

SCHEDULE

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**BILLS
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Bill No. 2 *Prevention of Trafficking In Persons Bill* 2009

THE PREVENTION OF TRAFFICKING IN PERSONS BILL, 2009.

MEMORANDUM.

The objects of this Bill are—

- (a) to combat trafficking in persons, a contemporary manifestation of modern day slavery whose victims are predominantly women and children;
- (b) to provide legislation necessary for criminalizing the offence of Trafficking in Persons and prosecution of offenders;
- (c) to provide for the prevention and suppression of the offence of Trafficking in Persons;
- (d) to provide for protection, assistance and support to victims of Trafficking in Persons with full respect of their human rights;
- (e) to promote co-operation amongst countries in combating Trafficking in Persons

Part I of the Bill—PRELIMINARY, provides for the commencement of the Bill and interpretation of the words and phrases used in the Bill.

Part II of the Bill—TRAFFICKING IN PERSONS, prohibits trafficking in persons by introducing the offences of Trafficking in Persons and aggravated Trafficking in Persons, and the penalties of imprisonment upon conviction. In the case of a legal person the court may also make orders like temporary or permanent closure, deregistration, dissolution, or disqualification from practice of certain activities, in addition to any other punishment.

This part also creates offences and penalties for acts that promote Trafficking in Persons, offences related to Trafficking in Persons, engaging the labour or services of a victim of Trafficking in Persons, failure to disclose a conviction; and imposes a duty on the community to report suspected cases of trafficking.

Part III of the Bill—PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS, provides for the protection, assistance and support to victims of Trafficking in Persons. It provides for non discrimination of victims of Trafficking on any basis, and protects them from being penalized for crimes committed as a result of their trafficking status. It provides for protection, assistance and support to victims by way of giving them information, providing them with opportunity to express themselves on matters concerning their cases, and victim friendly investigations and court proceedings, including confidentiality of their identity. This part also provides for provision of available medical, social, material, and other assistance to victims, and their referral to other organizations for assistance and support where necessary. It provides for institution of civil proceedings by victims of Trafficking in Persons, and a waiver on filing fees for such cases.

Part III of the Bill further provides for the repatriation of victims to and from Uganda, processing of the necessary documents, and deferring repatriation of victims in appropriate cases. It also provides for restitution and compensation to victims of Trafficking in Persons, payable by the offenders.

Part IV of the Bill—JURISDICTION, provides for the jurisdiction of Ugandan courts in cases of Trafficking in Persons, including extra-territorial jurisdiction with consent of the Attorney General.

Part V of the Bill—PREVENTION OF TRAFFICKING IN PERSONS OFFICE, provides for the designation of the Anti Trafficking office by the Minister, to be responsible for the coordination, monitoring and overseeing the implementation of the Act, and provides for the functions of that office.

Part VI of the Bill—MISCELLANEOUS PROVISIONS, empowers the court to order the confiscation of all the proceedings derived from the commission of the crime, and the Minister to make regulations to give effect to the Act.

HON. WINIFRED MASIKO (MP),
Rukungiri District.

THE PREVENTION OF TRAFFICKING IN PERSONS BILL, 2009.

ARRANGEMENT OF CLAUSES.

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- 2. Interpretation

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- 3. Offence of Trafficking in Persons
- 4. Aggravated Trafficking in Persons
- 5. Engaging the Labour or Services of a Victim of trafficking
- 6. Promoting Trafficking in Persons
- 7. Offences Related to Trafficking in Persons
- 8. Failure to Disclose Conviction
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- 20. Designation of Prevention of Trafficking in Persons Office

Clause.

PART VI—MISCELLANEOUS PROVISIONS

- 21. Confiscation and Forfeiture of Proceeds of Trafficking
- 22. Regulations

SCHEDULE

Currency Point

A Bill for an Act

ENTITLED

THE TRAFFICKING IN PERSONS ACT, 2009.

An Act to provide for the prohibition of Trafficking in Persons, creation of offences, prosecution and punishment of offenders, prevention of the vice, protection of victims of Trafficking in Persons, and other related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. Commencement.

This Act shall come into force upon publication in the Gazette.

