

REPUBLIC OF SOUTH AFRICA

PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Gazette No. 32906 of 29 January 2010)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

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BILL

To give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000; to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to prevent and combat the trafficking in persons within or across the borders of the Republic; to provide for measures to protect and assist victims of trafficking in persons; to provide for the establishment of the Intersectoral Committee on Prevention and Combating of Trafficking in Persons; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the search for improved socio-economic opportunities contributes to making persons vulnerable to becoming victims of trafficking;

CONCERNED by the increase of trafficking in persons, especially women and children, and the role played by organised criminal networks in the trafficking in persons globally;

SINCE the South African common law and statutory law do not deal with the problem of trafficking in persons adequately;

AND SINCE the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the right to human dignity, the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause, the right not to be subjected to slavery, servitude or forced labour, and the right of children to be protected from maltreatment, neglect, abuse or degradation; and

MINDFUL of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000, and other international instruments which place obligations on the Republic of South Africa towards the combating and, ultimately, the eradication of trafficking in persons,

Parliament of the Republic of South Africa therefore enacts as follows:—

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CHAPTER 1

DEFINITIONS AND OBJECTS OF ACT

Definitions 40

- 1. In this Act, unless the context indicates otherwise—
 “**abuse of vulnerability**”, for purposes of the definition of trafficking, means any physical or psychological abuse that leads a person to believe that he or she has no reasonable alternative but to submit to exploitation, and includes, but is not limited to, taking advantage of the vulnerabilities of that person resulting from— 45

- (a) the person having entered or remained in the Republic illegally or without proper documentation;
 - (b) pregnancy;
 - (c) any disability of the person;
 - (d) addiction to the use of any dependence-producing substance; 5
 - (e) being a child; and
 - (f) socio-economic circumstances;
- “accredited organisation”** means an organisation accredited in terms of section 20 to provide services to adult victims of trafficking;
- “carrier”** includes a company, or the owner, agent, operator, lessor, driver, charterer or master of any means of transport; 10
- “child”** means a person under the age of 18 years;
- “Children’s Act”** means the Children’s Act, 2005 (Act No. 38 of 2005);
- “children’s court”** means a children’s court referred to in section 42 of the Children’s Act; 15
- “court”** means a High Court or a magistrate’s court for any district or for any regional division;
- “Criminal Law (Sexual Offences and Related Matters) Amendment Act”** means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); 20
- “Criminal Procedure Act”** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- “debt bondage”** means the status or condition that arises from a pledge by a person of—
- (a) his or her personal services; or 25
 - (b) the personal services of another person under his or her control, as security for a debt owed, or claimed to be owed, including any debt incurred or claimed to be incurred after the pledge is given, by that person if the—
- (i) debt owed or claimed to be owed, as reasonably assessed, is manifestly excessive; 30
 - (ii) length and nature of those services are not respectively limited and defined; or
 - (iii) value of those services as reasonably assessed is not applied towards the liquidation of the debt or purported debt;
- “designated child protection organisation”** has the meaning ascribed to it in section 1 of the Children’s Act; 35
- “exploitation”** includes, but is not limited to—
- (a) all forms of slavery or practices similar to slavery;
 - (b) forced marriage;
 - (c) sexual exploitation;
 - (d) servitude; 40
 - (e) debt bondage;
 - (f) forced labour;
 - (g) child labour as defined in section 1 of the Children’s Act;
 - (h) the removal of body parts; and
 - (i) the impregnation of a female person against her will for the purpose of selling her child when the child is born; 45
- “forced labour”** means labour or services of a person obtained or maintained through threats or perceived threats of harm, the use of force, intimidation or other forms of coercion, or physical restraint to that person or another person;
- “forced marriage”** means a marriage concluded against the will and without the valid consent of both parties to the marriage; 50
- “foreigner”** means a person who is not a citizen or permanent resident of the Republic;
- “guardian”** has the meaning ascribed to it in section 1 of the Children’s Act;
- “illegal foreign child”** means a child who is present in the Republic in contravention of the Immigration Act; 55
- “internet service provider”** means an internet service provider as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002);
- “Immigration Act”** means the Immigration Act, 2002 (Act No. 13 of 2002); 60
- “Minister”** means the Cabinet member responsible for the administration of justice;

“National Director of Public Prosecutions” means the person referred to in section 179(1)(a) of the Constitution of the Republic of South Africa, 1996, and appointed in terms of section 10 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

“parent” has the meaning ascribed to it in section 1 of the Children’s Act; 5

“parental responsibilities and rights”, in relation to a child, means the responsibilities and rights referred to in section 18 of the Children’s Act;

“person”, for purposes of this Act, includes a natural person, a juristic person and a partnership, unless the context indicates otherwise;

“prescribe” means prescribe by regulation in terms of section 43 of this Act; 10

“provincial department of social development” has the meaning ascribed to it in section 1 of the Children’s Act;

“provincial head” has the meaning ascribed to it in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“removal of body parts” means the removal of or trade in any organ or other body part from a living person who has been trafficked or the body of a deceased person who has been trafficked and killed for the sole purpose of removing the organ or other body part in contravention of the National Health Act, 2003 (Act No. 61 of 2003); 15

“servitude” means a condition in which the labour or services of a person are provided or obtained through threats or perceived threats of harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if the person does not perform the labour or services in question, that person or another person would suffer harm; 20

“sexual exploitation” means the commission of any sexual offence in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any offence of a sexual nature in any other law against a victim of trafficking, and includes forcing a victim of trafficking to participate in the production of pornographic material or to perform any act of a sexual nature in, but not limited to, a strip club, massage parlour, brothel or escort agency; 25

“slavery” means reducing a person by any means to a state of submitting to the control of another person as if that other person were the owner of that person; 30

“social service professional” has the meaning ascribed to it in section 1 of the Children’s Act;

“social worker” means a person registered as a social worker in terms of section 17 of the Social Service Professions Act, 1978 (Act No. 110 of 1978); 35

“trafficking” includes the delivery, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, exchange, lease, disposal or receiving of a person, or the adoption of a child facilitated or secured through legal or illegal means, within or across the borders of the Republic, of a person trafficked or an immediate family member of the person trafficked, by means of— 40

- (a) a threat of harm;
- (b) the threat or use of force, intimidation or other forms of coercion;
- (c) the abuse of vulnerability;
- (d) fraud; 45
- (e) deception or false pretences;
- (f) debt bondage;
- (g) abduction;
- (h) kidnapping;
- (i) the abuse of power; 50
- (j) the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
- (k) the giving or receiving of payments, compensation, rewards, benefits or any other advantage,

for the purpose of any form or manner of exploitation, sexual grooming or abuse of such person, including the commission of any sexual offence or any offence of a sexual nature in any other law against such person or performing any sexual act with such person, whether committed in or outside the borders of the Republic; and 55

“UN Protocol to Prevent, Suppress and Punish Trafficking in Persons” means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000, the English text of which is replicated in Schedule 2. 60

Objects of Act

2. The objects of this Act are to—
- (a) give effect to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons;
 - (b) provide for the prosecution of persons involved in trafficking and for appropriate penalties; 5
 - (c) provide for the prevention of trafficking in persons and for the protection of and assistance to victims of trafficking;
 - (d) provide services to victims of trafficking;
 - (e) provide for effective enforcement measures; 10
 - (f) establish an Intersectoral Committee on the Prevention and Combating of Trafficking in Persons, which must develop a draft national policy framework; and
 - (g) combat trafficking in persons in a co-ordinated manner.

CHAPTER 2

15

PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS

Public awareness

3. (1) The Intersectoral Committee established by section 40 must, and where appropriate, after consultation with relevant non-governmental organisations, establish public awareness programmes or other measures for the prevention and combating of trafficking in persons designed to— 20
- (a) inform and educate members of the public, especially those who are vulnerable or at risk of becoming victims of trafficking, foreigners who apply for South African visas who may be victims of trafficking, and South African citizens or permanent residents who apply for South African passports or who depart abroad, on issues relating to trafficking in persons, including— 25
 - (i) common recruitment techniques used by traffickers;
 - (ii) practices used to keep victims of trafficking in exploitative situations;
 - (iii) the forms of abuse to which victims of trafficking may be subjected; and
 - (iv) organisations, institutions or law enforcement agencies that may be approached for assistance or information; 30
 - (b) inform and educate victims of trafficking on—
 - (i) their rights as victims;
 - (ii) legal or other measures in place to ensure their safety, recovery and repatriation; and 35
 - (iii) organisations, institutions or law enforcement agencies that may be approached for assistance or information; and
 - (c) discourage the demand for and the supply of victims of trafficking that fosters the exploitation of those victims, especially women and children.
- (2) The programmes or other measures referred to in subsection (1) must— 40
- (a) include appropriate measures aimed at reaching rural communities;
 - (b) where possible, be provided in a language understood by the persons at whom they are directed; and
 - (c) be reviewed every second year in order to determine their effectiveness.
- (3) The Director-General: Justice and Constitutional Development must take all 45 reasonable steps within available resources to ensure that the programmes or other measures referred to in subsection (1) are implemented throughout the Republic.

CHAPTER 3

OFFENCES, PENALTIES AND EXTRA-TERRITORIAL JURISDICTION

Trafficking in persons and acts aimed at committing, acquiring another person to commit, or conspiring to commit an offence under this Chapter 50

4. (1) A person is guilty of an offence of trafficking in persons if that person trafficks another person and is, subject to section 51 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), liable on conviction to a fine or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine or both. 55

- (2) A person is guilty of an offence of involvement of trafficking in persons and is, subject to section 51 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), liable on conviction to a fine or imprisonment, or such imprisonment without the option of a fine or both, if that person—
- (a) performs any act aimed at committing an offence under this Chapter; 5
 - (b) incites, instigates, commands, directs, aids, promotes, advises, recruits, encourages or procures any other person to commit an offence under this Chapter; or
 - (c) conspires with any other person to commit an offence under this Chapter or to aid in the commission thereof. 10
- (3) It is no defence to a charge of contravening subsection (1) or (2) that—
- (a) a child who is a victim of trafficking or a person having control or authority over a child who is a victim of trafficking has consented to the intended exploitation, the action which was intended to constitute trafficking, or that the intended exploitation or action did not occur, even if none of the means referred to in the definition of trafficking have been used; or 15
 - (b) an adult person who is a victim of trafficking has consented to the intended exploitation, the action which was intended to constitute trafficking or that the intended exploitation or action did not occur, if one or more of the means referred to in the definition of trafficking have been used. 20
- (4) In order to establish the liability in terms of subsection (1) or (2) of an employer or principal, the conduct of an employee or agent of or any other person acting on behalf of the employer or principal may be attributed to the employer or principal if that person is acting—
- (a) within the scope of his or her employment; 25
 - (b) within the scope of his or her actual or apparent authority; or
 - (c) with the express or implied consent of a director, member or partner of the employer or principal.
- (5) Subsection (4) does not exclude the liability of an employee or agent of or any other person acting on behalf of the employer or principal for committing the offence of trafficking in persons. 30
- (6) (a) A finding by a court that an employer or principal has contravened subsection (1) or (2) serves as a ground for the revocation or cancellation of any licence or registration that the employer or principal may require in order to conduct its business.
- (b) The clerk or registrar of the court which made the finding referred to in paragraph (a) must, in writing notify the authority that granted the licence or registration of the finding. 35
- (c) The authority that granted the licence or registration must review the licence or the registration and, where necessary, revoke or cancel the licence or registration.

Debt bondage 40

5. Any person who intentionally engages in conduct that causes another person to enter into debt bondage is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 15 years.

