

BILL No. 12 of 2004

Tuesday 27th July, 2004

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

27th July, 2004

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

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



BILL No. 12 of 2004

COMBATING TRAFFICKING IN PERSONS BILL 2004

ARRANGEMENT OF SECTIONS

SECTION

PART I – PRELIMINARY

1. Short title.
2. Interpretation.

PART II

CRIMINAL OFFENCES AND RELATED PROVISIONS

3. Trafficking in persons.
4. Unlawful withholding of identification papers.
5. Transporting a person for the purpose of exploiting such person's prostitution.
6. Restitution.
7. Forfeiture.
8. Sentencing guidelines.
9. Consent or past sexual behaviour history of victim is irrelevant.
10. Legal age of consent to sex not a defence in trafficking.
11. Victim immunity from prosecution.
12. Extradition.

**PART III
ASSISTANCE AND PROTECTION FOR VICTIMS**

13. Protection for the safety of victims.
14. Witness protection.
15. Protection for the privacy of victims.
16. Information for victims.
17. Opportunity for presentation of victim's views and concerns.
18. Support for victims.
19. Immigration status of victims.
20. Assistance for citizen; permanent resident victims abroad.
21. Verification of citizen; permanent resident status and age.
22. Return of victims to country of citizenship, permanent residence.
23. Victims unable to prove citizenship status through normal means.
24. Services for returned victims of trafficking.
25. Appropriate implementation for child victims.

**PART IV
MISUSE OF COMMERCIAL TRANSPORTATION**

26. Responsibilities of international transportation companies.
27. Liability of international transportation companies.
28. Role of Government.
29. Measures to ensure the safety of children travelling unattended across international borders.

**PART V
PREVENTING OF TRAFFICKING**

30. National Task Force for prevention of trafficking.
31. Data collection and dissemination.
32. Training.
33. Public awareness.
34. Exclusion of persons implicated in trafficking.
35. Border inspections.
36. Applicability of labour standards.

**PART VI
SECURITY AND CONTROL OF DOCUMENTS**

37. Integrity of travel and identity documents.
38. Verification of legitimacy and validity of documents.

4

**A BILL
Intituled**

AN ACT to provide comprehensive measures to combat trafficking in persons.

A.D.2004

Enacted by the Parliament of Guyana:-

PART I - PRELIMINARY

Short title.

1. This Act may be cited as the Combating of Trafficking in Persons Act 2004.

Interpretation.

2. In this Act -

- (a) “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 reduced capacity to form judgments by virtue of being a child;
- (b) “child” means any person under eighteen years of age;
- (c) “coercion” includes violent as well as some forms of non-violent or psychological coercion, including -

5

- (i) threats of serious harm to or physical restraint 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;
 - (iii) or the abuse or threatened abuse of the legal process;
- (d) "debt bondage" means the status or condition of a debtor arising from a pledge by the debtor 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;
- (e) "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 labor or services;
 - (iv) keeping a person in a state of servitude, including sexual servitude;
 - (v) exploitation of the prostitution of another;
 - (vi) engaging in any other 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;

- (f) “forced labor” means labor or services obtained or maintained through force, threat of force, or other means of coercion or physical restraint;
- (g) “illicit removal of organs” refers to the unlawful conduct, and not to legitimate medical procedures for which proper consent has been obtained;
- (h) “practices similar to slavery” includes, in general, debt bondage, serfdom, forced or servile marriages and delivery of children for exploitation;
- (i) “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;
- (j) “slavery” means the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised;
- (k) “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

7

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 purpose of exploitation.

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 assists another person to engage in or organises or directs other persons to engage in “trafficking in persons” shall -

- (a) be sentenced to any term of years or life imprisonment;
- (b) be subject to forfeiture of property under section 7; and
- (c) be ordered to pay full restitution to the trafficked person or persons under section 6.

(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 section 2(k) have been established.

Unlawful withholding of identification papers.

4. Any person who, 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 passport, immigration document, or other government identification document, whether actual or purported, belonging to another person commits an offence and shall on conviction be fined one million dollars and imprisoned not more than five years.

