

ANTI-TRAFFICKING IN PERSONS BILL 2007

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A BILL

i n t i t u l e d

An Act to provide for the offence of trafficking in persons, the protection and support of trafficked persons, the establishment of the Council for Anti-Trafficking in Persons, and for matters connected therewith.

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Anti-Trafficking in Persons Act 2007.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires —

"this Act" includes any subsidiary legislation made under this Act;

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"prescribed" means prescribed by the Minister by regulations;

"fraudulent travel or identity document" means a travel or identity document that—

- (a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country;
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being improperly used by a person other than the rightful holder;

"exploitation" means all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs;

"child" means a person who is under the age of eighteen years;

"Court" means Sessions Court;

"Council" means the Council for Anti-Trafficking in Persons established under section 6;

"Minister" means the Minister charged with the responsibility for internal security;

"receiving country" means any country into which a trafficked person is brought as part of an act of trafficking in persons;

"trafficked person" means any person who is the victim or object of an act of trafficking in persons;

"coercion" means —

- (a) threat of serious harm to or physical restraint against any person;
- (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in

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serious harm to or physical restraint against any person;
or

(c) the abuse or threatened abuse of the legal process;

"officer of the Malaysian Maritime Enforcement Agency" has the same meaning assigned to it by the Malaysian Maritime Enforcement Agency Act 2004 [Act 633];

"immigration officer" has the same meaning assigned to it by the Immigration Act 1959/63 [Act 155];

"Officer of customs" has the same meaning assigned to it by the Customs Act 1967 [Act 235];

"Social Welfare Officer" means any Social Welfare Officer in the ministry or department responsible for welfare services and includes any Assistant Social Welfare Officer;

"Protection Officer" means any officer appointed under section 43;

"enforcement officer" means any officer specified in section 27;

"medical officer" means a registered medical practitioner in the service of the Government and includes a registered medical practitioner in any teaching hospital of a University;

"permanent resident" has the same meaning assigned to it by the Courts of Judicature Act 1964 [Act 91];

"trafficking in persons" or "traffics in persons" means the recruiting, transporting, transferring, harbouring, providing or receiving of a person for the purpose of exploitation;

"conveyance" means any vehicle, vessel, ship, aircraft, or any other mode of transport whether by air, sea or land;

"Protection Order" means an order made by a Magistrate for the care and protection of a trafficked person under paragraph

"premises" means house, building, factory, land, tenement, easement of any tenure, whether open or enclosed,

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whether built on or not, whether public or private, and whether maintained or not under statutory authority, and includes any container.

Scope of application

3. The offences under this Act apply, regardless of whether the conduct constituting the offence took place inside or outside Malaysia, in the following circumstances —

- (a) if Malaysia is the receiving country or the exploitation occurs in Malaysia; or
- (b) if the receiving country is a foreign country but the trafficking in persons starts in Malaysia or transits Malaysia.

Extension of Act to extra territorial offences

4. Any offence under this Act committed—

- (a) on the high seas on board any ship or on any aircraft registered in Malaysia;
- (b) by any citizen or permanent resident of Malaysia on the high seas on board any ship or on any aircraft; or
- (c) by any citizen or any permanent resident in any place outside and beyond the limits of Malaysia,

may be dealt with as if it had been committed at any place within Malaysia.

Prevailing law

5. (1) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to trafficking in persons.

(2) In the event of any conflict or inconsistency between the provisions of this Act and those of any other written laws, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written laws shall, to the extent of the conflict or inconsistency, be deemed to be superseded.

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PART II

COUNCIL FOR ANTI-TRAFFICKING IN PERSONS

Council for Anti-Trafficking in Persons

6. (1) A body to be known as Council for Anti-Trafficking in Persons shall be established for the purpose of this Act.

(2) The Council shall consist of the following members —

- (a) the Secretary General of the Ministry responsible for internal security, who shall be the Chairman;
- (b) the Secretary General of the Ministry responsible for foreign affairs, or his representative;
- (c) the Secretary General of the Ministry responsible for home affairs, or his representative;
- (d) the Secretary General of the Ministry responsible for women, family and community development, or his representative;
- (e) the Secretary General of the Ministry responsible for human resources, or his representative;
- (f) the Secretary General of the Ministry responsible for transport, or his representative;
- (g) the Secretary General of the Ministry responsible for information, or his representative;
- (h) the Attorney General of Malaysia, or his representative;
- (i) the Inspector General of Police, or his representative;
- (j) the Director-General of Immigration, or his representative;
- (k) the Director-General of Customs, or his representative;
- (l) the Director-General of Malaysian Maritime Enforcement, or his representative;
- (m) a representative of the Ministry responsible for internal security; and

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(n) not more than three persons from non-governmental organization or other relevant organizations having appropriate experience, knowledge and expertise in problems and on issues relating to trafficking in persons including the protection and support of trafficked persons, to be appointed by the Minister.

(3) Each member of the Council appointed under paragraph (2)(n) shall, unless he sooner resigns, hold office for a period not exceeding two years and is eligible for re-appointment.

(4) Any member of the Council appointed under paragraph (2)(n) may, at any time resign his office, by giving notice in writing to the Minister.

(5) The members of the Council specified under subsection (2) may be paid such allowances as the Minister may determine.

Functions and powers of Council

7. (1) The Council shall perform the functions of coordinating the implementation of this Act, formulating policies and programmes to prevent and suppress trafficking in persons including programmes in rendering assistance to trafficked persons, formulating protective programmes for trafficked persons and initiating education programmes to increase public awareness of the causes and consequences of the act of trafficking in persons.

(2) Without prejudice to the generality of subsection (1), it shall be the responsibility of the Council to —

- (a) formulate and oversee the implementation of a national action plan on the prevention and suppression of trafficking in persons including the support and protection of trafficked persons;
- (b) make recommendations to the Minister on all aspects of prevention and suppression of trafficking in persons;
- (c) monitor the immigration and emigration patterns in Malaysia for evidence of trafficking and to secure the prompt response of the relevant government agencies or bodies, and non-governmental organizations to problems on trafficking in persons brought to their attention;

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- (d) coordinate in the formulation of policies and monitor its implementation on issues of trafficking in persons with relevant government agencies or bodies and non-governmental organizations;
- (e) formulate and coordinate measures to inform and educate the public, including potential trafficked persons, on the causes and consequences of trafficking in persons;
- (f) cooperate and coordinate with international bodies and other similar regional bodies or committees in relation to the problems and issues of trafficking in persons including support and protection of trafficked persons;
- (g) advise the government on the issues of trafficking in persons including developments at the international level against the act of trafficking in persons;
- (h) collect and collate data and information, and authorise research, in relation to the prevention and suppression of trafficking in persons;
- (i) perform any other functions as directed by the Minister for the proper implementation of this Act.