Possession, destruction, confiscation, concealment of or tampering with documents

6. Any person who has in his or her possession or intentionally destroys, confiscates, conceals or tampers with any actual or purported identification document, passport or other travel document of a victim of trafficking in facilitating or promoting trafficking in persons is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years. 45

Using services of victims of trafficking 50

7. Any person who intentionally benefits, financially or otherwise, from the services of a victim of trafficking or uses or enables another person to use the services of a victim of trafficking and knows or ought reasonably to have known that such person is a victim of trafficking, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 15 years. 55

Conduct facilitating trafficking in persons

- 8.** (1) A person is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years if the person—
- (a) intentionally leases or subleases any room, house, building or establishment for facilitating or promoting trafficking in persons or allows it to be used or ought reasonably to have known that it will be used for facilitating or promoting trafficking in persons; or 5
 - (b) advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcast or distribution of information that facilitates or promotes trafficking in persons by any means, including the use of the internet or other information technology, and knows or ought reasonably to have known that it will be used for facilitating or promoting trafficking in persons. 10
- (2) An internet service provider operating in the Republic—
- (a) must take all reasonable steps to prevent the use of its service for the hosting of information referred to in subsection (1)(b); and 15
 - (b) that has knowledge that any internet address on its server contains information referred to in subsection (1)(b) must—
 - (i) without delay report that internet address, as well as the particulars of the person maintaining or in any manner contributing to that internet address, to the South African Police Service; 20
 - (ii) take all reasonable steps to preserve any evidence for purposes of investigation and prosecution by the relevant authorities; and
 - (iii) without delay take all reasonable steps to prevent access to that internet address by any person. 25
- (3) An internet service provider who fails to comply with the provisions of subsection (2) is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years.
- (4) (a) A finding by a court that an internet service provider has contravened subsection (2) serves as a ground for the revocation or cancellation of that licence. 30
- (b) The clerk or registrar of the court which made the finding referred to in paragraph (a) must, in writing, notify the authority that granted the licence of the finding.
- (c) The authority that granted the licence must review the licence and, where necessary, revoke or cancel the licence.

Liability of carriers

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- 9.** (1) A carrier who brings a victim of trafficking into or removes a victim of trafficking from the Republic knowing that the victim of trafficking does not have a passport and, where applicable, a valid visa required for lawful entry into or departure from the Republic, is guilty of an offence and is liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years. 40
- (2) A carrier is not guilty of an offence under subsection (1) if entry of the victims of trafficking into the Republic occurred because of circumstances beyond the control of the carrier.
- (3) In addition to any other offence under this section, a carrier is liable to pay the expenses incurred or reasonably expected to be incurred in connection with the care, accommodation, transportation and repatriation of the victim, as provided for in section 28. 45

Extra-territorial jurisdiction

- 10.** (1) A court of the Republic has jurisdiction in respect of an act committed outside the Republic which would have constituted an offence in terms of this Act had it been committed in the Republic, regardless of whether or not the act constitutes an offence at the place of its commission, if the person to be charged— 50
- (a) is a citizen of the Republic;
 - (b) is ordinarily resident in the Republic;
 - (c) has committed the offence against a citizen of the Republic or a person who is ordinarily resident in the Republic; 55

- (d) is, after the commission of the offence, present in the territory of the Republic, or in its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform or aircraft registered or required to be registered in the Republic;
 - (e) is, for any reason, not extradited by the Republic or if there is no application to extradite that person; or 5
 - (f) is a juristic person or a partnership registered in terms of any law in the Republic.
- (2) Only a High Court has jurisdiction in respect of an offence referred to in subsection (1)(d). 10
- (3) A person who commits an offence referred to in subsection (1) is liable on conviction to the penalty prescribed for that offence.
- (4) The Minister must, in consultation with the Chief Justice and after consultation with the National Director of Public Prosecutions, in writing designate an appropriate court in which to conduct a prosecution against any person accused of having committed an offence in a country outside the Republic as provided for in subsection (1). 15
- (5) No prosecution may be instituted against a person in terms of this section with respect to conduct which formed the basis of an offence under this Act in respect of which that person has already been convicted or acquitted by a court of another jurisdiction. 20
- (6) The institution of a prosecution in terms of this section must be authorised in writing by the National Director of Public Prosecutions.

Factors to be considered in sentencing

- 11.** If a person is convicted of any offence under this Act, the court that imposes the sentence must consider, but is not limited to, the following aggravating factors: 25
- (a) The significance of the role of the convicted person in the trafficking process;
 - (b) previous convictions relating to the crime of trafficking in persons;
 - (c) whether the convicted person caused the victim to become addicted to the use of a dependence-producing substance;
 - (d) the conditions in which the victim was kept; 30
 - (e) whether the victim was held captive for any period;
 - (f) whether the victim suffered abuse and the physical and psychological effects the abuse had on the victim;
 - (g) whether the offence formed part of organised crime; and
 - (h) whether the victim was a child. 35

CHAPTER 4

IDENTIFICATION AND PROTECTION OF VICTIMS OF TRAFFICKING

Reporting and referral of child victim of trafficking

- 12.** (1) Despite any other law, policy or code of conduct prohibiting the disclosure of personal information, an immigration officer, labour inspector, social worker, social service professional, medical practitioner, nurse, teacher, traditional health practitioner, traditional healer or traditional leader who, on reasonable grounds, suspects that a child is a victim of trafficking must immediately report that suspicion to a police official for investigation. 40
- (2) Any person other than the persons referred to in subsection (1) who on reasonable grounds suspects that a child is a victim of trafficking, must report that suspicion to a police official for investigation. 45
- (3) A person referred to in subsection (1) or (2)—
- (a) must provide reasons for that suspicion to a police official;
 - (b) who makes the report in good faith, is not liable to civil action on the basis of the report; and 50
 - (c) is entitled to have his or her identity kept confidential if his or her safety is at risk as a result of the report, unless the interests of justice require otherwise.
- (4) A police official to whom a report has been made in terms of subsection (1) or (2) or a police official who, on reasonable grounds, suspects that a child is a victim of trafficking must, within 24 hours, refer that child to a designated child protection 55

organisation or the provincial department of social development, pending a police investigation into the matter.

(5) The procedure provided for in section 110(5) to (8) of the Children's Act applies in respect of a child referred to a designated child protection organisation or the provincial department of social development in terms of subsection (4). 5

(6) A person who fails to comply with the provisions of subsections (1), (2) or (4), is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding one year.

Reporting and referral of adult victim of trafficking

13. (1) (a) An immigration officer, labour inspector, social worker, social service professional, medical practitioner, nurse, traditional health practitioner, traditional healer or traditional leader who, on reasonable grounds, suspects that an adult person is a victim of trafficking must, subject to paragraph (b), immediately report that suspicion to a police official for investigation. 10

(b) A social worker, social service professional, medical practitioner, nurse, traditional health practitioner, traditional healer or traditional leader may only report a matter to a police official as provided for in paragraph (a) if the victim has given his or her written consent in the prescribed manner, except where the person is— 15

- (i) mentally disabled; or
- (ii) in an altered state of consciousness, including being under the influence of any medicine, drug or other substance, to the extent that the person's consciousness or judgement is adversely affected. 20

(2) Any person, other than the persons referred to in subsection (1)(a), who on reasonable grounds suspects that an adult person is a victim of trafficking, may report that suspicion to a police official for investigation. 25

(3) A person referred to in subsection (1) or (2)—

- (a) must provide reasons for that suspicion to a police official;
- (b) who makes a report in good faith, is not liable to civil action on the basis of the report; and
- (c) is entitled to have his or her identity kept confidential if his or her safety is at risk as a result of the report, unless the interests of justice require otherwise. 30

(4) A police official to whom a report has been made in terms of subsection (1) or (2) or a police official who, on reasonable grounds, suspects that an adult person is a victim of trafficking must, within 24 hours, refer that person to an accredited organisation or the provincial department of social development, pending a police investigation into the matter. 35

(5) An accredited organisation or the provincial department of social development to which a referral has been made in terms of subsection (4) must—

- (a) within 24 hours, where necessary with the assistance of the South African Police Service, ensure the safety of the person concerned if the person's safety is at risk; and
- (b) without delay, in the prescribed manner, assess whether the person concerned is a victim of trafficking. 40

(6) An adult person referred to in subsection (1), (2) or (4) may temporarily be accommodated at an accredited organisation pending a decision in terms of subsection (5)(b) on whether he or she is a victim of trafficking. 45

(7) If, after an assessment referred to in subsection (5)(b), it is found that the person concerned is a victim of trafficking—

- (a) a certificate, as prescribed, must be issued to him or her, certifying him or her to be a victim of trafficking; and
- (b) he or she must be informed of the right to apply for a recovery and reflection period in terms of section 17, if he or she is a foreigner. 50

(8) An immigration officer or labour inspector who fails to comply with the provisions of subsection (1) or a police official who fails to comply with the provisions of subsection (4) is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding one year. 55

(9) A social worker, social service professional, medical practitioner, nurse, traditional health practitioner, traditional healer or traditional leader is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding one year if he or she fails to— 60

- (a) request the written consent referred to in subsection (1)(b) of an adult person referred to in subsection (1)(a) whilst he or she on reasonable grounds suspects that that person is a victim of trafficking; or
- (b) make a report referred to in subsection (1)(a) after he or she has obtained the written consent referred to in subsection (1)(b). 5

Child victim of trafficking found in Republic

- 14.** (1) A child who is a victim of trafficking—
- (a) must be referred to a designated social worker for investigation in terms of section 155(2) of the Children's Act; and
 - (b) may, pending such investigation, be placed in temporary safe care in terms of section 151 of the Children's Act. 10
- (2) If, after an investigation as provided for in subsection (1), an illegal foreign child is brought before the children's court, the court may order that the child be assisted in applying for asylum in terms of the Refugees Act, 1998 (Act No. 130 of 1998).
- (3) A finding in terms of section 156 of the Children's Act that an illegal foreign child who is a victim of trafficking is a child in need of care and protection serves as authorisation for allowing the child to remain in the Republic for the duration of the children's court order. 15

Provision of health care services

- 15.** A foreigner who is a victim of trafficking is entitled to the same public health care services as those to which the citizens of the Republic have access. 20

Criminal prosecution against victim of trafficking prohibited

- 16.** (1) No criminal prosecution may be instituted against a child who is found to be a victim of trafficking after an investigation in terms of section 110(5)(c) of the Children's Act, or against an adult person who has been certified to be a victim of trafficking in terms of section 13(7)(a), for— 25
- (a) entering or remaining in the Republic in contravention of the Immigration Act;
 - (b) assisting another person to enter or remain in the Republic in contravention of the Immigration Act; 30
 - (c) possessing any fabricated or falsified passport, identity document or other document used for the facilitation of movement across borders; or
 - (d) being involved in an illegal activity to the extent that he or she has been compelled to do so,
- as a direct result of his or her situation as a victim of trafficking. 35
- (2) If, during a criminal prosecution of a child or an adult person in respect of any matter referred to in subsection (1), the prosecutor on reasonable grounds suspects that that child or adult person is a victim of trafficking, the prosecutor must—
- (a) apply to the court for a postponement; and
 - (b) refer that child to a designated child protection organisation or provincial department of social development for an investigation in terms of section 110 of the Children's Act; or 40
 - (c) refer that adult person to an accredited organisation or provincial department of social development for an assessment referred to in section 13(5).
- (3) A certificate that an adult person is a victim of trafficking or a finding by a children's court that a child is a victim of trafficking serves as ground for the withdrawal of the criminal prosecution or the discharge of the victim of trafficking. 45

CHAPTER 5

STATUS OF FOREIGN VICTIMS OF TRAFFICKING

Recovery and reflection period 50

- 17.** (1) Despite the provisions of the Immigration Act, the Director-General: Home Affairs must, in the prescribed manner and subject to the prescribed conditions, allow a foreigner who has been certified to be a victim of trafficking in terms of section 13(7)(a),

regardless of his or her status, to remain in the Republic for a non-renewable recovery and reflection period not exceeding 90 days.

(2) If a foreigner referred to in subsection (1), after a period of 30 days since he or she has been granted a recovery and reflection period, is unwilling to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a trafficker, an investigation into his or her circumstances must be conducted by the Director-General: Social Development in order to determine whether it is safe to return him or her to his or her country of origin or the country from where he or she has been trafficked. 5

(3) If a foreigner referred to in subsection (2) is still unwilling to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a trafficker upon expiration of the recovery and reflection period, the information obtained as a result of an investigation referred to in subsection (2) must be provided to the Director-General: Home Affairs to be taken into account when deciding whether to repatriate the foreigner. 10 15

(4) If the Director-General: Social Development is unable to complete an investigation referred to in subsection (2) before the expiration of the recovery and reflection period, he or she must, in the prescribed manner, request the Director-General: Home Affairs to extend, in the prescribed manner, that period to six months.

