

REPUBLIC OF SOUTH AFRICA

**PREVENTION AND
COMBATING OF TRAFFICKING IN
PERSONS BILL**

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 7B—2010]

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BILL

To give effect to the Republic's obligations concerning the trafficking of persons in terms of international agreements; to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to provide for penalties that may be imposed in respect of the offences; to provide for measures to protect and assist victims of trafficking in persons; to provide for the coordinated implementation, application and administration of this Act; to prevent and combat the trafficking in persons within or across the borders of the Republic; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the search for improved socio-economic circumstances and the demand for the services of victims of trafficking contribute 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 of 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, equality, the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause, and not to be treated in a cruel, inhuman or degrading way, 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 agreements 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 35

DEFINITIONS, INTERPRETATION AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context indicates otherwise—
- “**abuse of vulnerability**” for purposes of section 4(1), means any 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—
- | | | |
|-----|--|----|
| (a) | the person having entered or remained in the Republic illegally or without proper documentation; | |
| (b) | pregnancy; | 45 |
| (c) | any disability of the person; | |

- (d) addiction to the use of any dependence-producing substance;
- (e) being a child;
- (f) social circumstances; or
- (g) economic circumstances;
- “accredited organisation”** means an organisation, including a government institution, accredited in terms of section 24 to provide services to adult victims of trafficking; 5
- “body part”** for purposes of this Act, means any blood product, embryo, gamete, gonad, oocyte, zygote, organ or tissue as defined in the National Health Act, 2003 (Act No. 61 of 2003); 10
- “carrier”** includes a person who is the owner or employee of the owner, an agent, an operator, a lessor, a driver, a charterer or a master, of any means of transport;
- “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 involuntary status or condition that arises from a pledge by a person of— 25
- (a) his or her personal services; or
- (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
- “electronic communications”** means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct; 40
- “electronic communications identity number”** means a technical identification label which represents the origin or destination of electronic communications traffic, as a rule clearly identified by a logical or virtual identity number or address assigned to a customer of an electronic communications service provider (such as a telephone number, cellular phone number, e-mail address with or without a corresponding address, web address with or without a corresponding IP address or other subscriber number);
- “electronic communications service provider”** means a person who is licensed or exempted from being licensed in terms of Chapter 3 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), to provide an electronic communications service; 50
- “exploitation”** includes, but is not limited to—
- (a) all forms of slavery or practices similar to slavery; 55
- (b) sexual exploitation;
- (c) servitude;
- (d) forced labour;
- (e) child labour as defined in section 1 of the Children’s Act;
- (f) the removal of body parts; or 60
- (g) the impregnation of a female person against her will for the purpose of selling her child when the child is born;

“forced labour” means labour or services of a person obtained or maintained—
 (a) without the consent of that person; and
 (b) 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 without the consent of each of the parties to the marriage;

“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;

“immediate family member” means the spouse, civil partner or life partner and dependant family members of a victim of trafficking;

“Immigration Act” means the Immigration Act, 2002 (Act No. 13 of 2002);

“letter of recognition” means a formal written recognition that an adult person is a victim of trafficking issued in terms of section 19(10);

“MEC” means the member of the Executive Council of a province to whom the powers and functions relating to social development in that province have been assigned by the Premier of that province;

“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;

“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;

“police official” means a member of the South African Police Service as defined in the South African Police Service Act, 1995 (Act No.68 of 1995);

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

“protective custody”, for purposes of section 19, means the detention or confinement of a person by the South African Police Service for the purpose of protecting that person in any place which is used for the reception, detention or confinement of a person who is in custody of the South African Police Service and includes all land, buildings and premises adjacent to that place and used in connection therewith;

“provincial department of social development” means the department within a provincial administration responsible for social development in the province;

“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 body part in contravention of any law;

“servitude” means a condition in which the labour or services of a person are provided or obtained through 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;

“sexual exploitation” means the commission of—
 (a) any sexual offence referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act; or
 (b) any offence of a sexual nature in any other law;

“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;

“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);

“temporary safe care” for purposes of section 19, means care of an adult person suspected of being a victim of trafficking in a shelter, private home or any other place approved by the Director-General: Social Development where that person can be accommodated safely pending the placement of that person in an accredited organisation;

- “**trafficking in persons**” has the meaning assigned to it in section 4(1);
 “**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; and 5
 “**victim of trafficking**” means—
 (a) a child who is found to be a victim of trafficking after an assessment in terms of section 18(6); or
 (b) an adult person who has been issued with a letter of recognition as provided for in section 19(10). 10

Interpretation of certain expressions

2. (1) For purposes of this Act, a person is regarded as having knowledge of a fact if—
 (a) that person has actual knowledge of the fact; or
 (b) the court is satisfied that—
 (i) the person believes that there is a reasonable possibility of the existence of the fact; and 15
 (ii) the person has failed to obtain information to confirm the existence of that fact,
 and “knows” or “knowing” must be construed accordingly.
 (2) For purposes of this Act, a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached are those which would have been reached by a reasonably diligent and vigilant person having both—
 (a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and
 (b) the general knowledge, skill, training and experience that he or she in fact has. 25
 (3) A reference in this Act to any act, includes an omission and “acting” must be construed accordingly.

Objects of Act

3. The objects of this Act are to—
 (a) give effect to the Republic’s obligations concerning the trafficking of persons in terms of international agreements; 30
 (b) provide for the prosecution of persons who commit offences referred to in this Act and for appropriate penalties;
 (c) provide for the prevention of trafficking in persons and for the protection of and assistance to victims of trafficking; 35
 (d) provide services to victims of trafficking;
 (e) provide for effective enforcement measures;
 (f) provide for the co-ordinated implementation, application and administration of this Act, including the development of a draft national policy framework; and 40
 (g) combat trafficking in persons in a co-ordinated manner.

CHAPTER 2

OFFENCES, PENALTIES AND EXTRA-TERRITORIAL JURISDICTION

Trafficking in persons

4. (1) Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of—
 (a) a threat of harm;
 (b) the threat or use of force or other forms of coercion;
 (c) the abuse of vulnerability; 50
 (d) fraud;
 (e) deception;
 (f) abduction;
 (g) kidnapping;
 (h) the abuse of power; 55

(i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
 (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage,
 aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons. 5

(2) Any person who—
 (a) adopts a child, facilitated or secured through legal or illegal means; or
 (b) concludes a forced marriage with another person,
 within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence. 10

Debt bondage

5. Any person who intentionally engages in conduct that causes another person to enter into debt bondage is guilty of an offence. 15

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. 20

Using services of victims of trafficking

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 or suspected that such person is a victim of trafficking, is guilty of an offence. 25

Conduct facilitating trafficking in persons

8. (1) Any person who—
 (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 or suspected that it will be used to facilitate or promote trafficking in persons; 30
 (b) subsequent to the lease or sublease of any room, house, building or establishment, becomes aware or ought reasonably to have known or suspected that it is being used to facilitate or promote trafficking in persons and fails to report that knowledge to a police official; 35
 (c) intentionally 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; or
 (d) finances, controls or organises the commission of an offence under this Chapter,
 is guilty of an offence. 40

(2) (a) An electronic communications service provider operating in the Republic must take all reasonable steps to prevent the use of its service for the hosting of information referred to in subsection (1)(c). 45

(b) An electronic communications service provider that is aware or becomes aware of any electronic communications which contain information referred to in subsection (1)(c) and which is stored upon or transmitted over its electronic communications system must—
 (i) without delay report the electronic communications identity number from which those electronic communications originated and any other particulars available to such electronic communications service provider which can be used to identify the person or electronic communications service provider (including an electronic communications service provider operating outside the Republic) from who or from which those electronic communications originated, to the South African Police Service; 55

- (ii) take such reasonable steps as are necessary to preserve evidence as may be required by the relevant investigation and prosecuting authorities, for purposes of investigation and prosecution by the relevant authorities; and
 - (iii) without delay take such reasonable steps as are necessary to prevent continued access to those electronic communications—
 - (aa) by any of the customers of that electronic communications service provider; or
 - (bb) by any person if they are stored on the system of the electronic communications service provider.
- (3) An electronic communications service provider which fails to comply with the provisions of subsection (2)(a) or (b) is guilty of an offence. 10
- (4) Nothing in this section places a general obligation on an electronic communications service provider to—
- (a) monitor the data which it transmits or stores; or
 - (b) actively seek facts or circumstances indicating an unlawful activity. 15
- (5) An electronic communications service provider is not liable for any loss sustained by or damage caused to any person as a result of any action taken in good faith in terms of subsection (2)(b)(iii).

Liability of carriers

9. (1) A carrier who transports a person within or across the borders of the Republic, and who knows that the person is a victim of trafficking or ought reasonably to have known that the person is a victim of trafficking, is guilty of an offence. 20
- (2) A carrier who, on reasonable grounds, suspects that any of its passengers is a victim of trafficking must immediately report that suspicion to a police official for investigation. 25
- (3) A carrier who fails to comply with the provisions of subsection (2) is guilty of an offence.
- (4) A carrier is liable to pay the expenses incurred or reasonably expected to be incurred in connection with the care, accommodation, transportation and repatriation or return of the victim to his or her country of origin or country or place from where he or she was trafficked, if the court finds, on a balance of probabilities, that the carrier has knowingly transported a victim of trafficking or ought reasonably to have known or suspected that it was transporting a victim of trafficking. 30

Involvement in offences under this Chapter

10. (1) Any person who— 35
- (a) attempts to commit or performs any act aimed at participating in the commission of;
 - (b) incites, instigates, commands, directs, aids, promotes, advises, recruits, encourages or procures any other person to commit; or
 - (c) conspires with any other person to commit, 40
- an offence under this Chapter is guilty of an offence.
- (2) A person who is found guilty of an offence referred to in subsection (1) is liable, on conviction, to the penalties for the offence in question, as provided for in section 13.

