

No. S 82

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

TRAFFICKING AND SMUGGLING OF PERSONS ORDER, 2004

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(Order under Article 83(3))

TRAFFICKING AND SMUGGLING OF PERSONS ORDER, 2004

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

Citation and long title.

1. (1) This Order may be cited as the Trafficking and Smuggling of Persons Order, 2004.

(2) The long title of this Order is "An Order to criminalise people trafficking and people smuggling and for purposes connected herewith".

Interpretation.

2. In this Order, unless the context otherwise requires –

"child" means a person who is under 18;

"commercial carrier" includes any person or the owner, operator, master of any means of transport who engages in the transportation of goods or people for commercial gain;

"exploitation" includes all forms a sexual exploitation (including sexual servitude and exploitation of another person's prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;

"financial or other material benefit" includes any type of financial or non-financial inducement, gratification, payment, bribe, reward, advantage or service;

"forged 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; or

(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;

"harbour" includes the giving of food or shelter and the act of assisting a person in any way to evade apprehension;

"Immigration Officer" has the same meaning as in section 2 of the Immigration Act (Chapter 17);

"master" includes any person in command or having charge of any means of transport;

"Minister" means the Minister of Home Affairs:

"officer of customs" has the same meaning as in subsection (1) of section 2 of the Customs Act (Chapter 36);

"owner" includes any part-owner, charterer or consignee in possession thereof or any duly authorised agent of any such person;

"people smuggling" means arranging or assisting a person's unlawful entry into any receiving country including Brunei Darussalam, of which the person is not a citizen or permanent resident of the receiving country, knowing or having reason to suspect that the person's entry is unlawful, in order to obtain a financial or other material benefit;

"people trafficking" means the recruitment, transportation, transfer, harbouring or receipt of a person for the purposes of exploitation, as set out in section 4 or 5;

"premises" includes —

(a) a vehicle, ship, aircraft or hovercraft;

(b) an installation which is maintained, or is intended to be established for underwater exploitation or exploration;

(c) tent or other movable structure;

"receiving country" means any country or territory into which a trafficked person or a smuggled person is brought or is arranged to be brought as part of an act of people trafficking or people smuggling;

"smuggled person" means any person who is a victim or object of an act of people smuggling, regardless of whether that person participated in people smuggling;

"trafficked person" means any person who is the victim or object of an act of people trafficking regardless of whether that person consented or not;

"transits" means arriving and passing through Brunei Darussalam by any means of transport for the purpose of continuing journey by any means of transport to a place outside of Brunei Darussalam;

"travel document" includes an internationally recognised passport, a certificate of identity and any similar document, issued by an authority recognised by the receiving country;

"unlawful entry" means crossing borders without complying with the necessary requirements for lawful entry into the receiving country.

Application.

3. The offences in this Order apply, regardless of whether the conduct constituting the offence whether in whole or in part took place within or outside Brunei Darussalam, in the following circumstances —

(a) if Brunei Darussalam is the receiving country or the exploitation for purposes of people trafficking occurs in Brunei Darussalam; or

(b) if the receiving country is a foreign country but the people trafficking or people smuggling starts in Brunei Darussalam or transits in Brunei Darussalam; or

(c) if the person who engages in the people trafficking or people smuggling is a citizen of Brunei Darussalam or a person to whom a Residence Permit or an Entry Permit has been issued under the Immigration Act [Chapter 17).

Offence of people trafficking.

4. Any person who recruits, transports, transfers, harbours or receives any person or persons for the purpose of exploitation by one or more of the following means —

(a) threat;

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

(c) abduction;

(d) fraud;

(e) deception;

(f) abuse of power or of a position of vulnerability;

(g) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term of not less than 4 years but not exceeding 30 years and whipping.

Offence of children trafficking.

5. Any person who recruits, transports, transfers, harbour or receives a child by any means for the purposes of exploitation shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term of not less than 4 years but not exceeding 30 years and not less than 5 strokes of whipping.

