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Trafficking in Persons

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I assent



PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

10th April, 2015

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**An Act to make provision for the prevention and elimination of trafficking in persons; to provide for the establishment of the National Coordination Committee against Trafficking in Persons for the coordination and management of matters related to trafficking in persons; and to provide for matters incidental thereto and connected therewith**

ENACTED by the Parliament of Malawi as follows—

## PART I—PRELIMINARY

1. This Act may be cited as the Trafficking in Persons Act, 2015, and shall come into force on such a date as the Minister may appoint by notice published in the *Gazette*. Short title and commencement
2. In this Act, unless the context otherwise requires— Interpretation
  - “AIDS” means Acquired Immune Deficiency Syndrome;
  - “child” means a person below the age of eighteen years;
  - “Committee” means the National Coordination Committee against Trafficking in Persons established under section 4;
  - “exploitation” includes—
    - (a) forced labour or any extraction of work or services from a person;
    - (b) the forced participation of a person in all forms of commercial sexual activity such as prostitution, sexually-explicit performance, or 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 can not be said that the person participated willingly;

“Fund” means the Anti-Trafficking Fund established under section 51;

“HIV” means the Human Immuno-deficiency Virus which causes AIDS;

“organized criminal group” means a group of two 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, grand parent, 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 highly contagious or infectious disease;

(b) any medical condition, occasioned as a result of the exploitation;

“trafficked person” means a person or child who has suffered harm, including mental and physical injury, emotional suffering, economic loss or substantial impairment of the person's fundamental human rights through acts that contravene sections 14 and 15 ;

“trafficking in persons” means recruiting, transporting, transferring, harbouring, receiving or obtaining a person, within or beyond the territory of Malawi, through—

(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; or

(g) giving or receiving of payments to obtain consent of a person having control of the trafficked person, for the purpose of exploitation of that person.

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

Scope of application

(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 a foreign jurisdiction, he shall not be prosecuted again for the same offence in Malawi, unless the proceedings of the court in the foreign jurisdiction—

(a) were for the purpose of shielding the person concerned from criminal proceedings outside in a foreign jurisdiction; or

(b) were 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—ADMINISTRATION

4.—(1) There shall be a committee to be known as the National Coordination Committee against Trafficking in Persons for the proper administration of this Act.

National Coordination Committee against Trafficking in Persons

(2) The Committee shall have its secretariat within the Ministry responsible for home affairs or any other ministry, as the President may direct.

5.—(1) The Committee shall consist of—

Composition of the Committee

(a) the Secretary responsible for Home Affairs;

(b) the Secretary responsible for Justice;

(c) the Secretary responsible for Gender;

(d) the Inspector General of Police;

(e) the Chief Immigration Officer;

(f) the Executive Director of the Human Rights Commission;

(g) a representative of the Faith-Based Organisations, appointed by the Minister; and

(h) a representative of non-governmental organisations dealing with issues of trafficking in persons, appointed by the Minister.

(2) The Minister shall publish in the *Gazette* names of all members of the Committee as first constituted, and every subsequent change in the membership.

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

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

(a) holds a political office; or

(b) with the exception of the members listed in section 5 (1) (a) to (e), is an employee in the public service.

Chairperson of the Committee 6. The Secretary responsible for Home Affairs shall be the Chairperson of the Committee.

Tenure of office 7.—(1) Save for the members appointed under section 5 (1) (a) to (e), a member of the Committee 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) The office of a member appointed under section 5 (1) (g) and (h) of the Committee 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, to attend three successive meetings of the Committee of which he has had notice;

(e) becomes incapacitated by reason of physical or mental disability; or

(f) resigns in accordance with subsection (4).

(3) A member other than any of those appointed under section 5 (1) (a) to (e), may at any time resign his office by giving one month written notice to the Chairperson, who shall forward that resignation to the Minister.

(4) A vacancy in the membership of the Committee shall be filled

by the appointment of a person in accordance with section 5, and the person appointed to fill the vacancy shall serve for the remainder of the relevant term of office, provided that a person shall not be appointed to fill a vacancy if that remaining period of a term is less than six months.

8.—(1) The functions of the Committee shall be to—

Functions and powers of the Committee

(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 rights 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 Schedule and Second Schedule hereto;

(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;

(f) formulate and oversee implementation activities aimed at the suppression of trafficking in persons;

(g) formulate policy, programmes and strategies to prevent and suppress trafficking in persons;

(h) make recommendations to the Minister on all aspects of prevention and suppression of trafficking in persons;

(i) coordinate and oversee training of relevant law enforcement and judicial officers;

(j) liaise with Government agencies and non-governmental organisations on rehabilitation and reintegration of trafficked persons;

(k) manage the Anti-Trafficking 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 Committee 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  
Committee

9. The Committee 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 or her 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  
Committee

10.—(1) The Committee 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 Committee shall be constituted by at least half of its members.

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

(4) In the absence of the Chairperson, the membership of the Committee shall elect a member present, to preside over the meeting.

(5) At a meeting of the Committee—

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

(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.

Allowances on  
Committee

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

Procedure

12. The Committee shall determine the procedure for its meetings.

Minutes of  
meetings

13. The Committee shall cause to be kept minutes of proceedings of its meetings.

## PART III—OFFENCES

**14.—**(1) A person who trafficks 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.

Trafficking in  
Persons

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

**15.—**(1) Notwithstanding section 14, a person who trafficks a 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.

Trafficking in  
Children

(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 not used or that the child consented to the commission of the offence.

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

Aggravated  
form of  
trafficking

(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; or

(h) as a consequence of the commission of the offence the trafficked person—

(i) dies;

(ii) develops a medical 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 dishonesty or moral

17. The offence of trafficking in persons or trafficking in children constitutes an offence of dishonesty or moral turpitude for the purposes of sections 51 and 80 of the Constitution.

Prohibition against working with children

18. A person convicted of the offence of trafficking in persons or trafficking in children is ineligible to work in any capacity with children for a period of seven years following their conviction.

Court to order closure of establishment

19. Where an offence of trafficking in persons or trafficking in children 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

20. 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, commits an offence and shall, upon conviction, be liable to imprisonment for five years.

Attempts, aiding or abetting to commit an offence

21.—(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 an offence pursuant to subsection (1) entails the same consequences in all respects as a conviction of committing the offence.

(3) Any person who procures another to do or omit 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, commits 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.