

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
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Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

PROHIBITION OF TRAFFICKING IN PERSONS ACT 2017

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PROHIBITION OF TRAFFICKING IN PERSONS ACT 2017

AN ACT to prohibit all forms of trafficking in persons in the Republic of the Marshall Islands and to ensure protection for women, children, men from the revictimization of trafficking in persons.

Commencement:

April 11, 2017

Source:

P.L. 2017-38

PART I - PRELIMINARY

§1001. Short title.

This Act may be cited as the Prohibition of Trafficking in Persons Act 2017.

§1002. Purpose and General Principles.

- (1) The purposes of this Law are:
 - (a) To prevent and combat trafficking in persons in the Republic of the Marshall Islands;
 - (b) To protect and assist the victims of the such trafficking, while maintaining full respect and protecting their human rights;
 - (c) To ensure just and effective investigation, prosecution and punishment of traffickers; and
 - (d) To promote and facilitate national and international cooperation in order to meet these objectives.

- (2) The measures set forth in this law shall be interpreted and applied in a way that is not discriminatory on any ground, such as race, color, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinion, disability, property, birth, immigration status, the fact that the person has been trafficked or has participated in the sex industry, or other status.
- (3) Child victims shall be treated fairly and equally regardless of their or their parents or the legal guardian's race, color, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinion, disability, property, birth, immigration status, the fact that the person has been trafficked or has participated in the sex industry, or other status.

§1003. Definitions.

- (1) For the purpose of this Law, the following definitions shall apply:
 - (a) "Abuse of a position of vulnerability" shall refer to any situation in which the person involved believes he or she has no real and acceptable alternative but to submit; or shall mean taking advantage of the vulnerable position a person is placed in as a result of fear, coercion, infliction of physical or emotional harm or influence.
 - (b) "Accompanying dependents" shall mean any family members and/or close relative, whom the trafficked person is legally obligated to provide support and was present with the victim of trafficking in persons at the time of the offense, as well as any child born during or after the time of the offense.
 - (c) 'Accomplice' shall mean any person natural or otherwise, that supports, contributes to, funds, or provides material resources, and any other assistance and in any form, to support the commission of an offense as set out under this Act.
 - (d) "Child" shall mean any person below the age of eighteen;
 - (e) "Commercial carrier" shall mean a legal or a natural person who engages in the transportation of goods or people for commercial gain;

- (f) “Coercion” shall mean the use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to
 - (i) threats of harm or physical restraint of 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 person;
 - (iii) abuse or any threat linked to the legal status of a person;
 - (iv) Psychological pressure;
- (g) “Deception” shall mean any conduct that is intended to deceive a person; or shall mean any deception by words or by conduct
- (h) “Debt bondage” shall mean the status or condition arising from a pledge by a debtor of his or her personal services or those of a person under his or her control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or if the length of those services is not limited and defined.
- (i) “Exploitation of prostitution of others” shall mean the unlawful obtaining of financial or other material benefit from the prostitution of another person;
- (j) “Forced labor or services” shall mean all work or service that is exacted from any person under the threat of any penalty and for which the person concerned has not offered him or herself voluntarily.
- (k) “Prostitution” shall have the same definition as defined in the Prostitution Act.
- (l) “Public Official” shall mean any person holding a legislative, executive, or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;
- (m) “Revictimization” shall mean a situation in which the same person suffers from more than one criminal incident over a specific period of time.

- (n) “Servitude” shall mean the labor conditions and/or the obligations to work or to render services from which the person in question cannot escape and which he or she cannot change
- (o) “Sexual Exploitation” shall mean the obtaining of financial 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 materials
- (p) “Slavery” shall mean the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised or the status or condition of a person over whom control is exercised to the extent that the person is treated like property.
- (q) “Support Person” shall mean a specially trained person designated to assist the child throughout the justice process to prevent risks of duress, revictimization and secondary victimization
- (r) “Victims of Trafficking” shall mean any natural persons who have been subject to trafficking in persons, or whom the relevant authorities reasonably believe is a victim of trafficking in persons, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.

PART II - JURISDICTION

§1004. Application of this Act within the territory.

This Act shall apply to any offense established under herein when:

- (a) the offense is committed within the territory of the Republic of the Marshall Islands;
- (b) the offense is committed on board a vessel or aircraft that is registered under the laws of the Republic of the Marshall Islands at the time the offense was committed;
- (c) the offense is committed partly within and partly outside the Republic’
- (d) the offense is committed outside the Republic provided that either the perpetrator or a victim is a citizen of the Republic, or both the perpetrator and the victim are citizens of the Republic;

PART III - CRIMINAL OFFENSES FOR TRAFFICKING IN PERSONS

§1005. Trafficking in Persons.

