

Ministry of Justice and Constitutional Affairs

Ref. No.

Draft: Trafficking in Persons Bill, 2011

(Subject to change)

Author: Isaac Chiundira

16th December, 2011

TRAFFICKING IN PERSONS BILL, 2012

TRAFFICKING IN PERSONS BILL, 2012

MEMORANDUM

Malawi ratified the United Nations Convention against Transnational Organized Crimes and its two protocols; the Trafficking Protocol and the Protocol against the Smuggling of Migrants by Land, Sea and Air on 17th March, 2005. In particular, the Trafficking Protocol, aims at preventing and combating trafficking of persons, specifically women and children; protecting and assisting the victims of such trafficking; and promotion of cooperation among States in order to meet these objectives. The United Nations Trafficking Protocol also encourages member States to develop and promulgate specific legislation in order to combat trafficking in persons. The Trafficking in Persons Bill, 2012 therefore comes to fulfill Malawi's commitment and undertaking as a member to the United Nations Convention against Transnational Organized Crimes and its protocols.

The Bill is aimed at providing a comprehensive legislative framework for combating and preventing trafficking in persons using a human rights approach. It also provides for the establishment of an institutional framework for effective regulation and coordination of trafficking in persons and related matters. The proposed legislation also takes a multi-dimensional approach by providing for, among other things, issues of protection of victims of trafficking in persons, prevention of trafficking in persons and specific offences and penalties for offenders.

Furthermore, it should be noted that the existing legal framework in Malawi does not make precise reference to the offence of trafficking in persons. However, some elements of the offence of trafficking in persons are regulated under several criminal statutes. These include the Penal Code, the Immigration Act, the Employment Act, the Extradition Act and the Mutual Assistance in Criminal Matters Act. Although some provisions in these statutes have been used in dealing with cases involving trafficking in persons, investigators and prosecutors have been experiencing several technical setbacks when handling these cases.

Firstly, the elements of the offence of trafficking in persons and the penalties that have been provided in those pieces of legislation are usually insufficient as compared to the gravity of the crimes involving trafficking in persons. This obviously arises because Parliament then did not have in mind the offence of trafficking in persons when passing those laws. For instance the Employment Act, where most penalties are administrative in nature. This therefore makes it difficult to secure convictions and desired punishments. In view of this, there is a need to clearly articulate all the elements of the offence of trafficking in persons if accused persons are to be successfully prosecuted, convicted and sentenced.

Secondly, the current laws do not provide for the important issue of victim support. They do not provide for how to care and support for victims of trafficking in persons, protection of witnesses and restriction on publication or reporting of victims. There is a need to address these very important issues if the war against trafficking of persons is to be won. This proposed legislation therefore will solve these technical challenges being faced by our law enforcement officers in matters relating to trafficking in persons.

In addition, this Bill also increases the participation of individuals, communities and institutions in the fight against trafficking in persons. It provides for the creation of shelters where victims of trafficking in persons will be cared for. It also provides for the establishment of a Board that will oversee the implementation of this proposed legislation. The Bill also seeks to create a Fund whose money will be used to care and support victims of trafficking in persons.

The Bill is divided into 8 parts.

Part I of the Bill provides for the preliminary provisions. It includes the short title and the interpretation. It also includes the scope of application of the proposed Act. It should be noted that ordinarily, a law passed by any country applies to people within its jurisdiction. However, bearing in mind that trafficking in persons may be a transnational crime and different elements of the offence may be perpetrated in different countries, the Bill proposes that jurisdiction should extend beyond the borders of Malawi. It should include cases where the offence is committed partly within Malawi and partly outside it. The proposed Act will also apply where either the perpetrator or the victim is a citizen of Malawi or is a resident. It will also apply where the offence was committed outside Malawi with the view to committing another offence that has been provided for in this Bill.

Part II of the Bill mainly seeks to establish the Trafficking in Persons Board. This Board will be responsible for the general coordination and monitoring of the implementation of the proposed Act. It shall not only oversee the investigations and prosecutions of all cases related to trafficking of persons but also initiate civic education and awareness programmes on causes and consequences of trafficking in persons. It also provides for functions, duties and composition of the Board.

Part III of the Bill seeks to provide for offences of trafficking in persons. It provides for the definition of trafficking in persons and the penalty for perpetrators of the offence. It also distinguishes the offence of trafficking in children to the general offence of trafficking in persons. Trafficking in children is where the victim involved is a child. Child is defined in the proposed legislation to mean a person below the age of eighteen (18). It also provides for aggravated forms of trafficking in persons and the penalties to such offences. The Bill in this part also makes it clear that any offence under the Act amounts to an offence involving dishonesty and moral turpitude for the purposes of sections 51 and 80 of the Constitution.

Part IV of the Bill provides for the procedure during investigation and prosecution of cases involving trafficking in persons. It gives power to the Minister by Order published in the Gazette to designate a police officer, immigration officer or any public officer as enforcement officers and to carry out functions which are also stipulated in this Part. Their powers include investigation, arrest and interrogation of any person suspected to have committed the offence of trafficking in persons. It also outlines the procedure in which arrests will be made and search warrants will be executed. It provides for the manner in which property acquired, obtained or associated with the offences will be confiscated and subsequently disposed of. More importantly, it also provides for immunity from prosecution for the victims of the offence.

Part V of the Bill seeks to provide for the care and protection of victims of the offences of trafficking in persons. It gives power to the Minister to appoint protection officers

whose primary function is to provide for care and protection of victims of the offence of trafficking in persons. It also provides for the designation of shelters which will provide for care and protection of victims of trafficking in persons.

Part VI of the Bill seeks to provide for the protection of witnesses. It creates an offence in instances where a person negligently discloses the identity of a witness in a case involving trafficking in person or indeed the victim in such cases without any authorization. It also allows any witness to apply for protection where he or she reasonably believes that his or her safety or that of any member of his or her family is threatened by reason of his or her being a witness in the case. A duty of confidentiality is also placed on the Board, enforcement officers, protection officers and any other person handling trafficking in persons cases to take an oath or make an affirmation not to divulge confidential information to any person without authorization.

Part VII of the Bill mainly seeks to establish the Trafficking in persons Fund and provide for its administration. The purpose of this Fund is to help in the adequate provision of care and support to victims of trafficking in persons. It will also cater for the training of enforcement officers, protection officers and any other personnel engaged in any capacity to effect the provisions of the proposed Act.

Part VIII of the Bill seeks to provide for miscellaneous matters. It provides for the general penalty and amendments to the Schedules. It also gives the Minister power to make regulations for the better carrying into effect of the provisions of this proposed legislation.