Liability of persons for offences under this Chapter

11. (1) It is no defence to a charge of contravening section 4, 5, 6, 7, 8, 9(1) or 10 that— 45
- (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, or the action which was intended to constitute an offence under this Chapter or that the intended exploitation or action did not occur, even if none of the means referred to in section 4(1)(a) to (j) have been used; or 50
 - (b) an adult person who is a victim of trafficking has consented to the intended exploitation, or the action which was intended to constitute an offence under this Chapter or that the intended exploitation or action did not occur, if one or more of the means referred to in section 4(1)(a) to (j) have been used. 55

- (2) In order to establish liability in terms of section 4, 5, 6, 7, 8, 9(1) or 10 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; 5
 - (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.
- (3) Subsection (2) 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 an offence under this Chapter. 10
- (4) (a) A finding by a court that an employer or principal has contravened section 4, 5, 6, 7, 8, 9(1) or 10 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. 15
- (b) The clerk or registrar of the court which makes the finding referred to in paragraph (a) must, in writing, notify the South African authority that granted the licence or registration of the finding.
- (c) The South African authority that granted the licence or registration may review the licence or registration and, where necessary, revoke or cancel the licence or registration. 20

Extra-territorial jurisdiction

- 12.** (1) A court of the Republic has jurisdiction in respect of an act committed outside the Republic which would have constituted an offence under this Chapter 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— 25
- (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;
 - (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; 30
 - (e) is, for any reason, not extradited by the Republic or if there is no application to extradite that person; or 35
 - (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 a person referred to in subsection (1)(d). 40
- (3) A person who commits an offence referred to in subsection (1) is liable on conviction to the penalty prescribed for that offence. 40
- (4) (a) Subject to paragraph (b), the National Director of Public Prosecutions must, in writing, designate an appropriate court in which to conduct a prosecution against any person accused of having committed an offence under this Chapter in a country outside the Republic as provided for in subsection (1). 45
- (b) For the purposes of determining the jurisdiction of a court to try the offence, the offence is deemed to have been committed—
- (i) at the place where the accused person is ordinarily resident; or
 - (ii) at the accused person's principal place of business.
- (5) The institution of a prosecution in terms of this section must be authorised in writing by the National Director of Public Prosecutions. 50

Penalties

- 13.** A person convicted of an offence referred to in—
- (a) section 4(1) is, subject to section 51 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), liable to a fine not exceeding R100 million or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine or both; 55

- (b) section 4(2) is liable to a fine not exceeding R100 million or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine or both;
- (c) section 5, 7 or 23 is liable to a fine or imprisonment for a period not exceeding 15 years or both; 5
- (d) section 6 or 8(1) is liable to a fine or imprisonment for a period not exceeding 10 years or both; and
- (e) section 8(3), 9, 18(8) or 19(13) is liable to a fine or imprisonment for a period not exceeding five years or both.

Factors to be considered in sentencing 10

14. If a person is convicted of any offence under this Chapter, the court that imposes the sentence must consider, but is not limited to, the following aggravating factors:

- (a) The significance of the role of the convicted person in the trafficking process;
- (b) previous convictions relating to the offence of trafficking in persons or related offences; 15
- (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;
- (e) whether the victim was held captive for any period;
- (f) whether the victim suffered abuse and the extent thereof; 20
- (g) the physical and psychological effects the abuse had on the victim;
- (h) whether the offence formed part of organised crime;
- (i) whether the victim was a child;
- (j) the nature of the relationship between the victim and the convicted person;
- (k) the state of the victim's mental health; and 25
- (l) whether the victim had any physical disability.

CHAPTER 3

STATUS OF FOREIGN VICTIMS OF TRAFFICKING REQUIRED TO ASSIST IN INVESTIGATIONS AND PROSECUTIONS

Protective measures for purposes of investigation and prosecution in respect of foreign victims of trafficking 30

15. (1) Despite the provisions of the Immigration Act, the Director-General: Home Affairs may, in the prescribed manner and subject to the prescribed conditions, issue, a foreigner in respect of whom—

- (a) a report has been made to a police official as provided for in section 19; and 35
- (b) the National Commissioner of the South African Police Service has, in writing, confirmed to be a person who might be able to assist in a police investigation relating to an offence under Chapter 2,

a visitor's visa in terms of section 11(1)(a) of the Immigration Act to remain in the Republic for a recovery and reflection period not exceeding three months which may be extended once in terms of subsection (4) for a further period not exceeding three months for the purpose of accessing the programmes referred to in section 26 with the view to enabling the foreigner to make informed decisions regarding his or her cooperation with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons as referred to in section 16(1)(b). 45

(2) If a foreigner referred to in subsection (1), after a period of 30 days after he or she has been issued with a visitor's visa to remain in the Republic for a recovery and reflection period, is unwilling or unable 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 repatriate him or her to his or her country of origin or the country from where he or she has been trafficked. 50

(3) If a foreigner referred to in subsection (2) is still unwilling or unable to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a trafficker upon expiration of the visitor's visa the person must be dealt with in terms of sections 31(2) and 32. 55

(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 for a further period not exceeding three months. 5

(5) The issuing of a visitor's visa as provided for in subsection (1) does not prevent or prejudice the competent authority from conducting any relevant investigation, provided that due regard is given to the emotional state of the victim.

(6) A foreigner referred to in subsection (1) in respect of whom a decision by the Director-General: Home Affairs in terms of subsection (1) or (4) is pending, may not be deported. 10

Facilitation of police investigation or prosecution in case of foreign witnesses

16. (1) (a) The Director-General: Home Affairs may, despite the provisions of the Immigration Act, and subject to paragraph (b), issue a visitor's visa in terms of section 11(1)(b)(iv) of the Immigration Act to a victim of trafficking if that person is present in the Republic and has agreed in writing to cooperate with the law enforcement or prosecuting authorities in the investigation of and the prosecution of a case of trafficking in persons, as the case may be. 15

(b) The Director-General: Home Affairs may only issue a visitor's visa in terms of paragraph (a) if the National Commissioner of the South African Police Service or the National Director of Public Prosecutions, in writing, confirms that the person is required for purposes of a police investigation or criminal prosecution, as the case may be, and that the continued presence of the person in South Africa is essential for the successful prosecution of a person who is alleged to have committed an offence under Chapter 2. 20

(c) The Director-General: Home Affairs may despite the provisions of the Immigration Act, extend or withdraw a visitor's visa referred to in paragraph (a) if he or she is requested in writing to do so by the National Commissioner of the South African Police Service or the National Director of Public Prosecutions in the prescribed manner. 25

(d) The Director-General: Home Affairs may, despite the provisions of this subsection, refuse to issue a visitor's visa or the extension thereof if there are substantial and compelling reasons to do so. 30

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

- (a) his or her status; or
- (b) whether a visitor's visa as provided for in section 15 was issued or has expired. 35

(3) The National Commissioner of the South African Police Service or the National Director of Public Prosecutions must, in writing, request the Director-General: Home Affairs to withdraw a visitor's visa issued in terms of this section when the need for that visitor's visa no longer exists. 40

Application for rights of permanent residence in terms of section 31(2)(b) of Immigration Act

17. The National Commissioner of the South African Police Service or the National Director of Public Prosecutions may assist a foreign victim of trafficking who has in any manner rendered assistance to either the South African Police Service or the National Prosecuting Authority before or during any criminal proceedings, to apply for the rights of permanent residence in terms of section 31(2)(b) of the Immigration Act, if, as a result of that victim's assistance he or she may be harmed or killed if he or she is repatriated to his or her country of origin or the country from where he or she has been trafficked. 45

CHAPTER 4 50

IDENTIFICATION AND PROTECTION OF VICTIMS OF TRAFFICKING

Reporting of and dealing with child victim of trafficking

18. (1) (a) Despite any law, policy or code of conduct prohibiting the disclosure of personal information, any person who knows or ought reasonably to have known or

suspected that a child is a victim of trafficking must immediately report that knowledge or suspicion to a police official for investigation.

(b) A designated child protection organisation which comes into contact with a child who is suspected of being a victim of trafficking and who has not been reported as provided for in paragraph (a), must immediately report that child to a police official for investigation, whereafter the provisions of subsections (5) and (6) apply. 5

(2) Subsection (1) does not apply to the right to legal professional privilege as between a legal practitioner and his or her client in respect of communications made in confidence between that legal practitioner and—

(a) his or her client for the purposes of legal advice or litigation which is pending or contemplated or which has commenced; or 10

(b) a third party for the purposes of litigation which is pending or contemplated or which has commenced.

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

(a) must provide reasons for that knowledge or suspicion to a police official; 15

(b) who makes the report in good faith, is not liable to civil or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information; 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. 20

(4) A police official to whom a report has been made in terms of subsection (1) or section 8(1)(b) or (2)(b)(i) or 9(2) in respect of a child or a police official who knows or ought reasonably to have known or suspected that a child is a victim of trafficking—

(a) may where necessary, and despite the proviso contained in section 26 of the Criminal Procedure Act, without a warrant, enter any premises if he or she, on reasonable grounds, believes that the safety of that child is at risk or that the child may be moved from those premises and may use such force as may be reasonably necessary to overcome any resistance against entry to the premises, including the breaking of any door or window of those premises, on condition that the police official must first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter those premises; 25 30

(b) must deal with that child in terms of section 110(4) of the Children's Act, pending a police investigation into the matter; and

(c) may place that child in temporary safe care in terms of section 152 of the Children's Act, pending the transfer of the child to a designated child protection organisation or provincial department of social development. 35

(5) The procedure provided for in section 110(5) to (8) of the Children's Act applies in respect of a child who has been dealt with in terms of subsection (4)(b) or who has been referred in terms of section 22(2)(b) or section 33(b)(iv). 40

(6) The provincial department of social development must without delay, in the prescribed manner, assess whether the child referred to in subsection (5) is a victim of trafficking, after taking into account the prescribed information obtained from the South African Police Service.

(7) A child who has been found to be a victim of trafficking in terms of subsection (6)— 45

(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. 50

(8) 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.

