportation companies or individuals who transport persons shall verify that every passenger possesses the necessary travel documents, including passports and visas, to enter the destination country and any transit countries.

(2) The requirement in subsection (1) applies both to staff or agents selling or issuing tickets, boarding passes or similar travel documents and to staff or agents collecting or checking tickets prior to or subsequent to boarding.

(3) Any person who, or company which, fails to comply with any of the requirements of this section may be sanctioned by the revocation of licences or permits to operate, after a hearing before the competent authority.

Liability of transportation companies or individuals.

38. Where a transportation company or individual knowingly transports victims of trafficking, that company or individual shall be liable for costs associated with providing accommodation and meals for the victim and any accompanying dependent children for the duration of the victim's stay in facilities established under section 26 and shall bear the costs of their transportation to a port of entry of the country of which the victim is a citizen or in which the victim holds a normal place of residence in Guyana.

Measures to ensure the safety of children travelling unattended across international borders.

39. (1) Operators or crews of commercial vehicles and aircraft shall hold the travel documents of children travelling within or into Guyana without a parent, guardian, or other responsible adult from the time the children board the vehicle or aircraft and shall surrender the documents upon arrival to the appropriate immigration authority or other authority.

(2) At every destination point or port of entry, the immigration authority or other authority shall, if practicable, provide officers to meet children travelling without a parent, guardian or other responsible adult, receive the children's travel documents from the operator of the commercial vehicle, and assist the children in passing through immigration and customs inspections.

(3) The officer shall surrender the children only to a parent, guardian, or other responsible adult upon presentation of appropriate identifying documents, and shall obtain a receipt indicating final destination, purpose of travel, and identification and address information of the receiving adult.

(4) Operators or owners of commercial vehicles transporting children travelling without a parent, guardian or other responsible adult within or into Guyana and without the necessary travel documents commit an offence and shall on summary conviction pay a fine of five hundred thousand dollars for every child that arrives without the necessary travel documents.

Role of Government.

40. (1) The Government shall take steps to educate citizens about sex tourism, sexual exploitation and forced labour and warn citizens that travelling to another country to engage in sex with a child or a trafficked person may be a crime in the destination country or in the home country, or may constitute child abuse.

(2) The steps in subsection (1) shall include –

(a) coordinating with the airline industry, hotel industry, taxi industry, and others to jointly produce educational materials alerting them to evidence of sex tourism, sexual exploitation and forced labour by their

customers and employees and warning them against facilitating such behaviours; and

(b) warning citizens and employees in the industries mentioned in (a) that a crime may be committed when someone engages in sex with a child, sex tourism, or frequents a brothel housing trafficked women and children.

PART VI

PREVENTION OF TRAFFICKING IN PERSONS

Establishment of Ministerial Task Force for the prevention and response to trafficking.

41. (1) The President shall establish a national inter-agency task force to be known as the Ministerial Task Force to develop, implement and monitor a National Plan for the Prevention and Response to Trafficking in Persons with the responsibility of all matters related to trafficking, including sex trafficking and labour trafficking, which shall be jointly chaired by the Ministries responsible for home affairs and human services and social security.

(2) The President shall appoint the members of the Ministerial Task Force, which shall include –

(a) the Ministers and senior representatives in policy and technical implementation of the Ministries responsible for –

(i) legal affairs;

(ii) foreign affairs;

(iii) labour;

(iv) home affairs;

(v) human services and social security;

(vi) Amerindian affairs;

(vii) education;

(viii) public health;

(ix) natural resources; and

(x) local government;

(b) senior representatives in policy and technical implementation of the-

(i) Guyana Police Force;

(ii) the Chambers of the Director of Public Prosecutions; and

(iii) the Guyana Geology and Mines Commission; and

(c) any other appropriate high level government officials including officials with responsibility for –

(i) law enforcement;

(ii) immigration;

(iii) natural resources;

(iv) human services and social security; and

(v) any other appropriate local governmental and non-governmental organisations or service providers.