(3) The Council shall have all such powers as may be necessary for, or in connection with, or incidental to, the performance of its functions under this Act.

Power of Minister to issue directions

8. The Minister may, from time to time, give the Council directions not inconsistent with this Act as to the performance of the functions and powers of the Council and the Council shall give effect to such directions.

Meetings of Council

9. (1) The Council shall meet as often as may be necessary for the performance of its functions at such time and place as the Chairman may determine.

(2) Seven members, including the Chairman, shall form the quorum of a meeting of the Council.

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(3) The Chairman shall preside over all its meetings.

(4) If the Chairman is unable for any reason to preside any meeting of the Council, the meeting shall be presided by a member elected from amongst the members present.

(5) The Council may invite any person to attend any meeting or deliberation of the Council for the purpose of advising it on any matter under discussion, but that person shall not be entitled to vote at the meeting.

(6) At any meeting of the Council, the Chairman shall have a deliberative vote and shall, in the event of an equality of votes, have a casting vote.

(7) Any person invited under subsection (5) may be paid such allowance as the Minister may determine.

(8) Subject to the provisions of this Act, the Council may make rules for regulating its meetings and proceedings.

Establishment of Committees

10. (1) The Council may establish such committees as it deems necessary or expedient to assist it in the performance of its functions and the exercise of its powers under this Act.

(2) A committee established under subsection (1)—

(a) shall be chaired by any member of the Council specified under paragraphs 6(2)(b) to (m);

(b) shall conform to and act in accordance with any direction given to it by the Council; and

(c) may determine its own procedure.

(3) Members of the committees established under subsection (1) may be appointed from amongst members of the Council or such other persons as the Council thinks fit.

(4) Except for members of the Committees appointed from amongst members of the Council, any other persons appointed as members of the Committees may be paid such allowance as the Minister may determine.

(5) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for reappointment.

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(6) The Council may revoke the appointment of any member of a committee without assigning any reason therefor.

(7) A member of a committee may, at any time, resign by giving notice in writing to the chairman of the committee.

(8) The Council may, at any time, discontinue or alter the constitution of a committee.

(9) A committee shall hold its meetings at such times and places as the chairman of the committee may determine.

(10) A committee may invite any person to attend any meeting of the committee for the purpose of advising it on any matter under discussion but that person shall not be entitled to vote at the meeting.

(11) Any person invited under subsection (10) may be paid such allowance as the Minister may determine.

Secretary of the Council and other officers

11. The Minister shall appoint a public officer to be the Secretary of the Council and such other public officers as may be necessary to assist the Council.

PART III

TRAFFICKING IN PERSONS OFFENCES, IMMUNITY, *ETC.*

Offence of trafficking in persons

12. Any person, who traffics in persons not being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to fine.

Offence of trafficking in persons by means of threat, force, *etc.*

13. Any person, who traffics in persons not being a child, for the purpose of exploitation, by one or more of the following means:

(a) threat;

(b) use of force or other forms of coercion;

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- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) abuse of power;
- (g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or
- (h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person,

commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.

Offence of trafficking in children

14. Any person, who traffics in persons being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.

Offence of profiting from exploitation of a trafficked person

15. Any person who profits from the exploitation of a trafficked person commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to a fine of not less than fifty thousand ringgit but not exceeding five hundred thousand ringgit.

Consent of trafficked person irrelevant

16. In a prosecution for an offence under section 12, 13 or 14, it shall not be a defence that the trafficked person consented to the act of trafficking in persons.

Past sexual behaviour irrelevant

17. A trafficked person's past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the trafficked person was engaged in other sexual behaviour or to prove the trafficked person's sexual predisposition.

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Fraudulent travel or identity documents

18. Any person who makes, obtains, gives, sells or possesses a fraudulent travel or identity document for the purpose of facilitating an act of trafficking in persons commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years, and shall also be liable to a fine of not less than fifty thousand ringgit but not exceeding five hundred thousand ringgit.

Recruiting persons

19. Any person who knowingly recruits, or agrees to recruit, another person to participate in the commission of an act of trafficking in persons, commits an offence and shall, on conviction be punished, with imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Providing facilities in support of trafficking in persons

20. Any person being —

- (a) the owner, occupier, lessee or person in charge of any premises, room or place, knowingly permits a meeting to be held in that premises, room or place; or
- (b) the owner, lessee or person in charge of any equipment or facility that allows for recording, conferencing or meetings via technology, knowingly permits that equipment or facility to be used,

for the purpose of committing an offence under this Act, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Providing services for purposes of trafficking in persons

21. (1) Any person who, directly or indirectly, provides or makes available financial services or facilities —

- (a) intending that the services or facilities will be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in

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part, for the purpose of committing or facilitating the commission of an act of trafficking in persons, or for the purpose of benefiting any person who is committing or facilitating the commission of an act of trafficking in persons; or

- (b) knowing or having reasonable grounds to believe that, in whole or in any part, the services or facilities will be used by or will benefit any person involved in an act of trafficking in persons,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to fine.

(2) For the purpose of subsection (1), "financial services or facilities" include the services or facilities offered by lawyers or accountants acting as nominees or agents for their clients.

Harbouring persons

22. (1) Any person who —

- (a) harbours a person; or
- (b) prevents, hinders or interferes with the arrest of a person,

knowing or having reason to believe that such person has committed or is planning or is likely to commit an act of trafficking in persons, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years, and shall also be liable to fine.

(2) In this section, "harbour" means supplying a person with shelter, food, drink, money or clothes, arms, ammunition or means of conveyance, or assisting a person in any way to evade apprehension.