(9) A person who fails to comply with the provisions of subsection (1) is guilty of an offence. 55

Reporting of and dealing with adult victim of trafficking

19. (1) (a) Despite any law, policy or code of conduct prohibiting the disclosure of personal information, any person who knows or ought reasonably to have known or suspected that an adult person who he or she comes into contact with during the 60

execution of his or her duties, is a victim of trafficking, must immediately report that knowledge or suspicion to a police official for investigation.

(b) An accredited organisation which comes into contact with an adult person who is suspected of being a victim of trafficking and who has not been reported as provided for in paragraph (a), must immediately report that person to a police official, whereafter the provisions of subsections (8) to (12) apply. 5

(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.

(3) Subsection (1) does not apply to the right to legal professional privilege as between a legal practitioner and his or her client in respect of communications made in confidence between the legal practitioner and— 10

(a) his or her client for the purposes of legal advice or litigation which is pending or contemplated or which has commenced; or

(b) a third party for the purposes of litigation which is pending or contemplated or which has commenced. 15

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

(a) must provide reasons for that knowledge or suspicion to a police official;

(b) who makes the report in good faith, is not liable to civil or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information; and 20

(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.

(5) A police official to whom a report has been made in terms of subsection (1) or (2), or section 8(1)(b) or (2)(b)(i) or 9(2) in respect of an adult person or a police official who knows or ought reasonably to have known or suspected that an adult person is a victim of trafficking— 25

(a) (i) may where necessary, and despite the proviso contained in section 26 of the Criminal Procedure Act, without a warrant, enter any premises if he or she on reasonable grounds believes that the safety of that person is at risk or that the person may be moved from those premises and may use such force as may be reasonably necessary to overcome any resistance against entry to the premises, including the breaking of any door or window of those premises, on condition that the police official must first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter those premises; 30

(ii) must where necessary, as a measure of last resort and with the written consent of the person concerned, take him or her into protective custody if there is an immediate threat to the safety of that person, for a period until the station commander of the police station in question is satisfied that the threat has ceased to exist, whereafter the police official may place that person in temporary safe care referred to in subsection (6); 40

(b) must, within 24 hours, refer the person to an accredited organisation and notify the provincial department of social development of that person; and

(c) must inform the person suspected of being a victim of trafficking that he or she may apply for a visitor's visa to remain in the Republic for a recovery and reflection period in terms of section 15 if he or she is a foreigner. 45

(6) A police official may place an adult person referred to in subsection (5) in temporary safe care, pending the transfer of that person to an accredited organisation.

(7) A police official must, if it is reasonably possible to do so, render such assistance to an adult person referred to in subsection (5), as may be necessary in the circumstances, including, but not limited to— 50

(a) assisting that person to obtain medical treatment; and

(b) transporting that person to a place of temporary safe care or an accredited organisation. 55

(8) The provincial department of social development which has been notified as provided for in subsection (5)(b), or to which an adult person has been referred as provided for in section 22(2)(b) or section 33(b)(v), must without delay, in the prescribed manner, assess whether the person concerned is a victim of trafficking, after taking into account the prescribed information obtained from the South African Police Service. 60

(9) An accredited organisation which has an adult person who is a victim of trafficking in its care and whose safety is at risk, must, where necessary, as a measure of last resort

and with the written consent of the person concerned, request the South African Police Service to take the person into protective custody, for a period until the station commander of the police station in question is satisfied that the threat has ceased to exist, whereafter that person must, without delay, be returned to the accredited organisation.

(10) If the provincial department of social development, after having completed the assessment referred to in subsection (8), is satisfied that the person is a victim of trafficking, the provincial head must immediately issue a letter of recognition, as prescribed, to the victim. 5

(11) The provincial head may, at any time, withdraw a letter of recognition in the prescribed manner if he or she receives information that a person in respect of whom a letter of recognition was issued, was not a victim of trafficking at the time the letter of recognition was issued. 10

(12) An adult person who—

(a) is suspected of being a victim of trafficking referred to in subsection (1);

(b) in respect of whom a letter of recognition has— 15

(i) not been issued; or

(ii) been withdrawn as provided for in subsection (11); or

(c) in respect of whom the 14-day period referred to section 20(1)(b) has not yet expired; or

(d) has lodged an appeal as provided for in section 20(1)(b), 20

may be accommodated temporarily at an accredited organisation, pending a decision in terms of subsection (10) or section 20(2).

(13) Any person who fails to comply with the provisions of subsection (1) is guilty of an offence.

Appeals against decision of provincial head 25

20. (1) If a provincial head is not satisfied that the person referred to in section 19(8) is a victim of trafficking, or withdraws a letter of recognition in terms of section 19(11)—

(a) that provincial head must provide written reasons to the person affected by his or her decision; and 30

(b) the person affected by the decision not to issue a letter of recognition in terms of section 19(10) or to withdraw a letter of recognition in terms of section 19(11) may, within 14 days of being informed of that decision, lodge an appeal in the prescribed manner to the MEC having jurisdiction.

(2) The MEC must, within 30 days of the appeal being lodged, finalise the appeal in the prescribed manner. 35

(3) If the appeal is unsuccessful or the affected person does not lodge an appeal, and the affected person is an illegal foreigner, he or she must be referred by the provincial department of social development in the prescribed manner to the Department of Home Affairs, to be dealt with in terms of the Immigration Act. 40

Provision of health care services to a foreigner who is a victim of trafficking

21. A foreigner who is a victim of trafficking is entitled to public health care services as provided for in section 27 of the Constitution of the Republic of South Africa, 1996.

Criminal prosecution of victim of trafficking

22. (1) When deciding whether to prosecute a victim of trafficking, the prosecutor must give due consideration to whether the offence was committed as a direct result of the person's position as a victim of trafficking. 45

(2) If, during a criminal prosecution of a person, the prosecutor on reasonable grounds suspects that that person is a victim of trafficking and that the offence was committed as a direct result of the person's position as a victim of trafficking that prosecutor must— 50

(a) apply to the court for a postponement; and

(b) in the prescribed manner, refer that person to the provincial department of social development, which must conduct an assessment in terms of section 18(6) or 19(8), as the case may be.

(3) A letter of recognition that an adult person is a victim of trafficking or a finding by the provincial department of social development after an assessment referred to in section 18(6) that a child is a victim of trafficking serves as a ground for the withdrawal 55

of the criminal prosecution or the discharge of the victim of trafficking if the prosecutor is satisfied that the offence was committed as a direct result of the person's position as a victim of trafficking.

(4) No criminal prosecution may be instituted against a person referred to in subsection (1) or be proceeded with against a person referred to in subsection (2) without the written authorisation of the Director of Public Prosecutions having jurisdiction. 5

Unauthorised access to and disclosure of information

23. Any person who—

- (a) allows any unauthorised person to gain access to a victim of trafficking or suspected victim of trafficking or to a child in the care of that victim or suspected victim; or 10
- (b) except for the purpose of giving effect to the provisions of this Act or required by a competent court to do so, discloses—
 - (i) the identity of a victim of trafficking or suspected victim of trafficking or the identity of a child in the care of that victim of trafficking or suspected victim of trafficking; 15
 - (ii) the place where a victim of trafficking or suspected victim of trafficking or child in the care of that victim or suspected victim is accommodated or treated; 20
 - (iii) any information which could lead to the identification of a victim of trafficking or suspected victim of trafficking or child in the care of that victim or suspected victim or the place where the victim of trafficking or suspected victim of trafficking or child is accommodated or treated; or 25
 - (iv) any information which undermines or compromises or could undermine or compromise the investigation or prosecution of a case of trafficking, is guilty of an offence .

CHAPTER 5

ACCREDITATION OF ORGANISATIONS TO PROVIDE SERVICES TO ADULT VICTIMS OF TRAFFICKING 30

Accreditation of organisations to provide services

24. (1) Subject to section 49(2), an adult victim of trafficking may only be referred in terms of section 19(5)(b) 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 must prescribe— 35

- (a) a system for the accreditation of organisations which will provide services to adult victims of trafficking; and
 - (b) the circumstances in which accredited organisations qualify for financial assistance, within available resources. 40
- (3) The system for accreditation referred to in subsection (2) must contain—
- (a) criteria for the evaluation of the programmes offered by organisations to ensure that they comply with the norms and minimum standards referred to in section 25;
 - (b) mechanisms to monitor the programmes in question; and
 - (c) measures for the removal of organisations from the system, where appropriate. 45

(4) (a) The Director-General: Social Development must, in the manner prescribed by the Minister of Social Development and within the time limits set out in the system of accreditation, consider all applications by organisations for accreditation and issue a certificate prescribed by the Minister of Social Development to each organisation that is accredited in terms of this section. 50

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

(5) A developmental quality assurance process must be conducted in the manner prescribed by the Minister of Social Development in respect of each accredited organisation. 55

- (6) (a) The Director-General: Social Development must compile and maintain a list containing the particulars of each accredited organisation or organisation placed on or removed from the system within 30 days of accreditation or removal.
- (b) The Director-General: Social Development must, without undue delay, provide a copy of the list referred to in paragraph (a) when it is compiled and every time it is amended in accordance with paragraph (a) to— 5
- (i) the relevant role players in his or her Department who are involved in the administration of this Act;
 - (ii) the National Director of Public Prosecutions who must distribute the list to all prosecutors; and 10
 - (iii) the National Commissioner of the South African Police Service, who must distribute the list to all relevant role players in the South African Police Service. 10

Norms and minimum standards

25. (1) The Minister of Social Development must prescribe norms and minimum standards for accredited organisations. 15
- (2) The norms and minimum 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; 20
 - (d) hygienic and adequate toilet facilities;
 - (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— 25
 - (i) referred to in subsection (4) is to be collected and collated; and
 - (ii) relating to a victim of trafficking's particulars must be kept confidential.
- (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 minimum standards referred to in subsection (1), provide— 30
- (a) a safe environment for children;
 - (b) proper care for sick children; and
 - (c) safe storage of anything that may be harmful to children.
- (4) (a) An accredited organisation must, in the prescribed manner, collect information on victims of trafficking relating to— 35
- (i) the number of foreign victims of trafficking who have accessed a programme referred to in section 26;
 - (ii) the number of South African citizens or permanent residents who are victims of trafficking and who have accessed a programme referred to in section 26;
 - (iii) the number of victims who have accessed a programme referred to in section 26 and who have not been reported to the South African Police Service; 40
 - (iv) the countries from which foreign victims have been trafficked;
 - (v) the countries to which South African citizens or permanent residents have been trafficked;
 - (vi) the areas in the Republic to and from which victims have been trafficked; 45
 - (vii) the purposes for which the victims have been trafficked;
 - (viii) the methods used to recruit and transport the victims;
 - (ix) the methods and routes used for trafficking the victims to and from and within the Republic;
 - (x) methods used to keep victims of trafficking in exploitative situations; and 50
 - (xi) 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.
- (b) An accredited organisation must provide an annual report on the information referred to in paragraph (a) to the Director-General: Social Development on a date determined by him or her. 55
- (c) The Director-General: Social Development must provide an annual report on the information referred to in paragraph (b) to the Director-General: Justice and Constitutional Development, as determined by him or her.