TRAFFICKING IN PERSONS BILL, 2012
ARRANGEMENT OF SECTIONS
PART I — PRELIMINARY

SECTION

1. Short title
2. Interpretation
3. Scope of application

PART II — TRAFFICKING IN PERSONS BOARD

4. Establishment of a Board
5. Composition of the Board
6. Chairperson and Vice-Chairperson of the Board
7. Tenure and vacancy
8. Functions and powers of the Board
9. Duties of the Board in relation to trafficked persons
10. Meetings of the Board
11. Allowances for members of the Board
12. Procedure
13. Committees
14. Minutes of the Board

PART III — OFFENCES

15. Trafficking in persons
16. Trafficking in children
17. Aggravated forms of trafficking
18. Trafficking in persons an offence involving dishonesty and moral turpitude
19. Prohibition against working with children
20. Court to order closure of establishment
21. Benefiting from exploitation of trafficked persons
22. Aiding or abetting trafficking in persons
23. Duty to report
24. Liability of legal person
25. Carrier liability
26. Other acts that promote or facilitate trafficking

PART IV — INVESTIGATION AND JUDICIAL PROCEEDINGS

27. Designation of enforcement officer
28. Powers of enforcement officer
29. Duties of enforcement officer
30. Identification of enforcement officers
31. Arrest by person who is not a police officer
32. Records

33. Search and seizure
34. Search and seizure without warrant
35. List of seized items
36. Access to electronic data
37. Confiscation
38. Disposal of confiscated property
39. Acquittal and assets
40. Right to institute civil action
41. Obstruction
42. Immunity of trafficked person

PART V — CARE AND PROTECTION

43. Appointment of protection officers
44. Duties of protection officer
45. Shelters

PART VI — WITNESS PROTECTION

46. Restriction on disclosure
47. Witness protection
48. Application for protection
49. Confidentiality

PART VII — FINANCIAL PROVISIONS

50. Funding of the Board
51. Trafficking in persons Fund
52. Purpose of the Fund
53. Management of the Fund
54. Accounts and Audit
55. Financial year
56. Annual report

PART VIII — MISCELLANEOUS

57. General penalty
58. Amendment to Schedules
59. Regulations
60. Repeals

A BILL

entitled

An Act to make provision for the prevention and elimination of trafficking in persons; to provide for the establishment of a Board for coordination and management of matters related to trafficking in persons; to make provision for care, assistance and protection of trafficked persons; to provide for international and local cooperation on matters of trafficking in persons; and to provide for connected matters.

ENACTED by the Parliament of Malawi as follows—

PART I — PRELIMINARY

- Short title 1. — This Act may be cited as the Trafficking in Persons Act, 2012.
- Interpretation 2. — In this Act, unless the context otherwise requires—
- “Board” means the Trafficking in Persons Board established under Section 4;
- “child” means a person below the age of eighteen years;
- “exploitation” includes—
- (a) the extraction of work or services from any person;
 - (b) the participation of a person in all forms of commercial sexual activity such as prostitution, sexually-explicit performance, forced prostitution, and forced participation in the production of pornography;
 - (c) the removal of body parts or the extraction of organs or tissue; or
 - (d) any other practice in terms of which it cannot be said that the person participated willingly;
- “Fund” means the Trafficking in Persons Fund established under section 51 of this Act.
- “organized criminal group” means a group of three or more persons, existing for a period of time and acting in concert with the aim of committing an offence under this Act;
- “relative” means—

- (a) a parent, step parent, foster parent, grandparent, sibling, guardian or any person who has legal custody over the child or to whom the child is a dependant; or
- (b) at the time the offence under the Act is committed, a person who is living with the child as a member of that person's family or was under the person's family care and protection;

“substantial health risk” means—

- (a) infection with—
 - (i) HIV;
 - (ii) a sexually transmitted disease; or
 - (iii) any other disease;
- (b) any medical condition, occasioned as a result of the exploitation.

“trafficking in persons” means recruitment, transportation, transferring, harbouring, receiving or obtaining another person, within or beyond the territory of Malawi, through the means of—

- (a) threats or use of force or coercion;
- (b) abduction;
- (c) fraud or deception;
- (d) abuse or threats of abuse of power or position;
- (e) abuse or threats of abuse of position of vulnerability;
- (f) abuse or threats of abuse of the law or legal process;
- (g) giving or receiving of payments to obtain consent of a person having control of that other person,

for the purpose of exploitation of that person.

Scope of application

3.— (1) This Act shall apply to a natural or legal person where the offence—

- (a) is committed wholly or partly within Malawi;
- (b) is committed outside Malawi and the trafficked person is a citizen of Malawi;

- (c) is committed outside Malawi by a citizen of Malawi or a person who is resident in Malawi;
- (d) committed outside Malawi with a view to the commission of an offence under this Act, within Malawi; or
- (e) involves an organized criminal group.

(2) Where a person has already been convicted or acquitted of an offence under this Act in the foreign jurisdiction, he shall not be prosecuted again for the same offence in Malawi; unless the proceedings of the court in the foreign jurisdiction were—

- (a) for the purpose of shielding the person concerned from criminal proceedings outside in a foreign jurisdiction; or
- (b) not conducted independently or impartially in accordance with norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

PART II — TRAFFICKING IN PERSONS BOARD

Establishment
of a Board

4.— (1) There is hereby established a Board to be known as the Trafficking in Persons Board.

(2) The Board shall be an independent Board and shall have its secretariat within the Ministry responsible for Home Affairs or any other ministry as the President may direct.

Composition of
the Board

5.— (1) The Board shall consist of—

- (a) the following members nominated by the Minister responsible for gender and children and appointed by the President, at least two of whom shall be women—
 - (i) two persons representing women’s interests; and
 - (ii) two persons representing children’s interests ;
- (b) two persons nominated by the Council for Non-Governmental Organizations (CONGOMA) and appointed by the President;

- (c) the following ex-officio members—
- (i) the Principal Secretary in the Ministry responsible for Home Affairs or his designated alternate;
 - (ii) the Director of Public Prosecutions or his designated alternate;
 - (iii) the Principal Secretary in the Ministry responsible for Women and Children Development or his designated alternate;
 - (iv) the Principal Secretary in the Ministry responsible for Local Government or his designated alternate;
 - (v) the Principal Secretary in the Ministry responsible for Education or his designated alternate;
 - (vi) the Principal Secretary in the Ministry responsible for Health or designated alternate;
 - (xii) the Principal Secretary in the Ministry responsible for Labour or his designated alternate;
 - (xiii) the Inspector General of Police or his designated alternate; and
 - (ix) the Chief Immigration Officer or his designated alternate.

(2) The Resident Representatives of the United Nations High Commissioner for Refugees in Malawi and the United Nations Children Fund or their designated alternates and in the absence of either, a representative of the Resident Representative of the United Nations Development Programme in Malawi may be invited by the Board to attend any meeting of the Board as observers but shall not have the right to vote.

(3) The Minister shall publish names of all members of the Board in the Gazette as first constituted and every subsequent change in the membership.

(4) A member shall not be in the employment of the Board nor serve on a full time basis.

(5) A person shall not be qualified for appointment by the Minister as a member of the Board, if he—

- (a) holds a political office; or
- (b) with the exception of the members listed in section 5 (1), is an employee in the public service.

Chairperson and Vice-Chairperson of the Board

6.— (1) There shall be a Chairperson and a Vice-Chairperson who shall be elected by the Board from among the appointed members at the first meeting of the Board.

Provided that no member appointed under section 5 (1) (c) shall be elected as Chairperson.

(2) Subject to subsection (3), the Chairperson and the Vice-Chairperson shall hold their office until the expiry of their term of office.

(3) The Chairperson or the Vice-Chairperson may be removed from office by the Board, as the case may be, by a majority vote of two-thirds of all the members on the following grounds—

- (a) misconduct;
- (b) incompetence in the execution of the functions of the office; or
- (c) any other good cause.