Transporting a person for the purpose of exploiting such persons's prostitution.

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

(2) Persons convicted of the crime of transporting a person for the purpose of that person's prostitution shall be liable to a fine of two million dollars and shall be imprisoned for not more than ten years, but the presence of any one of the following aggravating factors resulting from acts of the defendant can permit a longer sentence up to a maximum of twenty years -

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

Restitution.

6. (1) Where a defendant is convicted of trafficking in persons under section 3, 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 losses suffered by the victim.

(3) Restitution shall be paid to the victim promptly upon the conviction of the defendant, with the proceeds from property forfeited under section 7 applied first to payment of restitution. The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prejudice the victim's right to receive restitution.

Forfeiture.

7. 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 State. Overseas assets of

persons convicted of trafficking in persons shall also be subject to forfeiture to the extent they can be retrieved by Government.

Sentencing
guidelines.

8.(1) As factually appropriate, the following adjustments to the minimum sentence, or enhancements to the sentence of a person convicted of the crime of trafficking in persons shall apply -

- (a) if the convicted person used, threatened use, or caused another to use or threaten use of a dangerous weapon, two years shall be added to the minimum sentence;
- (b) if a trafficked person suffers a serious bodily injury, or if the convicted person commits a sexual assault against a trafficked person, five years shall be added to the minimum sentence;
- (c) if the trafficked person has not attained the age of eighteen years, five years shall be added to the minimum sentence;
- (d) if, in the course of trafficking or subsequent exploitation, the convicted person 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, five years shall be added to the minimum sentence;
- (e) if a trafficked person suffers a permanent or life threatening injury, ten years shall be added to the minimum sentence;

11

- (f) if a trafficked person dies as a result of the trafficking, the sentence shall be between twenty and thirty years imprisonment;
- (g) if the trafficking was part of the activity of an organised criminal group three years shall be added to the minimum; or
- (h) 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 shall be added to the minimum sentence;
- (i) 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 shall be added to the minimum sentence.

(2) In this section -

- (a) "dangerous weapon" means (i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or seriously bodily injury but (I) closely resembles such an instrument; or (II) 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 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, constitutes life- threatening bodily injury;
- (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, hospitalisation, 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

13

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 victim is irrelevant.

9. (1) In a prosecution for trafficking in persons under section 3, the alleged consent of a person to the intended or realised exploitation is irrelevant once any of the means or circumstances set forth in section 2(j) is established.

(2) In a prosecution for trafficking in persons under section 3, evidence of a victim's past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the victim engaged in other sexual behavior, or to prove the victim's sexual predisposition.

Legal age of consent to sex not a defence in trafficking.

10. Age of consent to sex, legal age of marriage, or other discretionary age shall not be used as a defense to trafficking.

Victim immunity from prosecution.

11. A victim of trafficking is not criminally liable for any migration-related offence, prostitution, or any other criminal offence that was a direct result from being trafficked.

Extradition.

12. Countries should extradite persons charged with trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with serious crimes.

PART 111

ASSISTANCE AND PROTECTION FOR VICTIMS

Protection for
the safety of
victims.

13. Investigative, prosecutorial, and other appropriate authorities shall take all steps necessary to identify victims of trafficking. Once victims are identified, these authorities shall provide reasonable protection to victims of trafficking to prevent recapture by the traffickers and their associates, secure the victim and the victim's family if they reside in Guyana from threats, reprisals or intimidation by the traffickers and their associates, and ensure the victim has an opportunity to consult with a victim advocate or other appropriate person to develop a safety plan.

Witness
protection.

14. Victims of trafficking who are witnesses or potential witnesses may be eligible for applicable witness relocation and protection programmes 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. The programmes may include -

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

Protection for
the privacy of
victims.

15. In a prosecution for trafficking in persons under section 3, or unlawful use of documents under section 4, the identity of the victim

and the victim's family should be kept confidential by ensuring that names and identifying information of the victim and victim's family are not released to the public, including by the defendant.

