

ANTI-HUMAN TRAFFICKING ACT, 2014

No. 32



of 2014

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An Act to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons; to provide for the prohibition, prevention and combating of human trafficking, to provide for measures to protect and assist victims of trafficking in persons and other matters incidental thereto.

Date of Assent: 27.08.2014

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Anti-Human Trafficking Act, 2014 and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title
and
commencement

2. (1) In this Act, unless the context otherwise requires —
“child” has the meaning assigned to it under the Children’s Act;
“centre for victims” means a centre for victims referred to in section 16;

Interpretation
Cap. 28:04

“Committee” means the Human Trafficking (Prohibition) Committee established under section 3;

“consent” in relation to a person means that the person agrees by choice, and has the freedom and capacity to make that choice;

“exploitation” includes but is not limited to —

- (a) keeping a person in a state of slavery;
- (b) subjecting a person to practices similar to slavery;
- (c) involuntary servitude;
- (d) forcible or fraudulent use of any human being for removal of organs or body parts;
- (e) forcible or fraudulent use of any human being to take part in armed conflict;
- (f) forced labour;
- (g) child labour;
- (h) sexual exploitation;
- (i) child marriage; or
- (j) forced marriage;

“forced labour” has the same meaning assigned to it under the Employment Act;

Cap. 47:01

“Fund” means the Victims of Trafficking Fund established under section 27;

“place of safety” has the same meaning assigned to it under the Children’s Act;

“pornography” means any representation, through a publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes;

“proceeds of crime” has the same meaning assigned to it under the Proceeds of Serious Crime Act;

Cap. 08:03

“Protocol” 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; done at New York on 15 November 2000, or as last revised or amended;

“slavery” is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;

Cap. 08:01

“sexual exploitation” means the commission of any sexual offence in terms of the Penal Code or any offence of a sexual nature in any other law against a victim of trafficking, and includes forcing a victim of trafficking to participate in the production of an obscene publication or obscene display including pornographic material or the performance of any act of a sexual nature;

“trafficking in persons” has the meaning assigned to it in section 9; and

“victim of trafficking in persons” includes a person who is being or has been trafficked as defined in section 9.

PART II — *Establishment of Human Trafficking (Prohibition) Committee*

Human
Trafficking
(Prohibition)
Committee

3. (1) There is hereby established a committee to be known as the Human Trafficking (Prohibition) Committee, in this Act referred to as “the Committee”.

(2) The Committee shall be under the general supervision of the Minister.

Membership
of
Committee

4. (1) The Committee shall consist of the following members appointed by the Minister —

- (a) the Permanent Secretary of the Ministry of Defence, Justice and Security;
- (b) the Permanent Secretary of the Ministry of Labour and Home Affairs or his or her nominee;
- (c) the Commissioner of Police or his or her nominee;
- (d) a nominee of Intelligence and Security;
- (e) a nominee of Immigration and Citizenship;
- (f) a nominee of the Attorney General’s Chambers;
- (g) the Director of Gender Affairs;
- (h) a nominee from the Ministry of Local Government and Rural Development;
- (i) a nominee from the Ministry of Transport and Communications;
- (j) the Commissioner of Labour;

- (k) three senior public officers who have the skill, experience and competence in social welfare, gender, children and health issues or any other skills relevant to the functions of the Committee under this Act; and
- (l) a representative of a non-governmental organisation and civil society dealing with matters concerning women.
- (2) The Permanent Secretary from the Ministry of Defence, Justice and Security shall be the Chairperson of the Committee and the members shall elect a member from among their number to be the Vice-Chairperson.

5. The Committee shall —

- (a) determine policies for giving effect to the objects and purposes of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and this Act;
- (b) make recommendations to the Minister concerning the policy on prevention and suppression of trafficking in persons;
- (c) make recommendations to the Minister on the effective implementation of this Act;
- (d) lay down strategies and measures for the prevention and suppression of trafficking in person;
- (e) monitor the implementation of international obligations, including cooperating and coordinating with foreign bodies in relation to the prevention and suppression of trafficking in persons;
- (f) direct and supervise the arrangements of study or research projects and the development of an integrated data base system for the benefit of prevention and suppression of trafficking in persons;
- (g) issue rules relating to the assistance to non-governmental organisations to carry out activities with a view to prevention and suppression of trafficking in persons;
- (h) manage, in consultation with the Permanent Secretary in the ministry responsible for finance, the receipt, payment, keeping, fund raising and the management of the Fund; and
- (i) perform any other acts as directed by the Minister.