Offence of exploiting a trafficked person.

6. Any person who —

(a) engages in; or

(b) profits from,

the exploitation of a trafficked person shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term of not less than 4 years but not exceeding 30 years and whipping.

Offence of people smuggling.

7. (1) Any person who engages in people smuggling, regardless of whether the smuggled person arrives in the receiving country, shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 30 years and whipping.

(2) Where in any proceeding for an offence under subsection (1), it is proved that the defendant arranged or assisted the unlawful entry of any person into any receiving country (including Brunei Darussalam) of which that person was not a citizen or a permanent resident, it shall be presumed, until the contrary is proved, that the defendant did so knowing that such person's entry was unlawful and in order to obtain a financial or other material benefit.

Offence to facilitate stay of a smuggled person.

8. (1) Any person who facilitates the continued presence of a smuggled person in a receiving country in order to obtain a financial or other material benefit shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 30 years and whipping.

(2) For the purpose of subsection (1), such assistance or facilitation includes producing, providing or procuring forged travel or identity documents in respect of the smuggled person.

(3) Where a smuggled person is found at any premises or place, the occupier of such premises or place shall be presumed, until the contrary is proved, to have facilitated the continued presence of that person at such premises or place in order to obtain a financial or other material benefit.

Aggravated people smuggling offences.

9. Any person who engages in people smuggling under one or more of the following circumstances —

(a) the smuggled person is, or is intended to be, subject to exploitation;

(b) the smuggled person is subjected to torture or to any other cruel, inhuman or degrading treatment; or

(c) the life or safety of the smuggled person is, or is likely to be, endangered regardless of whether the smuggled person arrives in the receiving country,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term of not less than 4 years but not exceeding 30 years and not less than 5 strokes of whipping.

Consent of trafficked person irrelevant.

10. For the purpose of sections 4, 5 and 6, it shall not be a defence if the trafficked person has consented to the people trafficking or to the exploitation.

Offence relating to forged travel or identity documents.

11. Any person who —

(a) makes;

(b) obtains;

(c) gives or sells; or

(d) possesses,

a forged travel or identity document for the purpose of facilitating people trafficking or people smuggling, shall be guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 10 years or both.

Liability of commercial carrier.

12. (1) A commercial carrier which brings a trafficked or smuggled person into a receiving country and, upon entry into the receiving country, the person does not have the travel documents required for lawful entry into that country, shall be guilty of an offence and liable on conviction to a fine not exceeding \$100,000.

(2) A commercial carrier shall not be guilty of an offence under subsection (1) if –

(a) the commercial carrier has reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country; or

(b) the person is in possession of the travel documents required for entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or

(c) the entry into the receiving country occurred only because of illness of or injury to a person on board, stress of weather or other circumstances beyond the control of the commercial carrier.

(3) A commercial carrier which has been found guilty of an offence under this section shall be liable for all expenses incurred by the receiving country in respect of the person's detention, maintenance and his removal from the receiving country and such expenses shall be recoverable as a debt due to the receiving country.

Attempts, abetment and conspiracy.

13. (1) Whoever attempts to commit any offence punishable under this Order or any regulations made thereunder, or abets the commission of such offence, shall be punished with the punishment provided for such offence.

(2) A person who conspires with another person to commits an offence under this Order or any regulations made thereunder shall be guilty of the

offence of conspiracy to commit that offence and may be punished as if the offence to which the conspiracy relates had been committed.

Offences by bodies of persons.

14. Where an offence against this Order or any regulations made thereunder has been committed by a company, firm, society or other body or persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the company, firm, society or other body of persons or has purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his 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.

Powers of arrest and investigation.

15. (1) Any police officer, Immigration Officer or officer of customs may arrest without warrant any person who he reasonably believes has committed an offence under this Order or any regulations made thereunder.

(2) When any person is arrested by an Immigration Officer or officer of customs, such officer shall comply with the provisions of section 33 of the Criminal Procedure Code [Chapter 7] as if he were a police officer.