Information for victims.

16. The Ministry of Home Affairs 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, and procedures for seeking legal immigration status under section 19.

Opportunity for presentation of victim's views and concerns.

17. The Director of Public Prosecutions 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. An interpreter who speaks a language the victim understands should be made available to the victim during the course of legal proceedings.

Support for victims.

18.(1) Within one year of the enactment of this Act, the Ministry of Home Affairs in conjunction with the Ministry of Labour, Human Resources and Social Security shall develop plans, 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 -

16

- (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 material assistance as appropriate;
- (e) employment, educational, and training opportunities; and
- (f) legal assistance or legal information in a language the victim understands.

(2) Victims of trafficking shall be eligible to work and to receive proof of work authorisation for the duration of their presence in Guyana.

(3) Victims of trafficking and their accompanying dependent children shall be entitled to receive social benefits for the duration of their stay in Guyana as may be determined by the Minister responsible for social security.

(4) Residence in shelters or other facilities established under this section shall be voluntary, and victims may decline to stay in shelters.

(5) Victims shall have the option to communicate with and receive visits from family, friends and attorneys-at-law.

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

identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals under any circumstances.

(7) 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.

(8) Plans developed in accordance with subsection (1) shall be submitted for approval to the Cabinet and the said authorities shall also undertake periodic reviews of the plans 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 and dignity.

Immigration
status of
victims.

19.(1) The Ministry of Home Affairs shall 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 the criminal prosecution against the 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.

Cap.14:07

(2) Victims of trafficking shall be eligible for residence in Guyana in the manner prescribed in Immigration Act, provided they have complied with reasonable requests, if any, for assistance in the investigation or prosecution of acts of trafficking. Dependent children accompanying the victim also shall be eligible for resident status in Guyana in the manner prescribed in the said Act.

(3) A victim's spouse and children, and in the case of child victims, the parents or guardian, and the victim's siblings, shall be eligible to

join the victim in Guyana as part of the victim's initial application for residence under the preceding subsections.

Assistance for
citizen,
permanent
resident victims
abroad.

20.(1) The Ministry of Foreign Affairs, through its diplomatic missions and consular offices abroad, where practicable, shall offer assistance to citizens of or persons holding permanent residency in another country who are victims of trafficking in persons located abroad, including but not limited to -

- (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 but not limited to 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 his country without undue or unreasonable delay;
- (d) material assistance in returning to their last place of residence in their country in the same manner provided for other citizens or persons with right of permanent

residency who become stranded abroad when the country to which the victim was trafficked does not provide such assistance.

(2) The Ministry of Foreign Affairs, through its diplomatic missions and consular offices abroad, 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. In the case of diplomatic missions and consular offices of countries of destination of trafficking victims, such information shall be provided to appropriate authorities and to potential trafficking victims who are citizens or lawful residents of the country for which the mission or office has responsibility.

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

(4) The Ministry of Foreign Affairs in cooperation with other appropriate authorities shall develop plans within six months of the enactment of this Act for the safe, orderly return without undue or unreasonable delay of citizens or persons holding permanent residency in Guyana.

21.(1) Upon request by the appropriate authority or representative of another State, the Ministry of Home Affairs shall, without undue or unreasonable delay, verify whether a person who is a victim or trafficking in persons is a citizen, or national of, or holds permanent residency in Guyana.

Verification of
citizen, permanent
resident status and
age.

(2) Upon request by the appropriate authority or representative of another State, Ministry of Home Affairs shall, without undue or unreasonable delay, verify 1) the age of a person who is a victim of trafficking in persons and who is suspected of being a minor and 2) whether the victim is a citizen, national of, holds permanent residency in Guyana, or any other immigration status the victim may have in Guyana.

(3) The Ministry of Home Affairs shall designate an appropriate officer to respond to inquiries mentioned in subsections (1) and (2).

Return of victims to country of citizenship, permanent residence.