Tenure and vacancy

7.— (1) Save as for the members appointed under section 5 (1) (c), a member of the Board shall unless he resigns, hold office for a period of three years from the date of appointment and may be eligible for re-appointment once.

(2) When making the appointment after the expiry of the three years, the President shall have regard to the need to maintain a reasonable degree of continuity on the membership of the Board so that at least half of the appointed members shall be re-appointed for the next term of office.

(3) The office of an appointed member of the Board shall become vacant in the event where the member—

- (a) dies;
- (b) is adjudged bankrupt;
- (c) is sentenced for an offence against any written law to any term of imprisonment without the option of a fine;

- (d) fails, without the permission of the Chairperson or the Vice-Chairperson, to attend three successive meetings of the Board of which he has had notice;
- (e) becomes incapacitated by reason of physical or mental disability; or
- (f) resigns in accordance with subsection (4).

(4) A member other than an ex-officio member, may at any time resign his office by giving one month written notice to the Chairperson, who shall then forward the resignation to the Minister.

(5) A vacancy in the membership of the Board shall be filled by the appointment of a person in accordance with section 5 (1) (a) and (b).

(6) A person appointed to fill a vacancy shall serve for the remainder of the term of his office but a person shall not be appointed to fill a vacancy of the remainder of term of office for a resigning officer if the remainder of the term is less than six months.

Functions and powers of the Board

- 8.— (1) The functions of the Board shall be to—
- (a) coordinate and oversee investigations and receive reports from enforcement officers on the investigation and prosecution of offences under this Act;
 - (b) ensure that trafficked persons are treated with dignity and respect of their right during interviews and throughout the investigation and prosecution process;
 - (c) ensure that all screening interviews of trafficked persons are conducted in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons contained in the First and Second Schedules to this Act;
 - (d) supervise protection officers in the provision of care, assistance, support and protection of trafficked persons;
 - (e) initiate education and awareness programmes on causes and consequences of trafficking in persons and children;
 - (f) formulate and oversee implementation activities aimed at the suppression of trafficking in persons and children;

- (g) formulate policy, programmes and strategies to prevent and suppress trafficking in persons and children;
- (h) make recommendations to the Minister on all aspects of prevention and suppression of trafficking in persons and children;
- (i) coordinate and oversee training of relevant law enforcement and judicial officers;
- (j) liaise with Government agencies and NGOs on rehabilitation and reintegration of trafficked persons;
- (k) manage the Trafficking in Persons Fund and prepare guidelines for disbursements from the Fund;
- (l) coordinate research on international, regional and national developments and standards on trafficking in persons;
- (m) coordinate and oversee data collection; and
- (n) generally coordinate and monitor the implementation of the Act.

(2) The Board shall have powers as may be necessary for, or in connection with or incidental to the performance of its functions under this Act on matters of or related to trafficking in persons.

Duties of the Board in relation to trafficked persons

9. — The Board shall ensure that a trafficked person—

- (a) is not subjected to any discriminatory practice;
- (b) has access to adequate health care during their residence at a shelter or any other place;
- (c) where applicable, has access to his diplomatic mission within Malawi on any matter;
- (d) has the right, facilitated by the State, to return to his country of origin;
- (e) is granted a temporary residence permit pending completion of any matter before a court or tribunal in Malawi;
- (f) has his full rights respected and observed during investigation, gathering and interpretation of evidence;

- (g) is kept separately from adults if the trafficked person is a child; and
- (h) is protected from any harm during residence at a shelter.

Meetings of the Board

10.— (1) The Board shall hold meetings at least once every three months at a place and time to be determined by the Chairperson.

(2) The quorum of a meeting of the Board shall be half of its membership.

(3) The Chairperson shall convene and preside over meetings of the Board.

(4) In the absence of the Chairperson, the Vice-Chairperson shall preside over the meetings of the Board.

(5) In the absence of both the Chairperson and the Vice-Chairperson, the membership of the Board shall elect a member present to preside over the meeting.

(6) At a meeting of the Board—

(a) a matter for the decision of the Board shall be decided by a majority of members present and voting;

(b) the Chairperson or a person elected to act as such in the event of equality of votes, shall have a deliberative vote in addition to a casting vote.

(7) The Chairperson shall call an extraordinary meeting of the Board by written request of at least four members within seven (7) days after receipt of the request.

(8) Where the urgency of any particular matter does not permit the giving of such notice, an extra—ordinary meeting may be called upon giving shorter notice.

(9) Where a member of the Board is unable to attend a meeting of the Board, the member shall not send a representative but may request that his apology for failure to attend be recorded.

Allowances for members of the Board

11.— A member of the Board shall be paid such allowances or other benefits as the Minister may on, on recommendation of the Board approve from time to time.

Procedure

12.— The Board may determine the procedure for its meetings and proceedings.

Committees

13.— (1) The Board may establish such number of committees as it deems necessary or expedient to perform such functions and powers as may be determined by the Board.

(2) A committee established under this section shall elect a chairperson and a Vice-Chairperson from among its members.

(3) A member of a committee appointed under this section may include a member of the Board or any other person appointed by the Board.

(4) A member of the committee appointed by the Board, may be paid an allowance as the Minister may determine.

(5) A member of the committee appointed by the Board shall hold office for the period specified in the letter of appointment and is eligible for re-appointment.

(6) A member of a committee may—

- (a) resign by giving notice to the chairperson of the Board;
- (b) be removed by revocation of appointment by the Board with or without reason.

(7) A committee shall hold its meetings at a place and time determined by the chairperson of the committee.

(8) A committee may invite any person to attend its meetings but the person shall not be entitled to vote at the meeting.

(9) A person invited to attend a meeting under this section may be paid an allowance as the Minister may determine.

Minutes of meetings

14. The Board shall cause to be kept minutes of proceedings of every meeting of the Board and of every meeting of any committee of the Board.

PART III — OFFENCES

Trafficking in persons

15.— (1) A person who traffics another person commits the offence termed trafficking in persons and shall, upon conviction, be liable to imprisonment for fourteen years without the option of a fine.

(2) The consent of a trafficked person is immaterial where any of the means set out in section 2 have been used.

Trafficking in children

16.— (1) Notwithstanding section 15, a person who recruits, transports, transfers, harbours, receives or obtains a child, within or beyond the territory

of Malawi, for the purpose of exploiting the child commits an offence termed trafficking in children and shall, upon conviction, be liable to imprisonment for twenty-one years without the option of a fine.

(2) It is immaterial that at the time of commission of trafficking in children, the means set out in section 2 with respect to trafficking in persons were used or the child consented to the commission of the offence.

Aggravated
forms of
trafficking

17.— (1) An offence of trafficking in persons or trafficking in children is deemed to be aggravated if committed in any of the following circumstances—

- (a) the judicial processes of adoption, fosterage, guardianship or wardship have been used to recruit a child;
- (b) the accused is a relative of the trafficked person;
- (c) the trafficked person is of unsound mind;
- (d) the offence is committed by an organized criminal group;
- (e) the offence is committed by a public servant, a religious leader, a traditional leader or any person acting in an official capacity in the exercise of his duties;
- (f) the offence is committed by a person purporting to act, in the exercise of an official duty where such official acts in abuse of authority or moral ascendancy;
- (g) the offence is committed for the purpose of removing body parts or extracting, tissue or organs;
- (h) on occasion of the commission of the offence the trafficked person—
 - (i) dies;
 - (ii) develops a mental condition;
 - (iii) becomes pregnant or is forced to terminate a pregnancy;
 - (iv) suffers mutilation, disfigurement or permanent bodily injury; or
 - (v) is exposed to any other substantial health risk.