Programme offered by accredited organisation

- 26.** (1) An accredited organisation—
- (a) must offer a programme aimed at—
 - (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—
 - (i) the provision of rehabilitation and therapeutic 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 and therapeutic services or education and skills development training.
- (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.
- (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.

Access to programme offered by accredited organisation

27. A person who has been issued with a letter of recognition is entitled to access a programme offered by an accredited organisation.

Plan to address needs of victim of trafficking

- 28.** (1) An accredited organisation must, having due regard to the views of a person who has been issued with a letter of recognition, draw up a plan to address the immediate and reasonable future needs of that victim.
- (2) The plan referred to in subsection (1), which must conform as far as possible to the form as prescribed, must include an exit plan and be brought to the attention of the victim and be signed by him or her.

CHAPTER 6**COMPENSATION****Compensation to victim of trafficking**

- 29.** (1) (a) A court may, on its own accord or at the request of the victim of trafficking or the prosecutor, in addition to any sentence which it may impose in respect of any offence under Chapter 2, order a person convicted of that offence to pay appropriate compensation to any victim of the offence for—
- (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,
- suffered by the victim as a result of the commission of that offence, whereafter the provisions of section 300(1)(a), (2), (3) and (4) of the Criminal Procedure Act apply with the necessary changes required by the context with regard to an order made under this section.
- (b) Appropriate compensation includes expenses reasonably expected to be incurred in relation to the matters referred to in paragraph (a)(i) to (iv).

(2) In cases where the amount of the damage, injury or loss suffered exceeds an order for compensation which can be made by a magistrate's court in terms of subsection (1), a civil action may be instituted by the victim for the recovery of the excess.

Compensation to State

- 30.** (1) The court may— 5
- (a) in addition to any sentence, including any sentence of imprisonment, which it may impose in respect of any offence under Chapter 2; or
 - (b) in addition to any order for the payment of compensation to a victim in terms of section 29; or
 - (c) in terms of section 9(4); and 10
 - (d) upon application by the prosecutor,
- make an order for payment by the convicted person or the carrier as provided for in section 9(4) to the Criminal Assets Recovery Account established under section 63 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), of an amount in compensation for expenses incurred or reasonably expected to be incurred in connection 15 with the care, accommodation, transportation, return and repatriation of the victim of the offence.
- (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.

CHAPTER 7 20

RETURN AND REPATRIATION OF VICTIMS OF TRAFFICKING

Repatriation of victim of trafficking from Republic

- 31.** (1) The Director-General: Social Development may not repatriate 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— 25
- (a) best interests of the child standard as provided for in section 7 of the Children's Act;
 - (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 repatriated; and 30
 - (d) possibility that the child might be harmed or killed.
- (2) The Director-General: Home Affairs—
- (a) may not repatriate 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— 35
 - (i) safety of the person during the repatriation process;
 - (ii) safety of the person in the country to which the person is to be repatriated; and
 - (iii) possibility that the person might be harmed or killed; and
 - (b) must— 40
 - (i) before repatriating 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 32(a); and
 - (ii) inform a person referred to in paragraph (a), in the prescribed manner, of 45 any arrangements that have been made for his or her reception in the country to which he or she is to be repatriated.
- (3) This section does not prohibit the voluntary repatriation 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 on condition that the victim has been given— 50
- (a) information on the protective measures offered to victims of trafficking in terms of this Act; and
 - (b) a clear explanation of the procedures to be followed in respect of repatriation.

Assistance to foreign victim of trafficking

32. 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 31(1) or (2) is to be repatriated and that is willing to provide assistance to such a person; and 5
 - (b) without undue delay, provide the Director-General: Home Affairs with information in respect of a request made in terms of section 31(2)(b)(i).

Repatriation of suspected victim of trafficking to Republic

33. With due regard to the safety of the person and without delay— 10
- (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 suspected of being a victim of trafficking, if he or she is repatriated to the Republic; 15
 - (ii) facilitate the repatriation 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; 20
 - (b) the Director-General: Home Affairs must—
 - (i) issue travel documents or other authorisations as may be necessary to enable that person to travel to and enter the Republic;
 - (ii) where necessary, take measures to secure the reception of a person referred to in paragraph (a) at a South African port of entry; 25
 - (iii) 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 suspected of being a victim of trafficking is a citizen or permanent resident of the Republic; 30
 - (iv) upon entry into the Republic of a child who is suspected of being a victim of trafficking refer the child to a designated child protection organisation or provincial department of social development; and
 - (v) upon entry into the Republic of a person who is suspected of being an adult victim of trafficking refer the person to the provincial department of social development. 35

Return of adult victim of trafficking within Republic

34. (1) An accredited organisation may not return an adult victim of trafficking to the place within the Republic from where he or she was 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 place.
- (2) An accredited organisation must—
- (a) take reasonable steps to find suitable family members to whom a victim referred to in subsection (1) can be returned and who are willing to provide assistance to the victim, taking into consideration the views of the victim; and 45
 - (b) if the victim in question does not have the financial means to travel to the place from where he or she was trafficked, in the prescribed manner, facilitate the return of the victim to the place in question. 50

Escorting of child victim of trafficking

35. (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 within the Republic from where the child was trafficked or to the child's country of origin or the country from where the child was trafficked. 55

(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 8

5

GENERAL PROVISIONS

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

36. (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— 10

(a) suspend all the parental responsibilities and rights of that parent, guardian or other person; and

(b) place that child in temporary safe care in terms of section 152 of the Children's Act, 15

pending an inquiry by a children's court.

(2) Any action taken by a children's court in terms of subsection (1) does not exclude a person's liability for committing any offence under Chapter 2 of this Act.

International co-operation

37. (1) The President may on the conditions as he or she deems fit— 20

(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. 25

(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. 30

(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. 35

Legitimacy and validity of documents

38. 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 under Chapter 2. 40

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

39. The Director-General: Social Development must submit to the Director-General: Justice and Constitutional Development, as determined by him or her, 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. 50

CHAPTER 9

ADMINISTRATION OF ACT

National Policy Framework

40. (1) The Minister must, after consultation with the Minister in The Presidency responsible for performance monitoring and evaluation, the Ministers of Finance, Home Affairs, Health, International Relations and Cooperation, Labour, Police, Social Development, State Security, and Women, Children and People with Disabilities and the National Director of Public Prosecutions approve a national policy framework, relating to all matters dealt with in this Act, in order to— 5

- (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 of persons; 10
- (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. 15

(2) The Minister must—

- (a) within one year after the commencement of this Act, approve and table the policy framework in Parliament; 20
- (b) publish the policy framework in the *Gazette* within two months after it has been tabled in Parliament; 20
- (c) review the policy framework within three years after its publication in the *Gazette* and at least once every five years thereafter; and
- (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. 25

Coordination of responsibilities, functions and duties relating to implementation of Act

41. (1) The Director-General: Justice and Constitutional Development, after consultation with the National Commissioner of the South African Police Service, the National Director of Public Prosecutions, the Chief Executive Officer of the Government Communication and Information System, the Commissioner of the South African Revenue Service and the Directors-General: Health, Home Affairs, International Relations and Cooperation, Labour, Social Development, State Security Agency and Women, Children and People with Disabilities, is responsible for— 30

- (a) developing a draft national policy framework, referred to in section 40(1), which must include guidelines for— 35
 - (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; 40
 - (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
 - (iv) monitoring the implementation of the national policy framework and this Act; 45
- (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 25(4)(c), 39, 44(1)(d), 44(3), 44(5)(c), 44(7)(c) and 44(9)(c) with the view to determining, among others— 50
 - (i) from which countries victims are being trafficked to the Republic;
 - (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; 55
 - (iv) the number of victims that have been repatriated to the Republic and the countries to which they were trafficked;
 - (v) the areas in the Republic to and from which victims are being trafficked;

- (vi) the purposes for which persons who have been identified as victims of trafficking have been trafficked;
- (vii) the profiles of the traffickers and their victims, including the age, gender, nationality and sex of the victims;
- (viii) which routes are used by traffickers to cross the borders of the Republic; 5
- (ix) which routes are used by traffickers to enter the countries to which South African citizens and other residents were trafficked;
- (x) the methods used by traffickers to recruit and transport their victims;
- (xi) the methods and routes used for trafficking victims within the Republic;
- (xii) the methods used by traffickers to keep victims in exploitative situations; 10
- (xiii) 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;
- (xiv) whether there is a link between trafficking operations and those involved in other forms of organised crime; 15
- (xv) the number of trafficking prosecutions, convictions and the form of sentences imposed on perpetrators;
- (xvi) the number of victims of trafficking who are awarded compensation orders in terms of section 29 of the Act; and 20
- (xvii) 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;
- (c) developing and reviewing guidelines on the identification of victims of trafficking and traffickers; and 25
- (d) establishing public awareness programmes or other measures for the prevention and combating of trafficking in persons designed to—
 - (i) 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— 30
 - (aa) common recruitment techniques used by traffickers;
 - (bb) practices used to keep victims of trafficking in exploitative situations; 35
 - (cc) the forms of abuse to which victims of trafficking may be subjected; and
 - (dd) organisations, institutions or law enforcement agencies that may be approached for assistance or information; 40
 - (ii) inform and educate victims of trafficking on—
 - (aa) their rights as victims;
 - (bb) legal or other measures in place to ensure their safety, recovery, return and repatriation; and
 - (cc) organisations, institutions or law enforcement agencies that may be approached for assistance of information; and 45
 - (iii) discourage the demand for and the supply of victims of trafficking that foster the exploitation of those victims, especially women and children.
- (2) (a) The programmes or other measures referred to in subsection (1)(d) must— 50
 - (i) include appropriate measures aimed at reaching rural communities;
 - (ii) where possible, be provided in a language understood by the persons at whom they are directed; and
 - (iii) be reviewed every second year in order to determine their effectiveness.
- (b) The Director-General: Justice and Constitutional Development must take all reasonable steps within available resources to ensure that the programmes or other measures referred to in subsection (1)(d) are implemented throughout the Republic. 55
- (3) The Director-General: Justice and Constitutional Development may, after consultation with the National Commissioner of the South African Police Service, the National Director of Public Prosecutions, the Chief Executive Officer of the Government Communication and Information System, the Commissioner of the South African Revenue Service and the Directors-General: Health, Home Affairs, International Relations and Cooperation, Labour, Social Development, State Security Agency 60

and Women, Children and People with Disabilities make recommendations to the Minister with regard to the amendment of the national policy framework.