Powers and functions of Committee

6. (1) The Minister may give the Committee written directions, of a general or specific nature, regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act.

Directions by Minister

(2) The Committee shall give effect to the Minister's directions given in accordance with subsection (1).

7. (1) Subject to the provisions of this Act, the Committee shall regulate its own proceedings.

Meetings of Committee

(2) The Committee shall meet for the transaction of its business at least four times in a year.

(3) The Chairperson may, upon giving notice in writing of not less than 14 days, call a meeting of the Committee, provided that if the urgency of any particular matter does not permit the giving of such notice, call a special meeting upon giving of a shorter notice.

(4) The quorum at any meeting of the Committee shall be a simple majority of the members of the Committee.

(5) There shall preside at any meeting of the Committee —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of the Chairperson and Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Committee on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding shall have a casting vote in addition to that person's deliberative vote.

Appointment
of Secretary
to Committee

8. (1) The Deputy Permanent Secretary in the Ministry of Defence, Justice and Security shall be the Secretary to the Committee.

(2) The Secretary shall attend all the meetings of the Committee but shall have no right to vote, and shall be responsible for the accurate and complete recording of the Committee's proceedings and decisions.

(3) The Secretary shall be accountable to the Chairperson and to the Committee for his or her functions and responsibilities in the Committee.

PART III — *Prohibition of Trafficking of Persons*

Trafficking
in person

9. (1) Any person who recruits, transports, transfers, harbours or receives another person by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of that person commits an offence of trafficking in persons and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 25 years, or to both.

(2) Any person who during the commission of the offence under section (1) —

(a) removes an organ from a person's body;

(b) forces a woman to fall pregnant and takes the child away;

(c) subjects a person to slavery or forced labour;

(d) instigates a person to commit an act of prostitution;

(e) instigates a person to take part in an obscene publication or obscene display; or

(f) commits a sexual offence against a person, commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding 30 years, or to both.

(3) The consent of a victim of trafficking in persons to the intended exploitation shall not be relevant where any of the means set out in subsection (1) have been used.

(4) The recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered “trafficking in persons” even if it does not involve any of the means set out in subsection (1).

10. (1) A person who for the purpose of trafficking in persons —
(a) adopts a child or offers a child for adoption;
(b) fosters a child or offers a child for fostering; or
(c) offers guardianship to a child or offers a child for guardianship, commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 25 years, or to both.

Acts that
promote child
trafficking

(2) A person who initiates or attempts to initiate adoption, fostering or guardianship proceedings for the purpose of subsection (1) commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding 15 years, or to both.

11. (1) A person who —
(a) knowingly leases, or being the occupier, permits to be used any house, building, or other premises for the purpose of promoting trafficking in persons;
(b) produces, publishes, advertises, broadcasts or distributes, exports or imports, any material for purposes of promoting trafficking in persons;
(c) manages, runs or finances any job recruitment agency for the purposes of promoting trafficking in persons; or
(d) by any other means promotes trafficking in persons, commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for a term not exceeding 10 years, or to both, and on a subsequent conviction, to a fine not exceeding P400 000 or to imprisonment for a term not exceeding 20 years.

Promotion of
trafficking in
persons

(2) A person who misrepresents any fact for purposes of facilitating the acquisition of travel documents or fraudulently obtains any document from Government agencies, in order to assist in the commission of an offence of trafficking in persons commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for a term not exceeding 10 years or, to both, and on a subsequent conviction, to a fine not exceeding P400 000 or to imprisonment for a term not exceeding 20 years.

(3) A person who facilitates, aids or abets the exit or entry of persons from or to the country at international and local airports, territorial boundaries and seaports for the purpose of promoting trafficking in persons commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding 15 years, or to both.

- (4) A person who —
 - (a) confiscates, conceals, alters, destroys or in any other manner deals with any identification or travel documents, of another person in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies; or
 - (b) confiscates, conceals, destroys or in any other manner deals with personal effects of another person or threatens to do so in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies,

commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding 15 years, or to both.