(2) A person who commits the offence of trafficking in persons or trafficking in children in any of the circumstances in subsection (1), shall, upon conviction, be liable to imprisonment for life without the option of a fine.

Trafficking in persons an offence involving moral turpitude

18.— The offence of trafficking in persons or trafficking in children constitutes an offence of moral turpitude for the purposes of sections 51, 80 and 94 of the Constitution.

Prohibition against working with children

19.— A person convicted of the offence of trafficking in persons or trafficking in children shall be ineligible to work in any capacity with children for a period of seven years from the last day of expiry of the sentence served.

Court to order closure of establishment

20.— Where an offence of trafficking in persons is committed by a person acting or purporting to act in an official capacity for a non-governmental organization or other establishment or body, the court may, upon conviction, order the closure and de-registration of the non-governmental organization, establishment or body under which the person acted.

Benefiting from exploitation of trafficked persons

21.— A person who intentionally benefits from the exploitation of a trafficked person or causes or enables another person to benefit from exploitation of a trafficked person for any purpose, commits an offence and shall, upon conviction, be liable to imprisonment for five years.

Aiding or abetting trafficking in persons

22.— (1) Where an offence under this Act is committed, each of the following persons is deemed to have taken part in the commission of the offence and may be charged and convicted with the actual commission of the offence—

- (a) a person who attempts to do the act or to make the omission which constitutes the offence;
- (b) a person who does or omits to do any act for the purpose of aiding or enabling another person to commit the offences;
- (c) a person who aids or abets another person to commit the offence;
- (d) a person who counsels or procures any other person to commit the offence; or
- (e) a person who being an employee or agent, acted in employment, or under instructions.

(2) A conviction of aiding or abetting the commission of any offence under this Act entails the same consequences in all respects as a conviction of committing the offence.

(3) Any person who procures another to do or commit to do any act of such nature that if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission and he may be charged with himself doing the act or making the omission.

Duty to report

23.— (1) A person who knows, suspects or has reason to suspect that an offence under this Act is being, has been or is about to be committed, shall as soon as is practicable, report this to the Police.

(2) A person who contrary to subsection (1), fails to report to the Police, commits an offence and shall, upon conviction, be liable to a fine of K200,000 and to imprisonment for two years.

(3) The Officer-in-Charge of the Police Station to which a report has been made shall ensure that the identity of the informant is not revealed.

Liability of legal person

24.— Where an offence under this Act has been committed by a legal person, any person who at the time of the commission of the offence was in any manner responsible for the management of any affairs of the legal person shall, upon conviction, be liable for the offence unless he or she proves that—

- (a) the offence was committed without his knowledge, consent or connivance; or
- (b) he exercised all diligence to prevent the commission of the offence under the circumstances.

Carrier liability

25.— (1) An international commercial transportation provider shall verify that each passenger to any destination into or outside Malawi possesses the necessary travel documents, including a passport and a visa, to enter the destination country and any transit countries.

(2) Subsection (1) shall apply to the international commercial transportation provider, his agents, and any person selling or issuing tickets, boarding passes or similar documents allowing passengers to travel, and to persons collecting or checking such tickets, boarding passes or similar documents prior to or subsequent to boarding.

(3) Any person referred to in subsection (2) who fails to comply with subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for five years.

(4) Where an offence is committed under this section, the international commercial transportation provider shall bear the costs of returning the person to his initial point of embarkation and shall, upon conviction, be liable to pay the person's costs associated with providing accommodation and meals for the person and any accompanying children.

(5) Where an international commercial transportation provider knowingly transports a trafficked person into or from Malawi, such international commercial transportation provider shall, upon conviction, be liable for costs associated with providing accommodation and meals for the trafficked person and any accompanying children for the duration of the person's stay outside or inside Malawi.

(6) An international commercial transportation provider shall not be guilty of an offence under subsection (1) if—

- (a) the international commercial transportation provider had reasonable grounds to believe that the documents which the person possess are the travel documents required for lawful entry of that person into the receiving country;
- (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
- (c) entry into the receiving country occurred only because of illness of or injury to a person on board, stress of weather or other circumstances beyond the control of the international commercial transportation provider.

Other acts
that promote
or facilitate
trafficking

26.— A person who for the purpose of the promotion of trafficking in persons and child trafficking, intentionally—

- (a) leases or subleases, uses or allows to be used any house, building or establishment;
- (b) produces, prints, broadcasts or distributes by any means including the use of information technology or the internet, any brochure, flyer or any other communication material that promotes trafficking in persons or children;
- (c) assists in misrepresentation or fraud for the purposes of procuring or facilitating the acquisition of necessary

exit documents from the Department of Immigration for the purposes of trafficking in persons or children;

- (d) facilitates exit from or entry into Malawi, a person who is in possession of unissued, tampered or fraudulent travel documents for the purpose of trafficking in persons or children;
- (e) confiscates, withholds or destroys the passport, travelling documents or personal documents which belong to a trafficked person for the purposes of furthering trafficking in persons or children;
- (f) prevents a trafficked person from leaving Malawi or seeking redress from appropriate law enforcement authorities, commits an offence and shall, upon conviction, be liable to imprisonment for seven years without the option of a fine.

PART IV — INVESTIGATION AND CRIMINAL PROCEEDINGS

Designation
of
enforcement
officer

27.— The Minister may, by notice published in the Gazette, designate the following persons as enforcement officers for the purposes of this Act—

- (a) a police officer;
- (b) an immigration officer; or
- (c) any other public officer as the Minister may deem fit.

Powers of
enforcement
officer
Cap. 8:01

28.— Notwithstanding the provisions of the Criminal Procedure and Evidence Code, an enforcement officer who reasonably suspects or receives information that any offence under this Act has been committed or is about to be committed shall have the power to—

- (a) institute and carry out an investigation;
- (b) arrest any suspect;
- (c) interrogate any suspect;
- (d) enter premises and search and seize any item under section 34;

- (e) interview any person suspected of being trafficked in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons contained in the First Schedule hereto; and
- (f) certify a person as a trafficked person if such person provides satisfactory information to that effect during the screening interview, having duly completed Form A contained in the Second Schedule hereto.

Duties of enforcement officer

29.— An enforcement officer shall—

- (a) record all cases of offences under this Act in accordance with section 32;
- (b) refer all trafficked persons to a protection officer for screening as soon as is practicably possible, but in any case no later than twenty-four hours after such a person is brought to the attention of the enforcement officer;
- (c) ensure the proper administration and enforcement of the provisions of this Act;
- (c) submit quarterly reports of all cases of offences in this Act within ten days of the last day of each preceding quarter to the Chairperson of the Board;
- (e) advise the Board on the effective implementation of this Act and other ancillary matters; and
- (f) perform such other duties as are necessary for the effective carrying out of the purposes of this Act.

Identification of enforcement officers

30.— An enforcement officer, in the exercise of any powers or in the discharge of any functions under this Act, shall—

- (a) declare his designation as an enforcement officer; and
- (b) produce evidence of his designation to any person if required.