2. Interpretation.

In this Act, unless the context otherwise requires—

- (a) “Child” means a person below the age of 18 years;
- (b) “Debt Bondage” means the status or condition arising from a pledge by the debtor of his or her personal services or labor, or those of a person under his or her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied towards the liquidation of the debt;

- (c) “Exploitation” includes at a minimum, sexual exploitation, forced marriage, child marriage, forced labor, harmful child labour, use of a child in armed conflict, use of a person in illegal activities, debt bondage, slavery or practices similar to slavery or servitude, human sacrifice, the removal of organs or body parts for sale or for purposes of witchcraft, harmful rituals or practices;
- (d) “Forced Labour” means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him/herself voluntarily;
- (e) “Gazette” means the Uganda Gazette, and includes any supplement of that Gazette;
- (f) “Minister” means the Minister in charge of Internal Affairs;
- (g) “Prostitution” means the activities of a “prostitute” as defined in the Penal Code Act – “a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain”;
- (h) “Public officer” means a person holding or acting in any public office; public office means an office in the public service;
- (i) “Pornography” means any representation, through publication, exhibition, cinematography, indecent show, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities, or any representation of the sexual parts of a person for primarily sexual excitement;
- (j) “Sex Tourism” means a program organized by travel and tourism – related establishments or individuals, which consists of tourism packages or activities, utilizing and offering escort and sexual services and practices offered for any persons as part of work recreation;

- (k) "Sexual Exploitation" means the use of a person in prostitution, sex tourism, pornography, the production of pornographic materials, or the use of a person for sexual intercourse or other lascivious conduct;
- (l) "Slavery" is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;
- (m) "Slave Trade" includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged;
- (n) "Trafficking in 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, of abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;
- (o) "Victim of Trafficking" includes a person who is being or has been trafficked as per the definition of Trafficking in Persons provided under this Act.

PART II—TRAFFICKING IN PERSONS

3. Offence of Trafficking in Persons.

(1) Any person, natural or legal who recruits, transports, transfers, harbours or receives a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, commits an offence and is liable to imprisonment for fifteen years.

(2) Notwithstanding the provisions of (1), where the offender is a legal person, it shall be liable to a fine of one thousand currency points, and temporary or permanent closure, deregistration, dissolution, or disqualification from practice of certain activities.

(3) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall constitute "trafficking in persons" even if this does not involve any of the means set forth in (1).

(4) For purposes of this section, the consent of the trafficked person to the intended acts of exploitation or, if a child, the consent of his/her parent or guardian, shall be irrelevant.

4. Aggravated Trafficking in Persons.

In cases where—

- (a) the victim of trafficking is a child;
- (b) adoption, guardianship, fostering is undertaken for the purpose of exploitation;
- (c) the offence is committed by a syndicate, or on large scale;
- (d) the offender engaged in organizing or directing another person or persons to commit the offence;
- (e) the offence is committed by a close relative or a person having the parental care, authority or control over the victim;
- (f) the offence is committed by a public officer;
- (g) the offence is committed by military personnel or law enforcement officer;
- (h) the victim dies, becomes a person of unsound mind, suffers mutilation, gets infected with HIV/ AIDS or any other life threatening illness;

- (i) the offender commits the offence of Aggravated Trafficking in Persons, and shall be liable to imprisonment for life.

5. Engaging the Labour or Services of a Victim of Trafficking in Persons.

A person who while knowing or having reason to believe that a person is a victim of trafficking, engages the labour or services of that victim in that status, commits an offence and is liable to imprisonment for ten years.

6. Promoting Trafficking in Persons.

Any person who—

- (a) knowingly leases or subleases, uses or allows to be used any house, building or establishment for the purpose of exploitation;
- (b) produces, prints, issues or distributes, any document or information of any government agency, which relates to immigration, without authority;
- (c) tampers with, or falsifies any government or government agency's document or information relating to the immigration regulations or requirements;
- (d) utters or aids any person to utter any false document relating to immigration for the purpose of facilitating that person's entry or stay in Uganda, or exit from the country;
- (e) gives or facilitates the giving of false information to any authority for the purpose of enabling the entry, stay in Uganda, or exit from the country of any person;
- (f) advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet of any pornographic or other material intended or likely to facilitate trafficking in persons;

- (g) in any way engages in the selling or buying of persons;
- (h) recruits, transports, transfers, harbours or receives a child for any purpose without authority of the parent or guardian of such child, except that this provision shall not apply where the recruitment, transportation, transfer, harbouring or receipt is done lawfully, in good faith and in the best interests of the child;
- (i) abandons a child. in circumstances likely to cause fear, isolation, injury, pain or other harm; or to facilitate the trafficking of that child;

commits an offence and is liable to imprisonment for five years, or a fine of 1,000 currency points or to both such imprisonment and fine, and on subsequent conviction to a term of imprisonment of seven years without the option of a fine.