22.(1) Within six months of the enactment of this Act, the Ministry of Home Affairs in conjunction with other appropriate authorities shall develop plans for the safe return of victims to their country of citizenship or a country in which they hold permanent residency. Where possible, the Ministry of Home Affairs shall work closely with international organisations and NGO's in this process.

(2) Plans developed under subsection (1) shall take into account the right of victims to seek temporary or permanent residence under the provisions of section 19 and other rights guaranteed under other applicable laws.

Victims unable to prove citizenship status through normal means.

23.(1) Victims of trafficking abroad who claim to be citizens or persons holding permanent residency in Guyana, but whose identity cannot be verified through ordinary means, can establish their right to return to Guyana by demonstrating significant connections to this country through such factors as -

- (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;
- (f) native-speaker level understanding of spoken English;
- or
- (g) any other means.

(2) The list of factors in subsection (1) is not exhaustive, and not every factor is required to make the determination. Determinations under this section are to be made with due concern for compassion and justice to victims. The fact that the victim would not be eligible for citizenship based on the showing made under this section shall not be a bar to re-entry.

(3) Diplomatic missions abroad shall delegate a specific diplomat to make determinations under this section. Victims may appeal an adverse determination to the Minister of Legal Affairs.

(4) Where the Ministry of Legal Affairs determines an individual is eligible to re-enter Guyana under this section, the diplomatic mission abroad shall issue a certificate of identity, permitting re-entry.

Services for
returned victims
of trafficking.

24.(1) 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.

(2) Diplomatic missions and consular offices in destination countries shall provide assistance to returned victims of trafficking in securing restitution for their losses under the laws of the destination country, and every such mission and office shall designate an officer to take responsibility for providing this assistance.

Appropriate
implementation
for child victims.

25. The assistance in Part III shall be provided to trafficking victims who are children in a manner that is in the child's best interests and appropriate to their situation. Child trafficking victims shall be provided with appropriate services, which may include understanding of their rights, privacy, housing, care and age-appropriate support and rights specified in Part III. Special programmes should be developed to accommodate child witnesses including -

- (a) testimony of minor conducted outside court setting or by video;
- (b) all testimony and court proceedings take place with parent, legal guardian or foster parent present;
- (c) whenever safe and possible, children should be reunited with family members either in country of origin or destination country;
- (d) special mental and physical medical care tailored to the child's needs;
- (e) upon return to the country of origin or resettlement in a new country, child victims of trafficking should be guaranteed education which at least matches the general standard of education in the country.

PART IV

MISUSE OF COMMERCIAL TRANSPORTATION

Responsibilities of international transportation companies.

26. (1) International transportation companies must 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 selling or issuing tickets, boarding passes or similar travel documents and to staff collecting or checking tickets prior to or subsequent to boarding.

(3) Companies which fail to comply with any requirements of this section will be reprimanded. Repeated failure to comply may be sanctioned by revocation of licences to operate after a hearing.

Liability of international transportation companies.

27. When a transportation company knowingly transports victims of trafficking into a country, that company 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 designated under section 18 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 residency.

Role of Government.

28. Governments should take steps to educate citizens about sex tourism. It should warn citizens that travelling to another country to engage in sex with a minor or a trafficked person may be a crime in the destination country or in the home country, or may constitute child abuse. These steps should include -

- (a) cooperating with airline industry, hotel industry, taxi industry, and others to jointly produce educational materials alerting them to evidence of sex tourism by their customers and warning them against facilitating such behaviours;
- (b) warning citizens and employees in the industries mentioned in section 29 that a crime may be committed when someone engages in sex with a minor, sex tourism, or frequents a brothel holding trafficked women and children;
- (c) giving up to date information about the links between HIV/AIDS and other STDs and trafficking.

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

29. (1) Operators or crews of commercial vehicles, including airplanes, trains, and buses, shall hold the travel documents of children travelling into Guyana without a parent, guardian, or other responsible adult from the time the child boards the vehicle and shall surrender the documents upon arrival to the appropriate immigration authority.

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

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

PART V

PREVENTION OF TRAFFICKING

National Task Force
for prevention of
trafficking.