Use of
trafficked
Persons

12. A person who buys or engages the services of a trafficked person commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding 15 years, or to both, and on a subsequent conviction, to a fine not exceeding P400 000 or to imprisonment for a term not exceeding 20 years.

PART IV — *Identification and Protection of Victims of Trafficking*

Reporting and
referral of
child victim of
trafficking in
persons

13. (1) Notwithstanding any other law prohibiting the disclosure of personal information, any person who, on reasonable grounds, suspects that a child is a victim of trafficking in persons shall immediately report that suspicion to a social worker or a police officer for investigation.

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

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

(3) A social worker or police officer to whom a report has been made in terms of subsection (1) or a social worker or police officer who, on reasonable grounds, suspects that a child is a victim of trafficking in persons, shall within 24 hours, refer that child to a place of safety in terms of section 44 of the Children's Act or to a centre for victims pending a police investigation into the matter.

(4) A person who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 2 years, or to both.

14. (1) Any person, who on reasonable grounds suspects that an adult person is a victim of trafficking, shall report that suspicion to a police officer for investigation.

Reporting and referral of adult victim of trafficking in persons

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

(a) shall provide reasons for that suspicion to a police officer;

(b) shall not be liable to action or demand on the basis of the report; and

(c) shall be entitled to have his or her identity kept confidential if his or her safety is at risk as a result of making the report, unless the interests of justice require otherwise.

(3) A police officer to whom a report has been made in terms of subsection (1) or a police officer who, on reasonable grounds, suspects that an adult person is a victim of trafficking shall, within 24 hours, refer that person to a centre for victims, pending a police investigation into the matter.

(4) A centre for victims to which a referral has been made in terms of subsection (3) shall —

(a) within 24 hours, where necessary with the assistance of the police, ensure the safety of the person concerned if the person's safety is at risk; and

(b) without delay, in the prescribed manner, cause an assessment to be carried on the person concerned, to determine —

(i) the immediate needs of the victim, and

(ii) the long term needs of the victim.

(5) If, after the police investigation referred to in subsection (3), it is found that the person concerned is a victim of trafficking in persons —

(a) a certificate, as prescribed, shall be issued to him or her, certifying him or her to be a victim of trafficking in persons; and

(b) he or she shall be informed of the remedies available to him or her under Part V.

(6) A person who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 2 years, or to both.

15. (1) The Committee shall, in consultation with the Minister formulate plans for the provision of appropriate services for victims of trafficking in persons and children accompanying the victims, including —

Support and protection of victims of trafficking in persons

(a) return to Botswana or leaving Botswana;

(b) resettlement;

(c) re-integration;

(d) appropriate shelter and other basic needs;

(e) psychosocial support;

(f) appropriate medical assistance;

(g) legal assistance or legal information, including information on the relevant judicial and administrative proceedings; or

(h) any other necessary assistance that a victim of trafficking in persons may require.

(2) When developing the plans under subsection (1), the Committee shall consider the age, gender, and the special needs of children and persons with disabilities and the personal circumstances of each victim of trafficking in persons.

(3) Notwithstanding the provisions of any other law, victims of trafficking in persons shall be eligible to work for gain for the duration of their necessary presence in Botswana.

(4) Notwithstanding the provisions of any other law, the victims of trafficking in persons shall be permitted to remain in Botswana until legal proceedings are concluded and may by an order of the court in such proceedings, be allowed to bring their children.

(5) In all dealings with a trafficked person, any Government officer dealing with the victim of trafficking in persons or any other person who by virtue of duty is dealing with the victim of trafficking in persons shall ensure that all communication with that person is in a language that the person understands.

(6) The support services provided under this section shall be available to victims of trafficking in persons regardless of their nationality.

PART V — *Centres for Victims*

Establishment
of centres for
victims

16. The Minister responsible for social welfare shall from money appropriated by Parliament for that purpose —

- (a) establish and operate centres for victims; and
- (b) accredit non-governmental organisations as centres for victims.

Minimum
norms and
standards

17. A centre for victims shall comply with the norms and standards as the Minister may, by statutory instrument, prescribe.