Arrest by person who is not a police officer

31. — Where an arrest of any person under this Act is made by a private person or an enforcement officer who is not a police officer, the person effecting the arrest shall present the arrested person to the nearest police station, as soon as it is practicable to do so, but in any case no later than twenty four hours after the arrest.

Records

32.— (1) An enforcement officer shall during interrogation, register all relevant information about the offence in a book to be kept in every police

station for such purpose and to be called “The Trafficking in Persons Register” in addition to being recorded in the Occurrence Book, according to Form A contained in the Second Schedule hereto in triplicate.

(2) The Officer in Charge of the police station to which a person suspected of having committed or is about to commit an offence under this Act is presented, shall within ten days after the last day of each quarter send to the Inspector General of Police a certified copy of all entries made in the Trafficking in Persons Register during the preceding quarter.

(3) The Inspector General of Police shall file the certified copy of the entry in the Trafficking in Persons Register in his office and maintain a database of the same.

Search and seizure

33.— (1) An enforcement officer may, where he has reasonable cause to believe that—

- (a) any premises or conveyance has or is being or is about to be used for; or
- (b) any premises or conveyance has evidence for an offence under this Act, apply to a Magistrate on written information under oath for a warrant authorizing entry into the premises or conveyance.

(2) A warrant issued under subsection (1) may authorize the enforcement officer to—

- (a) search the premises or conveyance for any matter connected to the commission of an offence under this Act;
- (c) seize or remove any matter which may be used in evidence for an offence under this Act; or
- (d) copy or extract any matter found in the premises or conveyance.

(3) Where it is deemed necessary, the enforcement officer may, in exercise of his powers under this Act—

- (a) break a door of premises or a conveyance or obstruction to the premises or conveyance in order to effect entry into the premises or conveyance;
- (b) remove by force, any obstruction to entry, search, seizure or removal of any matter, to which this section applies; or

- (c) detain a person found in the premises or conveyance until the search is completed.

(4) Where, by reason of its nature, size or quantity, it is not possible to remove any matter seized under this section, the enforcement officer shall—

- (a) seal the matter, premises or conveyance; and
- (b) indicate, where possible, that the matter, premises or conveyance has been sealed.

(5) A person who, without written authority—

- (a) breaks, tampers with, damages or alters the seal referred to in subsection (4); or
- (b) attempts, aids or abets in breaking, tampering with, damaging or altering the seal, commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for five years.

Search and seizure without warrant

34.— (1) Where an enforcement officer has reasonable grounds to believe that obtaining a warrant under section 33 may cause delay or would adversely affect investigation of an offence under this Act, he may, without warrant, with assistance and force as is necessary—

- (a) enter or search any premises or conveyance;
- (b) stop, enter and search any conveyance;
- (c) seize or detain a conveyance or any matter connected to investigation for an offence under this Act; or
- (d) inspect, copy or extract any matter found at any premises or conveyance.

(2) In exercising powers under this section, the enforcement officer shall have all powers conferred on him under this Act.

List of seized items

35.— (1) An enforcement officer shall prepare a list of all items seized under this Part, in triplicate, and immediately deliver one copy of the list, duly signed by the enforcement officer, to an occupier or owner or an agent or servant of premises or conveyance to which the list applies, and another copy to the Chairperson of the Board.

(2) Where premises or conveyance are not occupied, the enforcement officer shall, if possible, post the list of items seized at a conspicuous place on the premises or conveyance.

Access to electronic data	<p>36.— (1) A search to which the provisions under this Part applies, shall include data in a computer or other electronic device.</p> <p>(2) When exercising powers under subsection (1), an enforcement officer shall be given a password, encryption code, decryption code, software or hardware or any other means required to enable access or comprehension of the data.</p> <p>(3) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for five years.</p>
Confiscation	<p>37.— Where an arrested person is convicted of an offence under this Act, an enforcement officer shall apply to court for an order of confiscation and disposal of the convicted person's assets and properties acquired, obtained or associated with the offence under which the person was convicted.</p>
Disposal of confiscated property	<p>38.— (1) Where an order under section 37 is issued, the Minister shall, by sale or otherwise, dispose of assets and property to which the order applies.</p> <p>(2) The proceeds realised from disposal of confiscated assets shall be paid into the Trafficking in Persons Fund.</p>
Acquittal and assets	<p>39.— Where an accused person whose property was seized under this Act has been acquitted for an offence under the Act, the court may order that the seized property be—</p> <ul style="list-style-type: none"> (a) released to the accused person; or (b) attached, where the acquittal is based on technical grounds.
Right to institute civil action	<p>40.— A trafficked person, irrespective of his immigration status, has the right to—</p> <ul style="list-style-type: none"> (a) institute civil proceedings against any person including a public officer in respect of an offence under this Act; or (b) seek compensation, restitution and recovery in damages from any person or from the proceeds of disposal of assets of any person connected with an offence under this Act.
Obstruction	<p>41.— A person who obstructs, impedes, interferes with or fails to comply with a lawful demand of an enforcement officer in performance of powers</p>

conferred under this Act commits an offence, and shall, upon conviction, be liable to imprisonment for five years without the option of a fine.

Immunity
of trafficked
person

42.— A person or child who is trafficked shall, upon being found to have indeed been trafficked, not be subjected to any criminal proceedings directly relating to the prosecution of offences under this Act or any other law.

PART V — CARE AND PROTECTION

Appointment
of protection
officers

43.— The Minister may, by notice published in the Gazette, appoint an officer charged with duties in relation to social welfare, to exercise and perform the duties of a protection officer under this Act.

Duties of
protection
officers

44.— (1) The Protection Officer shall perform the following duties—

- (a) ensure that trafficked persons are accorded proper treatment and are provided with the necessary care, assistance and protection; and
- (b) ensure that all interviews of trafficked persons are conducted in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons contained in the First Schedule and that Form A contained in the Second Schedule is duly completed.

Shelters

45.— (1) The Minister may, by notice published in the Gazette—

- (a) designate any premises to be a shelter for the care and protection of trafficked persons;
- (b) make rules for the standard of care and protection services for trafficked persons at a shelter; or
- (c) make regulations for the administration of any shelter within Malawi.

(2) A person in charge of a shelter shall ensure that the rights and freedoms of trafficked persons are observed and protected.

(3) A person or organization may apply to the Minister to designate the premises of that person or organization as a shelter.

(4) A person who operates a shelter in contravention of this section commits an offence and shall, upon conviction, be liable to a fine of K300,000 and to imprisonment for five years.

(5) For the purposes of this Part, “Minister” means the Minister responsible for social welfare.

PART VI — WITNESS PROTECTION

Restriction on disclosure

46.— (1) A person shall not, without leave of court, disclose in the public media regarding—

- (a) any step taken in relation to a trafficked person at any stage of any judicial proceedings under this Act; or
- (b) the identity of a trafficked person or any particular that may lead to disclosure of his identity.

(2) A person shall not disclose any information, capable of prejudicing the safety or provision of care and protection to any trafficked person, acquired in the exercise of the powers, performance of the functions or carrying out of the duties conferred upon, assigned to or imposed upon him by or under this Act.