30.(1) The President shall establish an international agency task force to develop and implement a National Plan for the Prevention of Trafficking in Persons. Such a task force should include all aspects of trafficking including sex trafficking and labour trafficking .

(2) The President shall appoint the members of the task force, which shall include the Ministers of Legal Affairs, Foreign Affairs, Labour, Human Services and Social Security and Home Affairs and other appropriate high-level government officials including officials with responsibility for law enforcement, immigration, and human and social services.

(3) The task force shall carry out the following activities either directly or via one or more of the constituent ministries as appropriate -

- (a) develop the National Plan for the Prevention of Trafficking in Persons;
- (b) co-ordinate the implementation of the Plan;

- (c) co-ordinate the collection and sharing of trafficking data among government agencies. All 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 or 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 victims. This 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 Guyana government to work with non-governmental organisations and other elements of civil society to prevent trafficking and provide assistance to victims.

Data
collection and
dissemination.

31.(1) The Minister of Home Affairs shall collect and periodically publish statistical data on trafficking.

(2) The Minister of Home Affairs shall 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 subsection (1).

(3) The Minister of Home Affairs shall make best efforts to collect information relevant to tracking progress on trafficking, including but not limited to -

- (a) number of arrests, prosecutions, and successful convictions of traffickers and those committing trafficking related crimes (pimping, pandering, procuring, maintaining a brothel, visa fraud, document fraud, and other crimes related to trafficking);
- (b) statistics on the number of victims, including age, method of recruitment etc;
- (c) trafficking routes and patterns (country of origin, transit countries);
- (d) method of transportation (car, boat, plane, foot);
- (e) border crossing issues (with fraudulent documents, without).

Training.

32.(1) The Minister of Home Affairs shall provide training for law enforcement, immigration, and other relevant officials in addressing trafficking in persons.

(2) Such training shall focus on-

- (a) methods used in identifying victims of trafficking;

- (b) methods for prosecuting traffickers;
- (c) methods for protecting the rights of victims, taking into account the need to consider human rights and special needs of women and children victims, and that 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 to recognise victims of trafficking quickly.

(3) The Minister of Home Affairs shall seek the input and participation of appropriate non-governmental organisations and other relevant organisations in the preparation and presentation of training called for in this section.

Public
awareness.

33.(1) For those at risk of becoming trafficking victims the Ministry of Education 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. Such public awareness programmes shall include but shall not be limited to –

- (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, exposure to HIV/AIDS and other sexually transmitted disease, and psychological harm related to the 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 methods for reporting suspected recruitment activities.

(2) For trafficked persons the Ministry of Labour, Human Services and Social Security in cooperation with other appropriate governmental agencies and appropriate NGOs 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, and how to contact appropriate law enforcement authorities. Such materials shall include, as appropriate, pamphlets, brochures, posters, advertisements in mass media, and any other methods appropriate for reaching victims of trafficking.

(3) The Ministry of Labour, Human Services and Social Security in cooperation with other appropriate governmental agencies and appropriate NGO's shall prepare and disseminate public awareness materials designed to discourage the demand that foster the exploitation of persons, especially women and children, and that leads to trafficking -

(a) such materials may include information on 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. Such materials may include, as appropriate, pamphlets, brochures, posters, advertisements in mass media, and any appropriate methods.

(b) materials described in this section may include information on the impact of trafficking on individual victims. However, any information on the experiences of individual victims shall preserve the privacy of the victim and the victim's family.

(4) All public awareness programmes established under this section shall be evaluated periodically to ensure their effectiveness.

Exclusion of persons implicated in trafficking.

34. (1) The Minister of 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 to traffic 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.

35. (1) The Minister of Home Affairs shall implement policies to screen persons entering or leaving the country to determine if they are victims of trafficking in persons.

(2) Such 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.

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

(2) The Ministry of Labour shall investigate complaints of unlawful working conditions without regard to the immigration status of complainants and without regard to the nature of the work or services involved.