(4) The Minister may make regulations establishing and regulating the functioning of a mechanism to facilitate the implementation of this Act and to coordinate the responsibilities, functions and duties referred to in this section. 5

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, State Security and Women, Children and People with Disabilities 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;
 - (ii) a report to Parliament reflecting information relating to trafficking in persons referred to in subsection 41(1)(b); and 15
- (b) every year thereafter submit reports referred to in paragraph (a)(i) and a report referred to in paragraph (a)(ii) to Parliament.

Regulations

43. (1) (a) The Minister must make regulations regarding the manner in which prosecutors must refer children and adult person suspected of being victims of trafficking for assessment as provided for in section 22(2)(b). 20

(b) The Minister may make regulations regarding the establishment and regulation of a mechanism to facilitate the implementation of this Act as provided for in section 41(4).

(2) The Minister of Home Affairs must make regulations regarding— 25

- (a) the manner in which a foreigner referred to in section 15(1) will be issued with a visitor's visa to remain in the Republic for a recovery and reflection period and the conditions upon which that visa is issued, as provided for in section 15(1);
- (b) the manner in which the Director-General: Social Development must request an extension of the recovery and reflection period as provided for in section 15(4); 30
- (c) the manner in which any extension of the recovery and reflection period must be granted as provided for in section 15(4); and
- (d) 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 repatriated as provided for in section 31(2)(b)(ii). 35

(3) The Minister of Social Development must make regulations regarding—

- (a) the assessment of a person to determine whether he or she is a victim of trafficking as provided for in sections 18(6) and 19(8) as well as the information to be obtained from the South African Police Service as provided for in those subsections; 40
- (b) the letter of recognition to be issued to a person who has been found to be a victim of trafficking as provided for in section 19(10);
- (c) the manner in which a provincial head may withdraw a letter of recognition as provided for in section 19(11); 45
- (d) the manner in which a person must lodge an appeal as provided for in section 20(1)(b);
- (e) the manner in which the MEC must deal with an appeal as provided for in section 20(2); 50
- (f) the manner in which the provincial department of social development must refer a person referred to in section 20(3) to the Department of Home Affairs;
- (g) the system of accreditation of organisations to provide services to adult victims of trafficking as provided for in section 24(2)(a);
- (h) the circumstances in which accredited organisations qualify for financial assistance as provided for in section 24(2)(b); 55
- (i) the manner in which the applications for accreditation of organisations must be considered and 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 24(4)(a);
- (j) the manner in which the developmental quality assurance process must be conducted in respect of each accredited organisation, as provided for in section 24(5);
 - (k) the norms and minimum standards for accredited organisations as provided for in section 25(1);
 - (l) the manner in which information on victims of trafficking must be collected as provided for in section 25(4);
 - (m) the form of the plan referred to in section 28(2); and
 - (n) the manner in which an adult victim of trafficking is to be returned as provided for in section 34(2)(b).
- (4) Any regulations made under this section—
- (a) must be submitted to Parliament for approval 60 days prior to publication thereof in the *Gazette*;
 - (b) which are not approved within the 60-day period referred to in paragraph (a) are deemed to have been approved by Parliament; and
 - (c) which may result in expenditure for the State, must be made in consultation with the Minister of Finance.

National instructions and directives

44. (1) (a) The Director-General: Justice and Constitutional Development must issue directives regarding the following matters with which all police officials, members of the prosecuting authority and officials of the Departments of Home Affairs, Labour and Social Development must comply in the execution of their functions in terms of this Act, after consultation with the National Commissioner of the South African Police Service, the National Director of Public Prosecutions, the Chief Executive Officer of the Government Communication and Information System, the Commissioner of the South African Revenue Service and the Directors-General: Health, Home Affairs, International Relations and Cooperation, Labour, Social Development, State Security Agency and Women, Children and People with Disabilities, where such consultation is necessary and relevant:
- (i) The manner in which the reporting of cases related to trafficking in persons must be dealt with;
 - (ii) measures to be taken in instances where foreign victims of trafficking are not conversant with any of the official languages of the Republic; and
 - (iii) 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.
- (b) The Minister must submit all directives provided for in paragraph (a) to Parliament 30 days before they are issued.
- (c) The Director-General: Justice and Constitutional Development must, after the expiry of the 30-day period, publish the directives on the website of the Department of Justice and Constitutional Development.
- (d) The functionaries referred to in paragraph (a) must provide any relevant information to the Director-General: Justice and Constitutional Development as he or she may require in preparing the directives referred to in paragraph (a).
- (2) The National Commissioner of the South African Police Service must 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, after consultation with the Directors-General: Health, Home Affairs, International Relations and Cooperation, Justice and Constitutional Development, Labour, Social Development, State Security Agency and Women, Children and People with Disabilities, the Chief Executive Officer: Government Communication and Information System, the Commissioner of the South African Revenue Service and the National Director of Public Prosecutions, where such consultation is necessary and relevant:
- (a) The division or divisions within the police to be tasked with the investigation of trafficking cases;
 - (b) the manner in which trafficking cases are to be investigated;

- (c) 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;
- (d) measures to be taken in order to ensure the detection of trafficking in persons at South African ports of entry and borders; 5
- (e) 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 29; and 10
- (f) 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; 15
 - (iii) the nationality of victims transiting the Republic and the countries to which they are being trafficked;
 - (iv) the areas in the Republic to and from which victims are being trafficked;
 - (v) the purposes for which the persons who have been identified as victims of trafficking have been trafficked; 20
 - (vi) the profiles of the traffickers and their victims, including their age, gender, nationality and sex;
 - (vii) the routes used by traffickers to enter and exit the Republic;
 - (viii) the methods used by traffickers to recruit and transport their victims;
 - (ix) the methods used by traffickers to keep victims in exploitative situations; 25
 - (x) the methods and routes used for trafficking victims within the Republic;
 - (xi) 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
 - (xii) the link between trafficking operations and those involved in other forms of organised crime. 30
- (3) The National Commissioner of the South African Police Service must provide an annual report on the information referred to in subsection (2)(f) or any other relevant information to the Director-General: Justice and Constitutional Development, as determined by him or her. 35
- (4) The Director-General: Home Affairs must, after consultation with the Directors-General: Health, International Relations and Cooperation, Justice and Constitutional Development, Labour, Social Development, State Security Agency and Women, Children and People with Disabilities, 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, where such consultation is necessary and relevant, issue directives regarding the collection and analysis of information on victims of trafficking who have been repatriated from the Republic in terms of section 31 and victims who have been repatriated to the Republic in terms of section 33, relating to— 45
- (a) The number of victims who have been repatriated to the Republic and the countries to which they have been trafficked;
 - (b) the profiles of the victims, including the age, gender, nationality and sex of the victims;
 - (c) the purposes for which the victims were trafficked; 50
 - (d) the routes used by traffickers to exit the Republic and to enter the countries to which the victims were trafficked;
 - (e) the methods used by traffickers to recruit and transport the victims;
 - (f) the methods used by traffickers to keep victims in exploitative situations; and
 - (g) 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. 55
- (5) (a) The Minister of Home Affairs must submit all directives provided for in subsection (4) to Parliament 30 days before they are issued.
- (b) The Director-General: Home Affairs must, after the expiry of the 30-day period, publish the directives on the website of the Department of Home Affairs. 60

(c) The Director-General: Home Affairs must provide an annual report on the information referred to in subsection (4) or any other relevant information to the Director-General: Justice and Constitutional Development, as determined by him or her.

(6) The Director-General: Social Development must issue directives regarding the following matters with which all police officials, members of the prosecuting authority and other functionaries must comply in the execution of their functions in terms of this Act, after consultation with the Directors-General: Health, Home Affairs, International Relations and Cooperation, Justice and Constitutional Development, Labour, State Security Agency and Women, Children and People with Disabilities, the Chief Executive Officer: Government Communication and Information System, the National Director of Public Prosecutions, the Commissioner of the South African Revenue Service and the National Commissioner of the South African Police Service, where such consultation is necessary and relevant:

- (a) The manner in which victims of trafficking must be identified, interviewed and treated, with particular attention to the vulnerability of children; and
- (b) the referral of victims of trafficking to social, health care and psychological services.

(7) (a) The Minister of Social Development must submit all directives provided for in subsection (6) to Parliament 30 days before they are issued.

(b) The Director-General: Social Development must, after the expiry of the 30-day period, publish the directives on the website of the Department of Social Development.

(c) The Director-General: Social Development must provide an annual report on any relevant information to the Director-General: Justice and Constitutional Development, as determined by him or her.