(3) The Ministerial Task Force shall carry out the following activities either directly or by one or more of the constituent ministries or agencies as appropriate-

(a) develop the National Plan for the Prevention and Response to Trafficking in Persons, which Plan shall include mechanisms to address reformation of convicted traffickers;

(b) co-ordinate the implementation and monitoring of the Plan;

(c) co-ordinate the collection and sharing of trafficking data among government agencies which data

collected shall respect the privacy of victims of trafficking;

(d) co-ordinate the sharing of information between agencies for the purposes of determining whether individuals crossing or attempting to cross the international border of Guyana with travel documents belonging to other persons or without travel documents are perpetrators of victims of trafficking in persons and detecting criminal groups engaged in trafficking;

(e) identify and engage in efforts to facilitate cooperation with foreign countries, particularly those which are a significant source of victims, transit location, or destination of victim which cooperation shall aim to strengthen bilateral, multilateral, local and regional capacities to assist trafficking victims, prevent trafficking, prosecute traffickers, and assist in the appropriate reintegration of victims of trafficking;

(f) establish policies to enable the Government to work with non-governmental organisations and other elements of civil society to prevent trafficking and provide assistance to victims;

(g) establish procedures to collect data and to promote research on the scale and nature of both domestic and transnational trafficking in persons and its forced labour and slavery-like outcomes, the factors that further and maintain trafficking in persons and best practices for the prevention of trafficking, for assistance to and protection of victims and the prosecution of traffickers; and

(h) ensure that anti-trafficking measures comply with existing human rights norms and do not undermine or adversely affect the human rights of the persons affected.

(4) Within six months after this Act comes into force, the Ministerial Task Force shall develop guidelines which shall set out the roles and responsibilities of each member of the Ministerial Task Force, and those guidelines, including any subsequent change to the guidelines, shall be approved by the Cabinet.

(5) (a) The Minister responsible for human services and social security and the Minister responsible for home affairs shall, in consultation with the Ministerial Task Force, establish a Secretariat which shall be responsible for carrying out the administrative functions of the Ministerial Task Force.

(b) In addition to paragraph (a), the Secretariat, under the direction of the Ministerial Task Force, shall be responsible for compiling quarterly and annual reports on trafficking in persons.

Data collection and dissemination.

42. The Ministry responsible for home affairs shall –

(a) collect and periodically publish statistical data on trafficking;

(b) elicit the cooperation and assistance of Government agencies, non-governmental organisations, and other elements of civil society as appropriate to assist in the data collection required under paragraph (a); and

(c) make the best efforts to collect information relevant for tracking progress on trafficking, including –

(i) the number of arrests, prosecutions and successful convictions of traffickers and those committing trafficking related crimes, including pimping, pandering, procuring, maintaining a brothel, visa fraud, document fraud, and other crimes related to trafficking;

(ii) statistics on the number of victims, including age, method of recruitment and other relevant information;

(iii) trafficking routes and patterns, including country of origin, transit countries;

(iv) method of transportation, including car, boat, plane, on foot; and

(v) border crossing without legal travel documents.

Training.

43. (1) The Ministries responsible for home affairs and human services and social security shall provide training for law enforcement, immigration, and other relevant officials including the Ministerial Task Force members and the media, in addressing trafficking in persons.

(2) Any training provided under subsection (1) shall focus on-

(a) methods used in identifying victims of trafficking;

(b) methods for investigating cases of trafficking and prosecuting traffickers;

(c) methods for protecting the rights of victims, taking into account the need to consider human rights and special needs of all victims, and that all victims should be treated as victims rather than criminals; and

(d) methods for promoting the safety of victims, including, for example, the training of police and immigration officers, labour and health inspectors, social workers, mines officers and other frontline officials and related professionals, to recognise and refer victims of trafficking quickly.

(3) The Ministries responsible for home affairs and human services and social security shall seek the input and participation of other Ministries, appropriate non-governmental organisations and other organisations in the preparation and presentation of any training organised under this section.

Co-operation.

44. (1) Law enforcement, immigration, labour and other relevant agencies shall, as appropriate, cooperate with one another to prevent and prosecute trafficking crimes and to protect the victims of trafficking in persons, without prejudice to the victims' right to privacy, by exchanging and sharing information and participating in training programmes, in order, among other things to–

(a) identify victims and traffickers;

(b) identify the type of travel documents used to cross the border for the purpose of trafficking in persons;

(c) identify the means and methods used by criminal groups for the purpose of trafficking in persons;

(d) identify best practices on all aspects of preventing and combating trafficking in persons; and

(e) provide assistance and protection to victims, witnesses and victims who are witnesses or potential witnesses.

(2) Ministries and State agencies shall cooperate, as appropriate, with non-governmental organisations, other civil society institutions and international organisations in the development and implementation of policies, programmes and measures to prevent and combat trafficking in persons and to assist and protect victims.