Obligation of owner, operator or master of conveyance

23. (1) Any person being the owner, operator or master of any conveyance, that engages in the transportation of goods or people for commercial gain shall ensure that every person travelling on board is in possession of travel documents for lawful entry of that person into the receiving country.

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(2) Any owner, operator or master of any conveyance mentioned in subsection (1), who —

- (a) knowingly permits or has reasonable grounds to believe that such conveyance is used for the purpose of bringing a person into a receiving country without travel documents required for the lawful entry of that person into the receiving country; or
- (b) knowingly permits or has reasonable grounds to believe that such conveyance is being used for the purpose of committing an act of trafficking in persons,

commits an offence and shall, on conviction be liable —

- (a) where such person is an individual, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both; or
- (b) where such person is a body corporate, to a fine not less than fifty thousand ringgit but not exceeding five hundred thousand ringgit.

(3) In any proceedings for an offence under this section, it shall be a defence for such owner, operator or master to prove that—

- (a) he has reasonable grounds to believe that the travel documents of the person travelling on board are travel documents required for lawful entry of that person into the receiving country;
- (b) the person travelling on board possessed travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the conveyance to travel to the receiving country; or
- (c) the entry of the person into the receiving country occurred only because of illness or injury to that person, stress of weather or any other circumstances beyond the control of such owner, operator or master.

(4) Any person convicted of an offence under this section shall be liable to pay the costs of the trafficked person's detention in, and removal from, the receiving country.

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Intentional omission to give information

24. Any person who knowing or having reason to believe, that any offence under this Act has been or will be committed, intentionally omits to give any information respecting that offence, commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years, or to both.

Immunity from criminal prosecution

25. A trafficked person shall not be liable to criminal prosecution in respect of—

- (a) his illegal entry into the receiving country;
- (b) his period of unlawful residence in the receiving country;
or
- (c) his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering the receiving country,

where such acts are the direct consequence of an act of trafficking in persons that is alleged to have been committed or was committed.

Protection of informers

26. (1) Except as provided in this section, no complaint as to an offence under this Act shall be admitted in evidence in any civil or criminal proceedings whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any book, document or paper which is in evidence or liable to inspection in any civil or criminal proceedings whatsoever contains any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceedings is had shall cause all such entries to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery.

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(3) If in a trial for any offence under this Act, the Court, after full enquiry into the case, is of the opinion that the informer willfully made in his complaint a material statement which he knew or believe to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties without the discovery of the informer, the Court may require the production of the original complaint, if in writing, and permit enquiry and require full disclosure concerning the informer.

(4) Any person who gives the information referred to in this section knowing that the information is false, commits an offence.

PART IV

ENFORCEMENT

Enforcement officers

27. (1) The following officers shall be enforcement officers for the purpose of this Act and may exercise all powers of enforcement:

- (a) any police officer;
- (b) any immigration officer;
- (c) any Officer of customs; or
- (d) any officer of the Malaysian Maritime Enforcement Agency.

(2) An enforcement officer when acting against any person under this Act, shall declare his office and shall produce to the person against whom he is acting any authority card which has been issued to him.

Power of investigation

28. An enforcement officer shall have all the powers necessary to carry out an investigation for any offence under this Act.

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Power of arrest

29. (1) An enforcement officer may arrest without warrant any person—

- (a) found committing or attempting to commit or abetting the commission of an offence under this Act; or
- (b) whom the enforcement officer reasonably suspects of being engaged in committing or attempting to commit or abetting the commission of an offence under this Act.

(2) An enforcement officer making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force.

Search and seizure with warrant

30. (1) If it appears to a Magistrate, upon written information on oath and after such enquiry as the Magistrate considers necessary, that there is reasonable cause to believe that—

- (a) any premises or conveyance has been used or is about to be used for; or
- (b) there is in any premises or conveyance evidence necessary to the conduct of an investigation into,

the commission of an offence under this Act, the Magistrate may issue a warrant authorizing any enforcement officer named therein, at any reasonable time, by day or by night, to enter the premises or conveyance.

(2) A warrant issued under subsection (1) may authorise the enforcement officer to —

- (a) search the premises or conveyance for, and to seize or remove from the premises or conveyance, any moveable, property, book, record, report or document, or any human organ that is reasonably believed to furnish evidence of the commission of such offence; and

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(b) make copies of, or take extracts from any book, record, report or document found in the premises or conveyance.

(3) An enforcement officer entering any premises or conveyance under this section may take with him such other persons or equipment as may appear to him to be necessary.

(4) An enforcement officer may, in the exercise of his powers under this section, if necessary —

- (a) break open any outer or inner door of the premises or conveyance or any obstruction to the premises or conveyance in order to effect entry into the premises or conveyance;
- (b) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under this section; and
- (c) detain any person found in the premises or conveyance until the search has been completed.

(5) Where, by reason of its nature, size or amount, it is not practicable to remove any moveable property, book, record, report or document or any human organ seized under this section, the enforcement officer shall, by any means, seal such moveable property, book, record, report or document or any human organ in the premises or conveyance in which it is found.

(6) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes the moveable property, book, record, report or document or any human organ under seal, or attempts to do so, commits an offence.

Search and seizure without warrant

31. (1) Where an enforcement officer has reasonable grounds to believe that by reason of delay in obtaining a search warrant under section 30, the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, he may, without warrant, with such assistance and force as is necessary —

- (a) enter and search any premises;
- (b) stop and search any conveyance or person;

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- (c) seize and detain such conveyance, moveable property, book, record, report or document or human organ; or
- (d) inspect, make copies of or take extract from any book, record, report or document found in the premises or conveyance.

(2) In exercising his powers under this section, an enforcement officer shall have all the powers conferred upon him under subsections 30(3), (4) and (5).

Access to computerized data

32. (1) Any enforcement officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of subsection (1), the enforcement officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required for his access to enable comprehension of the computerized data.

List of things seized

33. (1) Except as provided in subsection (2), where any conveyance, moveable property, book, record, report or document or any human organ is seized under this Part, the enforcement officer shall prepare a list of the things seized and immediately deliver a copy signed by him to the occupier of the premises or the owner of the conveyance which has been searched, or to his agent or servant, at the premises or conveyance.

(2) Where the premises is unoccupied, the enforcement officer shall, whenever possible, post a list of the things seized conspicuously at or on the place or premises.

