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**THE TRAFFICKING IN PERSONS (PREVENTION AND
SUPPRESSION) ACT, 2008**

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No. 27 of 2008

**AN ACT TO FACILITATE THE BAHAMAS FULFILLING
OBLIGATIONS UNDER THE UNITED NATIONS
PROTOCOL RESPECTING THE TRAFFICKING IN
PERSONS AND TO PROVIDE COMPREHENSIVE
MEASURES TO COMBAT THAT ACTIVITY.**

[Date of Assent – 9th December, 2008]

Enacted by the Parliament of The Bahamas.

Short
title.
Interpre-
tation.

1. This Act may be cited as the Trafficking in
Persons (Prevention and Suppression) Act, 2008.

2. In this Act -
“abuse of a position of vulnerability”
means such abuse that the person
believes he has no reasonable
alternative but to submit to the labour
or service demanded of the person,
and includes but is not limited to
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 reduce capacity to form
judgments by virtue of being a child;
“child” means any person under eighteen
years of age;

“child pornography” means -

- (a) audio or visual depiction of any kind, whether -
 - (i) made or produced by electronic, mechanical or other means; or
 - (ii) embodied in a disc, tape, film or other device, whether electronically or otherwise, so as to be capable of being retrieved or reproduced therefrom, of sexually explicit conduct involving a child; or

- (b) any representation of the genitalia of a child, where such audio or visual depiction or representation lacks genuine literary, artistic, or scientific value;

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

- (i) threats of serious harm to or physical restraints against any person,
- (ii) 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 persons; or
- (iii) the abuse or threatened abuse of the legal process;

“debt bondage” means the status or condition of a debtor arising from a pledge by him of his personal services or those of a person under his control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

“exploitation” means -

- (i) keeping a person in a state of slavery;
- (ii) subjecting a person to practices similar to slavery;
- (iii) compelling or causing a person to provide forced labour or services;
- (iv) keeping a person in a state of servitude, including sexual servitude;
- (v) exploitation of prostitution of another;
- (vi) engaging in any form of commercial sexual exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child pornography;
- (vii) illicit removal of human organs;

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

“illicit removal of organs” refers to the unlawful conduct, and not to legitimate medical procedures for which proper consent has been obtained;

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

“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 explicit conduct” includes actual or simulated sexual activity, such as sexual intercourse whether between persons of the same or opposite sex and whether involving genital, anal or oral sex, bestiality, masturbation, sadistic or masochistic abuse;

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

- (a) prostitution;
- (b) the production of child pornography or other pornographic material;
- (c) any other sexual activity, as a result of being subjected to threat, coercion, abduction, the effects of narcotic drugs, force, abuse of authority or fraud;

“slavery” means the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised;

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power or of a 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, for the purposes of exploitation;

“victim” means the person in respect of whom the offence of trafficking in persons is committed.

PART II
CRIMINAL OFFENCES AND RELATED PROVISIONS

**Trafficking
in persons.**

3. (1) Whoever engages in or conspires to engage in, or attempts to engage in, or assist or otherwise facilitates another person to engage in "trafficking in persons" shall -

- (i) on summary conviction -
 - (a) be sentenced to not less than three years nor more than five years imprisonment;
 - (b) be subject to forfeiture of property under section 7; and
 - (c) be ordered to pay full restitution to the victim under section 6.
- (ii) on conviction on information -
 - (a) be sentenced to life imprisonment or to a term not less than five years;
 - (b) be subject to forfeiture of property under section 7; and
 - (c) be ordered to pay full restitution to the victim under section 6.

(2) A person commits the offence of trafficking in persons where, for the purpose of exploitation he -

- (a) recruits, transports, transfers, harbours or receives another person within The Bahamas;
- (b) recruits, transports or transfers another person from The Bahamas to another country; or
- (c) recruits, transports, transfers, or receives or facilitates the arrival of another person from another country into The Bahamas,

by any of the means specified in subsection (3).

(3) The means referred to in subsection (2) are -

- (a) threat or use of force or other form of coercion;
- (b) abduction;
- (c) deception or fraud;
- (d) the abuse of -
 - (i) power; or
 - (ii) a position of vulnerability;
- (e) the giving or receiving of a benefit in order to obtain the consent of a person who has control over another person.

(4) Notwithstanding the absence of the use of any of the means specified in paragraphs (a) to (e) of subsection (3) a person who recruits, transports, transfers, harbours or receives a child for the purpose of exploitation of that child commits the offence of trafficking in persons.

