

MACAO SPECIAL ADMINISTRATIVE REGION

Law No. 6/2008

Combat the crime of trafficking in persons

The Legislative Assembly decrees, pursuant to Article 71, subparagraph 1, of the Basic Law of the Macao Special Administrative Region, the following with the force of law:

Article 1

Object

This law establishes measures to prevent and suppress the crime of trafficking in persons, ascertains the rights of victim, and provides necessary measures for his or her protection and assistance.

Article 2

Additional provision to the Criminal Code

It shall be added to the Criminal Code, approved by Decree–Law No. 58/95/M, of 14 November, and amended by Laws No. 6/2001 and 3/2006, an Article 153-A with the following wording:

“Article 153-A

(Trafficking in persons)

1. Whoever offers, delivers, induces, recruits, accepts, transports, transfers, harbours or receives a person for the purpose of sexual exploitation, exploitation of labour or services of that person, including at a minimum, forced labour or services, slavery or practices similar to slavery, removal of organs or tissues of human origin, by means of:

- a) Violence, abduction, or serious threat;
- b) Deception or fraud;
- c) Abuse of authority as a result of a hierarchical, economic, labour or family relationship of dependency;
- d) Abuse of psychic incapacity or of any other situation of vulnerability of the victim; or
- e) Obtaining the consent of a person having control over the victim;

shall be punished with a penalty of 3 to 12 years of imprisonment.

2. Whoever, by any means, offers, induces, recruits, accepts, transports, transfers, harbours or receives a minor for the purpose of sexual exploitation, exploitation of labour or services of that minor, including at a minimum, forced labour or services, slavery or practices similar to slavery, removal of human organs or tissues, shall be punished with a penalty of 5 to 15 years of imprisonment.

3. In the case provided for in the previous paragraph, if the victim is a minor under 14 years old, or if the perpetrator acts as a form of living or with intent to profit, the penalties referred to in the previous paragraph shall be aggravated by one third in its minimum and maximum limits.

4. Whoever, by means of giving or receiving payments or any other benefits, surrenders, cedes or acquires a minor, or obtains or gives the consent to the adoption of a minor, shall be punished with a penalty of 1 to 5 years of imprisonment.

5. Whoever, having knowledge of the commission of the crimes referred to in paragraphs 1 and 2, exploits the work of the victim or uses the organs of the victim, shall be punished with a penalty of 1 to 5 years of imprisonment, if a heavier sentence is not applicable by virtue of another legal provision.

6. Whoever retains, conceals, damages or destroys the identity or travel documents of a person who is a victim of any of the crimes provided for in paragraphs 1 and 2, shall be punished with a penalty of 1 to 5 years of imprisonment, if a heavier sentence is not applicable by virtue of another legal provision.

Article 3

Amendment to the Criminal Code

Article 5 of the Criminal Code, approved by Decree–Law No. 58/95/M, of 14 November, and amended by Laws No. 6/2001 and No. 3/2006, is amended as follows:

“Article 5

(...)

1.
 - a)

- b) When the acts constitute the criminal offences provided for in Article 152, paragraph 2, and in Articles 153, 153–A, 154, 155, 229, 230 and 236, if the perpetrator is found in Macao and cannot be surrendered to another territory or State;
- c)
- (1)
- (2)
- (3)
- d)
- 2.”

Article 4
Amendments to the Criminal Procedure Code

Articles 77 and 78 of the Criminal Procedure Code, approved by Decree-Law No. 48/96/M, of 2 September, and amended by Decree-Law No. 63/99/M, of 25 October, and by Laws No. 9/1999 and No. 3/2006, are amended as follows:

“Article 77
(...)

- 1.
- 2.
- 3.
- 4. In case of criminal proceedings related to the crime of trafficking in persons or any sexual crime whose victim is a minor under 16 years old, the criminal proceedings shall be conducted, as a general rule, without publicity.
- 5.
- 6.
- 7.

Article 78
(...)

- 1.
- 2.
- a)
- b)

- c) The disclosure, by any means, of the identity of victims of crimes of trafficking in persons, either before or after the hearing, and the disclosure of the identity of victims of sexual crimes, crimes against honour or crimes against the intimacy of private life before the hearing, or if the victim is a minor under the 16 years old, even after the hearing.

3.”

Article 5

Criminal liability of legal persons

1. Legal persons, even if irregularly formed, and associations without legal personality shall be liable for the crime of trafficking in persons when the crime is committed on their behalf or in their collective interest:

- 1) By their organs or representatives; or;
- 2) By a person under their authority, when the commission of the crime has been rendered possible by virtue of an intentional breach of the duties of supervision or control that they are entrusted with.

2. The responsibility of the entities referred to in the previous paragraph does not exclude the individual responsibility of the respective perpetrators.

3. For the criminal offences referred to in paragraph 1, the following principle penalties shall be applicable to the entities therein referred:

- 1) Fine;
- 2) Judicial dissolution.

4. The fine penalty is fixed in days, the minimum being 100 and the maximum being 1000.

5. Each day of fine corresponds to an amount between \$100.00 (one hundred patacas) and \$20,000.00 (twenty thousand patacas).

6. If the fine is applied to an association without legal personality, its common property shall be liable, and in its absence or insufficiency, the property of each one of the associates shall be severally liable.

7. The penalty of judicial dissolution shall only be imposed when those who formed the entities referred to in paragraph 1 had the exclusive or predominant intention of, through those entities, committing the crime therein provided for or when the repeated commission of such crime demonstrates that the entity is being used, exclusively or predominantly, for that purpose, be it by their members or by whoever that exercises the respective management.