(3) Any person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

Witness protection

47.— A person who wilfully or negligently—

- (a) allows any unauthorized person to gain access to any witness, trafficked person or child;
- (b) discloses, in contravention of any provision of this Act—
 - (i) the identity of any protected person;
 - (ii) information that a particular protected person is under protection;
 - (iii) the place of safety or location where any person is under protection or has been relocated in terms of this Act;
 - (iv) any information which could lead to the identification of any such person or any such place of safety;
 - (v) any information which undermines or compromises or could undermine or

compromise the integrity of a witness protection programme in terms of this Act; or

(vi) any information relating to the relocation or change of identity of a protected person, commits an offence and shall, upon conviction, be liable to imprisonment for seven years without the option of a fine.

Application
for protection

48.— (1) A witness who reasonably believes that his safety or the safety of any member of his family, is or may be threatened, by any person or group or class of persons, by reason of his being a witness, may—

(a) report such belief—

(i) to the investigating officer in the proceedings concerned;

(ii) to the officer in charge of a police station;

(iii) if he is in prison, to the officer in charge of the prison where he is being detained; or

(iv) to the Director of Public Prosecutions; and

(b) apply to the court requesting that the applicant or any family member be placed under protection.

(2) If a witness is for any reason unable to make the report or to make an application for protection referred to under subsection (1), any interested person or the investigating officer concerned, who reasonably believes that the safety of the witness or any family member is or may be threatened as contemplated in subsection (1), may make such a report or application on behalf of the witness.

(3) Unless otherwise provided for under this Act, an application for protection of a minor may be made by or on behalf of the minor without the consent of his parent or guardian.

(4) Any person to whom a report is made as contemplated in subsection (1), shall assist the applicant in the making of an application for protection and, unless he is the Chairperson of the Board, shall—

(a) inform the Chairperson of the Board of the application; and

(b) submit the application to the court.

Confidentiality

49.— A person, being the Chairperson or member of the Board, an enforcement officer, a protection officer and an employee of a non-

governmental organization, or otherwise accredited by the Board to handle cases dealing with trafficked persons, shall either upon taking office or upon handling every case, take an oath or make affirmation in the form specified in the Form B, in the Third Schedule hereto before a Commissioner for Oaths.

PART VII— FINANCIAL PROVISIONS

Funding of
the Board

50.— (1) The Government shall adequately fund the Board to enable it to perform its duties and functions and exercise its powers effectively.

(2) The Board may receive grants or donations of funds, material or any other forms of assistance for the purposes of performing its duties and functions.

Trafficking in
Persons Fund

51.— (1) There is hereby established a Fund to be known as the Trafficking in Persons Fund.

(2) The Fund shall consist of—

- (a) such amount of money as may be appropriated by Parliament for payment into the Fund;
- (b) such amount of money as may be paid to the Fund by way of loans, grants or donations;
- (c) such amount of money as may be realized from proceeds of confiscation, seizure, or sale of property connected with trafficking in persons after conviction of the offence under this Act; or
- (d) such amount of money from any source approved by the Minister.

Purpose of
the Fund

52.— The purpose of the Fund is to finance—

- (a) the training of enforcement officers, protection officers or any other personnel engaged in any capacity to effect the provisions of this Act;
- (b) the provision of care, assistance and support to victims of trafficking in persons, specifically by—
 - (i) constructing or commissioning a building as a reception shelter for such victims;
 - (ii) tracing the family of a victim of offences under this Act and where possible facilitating the reintegration of such a victim with his family; or

- (iii) any activity or matter as the Board may deem fit for the prevention and suppression of trafficking in persons.

Management of the Fund 53.— (1) The Fund shall be managed by the Board which shall deposit all money due to the Fund in an account opened for that purpose.

(2) The Board shall develop guidelines for disbursements of money from the Fund.

(3) The Board shall, not later than three months before the end of each financial year, prepare and submit to the Minister detailed estimates of income and expenditure for the next financial year.

Accounts and audit 54.— (1) The Board shall keep books of accounts of the Fund and proper records in relation to them as approved by the Auditor General.

(2) The Board shall submit accounts of the Fund to the Auditor General for audit within three months after the end of the financial year.

(3) The Auditor General shall, not later than three months after the receipt of the accounts, audit the account of the Fund in accordance with the provisions of the Public Finance Management Act and forward a copy of the audit report to the Minister.

Cap. 37:02

Financial year 55.— The financial year for the Fund shall be the same as the financial year of Government.

Annual Report 56.— (1) The Minister shall within one month after the receipt of the audit report, submit an annual report to Parliament covering the activities and the operations of the Fund for the year to which the report relates.

(2) The annual report shall include—

- (a) the audited accounts of the Fund;
- (b) the Auditor General’s report on the accounts of the Fund; and
- (c) other information that the Minister may consider necessary.

PART VIII — MISCELLANEOUS

General penalty 57.— A person who contravenes any provision of this Act where a punishment has not been expressly provided, commits an offence and shall, upon conviction, be liable to imprisonment for two years without an option of a fine.

Amendment to Schedules	58.— The Minister may, by notice published in the <u>Gazette</u> , amend the Schedules to this Act.
Regulations	59.— The Minister may, on the advice of the Board, make regulations for the better carrying into effect of the provisions of this Act.
Repeals Act. No. 7 of 2010	60.— Section 79 of the Child Care, Protection and Justice Act is hereby repealed.

FIRST SCHEDULE s.8, 28 and 44
TRAFFICKING IN PERSONS ACT
GUIDING PRINCIPLES IN CONDUCTING SCREENING INTERVIEWS FOR THE
IDENTIFICATION OF TRAFFICKED PERSONS

PART I — MINIMUM STANDARDS FOR INTERVIEWS

In all interviews under this Act, regardless of the legal status of the person being interviewed, the person conducting the interview shall ensure that the following minimum standards are in place—

- | | |
|----------------|--|
| Information | 1. The presumed trafficked person should be informed about the procedure of the police interrogation and its consequences. |
| Language | 2. The information given should be clear, accurate and in the native language of the presumed trafficked person. |
| Interpretation | 3. Experienced interpreters should be present during the interview. |
| Privacy | 4. Questions touching upon the person's privacy, for instance regarding intimate relationships and experiences in prostitution, should be avoided. |
| Identification | 5. A trafficked person can only be conclusively identified as such if the distinct elements of the crime of trafficking have been detected. This may require time because of the complexity of the crime of trafficking and the vulnerable status of trafficked persons suffering from post—traumatic stress disorder. |
| Evidence | 6. Evidence 6. Besides the statements of the presumed trafficked person, other evidence should be collected to identify all the facts and relevant information to determine if the case is one of trafficking. |

PART II — GENERAL PRINCIPLES

In all interviews under this Act, regardless of the immigration status of the person being interviewed, the person conducting the interview shall endeavour to do the following—

- | | |
|-------------|--|
| Do not harm | 1. Treat each presumed trafficked person and the situation as if the potential for harm is extreme until there is evidence to the contrary. Do not undertake any interview that will make a presumed trafficked person's situation worse in the short term or longer term. |
|-------------|--|