(5) The granting of a non-renewable recovery and reflection period referred to in subsection (1) does not— 20

- (a) depend upon the willingness of a victim of trafficking to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a case of trafficking in persons; and
- (b) prevent or prejudice the competent authority from conducting any relevant investigation, provided that due regard is given to the emotional state of the victim. 25

Temporary residence

18. (1) Despite the provisions of section 11(1) of the Immigration Act, a visitor's permit may be issued to a victim of trafficking— 30

- (a) who—
 - (i) is present in the Republic; and
 - (ii) has agreed to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a case of trafficking in persons; or
- (b) if an investigation referred to in section 17(2) indicates that it is not safe to return him or her to his or her country of origin or the country from where he or she has been trafficked. 35

(2) Despite the provisions of section 11(1) of the Immigration Act, a visitor's permit may be renewed by the Director-General: Home Affairs for the duration of the investigation of and the prosecution of a case of trafficking in persons. 40

(3) A visitor's permit referred to in subsection (1) may be issued to a victim of trafficking regardless of—

- (a) his or her status; or
- (b) whether a recovery and reflection period as provided for in section 17 was granted or has expired. 45

(4) For purposes of this Act, the Director-General: Home Affairs may, on humanitarian grounds, extend a visitor's permit referred to in subsection (1), taking into account the likelihood that the holder of that permit may be harmed, killed or trafficked again if he or she is returned to his or her country of origin or the country from where he or she has been trafficked. 50

(5) Despite the provisions of section 11(2) of the Immigration Act, the holder of a visitor's permit that has been extended in terms of subsection (4) may conduct work or study in the Republic.

Permanent residence

19. A victim of trafficking is entitled to apply for a permanent residence permit in terms of section 27 of the Immigration Act, after five years' continuous residence in the Republic from the date on which a visitor's permit referred to in section 18 was issued to him or her, upon proof by that victim to the satisfaction of the Director-General: 55

Home Affairs that he or she may be harmed, killed or trafficked again if he or she is returned to his or her country of origin or the country from where he or she has been trafficked.

CHAPTER 6

SERVICES TO ADULT VICTIMS OF TRAFFICKING

5

Accreditation of organisation to provide service

20. (1) An adult victim of trafficking may only be referred in terms of section 13(4) to an organisation that has been accredited in terms of this section and has a valid certificate of accreditation, referred to in subsection (4)(a).

(2) The Minister of Social Development— 10

(a) must prescribe a system for the accreditation of organisations who will provide services to adult victims of trafficking; and

(b) may prescribe the circumstances in which accredited organisations qualify for financial assistance, within available resources.

(3) The system for accreditation referred to in subsection (2) must contain— 15

(a) criteria for the evaluation of the programmes offered by organisations to ensure that they comply with the minimum norms and standards referred to in section 21;

(b) mechanisms to monitor the programmes in question; and

(c) measures for the removal of organisations from the system, where appropriate. 20

(4) (a) The Minister of Social Development must issue a prescribed certificate to each organisation that is accredited in terms of this section.

(b) A certificate of accreditation referred to in paragraph (a) is valid for a maximum of four years from the date of accreditation. 25

(c) A quality assurance process must be conducted in the prescribed manner in respect of each accredited organisation.

(d) The Minister of Social Development must compile a report containing the particulars of each accredited organisation or organisation removed from the system within 30 days of accreditation or removal. 30

(e) The Director-General: Social Development must, without undue delay, provide a copy of the report referred to in subsection (4)(d) to—

(i) the relevant roleplayers in his or her Department;

(ii) the National Director of Public Prosecutions who must distribute the report to all prosecutors; and 35

(iii) the National Commissioner of the South African Police Service, who must distribute the report to all relevant roleplayers in the South African Police Service,

who are involved in the administration of this Act.

Minimum norms and standards

40

21. (1) The Minister of Social Development must, after consultation with interested parties, the Minister in The Presidency responsible for performance monitoring and evaluation, the Ministers of Basic Education, Finance, Health, Home Affairs, Justice and Constitutional Development, Labour, Police and State Security, prescribe minimum norms and standards for accredited organisations. 45

(2) The norms and standards referred to in subsection (1) must deal with—

(a) the safety of victims of trafficking, especially those at risk of harm;

(b) access to and provision of adequate health care;

(c) the provision of separate facilities for male and female victims of trafficking;

(d) hygienic and adequate toilet facilities; 50

(e) access to refuse disposal services or other adequate means of disposal of refuse generated at the facility;

(f) the drawing up of action plans for emergencies; and

(g) the manner in which information relating to a victim of trafficking's particulars should be kept confidential. 55

(3) An accredited organisation that provides services to adult victims of trafficking who have children in their care must, in addition to the norms and standards referred to in subsection (1), provide—

- (a) a safe environment for children;
- (b) proper care for sick children or children that become ill; and 5
- (c) safe storage of anything that may be harmful to children.

Programme offered by accredited organisation

22. (1) An accredited organisation—

- (a) must offer a programme aimed at— 10
 - (i) the provision of accommodation to adult victims of trafficking;
 - (ii) the provision of counselling to adult victims of trafficking; and
 - (iii) the reintegration of adult victims of trafficking into their families and communities; and
- (b) may offer a programme aimed at— 15
 - (i) the provision of rehabilitation services to adult victims of trafficking; or
 - (ii) the provision of education and skills development training to adult victims of trafficking.

(2) An accredited organisation may refer an adult victim of trafficking to an organisation that offers a programme referred to in subsection (1)(b) for purposes of obtaining those rehabilitation services or education and skills development training. 20

(3) An accredited organisation that provides services to an adult victim of trafficking who has a child in his or her care must offer a programme aimed at the reception, care and development of that child.

(4) Subject to subsection (5), a child referred to in subsection (3) may be cared for at any other premises only with the explicit consent of the adult victim in whose care he or she is. 25

(5) A child referred to in subsection (3) must be referred to a designated child protection organisation or the provincial department of social development for investigation in terms of section 155(2) of the Children's Act, to determine whether the child is in need of care and protection. 30

Access to programme offered by accredited organisation

23. A person who has been certified to be a victim of trafficking in terms of section 13(7)(a) is entitled to access to a programme offered by an accredited organisation.

Plan to address needs of victim of trafficking

24. An accredited organisation must, having due regard to the views of a person who has been certified to be a victim of trafficking in terms of section 13(7)(a), draw up a plan to address the immediate and long-term needs of that victim. 35

Return of adult victim of trafficking within Republic

25. An accredited organisation may not return an adult victim of trafficking to an area within the Republic from where he or she has been trafficked, without giving due consideration to— 40

- (a) the safety of the person during the process of returning him or her; and
- (b) the possibility that the person might be harmed, killed or trafficked again if returned to that area.

Information management 45

26. (1) An accredited organisation must collect information on victims of trafficking relating to—

- (a) the number of foreign victims of trafficking who have accessed a programme referred to in section 22;
- (b) the number of South African citizens or permanent residents who are victims of trafficking and who have accessed a programme referred to in section 22; 50
- (c) the number of victims who have accessed a programme referred to in section 22 and who have not been reported to the South African Police Service;

- (d) the countries from which foreign victims have been trafficked;
 - (e) the countries to which South African citizens or permanent residents have been trafficked;
 - (f) the purposes for which the victims have been trafficked;
 - (g) the methods used to recruit and transport the victims; 5
 - (h) the methods and routes used for trafficking the victims to and from the Republic; and
 - (i) the types of travel documents that victims have used or attempted to use to cross the borders of the Republic and how these documents were obtained.
- (2) An accredited organisation must provide an annual report on the information referred to in subsection (1) to the Director-General: Social Development on a date determined by him or her. 10
- (3) The Director-General: Social Development must provide an annual report on the information referred to in subsection (2) to the Intersectoral Committee established by section 40, as determined by the Intersectoral Committee. 15

CHAPTER 7

COMPENSATION

Compensation to victim of trafficking

27. (1) (a) The court may, subject to paragraph (c), on its own accord or at the request of the complainant or the prosecutor, in addition to any sentence which it may impose in respect of any offence under this Act, order a person convicted of that offence to pay appropriate compensation to any victim of the offence for— 20
- (i) damage to or the loss or destruction of property, including money;
 - (ii) physical, psychological or other injury;
 - (iii) being infected with a life-threatening disease; or
 - (iv) loss of income or support, 25
- suffered by the victim as a result of the commission of that offence.
- (b) Appropriate compensation includes expenses reasonably expected to be incurred in relation to the matters referred to in subparagraphs (i) to (iv) of subsection (1)(a).
- (c) A magistrate's court established under section 2 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), may not make an order for the payment of compensation, as provided for in paragraph (a) which exceeds the monetary jurisdiction determined by the Minister from time to time by notice in the *Gazette*, as provided for in section 300 of the Criminal Procedure Act. 30
- (2) In cases where the amount of the damage, injury or loss suffered exceeds an order for compensation made in terms of subsection (1), a civil action may be instituted by the victim for the recovery of the excess. 35
- (3) (a) Where the court makes an order for compensation to be paid in terms of this section, it must also determine the time within which payment is to be made and the method of payment, including whether it is to be paid in instalments or not and if it is to be paid in instalments, the intervals between the payment of instalments. 40
- (b) A magistrate or judge may, on application of the convicted person on good cause shown, vary the conditions and instalments according to which compensation is to be made.
- (c) A court that has acted in terms of paragraph (b), whether differently constituted or not, or any court of equal or superior jurisdiction may, on good cause shown, reconsider any decision that it has made regarding the payment of compensation and substitute it with a new order. 45
- (4) (a) An order for the payment of compensation as provided for in subsection (1) has the effect of a civil judgment of a magistrate's court and the person in whose favour the compensation order was made is deemed to be the judgment creditor and the convicted person against whom the compensation order was made is deemed to be the judgment debtor. 50
- (b) The judgment creditor referred to in paragraph (a) may, where a compensation order has not been complied with, file with the clerk of the court or registrar of the court which made the compensation order, an affidavit setting out the details of the compensation order and stating that the compensation order has not been complied with or has not been complied with in full, as the case may be, and the amount outstanding, 55

and must request that clerk of the court or registrar to furnish him or her with a certified copy of that compensation order.

(c) The clerk of the court or registrar of the court that made the compensation order must, after having inspected the court record concerned to verify the contents of the affidavit referred to in paragraph (b), furnish the judgment creditor with a certified copy of the compensation order in question and record on the court record that the judgment creditor has been furnished with a certified copy of the compensation order in question. 5

(d) The judgment creditor must file the certified copy of the compensation order with the clerk of the civil court of the magisterial district in which he or she or the judgment debtor resides, carries on business or is employed. 10

(e) The compensation order must then be executed in accordance with the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the Magistrates' Courts Rules, regarding warrants of execution against movable and immovable property and the issuing of emolument attachment orders and garnishee orders.

(5) (a) Where the court makes an order for compensation to be paid in terms of this section, it may, in its discretion, issue a warrant addressed to the sheriff authorising him or her to recover the amount of the compensation by the attachment and sale of any movable property belonging to the person in question. 15

(b) The amount which may be recovered in terms of paragraph (a) must be sufficient to cover, in addition to the amount of the compensation, the costs and expenses of the warrant and of any attachment and sale of property. 20

(c) If the proceeds of the sale of the movable property are insufficient to satisfy the amount referred to in paragraph (b), a High Court may issue a warrant, or in the case of a compensation order being made by a magistrate's court, authorise that magistrate's court to issue a warrant for the levy against the immovable property of the person in question of the amount unpaid. 25

Compensation to State

28. (1) The court may—

(a) in addition to any penalty which it may impose in respect of any offence in terms of this Act; 30

(b) in addition to any order for the payment of compensation to a victim in terms of section 27; and

(c) upon application by the prosecutor, make an order for payment by the convicted person to the State of an amount in compensation for expenses incurred or reasonably expected to be incurred in connection with the care, accommodation, transportation and repatriation of the victim of the offence. 35

(2) An order for the payment of compensation as provided for in subsection (1) has the effect of a civil judgment of a magistrate's court and the provisions of section 27(4) apply with the changes required by the context. 40

CHAPTER 8

DEPORTATION AND REPATRIATION OF VICTIMS OF TRAFFICKING

Summary deportation of victim of trafficking prohibited

29. Subject to section 30, the summary deportation of a victim of trafficking is prohibited. 45

Repatriation of victim of trafficking from Republic

30. (1) The Director-General: Social Development may not return a foreign child who is a victim of trafficking to his or her country of origin or the country from where he or she has been trafficked without giving due consideration to the—

(a) best interests of the child standard as provided for in section 7 of the Children's Act; 50

(b) safety of the child during the repatriation process;

(c) availability and suitability of care arrangements and the safety of the child in the country to which the child is to be returned; and

(d) possibility that the child might be harmed, killed or trafficked again. 55

- (2) The Director-General: Home Affairs—
- (a) may not return an adult who is a victim of trafficking to his or her country of origin or the country from where he or she has been trafficked without giving due consideration to the—
 - (i) safety of the person during the repatriation process; 5
 - (ii) safety of the person in the country to which the person is to be returned; and
 - (iii) possibility that the person might be harmed, killed or trafficked again; and
 - (b) must— 10
 - (i) before returning a person referred to in paragraph (a) to his or her country of origin or the country from where he or she has been trafficked, request the Director-General: Social Development to take reasonable steps as provided for in section 31(a); and
 - (ii) inform a person referred to in paragraph (a), in the prescribed manner, of any arrangements that have been made for his or her reception in the country to which he or she is to be returned. 15
- (3) This section does not prohibit the voluntary return of an adult who is a victim of trafficking to his or her country of origin or the country from where he or she has been trafficked. 20

Assistance to foreign victim of trafficking

31. The Director-General: Social Development must—
- (a) take reasonable steps to find suitable family members or an institution or organisation that renders assistance to victims of trafficking in the country to which a person referred to in section 30(1) or (2) is to be returned and that is willing to provide assistance to such a person; and 25
 - (b) without undue delay, provide the Director-General: Home Affairs with information in respect of a request made in terms of section 30(2)(b)(i).