(8) The National Director of Public Prosecutions must issue directives regarding all matters which are necessary or expedient to be provided for and which are to be complied with by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in cases relating to trafficking in persons, in consultation with the Minister and after consultation with the Directors-General: Health, Home Affairs, International Relations and Cooperation, Justice and Constitutional Development, Labour, Social Development, State Security Agency and Women, Children and People with Disabilities and the National Commissioner of the South African Police Service, the Commissioner of the South African Revenue Service and the Chief Executive Officer: Government Communication and Information System, where such consultation is necessary and relevant, including the following:

- (a) The manner in which cases relating to trafficking in persons should be dealt with;
- (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 witnesses 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 subsection (2)(a) of that section or if an application in terms of subsection (2)(b) of that section is not made;
- (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;
- (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;
- (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;
- (g) the need to inform victims of trafficking about their right to and the process to claim compensation in terms of section 29;

- (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 29; and
- (i) the collection and analysis of information relating to—
- (i) the number of trafficking prosecutions, convictions and the form of sentences imposed on traffickers; 5
 - (ii) the number of victims of trafficking awarded compensation orders in terms of section 29; and
 - (iii) the number of cases where the courts did not provide compensation orders in terms of section 29 and the reasons for doing so. 10
- (9) (a) The Minister must submit any directives provided for in subsection (8) to Parliament 30 days before they are issued.
- (b) The National Director of Public Prosecutions must, after the expiry of the 30-day period, publish the directives on the website of the National Prosecuting Authority.
- (c) The National Director of Public Prosecutions must provide an annual report on the information referred to in subsection (8)(i) or any other relevant information to the Director-General: Justice and Constitutional Development as determined by him or her. 15
- (10) The Director-General: Justice and Constitutional Development, 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 20 must each develop training courses which must—
- (a) include training, also incorporating social context training, on the national instructions or directives, as the case may be, referred to in this section; and
 - (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. 25
- (11) 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. 30
- (12) Any national instruction or directive issued under this section may be amended or withdrawn in like manner.

Delegation of powers and assignment of duties by Director-General to senior official 35

45. (1) 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 Department above the rank of director.
- (2) A delegation or assignment in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions which a Director-General may impose; 40
 - (b) must be in writing; and
 - (c) does not divest a Director-General of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) A Director-General may— 45
- (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) A Director-General may not delegate a power or assign a duty conferred on or assigned to him or her by section 15, 16, 31, 38, 39, 41 or 44 of this Act. 50

Assignment of powers and duties by Director-General to provincial head

46. (1) Any Director-General referred to in this Act may, subject to subsection (4), assign any power or duty conferred on or assigned to him or her by this Act to a provincial head of the corresponding provincial department, by agreement with that provincial head. 55
- (2) An assignment in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions which a Director-General may impose;

- (b) must be in writing;
 - (c) may include the power to delegate or assign; and
 - (d) does not divest a Director-General of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) A Director-General may— 5
- (a) confirm, vary or revoke any decision taken in consequence of an 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 an assignment.
- (4) A Director-General may not assign a power or duty conferred on or assigned to him or her by section 15, 16, 31, 38, 39, 41 or 44 of this Act. 10

Delegation of powers and assignment of duties by provincial head

47. (1) A provincial head to whom a power or duty has been assigned in terms of section 46 or upon whom a power or duty has been conferred or assigned by this Act, may, subject to subsection (4), delegate that power or assign that duty to an officer at director level or above in the employ of the provincial department concerned. 15
- (2) A delegation or assignment in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions which the provincial head may impose;
 - (b) must be in writing; and 20
 - (c) does not divest a provincial head of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) A 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 25
 - (b) at any time withdraw a delegation or assignment.
- (4) A provincial head may not delegate a power or assign a duty conferred on or assigned to him or her by section 19(10) or (11).

CHAPTER 10 30

MISCELLANEOUS MATTERS

Laws repealed or amended

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

Transitional arrangements 35

49. (1) Criminal proceedings instituted in terms of any law, in respect of conduct which constitutes an offence provided for in Chapter 2, but which were instituted prior to the commencement of this Act, must be continued and concluded as if this Act had not been passed.
- (2) Every organisation which existed at the time of the commencement of this Act and which — 40
- (a) provided services to victims of trafficking; and
 - (b) the Minister of Social Development has listed by notice in the *Gazette*,
- may continue to operate and provide such services after the commencement of this Act until the first application procedure as provided for in section 24(4)(a) has been finalised. 45

Short title and commencement

50. (1) This Act is called the Prevention and Combating of Trafficking in Persons Act, 2012, and takes effect on a date fixed by the President by proclamation in the *Gazette*.
- (2) Different dates may be fixed in respect of different provisions of this Act. 50

SCHEDULE

Laws repealed or amended

(Section 48)

Number and year of law	Short title	Extent of repeal or amendment
Act No. 68 of 1969	Prescription Act, 1969	<p>The amendment of section 12 by the substitution for subsection (4) of the following subsection:</p> <p>“(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 and <u>involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2012</u>, during the time in which the creditor is unable to institute proceedings because of his or her mental or psychological condition.”.</p>
Act No. 51 of 1977	Criminal Procedure Act, 1977	<p>1. The amendment of section 18 by the substitution for paragraph (h) of the following paragraph:</p> <p>“(h) [trafficking in persons for sexual purposes by a person] offences as provided for in section [71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] <u>4, 5 and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2012;</u>”.</p> <p>2. The insertion of the following section after section 261:</p> <p>“Trafficking in persons</p> <p>261A. (1) In this section— <u>‘Basic Conditions of Employment Act’</u> means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);</p>

Number and year of law	Short title	Extent of repeal or amendment
		<p><u>‘Criminal Law (Sexual Offences and Related Matters) Amendment Act’</u> means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);</p> <p><u>‘Immigration Act’</u> means the Immigration Act, 2002 (Act No. 13 of 2002; and</p> <p><u>‘Prevention and Combating of Trafficking in Persons Act’</u> means the Prevention and Combating of Trafficking in Persons Act, 2012 (Act No..... of 2012)</p> <p><u>(2) If the evidence on a charge of trafficking in persons provided for in section 4 or any involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, does not prove the offence of trafficking in persons or the involvement in the offence, but the offence of—</u></p> <p><u>(a) assault with intent to do grievous bodily harm;</u></p> <p><u>(b) common assault;</u></p> <p><u>(c) rape as provided for in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act;</u></p> <p><u>(d) compelled rape as provided for in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act;</u></p> <p><u>(e) sexual assault as provided for in section 5 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act;</u></p> <p><u>(f) compelled sexual assault as provided for in section 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act;</u></p> <p><u>(g) compelled self-sexual assault as provided for in section 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment;</u></p> <p><u>(h) debt bondage as provided for in section 5 or any involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act;</u></p>

Number and year of law	Short title	Extent of repeal or amendment
		<p><u>(i) the possession, destruction, confiscation, concealment of or tampering with documents as provided for in section 6 or any involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act;</u></p> <p><u>(j) using the services of a victim of trafficking as provided for in section 7 or any involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act;</u></p> <p><u>(k) conduct facilitating trafficking in persons as provided for in section 8 or any involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act;</u></p> <p><u>(l) transporting a person within or across the borders of the Republic knowing that the person is a victim of trafficking as provided for in section 9(1) or any involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act;</u></p> <p><u>(m) entering or remaining in, or departing from the Republic as provided for in section 49(1)(a) of the Immigration Act;</u></p> <p><u>(n) 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></p> <p><u>(o) employing a child as provided for in section 43 of the Basic Conditions of Employment Act;</u> or</p> <p><u>(p) forced labour as provided for in section 48 of the Basic Conditions of Employment Act, the accused may be found guilty of the offence so proved.”.</u></p>

Number and year of law	Short title	Extent of repeal or amendment
		<p>3. The amendment of section 299A by—</p> <p>(a) the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs:</p> <p>(e) kidnapping; [or]</p> <p>(f) any conspiracy, incitement or attempt to commit any offence contemplated in paragraphs (a) to (e)[,] ; or; and</p> <p>(b) the addition in subsection (1) of the following paragraph after paragraph (f):</p> <p>(g) offences as provided for in section 4, 5 and 7 and involvement in these offences as provided for in section 10 of the <u>Prevention and Combating of Trafficking in Persons Act, 2012 (Act No. ... of 2012)</u>,</p> <p>4. 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:</p> <p>“<u>Trafficking in persons as provided for in section 4 and involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2012.</u>”.</p> <p>5. 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:</p> <p>“<u>Offences provided for in section 4, 5 and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2012.</u>”.</p> <p>6. The amendment of Part III of Schedule 2 by the insertion of the following item after the item of “Childstealing”:</p>

Number and year of law	Short title	Extent of repeal or amendment
		<p>“Offences as provided for in section 4, 5 and 7 and involvement in these offences as provided for in section 10 of the <u>Prevention and Combating of Trafficking in Persons Act, 2012.</u>”.</p> <p>7. 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: “Offences as provided for in section 4, 5, 7 and 9(1) and involvement in these offences as provided for in section 10 of the <u>Prevention and Combating of Trafficking in Persons Act, 2012.</u>”.</p> <p>8. 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: “Offences as provided for in section 4, 5 and 7 and involvement in these offences as provided for in section 10 of the <u>Prevention and Combating of Trafficking in Persons Act, 2012.</u>”.</p>
Act No. 105 of 1997	Criminal Law Amendment Act, 1997	<p>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(1) and involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2012.</u>”.</p> <p>2. The amendment of Part III of Schedule 2 by the deletion of 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]”.</p>

Number and year of law	Short title	Extent of repeal or amendment
Act No. 112 of 1998	Witness Protection Act, 1998	<p>The amendment of the Schedule by the substitution for item 10A of the following item:</p> <p>“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] Any offence under Chapter 2 of the Prevention and Combating of Trafficking in Persons Act, 2012.”.</p>
Act No. 121 of 1998	Prevention of Organised Crime Act, 1998	<p>The amendment of Schedule 1 by the insertion after item 33 of the following item:</p> <p>“33A. [Trafficking in persons as provided for in section 3] Any offence under Chapter 2 of the Prevention and Combating of Trafficking in Persons Act, 2012;”.</p>
Act No. 56 of 2001	Private Security Industry Regulation Act, 2001	<p>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:</p> <p>“Any offence under Chapter 2, except section 9(3), of the Prevention and Combating of Trafficking in Persons Act, 2012.”.</p>
Act No. 13 of 2002	Immigration Act, 2002	<p>1. The amendment of section 29 by—</p> <p>(a) the insertion of the following subsections after subsection (1):</p> <p>“(1A) A port of entry 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.</p> <p>(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.”.</p>