(5) In subsection (3) a reference to "deception or fraud" includes deceiving another person about the fact that the other person's exit from or arrival in The Bahamas is for a purpose that involves the provision by the other person of sexual services in or outside The Bahamas or will involve the other person's exploitation or the confiscation of the other person's travel or identity document.

4. (1) A person who, for the purpose of committing or facilitating an offence under subsection (1) of section 3 conceals, removes, withholds or destroys any -

- (a) travel document that belongs to another person; or
- (b) document that establishes or purports to establish another person's identity or immigration status,

is liable on -

- (i) summary conviction to imprisonment for a term of three years;
- (ii) conviction on information for imprisonment for a term of ten years.

Unlawful
withholding
of identifi-
cation
papers.

(2) Every person who receives a financial or other benefit knowing that it results from the offence of trafficking in persons commits an offence and is liable on -

- (a) summary conviction to a fine of ten thousand dollars or to imprisonment for three years or to both such fine and imprisonment;
- (b) conviction on information to a fine of fifteen thousand dollars or to imprisonment for a term of ten years or to both such fine and imprisonment.

(3) For the purposes of this section, an offence under subsection (1) is facilitated -

- (a) where the facilitator knows that such an offence is intended to be facilitated;
- (b) whether or not the facilitator knows the specific nature of the offence that is intended to be facilitated; and
- (c) whether or not the offence was actually committed.

Trans-
porting
a person
for the
purpose of
exploiting
such
person's
prostitu-
tion.

5. (1) Whoever knowingly transports or conspires to transport, or attempts to transport or assists another person engaged in transporting any person in The Bahamas or across an international border for the purpose of that person engaging in prostitution commits an offence and shall be liable on summary conviction to be punished in accordance with subsections (2) and (3).

(2) Persons convicted of the crime of transporting a person for the purpose of exploiting that person's prostitution shall be liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for three years.

(3) The presence of any one of the following aggravating factors resulting from acts of the defendant can permit a longer sentence of five years in lieu of that mentioned in subsection (2) together with forfeiture of the conveyance used for transporting the victim -

Resti-
tution.

- (a) transporting two or more persons at the same time;
- (b) permanent or life-threatening bodily injury to a victim;
- (c) transportation of one or more children; or
- (d) transporting as part of the activity of an organized criminal group.

6. (1) Where a defendant is convicted of trafficking in persons under this Act, the court shall order the defendant to pay restitution to the victim.

(2) Restitution shall compensate the victim 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) lost income;
- (e) attorney's fees and other cost such as victim advocate fees;
- (f) compensation for emotional distress, pain and suffering; and
- (g) any other loss suffered by the victim.

(3) Restitution shall be paid to the victim promptly upon the conviction of the defendant and any proceeds from the property forfeited under section 7 shall be applied first to the payment of restitution.

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

Forfeiture.

7. (1) All property, including but not limited to money, valuables and other movable and immovable property, of persons convicted of the crime of trafficking in persons under section 3 that was used or intended to be used, or was obtained in the course of the crime, or benefits gained from the proceeds of the crime, shall be forfeited to the Crown on behalf of The Bahamas subject to subsection (2).

(2) Where the court, is satisfied beyond any reasonable doubt that -

- (a) the person who was the owner of the conveyance; and
- (b) in the case of an aircraft or ship, every person who was a responsible officer thereof,

when it was made use of for the purpose of trafficking in persons, was not concerned in or privy to such use, the conveyance shall be restored to the owner thereof by the court on application of the owner.

(3) Subsection (2) shall mutatis mutandis apply to a forfeiture of a conveyance under section 5(3).

Sentencing
guidelines.

8. (1) Where a person is convicted on information of the crime of trafficking in persons the following provisions as regards his sentence, other than a life sentence, 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 the victim suffers a serious bodily injury due to any act or omission of the defendant, or if the defendant commits a sexual assault against the victim, five years may be added to the sentence;
- (c) if the victim had not attained the age of eighteen years, five years may be added to the sentence;
- (d) if, in the course of trafficking or subsequent exploitation, the defendant recklessly caused the victim to be exposed to a life threatening illness, or if the defendant 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 life threatening injury, ten years may be added to the sentence;

- (f) if the trafficking was part of the activity of an organized criminal group three years may be added to the sentence; or
 - (g) if trafficking was part of the activity of an organized criminal group and the defendant organized 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 but not limited to a parent or guardian, teacher, children's club leader, or any other person who has been entrusted with the care or supervision of the child, four years may be added to the sentence.
- (2) In this section -
- (a) "dangerous weapon" means an instrument capable of inflicting death or serious bodily injury and includes an object that is not an instrument capable of inflicting death or serious bodily injury but closely resembles such an instrument or is used in such a way that it creates the impression that the object is an instrument capable of inflicting death or serious bodily injury;
 - (b) "life-threatening illness" means any illness that involves a substantial risk of death, and includes Human Immune Deficiency Virus (HIV) infection and tuberculosis;
 - (c) "organized criminal group" means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more offences established under this section in order to obtain, directly or indirectly, a financial or other material benefit;