(3) In any case relating to the commission of any offence against this Order or any regulations made thereunder, any Immigration Officer or any officer of customs shall have the same powers of investigation of a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).

Powers of search.

16. (1) Any police officer, Immigration Officer or officer of customs may without a warrant —

(a) enter and search any premises; and

(b) stop and search any ship, vehicle and person, whether in public place or not,

if he has reason to believe that any evidence of the commission of an offence against this Order or any regulations made hereunder is likely to be found on such premises or person or in such ship or vehicle and may seize any evidence so found.

- (2) No woman shall be searched under this section except by a woman.

Offences to be non-bailable.

17. Every offence under this Order or any regulation made hereunder shall be deemed to be non-bailable for the purposes of the law relating to criminal procedure.

Consent of Public Prosecutor.

18. No prosecution for any offence under this Order shall be instituted except with the consent in writing of the Public Prosecutor.

Trafficking and Smuggling of Persons Fund.

19. (1) There is hereby established a fund called the Trafficking and Smuggling of Persons Fund which, subject to this section, shall be administered and managed by the Permanent Secretary.

- (2) The Fund shall consist of –

(a) all amounts contributed by the Government towards the establishment or maintenance of the Fund from the Consolidated Fund or any other sources;

(b) all sums recovered under or in satisfaction of a judgment of any court under this Order; and

(c) subject to section 21, all fines imposed by any court under this Order.

(3) For the purpose of this Order, monies paid into the Fund shall not form part of the Consolidated Fund.

- (4) Subject to subsection (5), monies in the Fund shall be applied for –

(a) financing the cost of repatriation of smuggled persons and trafficked persons;

(b) the promotion of information and education of the public in preventing, suppressing or otherwise of people trafficking and people smuggling;

(c) rewards to any person in preventing or suppressing people trafficking and people smuggling; or

(d) such other purposes as the Minister may consider necessary or expedient for giving effect to and carrying out the provisions of this Order.

(5) The Permanent Secretary shall consult the Attorney General before applying the Fund for any of the purposes set out in subsection (4).

(6) Monies paid into the Fund, while not being applied for any of the purposes set out in subsection (4), shall be placed in the name of the Fund, in a current or deposit account, with one or more banks selected by the Permanent Secretary, and any interest earned on such monies while held in any such account shall be credited to such account.

(7) The accounts of the Fund shall be audited at least once annually by the Auditor General and the duly audited accounts shall be presented to the Minister of Finance.

(8) In this section —

"Fund" means the Trafficking and Smuggling of Persons Fund established by subsection (1);

"Permanent Secretary" means the Permanent Secretary to the Ministry of Home Affairs.

Penalties to be cumulative.

20. For the avoidance of any doubt, where more than one penalty is prescribed for an offence under this Order, the use of the word "and" shall signify that the penalties shall be inflicted cumulatively.

Application of fines.

21. When under this Order or any regulations made thereunder any court imposes a fine for the contravention of section 4, 5 or 6 or for an abetment of or conspiracy or attempt to commit such offences, the court may upon the application of the Public Prosecutor and, if it thinks fit, direct that the whole or any part of such fine when recovered be paid as compensation to the trafficked person.

Offender deemed to be prohibited immigrant.

22. A person, not being a citizen of Brunei Darussalam, convicted for any offence under this Order or any regulations made thereunder shall be deemed to be a prohibited immigrant under the Immigration Act (Chapter 17).

Regulations.

23. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Application to other laws.

24. The offences created by this Order shall be –

(a) offences to which the Criminal Conduct (Recovery of Proceeds) Order, 2000 (S52/00) apply;

(b) deemed to be included in the list of extradition crimes described in the First Schedule to the Extradition Act (Chapter 8);

(c) offences in respect of which mutual legal assistance may be granted under any law relating to mutual legal assistance in criminal matters.

Made this 8th. day of Zulkaedah, 1425 Hijriah corresponding to the 20th. day of December, 2004 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM