

GENERAL NOTICE
ALGEMENE KENNISGEWINGS
NOTICE OF 2009

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

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

The Minister of Justice and Constitutional Development invites interested parties to submit any comments they might have on the Prevention and Combating of Trafficking in Persons Bill set out below. Any person wishing to comment on the Bill is invited to submit written comments to the Minister of Justice and Constitutional Development. Comments should kindly be directed for the attention of Mr TN Matibe or Ms E Steyn, Private Bag X81, Pretoria, 0001, or faxed to them at 012- 315 1550 by not later than **15 June 2009**.

(Electronic mail addresses: TMatibe@justice.gov.za
EnSteyn@justice.gov.za)

By way of background, the following:

The Bill emanates from an investigation by the South African Law Reform Commission (SALRC) into trafficking in persons. The SALRC report on the matter contains legislative proposals in the form of a Prevention and Combating of Trafficking in Persons Bill.

According to the SALRC poverty and a lack of economic opportunities, war and political instability are some of the main causes of trafficking in persons which is globally one of the most lucrative businesses today. South Africa (the RSA) is regarded as a transit country and a country of destination for the trafficking of persons, with sporadic reports of the trafficking of South Africans to other parts of the world. Persons are trafficked for sexual exploitation, forced labour or slavery or practices similar to slavery and servitude, forced marriages, begging, adoptions or the removal of organs or other body parts. Victims of trafficking must deal with physical and emotional damage, health problems such as HIV/AIDS, effects from forced and unsafe abortions, drug and alcohol abuse and post-traumatic stress disorders. The RSA lacks a proper system to deal with trafficking in persons. There are no reliable statistics due to the clandestine nature of trafficking in persons and a lack of a coordinated response to the problem. Cases of trafficking in persons cannot be recorded as such because there is no specific domestic legislation on trafficking in persons.

The current law regarding trafficking in persons in the RSA is fragmented. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (the Sexual Offences Amendment Act) and the Children's Act, 2005 (Act No. 38 of 2005) (the Children's Act), contain transitional provisions relating to trafficking in persons. The Sexual Offences Amendment Act criminalises the act of trafficking in persons for sexual exploitation only, while the Children's Act addresses more comprehensively the trafficking of children. The provisions in the above two Acts relating to trafficking will be repealed after their incorporation into the proposed

trafficking legislation. Other current legislation which could be used to prosecute persons suspected of trafficking in persons include the Sexual Offences Act, 1957; the Riotous Assemblies Act, 1956; the Immigration Act, 2002; the Basic Conditions of Employment Act, 1997; the Intimidation Act, 1982; the Domestic Violence Act, 1998; the Films and Publications Act, 1996 and the Prevention of Organised Crime Act, 1998. Under the common law, depending on the circumstances of each case, persons suspected of trafficking could be charged with kidnapping, common assault, assault with intent to do grievous bodily harm, extortion, attempted murder and murder.

The SALRC is therefore of the opinion that legislation should be enacted to create a statutory offence of trafficking in persons, as well as other trafficking-related offences. The Bill also contains protective measures for victims of trafficking as well as measures to prevent trafficking in persons.

The Bill proposed by the SALRC has been adapted to bring it in line with prevailing drafting norms and standards. Changes were, among others, made to various clauses containing provisions regarding penalties and clauses dealing with the manner in which a court is designated to try an offence which was committed abroad, the manner in which accredited organisations can qualify for financial assistance, compensation orders, national directives and instructions, regulations, delegation of powers and duties and the Intersectoral Committee.

REPUBLIC OF SOUTH AFRICA

PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL

*(As approved and recommended by the South African Law Reform Commission and
adapted by the Department of Justice and Constitutional Development)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B ... -2009]

BILL

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

PREAMBLE

RECOGNISING that poverty, unemployment and the search for improved socio-economic opportunities are contributing factors making persons vulnerable to becoming victims of trafficking;

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

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

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

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

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

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CHAPTER 1 DEFINITIONS AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context indicates otherwise—
- “abuse of vulnerability”** for purposes of the definition of trafficking, means any physical or psychological abuse that leads a person to believe that he or she has no reasonable alternative but to submit to exploitation, and includes but is not limited to taking advantage of the vulnerabilities of that person resulting from—
- (a) the person having entered or remained in the Republic illegally or without proper documentation;
 - (b) pregnancy;
 - (c) any disability of the person;
 - (d) addiction to the use of any dependence-producing substance;
 - (e) being a child; and
 - (f) socio-economic circumstances;
- “accredited organisation”** means an organisation accredited in terms of section 19 to provide services to adult victims of trafficking;
- “carrier”** includes a company, or the owner, operator or master of any means of transport;
- “child”** means a person under the age of 18 years;
- “Children’s Act”** means the Children’s Act, 2005 (Act No. 38 of 2005);
- “children’s court”** means a children’s court referred to in section 42 of the Children’s Act;
- “court”** means a High Court or a magistrate’s court for any district or for any regional division;
- “Criminal Law (Sexual Offences and Related Matters) Amendment Act”** means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);
- “Criminal Procedure Act”** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- “debt bondage”** means the status or condition that arises from a pledge by a person—
- (a) of his or her personal services; or
 - (b) of the personal services of another person under his or her control;
- as security for a debt owed, or claimed to be owed, including any debt incurred or claimed to be incurred after the pledge is given, by that person if—
- (i) the debt owed or claimed to be owed, as reasonably assessed, is manifestly excessive;
 - (ii) the value of those services as reasonably assessed is not applied towards the liquidation of the debt or purported debt; or
 - (iii) the length and nature of those services are not respectively limited and defined;
- “designated child protection organisation”** means a designated child protection organisation as defined in section 1 of the Children’s Act;
- “exploitation”** includes, but is not limited to—
- (a) all forms of slavery or practices similar to slavery;
 - (b) forced marriage;
 - (c) sexual exploitation;
 - (d) servitude;

- (e) forced labour;
- (f) child labour as defined in section 1 of the Children’s Act;
- (g) the removal of body parts; and
- (h) the impregnation of a female person against her will for the purpose of selling her child when the child is born;

“**forced labour**” means labour or services obtained or maintained through threats, the use of force, intimidation or other forms of coercion, or physical restraint;

“**forced marriage**” means a marriage in contravention of the laws in relation to civil and customary marriages in the Republic;

“**foreigner**”, for purposes of this Act, means a person who is not a citizen or permanent resident of the Republic;

“**guardian**” means a guardian as defined in section 1 of the Children’s Act;

“**illegal foreign child**” means a child who is present in the Republic in contravention of the Immigration Act;

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

“**Minister**” means the Cabinet member responsible for the administration of justice;

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

“**parent**” means a parent as defined in section 1 of the Children’s Act;

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

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

“**prescribe**” means prescribe by regulation in terms of section 40 of this Act;

“**provincial department of social development**” means a provincial department of social development as defined in section 1 of the Children’s Act;

“**provincial head**” means the head of a provincial department as defined in section 1 of the Public Service Act, 1994;

“**regulation**” means a regulation made in terms of this Act;

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

“**Republic**” means the Republic of South Africa;