Repatriation of victim of trafficking to Republic

32. With due regard to the safety of the person and without delay— 30
- (a) the Director-General: International Relations and Co-operation must—
 - (i) in co-operation with the Director-General: Social Development assess the risks to the safety and life of a person who is a citizen or permanent resident of the Republic and who is on reasonable grounds considered to be a victim of trafficking, if he or she is returned to the Republic; 35
 - (ii) facilitate the return of a person referred to in subparagraph (i) to the Republic; and
 - (iii) advise the Director-General: Home Affairs on measures to secure the reception of a person referred to in subparagraph (i) at a South African port of entry; 40
 - (b) the Director-General: Home Affairs must—
 - (i) facilitate and accept the return of a person referred to in paragraph (a);
 - (ii) where necessary, take measures to secure the reception of a person referred to in paragraph (a) at a South African port of entry;
 - (iii) issue travel documents or other authorisations as may be necessary to enable that person to travel to and enter the Republic; 45
 - (iv) at the request of another State that is a party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons or to an agreement relating to trafficking in persons to which the Republic is a party, verify that a person who is on reasonable grounds considered to be a victim of trafficking is a citizen or permanent resident of the Republic; 50
 - (v) upon entry into the Republic of a child who is on reasonable grounds considered to be a victim of trafficking refer the child to a designated social worker for investigation in terms of section 155(2) of the Children's Act; and 55
 - (vi) upon entry into the Republic of a person who is on reasonable grounds considered to be an adult victim of trafficking refer the person to an accredited organisation or provincial department of social development for an assessment referred to in section 13(5).

Escorting of child victim of trafficking

33. (1) If it is considered to be in the best interests of a child who has been trafficked, the Director-General: Social Development must authorise an adult at State expense to escort the child from the place where the child was found to the place from which the child was trafficked. 5

(2) The Director-General may not act in terms of subsection (1) unless he or she is satisfied that the parent, guardian or other person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place where the child is in order to escort the child back.

CHAPTER 9

10

GENERAL PROVISIONS

Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child

34. (1) If a children's court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child, the court may— 15

- (a) suspend all the parental responsibilities and rights of that parent, guardian or other person; and
- (b) place that child in temporary safe care, pending an inquiry by a children's court. 20

(2) Any action taken by a children's court in terms of subsection (1) does not exclude a person's liability for committing the offence of trafficking in persons as provided for in section 4.

International cooperation

35. (1) The President may on the conditions as he or she deems fit— 25

- (a) enter into an agreement with a foreign State that is not a State Party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons in respect of any matter pertaining to trafficking in persons; or
- (b) enter into an agreement with a foreign State that is a State Party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons in respect of any matter pertaining to trafficking in persons for the purpose of supplementing the provisions of that protocol or to facilitate the application of the principles contained therein. 30

(2) An agreement referred to in subsection (1) may not be in conflict with the provisions of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons. 35

(3) The President may agree to any amendment or revocation of an agreement referred to in subsection (1).

(4) An agreement referred to in subsection (1) or any amendment or revocation thereof, is not of any force or effect until that agreement, amendment or revocation has been approved by Parliament. 40

National instructions and directives

36. (1) The National Commissioner of the South African Police Service must, after consultation with the Directors-General: Health, Home Affairs, International Relations and Cooperation, Justice and Constitutional Development, Labour, National Intelligence Agency, and Social Development, the Chief Executive Officer: Government Communication and Information System and the National Director of Public Prosecutions, issue national instructions as provided for in section 25 of the South African Police Service Act, 1995 (Act No. 68 of 1995), regarding the following matters with which all police officials must comply in the execution of their functions in terms of this Act: 45

- (a) The division or divisions within the police to be tasked with the investigation of trafficking cases; 50
- (b) the manner in which the reporting of an alleged trafficking case is to be dealt with;
- (c) the manner in which trafficking cases are to be investigated;

- (d) the manner in which victims of trafficking should be identified, interviewed and treated with particular attention to the vulnerability of child victims;
 - (e) measures to be taken in instances where foreign victims of trafficking are not conversant with any of the official languages of the Republic;
 - (f) the referral of victims of trafficking to social, health care and psychological services; 5
 - (g) measures to be taken to ensure the safety of victims of trafficking or other potential witnesses if there is a likelihood that harm might result to them as a result of the reporting and consequent investigation of and prosecution of the case; 10
 - (h) the circumstances in which consultation with the prosecuting authority is required with the view to guiding the investigation of trafficking cases for purposes of obtaining the required evidence and to identify relevant witnesses;
 - (i) measures to be taken in order to ensure the detection of trafficking in persons at South African ports of entry and borders; 15
 - (j) the kind of information that must be obtained from a victim of trafficking with the view to provide such information to the prosecuting authority for purposes of determining the quantum of the damages suffered by the victim for which he or she may claim compensation in terms of section 27; and 20
 - (k) the collection and analysis of information on reported cases of trafficking in persons, including information relating to—
 - (i) the countries from which victims are being trafficked to the Republic;
 - (ii) the countries to which South African citizens and other residents are being trafficked; 25
 - (iii) the nationality of victims transiting the Republic and the countries to which they are being trafficked;
 - (iv) the purposes for which the persons who have been identified as victims of trafficking have been trafficked;
 - (v) the profiles of the traffickers and their victims, including their age, gender, nationality and sex; 30
 - (vi) the routes used by traffickers to enter and exit the Republic;
 - (vii) the methods used by traffickers to recruit and transport their victims;
 - (viii) the types of travel documents that traffickers and their victims have used or attempted to use to cross the borders of the Republic and how those documents were obtained; and 35
 - (ix) the link between trafficking operations and those involved in other forms of organised crime.
- (2) The National Commissioner of the South African Police Service must provide an annual report on the information referred to in subsection (1)(k) or any other relevant information to the Intersectoral Committee established by section 40, as determined by the Intersectoral Committee. 40
- (3) The Director-General: Home Affairs must, after consultation with the Directors-General: Health, International Relations and Cooperation, Justice and Constitutional Development, Labour, National Intelligence Agency, and Social Development, the Chief Executive Officer: Government Communication and Information System, the National Director of Public Prosecutions and the National Commissioner of the South African Police Service, issue directives regarding the following matters with which all immigration officers must comply in the execution of their functions in terms of this Act: 45
- (a) The manner in which the reporting of an alleged trafficking case is to be dealt with; 50
 - (b) the manner in which victims of trafficking must be identified, interviewed and treated, with particular attention to the vulnerability of child victims;
 - (c) measures to be taken in instances where foreign victims of trafficking are not conversant with any of the official languages of the Republic; 55
 - (d) the referral of victims of trafficking to social, health care and psychological services;
 - (e) the referral of victims of trafficking or other potential witnesses to the South African Police Service or relevant institutions or organisations if there is a likelihood that the victims or witnesses may be harmed or killed; and 60
 - (f) the collection and analysis of information on victims of trafficking who have been repatriated to the Republic in terms of section 32 relating to—

- (i) the number of victims who have been repatriated to the Republic and the countries to which they have been trafficked;
 - (ii) the profiles of the victims, including the age, gender and sex of the victims;
 - (iii) the purposes for which the victims were trafficked; 5
 - (iv) the routes used by traffickers to exit the Republic and to enter the countries to which the victims were trafficked;
 - (v) the methods used by traffickers to recruit and transport the victims; and
 - (vi) the types of travel documents that traffickers and their victims have used or attempted to use to exit the Republic and to enter the countries to which the victims were trafficked and how these documents were obtained. 10
- (4) (a) The Minister of Home Affairs must—
- (i) submit all directives provided for in subsection (3) to Parliament 30 days before they are issued; and 15
 - (ii) after the expiry of the 30-day period, publish them in the *Gazette*.
- (b) The Director-General: Home Affairs must provide an annual report on the information referred to in subsection (3)(f) or any other relevant information to the Intersectoral Committee established by section 40, as determined by the Intersectoral Committee. 20
- (5) The Director-General: Labour must, after consultation with the Directors-General: Health, Home Affairs, International Relations and Cooperation, Justice and Constitutional Development, National Intelligence Agency, and Social Development, the Chief Executive Officer: Government Communication and Information System, the National Director of Public Prosecutions and the National Commissioner of the South African Police Service, issue directives regarding the following matters with which all labour inspectors must comply in the execution of their functions in terms of this Act: 25
- (a) The manner in which the reporting of an alleged trafficking case is to be dealt with;
 - (b) the manner in which victims of trafficking should be identified, interviewed and treated, with particular attention to the vulnerability of child victims; 30
 - (c) measures to be taken in instances where foreign victims of trafficking are not conversant with any of the official languages of the Republic;
 - (d) the referral of victims of trafficking to social, health care and psychological services; and 35
 - (e) the referral of victims of trafficking or potential witnesses to the South African Police Service or relevant institutions or organisations if there is a likelihood that the victim or witnesses may be harmed or killed.
- (6) (a) The Minister of Labour must—
- (i) submit any directives provided for in subsection (5) to Parliament 30 days before they are issued; and 40
 - (ii) after the expiry of the 30-day period, publish them in the *Gazette*.
- (b) The Director-General: Labour must provide an annual report on any relevant information to the Intersectoral Committee established by section 40, as determined by the Intersectoral Committee. 45
- (7) The National Director of Public Prosecutions must, after consultation with the Minister, the Directors-General: Health, Home Affairs, International Relations and Cooperation, Justice and Constitutional Development, Labour, National Intelligence Agency, and Social Development, the National Commissioner of the South African Police Services and the Chief Executive Officer: Government Communication and Information System, issue directives regarding all matters which are necessary or expedient to be provided for and which are to be followed by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in cases relating to trafficking in persons, including the following: 50
- (a) The manner in which cases relating to trafficking in persons should be dealt with; 55
 - (b) the criteria to be used and the circumstances in which the prosecution must apply to court for an order that a witness and, in particular, child complainants give evidence by means of closed circuit television as provided for in section 158 of the Criminal Procedure Act, if the court does not make an order on its own accord in terms of subsection (2)(a) of that section or if an application in terms of subsection (2)(b) of that section is not made; 60