Power to examine persons

34. (1) An enforcement officer may, by notice in writing, require any person whom he believes to be acquainted with the facts and circumstances of the case to —

- (a) attend before him for examination;

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- (b) produce before him any moveable property, record, report or document; or
- (c) furnish him a statement in writing made on oath or affirmation setting out such information as he may require.

(2) Any person who contravenes subsection (1) commits an offence.

(3) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the enforcement officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(4) A person making a statement under paragraph (i)(c) shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions of the enforcement officer.

(5) An enforcement officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (3) and (4).

(6) A statement made by any person under subsection (3) or (4) shall be reduced into writing and signed by the person making it or affixed with his thumb print-

fa) after it has been read to him in the language in which he made it; and

(b) after he has been given an opportunity to make any correction he may wish.

Admissibility of statement

35. (1) Except as provided in this section, no statement made by any person to an enforcement officer in the course of an investigation made under this Act shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the Court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to an enforcement officer in the course of an

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investigation under this Act and may then, if the Court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [*Act 56*].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to—

(a) the making; or

(b) the contents,

of any statement made by him to an enforcement officer in the course of an investigation made under this Act, that statement may be used as evidence in the prosecution's case.

Forfeiture of conveyance, moveable property, etc.

36. (1) All conveyance, moveable property, book, record, report or document, or any human organ seized in the exercise of any power conferred under this Act are liable to forfeiture.

(2) The Court trying any person accused of an offence under this Act may at the conclusion of the trial, whether he is convicted or not, order that the conveyance, moveable property, book, record, report or document or any human organ seized from that person be forfeited.

(3) Where there is no prosecution with regard to any offence under this Act—

(a) in the case of human organ seized, it shall be deemed to be forfeited; and

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(b) in the case of the conveyance, moveable property, book, record, report or document seized, the enforcement officer shall serve a notice in writing to the last known address of the person from whom the conveyance, moveable property, book, record, report or document was seized.

(4) The notice in paragraph (3)(b) shall specify that there is no prosecution in respect of such conveyance, moveable property, book, record, report or document and that such conveyance, moveable property, book, record, report or document will be forfeited at the expiration of one calendar month from the date of service of the notice unless a claim is made by the person from whom the conveyance, moveable property, book, record, report or document was seized.

(5) Upon receipt of the notice issued under paragraph (3)(b), any person asserting that he is the owner of any conveyance, moveable property, book, record, report or document seized under this Act which is not liable to forfeiture may, personally or by his agent authorized in writing by him, give written notice to the enforcement officer in whose possession the conveyance, moveable property, book, record, report or document is held.

(6) Upon receipt of a notice under subsection (5), the enforcement officer who made the seizure shall refer the matter to the Court for its determination.

(7) The Court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the conveyance, moveable property, book, record, report or document and the person from whom it was seized to appear before the Court, and upon their appearance or default to appear, due service of the summons being proved, the Court shall proceed to the examination of the matter, and on proof that such conveyance, moveable property, book, record, report or document was the subject matter of or was used in the commission of an offence under this Act, shall order the conveyance, moveable property, book, record, report or document to be forfeited or may, in the absence of such proof, order the release of such conveyance, moveable property, book, record, report or document to the person entitled to it.

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(8) Any conveyance, moveable property, book, record, report or document or any human organ forfeited or deemed to be forfeited shall be disposed of in any manner as the enforcement officer deems fit.

Cost of holding conveyance, moveable property, etc., seized

37. Where any conveyance, moveable property, record, report or document or human organ seized under this Act is held in the custody of the enforcement officer pending completion of any proceedings in respect of an offence under this Act, the cost of holding such conveyance, moveable property, record, report or document or any human organ in custody shall, in the event of any person being found guilty of an offence, be a civil debt due to the Government by such person and shall be recoverable accordingly.

No costs or damages arising from entry, search or seizure to be recoverable

38. No person shall, in respect of any entry or search, or seizure of any conveyance, moveable property, record, report or document or any human organ seized in the exercise of any power conferred by this Act, be entitled to the costs of such entry, search, or seizure or to any damages or other relief unless such entry, search or seizure was made without reasonable cause.

Obstruction

39. Any person who obstructs, impedes, interferes or fails to comply with any lawful demand of an enforcement officer in the performance of his functions under this Act commits an offence.

Tipping-off

40. (1) Any person who —

- (a) knows or has reasonable grounds to suspect that an enforcement officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of

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this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

- (b) knows or has reasonable grounds to suspect that a disclosure has been made to an enforcement officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or
- (b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In a proceedings against a person for an offence under this section, it is a defence to prove that—

- (a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or
- (b) he had lawful authority or reasonable excuse for making the disclosure.

Institution of prosecution

41. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

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PART V

CARE AND PROTECTION OF TRAFFICKED PERSONS

Place of refuge

42. (1) The Minister may, by notification in the *Gazette*, declare any house, building or place, or any part thereof, to be a place of refuge for the care and protection of trafficked persons and may, in like manner, declare that such place of refuge ceases to be a place of refuge.

(2) The Minister may, from time to time, direct the separation of different categories of trafficked persons, among others, according to age and gender either at the same place of refuge or at different places of refuge.

Appointment of Protection Officers

43. (1) The Minister, after consultation with the Minister charged with the responsibility for women, family and community development may, by notification in the *Gazette*, appoint such number of Social Welfare Officers or any other public officers to exercise the powers and perform the duties of a Protection Officer under this Act subject to any condition as may be specified in the notification.

(2) The Protection Officer shall —

- (a) have control over and responsibility for the care and protection of the trafficked person at the place of refuge;
- (b) carry out an enquiry and cause to be prepared a report of the trafficked person as required under this Act;
- (c) have the power to supervise the trafficked person upon order by the Magistrate or direction by the Minister; and
- (d) have such other powers, duties and functions as the Minister may prescribe.

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Taking a person into temporary custody

44. (1) An enforcement officer may, on reasonable suspicion that any person who is found or rescued is a trafficked person, take that person into temporary custody and produce him before a Magistrate within twenty-four hours, exclusive of the time necessary for the journey to the Magistrate's Court, for the purpose of obtaining an interim protection order.