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

“**sexual exploitation**” means the commission of any sexual offence in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, or any offence of a sexual nature in any other law against a victim of trafficking;

“**slavery**” means, other than to the extent permitted by law, reducing a person by any means to a state of submitting to the control of another person as if that other person were the owner of that person;

“**social worker**” means a person who is registered or deemed to be registered as a social worker in terms of section 17 of the Social Service Professions Act, 1978 (Act No. 110 of 1978);

“this Act” includes the regulations;

“trafficker” means a person who is known or suspected to be involved in the offence of trafficking in persons;

“trafficking” includes the recruitment, sale, supply, procurement, transportation, transfer, harbouring, disposal or receipt of persons or the adoption of a child facilitated or secured through legal or illegal means, within or across the borders of the Republic—

(a) by means of the use of threat, force, intimidation or other forms of coercion, abduction, kidnapping, fraud, deception, debt bondage, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control or authority over another person; or

(b) by abusing vulnerability,

for the purpose of exploitation, and “trafficks” or “trafficked” has a corresponding meaning;

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

“victim of trafficking” means any person who is a victim of the offence of trafficking in persons.

Objects of Act

2. The objects of this Act are—

(a) to give effect to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons;

(b) to provide for the prosecution of traffickers and persons involved in trafficking and for appropriate penalties;

(c) to provide for the prevention of trafficking in persons and for the protection of and assistance to victims of trafficking;

(d) to provide for effective enforcement measures; and

(e) generally to combat trafficking in persons.

CHAPTER 2

PREVENTION OF TRAFFICKING IN PERSONS

Public awareness

3. (1) The Intersectoral Committee established by section 37 must, and where appropriate, after consultation with relevant non-governmental organisations, establish public awareness programmes or other measures for the prevention of trafficking in persons designed to—

(a) inform and educate members of the public, especially those who are vulnerable or at risk of becoming victims of trafficking, foreigners who apply for South African visas who may be victims of trafficking, and South African citizens or permanent residents who depart for work abroad, on issues relating to trafficking in persons, including—

(i) common recruitment techniques used by traffickers;

- (ii) tactics used to keep victims of trafficking in exploitative situations;
 - (iii) the forms of abuse to which victims of trafficking may be subjected; and
 - (iv) organisations, institutions or law enforcement agencies that may be approached for assistance or information;
- (b) inform and educate victims of trafficking on—
- (i) their rights as victims;
 - (ii) legal or other measures in place to ensure their safety, recovery and repatriation; and
 - (iii) organisations, institutions or law enforcement agencies that may be approached for assistance or information;
- (c) discourage the demand for and the supply of victims of trafficking that fosters the exploitation of those victims, especially women and children.
- (2) The programmes or other measures referred to in subsection (1) must—
- (a) include appropriate measures aimed at reaching rural communities;
 - (b) where possible, be provided in a language understood by the persons at whom they are directed; and
 - (c) be reviewed biennially in order to determine their effectiveness.

(3) The Director-General: Justice and Constitutional Development must take all reasonable steps within available resources, to ensure that the programmes or other measures referred to in subsection (1) are implemented across the country.

CHAPTER 3 OFFENCES AND PENALTIES

Trafficking in persons

4. (1) Notwithstanding the common law position regarding slavery, the slave trade and practices similar to slavery, any person who intentionally trafficks another person is guilty of the offence of trafficking in persons and is liable on conviction to a fine or imprisonment, including imprisonment for life.

- (2) A person who—
- (a) performs any act which is aimed at committing the offence of trafficking in persons;
 - (b) incites, instigates, commands, directs, aids, advises, recruits, encourages or procures any other person to commit the offence of trafficking in persons; or
 - (c) conspires with any other person to commit the offence of trafficking in persons or to aid in the commission thereof,

is guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing the offence of trafficking in persons would be liable.

- (3) It is no defence to a charge of contravening subsection (1) that—
- (a) a child who is a victim of trafficking or a person having control or authority over a child who is a victim of trafficking has consented to the intended exploitation or that the intended exploitation did not occur, even if none of the means referred to in the definition of trafficking has been used;

(b) an adult person who is a victim of trafficking has consented to the intended exploitation or that the intended exploitation did not occur, only if one or more of the means referred to in the definition of trafficking has been used.

(4) In order to establish the liability in terms of subsection (1) or (2) of an employer or principal, the conduct of an employee or agent of or any other person acting on behalf of the employer or principal may be attributed to the employer or principal if that person is acting—

- (a) within the scope of his or her employment;
- (b) within the scope of his or her actual or apparent authority; or
- (c) with the express or implied consent of a director, member or partner of the employer or principal.

(5) Subsection (4) does not exclude the liability of an employee or agent of or any other person acting on behalf of the employer or principal for committing the offence of trafficking in persons.

(6) A finding by a court that an employer or principal has contravened subsection (1) or (2) serves as a ground for revoking the licence or registration of the employer or principal to operate its business.

Debt bondage

5. Any person who intentionally engages in conduct that causes another person to enter into debt bondage is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years.

Destruction, confiscation, possession, concealment of or tampering with documents

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

Using services of victims of trafficking

7. Any person who intentionally benefits, financially or otherwise, from the services of a person or uses or enables another person's usage of the services of that person he or she knows or ought reasonably to have known to be a victim of trafficking is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years.

Conduct facilitating trafficking in persons

8. (1) Any person who—
- (a) intentionally leases or subleases or allows to be used any room, house, building or establishment he or she knows or ought reasonably to have known will be used for facilitating or promoting trafficking in persons; or
 - (b) advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcast or distribution of information

that facilitates or promotes trafficking in persons by any means, including the use of the Internet or other information technology, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years.

- (2) An Internet service provider operating in the Republic—
- (a) must take all reasonable steps to prevent the use of its service for the hosting of information referred to in subsection (1)(b);
 - (b) that has knowledge that any Internet address on its server contains information referred to in subsection (1)(b) must—
 - (i) without delay report that Internet address, as well as the particulars of the person maintaining or in any manner contributing to that Internet address, to the South African Police Service;
 - (ii) take all reasonable steps to preserve any evidence for purposes of investigation and prosecution by the relevant authorities; and
 - (iii) without delay take all reasonable steps to prevent access to that Internet address by any person.

(3) An Internet service provider who fails to comply with the provisions of subsection (2) is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years.

Liability of carriers

9. (1) A carrier which brings a victim of trafficking into or removes a victim of trafficking from the Republic and, upon entry into or departure from the Republic, the victim of trafficking does not have the travel documents required for lawful entry into or departure from the Republic, is guilty of an offence and is liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years.

- (2) A carrier is not guilty of an offence under subsection (1) if—
- (a) the carrier had reasonable grounds to believe that the documents that the victim of trafficking has are the travel documents required for lawful entry into or departure from the Republic by him or her;
 - (b) the victim of trafficking possessed the travel documents required for lawful entry into or departure from the Republic when he or she boarded, or last boarded, the means of transport to travel to or from the Republic; or
 - (c) entry into the Republic occurred only because of illness of or injury to a person on board, stress of weather or other circumstances beyond the control of the carrier.

(3) A carrier is, in addition to any offence under this section, liable to pay the expenses incurred or reasonably expected to be incurred in connection with the care, accommodation, transportation and repatriation of the victim, as provided for in section 26.

Extra-territorial jurisdiction

10. (1) A court of the Republic has jurisdiction in respect of an act committed outside the Republic which would have constituted an offence in terms of this Act had it been committed inside the Republic, regardless of whether or not the act constitutes an offence at the place of its commission, if the person to be charged—

- (a) is a citizen of the Republic;

- (b) is ordinarily resident in the Republic;
- (c) has committed the offence against a citizen of the Republic or a person who is ordinarily resident in the Republic;
- (d) is, after the commission of the offence, present in the territory of the Republic, or in its territorial waters or on board a ship or aircraft registered or required to be registered in the Republic;
- (e) is, for any reason, not extradited by the Republic or if there is no application to extradite that person; or
- (f) is a juristic person or a partnership registered in terms of any law in the Republic.

(2) Only a High Court has jurisdiction in respect of an offence referred to in subsection (1)(d).

(3) A person who commits an offence referred to in subsection (1) is liable on conviction to the penalty prescribed for that offence.

(4) The Minister must, in consultation with the Chief Justice and after consultation with the National Director of Public Prosecutions and, in writing, designate an appropriate court in which to conduct a prosecution against any person accused of having committed an offence in a country outside the Republic as provided for in subsection (1).

(5) No prosecution may be instituted against a person in terms of this section with respect to conduct which formed the basis of an offence under this Act in respect of which that person has already been convicted or acquitted by a court of another jurisdiction.

(6) The institution of a prosecution in terms of this section must be authorised in writing by the National Director of Public Prosecutions.

CHAPTER 4

IDENTIFICATION AND PROTECTION OF VICTIMS OF TRAFFICKING

Reporting and referral of child victim of trafficking

11. (1) An immigration official, labour inspector, social worker, social service professional, medical practitioner, nurse, teacher, traditional health practitioner or traditional healer who, on reasonable grounds, suspects that a child is a victim of trafficking must, within 24 hours, report that suspicion to a police official for investigation, if it is in the best interests of the child concerned.

(2) A person who on reasonable grounds suspects that a child is a victim of trafficking may report that suspicion to a police official for investigation.

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

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

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

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

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

Reporting and referral of adult victim of trafficking

12. (1) (a) An immigration official, labour inspector, social worker, social service professional, medical practitioner, nurse, traditional health practitioner or traditional healer who, on reasonable grounds, suspects that an adult person is a victim of trafficking must, subject to paragraph (b) and within 24 hours, report that suspicion to a police official for investigation.

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

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

(2) A person who on reasonable grounds suspects that an adult person is a victim of trafficking may report that suspicion to a police official for investigation.

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

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

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

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

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

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

- (a) a certificate, as prescribed, must be issued to him or her, certifying him or her to be a victim of trafficking; and

(b) he or she must be informed of the right to apply for a recovery and reflection period in terms of section 16, if he or she is a foreigner.

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

Child victim of trafficking found in Republic

13. (1) A child who is a victim of trafficking may be placed in temporary safe care in terms of section 151 of the Children's Act, pending an investigation in terms of section 155(2) of the Children's Act.

(2) If, after an investigation as provided for in subsection (1), an illegal foreign child is brought before the children's court, the court may order that the child be assisted in applying for asylum in terms of the Refugees Act, 1998 (Act No. 130 of 1998).

(3) A finding in terms of section 156 of the Children's Act that an illegal foreign child who is a victim of trafficking is a child in need of care and protection serves as authorisation for allowing the child to remain in the Republic for the duration of the children's court order.

Provision of health care services

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

Criminal prosecution against victim of trafficking prohibited

15. No criminal prosecution may be instituted against a child who is found to be a victim of trafficking after an investigation in terms of section 110(5)(c) of the Children's Act or an adult person who has been certified to be a victim of trafficking in terms of section 12(6)(a) for—

- (a) entering or remaining in the Republic in contravention of the Immigration Act;
- (b) assisting another person to enter or remain in the Republic in contravention of the Immigration Act;
- (c) possessing any fabricated or falsified passport, identity document or other document used for the facilitation of movement across borders; and
- (d) being involved in an illegal activity to the extent that he or she has been compelled to do so,

as a direct result of his or her situation as a victim of trafficking.

CHAPTER 5 STATUS OF FOREIGN VICTIMS OF TRAFFICKING

Recovery and reflection period

16. (1) Notwithstanding the provisions of the Immigration Act, the Director-General: Home Affairs must, in the prescribed manner and subject to the prescribed conditions, allow a foreigner who has been certified to be a victim of

trafficking in terms of section 12(6)(a), regardless of his or her status, to remain in the Republic for a non-renewable recovery and reflection period not exceeding 90 days.

(2) A foreigner who has been granted a recovery and reflection period in terms of subsection (1) must, within 10 days, be assessed by an accredited organisation and a plan must be drawn up by the organisation to address the immediate and long term needs of the person, as provided for in section 23.

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

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

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

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

Temporary residence

17. (1) Notwithstanding the provisions of section 11(1) of the Immigration Act, a visitor's permit may, subject to the prescribed conditions, be issued to a victim of trafficking—

- (a) who—
 - (i) is present in the Republic; and
 - (ii) has agreed to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a case of trafficking in persons; or
- (b) if an investigation referred to in section 16(3) indicates that it is not safe to return him or her to his or her country of origin or the country from where he or she has been trafficked.

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

- (a) his or her status; or
- (b) whether a recovery and reflection period as provided for in section 16 was granted or has expired.

(3) For purposes of this Act, the Director-General: Home Affairs may, on humanitarian grounds, extend a visitor's permit referred to in subsection (1), taking into account the likelihood that the holder of that permit may be harmed, killed

or trafficked again if he or she is returned to his or her country of origin or the country from where he or she has been trafficked.

Permanent residence

18. A victim of trafficking is entitled to apply for a permanent residence permit in terms of section 27(*h*) of the Immigration Act, after five years' continuous residence in the Republic from the date on which a visitor's permit referred to in section 17 was issued to him or her, upon proof by that victim to the satisfaction of the Director-General: Home Affairs that he or she may be harmed, killed or trafficked again if he or she is returned to his or her country of origin or the country from where he or she has been trafficked.

CHAPTER 6 SERVICES TO ADULT VICTIMS OF TRAFFICKING

Accreditation of organisations to provide services

19. (1) A victim of trafficking may only be referred in terms of section 12(4) to an organisation that has been accredited in terms of this section and has a valid certificate of accreditation, referred to in subsection (4)(*a*).

(2) The Minister of Social Development—

- (*a*) must by means of regulations establish and maintain a system for the accreditation of organisations to provide services to adult victims of trafficking; and
- (*b*) may by means of regulations prescribe the circumstances in which accredited organisations qualify for financial assistance, within available resources.

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

- (*a*) criteria for the evaluation of the programmes offered by organisations to ensure that they comply with the minimum norms and standards referred to in section 20;
- (*b*) mechanisms to monitor the programmes in question; and
- (*c*) measures for the removal of organisations from the system, where appropriate.

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

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

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

(*d*) The Minister of Social Development must publish the particulars of each accredited organisation or organisation removed from the system in terms of this section in the *Gazette* within 30 days of accreditation or removal.

(*e*) The Director-General: Social Development must, immediately after any publication referred to in paragraph (*d*), provide a copy of the publication to—

- (i) the relevant role players falling under his or her jurisdiction; and
- (ii) the National Commissioner of the South African Police Service, who must distribute the publication to all relevant role players falling under his or her jurisdiction,

who are involved in the administration of this Act.

Minimum norms and standards

20. (1) The Minister of Social Development must, after consultation with interested parties, the Ministers of Finance, Health, Justice and Constitutional Development and Safety and Security, determine minimum norms and standards for accredited organisations by regulation.

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

- (a) the safety of victims of trafficking, especially those at risk of harm;
- (b) access to and provision of adequate health care;
- (c) the provision of separate facilities for male and female victims of trafficking;
- (d) hygienic and adequate toilet facilities;
- (e) access to refuse disposal services or other adequate means of disposal of refuse generated at the facility; and
- (f) the drawing up of action plans for emergencies.

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

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

Programme offered by accredited organisation

21. (1) An accredited organisation—

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

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

(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 in whose care he or she is.

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

Access to programme offered by accredited organisation

22. A person who has been certified to be a victim of trafficking in terms of section 12(6)(a) or who has been repatriated to the Republic in terms of section 30 is entitled to access to a programme offered by an accredited organisation, regardless whether he or she is accommodated at that organisation or not.

Plan to address needs of victim of trafficking

23. An accredited organisation must draw up a plan to address the immediate and long term needs of a person who has been certified to be a victim of trafficking in terms of section 12(6)(a) or a victim of trafficking who has been repatriated to the Republic in terms of section 30.

Information management

24. (1) An accredited organisation must, in the prescribed manner, collect information on victims of trafficking relating to—

- (a) the number of foreign victims of trafficking who have accessed a programme referred to in section 21;
- (b) the number of South African citizens or permanent residents who are victims of trafficking and who have accessed a programme referred to in section 21;
- (c) the number of victims who have accessed a programme referred to in section 21 and who have not been reported to the South African Police Service;
- (d) the countries from which foreign victims have been trafficked;
- (e) the countries to which South African citizens or permanent residents have been trafficked;
- (f) the purposes for which the victims have been trafficked;
- (g) the methods used to recruit and transport the victims;
- (h) the methods and routes used for trafficking the victims to and from the Republic; and
- (i) the types of travel documents that victims have used or attempted to use to cross the borders of the Republic and how these documents were obtained.

(2) An accredited organisation must provide an annual report on the information referred to in subsection (1) to the Intersectoral Committee established by section 37.

CHAPTER 7

COMPENSATION

Compensation to victim of trafficking

25. (1) (a) The court may, subject to paragraph (b), on its own accord or at the request of the complainant or the prosecutor, in addition to any sentence which it may impose in respect of any offence under this Act, order a person convicted of that offence to pay appropriate compensation to any victim of the offence for—

- (i) damage to or the loss or destruction of property, including money;
- (ii) physical, psychological or other injury;
- (iii) being infected with a life-threatening disease; or
- (iv) loss of income or support,

resulting from the commission of that offence.

(b) A magistrate's court established under section 2 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), may not make an order for the payment of compensation, as provided for in paragraph (a) which exceeds the monetary jurisdiction determined by the Minister from time to time by notice in the *Gazette*, as provided for in section 300 of the Criminal Procedure Act.

(2) In cases where the amount of the damage, injury or loss exceeds an order for compensation made in terms of subsection (1), an additional civil action may be instituted.

(3) (a) Where the court makes an order for compensation to be paid in terms of this section, it must also determine the time within which payment is to be made and the method of payment, including whether it is to be paid in instalments or not and if it is to be paid in instalments, the intervals between the payment of instalments.

(b) A magistrate or judge may, on application of the convicted person on good cause shown, vary the conditions and instalments according to which compensation is to be made.

(c) A court that has acted in terms of paragraph (b), whether differently constituted or not, or any court of equal or superior jurisdiction may, on good cause shown, reconsider any decision that it has made regarding the payment of compensation and substitute it with a new order.

(4) (a) An order for the payment of compensation as provided for in subsection (1) has the effect of a civil judgment of a magistrate's court and the person in whose favour the compensation order was made is deemed to be the judgment creditor and the convicted person against whom the compensation order was made is deemed to be the judgment debtor.

(b) The judgment creditor referred to in paragraph (a) must, where a compensation order has not been complied with, file with the clerk of the court or registrar of the court which made the compensation order, an affidavit setting out the details of the compensation order and stating that the compensation order has not been complied with or has not been complied with in full, as the case may be, and the amount outstanding, and must request that clerk of the court or registrar to furnish him or her with a certified copy of that compensation order.

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

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

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

(5) (a) Where the court makes an order for compensation to be paid in terms of this section, it may, in its discretion, issue a warrant addressed to the

sheriff authorising him or her to recover the amount of the compensation by the attachment and sale of any movable property belonging to the person in question.

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

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

Compensation to State

26. (1) The court may—

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

(b) in addition to any order for the payment of compensation to a victim in terms of section 25; and

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

(2) An order for the payment of compensation as provided for in subsection (1) has the effect of a civil judgment of a magistrate's court and the provisions of section 25(4) apply with the changes required by the context.

CHAPTER 8

DEPORTATION AND REPATRIATION OF VICTIMS OF TRAFFICKING

Summary deportation of victim of trafficking prohibited

27. Subject to section 28, the summary deportation of a victim of trafficking is prohibited.

Repatriation of victim of trafficking from Republic

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

- (a) the safety of the child during the repatriation process;
- (b) the availability and suitability of care arrangements in the country to which the child is to be returned;
- (c) the safety of the child in the country to which he or she is to be returned; and
- (d) the possibility that the child might be harmed, killed or trafficked again.

(2) The Director-General: Home Affairs—

- (a) may not return an adult who is a victim of trafficking to his or her country of origin or the country from where he or she has been trafficked without giving due consideration to—
- (i) the safety of the person during the repatriation process;
 - (ii) the safety of the person in the country to which he or she is to be returned; and
 - (iii) the possibility that the person might be harmed, killed or trafficked again;
- (b) must—
- (i) before returning a person referred to in paragraph (a) to his or her country of origin or the country from where he or she has been trafficked, request the Director-General: Social Development to take reasonable steps as provided for in section 29(a); and
 - (ii) inform a person referred to in paragraph (a), in the prescribed manner, of any arrangements that have been made for his or her reception in the country to which he or she is to be returned.
- (3) This section does not prohibit the return of an adult who is a victim of trafficking to his or her country of origin or the country from where he or she has been trafficked who freely elects to do so.