- (c) the criteria to be used and the circumstances in which the prosecution must request the court to consider appointing a competent person as an intermediary as provided for in section 170A of the Criminal Procedure Act, in respect of a child witness;
- (d) the circumstances in which the prosecution must request the court to consider directing that the proceedings may not take place in open court as provided for in section 153 of the Criminal Procedure Act; 5
- (e) the circumstances in which the prosecution must request the court to consider directing that the identity of a witness should not be revealed or that it should not be revealed for a period specified by the court as provided for in section 153 of the Criminal Procedure Act; 10
- (f) the circumstances in which the prosecution must request the court to consider prohibiting the publication of the identity of the complainant in the case as provided for in section 154 of the Criminal Procedure Act or of the complainant's family, including the publication of information that may lead to the identification of the complainant or the complainant's family; 15
- (g) the need to inform victims of trafficking about their right to and the process to claim compensation in terms of section 27;
- (h) the kind of information that must be obtained from a victim of trafficking for purposes of determining the quantum of the damages suffered by the victim for which he or she may claim compensation in terms of section 27; 20
- (i) the collection and analysis of information relating to—
 - (i) the number of trafficking prosecutions, convictions and the form of sentences imposed on traffickers;
 - (ii) the number of victims of trafficking awarded compensation orders in terms of section 27; and 25
 - (iii) the number of cases where the courts did not provide compensation orders in terms of section 27 and the reasons for doing so.
- (8) (a) The Minister must—
 - (i) submit any directives provided for in subsection (7) to Parliament 30 days before they are issued; and 30
 - (ii) after the expiry of the 30-day period, publish them in the *Gazette*.
- (b) The National Director of Public Prosecutions must provide an annual report on the information referred to in subsection (7)(i) or any other relevant information determined by the Intersectoral Committee established by section 40 as determined by the Intersectoral Committee. 35
- (9) The National Commissioner of the South African Police Service, the National Director of Public Prosecutions and the Directors-General: Home Affairs, Labour and Social Development must each develop training courses, which must—
 - (a) include training on the national instructions or directives, as the case may be, referred to in this section; and 40
 - (b) provide for and promote the use of uniform norms, standards and procedures, to ensure that all police officials, prosecutors and other functionaries are able to deal with matters relating to trafficking in persons in an appropriate, efficient and sensitive manner. 45
- (10) The national instructions or directives referred to in this section must provide that adequate disciplinary steps are taken against any police official, prosecutor or other functionary who fails to comply with any duty imposed on him or her in terms of this Act or the national instructions or directives issued in terms of this Act.
- (11) Any national instruction or directive issued under this section may be amended or withdrawn in like manner. 50

Legitimacy and validity of documents

37. The Director-General: Home Affairs must, at the request of another State that is a party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons or to an agreement relating to trafficking in persons, verify, within a reasonable time, the legitimacy and validity of travel or identity documents issued or purported to have been issued by the Department of Home Affairs and suspected of being used in the commission of an offence in terms of this Act. 55

Annual report on abuse or deliberate neglect of child and findings by children's court that child is in need of care and protection

38. The Director-General: Social Development must submit to the Intersectoral Committee established by section 40, as determined by the Intersectoral Committee, an annual report on all cases of abuse or deliberate neglect of a child and all findings by a children's court that a child is in need of care and protection because of abuse or deliberate neglect of the child as contained in Part A of the National Child Protection Register provided for in Part 2 of Chapter 7 of the Children's Act insofar as those cases and findings relate to child victims of trafficking. 5

CHAPTER 10 10

ADMINISTRATION OF ACT

National Policy Framework

39. (1) The Minister must, after consultation with the Minister in The Presidency responsible for performance monitoring and evaluation, the Ministers of Home Affairs, Health, International Relations and Cooperation, Labour, Police, Social Development, and State Security and the National Director of Public Prosecutions adopt a national policy framework, relating to all matters dealt with in this Act, in order to— 15

- (a) ensure a uniform, coordinated and cooperative approach by all government departments, organs of state and institutions in dealing with matters relating to the trafficking in persons; 20
- (b) guide the implementation and administration of this Act; and
- (c) enhance service delivery as envisaged in this Act by the development of a plan within available resources.

(2) The Minister must—

- (a) within two years after the commencement of this Act, adopt and table the policy framework in Parliament; 25
- (b) publish the policy framework in the *Gazette* within two months after it has been tabled in Parliament;
- (c) review the policy framework within three years after its publication in the *Gazette* and at least once every five years thereafter; and 30
- (d) amend the policy framework when required, in which case the amendments must be tabled in Parliament and published in the *Gazette* within two months after it has been tabled in Parliament.

Establishment of Intersectoral Committee on Prevention and Combating of Trafficking in Persons 35

40. (1) There is hereby established a Committee to be known as the Intersectoral Committee on the Prevention and Combating of Trafficking in Persons.

(2) The Intersectoral Committee consists of the—

- (a) Director-General: Justice and Constitutional Development, who is the chairperson of the Committee; 40
- (b) National Commissioner of the South African Police Service;
- (c) Director-General: Home Affairs;
- (d) Director-General: International Relations and Cooperation;
- (e) Director-General: Social Development;
- (f) Director-General: Health; 45
- (g) Director-General: Labour;
- (h) Director-General: National Intelligence Agency;
- (i) National Director of Public Prosecutions; and
- (j) Chief Executive Officer: Government Communication and Information System. 50

(3) A member of the Intersectoral Committee may designate a senior official as an alternate to attend a meeting of the Committee in his or her place.

(4) (a) The members of the Intersectoral Committee must designate one of its members as deputy chairperson of the Committee, and when the chairperson is not available, the deputy chairperson acts as chairperson. 55

(b) If neither the chairperson nor the deputy chairperson is available, the members present at a meeting must elect a person from their own ranks to preside at that meeting.

(5) The Intersectoral Committee may invite—

- (a) representatives from the Commission for Gender Equality, the South African Human Rights Commission and the National House of Traditional Leaders to its meetings with the view to obtaining their views on issues relating to the responsibilities, functions and duties of the Committee; 5
- (b) representatives from the non-governmental sector and civil society to its meetings with the view to fostering cooperation between government and civil society in the implementation of this Act; and 10
- (c) persons to its meetings, when necessary, for technical assistance, support or advice.

(6) The Intersectoral Committee must—

- (a) meet at least twice every year on a date and at the time and place determined by the chairperson; and 15
- (b) report in writing to the Minister within one month of every meeting.

Responsibilities, functions and duties of Intersectoral Committee

41. (1) The Intersectoral Committee is responsible for—

- (a) developing a draft national policy framework, referred to in section 39(1), which must include guidelines for— 20
 - (i) the implementation of the priorities and strategies contained in the national policy framework;
 - (ii) measuring progress on the achievement of the national policy framework objectives;
 - (iii) ensuring that the different organs of state comply with the roles and responsibilities allocated to them in terms of the national policy framework and this Act; and 25
 - (iv) monitoring the implementation of the national policy framework and this Act;
- (b) the establishment of an integrated information system to facilitate the effective monitoring and implementation of this Act and to recommend interventions relating to trafficking in persons by collating and analysing the information obtained in terms of sections 26(3), 36(1)(k), 36(3)(f), 36(7)(i) and 38 with the view to determining, among others— 30
 - (i) from which countries victims are being trafficked to the Republic; 35
 - (ii) to which countries South African citizens and other residents are being trafficked;
 - (iii) the nationality of victims transiting the Republic and the countries to which they are being trafficked;
 - (iv) the number of victims that have been repatriated to the Republic and the countries to which they were trafficked; 40
 - (v) the purposes for which persons who have been identified as victims of trafficking have been trafficked;
 - (vi) the profiles of the traffickers and their victims, including the age, gender, nationality and sex of the victims; 45
 - (vii) which routes are used by traffickers to cross the borders of the Republic;
 - (viii) which routes are used by traffickers to enter the countries to which South African citizens and other residents were trafficked;
 - (ix) the methods used by traffickers to recruit and transport their victims;
 - (x) the types of travel documents traffickers and their victims have used or attempted to use to cross the borders of the Republic and to enter the countries to which South African citizens and other residents were trafficked and how these documents were obtained; 50
 - (xi) whether there is a link between trafficking operations and those involved in other forms of organised crime; 55
 - (xii) the number of trafficking prosecutions, convictions and the form of sentences imposed on perpetrators;
 - (xiii) the number of victims of trafficking who are awarded compensation orders in terms of section 27 of the Act; and

- (xiv) the number of cases the courts refrained from providing compensation orders and the reasons for doing so:

Provided that information which identifies victims of trafficking must be kept confidential; and

- (c) developing and reviewing guidelines on the identification of victims of trafficking and traffickers. 5

(2) The Intersectoral Committee may make recommendations to the Minister with regard to the amendment of the national policy framework.

Report to Parliament

42. The Minister must, after consultation with the Minister in The Presidency responsible for performance monitoring and evaluation, the Ministers of Home Affairs, International Relations and Cooperation, Labour, Police, Social Development, and State Security and the National Director of Public Prosecutions— 10

- (a) within one year after the commencement of this Act, submit—
 - (i) reports to Parliament by each Department or institution referred to in this section on the implementation of this Act; 15
 - (ii) a report to Parliament reflecting information relating to trafficking in persons referred to in subsection 41(1)(b); and
- (b) every year thereafter submit reports referred to in paragraph (a)(i) and a report referred to in paragraph (a)(ii) to Parliament. 20

Regulations

43. (1) The Minister of Home Affairs must, after consultation with the Minister in The Presidency responsible for performance monitoring and evaluation, the Ministers of Health, International Relations and Cooperation, Justice and Constitutional Development, Labour, Police, Social Development and State Security make regulations regarding— 25

- (a) the certificate to be issued to a person who is certified to be a victim of trafficking as provided for in section 13(7)(a);
- (b) the manner in which a foreigner who has been certified to be a victim of trafficking will be granted approval to remain in the Republic for a non-renewable recovery and reflection period and the conditions upon which that approval is granted, as provided for in section 17(1); 30
- (c) the manner in which the Director-General: Social Development must request an extension of the recovery and reflection period as provided for in section 17(4); 35
- (d) the manner in which any extension of the recovery and reflection period must be granted as provided for in section 17(4); and
- (e) the manner in which a person must be informed of arrangements that have been made for his or her reception in the country to which he or she is to be returned, as provided for in section 30(2)(b)(ii). 40

(2) (a) The Minister of Social Development must, after consultation with the Minister in The Presidency responsible for performance monitoring and evaluation, the Ministers of Health, Home Affairs, International Relations and Cooperation, Justice and Constitutional Development, Labour, Police and State Security make regulations regarding— 45

- (i) the form of the written consent referred to in section 13(1)(b);
- (ii) the assessment of a person to determine whether he or she is a victim of trafficking as provided for in section 13(5)(b);
- (iii) the system of accreditation of organisations to provide services to adult victims of trafficking, as provided for in section 20(2)(a); 50
- (iv) the form of the certificate of accreditation to be issued to an organisation which provides services to adult victims of trafficking, as provided for in section 20(4)(a);
- (v) the manner in which the quality assurance process must be conducted in respect of each accredited organisation, as provided for in section 20(4)(c); 55 and
- (vi) the minimum norms and standards for accredited organisations, as provided for in section 21(1).

(b) The Minister of Social Development may, after consultation with the Minister in The Presidency responsible for performance monitoring and evaluation, the Ministers of Finance, Health, Home Affairs, International Relations and Cooperation, Justice and Constitutional Development, Labour, Police and State Security make regulations regarding the circumstances in which accredited organisations qualify for financial assistance, as provided for in section 20(2)(b). 5

(3) Any regulation made under this section—

- (a) must be submitted to Parliament prior to publication thereof in the *Gazette*;
- (b) which may result in expenditure for the State, must be made in consultation with the Minister of Finance; and 10
- (c) may provide that any person who contravenes a provision thereof or fails to comply therewith, is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding one year.

(4) The Minister may, after consultation with the Minister in The Presidency responsible for performance monitoring and evaluation, the Ministers of Health, Home Affairs, International Relations and Cooperation, Labour, Police, Social Development and State Security and the National Director of Public Prosecutions, make regulations regarding any matter that this Act requires or permits to be prescribed. 15

Delegation of powers and assignment of duties by National Commissioner of South African Police Service or Director-General to senior officials 20

44. (1) The National Commissioner of the South African Police Service or any Director-General referred to in this Act may, subject to subsection (4), delegate any power or assign any duty conferred on or assigned to him or her by this Act to an official in the employ of his or her Service or Department above the rank of director.

(2) A delegation or assignment in terms of subsection (1)— 25

- (a) is subject to any limitations, conditions and directions which the National Commissioner or Director-General may impose;
- (b) must be in writing; and
- (c) does not divest the National Commissioner or Director-General of the responsibility concerning the exercise of the power or the performance of the duty. 30

(3) The National Commissioner or Director-General may—

- (a) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and 35
- (b) at any time withdraw a delegation or assignment.

(4) The National Commissioner or Director-General may not delegate a power or assign a duty conferred on or assigned to him or her by section 36, 37 or 38 of this Act.