Public awareness.

45. (1) The Unit in collaboration with the Ministerial Task Force, in cooperation with other appropriate governmental agencies and appropriate non-governmental organisations, shall prepare public awareness programmes designed to educate potential victims of trafficking in persons and their families of the risk of victimisation.

(2) Any public awareness programmes under subsection (1) shall include–

(a) information about the risk of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, life threatening diseases including human immunodeficiency virus or acquired immunodeficiency syndrome and other sexually transmitted diseases and psychological harm related to victimisation in trafficking cases; and

(b) information about potential victims' rights in Guyana and in major destination countries and under

international law, as well as method for reporting suspected recruitment activities.

(3) For trafficked persons, the Unit in cooperation with the other appropriate Governmental agencies and appropriate non-governmental organisations, shall prepare and disseminate educational materials designed to inform victims of trafficking in Guyana of their rights, the measures in place to ensure their safety, recovery and safe return to their home countries or places of residence in Guyana, and how to contact appropriate law enforcement authorities.

(4) The materials under subsection (3) shall include, as appropriate, pamphlets, brochures, posters, advertisements in mass media, and any other methods appropriate for reaching victims of trafficking.

(5) The Minister responsible for human services and social security, in cooperation with other appropriate Governmental agencies and appropriate non-governmental organisations, shall prepare and disseminate public awareness materials designed to discourage the demand that fosters the exploitation of persons, especially women and children, and that leads to trafficking –

(a) the materials may include information on the impact of trafficking on individual victims, aggregate information on trafficking world-wide and domestically, as well as warnings of the potential for criminal consequences for taking part in trafficking including, as appropriate, pamphlets, brochures, posters, advertisements in mass media, and any appropriate methods; and

(b) materials described in this section may include information on the impact of trafficking on individual victims but shall not include any information on the

experiences of individual victims to preserve the privacy of the victim and the victim's family.

(6) All public awareness programmes established under this section shall be evaluated periodically by the Ministerial Task Force and shall have a component which caters for persons with disabilities, to ensure their effectiveness.

Publication of identity of persons implicated in trafficking.

46. (1) The Minister responsible for home affairs shall periodically identify, in a public report, every person who is a trafficker of persons, or who had knowingly assisted or conspired with another person to commit the offence of trafficking in persons.

(2) Persons identified in reports under subsection (1), or whom an overseas consular official knows or has reason to believe is a trafficker of persons, or who has knowingly assisted or conspired with a trafficker to traffic in persons, shall not receive an entrance or transit visa.

(3) The visas of persons identified in reports under subsection (1) shall be revoked.

Border inspection.

47. (1) The Minister responsible for home affairs shall implement policies to screen persons entering or leaving the country to determine if they are victims of trafficking in persons.

(2) The screening shall be undertaken with consideration for the right of individuals to travel and shall not result in undue invasion of the individual's privacy or undue restriction of the individual's freedom of movement.

(3) On the identification of a victim or suspected victim of trafficking, the Unit shall be immediately informed.

Applicability of labour standards.

48. (1) Standards for working conditions specified in the labour laws shall apply equally to persons with or without the legal right to work in Guyana.

(2) The Minister responsible for labour shall cause to be investigated complaints of unlawful working conditions without regard to the immigration statuses of complainants and without regard to the nature of the work or services involved.

PART VII

SECURITY AND CONTROL OF DOCUMENTS

Integrity of travel and identity documents.

49. (1) The Minister responsible for home affairs shall appoint a committee to monitor the quality of travel and identity documents issued by the competent authority to ensure that they comply with the International Civil Aviation Organisation standards and that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued.

(2) The task of the Committee shall include–

(a) monitoring technical developments in the field of anti-counterfeiting in order to recommend improvements to any documents as they develop;

(b) monitoring the issuance of travel documents abroad, with attention to patterns of abuse such as misrepresentation, corruption and fraud;

(c) monitoring the issuance of travel documents domestically, with attention to patterns of abuse such as misrepresentation, corruption and fraud; and

(d) forwarding examples of abuse described in the paragraphs (b) and (c) to the appropriate authorities for investigation.

Verification of legitimacy and validity of document.

50. (1) Upon request by the appropriate authority or representative of another State, the Minister responsible for home affairs shall verify within a reasonable time, the legitimacy and validity of travel or identity documents issued or purported to have been issued by the authority and suspected of being used for trafficking in persons.