Assistance to foreign victim of trafficking

- 29.** The Director-General: Social Development must—
- (a) take reasonable steps to find suitable family members or an institution or organisation that renders assistance to victims of trafficking in the country to which a person referred to in section 28(1) or (2) is to be returned and that is willing to provide assistance to such a person; and
 - (b) without undue delay, provide the Director-General: Home Affairs with information in respect of a request made in terms of section 28(2)(b)(i).

Repatriation of victim of trafficking to Republic

- 30.** (1) With due regard to the safety of the person and without delay—
- (a) the Director-General: Foreign Affairs must—
 - (i) in co-operation with the Director-General: Social Development assess the risks to the safety and life of a person who is a citizen or permanent resident of the Republic and who is a victim of trafficking, if he or she is returned to the Republic;
 - (ii) facilitate the return to the Republic of a person referred to in subparagraph (i); and
 - (iii) advise the Director-General: Home Affairs on measures to be taken for the secure reception of a person referred to in subparagraph (i) at a South African port of entry;
 - (b) the Director-General: Home Affairs must—
 - (i) facilitate and accept the return of a person referred to in paragraph (a);
 - (ii) where necessary, take measures to secure the reception of a person referred to in paragraph (a) at a South African port of entry;
 - (iii) issue travel documents or other authorisations as may be necessary to enable that person to travel to and enter the Republic;

- (iv) at the request of another state that is a party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons or to an agreement relating to trafficking in persons, verify that a person who is a victim of trafficking is a citizen or permanent resident of the Republic;
- (v) upon entry into the Republic of a child who is a victim of trafficking refer the child to a designated social worker for investigation in terms of section 155(2) of the Children's Act; and
- (vi) upon entry into the Republic of a person who is an adult victim of trafficking refer the person to an accredited organisation.

Escorting of child victim of trafficking

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

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

CHAPTER 9

GENERAL PROVISIONS

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

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

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

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

International co-operation

- 33.** (1) The President may on the conditions as he or she deems fit—
- (a) enter into an agreement with a foreign State that is not a State Party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons in respect of any matter pertaining to trafficking in persons; or
 - (b) enter into an agreement with a foreign State that is a State Party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons in respect of any matter pertaining to trafficking in persons for the purpose of

supplementing the provisions of the Protocol or to facilitate the application of the principles contained therein.

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

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

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

National instructions and directives

34. (1) The National Commissioner of the South African Police Service must, after consultation with the Directors-General: Justice and Constitutional Development, Social Development, Home Affairs, Foreign Affairs, Health, Labour and the National Director of Public Prosecutions, issue national instructions as provided for in section 25 of the South African Police Service Act, 1995 (Act No. 68 of 1995), regarding the following matters with which all police officials must comply in the execution of their functions in terms of this Act:

- (a) The division or divisions within the police to be tasked with the investigation of trafficking cases;
- (b) the manner in which the reporting of an alleged trafficking case is to be dealt with;
- (c) the manner in which trafficking cases are to be investigated;
- (d) the manner in which victims of trafficking should be identified, interviewed and treated with particular attention to the vulnerability of child victims;
- (e) measures to be taken in instances where foreign victims of trafficking are not conversant with any of the South African languages;
- (f) the referral of victims of trafficking to social and health care services;
- (g) measures to be taken to ensure the safety of victims of trafficking or other potential witnesses if there is a likelihood that harm might result to them as a result of the reporting and consequent investigation of and prosecution of the case;
- (h) the circumstances in which consultation with the prosecuting authority is required with the view to guiding the investigation of trafficking cases for purposes of obtaining the required evidence and to identify relevant witnesses;
- (i) measures to be taken in order to ensure the detection of trafficking in persons at South African ports of entry and borderlines;
- (j) the kind of information that must be obtained from a victim of trafficking with the view to provide such information to the prosecuting authority for purposes of determining the quantum of the damages suffered by the victim for which he or she may claim compensation in terms of section 25; and
- (k) the collecting and analysing of information on reported cases of trafficking in persons, including information relating to—
 - (i) the countries from which victims are being trafficked to the Republic;
 - (ii) the countries to which South African citizens and other residents are being trafficked;
 - (iii) the nationality of victims transiting the Republic and the countries to which they are being trafficked;

- (iv) the purposes for which the persons who have been identified as victims of trafficking have been trafficked;
- (v) the profiles of the traffickers and their victims, including the gender, age and nationality of the victims;
- (vi) the routes used by traffickers to enter and exit the Republic;
- (vii) the methods used by traffickers to recruit and transport their victims;
- (viii) the types of travel documents that traffickers and their victims have used or attempted to use to cross the borders of the Republic and how those documents were obtained; and
- (ix) the link between trafficking operations and those involved in other forms of organised crime.

(2) The National Commissioner of the South African Police Service must provide an annual report on the information referred to in subsection (1)(k) or any other relevant information to the Intersectoral Committee established by section 37, as determined by the Intersectoral Committee.

(3) The Director-General: Home Affairs must, after consultation with the Directors-General: Justice and Constitutional Development, Social Development, Foreign Affairs, Health and Labour, the National Director of Public Prosecutions and the National Commissioner of the South African Police Service, issue directives regarding the following matters with which all immigration officials must comply in the execution of their functions in terms of this Act:

- (a) The manner in which the reporting of an alleged trafficking case is to be dealt with;
- (b) the manner in which victims of trafficking should be identified, interviewed and treated, with particular attention to the vulnerability of child victims;
- (c) measures to be taken in instances where foreign victims of trafficking are not conversant with any of the South African languages;
- (d) the referral of victims of trafficking to social and health care services;
- (e) the referral of victims of trafficking or other potential witnesses to the South African Police Service or other relevant institutions or organisations if there is a likelihood that they may be harmed or killed; and
- (f) the collecting and analysing of information on victims of trafficking who have been repatriated to the Republic in terms of section 30 relating to—
 - (i) the number of victims who have been repatriated to the Republic and the countries to which they have been trafficked;
 - (ii) the profiles of the victims, including the gender and ages of the victims;
 - (iii) the purposes for which the victims were trafficked;
 - (iv) the routes used by traffickers to exit the Republic and to enter the countries to which the victims were trafficked;
 - (v) the methods used by traffickers to recruit and transport the victims; and
 - (vi) the types of travel documents that traffickers and their victims have used or attempted to use to exit the Republic and to enter the countries to which the victims were trafficked and how these documents were obtained.

(4) (a) The Minister of Home Affairs must—

- (i) submit any directives provided for in subsection (3) to Parliament 30 days before they are issued; and
- (ii) after the expiry of the 30 day period, publish them in the *Gazette*.

(b) The Director-General: Home Affairs must provide an annual report on the information referred to in subsection (3)(f) or any other relevant information to the Intersectoral Committee established by section 37, as determined by the Intersectoral Committee.

(5) The Director-General: Labour must, after consultation with the Directors-General: Justice and Constitutional Development, Social Development, Foreign Affairs and Health, the National Director of Public Prosecutions and the National Commissioner of the South African Police Service, issue directives regarding the following matters with which all labour inspectors must comply in the execution of their functions in terms of this Act:

- (a) The manner in which the reporting of an alleged trafficking case is to be dealt with;
- (b) the manner in which victims of trafficking should be identified, interviewed and treated, with particular attention to the vulnerability of child victims;
- (c) measures to be taken in instances where foreign victims of trafficking are not conversant with any of the South African languages;
- (d) the referral of victims of trafficking to social and health care services; and
- (e) the referral of victims of trafficking or other potential witnesses to the South African Police Service or other relevant institutions or organisations if there is a likelihood that they may be harmed or killed.