Delegation of powers and assignment of duties by National Commissioner of South African Police Service or Director-General to provincial commissioner or provincial head 40

45. (1) The National Commissioner of the South African Police Service or any Director-General referred to in this Act may, subject to subsection (4), delegate any power or assign any duty conferred on or assigned to him or her by this Act to a provincial commissioner of the South African Police Service or to a provincial head of the corresponding provincial department, respectively, by agreement with that provincial commissioner or provincial head, as the case may be. 45

(2) A delegation or assignment in terms of subsection (1)—

- (a) is subject to any limitations, conditions and directions which the National Commissioner or Director-General may impose; 50
- (b) must be in writing;
- (c) may include the power to delegate or assign; and
- (d) does not divest the National Commissioner or Director-General of the responsibility concerning the exercise of the power or the performance of the duty. 55

(3) The National Commissioner or Director-General may—

- (a) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation or assignment.

(4) The National Commissioner or a Director-General may not delegate a power or assign a duty conferred on or assigned to him or her by section 36, 37 or 38 of this Act.

Delegation of powers and assignment of duties by provincial commissioners of South African Police Service or provincial heads 5

46. (1) A provincial commissioner of the South African Police Service or a provincial head to whom a power or duty has been delegated or assigned in terms of section 45, may delegate that power or assign that duty to an officer at director level or above in the employ of the South African Police Service or provincial department concerned.

(2) A delegation or assignment in terms of subsection (1)— 10

- (a) is subject to any limitations, conditions and directions which the provincial commissioner or provincial head may impose;
- (b) must be in writing; and
- (c) does not divest the provincial commissioner or provincial head of the responsibility concerning the exercise of the power or the performance of the 15 duty.

(3) The provincial commissioner or provincial head may—

- (a) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and 20
- (b) at any time withdraw a delegation or assignment.

CHAPTER 11

MISCELLANEOUS MATTERS

Laws repealed or amended

47. The laws referred to in the second column of Schedule 1 are hereby repealed or 25 amended to the extent indicated in the third column of the Schedule.

Short title and commencement

48. This Act is called the Prevention and Combating of Trafficking in Persons Act, 2010, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

Laws repealed or amended

(Section 47)

Number and year of law	Short title	Extent of repeal or amendment
Act No. 68 of 1969	Prescription Act, 1969	The amendment of section 12 by the substitution for subsection (4) of the following subsection: “(4) Prescription shall not commence to run in respect of a debt based on the commission of an alleged sexual offence as contemplated in sections 3, 4, 17, 18 (2), 20 (1), 23, 24 (2) and 26 (1) [and 71(1) or (2)] of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, and an alleged offence as provided for in sections 4, 5 and 7 of the <u>Prevention and Combating of Trafficking in Persons Act, 2010</u>, during the time in which the creditor is unable to institute proceedings because of his or her mental or psychological condition.”.
Act No. 51 of 1977	Criminal Procedure Act, 1977	1. The amendment of section 18 by the substitution for paragraph (h) of the following paragraph: “(h) trafficking in persons [for sexual purposes by a person] as provided for in section [71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] 4 of the <u>Prevention and Combating of Trafficking in Persons Act, 2010</u>.”. 2. The insertion of the following section after section 261: “Trafficking in persons 261A. (1) In this section— ‘Basic Conditions of Employment Act’ means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); ‘Criminal Law (Sexual Offences and Related Matters) Amendment Act’ means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);

Number and year of law	Short title	Extent of repeal or amendment
		<u>‘Immigration Act’</u> means the Immigration Act, 2002 (Act No. 13 of 2002); and <u>‘Prevention and Combating of Trafficking in Persons Act’</u> means the Prevention and Combating of Trafficking in Persons Act, 2010. (2) If the evidence on a charge of trafficking in persons provided for in section 4 of the Prevention and Combating of Trafficking in Persons Act or any attempt to commit that offence, does not prove the offence of trafficking in persons, but the offence of— (a) assault with intent to do grievous bodily harm; (b) common assault; (c) rape as provided for in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; (d) compelled rape as provided for in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; (e) sexual assault as provided for in section 5 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; (f) compelled sexual assault as provided for in section 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; (g) compelled self-sexual assault as provided for in section 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; (h) debt bondage as provided for in section 5 of the Prevention and Combating of Trafficking in Persons Act or any attempt to commit that offence; (i) the possession, destruction, confiscation, concealment of or tampering with documents as provided for in section 6 of the Prevention and Combating of Trafficking in Persons Act or any attempt to commit that offence;

Number and year of law	Short title	Extent of repeal or amendment
		(j) <u>using the services of a victim of trafficking as provided for in section 7 of the Prevention and Combating of Trafficking in Persons Act or any attempt to commit that offence;</u> (k) <u>entering or remaining in, or departing from the Republic as provided for in section 49(1)(a) of the Immigration Act;</u> (l) <u>knowingly assisting a person to enter or remain in, or depart from, the Republic as provided for in section 49(2) of the Immigration Act;</u> (m) <u>employing a child as provided for in section 43 of the Basic Conditions of Employment Act; or</u> (n) <u>forced labour as provided for in section 48 of the Basic Conditions of Employment Act,</u> <u>the accused may be found guilty of the offence so proved.”.</u> 3. The amendment of Schedule 1 by the substitution for the item “[Trafficking in persons for sexual purposes by a person contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007]” of the following item: “<u>Trafficking in persons as provided for in section 4 of the Prevention and Combating of Trafficking Act, 2010.</u>”. 4. The amendment of Part II of Schedule 2 by the substitution for the item “[Trafficking in persons for sexual purposes by a person contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007]” of the following item: “<u>Trafficking in persons as provided for in section 4 of the Prevention and Combating of Trafficking in Persons Act, 2010.</u>”. 5. The amendment of Part III of Schedule 2 by the insertion of the following item after the item “Childstealing”: “<u>Trafficking in persons as provided for in section 4 of the Prevention and Combating of Trafficking in Persons Act, 2010.</u>”.

Number and year of law	Short title	Extent of repeal or amendment
		6. The amendment of Schedule 5 by the substitution for the item “[Any trafficking related offence by a commercial carrier as contemplated in section 71 (6) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007]” of the following item: “<u>Any trafficking-related offence by a carrier as provided for in section 9 of the Prevention and Combating of Trafficking in Persons Act, 2010.</u>”. 7. The amendment of Schedule 6 by the substitution for the item “[Trafficking in persons for sexual purposes by a person as contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007]” of the following item: “<u>Trafficking in persons as provided for in section 4 of the Prevention and Combating of Trafficking in Persons Act, 2010.</u>”.
Act No. 105 of 1997	Criminal Law Amendment Act, 1997	1. The amendment of Part I of Schedule 2 by the substitution for the item “[Trafficking in persons for sexual purposes by a person as contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007]” of the following item: “<u>Trafficking in persons as provided for in section 4 of the Prevention and Combating of Trafficking in Persons Act, 2010.</u>”. 2. The amendment of Part III of Schedule 2 by the substitution for the item “[Any trafficking related offence by a commercial carrier as contemplated in section 71 (6) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007]” of the following item: “<u>Any trafficking-related offence by a carrier as provided for in section 9 of the Prevention and Combating of Trafficking in Persons Act, 2010.</u>”.

Number and year of law	Short title	Extent of repeal or amendment
Act No. 112 of 1998	Witness Protection Act, 1998	The amendment of the Schedule by the substitution for item 10A of the following item: “10A. Trafficking in persons [for sexual purposes by a person or commercial carrier as contemplated in section 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] as provided for in section 4 or any trafficking-related offence committed by a carrier as provided for in section 9 of the Prevention and Combating of Trafficking in Persons Act, 2010.”.
Act No. 121 of 1998	Prevention of Organised Crime Act, 1998	The amendment of Schedule 1 by the insertion after item 33 of the following item: “33A. Trafficking in persons as provided for in section 4 of the Prevention and Combating of Trafficking in Persons Act, 2010;”.
Act No. 56 of 2001	Private Security Industry Regulation Act, 2001	The amendment of the Schedule by the substitution for the item “[Trafficking in persons for sexual purposes by a person contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007]” of the following item: “Trafficking in persons as provided for in section 4 of the Prevention and Combating of Trafficking in Persons Act, 2010.”.
Act No. 13 of 2002	Immigration Act, 2002	1. The amendment of section 27 by— (a) the substitution for paragraphs (f) and (g) of the following paragraphs: “(f) has proven to the satisfaction of the Director-General that he or she has a prescribed minimum net worth and has paid a prescribed amount to the Director-General; [or] (g) is the relative of a citizen or permanent resident within the first step of kinship; or”; and (b) the addition of the following paragraph after paragraph (g): “(h) is a victim of trafficking referred to in section 18 of the Prevention and Combating of Trafficking in Persons Act, 2010, subject to any prescribed requirements.”.

Number and year of law	Short title	Extent of repeal or amendment
		2. The amendment of section 29 by— (a) the substitution for paragraph (b) of subsection (1) of the following paragraph: “(b) anyone against whom a warrant is outstanding or a conviction has been secured in the Republic or a foreign country in respect of genocide, terrorism, murder, torture, drug-related charges, money laundering, <u>trafficking in persons</u> or kidnapping;” and (b) the insertion of the following subsections after subsection (1): “(1A) A visa or temporary residence permit issued to a foreigner before he or she became a prohibited person in terms of subsection (1)(b) must be withdrawn. (1B) Subsection (1)(b) does not prohibit the relevant authorities from bringing a person to the Republic for prosecution if a warrant for his or her arrest is outstanding in the Republic.”. 3. The amendment of section 35 by— (a) the addition of the following paragraph in subsection (3): “(e) a list of all the children on board of the conveyance indicating which children are unaccompanied.”; and (b) the insertion after subsection (3) of the following subsection: “(3A) If an immigration officer has reason to believe that any passenger on board the conveyance is a victim of trafficking, he or she must immediately report the matter, in terms of section 12(1) or 13(1) of the Prevention and Combating of Trafficking in Persons Act, 2010, to a police official.”.

Number and year of law	Short title	Extent of repeal or amendment
		4. The amendment of section 49 by the substitution for subsection (15) of the following subsection: “(15) Any <u>natural or juristic person</u>, <u>or a partnership who</u>— (a) for the purpose of entering the Republic, or of remaining therein, in contravention of this Act, or departing from the Republic, or of assisting any other person so as to enter or so to remain or so to depart, utters, uses or attempts to use— (i) any permit, certificate, written authority or other document which has been issued by lawful authority, or which, though issued by lawful authority, he, [or] she <u>or it</u> is not entitled to use; or (ii) any fabricated or falsified permit, certificate, written authority or other document; or (b) without sufficient cause has in his, [or] her <u>or its</u> possession— (i) any stamp or other instrument which is used or capable of being used for purposes of fabricating or falsifying or unlawfully recording on any document any endorsement under this Act or required to be submitted in terms of this Act; (ii) any form officially printed for purposes of issuing any permit, certificate, written authority or other document under this Act or required to be submitted in terms of this Act, or any reproduction or imitation of any such form; (iii) any passport, travel document, identity document or other document used for the facilitation of movement across borders, which is blank or reflects particulars other than those of the person in whose possession it is found; [or] (iv) any fabricated or falsified passport, travel document, identity document or other document used for the facilitation of movement across borders; <u>or</u>

Number and year of law	Short title	Extent of repeal or amendment
		(c) <u>has in his or her possession or intentionally destroys, confiscates, conceals or tampers with any actual or purported passport, travel document or identity document of another person in furtherance of a crime, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding four years.</u>”. 5. The amendment of Schedule 1 by the substitution for the item “[Trafficking in persons for sexual purposes by a person as contemplated in sections 71(1), (2) or (6) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007]” of the following item: “<u>Trafficking in persons as provided for in sections 4 and 9 of the Prevention and Combating of Trafficking in Persons Act, 2010.</u>”.
Act No. 38 of 2005	Children’s Act, 2005	1. The amendment of the Table of Contents by the deletion of the following: (a) “CHAPTER 18 TRAFFICKING IN CHILDREN 281. Purposes of Chapter 282. UN Protocol to Prevent Trafficking in Persons to have force of law 283. International co-operation 284. Trafficking in children prohibited 285. Behaviour facilitating trafficking in children prohibited 286. Assistance to child who is victim of trafficking 287. Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child 288. Reporting of child who is victim of trafficking 289. Child who is victim of trafficking found in Republic 290. Repatriation of child who is victim of trafficking 291. Extra-territorial jurisdiction””; and (b) “Schedule 3”.