(2) The Minister responsible for home affairs shall assign an appropriate officer to respond to inquiries mentioned in subsection (1) or to establish procedures for responding to the inquiries in a regular and timely manner.

PART VIII
GENERAL

Plea bargaining option.
Cap. 10:09

51. The Criminal Procedure (Plea Bargaining and Plea Agreement) Act shall apply to all summary and indictable offences under this Act.

Limitation Act not to apply for compensation.
Cap. 7:02
Cap. 8:02

52. The Limitation Act shall not apply to proceedings instituted by a victim against a person convicted under this Act for compensation in accordance with this Act, section 14 of the Summary Jurisdiction (Offences) Act or any other law.

Removal of limitation period for summary matters.
Cap. 10:02

53. The limitation period of six months prescribed in the Summary Jurisdiction (Procedure) Act for the making of a complaint of a summary offence shall not be applicable to summary offences under this Act:

Provided that where an offence against this Act is punishable on summary conviction and on conviction on indictment, nothing in this section shall be deemed to restrict the power to commence proceedings for conviction on indictment for that offence or for any other act, relating to the offence under this Act.

Provision of accommodation.

54. The Government, through the Ministry responsible for home affairs and the Ministry responsible for human services and social security, may provide accommodation for adults and children who are victims.

Power to make regulations.

55. The Minister may make regulations for the better carrying out of the provisions of this Act.

Order to increase fines.

56. The Minister may, by order, increase the fines provided for under this Act subject to negative resolution of the National Assembly.

Provision of certified interpreters.

57. Any interpreter who provides services under this Act shall be a certified interpreter.

Amendment of Childcare and Protection Agency Act. Cap. 46:07

58. Section 4(3) of the Childcare and Protection Agency Act is amended by the substitution for that subsection, of the following –

"(3) Except as otherwise provided for in the Combating of Trafficking in Persons Act, the Agency shall have complete and final jurisdiction in relation to those matters provided for in subsection (1) but not covered by the laws mentioned in that subsection.".

Repeal. Cap. 10:06

59. The Combating of Trafficking in Persons Act is repealed and any person who has been charged with any offence under that Act immediately before this Act came into force shall, on conviction, be liable to the punishment prescribed by that Act.

FIRST SCHEDULE Section 18(3)

National Referral Mechanism for Victims of Trafficking

1. The Ministerial Taskforce together with the Counter- Trafficking in Persons Unit of the Ministry of Human Services and Social Security shall be the principal authorities to implement and have oversight of the National Referral Mechanism (NRM).

2. All co-ordination of the NRM shall be conducted by the Unit and the execution of the NRM shall be done by a multi-sectoral team ("NRM Team") which shall provide services, as may be required, to any identified victim of trafficking in persons.

3. There shall be four elements utilised to ensure adequate support and protection is provided to victims of trafficking in persons which shall include –

   (a) identification;

   (b) consent, referral of the victim for support and protection services and provision of support and protection to victims of trafficking;

   (c) safe return, where applicable, or social inclusion and closure; and

   (d) use of basic co-operation agreements or Memoranda of Understanding (MOUs) between Government and other entities which set out the scope of the agreement and responsibilities of each party to the agreement or MOU.

4. In relation to paragraph 3(b) above, when a victim of trafficking in persons is identified, a reflection period of ten days shall be given to that victim to decide whether –

   (a) to consent to referral for support or protection services;

   (b) to decline receipt of any victim assistance or support; or

(c) to exit the process and decline to go forward with the participation as a witness or victim in any prosecution under the Act.

5. The following basic principles of the NRM shall be applied by the Unit and the NRM Team when utilising the NRM–

(a) a victim-centred approach;

(b) development of individual care or assistance plans;

(c) informed consent of victim;

(d) protection of and respect for human rights of the victim;

(e) gender responsiveness and appropriateness approach; and

(f) non-discrimination and maintenance of appropriate data as set out below, and in the case of children, the best interests of the child shall be paramount.

IDENTIFICATION

1. The Unit and the Counter-Trafficking in Persons Unit of the Guyana Police Force shall be the agencies responsible for verifying that a person is a victim of trafficking in persons.
2. All other agencies and non- governmental organisations, which have formed a reasonable suspicion that a person is a victim of trafficking in persons, shall refer that person to the Unit for appropriate assistance.