- (d) "permanent or life-threatening bodily injury" means injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent; maltreatment to a life-threatening degree, such as by denial of food or medical care that results in substantial impairment of function.
- (e) "serious bodily injury" means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.
- (f) "sexual assault" means causing another to engage in a sexual act by using force against that person, threatening or placing that person in fear that any person will be subjected to death, serious bodily injury, or kidnapping, and engaging in a sexual act with an incapacitated person, or a person who cannot express consent or with a minor that constitutes statutory rape.

Consent or
past sexual
behaviour
history of
irrelevant.

9. (1) In a prosecution for trafficking in persons under section 3 or the offence under section 4 the alleged consent of a person to the intended or realized exploitation is irrelevant.

(2) In a prosecution for the offence of trafficking in persons under section 3, 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 prove the victim's sexual predisposition.

Immunity
of victim
from pro-
secution.

Extra-
dition.

10. Where a person provides evidence that he is a victim he shall not be liable to prosecution for any offence against the laws relating to immigration or prostitution, that is a direct result of the offence of trafficking in persons committed against him.

11. (1) The offence of trafficking in persons shall constitute an extraditable offence for the purposes of the Extradition Act and in that respect any party to the Protocol shall be deemed a "treaty State" within the meaning of that Act.

(2) In this Act "Protocol" means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

PART III

ASSISTANCE AND PROTECTION FOR VICTIMS

Protection
for the
safety of
victims.

12. (1) All law enforcement agencies and other appropriate authorities shall take all steps necessary to identify victims of trafficking.

(2) When victims are identified, these authorities shall provide reasonable protection to them to prevent their recapture by the traffickers and their associates.

(3) It shall be the responsibility of the Minister responsible for national security to secure the victim and the victim's family if they reside in The Bahamas from threats, reprisals or intimidation by the traffickers and their associates, and ensure the victim has an opportunity to consult with a victim's advocate or other appropriate person to develop a safety plan.

Witness
protection.

13. Victims who are witnesses or potential witnesses should be considered for entry into the Witness Protection programme established under the Justice Protection Act if it is determined that an offence involving a crime of violence directed at the witness or potential witness is likely to be committed.

Immigration
regime
for
victims.

14. (1) Where the victim is a person who does not have the right to remain or reside in The Bahamas, The Director of Immigration shall, subject to the provisions of this section, grant the victim the appropriate visas or other required authorization to allow him to remain in The Bahamas for the duration of time necessary to carry out, where feasible, the -

- (a) process of identifying the victim or verifying his identity and nationality;
- (b) activities necessary to find accommodation for and other assistance to the victim;
- (c) criminal prosecution against the person who has committed or facilitated the commission of the offence of trafficking in persons;
- (d) investigations necessary to prosecute the offence of trafficking in persons or facilitating the offence and other legal and administrative activities.

Proceedings
to be in
camera.

15. (1) In any proceedings involving a victim who -

- (a) is a child;
- (b) has been traumatized by the experience of exploitation;
- (c) is mentally or physically challenged; or
- (d) is a person against whom any of the offences of indecent assault, carnal abuse, abduction, rape, buggery and prostitution was committed,

the court shall order that such proceedings be held in camera though members of the press may be present.

(2) No publication shall be made of any particulars which may, or tend to, identify the identity of the victim.

(3) A person who commits a breach of the confidentiality enjoined by this section shall be guilty of an offence and shall on summary conviction be liable to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

Information
for
victims.

16. The Minister responsible for national security shall inform victims of trafficking, in a language they can understand, of their legal rights and the progress of relevant court and administrative proceedings, as appropriate, including but not limited to prosecution of the criminal offenders, proceedings for the return of the victims to their country of citizenship or lawful residence.

Opportunity
for pre-
sentation
of victim's
views
and
concerns.

17. The court shall provide -
- (a) 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;
 - (b) an interpreter who speaks a language the victim understands during the course of legal proceedings.

PART IV

PREVENTION OF TRAFFICKING IN PERSONS

Entry,
search and
seizure.

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

(2) A warrant issued under subsection (1) may authorize a peace officer named therein to enter the premises specified therein, with such assistance and by the use of such force as is necessary and reasonable to -

- (a) enter upon the premises;
- (b) search the premises for evidence of or relating to an offence under this Act;
- (c) seize property found in the course of the search that the constable believes, on reasonable grounds, to be evidence of or relating to an offence under this Act.