(2) The Magistrate may make an interim protection order for the person to be placed at a place of refuge for a period of fourteen days for the purpose of carrying out an investigation and enquiry under section 51.

(3) The enforcement officer shall, upon obtaining the order issued under subsection (2), surrender the trafficked person to a Protection Officer to place that trafficked person at the place of refuge specified in the order.

Person in temporary custody in need of medical examination or treatment

45. (1) Where an enforcement officer who takes a person into temporary custody under subsection 44(1) is of the opinion that the person is in need of medical examination or treatment, the enforcement officer may, instead of taking that person before a Magistrate, present him to a medical officer.

(2) If at the time of being taken into temporary custody, the person is a patient in a hospital, the enforcement officer may leave that person in the hospital.

Medical examination and treatment

46. A medical officer before whom a person is presented under section 45 —

- (a) shall conduct or cause to be conducted an examination of the person;
- (b) may in examining the person and if so authorised by an enforcement officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the person's condition; or

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- (c) may provide or cause to be provided such treatment as he considers necessary as a result of the diagnosis.

Authorization for hospitalization

47. Where a person taken into temporary custody under subsection 44(1) is a child and the medical officer who examines him is of the opinion that his hospitalization is necessary for the purpose of medical care or treatment, an enforcement officer may authorise that person to be hospitalised.

Control over hospitalised person

48. Where the person taken into temporary custody under subsection 44(1) is hospitalised, the enforcement officer shall have control over, and responsibility for, the security and protection of that person.

Steps to be taken after medical examination or treatment

49. (1) A person who is taken into temporary custody under subsection 44(1) and is medically examined under section 46 shall be produced before a Magistrate within twenty-four hours —

- (a) of the completion of such examination or treatment; or
- (b) if the person is hospitalised, on his discharge from the hospital.

(2) If it is not possible to bring that person before a Magistrate within the time specified in subsection (1), that person shall be placed in a place of refuge until such time as he can be brought before a Magistrate.

No liability incurred for giving authorization

50. (1) If a person is examined or treated under this Part—

- (a) the enforcement officer who authorises such examination or treatment;
- (b) the medical officer who examines or treats the person; and

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(c) all persons acting in aid of the medical officer,
shall not incur any liability at law by reason only that a person is examined or treated pursuant to this Part.

(2) Nothing contained in subsection (1) relieves a medical officer from liability in respect of the examination or treatment of the person taken into temporary custody under subsection 44(1), which liability he would have been subject to had the examination or treatment been carried out or administered with the consent of the parent or guardian of the person or person having authority to consent to the examination or treatment.

Investigation, enquiry and Protection Order

51. (1) Where an interim protection order is made under subsection 44(2), within fourteen days from the date of such order—

- (a) an enforcement officer shall investigate into the circumstances of the person's case for the purpose of determining whether the person is a trafficked person under this Act; and
- (b) a Protection Officer shall enquire into the background of that person.

(2) Upon completion of the investigation and enquiry under subsection (1), the enforcement officer and the Protection Officer shall prepare a report and produce the report together with the person before a Magistrate's Court for the purpose of satisfying the Magistrate that such person is a trafficked person under this Act.

(3) Where the Magistrate, having read the report produced under subsection (2), is satisfied that the person brought before him—

- (a) is a trafficked person and in need of care and protection, the Magistrate may make a Protection Order—
 - (i) in the case of a trafficked person who is a citizen or permanent resident of Malaysia, ordering that such trafficked person be placed in a place of refuge for a period not exceeding two years from the date of the order; or

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(ii) in the case of a trafficked person who is a foreign national, ordering that such trafficked person be placed in a place of refuge for a period not exceeding three months from the date of the order, and thereafter to release him to an immigration officer for necessary action in accordance with the provisions of the Immigration Act 1959/63,

(b) is not a trafficked person, the Magistrate may —

(i) in the case of a person who is a citizen or permanent resident of Malaysia, order that person to be released; or

(ii) in the case of a person who is a foreign national, order that person to be released to an immigration officer for necessary action in accordance with the provisions of the Immigration Act 1959/63.

(4) The Magistrate may at any time, on the application of an enforcement officer or a Protection Officer, as the case may be, extend or revoke the Protection Order made under this section.

(5) Notwithstanding subsection (4), where the trafficked person is a foreign national, an extension of the Protection Order may be granted only for the purpose of completing the recording of his evidence under section 52 or for any exceptional circumstances as determined by the Magistrate.

Recording of evidence of trafficked person

52. (1) At any time during the period of the Protection Order made under subparagraph 51 (3)(a)(ii), where a criminal prosecution has been instituted against any person for an offence under this Act, an enforcement officer may make an oral application for the production of the trafficked person before a Magistrate's Court for the purpose of recording that trafficked person's evidence on oath.

(2) The Magistrate may, upon such application, issue a summons or order directed to the person in charge of the place of refuge where such trafficked person is placed, requiring him to produce the trafficked person at the time and place specified in the summons or order.

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(3) The Magistrate shall record the evidence of the trafficked person and complete such recording within seven days from the date of the production of that trafficked person before him.

(4) In the course of the recording of evidence of the trafficked person, he shall be examined in accordance with the provisions of the Evidence Act 1950.

(5) The Magistrate shall cause the evidence taken by him to be reduced into writing and, at the end of that writing, shall sign the same.

(6) Notwithstanding anything contained in this Act or any other written laws to the contrary, the evidence recorded under this section shall be admissible in evidence in any proceedings under this Act and the weight to be attached to such evidence shall be the same as that of a witness who appears and gives evidence in the course of a proceeding.

Application by parent, guardian or relative

53. (1) Where a trafficked person placed in a place of refuge is a citizen or permanent resident of Malaysia, the parent, guardian or relative of that person may, at any time, make an application to the Magistrate's Court to commit that person into the custody of the parent, guardian or relative.

(2) The parent, guardian or relative of the trafficked person shall serve a copy of the application to the Protection Officer.

(3) Upon receipt of an application under subsection (2), the Protection Officer shall cause a report to be prepared in relation to—

- (a) the trafficked person;
- (b) the status of any investigation or prosecution for any offence under this Act in relation to the trafficked person;
- (c) the background of the trafficked person, his parent, guardian or relative; or

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- (d) any other matter as the Protection Officer deems relevant,

to enable the Magistrate to determine the application in the best interest of the trafficked person.