CONSENT

A person identified as a victim of trafficking in persons shall give consent to be referred for any support or protection services using the consent form prescribed by the Unit before any referral may be made.

REFERRAL FOR SERVICES FOR PROTECTION AND PRESERVATION OF HUMAN RIGHTS OF VICTIM OF TRAFFICKING IN PERSONS

1. A Referral Form shall be completed by the Unit only if consent was first obtained from the identified victim of trafficking in persons.

2. The services for support and protection for which an identified victim of trafficking in persons shall be referred include –

    (a) the crafting of an individual care or assistance plan, including risk assessment;
    (b) provision of security;
    (c) rescue;
    (d) provision of shelter through an identified shelter home, where required;
    (e) provision of legal representation and advisory services through the Guyana Legal Aid Clinic;
    (f) provision of counselling services including family counselling;
    (g) health care;
    (h) family tracing;
    (i) language services, including spoken and written interpretation, where applicable;
    (j) rehabilitation and reintegration including psycho-social support; and
    (k) provision of education and empowerment skills.

SAFE RETURN, SOCIAL INCLUSION OR CLOSURE

This shall be in accordance with the provisions of the Act.

MEMORANDA OF UNDERSTANDING

Memoranda of understanding are to be executed with identified partners and shall include the scope of co-operation, identification of authorised representatives, roles and responsibilities of partners, dispute resolution, methods of evaluation, approved use of data, and confidentiality.

MONITORING AND EVALUATION

Documentation and Reporting

1. The progress of the implementation of the NRM shall be tracked on a continuous basis, employing high standards of data capture which shall be the focus of the Ministerial Task Force through an appropriate mechanism which shall promote continuous assessment.

2. There shall be maintenance of log books, registers and filing of referrals, consent forms and care plans related to all victims of trafficking in persons.
3. All records shall be kept in a confidential manner.
4. It shall be a requirement for all members of the NRM Team to maintain careful documentation with respect to each individual plan and services in support of the NRM.

NATIONAL REFERRAL MECHANISM SUPPORT

1. Appropriate training of persons who are part of or provide support to the NRM shall be facilitated by the Ministerial Task Force and the Unit.
2. A standard core curriculum developed by the Ministerial Task Force and the Unit shall be used, which shall include sensitisation training.

SECOND SCHEDULE Section 7(1)

Information to be used by the Court to determine the restitution to be paid by a convicted person to the victim

Restitution shall seek to restore a victim of trafficking in persons to the victim's circumstances prior to being trafficked in accordance with the following –

1. Identity – The victim shall be returned to the victim's full identity and dignity and shall be provided with identification documents and other documentation in support of the victim's existence.

2. Restoration of liberty – The victim shall be restored to full freedom without fear of victimisation.

3. Enjoyment and restoration of human rights – The enjoyment of all human rights including of the right to freedom, protection, expression, and access to water and food shall be restored to the victim.

4. Family life and citizenship – Victims shall be allowed to return to their family and country and live without fear and be afforded appropriate protection.

5. Return of property or payment for loss suffered - Itemised property loss and approximate valuation provided shall be based on the current market value of the property. Loss suffered shall be based on the itemisation of loss including pain and suffering.

6. Reimbursement of expenses as a result of victimisation – The quantified cost of being placed in bondage or any circumstance in which the victim's freedom was curtailed shall be taken into consideration.

7. Provision of services – All victims shall be provided with compensation which will allow the victim to access all the services that may be needed to restore the victim to "wholesomeness".

EXPLANATORY MEMORANDUM

This Bill repeals and replaces the Combating of Trafficking in Persons Act 2005 to provide more comprehensive measures to combat trafficking in persons synonymous with international best practices and changing socio-political needs. Trafficking in persons is a violation of human rights such as the unassailable right to liberty, freedom of movement and the right to not be subjected to cruel, inhuman and degrading treatment. The Bill provides measures to protect the rights of individuals and prevent and combat trafficking of persons within or across the borders of Guyana.

PART I of the Bill provides for the preliminary provisions of the Bill, including the definition of the key words and expressions used throughout the Bill and the object of the Bill. The object of the Bill is to prescribe measures to combat trafficking in persons including children.