(6) (a) The Minister of Labour must—

- (i) submit any directives provided for in subsection (5) to Parliament 30 days before they are issued; and
- (ii) after the expiry of the 30 day period, publish them in the *Gazette*.

(b) The Director-General: Labour must provide an annual report on any relevant information to the Intersectoral Committee established by section 37, as determined by the Intersectoral Committee.

(7) The National Director of Public Prosecutions must, in consultation with the Minister and after consultation with the National Commissioner of the South African Police Service and the Directors-General: Justice and Constitutional Development, Social Development, Home Affairs, Foreign Affairs, Labour and Health, issue directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in cases relating to trafficking in persons, including the following:

- (a) The manner in which cases relating to trafficking in persons should be dealt with in general;
- (b) the criteria to be used and the circumstances in which the prosecution must apply to court for an order that a witness and, in particular, child complainants give evidence by means of closed circuit television as provided for in section 158 of the Criminal Procedure Act, if the court does not make an order on its own accord in terms subsection (2)(a) of that section or if an application in terms of subsection (2)(b) of that section is not made;
- (c) the criteria to be used and the circumstances in which the prosecution must request the court to consider appointing a competent person as an intermediary as provided for in section 170A of the Criminal Procedure Act, in respect of a child witness;
- (d) the circumstances in which the prosecution must request the court to consider directing that the proceedings may not take place in open court as provided for

- in section 153 of the Criminal Procedure Act;
- (e) the circumstances in which the prosecution must request the court to consider directing that the identity of a witness should not be revealed or that it should not be revealed for a period specified by the court as provided for in section 153 of the Criminal Procedure Act;
 - (f) the circumstances in which the prosecution must request the court to consider prohibiting the publication of the identity of the complainant in the case as provided for in section 154 of the Criminal Procedure Act or of the complainant's family, including the publication of information that may lead to the identification of the complainant or the complainant's family;
 - (g) the provision of interpretation services during court proceedings to foreign victims of trafficking who are not conversant with any of the South African languages;
 - (h) the need to inform victims of trafficking about their right to and the process to claim compensation in terms of section 25;
 - (i) the kind of information that must be obtained from a victim of trafficking for purposes of determining the quantum of the damages suffered by the victim for which he or she may claim compensation in terms of section 25;
 - (j) the collecting and analysing of information relating to—
 - (i) the number of trafficking prosecutions, convictions and the form of sentences imposed on traffickers;
 - (ii) the number of victims of trafficking awarded compensation orders in terms of section 25; and
 - (iii) the number of cases where the courts did not provide compensation orders in terms of section 25 and the reasons for doing so.
- (8) (a) The Minister must—
- (i) submit any directives provided for in subsection (7) to Parliament 30 days before they are issued; and
 - (ii) after the expiry of the 30 day period, publish them in the *Gazette*.

(b) The National Director of Public Prosecutions must provide an annual report on the information referred to in subsection (7)(j) or any other relevant information to the Intersectoral Committee established by section 37, as determined by the Intersectoral Committee.

(9) The National Commissioner of the South African Police Service, the National Director of Public Prosecutions and the Directors-General: Social Development, Home Affairs and Labour must each develop training courses which must—

- (a) include training on the national instructions or directives, as the case may be, referred to in this section; and
- (b) provide for and promote the use of uniform norms, standards and procedures, to ensure that all police officials, prosecutors and other functionaries are able to deal with matters relating to trafficking in persons in an appropriate, efficient and sensitive manner.

(10) The national instructions or directives referred to in this section must provide that adequate disciplinary steps are taken against any police official, prosecutor or other functionary who fails to comply with any duty imposed on him or her in terms of this Act or the national instructions or directives issued in terms of this Act.

(11) Any national instruction or directive issued under this section may be amended or withdrawn in like manner.

Legitimacy and validity of documents

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

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

36. The Director-General: Social Development must submit to the Intersectoral Committee established by section 37, as determined by the Intersectoral Committee, an annual report on all cases of abuse or deliberate neglect of a child and all findings by a children's court that a child is in need of care and protection because of abuse or deliberate neglect of the child as contained in Part A of the National Child Protection Register provided for in Part 2 of Chapter 7 of the Children's Act insofar as those cases and findings relate to child victims of trafficking.

CHAPTER 10 ADMINISTRATION OF ACT

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

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

(2) The Intersectoral Committee consists of—

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

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

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

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

(5) The Intersectoral Committee may invite—

- (a) representatives from the non-governmental sector and civil society to its meetings with the view to fostering cooperation between government and civil society in the implementation of this Act; and
- (b) persons to its meetings, when necessary, for technical assistance, support or advice.

(6) The Intersectoral Committee must—

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

Responsibilities, functions and duties of Intersectoral Committee

38. The Intersectoral Committee is responsible for—

- (a) monitoring that this Act is implemented in an integrated, co-ordinated and uniform manner by the different organs of state;
- (b) ensuring that the different organs of state comply with the roles and responsibilities allocated to them in terms of this Act;
- (c) the establishment of an integrated information system to facilitate the effective monitoring and implementation of this Act and to recommend interventions relating to trafficking in persons by collating and analysing the information obtained in terms of sections 24(2), 34(1)(k), 34(3)(f), 34(7)(j) and 37 with the view to determining, among others—
 - (i) from which countries victims are being trafficked to the Republic;
 - (ii) to which countries South African citizens and other residents are being trafficked;
 - (iii) what the nationality is of victims transiting the Republic and the countries to which they are being trafficked;
 - (iv) what number of victims have been repatriated to the Republic and the countries to which they were trafficked;
 - (v) for what purposes persons who have been identified as victims of trafficking have been trafficked;
 - (vi) what the profiles of the traffickers and their victims are, including the gender, age and nationality of the victims;
 - (vii) which routes are used by traffickers to cross the borders of the Republic;
 - (viii) which routes are used by traffickers to enter the countries to which South African citizens and other residents were trafficked;
 - (ix) what methods are used by traffickers to recruit and transport their victims;
 - (x) what types of travel documents traffickers and their victims have used or attempted to use to cross the borders of the Republic and to enter the countries to which South African citizens and other residents were trafficked and how these documents were obtained;
 - (xi) if there is a link between trafficking operations and those involved in other forms of organised crime;
 - (xii) what the number of trafficking prosecutions, convictions and the form of sentences imposed on perpetrators are;
 - (xiii) what number of victims of trafficking are awarded compensation orders in terms of section 25 of the Act, ; and
 - (xiv) in what number of cases the courts refrained from providing

compensation orders and the reasons for doing so:

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

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

Report to Parliament

39. The Minister must, after consultation with the Ministers of Safety and Security, Home Affairs, Foreign Affairs, Social Development, Labour and the National Director of Public Prosecutions—

- (a) within one year after the commencement of this Act, submit—
- (i) reports to Parliament by each Department or institution referred to in this section on the implementation of this Act;
 - (ii) a report to Parliament reflecting information relating to trafficking in persons referred to in subsection 38(c); and
- (b) every year thereafter submit reports referred to in paragraph (a)(i) and a report referred to in paragraph (a)(ii) to Parliament.