Case familiarization and risk assessment	2. Learn the risks associated with trafficking and each presumed trafficked person’s case before undertaking an interview.
Preparation of referral information	3. Be prepared to provide information in a presumed victim’s native language and the local language (if different) about appropriate legal, health, shelter, social support and security services and to help with referral, if requested.
Careful selection and preparation of interpreters and co—workers	4. Weigh the risks and benefits associated with employing interpreters, co—workers or others and develop adequate methods for training.
Ensuring anonymity and confidentiality	5. Protect a respondent’s identity and confidentiality throughout the entire interview process — from the moment a presumed trafficked person is contacted to the time that details of his case are made public.
Getting informed consent	6. Make certain that each presumed trafficked person clearly understands the content and purpose of the interview, the intended use of the information, his right not to answer questions, his right to terminate the interview at any time and his right to put restrictions on how the information is used.
Listening to and respecting each presumed trafficked person’s assessment of her situation and risk to her safety Re-traumatization	7. Recognize that each presumed trafficked person will have different concerns and that the way he views his concerns may be different from how others might assess them.
Emergency intervention	8. Do not ask questions intended to provoke an emotionally charged response. Be prepared to respond to a presumed trafficked person’s distress and highlight his strengths.
Use of information collected	9. Be prepared to respond if a presumed trafficked person says he is in imminent danger.
	10. Use information in a way that benefits an individual presumed trafficked person or that advances the development of good policies and interventions for persons suspected of being trafficked generally.

PART III — CHILDREN

The following principles shall be used in all cases concerning children—

- | | |
|---|---|
| Time is of essence | 1. Interviews should take place as soon as possible after the allegation or suspicion of abuse emerges. |
| Safety and support | 2. The child should feel safe and supported during the interview. |
| Sex/age appropriate interviewers | 3. Girls and younger boys should be interviewed by female interviewers. Older boys can be interviewed by male interviewers. |
| Presence of familiar adult during interview | 4. An adult that the child trusts should generally be present during the interview. This person's responsibility is to look after the child's best interests. It could be a guardian, a legal representative or, if neither has been appointed, a teacher or social worker. |
| Informal setting | 5. Interviews should take place in an informal setting and be conducted by interviewers trained to talk with children. |
| Language of interview | 6. Interviews should be in the child's own language. If this is impossible to organize, considerable care must be taken in arranging interpretation. |
| Length of interview | 7. If possible, interviews should not be too long to avoid tiring the child. |
| Child's developmental stage | 8. The child's developmental stage and needs should be considered in planning the interview. |
| Child's characteristics | 9. The characteristics of the child and the child's family background should be considered in planning the interview. |
| Opportunity to narrate | 10. The children should be given an opportunity to narrate their story in their own way, before they are asked explicit questions. |
| Interview plan | 11. The questions should begin with open questions and direct or leading questions should be reserved for the latter part of the interview. |

SECOND SCHEDULE
TRAFFICKING IN PERSONS ACT
FORM A

s.8, 28 and 43

Sections 8, 28 and 43

TRAFFICKED PERSONS SCREENING AND IDENTIFICATION FORM
PART I — INFORMED CONSENT

Has the individual been informed that the Enforcement Officer or
..... (name of partnering organization) reserves the
right to share her/his individual case data for assistance purposes and only with authorized
officers in the Malawi Police Service, the Department of Immigration and partnering
organizations involved in direct assistance? (Yes/No)*

1. Has the individual further been informed that the Malawi Government reserves the
right to use (only anonymous, aggregate) data for research purposes? (Yes/No)
2. Has the individual's full and informed consent been obtained to conduct the screening
interview based on information given regarding the designation of the enforcement
officer, the role of the organization, the voluntary nature of the interview and the use
of the information provided by the individual as outlined above? (Yes/No)*

Note: Informed consent is necessary for all services, such as medical examination and
procedure, health assessments, assisted voluntary returns and reintegration assistance.

If the individual is a minor, has the consent of the parent(s)/guardian(s) been obtained?
(Yes/No)

Signature of interviewer: Date:
Signature of trafficked person: Date:

**Circle as appropriate*

PART II — REGISTRATION DATA

1. First name(s):
2. Family name(s):
3. Sex:
4. Country of birth:
5. Place of birth:
6. Last place of residence in country of origin:
7. Date of birth:
8. Is date of birth an estimate? (Yes/No)
9. Age (in number of years):
10. Citizenship:
11. Ethnicity:
12. Identity document (type, country, number and expiry date):

PART III — CASE AND INTERVIEW DATA

1. (*Where the trafficked person is referred:*)

Type of referring organization/individual: (NGO/international organization/ law enforcement/ immigration/ Government/ embassy/ IOM mission/hotline/ self-referral walk-in/family/friend/client/other)* Other, please specify

.....
.....

2. Name/location of referring organization/individual:
3. Address and telephone number of referring organization:
4. Screening date:.....
5. Screening location:.....
6. Name/Designation/Rank of interviewer:.....
7. Name of organization/institution:.....
8. Interviewee's language(s):.....
9. Interpreter? (Yes/No).....
10. Name of interpreter:.....
11. If minor: Name(s), address(es) and telephone number of parent(s) or guardian(s):.....

PART IV — ENTRY INTO TRAFFICKING

1. How did the individual enter the process (indicate multiple options and continue on separate sheet if necessary)?
.....
.....
.....
.....
.....
.....
.....
2. Did entry into the process involve recruitment? (Yes/No)* If Yes, how was the contact initiated between the individual and her/his recruiter? (personal contact/employment agency/travel agency/Internet advertisement/newspaper advertisement/radio advertisement/television advertisement/other)*
3. If labour migration, what activity did the individual believe he or she was going to be engaged in following arrival at the final destination (indicate multiple options if necessary)? (Agricultural work/begging/child care/ construction/domestic work/factory work/fishing/low-level criminal activities/military service/mining/prostitution/restaurants and hotel work/study/small street commerce/trade/transport/other)* If other, please specify
.....

4. What was the individual told would be their benefits following arrival at final destination?
Salary (equivalent in US\$ per month)
.....
Other benefits
.....
.....
.....
5. In which month/year did the individual enter into the process?
.....
6. Was the individual a minor at the time of entry into the process? (Yes/No) *
7. From which place/country did the individual enter into the process?
.....
8. What place/country is the last (or intended) destination?
.....
9. Did the individual travel alone? (Yes/No)* If No, who did the individual travel with (indicate multiple options if necessary)? Husband /wife/ partner/relative/ friend/recruiter/transporter/unknown persons/other)* If other, specify
.....
10. Did the individual spend any time in transit place(s)/country(ies) (Yes/No)*
(a) If Yes, who did the individual travel with? (husband/wife/partner/ relative/friend/recruiter/transporter/unknown persons/ other)* If other, specify
.....
11. Did he or she engage in any activity in this place(s)/country(ies) (Yes/No)* If Yes, which activity in first/only transit place/country? (agricultural work/begging/child care/construction/domestic work/factory work/fishing/ low-level criminal activities/marriage/military service/mining/prostitution /restaurants and hotel work/study/small street commerce/trade/transport sector/other)* If other, specify
.....
12. If more places/countries, add respective places and activities engaged in.
.....
.....
.....
.....
13. Were any of the following means used to control the individual?
(a) Physical abuse? (Yes/No)* If Yes, who by? (Recruiter/Transporter/ Harbourer/Receiver/Other)* If other, specify
.....
(b) Psychological abuse? (Yes/No)* If Yes, who by? (Recruiter/Transporter/ Harbourer/Receiver/Other)* If other, specify
.....

