

AN ACT

To provide criminal penalties for smuggling people and trafficking people in accordance with the Republic of Palau's international commitments, including the Nasonini Declaration, the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

1 **Section 1. Short Title:** This Act shall be known and may be cited as the Anti-People
2 Smuggling and Trafficking Act.

3 **Section 2. Definitions:**

4 (a) “Child” means a person who is less than 18 years of age.

5 (b) “Commercial carrier” means a company, or the owner, operator or master of any
6 means of transport, any vessel or aircraft, that engages in the transportation of
7 cargo or passengers for commercial gain.

8 (c) “Company” means a corporation, partnership, or other entity that is not an
9 individual.

10 (d) “Exploitation” means sexual servitude, exploitation of another person by and
11 through prostitution, forced labor or services, or slavery.

12 (e) “Fraudulent passport and/or travel or identity document” means a passport, travel
13 and/or any other identity document that:

14 (1) has been made or altered in a material way, by a person other than a person
15 or agency lawfully authorized to make or issue the passport, travel and/or
16 any other identity document on behalf of the country that issued the
17 document; or

18 (2) has been issued or obtained through misrepresentation, bribery, corruption,
19 duress, or in any other unlawful manner; or

20 (3) is being improperly used by a person other than the rightful holder.

- 1 (f) “Illegal entry” means crossing the border of the Republic of Palau or any other
2 country without complying with the requirements for lawful entry of that country.
- 3 (g) “People smuggling” means arranging or assisting a person’s illegal entry into any
4 country of which the person is not a citizen, including the Republic of Palau, either
5 knowing or being reckless as to the fact that the person’s entry is illegal.
- 6 (h) “People trafficking” means the recruitment, transportation, transfer, harboring or
7 receipt of a person for the purposes of exploitation as described in sections 5 or 6.
- 8 (i) “Receiving country” means any country into which a trafficked person is brought as
9 part of an act of people trafficking.
- 10 (j) “Smuggled person” means any person who is a victim or object of an act of people
11 smuggling, regardless of whether that person participated in the people smuggling.
- 12 (k) “Trafficked person” means any person who is the victim or object of an act of
13 people trafficking.

14 **Section 3. Offense of People Smuggling.** Every person who engages in people
15 smuggling shall be guilty of people smuggling regardless of whether the smuggled person arrives
16 in the receiving country and upon conviction thereof shall be fined not more than \$25,000, or
17 imprisoned not more than 10 years or both.

18 **Section 4. Offense of Aggravated people Smuggling.** Every person who engages in
19 people smuggling under circumstances in which the life or safety of the smuggled person is, or is
20 likely to be, endangered shall be guilty of aggravated people smuggling regardless of whether the
21 smuggled person arrives in the receiving country, and upon conviction thereof shall be fined not
22 more than \$50,000 or imprisoned not more than 15 years or both.

23 **Section 5. Offense Relating to Fraudulent Passport, Travel and/or any Other**
24 **Identity Documents.** Every person who makes, obtains, gives, sells, or possesses a fraudulent
25 passport, travel and/or any other identity document for the purpose of facilitating people smuggling
26 or facilitating the continued presence of a smuggled person in a receiving country shall be guilty of
27 travel document fraud, and upon conviction thereof shall be fine not more than \$25,000, or

1 imprisoned not more than 10 years or both.

2 **Section 6. Offense of People Trafficking.** Every person who knowingly or recklessly
3 recruits, transport, transfers, harbors or receives any person or persons for the purpose of
4 exploitation by threat, use of force, abduction, fraud, deception, abuse of power, or the giving or
5 receiving of payments or benefits to achieve the consent of a person having control over another
6 person, shall be guilty of people trafficking, and upon conviction thereof shall be fined not more than
7 \$250,000, or imprisoned not more than 25 years or both.

8 **Section 7. Offense of Trafficking in Children.** Every person who knowingly or
9 recklessly recruits, transports, transfers, harbors or receives a child by any means for the purposes
10 of exploitation shall be guilty of trafficking in children and upon conviction thereof, shall be fined
11 not more than \$500,000, or imprisoned for not more than 50 years or both.

12 **Section 8. Offense of Exploiting a Trafficked Person.** Every person who knowingly
13 or recklessly engages in, participates in, or profits from the exploitation of a trafficked person shall
14 be guilty of exploitation of a trafficked person and, upon conviction thereof, shall be fined not more
15 than \$50,000, or imprisoned for not more than 10 years or both.

16 **Section 9. Consent of Trafficked Person Irrelevant.** For sections 5, 6 and 7 hereof,
17 it is not defense that the trafficked person consented to the people trafficking or to the exploitation.

18 **Section 10. Immunity of Trafficked Person.** A trafficked person shall not be subject
19 to criminal prosecution with respect to:

- 20 (a) The act of people trafficking;
- 21 (b) That person's period of unlawful residence in the receiving country; and
- 22 (c) That person's procurement or possession of any fraudulent travel or identity
23 documents which he or she obtained, or with which he or she was supplied, for the
24 purpose of entering the receiving country; and
- 25 (d) That person's illegal entry into the receiving country.

26 **Section 11. Penalty for Non-Citizen.**

27 Every non-citizen convicted under any one of Sections 3,4,5,6, 7 and/or 8 shall have his or

1 her entry permit revoked and shall be deported upon completion of any sentence imposed by this
2 Section. The Minister of Justice shall promulgate regulations for the deportation of persons pursuant
3 to this Act.

4 **Section 12. Scope of Application.** The offenses described in sections 2,3,4,5,6 and 7
5 hereof apply, regardless of whether the conduct constituting the offense took place inside or outside
6 the Republic of Palau if:

- 7 (a) the Republic of Palau is the receiving country or the exploitation occurs in the
8 Republic of Palau;
- 9 (b) the receiving country is a foreign country but the people smuggling or people
10 trafficking started in the Republic of Palau or transits the Republic of Palau; or
- 11 c) the person who engages in the people smuggling or people trafficking is a citizen of
12 the Republic of Palau.

13 **Section 13. Obligation of Commercial Carriers.** If a commercial carrier carries a
14 person into the Republic of Palau and, upon entry into the Republic of Palau, the person does not
15 have the passport and/or travel documents required for lawful entry, the commercial carrier shall
16 be liable to pay the costs of the person's detention in, and removal from, the Republic of Palau
17 unless:

- 18 (a) the carrier had reasonable grounds to believe that the documents that the person had
19 were the travel documents required for lawful entry of that person into the Republic
20 of Palau; or
- 21 (b) the person possessed the passport and/or travel documents required for lawful entry
22 into the Republic of Palau when that person boarded, or last boarded, the means of
23 transport to travel to the Republic of Palau; or
- 24 c) entry into the Republic of Palau occurred only because of illness of or injury to
25 person on board, stress of weather, or other circumstances beyond the control of the
26 commercial carrier.

1 **Section 14. Effective Date.** This Act shall take effect upon its approval by the President
2 of the Republic of Palau or upon its becoming law without such approval, except as otherwise
3 provided by law.

PASSED: April 26, 2005

Approved this 4th day of ~~April~~ May 2005.

/s/ _____
Tommy E. Remengesau, Jr.
President
Republic of Palau