7. Offences Related to Trafficking in Persons

Any person who—

- (a) attempts to traffic in persons;
- (b) conspires with another person to do an act of trafficking in persons;
- (c) recruits, transports, transfers, harbours, provides or receives a person for domestic or overseas employment or training or apprenticeship without any clear prior arrangement for the same;
- (d) recruits a person below 18 years in any form of employment without the prior knowledge and consent of the parent or guardian of that person about the nature, terms and conditions of the employment;
- (e) introduces or matches any person to a foreign national, for marriage in consideration for material or economic gain;

(f) confiscates, conceals, or destroys a passport, travel documents, or other personal documents or belongings of a person for the purpose of unlawfully denying that person freedom of movement, or access to any public services;

(g) adopts or facilitates the adoption of a person for illicit purposes;

commits an offence and shall be liable to imprisonment for five years or a fine of 1,000 currency points or to both such imprisonment and fine, and on subsequent conviction to a term of imprisonment of seven years without the option of a fine.

8. Failure to Disclose Conviction.

A person who, having been convicted of a trafficking offence under this Act fails to disclose that conviction—

(a) when applying for employment which places him or her in a position of authority or care of children; or

(b) when offering or agreeing to take care of or supervise children,

commits an offence and is liable on conviction to a fine, not exceeding twenty five currency points or to a term of imprisonment not exceeding three years or both.

9. Duty to Report Trafficking in Persons.

(1) Every member of the community, who knows that any person has committed or intends to commit an offence under this part of the Act, shall report the matter to the police or other authority for appropriate action.

(2) Any person who knowing that a person has committed or intends to commit an offence, does not report to police or other authority, commits an offence and is liable to a fine of 10 (ten) currency points or imprisonment for six months.

PART III—PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS.

10. Non Discrimination of Victims of Trafficking in Persons.

(1) Measures for the protection, assistance and support to victims of trafficking in persons shall be interpreted and applied in a way that is not discriminatory to persons on the basis of race, religion, belief, age, family status, culture, language, nationality or gender.

(2) Any person who applies the measures for protection, assistance and support of victims in a discriminatory manner commits an offence and is liable to a fine of 10 (ten) currency points or imprisonment for six months.

11. Protection, Assistance and Support for Victims of Trafficking.

(1) A victim of trafficking shall be legally recognized as such and shall not be penalized for any crime committed as a direct result of his or her trafficking.

(2) A victim of trafficking shall be informed in a language that he or she understands about the different stages of any proceedings, and about her/his rights and duties.

(3) A victim of trafficking shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the proceedings.

(4) The institution of a criminal charge arising from acts of trafficking in persons shall not affect the rights of a victim to pursue a civil case for damages.

(5) A person instituting proceedings under this section shall be exempted from payment of any filing fees required under civil procedure laws.

(6) A victim of trafficking in persons will be accorded the available health and social services, medical care, counseling and psychological assistance, on a confidential basis and with full respect of his/her privacy, in a language she/he understands.

(7) A victim of trafficking shall be considered for provision of safe and appropriate accommodation and material assistance, where necessary and possible.

(8) Protection, Assistance and Support to children shall be provided in accordance with their special needs, especially with regard to accommodation, education and care.

(9) The protection, assistance and support prescribed in (6) - (8) above may be provided by or in cooperation with Non Governmental Organizations and other elements of civil society.

(10) Public Officers and any other person involved in the detection, investigation, prosecution or trial of offences under this Act shall whenever necessary, refer victims to appropriate organizations and institutions for assistance and support.

(11) A victim of trafficking shall be entitled to information on the nature of protection, assistance and support he or she is entitled to and the possibilities of assistance and support by Non Governmental Organizations and other victim agencies.

12. Confidentiality.

(1) At any stage of the investigation or trial of an offence under this Act, law enforcement officers, prosecutors, judicial officers and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the victim of trafficking.

(2) For the purpose of (1), proceedings of the court shall be conducted in camera, outside the presence of the media, in cases involving children, sexual exploitation, and other cases where the court considers this appropriate.

(3) Any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or director of a film in case of the movie industry, or any person utilizing trimedia facilities or information technology who publishes or causes publicity of the names and personal circumstances or any other information tending to establish the victim's identity without authority, commits an offence and is liable to a fine of two hundred and fifty currency points.

13. Repatriation of Victims of Trafficking In Persons.

(1) The Minister in cooperation with the appropriate government agencies shall be responsible for the facilitation of repatriation of victims of trafficking in persons to and from Uganda.

(2) Where the repatriation of a Ugandan victim is likely to expose the victim to greater risks or to compromise his or her safety, the Minister may through the relevant office negotiate with the host government for the extension of appropriate residency permits, work permits and maintenance as may be necessary to protect the victim.

(3) Where the repatriation of a foreign victim is likely to expose the victim to greater risks, to compromise his or her safety, or where presence of the victim is necessary for court proceedings, the Minister may facilitate the extension of appropriate residency permits, work permits and maintenance as may be necessary to protect, assist and support the victim.