Any person who:

- (a) recruits, transports, transfers, harbors or receives another person;
- (b) 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;
- (c) for the purpose of exploitation of that person;

shall be guilty of the offense of trafficking in persons, and upon conviction shall be subject to a term of imprisonment not exceeding fifteen (15) years, and a fine not exceeding ten thousand dollars (\$10,000), or both.

§1006. Exploitation.

- (1) Exploitation within the meaning of this Act shall include:
 - (a) the exploitation of the prostitution of others or other forms of sexual exploitation;
 - (b) forced or coerced labor or services including bonded labor and debt bondage;
 - (c) slavery or practices similar to slavery;
 - (d) servitude including sexual servitude;
 - (e) the removal of organs;
 - (f) other forms of exploitation.
- (2) If the person subjected to exploitation is a child, exploitation shall also include:
 - (a) the use of procuring or offering of a child for illicit or criminal activities;
 - (b) the exploitation of the prostitution of others or other forms of sexual exploitation;

- (c) the use in armed conflict;
- (d) work that, by its nature or by the circumstances in which it is carried out, is likely to harm the health or safety of children;
- (e) the employment or use in work, where the said child has not reached the applicable minimum working age for the said employment or work;
- (f) other forms of exploitation.

§1007. Trafficking in Children.

- (1) Any person who:
 - (a) recruits, transports, transfers, harbors, arranges or receives a child;
 - (b) for the purpose of exploitation of that child;

shall be guilty of an offense of trafficking in persons, and upon conviction shall be subject to a term of imprisonment not exceeding twenty (20) years, and a fine not exceeding fifteen thousand dollars (\$15,000), or both.

- (2). The consent of the victim or the parent or a person having legal or de facto control of a child victim of trafficking to the intended exploitation set forth in subsection (1) shall be irrelevant, and shall not constitute a defense against any prosecution under this Act.

§1008. Forced Labor and Services.

Any person who makes use of the services or labor of a person or profits in any form from the services or labor of a person with the prior knowledge that such labor or services are performed or rendered under one more of the conditions described in Section 6 above, shall be guilty of an offense, and upon conviction shall be subject to a term of imprisonment of not more than fifteen (15) years or a fine not exceeding \$10,000 or both.

§1009. Non-Prosecution of victims of trafficking in persons.

- (1) A victim of trafficking in persons shall not be held criminally punishable for offenses committed by them, to the extent that such

involvement is a direct consequence of their situation as trafficked persons.

- (2) Notwithstanding the provisions of the Immigration Act 2006, a victim of trafficking in persons who is a foreign citizen shall not be held criminally liable for immigration offenses established under the Immigration Act, if entry into the Republic without lawful approval was occasioned by the fact that such person was a victim of an offense under this Act, and to the satisfaction of the Director of Immigration.
- (3) The Director of Immigration may cause to be issued to victims of trafficking under these circumstances, with the approval of the Minister for Justice, temporary visas or other temporary authorization allowing the presence of said victims in the Republic, pending investigations and or the prosecution of said cases.
- (4) Notwithstanding that, the Attorney General may exercise his or her authority to deport any victim of trafficking if he or she sees it best under the current circumstances.

§1010. Consent of trafficked person.

It shall not be a defense that the trafficked persons consented to the intended exploitation or that the intended exploitation did not occur.

PART IV - OFFENSES RELATED TO TRAFFICKING

§1011. Accomplice.

- (1) Any person, who knowingly participates as an accomplice in the crime of trafficking shall be guilty of an offense, and upon conviction, shall be liable to a term of imprisonment of not more than fifteen (15) years or to a fine of not more than five thousand dollars (\$5,000) or both.
- (2) A corporation or other entity whose management knowingly participates as an accomplice or accomplices in the crime of trafficking in persons, shall be guilty of an offense and upon conviction, shall be liable to a fine in an amount not exceeding two hundred and fifty thousand dollars (\$250,000).

§1012. Organizing and directing to commit an offense.

Any person who organizes or directs another person(s) or child(ren) to commit the crime of trafficking shall be guilty of the offense, and upon conviction shall be subject to a term of imprisonment of no less than fifteen (15) years, and a fine of not more than ten thousand dollars (\$10,000) or both.

§ 1013. Attempt.

Any person who attempts to commit the crime of trafficking in persons shall be guilty of an offense, and upon conviction shall be subject to a term imprisonment of not more than seven (7) years and a fine of not more than five thousand dollars (\$5,000) or both.

§1014. Aiding and Abetting

Any person who aids and abets another in the commission of an offense under this Act shall be guilty of an offense, and upon conviction, shall be subject to a term of imprisonment of not more than seven (7) years and a fine of not more than five thousand dollars (\$5,000) or both.

§1015. Unlawful handling of travel or identity documents.