PART II of the Bill sets out criminal offences, and those offences have extraterritorial effect. It provides that trafficking in persons is an offence and anyone who commits this offence is liable on summary conviction to imprisonment for five years. However, conviction on indictment carries a penalty of life imprisonment. In both instances, the person's property can be forfeited and restitution to the victim can be ordered. This Part also provides for ancillary offences. Additionally, this Part also makes it an offence to transport a person or child across an international border for the purpose of exploiting the person's or child's prostitution. This Part also provides the court with sentencing guidelines and a number of aggravated circumstances that can result in the adjustment of the sentence of a person convicted for trafficking in persons. This Part further stipulates that consent of past sexual behavior or history of the victim is irrelevant. Moreover, this Part provides that the legal age of consent to sex or of marriage cannot be used as a defence to trafficking in persons. A further protection that this Part offers is that the victim is immune from prosecution for immigration offences. Additionally, this Part provides that a body corporate may also be guilty of trafficking in persons and any ancillary offences.

PART III of the Bill establishes the Counter-Trafficking in Persons Unit which shall be responsible for protecting and assisting victims of trafficking. The Guyana Police Force shall provide assistance to the Unit and the Unit is expected to engage with the Ministerial Task Force and shall be responsible for the protection and assistance of victims of trafficking. This Part also

provides for the court to conduct case management proceedings to ensure that cases are heard expeditiously. Also, this Part sets out that the Childcare and Protection Agency shall be responsible for and collaborate with the Unit on matters related to child victims of trafficking. Further, this Part provides that all steps shall be taken to identify the victims of trafficking and that the authorities shall provide protection to victims and their families. Moreover, this Part stipulates that victims may be eligible to participate in any applicable witness protection programme. Further, this Part provides that to ensure protection of victims questioning or interviews with victims shall be held in privacy. This Part also makes provision for victims to be provided assistance and support, including counselling, housing, financial, employment and immigration services.

PART IV of the Bill sets out provisions relating to investigation and court procedure. This Part requires a mandatory record to be kept of the conduct of an investigation into a trafficking in persons' offence. It provides that paper committals are permitted for indictable matters and it prohibits confrontation between the accused and the victim.

PART V of the Bill makes provision for the misuse of transportation in committing a trafficking in persons' offence. It provides for the safe handling of children travelling within or into Guyana without a parent, guardian or responsible adult. The Bill requires that their documents be retained and subsequently surrendered upon arrival to the immigration authority or other authority. It also provides that the Government shall educate citizens about sex tourism, sexual exploitation and forced labour. To this end, this Part provides that the Government shall coordinate educational activities with the airline, hotel and taxi industries and others.

PART VI of the Bill deals with the prevention of trafficking in persons and provides that the President shall establish a Ministerial Task Force. This Part provides for the Task Force to comprise members of various sectors including the immigration and law enforcement, legal affairs, foreign affairs, public health, Amerindian affairs and human services and social security. The role, responsibilities and activities of the Task Force in the prevention of trafficking are also set out under this Part. This Part also establishes a Secretariat which shall be responsible for carrying out the administrative functions of the Task Force. Additionally, this Part also deals with data collection and dissemination and it entails collecting and periodically publishing statistical data on trafficking. Further, this Part also provides for training of law enforcement, immigration and other officials and for the Unit and Task Force to conduct public awareness.

PART VII of the Bill provides that the Minister responsible for home affairs shall appoint a committee to monitor the quality of travel and identity documents issued by the competent authority. This is to ensure that those documents comply with the International Civil Aviation Organisation's standards and cannot easily be misused and falsified or unlawfully altered, replicated or issued.

PART VIII of the Bill provides for the general and miscellaneous provisions. This Part provides that the Criminal Procedure (Plea Bargaining and Plea Agreement) Act, Cap. 10:09 shall apply to offences under this Act. This Part further stipulates that the Limitation Act, Cap. 7:02 will not be applicable to proceedings instituted by a victim of trafficking for compensation, whether under this Act or any other law. Further, this Part provides that accommodation for victims of trafficking may be established by the Government. This Part further amends the Childcare and Protection Act, Cap. 46:07 to place responsibility for children who are victims of trafficking within the framework and mechanisms of this Act. Additionally, this Part provides that the Minister may make regulations to give effect to this Act and may by order increase any fines provided for under the Act. Finally, this Part repeals the Combating of Trafficking in Persons Act 2005.

The **First Schedule** to the Act sets out the procedure for the National Referral Mechanism for Victims of Trafficking.

The **Second Schedule** to the Act provides the information that the courts will use to compute the amount of restitution that the convicted person will pay to victims of trafficking.

Vindhya V. Persaud

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