Regulations

40. (1) The Minister of Home Affairs must, after consultation with the Ministers of Justice and Constitutional Development, Safety and Security, Social Development, Foreign Affairs, Health and Labour, make regulations regarding—

- (a) the certificate to be issued to a person who is certified to be a victim of trafficking as provided for in section 12(6)(a);
- (b) the manner in which a foreigner who has been certified to be a victim of trafficking will be granted approval to remain in the Republic for a non-renewable recovery and reflection period and the conditions upon which that approval is granted, as provided for in section 16(1); and
- (c) the conditions on which a visitor's permit may be issued, as provided for in section 17(1).

(2) (a) The Minister of Social Development must, after consultation with the Ministers of Justice and Constitutional Development, Safety and Security, Home Affairs, Foreign Affairs, Health and Labour, make regulations regarding—

- (i) the assessment of a person to determine whether he or she is a victim of trafficking as provided for in section 12(5);
- (ii) the system of accreditation of organisations to provide services to adult victims of trafficking, as provided for in section 19(2)(a);
- (iii) the form of the certificate of accreditation to be issued to an organisation which provides services to adult victims of trafficking, as provided for in section 19(4)(a);
- (iv) the manner in which the quality assurance process must be conducted in respect of each accredited organisation, as provided for in section 19(4)(c);
- (v) the minimum norms and standards for accredited organisations, as provided for in section 20(1);
- (vi) the manner in which accredited organisations must collect information on victims of trafficking, as provided for in section 24(1); and

(vii) the manner in which a person must be informed of arrangements that have been made for his or her reception in the country to which he or she is to be returned, as provided for in section 28(2)(b)(ii).

(b) The Minister of Social Development may, after consultation with the Ministers of Finance, Justice and Constitutional Development, Safety and Security, Home Affairs, Foreign Affairs, Health and Labour, make regulations regarding the circumstances in which accredited organisations qualify for financial assistance, as provided for in section 19(2)(b).

(3) Any regulation made under this section—

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

Delegation of powers and assignation of duties by Director-General or National Commissioner of South African Police Service

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

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

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

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

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

(4) A Director-General or the National Commissioner may not delegate a power or duty conferred on him or her in terms of section 34, 35 or 36 of this Act.

Delegation of powers and assignation of duties by Director-General or National Commissioner of South African Police Service

42. (1) Any Director-General or the National Commissioner of the South Africa Police Service referred to in this Act may, subject to subsection (5), delegate any power or assign any duty conferred on or assigned to him or her by this Act to a provincial head of the corresponding provincial department or to a provincial commissioner of the South African Police Service, respectively, by agreement with that provincial head or provincial commissioner, as the case may be.

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

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

(3) The Director-General or National Commissioner may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The Director-General or National Commissioner may at any time withdraw a delegation or assignment.

(5) A Director-General or the National Commissioner may not delegate a power or assign a duty conferred on or assigned to him or her by section 34, 35 or 36 of this Act.

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

43. (1) A provincial head or a provincial commissioner of the South African Police Service to whom a power or duty has been delegated or assigned in terms of section 42 may delegate that power or assign that duty to an officer at Director level or above in the employ of the provincial department concerned or in the South African Police Service.

- (2) A delegation or assignment in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions which the provincial head or provincial commissioner may impose;
 - (b) must be in writing; and
 - (d) does not divest the provincial head or provincial commissioner of the responsibility concerning the exercise of the power or the performance of the duty.

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

CHAPTER 11 MISCELLANEOUS MATTERS

Laws repealed or amended

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

Short title and commencement

45. This Act is called the Prevention and Combating of Trafficking in Persons Act, 2009, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1
Laws repealed or amended
(Section 44)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

Act No. and year	Title	Extent of repeal or amendment
68 of 1969	Prescription Act	<p>The amendment of section 12 by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Prescription shall not commence to run in respect of a debt based on the commission of an alleged sexual offence as contemplated in sections 3, 4, 17, 18 (2), 20 (1), 23, 24 (2) <u>and 26 (1) [and 71(1) or (2)]</u> of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, <u>and an alleged offence as provided for in sections 4(1) or (2), 5 and 7 of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. ... of 2009)</u>, during the time in which the creditor is unable to institute proceedings because of his or her mental or psychological condition.”.</p>
51 of 1977	Criminal Procedure Act	<p>1. The substitution for section 18 of the following section: “Prescription of right to institute prosecution 18. The right to institute a prosecution for any offence, other than the offences of—</p> <p>(a) murder;</p> <p>(b) treason committed when the Republic is in a state of war;</p> <p>(c) robbery, if aggravating circumstances were present;</p> <p>(d) kidnapping;</p> <p>(e) child-stealing;</p> <p>(f) rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;</p> <p>(g) the crime of genocide, crimes against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002, or</p> <p>(h) trafficking in persons [for sexual purposes by a person] as provided for in section [71 (1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act,</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>2007] <u>4(1) or (2) of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No.,...of 2009); or</u> <i>(i)</i> using a child or person who is mentally disabled for pornographic purposes as contemplated in sections 20 (1) and 26 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, shall, unless some other period is expressly provided for by law, lapse after the expiration of a period of 20 years from the time when the offence was committed.”; and</p> <p>2. The insertion of the following section after section 261: “Trafficking in persons <u>261A. (1) In this section–</u> ‘Basic Conditions of Employment Act’ means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); ‘Criminal Law (Sexual Offences and Related Matters) Amendment Act’ means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); ‘Immigration Act’ means the Immigration Act, 2002 (Act No. 13 of 2002; and ‘Prevention and Combating of Trafficking in Persons Act’ means the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. . of 2009). (2) If the evidence on a charge of trafficking in persons provided for in section 4 of the Prevention and Combating of Trafficking in Persons Act or any attempt to commit that offence, does not prove the offence of trafficking in persons, but the offence of— <i>(a)</i> assault with intent to do grievous bodily harm; <i>(b)</i> common assault; <i>(c)</i> rape as provided for in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; <i>(d)</i> compelled rape as provided for in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; <i>(e)</i> sexual assault as provided for in section 5 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; <i>(f)</i> compelled sexual assault as provided for in section 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; <i>(g)</i> compelled self-sexual assault as provided for in section 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any attempt to commit that offence; <i>(h)</i> debt bondage as provided for in section 5 of the Prevention and Combating of Trafficking in Persons Act or any attempt to commit that offence; <i>(i)</i> destroying, confiscating, possession, concealing of or</p>