Number and year of law	Short title	Extent of repeal or amendment
		2. The amendment of section 1 by— (a) the substitution for the definition of “commercial sexual exploitation” of the following definition: “commercial sexual exploitation”, in relation to a child means [— (a)] the procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or caregiver of the child, or any other person [; or (b) trafficking in a child for use in sexual activities, including prostitution or pornography”; and (b) the repeal of the definitions of “trafficking” and “UN Protocol to Prevent Trafficking in Persons”. 3. The repeal of Chapter 18. 4. The repeal of section 305(1)(r) and (s) and subsection (8). 5. The repeal of Schedule 3.
Act No. 32 of 2007	Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007	1. The amendment of the long title by the deletion of “* making interim provision relating to the trafficking in persons for sexual purposes;”. 2. The amendment of the Index by the deletion in Chapter 7 Part 6 of the following: “Transitional provisions relating to trafficking in persons for sexual purposes 70. Application and interpretation 71. Trafficking in persons for sexual purposes”.

Number and year of law	Short title	Extent of repeal or amendment
		3. The amendment of section 1 by the substitution for the definition of “sexual offence” of the following definition: “‘sexual offence’ means any offence in terms of Chapters 2, 3 and 4 and section[s] 55 [and 71(1), (2) and (6)] of this Act and <u>any offence referred to in Chapter 3 of the Prevention and Combating of Trafficking in Persons Act, 2010, which was committed for sexual purposes;</u>”. 4. The amendment of Chapter 7 by the deletion of the heading of Part 6. 5. The repeal of sections 70 and 71.
Act No. 75 of 2008	Child Justice Act, 2008	The amendment of Schedule 3 by the substitution for item 13 of the following item: “[Trafficking in persons for sexual purposes referred to in section 71(1) and involvement in trafficking in persons for sexual purposes referred to in section 71(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] <u>Any offence provided for in sections 4, 5, 6, 7 or 8 of the Prevention and Combating of Trafficking in Persons Act, 2010.</u>”.

SCHEDULE 2

(Section 1)

Text of United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001). 5

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights, 10

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons, 15

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected, 20

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children, 25

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows: 30

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention. 35

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein. 40

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are: 45

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;

- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

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Use of terms

For the purposes of this Protocol:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; 10
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article; 20
- (d) “Child” shall mean any person under eighteen years of age.

Article 4

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Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences. 30

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally. 35
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article; 40
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

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Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential. 50
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;

- (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons. 5

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures: 10

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization. 15

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society. 20

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. 25

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. 30

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine: 35

- (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons; 40
- (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them. 45

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society. 55

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons. 5
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol. 10
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State. 15
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article. 20
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication. 25

Article 12

Security and control of documents

- Each State Party shall take such measures as may be necessary, within available means: 30
- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
 - (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance 35 and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons. 40

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein. 45 50
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination. 55

Article 15

Settlement of disputes

1. State Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation. 5
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court. 10
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation. 15
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations. 20

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002. 25
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article. 30
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence. 35
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence. 40

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization. 50
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such 55

action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties. 5 10 15
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa. 20
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment. 25
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved. 30

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General. 35
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it. 40

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol. 45
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol. 50

MEMORANDUM ON OBJECTS OF THE PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL, 2010

1. PURPOSE OF BILL

The purpose of the Bill is to give effect to South Africa's obligations as a party to international instruments, such as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons), which address the issue of trafficking in persons, by bringing its domestic laws in line with the standards set by those instruments. The Bill is a result of an investigation and a report by the South African Law Reform Commission (SALRC) on Trafficking in Persons (project 131).

2. OBJECTS OF BILL

The objects of the Bill are to—

- (a) give effect to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons;
- (b) provide for the prosecution of persons and for appropriate penalties;
- (c) provide for the prevention of trafficking in persons and for the protection and assistance of victims of trafficking;
- (d) provide for effective enforcement measures; and
- (e) combat trafficking in persons.

3. DISCUSSION OF BILL

3.1 Clause 1: Definitions

(a) Some of the definitions in the Bill describe the core elements of trafficking in persons and are used where offences are created. The following definitions are examples: "abuse of vulnerability"; "debt bondage"; "exploitation"; "forced marriage"; "forced labour"; "removal of body parts"; "servitude"; "sexual exploitation"; and "slavery".

(b) The definition of "trafficking" goes beyond the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons to ensure that any conduct relating to trafficking is included.

3.2 Clause 2: Objects of the Act

Clause 2 sets out the objects of the Act as indicated in paragraph 2 above.

3.3 Clause 3: Public awareness

Clause 3 is aimed at the prevention of trafficking in persons and provides for the establishment of public awareness programmes and other measures for the prevention and combating of trafficking in persons.

3.4 Clause 4: Trafficking in persons

Clause 4 criminalises trafficking in persons and the liability for the offence is extended to include juristic persons and partnerships. This clause provides that a person who trafficks another person, performs any act which is aimed at committing an offence under Chapter 3, or incites, instigates, commands, directs, aids, advises, recruits, encourages or procures any other person to commit an offence under this chapter or who conspires with any other person to commit such an offence, is guilty of an offence and is liable on conviction to a fine or imprisonment, including imprisonment for life, or both.

3.5 Clause 5: Debt bondage

Clause 5 criminalises conduct that causes another person to enter into debt bondage, which is a form of control over a victim of trafficking.

3.6 Clause 6: Possession, destruction, confiscation, concealment of or tampering with documents

Clause 6 criminalises the possession and the intentional destruction, confiscation, concealment of or tampering with identification or travel documents of a victim of trafficking because it is a form of control over a victim of trafficking.

3.7 Clause 7: Using the services of victims of trafficking

An effective strategy to combat the trafficking in persons should include measures to combat the demand for the services of victims of trafficking. Clause 7 states that any person who intentionally benefits, financially or otherwise, from the services of a victim of trafficking, knowing or ought reasonably to have known that the person is a victim of trafficking, is guilty of an offence.

3.8 Clause 8: Conduct facilitating trafficking in persons

The purpose of clause 8 is to combat the demand for the services of victims of trafficking. Clause 8 criminalises conduct which facilitates or promotes the trafficking in persons which includes the intentional lease of property and the use of media and information technology for the purposes of trafficking persons. Internet service providers are required to take reasonable steps to prevent the use of their services for the hosting of information that facilitates trafficking in persons and must report internet addresses which facilitate trafficking in persons, to the South African Police Service (SAPS).

3.9 Clause 9: Liability of carriers

Clause 9 criminalises the act by which a carrier brings a victim of trafficking into or removes the victim from the Republic, knowing that the victim does not have the required passport and, where applicable, a valid visa.

3.10 Clause 10: Extra-territorial jurisdiction

The crime of trafficking in persons is regarded as an international crime. Clause 10 gives the courts in the Republic extra-territorial jurisdiction in respect of an act committed outside the Republic which would have constituted an offence if committed in the Republic. The High Court is provided with universal jurisdiction in respect of an offence in terms of the Bill if the person to be charged is, after the commission of the offence, present in the territory of the Republic or in its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform or aircraft registered or required to be registered in the Republic. This means that the High Court has jurisdiction irrespective of where the offence was committed, by whom it was committed, or against whom it was committed.

3.11 Clause 11: Factors to be considered in sentencing

Clause 11 lists factors the court must consider when imposing a sentence. The serious nature of trafficking in persons and the related offences should be impressed on the courts so as to ensure appropriate sentences. Clause 11 provides, among others, for the following factors: The significance of the perpetrator's role in the trafficking process; previous convictions relating to the crime of trafficking in persons; the conditions in which the victim was kept and the period the victim was held captive; the kind of abuse suffered and the effects thereof on the victim; whether the offence was part of the activities of an organised criminal group; and whether the victim was a child.

3.12 Clause 12: Reporting and referral of child victim of trafficking

Clause 12(1) places a duty on everyone to report a child who they reasonably suspect to be a victim of trafficking to a police official for investigation, despite any law, policy or code of conduct prohibiting the disclosure of personal information. The phrase "despite any law, policy or code of conduct" seeks to enable professional persons to report child victims without fear of contravening the law, policies and codes of conduct

relevant to their professions. A police official to whom a report is made or who suspects a child to be a victim of trafficking, must refer that child to a designated child protection organisation or provincial department of social development, pending a police investigation. It is an offence if a person mentioned in subclause (1) fails to report a suspicion that a child is a victim of trafficking in persons or if a police official fails to comply with the duties imposed on him or her in terms of this clause.

3.13 Clause 13: Reporting and referral of adult victim of trafficking

Clause 13(1) places a duty on immigration officers, labour inspectors, social workers, social service professionals, medical practitioners, nurses, traditional health practitioners, traditional healers or traditional leaders who, on reasonable grounds, suspect that an adult person is a victim of trafficking, to immediately report that suspicion to a police official for investigation. Certain categories of persons who are required to report, must obtain the written consent of the adult person concerned, except where the person is mentally disabled or in an altered state of consciousness. The reason for this provision is that an adult person has the right to decide to lay a charge against the perpetrator. These persons must also, by virtue of their profession and their relationship with the alleged victim, have to respect the privacy of their “patients” and treat information they obtain in the course of their duties with the necessary confidentiality. This is not necessarily the case with immigration officers, labour inspectors and police officials who are required to uphold the law and ensure that transgressors are brought to book. Clause 13 further provides that a person other than those mentioned in subclause (1) (for example a member of the public) may report an adult person who is reasonably suspected to be a victim of trafficking to a police official for further investigation. A police official to whom a report is made or who suspects that an adult person is a victim of trafficking, must refer that adult to an accredited organisation or provincial department of social development, pending a police investigation. Such an organisation must assess whether the adult is a victim of trafficking and issue him or her with a certificate to that effect. Failure by the persons mentioned in subclause (1) and by police officials to comply with the duties imposed on them in terms of this clause, is an offence.

3.14 Clause 14: Child victim of trafficking found in Republic

Clause 14 is aimed at the protection of a child victim of trafficking and provides for child victims to be placed in temporary safe care as provided for in the Children’s Act, 2005 (Act No. 38 of 2005), pending an investigation in terms of that Act. The children’s court may order that an illegal foreign child be assisted to apply for asylum. A finding that an illegal foreign child is in need of care and protection serves as authorisation for allowing the child to remain in the Republic for the duration of the court’s order.

3.15 Clause 15: Provision of health care services

Clause 15 aims to inform a foreign victim of trafficking that he or she is entitled to the same public health care services as those to which a citizen of the Republic has access.

3.16 Clause 16: Criminal prosecution against victim of trafficking prohibited

Clause 16 is aimed at protecting victims by prohibiting the prosecution of persons who are found to be victims of trafficking for certain offences committed by them as a direct result of their situation as victims of trafficking. This will enable law enforcement agencies to investigate and prosecute traffickers by using the victims as witnesses. Provision is also made for a criminal case to be postponed and withdrawn, or for the discharge of the victim, where the prosecutor suspects that the person who is prosecuted, is a victim of trafficking.

3.17 Clause 17: Recovery and reflection period

Clause 17 is aimed at allowing victims to recover from the abuse to which they have been subjected and to reflect on their way forward, including whether to co-operate with authorities. Clause 17 provides that a person who has been certified as a victim of trafficking may remain in the country for a non-renewable period of 90 days. If during this period, the victim is unwilling to co-operate with authorities regarding the

investigation and prosecution of a trafficker, his or her circumstances must be investigated to determine whether it is safe to return the victim to the country of origin or country from where he or she has been trafficked, which circumstances must be taken into account when deciding whether to repatriate the foreigner upon expiry of the 90-day period. The granting of the recovery and reflection period is not dependent on the willingness of the victim to co-operate with law enforcement agencies and does not prevent or prejudice the competent authority from conducting an investigation, provided that due regard is given to the emotional state of the victim.

3.18 Clause 18: Temporary residence

Clause 18 addresses the status of a victim of trafficking who is willing to co-operate with authorities in the investigation and prosecution of a trafficker or whose circumstances indicate that it is not safe to return him or her to the country of origin or country from where he or she has been trafficked. Despite the provisions of the Immigration Act, 2002, the Director-General: Home Affairs may renew a visitor's permit for the duration of the investigation and prosecution of a case of trafficking in persons and a holder of a visitor's permit which has been extended on humanitarian grounds may work and study in the Republic.