(4) The Magistrate shall, upon receipt of the application, fix a date for the hearing of the application, and shall, by notice in writing, inform the parent, guardian or relative of the trafficked person, as the case may be, the Protection Officer or other person the Magistrate deems fit, and shall require the production of the trafficked person before him on the appointed date.

(5) After hearing the application and having read the report of the Protection Officer, and if the Magistrate is satisfied that it is in the best interest of the trafficked person, he may—

- (a) commit the person into the care and protection of the parent, guardian or relative of the person, upon such conditions as he may deems fit to impose;
- (b) require the parent, guardian or relative of the person to enter into a bond; or
- (c) require the person to be placed under the supervision of a Protection Officer,

for a period to be determined by the Magistrate.

(6) The Magistrate may, at any time, revoke any order made under subsection (5).

Release of trafficked person

54. (1) Upon revocation of a Protection Order or expiry of the period specified in a Protection Order, the Protection Officer shall-

- (a) in the case of a trafficked person who is a citizen or permanent resident of Malaysia, release that person;
or
- (b) in the case of a trafficked person who is a foreign national, release that person to an immigration officer

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for necessary action in accordance with the provisions of the Immigration Act 1959/63.

(2) The immigration officer shall take all necessary steps to facilitate the return of that trafficked person to his country of origin without unnecessary delay, with due regard for his safety.

(3) Notwithstanding paragraph (1)(a), the court may, upon an application made by the Protection Officer, and being satisfied that such person is in need of further care and protection, make an order that such trafficked person be placed in the place of refuge for any further period as the Magistrate deems fit.

Trafficked person who escapes or is removed from place of refuge

55. Any trafficked person who escapes or is removed from a place of refuge without lawful authority—

- (a) may be taken into custody by any enforcement officer and shall be brought back to the place of refuge; and
- (b) shall be placed for such period which is equal to the period during which he was unlawfully at large and for the unexpired residue of his term in the Protection Order originally made by the Magistrate.

Offence of removing or helping a trafficked person to escape from place of refuge

56. Any person who —

- (a) removes a trafficked person from a place of refuge without lawful authority;
- (b) knowingly assists or induces, directly or indirectly, a trafficked person to escape from a place of refuge; or
- (c) knowingly harbours or conceals a trafficked person who has so escaped, or prevents him from returning to the place of refuge,

commits an offence.

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Power of Minister to remove trafficked person from one place of refuge to another

57. The Minister may, at any time, for reasons which appear to him to be sufficient, by order in writing direct the removal of any trafficked person from a place of refuge to any other place of refuge as may be specified in the order.

PART VI

MISCELLANEOUS

Restriction on media reporting and publication

58. (1) Notwithstanding any written laws to the contrary, any mass media report regarding —

- (a) any step taken in relation to a trafficked person in any proceedings be it at the pre-trial, trial or post-trial stage;
- (b) any trafficked person in respect of whom custody or protection is accorded under Part V; or
- (c) any other matters under this Act,

shall not reveal the name or address, or include any particulars calculated to lead to the identification of any trafficked person so concerned either as being the trafficked person or as being a witness to any proceedings.

(2) A picture of—

- (a) any trafficked person in any of the matters mentioned in subsection (1); or
- (b) any other person, place or thing which may lead to the identification of the trafficked person,

shall not be published in any newspaper or magazine or transmitted through any electronic medium.

(3) Any person who contravenes subsection (1) or (2) commits an offence.

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Evidence of *agent provocateur* admissible

59. (1) Notwithstanding any law or rule of law to the contrary, in any proceedings against any person for an offence under this Act, no *agent provocateur* shall be presumed to be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person.

(2) Notwithstanding any law or rule of law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

Admissibility of documentary evidence

60. Where any enforcement officer has obtained any document or other evidence in exercise of his powers under this Act, such document or copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any written laws.

Admissibility of translation of documents

61. (1) Where any document which is to be used in any proceeding against any person for an offence under this Act is in a language other than the national language or English language, a translation of such document into the national language or English language shall be admissible in evidence where the translation is accompanied by a certificate of the person who translated the document setting out that it is an accurate, faithful and true translation and the translation had been done by such person at the instance of any enforcement officer.

(2) Subsection (1) shall apply to a document which is translated, regardless of whether the document was made in or outside Malaysia, or whether the translation was done in or outside Malaysia, or whether possession of such document was obtained by any enforcement officer in or outside Malaysia.

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Indemnity

62. No action, suit, prosecution or other proceedings shall lie or be brought, instituted, or maintained in any court or before any other authority against—

- (a) any enforcement officer;
- (b) any Protection Officer; or
- (c) any person lawfully acting in compliance with any direction or order of an enforcement officer or a Protection Officer,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act or any order in writing, direction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith.

General penalty

63. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding one hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to **both**.

Offence by body corporate

64. Where any offence against any provision of this Act has been committed by a body corporate, any person who -at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall also be guilty of that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

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Offence by employee or agent

65. Where any person would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, such person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his or of the employee of such agent, if such act, omission, neglect or default was committed by the person's employee in the course of his employment, or by the agent when acting on behalf of the person, or by the employee of such agent in the course of his employment by such agent, or otherwise on behalf of the agent.

Regulations

66. (1) The Minister may make such regulations as are necessary or expedient to give full effect to, or for carrying out, the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made-
(a) to prescribe the functions or any other matters in relation to the Council;

- (b) to provide for an offence, any act or omission which contravenes any provision of any regulations;
- (c) to provide for the imposition of penalties for such offences;
- (d) to prescribe measures for the care and protection of trafficked persons at the place of refuge;
- (e) to prescribe for the powers and functions of a Protection Officer;
- (f) to regulate the management, administration and control of place of refuge, including provisions for the powers, duties and functions of the person in charge of place of refuge;
- (g) to provide for any matter which, under this Act, is required or permitted to be prescribed or which is necessary or expedient to be prescribed.

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Prevention of anomalies

67. (1) The Minister may, whenever it appears to him necessary or expedient to do so, whether for the purpose of removing difficulties or preventing anomalies in consequence of the enactment of this Act, by order published in the *Gazette* make such modifications to any provisions in this Act as he thinks fit, but the Minister shall not exercise the powers conferred by this section after the expiration of two years from the appointed date.