Number and year of law	Short title	Extent of repeal or amendment
		<p>2. The amendment of section 35 by—</p> <p>(a) the addition of the following paragraph in subsection (5): <u>“(e) a list of all the children on board of the conveyance indicating which children are unaccompanied.”</u>; and</p> <p>(b) the insertion after subsection (5) of the following subsection: <u>“(5A) 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 18(1) or 19(1) of the Prevention and Combating of Trafficking in Persons Act, 2012, to a police official.”</u>.</p> <p>3. The amendment of section 49 by the addition in subsection (15) of the following paragraph: <u>“(c) has in his or her or its 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 imprisonment for a period not exceeding 15 years without the option of a fine.”</u>.</p> <p>4. 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>“Any offence under Chapter 2 except section 9(3) of the Prevention and Combating of Trafficking in Persons Act, 2012”</u>.</p>

Number and year of law	Short title	Extent of repeal or amendment
Act No. 38 of 2005	Children's Act, 2005	<p>1. The amendment of the Table of Contents by the deletion of the following:</p> <p>(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</p> <p>(b) “Schedule 3”.</p> <p>2. The amendment of section 1 by—</p> <p>(a) the substitution for the definition of “commercial sexual exploitation” of the following definition:</p> <p style="padding-left: 40px;">“commercial sexual exploitation”, in relation to a child means [—</p> <p style="padding-left: 80px;">(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 care-giver of the child, or any other person [;</p> <p style="padding-left: 80px;">or</p> <p style="padding-left: 80px;">(b) trafficking in a child for use in sexual activities, including prostitution or pornography”; and</p> <p>(b) the repeal of the definitions of “trafficking” and “UN Protocol to Prevent Trafficking in Persons”.</p>

Number and year of law	Short title	Extent of repeal or amendment
		<p>3. The repeal of Chapter 18.</p> <p>4. The amendment of section 305 by—</p> <p>(a) the repeal of subsection (1)(r) and (s);</p> <p>(b) the substitution for subsection (6) of the following subsection:</p> <p style="padding-left: 40px;">“(6) [Subject to subsection (8), a] <u>A</u> person convicted of an offence in terms of subsection (1), (2), (3), (4) or (5) is liable to a fine or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment.” ; and</p> <p>(c) the repeal of subsection (8).</p> <p>5. The repeal of Schedule 3.</p>
Act No. 32 of 2007	Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007	<p>1. The amendment of the long title by the deletion of the following “* making interim provision relating to the trafficking in persons for sexual purposes;”.</p> <p>2. The amendment of the Index by the deletion in Chapter 7 Part 6 of the following:</p> <p style="padding-left: 40px;">“Transitional provisions relating to trafficking in persons for sexual purposes</p> <p style="padding-left: 40px;">70. Application and interpretation</p> <p style="padding-left: 40px;">71. Trafficking in persons for sexual purposes”.</p> <p>3. The amendment of section 1 by the substitution for the definition of “sexual offence” of the following definition: ”</p> <p style="padding-left: 40px;">‘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 2 of the Prevention and Combating of Trafficking in Persons Act, 2012, which was committed for sexual purposes;</u>”.</p> <p>4. The amendment of Chapter 7 by the deletion of the heading of Part 6.</p> <p>5. The repeal of sections 70 and 71.</p>

Number and year of law	Short title	Extent of repeal or amendment
Act No. 75 of 2008	Child Justice Act, 2008	<p>The amendment of Schedule 3 by the substitution for item 13 of the following item:</p> <p>“[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, or 7 or involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2012.</u>”</p>

MEMORANDUM ON OBJECTS OF THE PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL, 2012

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 Trafficking in Persons Protocol), 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 THE BILL

The objects of the Bill are to—

- (a) give effect to the Republic's obligations concerning the trafficking of persons in terms of international agreements;
- (b) provide for the prosecution of persons who commit offences referred to in this act and to provide for appropriate penalties;
- (c) provide for the prevention of trafficking in persons and for the protection and assistance of victims of trafficking;
- (d) provide services to victims of trafficking;
- (e) provide for effective enforcement measures;
- (f) provide for the co-ordinated implementation, application and administration of the Act; and
- (g) combat trafficking in persons in a co-ordinated manner.

3. DISCUSSION OF THE BILL

3.1 Clause 1: Definitions

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"; "slavery"; "victim of trafficking".

3.2 Clause 2: Interpretation of certain expressions

Clause 2 provides for the interpretation of certain expressions used in the Bill.

3.3 Clause 3: Objects of the Act

Clause 3 sets out the objects of the Act as indicated in paragraph 2 above.

3.4 Clause 4: Trafficking in persons

Clause 4 provides for the offence of trafficking in persons.

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 any identification document or travel document 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 of 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 or suspected 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 of persons which includes the intentional lease of property and the use of media and information technology for the purposes of trafficking persons. Under this clause a person who finances, controls or organises the commission of an offence under Chapter 2 of the Bill is also guilty of an offence. Although electronic service providers are not under a general obligation to monitor the data which it transmits or stores or actively seek facts or circumstances which indicate unlawful activity, they are required to take reasonable steps to prevent the use of their services for the hosting of information that facilitates trafficking in persons and when they become aware or are aware of electronic communications which contain such information, they must report the electronic communications identity number from which those electronic communications originated and other particulars to identify the person or service provider from who or which the communications originated, to the South African Police Service (SAPS). Electronic service providers must take such reasonable steps as are necessary to preserve any evidence as may be required by the relevant investigation and prosecuting authorities and must take the reasonable steps necessary to prevent continued access to those electronic communications. A further safeguard for electronic communications service providers is that they will not be liable for loss or damage as a result of action taken in good faith when taking steps to prevent continued access to electronic communications.

3.9 Clause 9: Liability of carriers

Clause 9 criminalises the act by which a carrier transports a person within or across the borders of the Republic, knowing that that person is a victim of trafficking. A carrier who suspects on reasonable grounds that any of its passengers is a victim of trafficking, must report that suspicion to a police official and failure to do so is an offence.

3.10 Clause 10: Involvement in offences under Chapter 2

Clause 10 creates the offence of involvement in offences under Chapter 2 of the Bill. It provides that a person who attempts to commit, incites or in other manners acquires another person to commit, or who conspires with another person to commit, an offence under Chapter 2, is guilty of an offence.

3.11 Clause 11: Liability of persons for offences under Chapter 2

Clause 11(1) provides that it is no defence to a charge of contravening any of the offences in Chapter 2 that a child has consented to the intended exploitation or to the action which was intended to constitute an offence or that the exploitation or that the exploitation or action did not occur, even if none of the means referred to in clause 4 have been used. Likewise it is no defence that an adult person has consented to the intended exploitation or action which was intended to constitute an offence or that the exploitation or action did not occur, if one or more of the means referred to in clause 4 have been used. Liability for the offences under Chapter 2 is extended to include employers or principals. Licences or registrations of employers may be revoked or cancelled if found guilty of an offence under this Chapter.

3.12 Clause 12: Extra-territorial jurisdiction

The crime of trafficking in persons is regarded as an international crime. Clause 12 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 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.

3.13 Clause 13: Penalties

Clause 13 contains the penalties in respect of the offences in the Bill. Of importance is that clause 4(1) is subject to the minimum sentencing legislation and a fine not exceeding R100 million or imprisonment, including life imprisonment, could be imposed. Clause 4(2) also carries a fine not exceeding R 100 million or imprisonment, including life imprisonment.

3.14 Clause 14: Factors to be considered in sentencing

Clause 14 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 14 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 or related offences; the conditions in which the victim was kept and the period the victim was held captive; whether the victim suffered abuse 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.

3.15 Protective measures for purposes of investigation and prosecution in respect of foreign victims of trafficking

Clause 15 is aimed at providing a foreign victim of trafficking the opportunity to remain in the Republic for a recovery and reflection period not exceeding three months. It provides that a visitor's visa in terms of the Immigration Act, 2002 (Act No. 13 of 2002) may be issued to a foreigner who is suspected of being a victim of trafficking and who has been reported to a police official and who might be able to assist in a police investigation. This would enable a foreigner to access the programmes referred to in clause 26 with the view to enabling him or her to make informed decisions regarding his or her cooperation with law enforcement and prosecuting authorities. If that foreigner is unwilling or unable to cooperate, his or her circumstances must be investigated to determine whether it is safe to return him or her to the country of origin or country from where he or she has been trafficked.

3.16 Clause 16: Facilitation of police investigation or prosecution in case of foreign witnesses

Clause 16 addresses the status of a victim of trafficking who is willing to co-operate with authorities in the investigation and prosecution of a case of trafficking in persons. A visitor's visa may only be issued to such a person if the National Commissioner of SAPS or the National Director of Public Prosecutions (NDPP) confirms in writing that the person is required for purposes of investigation or prosecution of a person who is alleged to have committed an offence under the Bill. Provision is further made for the extension or withdrawal of such a visitor's visa.

3.17 Clause 17: Application for rights of permanent residence in terms of section 31(2)(b) of Immigration Act

If a foreign victim of trafficking has assisted the SAPS or NPA before or during criminal proceedings, he or she may be assisted by the National Commissioner of SAPS or the NDPP to apply for the rights of permanent residence in terms of the Immigration Act, if as a result of that victim's assistance, the victim may be harmed or killed if repatriated to his or her country of origin or the country from where he or she has been trafficked.