PART VI SECURITY AND CONTROL OF DOCUMENTS

37. (1) The Ministry of Home Affairs shall appoint a committee to monitor the quality of travel and identity documents issued by the Ministry of Home Affairs to ensure that they comply with International Civil Aviation

Integrity of
travel and
identity
documents.

Applicability
of labour
standards.

Border
inspection.

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, but not be limited to-
- (a) monitoring technical developments in the field of anti-counterfeiting in order to recommend improvements to such 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 paragraphs (b) and (c) to the appropriate authorities for investigation.

Verification of legitimacy and validity of documents.

38.(1) Upon request by the appropriate authority or representative of another state, the Ministry of 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 such authority and suspected of being used for trafficking in persons.

(2) The Ministry of Home Affairs shall designate an appropriate officer to respond to inquiries mentioned in subsection (1) or to established procedures for responding to such inquiries in a regular and timely fashion.

EXPLANATORY MEMORANDUM

This Bill provides comprehensive measures to combat trafficking in persons.

PART I of the Bill contains the short title of the Act and defines a number of words and expressions. "Abuse of a position of vulnerability" means the abuse that the person believes he has no alternative but to submit to. "Debt bondage means the conditions of a debtor arising from his pledge of personal services as a security for a debt when the services are not limited and defined. Words defined include "exploitation", "servitude", "slavery".

PART II of the Bill deals with criminal offences and related provisions. Clause 3 prescribes the penalty for trafficking in persons. The unlawful withholding of identification papers is an offence (Clause 4). Transporting a person across an international border for the purpose of exploiting such person's prostitution is an offence with a fine of two million dollars and imprisonment for ten years.

Where a defendant is convicted of trafficking in persons the court shall order the payment of restitution to the victim and all property of the defendant used in the course of the crime shall be forfeited to the State (clauses 6 and 7). Legal age of consent to sex or of marriage shall not be used as a defence to trafficking (clause 10).

PART III deals with assistance and protection for victims. Investigative and other authorities shall identify victims of trafficking to prevent their re-capture. (clause 13).

In any prosecution for trafficking in persons the identity of the victims should be kept confidential; they should be informed of their legal rights and provided an opportunity to present their views and concerns (clauses 15, 16, 17). Support services should be provided for victims of trafficking including housing, counselling, medical and legal assistance. Victims shall be eligible to work (clause 18). Victims shall be provided permits to remain in Guyana; they shall be eligible for residence in Guyana. (clause 19)

The Government through its diplomatic missions and consular offices abroad shall offer assistance to citizens or persons holding permanent residency in another country who are victims of trafficking in persons located abroad. (clause 20). Upon request by another State Guyana shall verify if a person who is a victim of trafficking in persons is a citizen or national of or holds permanent residency in, Guyana. (clause 21). Victims of trafficking shall be returned to their country of citizenship and victims abroad unable to prove citizenship of Guyana through normal channels may do so by demonstrating significant connections to this country, (clause 22 and 23).

PART IV deals with misuse of commercial transportation. International transportation companies have a duty to verify that passengers possess the necessary travel documents - passports, visas, to enter the destination country or a transit country and repeated failure to comply with this provision may lead to revocation of licences. (clause 26) Governments should take steps to educate citizens about sex tourism and there should be measures in place to ensure the safety of children travelling unattended across international borders. (clause 28 and 29).

PART V deals with prevention of trafficking for which there shall be an international task force including all aspects of trafficking - sex trafficking and labour trafficking (clause 30). The Government shall collect and periodically publish data on trafficking and provide training for law enforcement, immigration and other officials and prepare public awareness programmes to educate potential victims of trafficking of the risk of becoming victims through the use of debt bondage, exposure to HIV/AIDS and other sexually transmitted diseases.

PART VI deals with security and control of documents. Such documents should be of such a standard that they cannot easily be misused, readily falsified or unlawfully altered, replicated or issued. Upon request by another State the Government shall verify the validity of travel or identity documents.

Bebr Shadiq

Minister within the Ministry of Labour, Human Services and Social Security.