(3) A warrant shall not be issued under this section unless the informant or some other person has given the magistrate, on oath, such further information as the magistrate may require concerning the grounds on which the issue of the warrant is sought.

(4) A warrant issued under this section shall include -

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the trafficking offence;
- (b) a description of the kind of 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 authorized to be made at any time of the day or night, or during the specified hours of the day or night.

(5) For the purposes 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.,
constable.

19. Any person who threatens, assaults, or obstructs a constable acting in the execution of his duty under this Act commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a period of six months or to both such fine and imprisonment.

Support
for
victims.

20. (1) The Minister responsible for national security in conjunction with the Minister responsible for social services shall develop a plan in consultation with non-governmental organizations 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 the 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 can understand;
- (c) medical assistance in a language the victim can understand;
- (d) other medical assistance as appropriate;
- (e) employment, educational, and training opportunities; and
- (f) legal assistance or legal information in a language the victim understands.

(2) Victims may exercise the option to communicate with and receive visits from family, friends and attorneys-at-law.

(3) In the absence of exigent circumstances, victims of trafficking, once identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals but no child victim shall in any circumstance be housed in a prison or detention facility for accused or convicted persons.

(4) The authorities mentioned in subsection (1) shall take into account the age, gender and special needs of victims and accompanying dependent children in formulating plans to provide services to them and in delivering such services.

(3) A person who is an accessory after the fact to -

(a) the offence of murder or treason, is guilty of an offence and liable to imprisonment for life;

(b) any felony other than as mentioned in paragraph (a), is guilty of an offence and liable to imprisonment for a term of imprisonment not exceeding fifteen years,

and may also be tried together with the principal offender.”.

(3) Sections 126 and 127 of the principal Act are repealed and replaced as follows -

“Police supervision and monitoring.

126. (1) When any person is convicted of any offence punishable with imprisonment for a period of three years or upwards, the court may if it thinks fit, at the time of passing sentence of imprisonment on such person, also order -

(a) that the person shall in addition to imprisonment be subject to police supervision as provided in section 127 for a period not exceeding five years from the date of the expiration of such sentence;

Repeal
and
replacement
of sections
126 and
127 of the
principal
Act.



No. 28 of 2008

AN ACT TO AMEND THE PENAL CODE

[Date of Assent – 9th December, 2008]

Enacted by the Parliament of The Bahamas.

Short
title and
commence-
ment.

1. (1) This Act, which amends the Penal Code may be cited as the Penal Code (Amendment) Act, 2008.

(2) This Act shall come into force on such day as may be appointed by notice by the Minister.

Insertion
of new
section
88A into
the
principal
Act.

2. The principal Act is amended by the insertion immediately after section 88 of the following new section -

“Acces-
sory
after
the
fact.

88A. (1) An accessory after the fact to the commission of an offence is one who, knowing that a person has been a party to an offence, receives, comforts or assists that person for the purpose of enabling that person to avoid the due process of the law.

(2) Where a person is charged with being an accessory after the fact to the commission of an offence, evidence of the conviction of the other person of the offence is admissible against the accused and in the absence of evidence to the contrary, is proof that the offence was committed.

(b) on application by the person and with the consent of the Crown, that the person in lieu of any part of the term of imprisonment determined by the court be subject to electronic monitoring carried out in accordance with rules made under section 127 (2).

(2) When any person is convicted of any offence punishable with imprisonment for a period of three years or less, the court may if it thinks fit, in lieu of imprisonment or any part thereof, order that the person be subject to electronic monitoring carried out in accordance with rules made under section 127 (2).

(3) When any person is granted bail in respect of any offence punishable with imprisonment for a period of three years or upwards, the court if it thinks fit may at the request of the prosecutor, as a condition of the bail, order that the person while on bail be subject to electronic monitoring carried out in accordance with rules made under section 127 (2).

Require-
ments
from

127. (1) Every person subject to police supervision and who is at large in The Bahamas shall personally -

persons
subject
to super-
vision.

Ch. 99.

- (a) report himself once in each month on such day as may be directed by the court or as may be prescribed by rules under this section, to the officer in charge of the police station nearest to his place of residence;
- (b) notify the respective aforementioned officer of any change of residence; and
- (c) if having been convicted of a sexual offence under section 10 or 11 of the Sexual Offences and Domestic Violence Act, also notify such officer -
 - (i) of his current place of work; and
 - (ii) of any educational, sporting, civic or other activities in which he is involved.

(2) The Minister responsible for National Security may make rules carrying out the provisions of this section.”.