Programme
offered by
centre for
child
victims

18. A centre for child victims —

- (a) shall secure the physical safety of a child victim;
- (b) shall provide temporary basic material support for the care of a child victim;
- (c) shall offer a programme for —
 - (i) the provision of counselling to child victims; and
 - (ii) the provision of rehabilitation services to child victims;
and
- (d) shall, in co-operation with the Ministry responsible for education, offer a programme aimed at the provision of education to child victims.

19. (1) A centre for adult victims —

- (a) shall secure the safety of adult victims at risk of retaliation;
- (b) shall offer a programme aimed at —
 - (i) the provision of counselling to adult victims;
 - (ii) the provision of rehabilitation services to adult victims; and
 - (iii) the re-integration of adult victims into their families and communities;
- (c) may, in co-operation with the Ministry responsible for education, offer a programme aimed at the provision of education to adult victims; and
- (d) may, in co-operation with the Ministry responsible for labour, offer a programme aimed at the provision of skills development training to adult victims.

Programme
offered by
centre for
adult
victims

(2) A centre for adult victims that provides accommodation to an adult victim who has a child in his or her care shall offer a programme aimed at the reception, care and development of such a child.

(3) Subject to subsection (4), a child referred to in subsection (2) may be cared for at any other premises only with the explicit consent of the adult victim.

(4) A child referred to in subsection (2) shall be referred to a designated social worker for investigation to determine whether the child is in need of care and protection.

*PART VI — Trial of offenders and remedies for victims of trafficking
in Persons*

20. (1) A law enforcement officer or the court and any other person involved in the investigation or trial of an offender under this Act, shall throughout the investigation or trial observe the right to privacy of the victim of trafficking in persons and of any witness.

Victim's right
to privacy

(2) The court dealing with the trial of an offence under this Act, may after considering all circumstances and for the best interest of the parties, order that the trial be held in camera.

(3) A person who discloses the name and personal circumstances of the victim of trafficking in persons or any other information tending to establish the identity of a victim of trafficking in persons and the circumstances of trafficking in persons commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding 10 years, or to both.

(4) Where a trial is conducted in camera, any person who publishes the proceedings of the court commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding 15 years, or to both.

Victim impact statement

21. The Director of Public Prosecutions may, in criminal proceedings relating to a trial of an offence under this Act, adduce evidence relating to the circumstances surrounding the commission of an offence and the impact of the offence under this Act upon a victim of trafficking in persons —

- (a) in order to prove whether an offence was committed under this Act —
 - (i) towards or in connection with the person concerned, or
 - (ii) under coercive circumstances referred to in section 9;
- (b) for purposes of seeking the imposition by the court of an appropriate sentence that relates to the extent of the harm suffered by the victim of trafficking in persons.

Restitution

22. Where a person is convicted of an offence under this Act, the court may, in addition to any other punishment prescribed under this Act, order the person to make restitution or compensate the victim for —

- (a) the costs of any medical or psychological treatment;
- (b) the costs of necessary transportation, accommodation and other living expenses; or
- (c) any other relief that the court may consider just.

Victim's immunity from prosecution

23. Notwithstanding the provisions of any other law, a victim of trafficking in persons shall not be criminally liable for any offence related to being in Botswana illegally or for any criminal act that was a direct result of being trafficked.

Trafficked person exempt from paying in civil suits

24. Where a victim of a trafficking in persons offence institutes a civil action for damages, the victim of trafficking persons shall be exempt from the payment of court fees.

Confiscation and forfeiture of proceeds of crime

25. (1) Notwithstanding the Proceeds and Instruments of Crime Act and in addition to any other penalty prescribed for an offence under this Act and under any other written law, the court may order the confiscation and forfeiture, of all the proceeds of crime under this Act, in favour of the Fund.

(2) All awards for damages shall be taken from the personal and separate property of the person who committed the offence and where the property is insufficient, the balance shall be taken from the Fund.

(3) Where the proceeds of crime are destroyed, diminished in value or otherwise rendered worthless by any act or omission of the person who committed the offence, directly or indirectly, or have been concealed, removed, converted or transferred to prevent them from being found or to avoid confiscation or forfeiture, the person who committed the offence shall, in addition to any other penalty be ordered to pay the amount equal to the value of the proceeds of crime.