- (1) Any person who without lawful authority makes, produces or alters any travel or identity document, whether actual or purported, in the course or furtherance of any offense under this Act, shall be guilty of an offense and upon conviction shall be subject to a term of imprisonment of not more than fifteen (15) years, and a fine of not more than ten thousand dollars (\$10,000), or both.
- (2) Any person who obtains, procures, destroys, conceals, removes, confiscates, withholds, alters, replicates, possesses, or facilitates the fraudulent use of another person's travel or identity document, with the intent to commit or to facilitate the commission of an offense under this Act, shall be guilty of an offense and upon conviction shall be subject to a term of imprisonment of not more than fifteen (15) years, and a fine of not more than ten thousand dollars (\$10,000) or both.

PART V- VICTIM ASSISTANCE AND PROTECTION

§1016. Information to victims.

- (1) Victims may be provided information on the nature of protection, assistance and support to which they are entitled and the possibilities of assistance and support by government and non-governmental organizations and other victim agencies, as well as information on any legal proceedings related to them.
- (2) Information shall be provided in a language that the victim understands. If the victim cannot read, he or she shall be briefed by the relevant government officials.

§1017. Provision of basic benefits and services to victims of trafficking in persons.

- (1) The relevant authorities may provide the basic benefits and services described below to victims of trafficking in persons in the Republic without regard to the immigration status of such victims.
- (2) Assistance may include:
 - (a) Safe and appropriate accommodation;
 - (b) Necessary medical treatment, including where appropriate, free optional confidential testing for HIV/AIDS and other sexually transmitted diseases;
 - (c) Counseling assistance on a confidential basis and with full respect for the privacy of the person concerned, in a language that he or she understands.
 - (d) Information regarding legal assistance to represent his or her interests in any criminal investigation
- (3) In appropriate cases and to the extent possible, assistance shall be provided to the accompanying dependents of the victim.

§1018. Protection of victims and witnesses in court.

- (1) In proceedings before the Court for an offense under this Act, a judge may order on application, or where the judge determines it is necessary in the interest of justice, and without prejudice to the rights of the accused, that;

- (a) Court proceedings be conducted in camera away from the presence of media and public;
 - (b) Records of the court proceedings be sealed;
 - (c) Evidence of a victim or a witness be heard through a video link or the use of other communications technology or behind a screen or similar adequate means out of view of the accused; provided however that the accused is afforded reasonable opportunity to cross-examine the witnesses at the said proceedings; and/ or
 - (d) The statement of a victim or a witness made during the pretrial phase in front of a judge shall, subject to the right of the defendant to object, be admissible as evidence.
- (2) The judge shall in accordance with the Rules of Evidence and upon motion or on his own volition, control or restrict certain questions in cross-examination of victims of trafficking in persons, to ensure that the victim of trafficking in person is not unduly battered, and the prosecution may, by motion, seek that questions related to the personal history, previous sexual behavior, the alleged character or the current or previous occupation of the victim be restricted.

§1019. Relocation of victims and/or witnesses.

The relevant agency of Government may, when necessary to safeguard the physical safety of a victim or witness, at the request of the victim or witness or in consultation with him or her, take all necessary measures to relocate him or her and to limit the disclosure of his or her name, address and other identifying personal information to the extent possible.

§1020 Court ordered compensation.

- (1) Where an offender is convicted of an offense under the present Act, the Court may order the offender to pay compensation to the victim, in addition to, or in place of, any other punishment ordered by the Court.
- (2) The aim of an order for compensation shall be to make reparation to the victim for the injury, loss or damage caused by the offender. An order for compensation may include payment for or towards:

- (a) Cost of medical, physical, psychological or psychiatric treatment by the victim;
- (b) Cost of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
- (c) Lost income and due wages according to national law and regulations regarding wages;
- (d) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
- (e) Any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by the Court.

§1021 Identification of victims of trafficking in persons.

- (1) The Office of the Attorney General in collaboration with the Marshall Islands Police Department or Public Safety shall establish national guidelines or procedures for identification of victims of trafficking.
- (2) The Office of the Attorney General in collaboration with the Marshall Islands Police Department or Public Safety shall develop and disseminate to professionals who are likely to encounter victims of trafficking information and materials concerning trafficking in persons, including, but not limited to, a procedural manual on the identification and referral of victims of trafficking in persons.
- (3) With a view of proper identification of victims of trafficking in persons, the relevant public authorities shall collaborate with relevant state and non state victim assistance organizations.

PART VI - MISCELLANEOUS

§1022. Repeal.

Sections 251.7, 251.8, 251.9, 251.10 AND 251.11 of the Criminal Code are hereby repealed.

§1023. Effective Date.

This Act shall take effect on the date of certification in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedure of the Nitijela.