(4) On getting notice of a victim of trafficking in persons in a foreign country, the minister shall verify whether the victim is a citizen or a permanent resident of Uganda and shall; where a victim is proved to be a Ugandan or a permanent resident without proper documentation, issue the relevant documents and other relevant authorization to facilitate the repatriation of the victim to or from Uganda.

14. Restitution.

Where a person is convicted of trafficking in persons under this Act, the court shall in addition to any other punishment, order that person to pay restitution to the victim or other person or organization which may have incurred expenses on the victim's behalf for—

- (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) costs of re-integration in society; and
- (e) any other costs that the court may deem fit.

15. Compensation.

Where a person is convicted of trafficking in persons under this Act, the court may in addition to any other punishment order that person to pay compensation to the victim for—

- (a) Physical injury;
- (b) Emotional distress;
- (c) Pain and suffering;
- (d) Loss or damage;
- (e) Any other damage that the court may deem fit.

16. Absence of Victims and Court Awards.

The return of the victim to his or her country, or other absence of the victim from the jurisdiction shall not prejudice the victim's right to receive restitution or compensation.

PART IV—JURISDICTION.

17. Jurisdiction.

A case under this Act shall be tried where the offence was committed, or where any of its components occurred, or where the trafficked person actually resided at the time of the commission of the offence.

18. Extra-Territorial Jurisdiction.

This Act shall apply to offences committed outside Uganda where—

- (1) A person who, while being a citizen of, or permanently residing in Uganda, commits an act outside Uganda, which act would constitute an offence had it been committed in Uganda.
- (2) The victim was a citizen of Uganda at the time of commission of the offence.
- (3) The offence was committed partly inside and partly outside Uganda.
- (4) A substantial proportion of the effects of the offence have occurred or taken place within the territory of Uganda.

Provided that—

- (a) no proceedings shall be instituted under this section without the written consent of the Attorney General;
- (b) if the consent of the Attorney General is received under (a) proceedings may be instituted in any appropriate court and such court shall have jurisdiction to try the matter as if the offence or offences had been committed within its jurisdiction;
- (c) a person shall not be tried for an offence under this section if that person has been acquitted or convicted of the same offence in another country.

19. Extradition.

A person charged with an offence under this Act shall be liable to extradition under the existing Extradition laws.

PART V—PREVENTION OF TRAFFICKING IN PERSONS OFFICE

20. Designation of Prevention of Trafficking in Persons Office.

- (1) The Minister shall designate an office to be responsible for the coordination, monitoring and overseeing the implementation of this Act.
- (2) The designated office shall have the following functions—
 - (a) to formulate a comprehensive and integrated program to prevent and suppress trafficking in persons;
 - (b) to draft an annual National Plan of Action on Prohibition of Trafficking in Persons taking into account activities on prevention, prosecution, and protection;
 - (c) to develop measures and policies to protect, assist and support victims of trafficking, taking particular consideration of the age, gender and special needs of victims of trafficking in persons;

- (d) to establish a data bank on cases of trafficking in persons and conduct continuing research and study on the pattern and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;
- (e) to engage in consultation, coordination, cooperation and advocacy with governmental and Non-Governmental Organizations, among other entities, to advance the objects of this Act;
- (f) to initiate the training and awareness of government personnel, law enforcement officials and the public, particularly among risk groups and communities, of the dangers of trafficking and protections that are available for victims of trafficking;
- (g) to propose rules and regulations to the Minister as may be necessary for effective implementation of this Act;
- (h) to carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under this Act.

PART VI—MISCELLANEOUS PROVISIONS

21. Confiscation and Forfeiture of Proceeds of Trafficking.

(1) In addition to any penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture of all the established proceeds and properties derived from the commission of the crime.

(2) Where the proceeds and properties derived from the offence have been destroyed, diminished in value or otherwise rendered worthless by an act or omission, directly or indirectly of the offender or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds or property.

(3) All awards of damages and costs of proceedings under this Act shall be paid directly by the offender, and where the offender fails to pay the same shall be recovered like a civil debt.

22. Regulations.

(1) The Minister may by statutory instrument make regulations to effect implementation of the provisions of this Act, and promote its objects.

(2) The Minister may by statutory instrument and with the approval of cabinet amend the schedule to this Act.

SCHEDULE

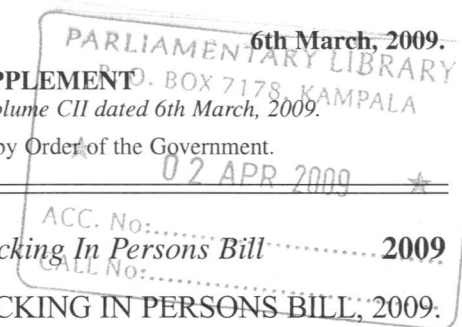
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