3.18 Clause 18: Reporting of and dealing with child victim of trafficking

Clause 18(1) places a duty on everyone (except a legal practitioner) to report a child who they know or 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 may use such force as may be necessary to enter premises if the safety of a child is at risk; must deal with the child in terms of section 110 of the Children's Act and may place the child in temporary safe care pending the transfer of that child to a designated child protection organisation or provincial department of social development. The latter must assess whether the child is a victim of trafficking. Certain protective measures of the Children's Act, 2005 (Act No. 38 of 2005), also apply to the child. Failure to report knowledge of or a suspicion that a child is a victim of trafficking in persons is an offence.

3.19 Clause 19: Reporting of and dealing with adult victim of trafficking

Clause 19(1) places a duty on any person who comes into contact with an adult person during the execution of their duties, whom they know is or suspect to be a victim of trafficking, to report that adult to a police official. Clause 19 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. A police official to whom a report is made or who suspects that an adult person is a victim of trafficking may use the necessary force to gain entry to premises if the victim's safety is at risk and must take such a victim into protective custody, with that victim's consent, if there is an immediate threat to the safety of that person. A police official must refer that adult to an accredited organisation and notify the provincial department of social development, pending a police investigation. A police official may place an adult person in temporary safe care pending the transfer of that person to an accredited organisation. A police official must render such assistance to the person as may be necessary in the circumstances, for example, obtaining of medical treatment. The provincial department of social development must assess whether the adult person is a victim of trafficking and issue him or her with a letter of recognition to that effect. A letter of recognition may be withdrawn if information shows that a person was not a victim of trafficking at the time the letter of recognition was issued. Failure to comply with subclause (1) is an offence.

3.20 Clause 20: Appeals against decision of provincial head

Clause 20 provides for an appeal procedure for a person affected by a decision of the provincial head not to issue a letter of recognition or to withdraw such a letter, wishes to lodge an appeal.

3.21 Clause 21: Provision of health care services to a foreigner who is a victim of trafficking

Clause 21 aims to inform a foreign victim of trafficking that he or she is entitled to public health care services as provided for in section 27 of the Constitution.

3.22 Clause 22: Criminal prosecution of victim of trafficking

Clause 22 is aimed at protecting victims of trafficking by providing that the prosecutor, when deciding whether to prosecute a victim of trafficking, he or she must give due consideration to whether the offence was committed as a direct result of that person's position as a victim of trafficking. If, during a criminal prosecution of a child or adult person, the prosecutor suspects the child or adult person to be a victim of trafficking and that the offence was committed as a direct result of that person's position as a victim of trafficking, that child or adult must be referred to the provincial department of social development for an assessment whether they are victims of trafficking. A letter of recognition or a finding by the provincial department of social development that a child is a victim of trafficking serves as a ground for the withdrawal of the prosecution or the discharge of the victim, if the prosecutor is satisfied that the offence was committed as a direct result of the person's position as a victim of trafficking. The Director of Public Prosecutions must authorize the institution of a criminal prosecution or continuation of a criminal prosecution.

3.23 Clause 23: Unauthorised access to and disclosure of information

Clause 23 is aimed at the further protection of a victim of trafficking in that the unauthorised access to a victim of trafficking and the disclosure of certain information regarding a victim of trafficking is an offence.

3.24 Clause 24: Accreditation of organisations to provide services

Clause 24 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, prescribe a system of accreditation of organisations to provide services to adult victims of trafficking and the circumstances in which accredited organisations qualify for financial assistance subject to available resources. The system must contain criteria for the evaluation of the programmes offered by organisations to ensure compliance with the norms and minimum standards required by this Bill, mechanisms to monitor those programmes and measures for the removal of organisations, where appropriate. A list containing the particulars of accredited organisations must be made available to role players.

3.25 Clause 25: Norms and minimum standards

Clause 25 requires the Minister of Social Development to prescribe the norms and minimum 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. 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 Trafficking in Persons Protocol also requires State Parties to share information. Clause 25 therefore also requires the accredited organisation to collect and collate certain information and to provide an annual report to the

Director-General: Social Development, who must in turn report to the Director-General: Justice and Constitutional Development.

3.26 Clause 26: Programme offered by accredited organisation

Clause 26 provides that the contents of a programme to be offered by an accredited organisation must include the provision of accommodation, counseling, rehabilitation and reintegration services and may include the provision of rehabilitation and therapeutic services or 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 and therapeutic services or education and skills development training.

3.27 Clause 27: Access to programme offered by accredited organisation

Clause 27 provides that a person, who has been issued with a letter of recognition, is entitled to access the programmes offered by an accredited organisation.

3.28 Clause 28: Plan to address needs of victim of trafficking

Clause 28 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.

3.29 Clause 29: Compensation to victim of trafficking

Clause 29 provides for the court to order compensation to any victim of trafficking. 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 Trafficking in Persons Protocol requires State Parties to put measures in place that offer victims of trafficking the possibility of compensation. Clause 29 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. Section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) applies with the necessary changes required by the context.

3.30 Clause 30: Compensation to State

Clause 30 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, or where the court finds that a carrier must pay expenses in terms of clause 9(4), and on application of the prosecutor, make an order for payment by the convicted person or the carrier to the Criminal Assets Recovery Account of an amount in compensation for expenses in connection with the care, accommodation, transportation, return and repatriation of a victim of the offence.

3.31 Clause 31: Repatriation of victim of trafficking from Republic

Clause 31 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 repatriated. Clause 31 does not prohibit the voluntary repatriation of an adult victim of trafficking to his or her country of origin or country from where he or she has been trafficked, on condition that the victim has been given information on the protective measures offered to victims in terms of this Bill and a clear explanation of repatriation procedures.

3.32 Clause 32: Assistance to foreign victim of trafficking

Clause 32 provides for a process to ensure the safety of a victim in the country to which he or she is to be repatriated. 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 repatriated and to provide that information to the Director-General: Home Affairs.

3.33 Clause 33: Repatriation of suspected victim of trafficking to Republic

Clause 33 provides for the reception of a person who is suspected of being a victim of trafficking and who is repatriated to the Republic. The risks to the safety and life of a victim of trafficking who is repatriated to the Republic must be assessed, travel documents must be issued and victims must be referred to a designated child protection organisation in the case of a child victim or to the provincial department of social development, in the case of an adult victim.

3.34 Clause 34: Return of adult victim of trafficking within Republic

Clause 34 provides that an accredited organisation may not return an adult victim of trafficking to a place 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 place. An accredited organisation is also required to find suitable family members to whom a victim can be returned and who are willing to assist the victim. If the victim does not have the financial means to travel to the place from where he or she was trafficked, an accredited organisation must facilitate the return in a manner to be prescribed.

3.35 Clause 35: Escorting of child victim of trafficking

Clause 35 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 within the Republic from where the child was trafficked or to the child's country of origin or the country from where the child was trafficked, if it is considered in the best interest of the child.

3.36 Clause 36: Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child

Clause 36 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 any offence under Chapter 2.

3.37 Clause 37: International co-operation

Clause 37 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 Trafficking in Persons Protocol. Clause 37 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 Trafficking in Persons Protocol.

3.38 Clause 38: Legitimacy and validity of documents

Clause 38 provides that the Director-General: Home Affairs must, at the request of a State which is a party to the Trafficking in Persons Protocol 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 Chapter 2. Since the Republic has ratified the Trafficking in Persons Protocol, it is obliged to adopt measures to prevent the 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.

3.39 Clause 39: 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 39 requires the Director-General: Social Development to submit an annual report to the Director-General: Justice and Constitutional Development 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.

3.40 Clause 40: National Policy Framework

Clause 40 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 to ensure a uniform, coordinated and cooperative approach by all government departments and organs of state dealing with trafficking in persons matters, to guide the implementation of the Bill and to enhance service delivery through a developed plan.

3.41 Clause 41: Coordination of responsibilities, functions and duties relating to implementation of the Bill

Clause 41 provides that the Director-General: Justice and Constitutional Development, after consultation with other stakeholder departments and institutions, is responsible for developing a draft national policy framework, referred to in clause 40; the establishment of an integrated information system to facilitate the effective monitoring and implementation of this Bill; developing and reviewing guidelines on the identification of victims of trafficking and traffickers; and establishing public awareness programmes or other measures for the prevention and combating of trafficking in persons.

3.42 Clause 42: Report to Parliament

Clause 42 compels the Minister to annually submit reports, including reports by other departments, to Parliament regarding the implementation of the Bill and certain information relating to trafficking in persons.

3.43 Clause 43: Regulations

Clause 43 provides that the Minister must make regulations regarding the manner in which prosecutors must refer children and adult persons suspected of being victims of trafficking, for assessment as to whether they are victims of trafficking. In order to facilitate the implementation of the Bill, the Minister may make regulations establishing and regulating the functioning of a mechanism to perform the facilitation and to coordinate the responsibilities, functions and duties provided for in clause 41. 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.

3.44 Clause 44: National instructions and directives

Clause 44 requires the Director-General: Justice and Constitutional Development to issue certain directives with which officials from stakeholder

departments must comply, after consultation with those departments. Clause 44 further compels the National Commissioner of SAPS 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 NDPP and the Directors-General of Home Affairs and Social Development 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.

3.45 Clauses 45—47: Delegation and assignment of powers and duties

In order to ensure the smooth administration of the Bill, clauses 45 to 47 provide for the delegation and assignment of certain powers and duties.

3.46 Clause 48: Laws repealed or amended

Clause 48 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 other Acts are necessitated by the provisions of the Bill.

3.47 Clause 49: Transitional arrangements

Clause 49 contains transitional arrangements regarding criminal proceedings relating to trafficking offences and instituted prior to the commencement of the Bill, as well as regarding organisations which provided services to victims of trafficking at the time of the commencement of this Bill.

3.48 Clause 50: Short title and commencement

This Bill will come into effect on a date fixed by the President by proclamation in the *Gazette*. Provision is made for different dates to be fixed in respect of different provisions.

4. CONSULTATION

- 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 NGO's. 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 NGO's 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.

- 4.3 The Portfolio Committee on Justice and Constitutional Development held public hearings and numerous meetings during which stakeholder departments were given the opportunity to make inputs.

5. IMPLICATIONS FOR PROVINCES

The Bill requires that a police official must 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.

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.

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