- (c) Sexual abuse? (Yes/No)* If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (d) Threats to individual? (Yes/No)* If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (e) Threat of action by law enforcement? (Yes/No)* If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (f) Threats to family? (Yes/No)* If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (g) False promises/deception? (Yes/No)* If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (h) Denial of freedom of movement? (Yes/No)* If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (i) Giving of drugs? (Yes/No)* If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (j) Giving of alcohol? (Yes/No)* If Yes, who by? If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (k) Denial of medical treatment? (Yes/No)* If Yes, who by? If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (l) Denial of food/drink? (Yes/No)* If Yes, who by? If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (m) Withholding of identity documents? (Yes/No)* If Yes, who by? If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....
- (n) Withholding of travel documents? (Yes/No)* If Yes, who by? If Yes, who by? (Recruiter/Transporter/Harboured/Receiver/Other)* If other, specify
.....

- (o) Debt bondage? (Yes/No)* If Yes, who by? If Yes, who by? (Recruiter/Transporter/Harbourer/Receiver/Other)* If other, specify

.....

* Circle as appropriate

PART V — EXPLOITATION PHASE

1. What activity has the individual undertaken since her/his arrival in the last destination? (Agricultural work/begging/child care/construction/domestic work/factory work/ fishing/low—level criminal activities/marriage/military service/mining/prostitution/ restaurants and hotel work/study/small street commerce/trade/transport sector/ unemployed/other)* If other, specify

.....

- (a) How old was the individual when the activity began?

.....

- (b) How long did the only/most significant activity last?

.....

2. Were any of the following means used to control the individual during the activity? Physical abuse? (Yes/No)* If Yes, who by? (Receiver/Exploiter/ Clients/Other)* If other, specify

.....

- (a) Psychological abuse? (Yes/No)* If Yes, who by? (Receiver/Exploiter/ Clients/Other)* If other, specify

.....

- (b) Sexual abuse? (Yes/No)* If Yes, who by? (Receiver/Exploiter/Clients/ Other)* If other, specify

.....

- (c) Threats to individual? (Yes/No)* If Yes, who by? (Receiver/Exploiter/ Clients/Other)* If other, specify

.....

- (d) Threat of action by law enforcement? (Yes/No)* If Yes, who by? (Receiver/Exploiter/Clients/Other)* If other, specify

.....

- (e) Other Threats to family? (Yes/No)* If Yes, who by? (Receiver/Exploiter/ Clients/Other)* If other, specify

.....

- (f) False promises/deception? (Yes/No)* If Yes, who by? (Receiver/
Exploiter/Clients/Other)* If other, specify
.....
- (g) Denial of freedom of movement? (Yes/No)* If Yes, who by? (Receiver/
Exploiter/Clients/Other)* If other, specify
.....
- (h) Giving of drugs? (Yes/No)* If Yes, who by? (Receiver/Exploiter/
Clients/Other)* If other, specify
.....
- (i) Giving of alcohol? (Yes/No)* If Yes, who by? (Receiver/Exploiter/
Clients/Other)* If other, specify
.....
- (j) Denial of medical treatment? (Yes/No)* If Yes, who by? (Receiver/
Exploiter/Clients/Other)* If other, specify
.....
- (k) Denial of food/drink? (Yes/No)* If Yes, who by? (Receiver/Exploiter/
Clients/Other)* If other, specify
.....
- (l) Withholding of wages? (Yes/No)* If Yes, who by? (Receiver/Exploiter/
Clients/Other)* If other, specify
.....
- (m) Withholding of identity documents? (Yes/No)* If Yes, who by?
(Receiver/Exploiter/Clients/Other)* If other, specify
.....
- (n) Withholding of travel documents? (Yes/No)* If Yes, who by? (Receiver/
Exploiter/Clients/Other)* If other, specify
.....
- (o) Debt bondage? (Yes/No)* If Yes, who by? (Receiver/Exploiter/Clients/
Other)* If other, specify
.....
- (p) Excessive working hours? (Yes/No)* If Yes, who by? (Receiver/
Exploiter/Clients/Other)* If other, specify
.....

3. If exploited for prostitution (sexual exploitation) were any of the following means used to control the individual during the exploitation?
 - (a) Denial of freedom to refuse client? (Yes/No)* If Yes, who by? (Receiver/Exploiter/Clients/Other)* If other, specify
.....
 - (b) Denial of freedom to refuse certain acts? (Yes/No)* If Yes, who by? (Receiver/Exploiter/Clients/Other)* If other, specify
.....
 - (c) Denial of freedom to use condom? (Yes/No)* If Yes, who by? (Receiver/Exploiter/Clients/Other)* If other, specify
.....
 - (d) Other means of control. Specify:
.....

4. Did the individual experience exploitation? (Yes/No)* If no exploitation took place
 - (a) was there any indication of a real and substantial threat of exploitation?
.....
.....
 - (b) If Yes, what were the reasons that exploitation never took place? (Rescue/Escape /Other)* If other, specify
.....

* Circle as appropriate

PART VI — ADDITIONAL CORROBORATIVE EVIDENCE

(To be answered as appropriate)

1. Are any of the following additional corroborative materials available?

(a) Police or other official reports	(Yes/No)*
(b) Identity documents	(Yes/No)*
(c) Travel documents	(Yes/No)*
(d) Medical reports	(Yes/No)*
(e) Copies of employment contract	(Yes/No)*
(f) Recruitment offer	(Yes/No)*

- (g) Personal writings by the individual (Yes/No)*
- (h) Hotline reports (Yes/No)*
- (i) If other, specify
.....

2. Is the individual a trafficked person? Justify this decision with reference to responses to questions 1—17 above. (Continue on separate sheet if necessary).

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

3. Certification that the individual is a trafficked person made by: (specify names, designation and rank):

.....
.....
.....
.....

4. If the individual is a trafficked person, was the type of trafficking in-country or transnational? (in-country/transnational/both)*

5. If the individual is not a trafficked person, is he or she in need of assistance? (Yes/No)* If Yes, what is the individual's situation? (Please specify all that applies.)

.....
.....
.....
.....
.....
.....
.....
.....

6. Additional remarks

.....
.....
.....
.....
.....

.....
.....
.....
.....
.....

* *circle as appropriate*

THIRD SCHEDULE
FORM B
FORM OF OATH

s.49(1)

I, A.B, of swear by Almighty God that I shall not make a record of, divulge or communicate information in contravention of this Act.

FORM OF AFFIRMATION

I, A.B, of do solemnly, sincerely and truly declare and affirm that I shall not make a record of, divulge or communicate, information in contravention of this Act.

OBJECTS AND REASONS

The object of this Bill is to provide for a comprehensive legislative framework for combating and preventing trafficking in persons. It will also provide for establishment of an institutional framework for effective regulation and coordination of trafficking in persons and related matters. The proposed legislation also takes a multi-dimensional approach by providing for, among other things issues of protection of victims of trafficking in persons and community participation in fighting trafficking in persons. The Bill will also minimize technical challenges that are encountered by our law enforcement officers when investigating and prosecuting matters involving trafficking in persons and other related offences. The proposed

legislation will go a long way in protecting and promoting the rights of vulnerable groups such as children especially the girl child, women and other young persons.

JUSTICE M. MBENDERA, SC
Attorney General