(2) In this section, "modifications" include amendments, additions, deletions, substitutions, adaptations, variations, alterations, and non-application of any provisions of this Act.

EXPLANATORY STATEMENT

The Anti-Trafficking in Persons Act 2007 ("the Act"), as proposed by this **Bill**, seeks to provide for the offence of trafficking in persons, the protection and support of trafficked persons, the establishment of the Council for **Anti-Trafficking in Persons**, and for matters connected therewith.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC) forms the basis of this Bill. Malaysia is a party to UNTOC, but has yet to accede to the Protocol.

PART I

2. Part I of the Act contains preliminary matters.
3. *Clause 1* contains the short title and empowers the Minister to appoint a date for the commencement of the Act.
4. *Clause 2* contains the definition of certain expressions used in the Act.
5. *Clause 3* provides that the Act applies regardless of whether the conduct constituting the offence of trafficking in persons took place inside or outside Malaysia in the circumstances stated in the *clause*.
6. *Clause 4* seeks to extend the Act to extra territorial offences.
7. *Clause 5* provides that the Act is to be read with other written laws and be regarded as an addition to, and not in derogation of, other written laws. However, in the event of conflict or inconsistency between the Act and any other written laws, the Act shall prevail to the extent of such conflict or inconsistency.

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PART II

8. Part II contains provisions for the establishment of a Council for Anti-Trafficking in Persons and other matters connected therewith regarding its composition, functions and powers.
9. *Clause 6* provides for the establishment of the Council for Anti-Trafficking in Persons ("the Council") and its composition. The Secretary General of the Ministry responsible for internal security shall be its Chairman.
10. *Clause 7* provides for the functions of the Council and powers necessary for the performance of its functions, which are *inter alia* to coordinate and formulate policies and programmes to prevent and suppress trafficking in persons including programmes for the protection of trafficked persons.
11. *Clause 8* seeks to confer on the Minister the power to issue directions to the Council as to the performance of its functions and powers.
12. *Clause 9* provides for the meetings of the Council. Seven members shall form the quorum for a meeting of the Council and the Chairman shall preside over all its meetings. This *clause* also seeks to confer on the Council the power to make rules to regulate its meetings and proceedings.
13. *Clause 10* seeks to enable the Council to establish committees, as it deems expedient, to assist in the performance of its functions.
14. *Clause 11* provides for the appointment of a Secretary of the Council and other officers by the Minister.

PART III

15. Part III contains provisions on the various offences under the Act.
16. *Clause 12* seeks to provide for the offence of trafficking in persons for the purpose of exploitation. It carries a punishment of imprisonment for a term not exceeding fifteen years, and shall also be liable to fine, upon conviction.
17. *Clause 13* seeks to provide for the offence of trafficking in persons for the purpose of exploitation by means of threat, force, coercion, fraud, deception, *etc.* It carries a punishment of imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine, upon conviction.
18. *Clause 14* seeks to provide for the offence of trafficking in children for the purpose of exploitation. It carries a punishment of imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine, upon conviction.
19. *Clause 15* seeks to provide for the offence of profiting from the exploitation of a trafficked person.

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20. *Clause 16* provides that the consent of a trafficked person to the act of trafficking in persons is irrelevant.
21. *Clause 17* seeks to make a trafficked person's past sexual behaviour irrelevant and inadmissible for the purpose of proving that the trafficked person was engaged in other sexual behaviour or to prove the trafficked person's sexual predisposition.
22. *Clauses 18, 19, 20, 21 and 22* seek to provide for ancillary offences.
23. *Clause 18* provides that any person who makes, obtains, gives, sells or possesses fraudulent travel or identity document for the purpose of facilitating an act of trafficking in persons, commits an offence.
24. *Clause 19* provides that any person who knowingly recruits another person to participate in the commission of an act of trafficking in persons, commits an offence.
25. *Clause 20* provides that any person who provides facilities for the purpose of committing an offence under the Act, commits an offence.
26. *Clause 21* provides that any person who makes available financial services or facilities, knowing or having reasonable grounds to believe that the services or facilities will be used to facilitate the commission of an act of trafficking in persons, commits an offence.
27. *Clause 22* makes it an offence to harbour any person who has committed, or is planning, or is likely to commit, an act of trafficking in persons.
28. *Clause 23* imposes an obligation on owners, operators or masters of any conveyance to ensure that persons travelling on board are in possession of travel documents for lawful entry into a receiving country.
29. *Clause 24* seeks to make it an offence for any person to intentionally omit to give information relating to any offence under the Act.
30. *Clause 25* seeks to provide for immunity from criminal prosecution to a trafficked person in respect of his illegal entry, period of unlawful residence and possession of fraudulent travel or identity document.
31. *Clause 26* seeks to provide for the protection of informers.

PART IV

32. Part IV contains provisions relating to the enforcement of the Act.
33. *Clause 27* seeks to identify the enforcement officers for the purpose of exercising the powers of enforcement under the Act. Every enforcement officer shall declare his office and shall produce any authority card issued to him when acting under the Act.

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34. *Clause 28* seeks to confer powers of investigation on an enforcement officer. Under *clause 29*, an enforcement officer is vested with the power to arrest without warrant any person found committing or attempting to commit an offence under the Act. He is also empowered to conduct searches and seizures with warrant under *clause 30*, and searches and seizures without warrant under *clause 31*.
35. *Clause 32* seeks to enable an enforcement officer to have access to computerized data.
36. *Clause 33* seeks to impose a duty on an enforcement officer to prepare a list of things seized.
37. *Clause 34* seeks to provide that enforcement officers may examine any person acquainted with the facts and circumstances of the case and to produce before him any moveable property, record, report or document or to furnish him a statement in writing made on oath setting out such information as he may require. *Clause 35* deals with the circumstances in which such statement may be admissible in the course of a trial.
38. *Clause 36* seeks to provide that things seized in the course of investigation may be forfeited by the court at the conclusion of the trial of any person accused of an offence under the Act. Where there is no prosecution, this *clause* sets out a procedure for the court to determine whether the things seized are to be forfeited or released to the person entitled to it.
39. *Clause 37* seeks to provide that the cost of holding anything seized under the Act shall be recoverable as a civil debt due to the Government from the person from whom they were seized.
40. *Clause 38* seeks to provide that no cost or damages arising from the seizure of anything in the exercise of any powers under the Act shall be recoverable unless the seizure was done without reasonable cause.
41. *Clause 39* seeks to make it an offence for any person to obstruct any enforcement officer in the performance of his functions under the Act.
42. *Clause 40* seeks to provide for the offence of disclosing to any other person information that is likely to prejudice an investigation under the Act.
43. *Clause 41* seeks to provide that no prosecution for an offence under the Act shall be instituted without the written consent of the Public Prosecutor.