26. (1) Subject to this Act the Minister responsible for immigration may arrange for the repatriation of the victims of trafficking in persons to their place of origin.

Repatriation
of trafficked
persons

(2) Where a Botswana victim of trafficking in persons across the borders does not have proper documentation, the Government shall issue the necessary travel documents to enable the victim of trafficking in persons to travel and re-enter the country.

(3) Where, in the opinion of the Minister responsible for immigration, the repatriation of a victim of trafficking in persons from Botswana is likely to or would expose the trafficked person to danger, the Minister may permit the trafficked person to continue staying in Botswana for such period as the Minister may consider fit.

PART VII — *Victims of Trafficking Fund*

27. (1) There is hereby established a Victims of Trafficking Fund in this Act referred to as “the Fund”, the object of which is to provide assistance to victims of trafficking in persons.

Establishment
of Victims of
Trafficking
Fund

(2) The Chairperson shall be the public officer responsible for the administration of the Fund.

28. (1) The sources of the Fund shall be —

Payments into
and out of the
Fund

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Fund;
- (b) any proceeds of crime confiscated and forfeited proceeds of crime under section 21; or
- (c) income generated by investments made by the Committee; and
- (d) any donation received by the Committee for purposes of the Fund.

(2) Without limiting the generality of section 23 (2), the Committee may make payments out of the Fund for —

- (a) the expenses arising out of assistance to the victims of trafficking in persons in the manner referred to in section 15;
- (b) the balance of damages under section 21 (2); and
- (c) such other purposes as may be required for purposes of this Act.

29. (1) The Chairperson shall cause the —

Accounts and
audit

- (a) keeping and maintenance of proper records of accounts in respect of the Fund;
- (b) preparation of an annual balance sheet and statement of income and expenditure in such form and manner as the Accountant-General may approve;
- (c) maintenance of an account in which shall be recorded all receipts into the Fund and all disbursements from the Fund and such accounts shall be reconciled monthly with the account maintained by the Accountant-General.

(2) The balance sheet and statement of income and expenditure shall be included in the annual statement of accounts submitted by the Accountant-General to the Auditor-General in accordance with the Public Finance Management Act.

PART VIII — *Miscellaneous Provisions*

Extra-territorial
jurisdiction

30. (1) A citizen of Botswana, or a person who permanently resides in Botswana, who commits an act outside Botswana that constitutes an offence under this Act if committed in Botswana, commits such an offence and is liable to a fine not exceeding P4000 000 or to imprisonment for a term not exceeding 20 years, or to both.

(2) Any act of trafficking referred to in Part III undertaken outside Botswana by a citizen of Botswana shall be deemed to have been undertaken at any place within Botswana.

(3) A person may not be convicted of an offence under subsection (1) if such a person has been acquitted or convicted in the country where that offence was committed.

Sentencing

31. If a person is convicted of any offence under this Act, the court that imposes the sentence shall 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) whether the offence involved serious injury or death of the victim or another person including death as a result of suicide;
- (c) whether the convicted person caused the victim to become addicted to the use of a dependence-producing substance or to a life-threatening illness including HIV/AIDS;
- (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 physical and psycho-logical effects the abuse had on the victim;
- (g) whether the offence involved a victim who is particularly vulnerable including a pregnant woman; and
- (h) whether the victim was a child or a physically or mentally handicapped person.

Legitimacy
and validity
of documents

32. The Director of Immigration and Citizenship shall, 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 Ministry of Labour and Home Affairs and suspected of being used in the commission of an offence in terms of this Act.

33. The Minister may make regulations for any matter which is required or permitted to be prescribed or for the better carrying out of the provisions of this Act and without derogating from the generality of the foregoing, such regulations may prescribe —

Regulations

- (a) the procedure of certifying persons as victims of trafficking in persons;
- (b) the criteria for accreditation of organisations to provide services to victims;
- (c) norms and standards to be complied with by centres for victims;
- (d) the repatriation process; and
- (e) any other matter, which is necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

PASSED by the National Assembly this 10th day of July, 2014.

BARBARA N. DITHAPO,
Clerk of the National Assembly.