3.19 Clause 19: Permanent residence

Clause 19 entitles a victim of trafficking to apply for permanent residence after five years of continuous residence in the Republic from the date on which a visitor's permit was issued to him or her. The victim must prove that he or she may be harmed, killed or trafficked again if returned to his or her country of origin or country from where he or she has been trafficked.

3.20 Clause 20: Accreditation of organisation to provide service

Clause 20 deals with the accreditation of an organisation to provide services to adult victims of trafficking. Whilst child victims of trafficking are covered by all the protective measures set out in the Child Care Act, 1983 (Act No. 74 of 1983), and the Children's Act, currently there is not a similar system in place for adult victims of trafficking. The Minister of Social Development must by means of regulations establish and maintain a system of accreditation of organisations to provide services to adult victims of trafficking, and may prescribe the circumstances in which accredited organisations may qualify for financial assistance subject to available resources.

3.21 Clause 21: Minimum norms and standards

Clause 21 requires the Minister of Social Development to prescribe the minimum norms and standards with which accredited organisations must comply. These norms and standards must deal with, among others, the safety of victims, access to adequate health care and, where victims have children in their care, a safe environment for those children.

3.22 Clause 22: Programme offered by accredited organisation

Clause 22 provides that the contents of a programme to be offered by an accredited organisation must include the provision of accommodation, counseling and reintegration services and may include the provision of rehabilitation services and education and skills development training. It must also offer a programme aimed at the reception, care and development of a child in the care of an adult victim of trafficking. An accredited organisation may refer an adult victim to an organisation, which might not necessarily be an accredited organisation that offers rehabilitation services or education and skills development training.

3.23 Clause 23: Access to programme offered by accredited organisation

Clause 23 provides that a person who has been issued with a certificate, is entitled to access the programmes offered by an accredited organisation.

3.24 Clause 24: Plan to address needs of victim of trafficking

Clause 24 provides that an accredited organisation must draw up a plan to address the needs of a victim. This plan is necessary to manage the victim's needs in a structured manner.

3.25 Clause 25: Return of adult victim of trafficking within Republic

Clause 25 provides that an accredited organisation may not return an adult victim of trafficking to an area within the Republic from where he or she has been trafficked without giving due consideration to the safety of the person during the process of returning him or her and to the possibility that the person may be harmed, killed or trafficked again if returned to that area. This provision seeks to adequately address the safety of adult victims of trafficking within the Republic.

3.26 Clause 26: Information management

Clause 26 provides that an accredited organisation must collect information on victims of trafficking and must report annually on the information to the Director-General: Social Development who, in turn, must report annually on the information to the Intersectoral Committee established under clause 40. The clandestine nature of trafficking in persons and the lack of a co-ordinated response to the problem make it difficult to provide reliable statistics on the number of persons trafficked to and from the Republic. The collecting of information and information sharing is therefore important to effectively address the problem. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons also requires State Parties to share information.

3.27 Clause 27: Compensation to victim of trafficking

Clause 27 provides for compensation orders by the court. Our current criminal justice system does not provide for victims of trafficking to claim damages from their traffickers, although provisions in some Acts allow victims to claim compensation for offences in terms those Acts. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons requires State Parties to put measures in place that offer victims of trafficking the possibility of compensation. Clause 27 provides that the court may, in addition to any sentence it may impose in terms of the Bill, order that the person convicted of the offence pay compensation to a victim for damages, injuries (physical or psychological), being infected with a life-threatening disease or loss of income or support. The clause further provides that an order for the payment of compensation has the effect of a civil judgment of the magistrate's court and creates a mechanism for the recovery of the compensation. It also makes provision for an alternative option in that the court making the compensation order may, in its discretion, issue a warrant of execution, authorising the sheriff to recover the amount of the compensation by the attachment and sale of movable property.

3.28 Clause 28: Compensation to State

Clause 28 provides that the court may, in addition to any punishment in terms of this Bill or in addition to any order for compensation to a victim of trafficking and on application by the prosecutor, make an order for payment by the convicted person to the State to compensate for expenses in connection with the care, accommodation, transportation and repatriation of a victim of the offence.

3.29 Clause 29: Summary deportation of victim of trafficking prohibited

Clause 29 prohibits the summary deportation of a victim of trafficking. The immediate deportation of victims of trafficking denies them essential services such as health care and counseling. It also deprives authorities of the opportunity to obtain information to investigate and prosecute traffickers. Victims of trafficking should not be returned to their countries if it is unsafe for them to return.

3.30 Clause 30: Repatriation of victim of trafficking from Republic

Clause 30 provides for structured repatriation procedures for victims of trafficking which take cognisance of the safety of victims during the repatriation process and in the

countries to which they are to be returned. Clause 30 does not prohibit the voluntary return of an adult victim of trafficking to his or her country of origin or country from where he or she has been trafficked.

3.31 Clause 31: Assistance to foreign victim of trafficking

Clause 31 provides for a process to ensure the safety of a victim in the country to which he or she is to be returned. It places a duty on the Director-General: Social Development to take reasonable steps to find suitable family members or an organisation that renders assistance to victims of trafficking in the country to which a victim of trafficking is to be returned and to provide that information to the Director-General: Home Affairs.

3.32 Clause 32: Repatriation of victim of trafficking to Republic

Clause 32 provides for the reception of a victim of trafficking who is repatriated to the Republic. The risks to the safety and life of a victim of trafficking who is returned to the Republic must be assessed, travel documents must be issued and victims must be referred to a designated social worker for investigation in terms of the Children's Act in the case of a child victim or to an accredited organisation or the provincial department of social development, in the case of an adult victim.

3.33 Clause 33: Escorting of child victim of trafficking

Clause 33 allows the Director-General: Social Development to authorise at State expense an adult to escort a child victim from the place the child was found to the place from where the child was trafficked, if it is considered in the best interest of the child.

3.34 Clause 34: Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child

Clause 34 provides that if a children's court has reason to believe that a parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child has trafficked the child, the court may suspend such rights and responsibilities and place the child in temporary safe care, pending a children's court inquiry. This, however, does not exclude that person's liability for committing the offence of trafficking in persons.

3.35 Clause 35: International co-operation

Clause 35 provides for the President to enter into agreements with foreign states in respect of trafficking in persons matters. The agreements may not be in conflict with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons. Clause 35 lays the foundation for bilateral, regional and multilateral agreements on trafficking in persons between the Republic and other States which is in accordance with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.

3.36 Clause 36: National instructions and directives

Clause 36 compels the National Commissioner of the South African Police Service to issue national instructions relating to matters with which all police officials must comply in the execution of their functions in terms of this Act. The National Director of Public Prosecutions and the Directors-General of Home Affairs and Labour are also compelled to issue directives with which prosecutors and officials must comply. The clause further provides for the development of training courses which must include training on the national instructions and directives. It provides for and promotes the use of uniform norms, standards and procedures to ensure that all functionaries are able to deal with matters relating to trafficking in an appropriate, efficient and sensitive manner. The national instructions and directives must provide that adequate disciplinary steps are taken against any functionaries who fail to comply with any duty imposed on them in terms of the Bill, national instructions or directives.

3.37 Clause 37: Legitimacy and validity of documents

Clause 37 provides that the Director-General: Home Affairs must, at the request of a State which is a party to the UN Protocol to Prevent, Suppress and Punish Trafficking in

Persons or to an agreement relating to trafficking in persons, verify the legitimacy and validity of travel or identity documents issued or purported to have been issued by the Department of Home Affairs and suspected of being used in the commission of an offence under the Bill. Since the Republic has ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, it is obliged to adopt measures to prevent trafficking in persons, ensure the protection of victims of trafficking and the prosecution of traffickers, including assisting other State Parties in this regard. International co-operation with State Parties that are not parties to the above-mentioned Protocol is, however, also necessary for the effective combating, prevention and prosecution of trafficking in persons.

3.38 Clause 38: Annual report on abuse or deliberate neglect of child and findings by children's court that child is in need of care and protection

Clause 38 requires the Director-General: Social Development to submit an annual report to the Intersectoral Committee on all cases of abuse or deliberate neglect of children and all findings by children's courts that a child is in need of care and protection, insofar as such cases and findings relate to child victims of trafficking.

3.39 Clause 39: National Policy Framework

Clause 39 provides that the Minister must, after consultation with specified Ministers of Cabinet and the National Director of Public Prosecutions, adopt a national policy framework relating to all matters dealt with in this Bill.

3.40 Clause 40: Establishment of Intersectoral Committee on Prevention and Combating of Trafficking in Persons

Clause 40 provides for the establishment of an Intersectoral Committee on Prevention and Combating of Trafficking in Persons. The Intersectoral Committee consists of specified senior government officials who may invite representatives from the Commission for Gender Equality, the South African Human Rights Commission and the National House of Traditional Leaders to its meetings to obtain their views on issues relating to the responsibilities, functions and duties of the Committee. The Committee may also invite representatives from the non-governmental sector and civil society to its meetings with the view to fostering co-operation between government and civil society in the implementation of the Bill and other persons, where necessary, for technical assistance, support or advice.

3.41 Clause 41: Responsibilities, functions and duties of Intersectoral Committee

Clause 41 sets out the responsibilities, functions and duties of the Intersectoral Committee, which includes developing a draft national policy framework referred to in section 39(1); the establishment of an integrated information system to facilitate the effective monitoring and implementation of this Bill and to recommend interventions relating to trafficking in persons; and developing and reviewing guidelines on the identification of victims of trafficking and traffickers.

3.42 Clause 42: Report to Parliament

Clause 42 compels the Minister to annually submit reports to Parliament regarding the implementation of the Bill and aspects relating to trafficking in persons.

3.43 Clause 43: Regulations

Clause 43 provides that the Minister of Home Affairs and the Minister of Social Development must make certain regulations with regard to aspects of this Bill which fall under their respective Departments. Clause 43(4) empowers the Minister of Justice and Constitutional Development, after consultation with specified Ministers, to make regulations regarding any matter that the Bill requires or permits to be prescribed.

3.44 Clauses 44-46: Delegation of powers and assignment of duties

In order to ensure the smooth administration of the Bill, clauses 44 to 46 provide for the delegation and assignment of certain powers and duties.

3.45 Clause 47: Laws repealed or amended

Clause 47 provides for the repeal or amendment of certain laws to bring them in line with the provisions of the Bill and to deal more effectively with trafficking in persons. Certain consequential amendments to the provisions of various other Acts are necessitated by the provisions of the Bill.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

4.1 During its investigations, the SALRC consulted widely on the Bill. Responses were received from, among others, the legal fraternity, various Government Departments, individual magistrates, academics and numerous non-governmental organisations (NGOs). The SALRC submitted the Bill to the Directors-General of the Departments of Foreign Affairs (International Relations and Cooperation), Home Affairs, Social Development, Labour, Health and Safety and Security (Police) for their consideration and input. These Departments were informed that, given the fact that the Bill imposes certain duties on them, the Commission would like to provide them with another opportunity to comment on the Bill before it is approved by the Commission. These Departments' attention was drawn to the provisions of the Bill impacting on their line functions. Inputs on the proposed Bill were received from the Departments of Foreign Affairs, Home Affairs, Social Development, Labour and Safety and Security. Foreign Affairs and Social Development stated that they agree with the contents of the Bill and that they had no further inputs. Inputs received from the other departments were incorporated into the Bill where necessary.

4.2 When the Bill was published for public comments in May 2009, comments were received from numerous NGOs and civil society organisations, the Departments of Home Affairs and Social Development, the Commission for Gender Equality, a Provincial House of Traditional Leaders and the South African Women Lawyers Association.

5. IMPLICATIONS FOR PROVINCES

The Bill requires a police official to refer victims of trafficking to a child protection organisation or an accredited organisation, as the case may be, or to a provincial department of social development, to be taken care of.

6. FINANCIAL IMPLICATIONS FOR STATE

There will be substantial financial implications for the government departments which will be involved in the implementation of the Act, once it has been passed. The Department of Justice and Constitutional Development has commenced with the process of costing the Bill to determine what the financial implications will be for each of the departments involved.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provisions to which the procedure set out in sections 74 or 76 of the Constitution applies.

7.2 We are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.