PART V

44. Part V contains provisions for the care and protection of trafficked persons.
45. *Clause 42* seeks to empower the Minister to declare any house, building or place as a place of refuge for the care and protection of trafficked persons. He may also direct the separation of different categories of trafficked persons.

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46. *Clause 43* seeks to provide for the appointment of Protection Officers for purposes of, *inter alia*, control over and responsibility for the care and protection of trafficked persons at the place of refuge.

47. *Clause 44* seeks to empower an enforcement officer to take into temporary custody any person on reasonable suspicion that he is a trafficked person and produce him before a Magistrate within twenty-four hours for the purpose of obtaining an interim protection order. The interim protection order allows the person taken into temporary custody to be placed at a place of refuge for a period of fourteen days for the purpose of carrying out an investigation and enquiry.

48. *Clause 45* seeks to provide that an enforcement officer may bring any person that he takes into temporary custody, if he is of the opinion that the person is in need of medical examination or treatment, instead of taking him to a Magistrate, to a medical officer.

49. *Clause 46* seeks to provide the duties of a medical officer when any person is presented to him under *clause 45*.

50. *Clause 47* seeks to confer on the enforcement officer the power to authorise the hospitalization of any child taken into temporary custody.

51. *Clause 48* seeks to impose on the enforcement officer the responsibility for security and protection where any person taken into temporary custody is hospitalised.

52. *Clause 49* seeks to provide that a person taken into temporary custody and presented to a medical officer for medical examination shall be produced before a Magistrate within twenty-four hours of the completion of the examination or treatment, or hospitalization, as the case may be.

53. *Clause 50* seeks to relieve the enforcement officer, medical officer and all persons acting in aid of the medical officer, from any liability at law.

54. *Clause 51* seeks to provide that, after an interim protection order is obtained under *subclause 44(2)*, the enforcement officer shall investigate into the circumstances of the person's case while the Protection Officer shall enquire into his background, and a report prepared for the Magistrate to determine whether he is a trafficked person. Where the Magistrate is satisfied that he is a trafficked person, the Magistrate may, if the trafficked person is a citizen or permanent resident of Malaysia, make a Protection Order ordering him to be placed at a place of refuge for a period not exceeding two years, or if he is a foreign national, order that he be placed at a place of refuge for a period not exceeding three months for the purpose of recording his evidence on oath and thereafter release him to an immigration officer to facilitate his return to his country of origin. The Protection Order may be extended or revoked on the application of the enforcement officer or the Protection Officer.

Anti-Trafficking in Persons

55. *Clause 52* seeks to provide for the recording of a trafficked person's evidence on oath before a Magistrate, where criminal prosecution has been instituted against any person for an offence under the Act, and such evidence shall be admissible in court. The Magistrate shall complete the recording of evidence of the trafficked person within seven days from the date of his production before him.

56. *Clause 53* seeks to set out a procedure by which a parent, guardian or relative of a trafficked person who is a citizen or permanent resident of Malaysia placed in a place of refuge, may apply to court to commit that trafficked person into the care and protection of the parent, guardian or relative.

57. *Clause 54* seeks to provide that upon revocation of the Protection Order or expiry of the period specified therein, the trafficked person, where he is a citizen or permanent resident of Malaysia, shall be released, or where he is a foreign national, shall be released to an immigration officer to facilitate his return to his country of origin without unnecessary delay.

58. *Clause 55* seeks to provide that any trafficked person who escapes or is removed from a place of refuge without lawful authority may be taken into custody and brought back to the place of refuge.

59. *Clause 56* seeks to make it an offence for any person to remove or assist a trafficked person to escape from a place of refuge without lawful authority.

60. *Clause 57* seeks to empower the Minister to direct the removal of any trafficked person from one place of refuge to another.

PART VI

61. Part VI contains provisions relating to miscellaneous matters.

62. *Clause 58* seeks to prohibit any mass media report from revealing the name, address or any particulars that would lead to the identification of any trafficked person. Likewise, a picture of any trafficked person shall not be published in any newspaper or magazine or transmitted through any electronic medium.

63. *Clause 59* seeks to make admissible the evidence of an *agent provocateur*.

64. *Clause 60* seeks to provide for the admissibility of documentary evidence obtained by any enforcement officer in the exercise of his powers under the Act.

65. *Clause 61* seeks to provide for the manner in which a translation of documents in a language other than the national language or English language shall be admissible in any proceeding.

Bill

66. *Clause 62* seeks to provide that no action shall lie against any enforcement officer, Protection Officer or any person lawfully acting in compliance with any direction of an enforcement officer or a Protection Officer, for any act or omission, where such act or omission is done in good faith.

67. *Clause 63* seeks to provide for a general penalty for offences where no penalty is expressly provided.

68. *Clause 64* seeks to make a director, manager, secretary or other similar officer acting in that capacity or person responsible in the management of the affairs of the body corporate or assisting in such management, liable for offences by the corporate entity unless the offence was committed without his knowledge, consent or connivance, or he took reasonable precautions and had exercised due diligence to prevent the commission of the offence.

69. *Clause 65* seeks to provide that every person is equally liable for any act, omission, neglect or default of his employee or agent of his, if such act, omission, neglect or default was committed in the course of his employment or agency.

70. *Clause 66* seeks to empower the Minister to make regulations as are necessary to give full effect to or for carrying out the provisions of the Act in respect of the matters specified therein.

71. *Clause 67* empowers the Minister to make modifications to any provisions of the Act within two years of its commencement for the purpose of removing difficulties or preventing anomalies in consequence of the enactment of the Act.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U²)2573]