8. The following accessory penalties may be applicable to the entities referred to in paragraph 1:

- 1) Prohibition of the exercise of certain activities for a period of 1 to 10 years;
- 2) Deprivation of the right to subsidies or subventions granted by public services or entities;
- 3) Closing of the establishment for a period of 1 month to 1 year;
- 4) Definite closing of the establishment;
- 5) Judicial injunction;
- 6) Publicity of the sentence, at the expense of the sentenced legal persons, in one of the most widely read Chinese language and Portuguese language newspapers of the MSAR, as well as through a notice, written in the referred languages, for a period not less than 15 days, affixed at the place where the activity is exercised, in such a manner as to be well visible to the public.

9. The accessory penalties may be applied cumulatively.

10. The termination of a labour relationship that may occur as a result of the application of the penalty of judicial dissolution or of any of the accessory penalties provided for in paragraph 8, shall be considered, for all purposes, as being wrongful dismissal in which case the employer is held liable.

Article 6

Rights of the victim

The victim of the crime of trafficking in persons shall be entitled to the following rights:

- 1) To communicate immediately with the embassy, consulate, or the official representation of his or her country or territory of origin;
- 2) To join the judicial proceedings as private prosecutor and civil part;
- 3) To obtain compensation for losses and damages in accordance with applicable laws;
- 4) To appropriate protection;
- 5) To remain in the Macao Special Administrative Region during all measures related to the crime of trafficking in persons of which he or she is the victim;
- 6) To legal protection including legal counselling and legal aid;
- 7) To be assisted by an appropriate translator or interpreter throughout the course of the judicial proceedings whenever he or she does not know or does not speak any of the official languages of the MSAR;
- 8) To obtain social assistance from the Social Welfare Institute, in particular the necessary assistance to return to his or her country or territory of origin, if it is proven that he or she lacks economic and social resources;
- 9) To receive psychological, healthcare and medical assistance free of charge, to be provided under Decree-Law No. 24/86/M, of 15 March, with the necessary changes, and other applicable laws;
- 10) To protection of confidentiality in the course of judicial proceedings and administrative procedures related to the crime of trafficking in persons.

Article 7

Measures of protection and assistance for the victim

1. The Government is responsible for the adoption of all necessary measures to protect and assist the victim of the crime of trafficking in persons, in particular the following:

- 1) To establish a program for the protection of the victim, which shall be confidential and free of charge, with the objective of ensuring temporary shelter in an appropriate place, guaranteeing personal physical safety and necessary and appropriate psychological, medical, social, economical and legal assistance;
- 2) To set up places to attend to the victim, which shall have the functions, in particular, to provide information to the victims on their rights and to

refer them to the competent entities, as well as to institute mechanisms to provide support and clarifications at the request of the victim;

- 3) To promote information and divulgation campaigns through the media with the objective of drawing the attention of the public to the problems of the crime of trafficking in persons, as well as to print and freely distribute leaflets about the rights of the victim, edited, whenever possible, in several languages, which shall contain information about the nature of trafficking in persons, the rights and guarantees of the victims, the services and entities the victim can turn to for help, and remedy mechanisms by means of which the victims can safeguard their rights or guarantee their protection;
- 4) To promote training activities on the prevention and suppression of the crime of trafficking in persons, on the condition of the victim, skills of reception, and mechanisms of protection;
- 5) To promote studies aiming at understanding the phenomena of the crime of trafficking in persons in its multiple dimensions;
- 6) To establish cooperation agreements with public or private entities that provide assistance and shelter to victims of the crime of trafficking in persons.

2. Whenever the life or the physical integrity of the victim of the crime of trafficking in persons, of the families of the victim or of witnesses are threatened, the judiciary authorities, the criminal police organs, and the competent public services or entities shall take, as soon and as effectively as the situation may require, all the appropriate measures to guarantee their protection and assistance; and in case of non-residents, the referred authorities, organs and entities shall activate the necessary cooperation mechanisms to achieve the same objective in the country or territory of origin.

Article 8

Police protection

1. Once the judiciary authorities, the criminal police organs or other police entities have knowledge of the notice of the crime of trafficking in persons, police protection shall be guaranteed to the victim whenever the victim's life, physical integrity, freedom or assets of a considerable value are in danger.

2. During the course of enquiry, police protection for the victim shall be ordered by the Public Prosecutor *ex officio*, or at the request of the victim or of his or her legal representative, or under the proposal of the criminal police authority; after the enquiry, it shall be ordered by the judge who presides over the proceedings at that stage at the request of the Public Prosecutor.

3. Police protection to the victim shall be provided by the Public Security Police Force; prior to the order referred to in the previous paragraph, to ensure police protection shall be of the competence of the criminal police organ carrying out the investigation measures.

Article 9

Repeal

Article 7 of Law No. 6/97/M, of 30 July, is repealed.

Article 10

References to the crime of international trafficking in persons

All references to the crime of international trafficking in persons in legislation currently in force as well as all references to Article 7 of Law No. 6/97/M of 30 July, shall be considered as references to the crime of trafficking in persons provided for in article 153-A of the Criminal Code, as added by this law.

Article 11

Entry into force

This law enters into force on the day following the day of its publication.

Approved on 12 June 2008

The President of the Legislative Assembly, *Susana Chou*.

Signed on 16 June 2008

To be published.

The Chief Executive, *Ho Hau Wah*.