Act No. and year	Title	Extent of repeal or amendment
		<p><u>tampering with documents as provided for in section 6 of the Prevention and Combating of Trafficking in Persons Act or any attempt to commit that offence;</u></p> <p><u>(j) using the services of a victim of trafficking as provided for in section 7 of the Prevention and Combating of Trafficking in Persons Act or any attempt to commit that offence;</u></p> <p><u>(k) entering or remaining in, or departing from the Republic as provided for in section 49(1)(a) of the Immigration Act;</u></p> <p><u>(l) knowingly assisting a person to enter or remain in, or depart from the Republic as provided for in section 49(2) of the Immigration Act;</u></p> <p><u>(m) employing a child as provided for in section 43 of the Basic Conditions of Employment Act; or</u></p> <p><u>(n) forced labour as provided for in section 48 of the Basic Conditions of Employment Act,</u></p> <p><u>the accused may be found guilty of the offence so proved.”.</u></p> <p>3. The substitution for Schedule 1 of the following Schedule:</p> <p style="text-align: center;">“Schedule 1 (Sections 40 and 42)</p> <p>Treason. Sedition. Public violence. Murder. Culpable homicide. Rape or compelled rape as contemplated in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Trafficking in persons [for sexual purposes by a person] <u>as contemplated in section [71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] 4(1) or (2) of the Prevention and Combating of Trafficking Act, 2009 (Act No...of 2009).</u> Bestiality as contemplated in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. Robbery. Kidnapping. Child-stealing.</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>Assault, when a dangerous wound is inflicted. Arson. Malicious injury to property. Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence. Theft, whether under the common law or a statutory provision. Receiving stolen property knowing it to have been stolen. Fraud. Forgery or uttering a forged document knowing it to have been forged. Offences relating to the coinage. Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine. Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in such custody in respect of the offence of escaping from lawful custody. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.</p> <p>4. The substitution for Part II of Schedule 2 of the following Part:</p> <p style="text-align: center;">PART II (Sections 59, 72)</p> <p>Treason. Sedition. Murder. Rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Trafficking in persons [for sexual purposes by a person] <u>as contemplated in section [71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] 4(1) or (2) of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009)</u> Robbery. Assault, when a dangerous wound is inflicted. Arson. Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds R2 500.</p> <p>Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones.</p> <p>Any offence under any law relating to the illicit-</p> <ul style="list-style-type: none"> (a) possession of- <ul style="list-style-type: none"> (i) dagga exceeding 115 grams; or (ii) any other dependence-producing drugs; or (b) conveyance or supply of dependence-producing drugs. <p>Any offence relating to the coinage.</p> <p>Any conspiracy, incitement or attempt to commit any offence referred to in this Part.</p> <p>5. The substitution for Part III of Schedule 2 of the following Part:</p> <p style="text-align: center;">PART III (Sections 59, 61, 72, 184, 185, 189)</p> <p>Sedition. Public violence. Arson. Murder. Kidnapping. Childstealing. <u>Trafficking in Persons as provided for in section 4(1) or (2) of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009)</u> Robbery. Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence. Contravention of the provisions of section 1 and 1A of the Intimidation Act, 1982 (Act 72 of 1982). Any conspiracy, incitement or attempt to commit any of the above-mentioned offences. Treason.</p> <p>6. The substitution for Schedule 5 of the following Schedule:</p> <p style="text-align: center;">Schedule 5 (Sections 58 and 60 (11) and (11A) and Schedule 6)</p> <p>Treason. Murder. Attempted murder involving the infliction of grievous bodily</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>harm.</p> <p>Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, in circumstances other than those referred to in Schedule 6.</p> <p>Any trafficking related offence by a [commercial] carrier as contemplated in section [71 (6) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] <u>9 of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. ... of 2009).</u></p> <p>Any offence referred to in section 13 (f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), if it is alleged that-</p> <p>(a) the value of the dependence-producing substance in question is more than R50 000,00; or</p> <p>(b) the value of the dependence-producing substance in question is more than R10 000,00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or</p> <p>(c) the offence was committed by any law enforcement officer.</p> <p>Any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament, or the possession of an automatic or semi-automatic firearm, explosives or armament.</p> <p>Any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act 75 of 1969), on account of being in possession of more than 1 000 rounds of ammunition intended for firing in an arm contemplated in section 39 (2) (a) (i) of that Act.</p> <p>Any offence relating to exchange control, extortion, fraud, forgery, uttering, theft, or any offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004-</p> <p>(a) involving amounts of more than R500 000,00; or</p> <p>(b) involving amounts of more than R100 000,00, if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or</p> <p>(c) if it is alleged that the offence was committed by any law enforcement officer-</p> <p>(i) involving amounts of more than R10 000,00; or</p> <p>(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively on a child under the age of 16 years.</p> <p>An offence referred to in Schedule 1-</p> <p>(a) and the accused has previously been convicted of an offence referred to in Schedule 1; or</p> <p>(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 1.</p> <p>The offences referred to in section 4 (2) or (3), 13 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004.</p> <p>7. The substitution for Schedule 6 of the following Schedule:</p> <p style="text-align: center;">“Schedule 6 (Sections 50 (6), 58 and 60 (11) and (11A))</p> <p>Murder, when-</p> <p>(a) it was planned or premeditated;</p> <p>(b) the victim was-</p> <p>(i) a law enforcement officer performing his or her functions as such, whether on duty or not, or a law enforcement officer who was killed by virtue of his or her holding such a position; or</p> <p>(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1;</p> <p>(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or having attempted to commit one of the following offences:</p> <p>(i) Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or</p> <p>(ii) robbery with aggravating circumstances;</p> <p>or</p> <p>(iii) <u>trafficking in persons as provided for in section 4(1) or (2) of the Prevention and Combating of Trafficking in Persons Act, 2009(Act No. of 2009); or</u></p> <p>(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy.</p> <p>Rape or compelled rape as contemplated in section 3 or 4 of the</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively-</p> <p>(a) when committed-</p> <p>(i) in circumstances where the victim was raped more than once, whether by the accused or by any co-perpetrator or accomplice;</p> <p>(ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;</p> <p>(iii) by a person who is charged with having committed two or more offences of rape; [or]</p> <p>(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus; <u>or</u></p> <p><u>(v) by a person or criminal gang who is charged with the offence of trafficking in persons;</u></p> <p>(b) where the victim-</p> <p>(i) is a person under the age of 16 years;</p> <p>(ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or</p> <p>(iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;</p> <p>(c) involving the infliction of grievous bodily harm.</p> <p>Trafficking in persons [for sexual purposes by a person] as contemplated in section 4(1) or (2) of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009) [71 (1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007].</p> <p>Robbery, involving-</p> <p>(a) the use by the accused or any co-perpetrators or participants of a firearm;</p> <p>(b) the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; or</p> <p>(c) the taking of a motor vehicle.</p> <p>An offence referred to in Schedule 5-</p> <p>(a) and the accused has previously been convicted of an offence referred to in Schedule 5 or this Schedule; or</p> <p>(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 5 or this Schedule.</p> <p>The offences referred to in section 2, 3(2)(a), 4(1), 5, 6, 7, 8, 9, 10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, section 2(1) and (2) of the Civil Aviation Offences Act, 1972 (Act 10 of 1972), section 26(1)(j) of the Non-Proliferation of Weapons of Mass Destruction Act,</p>

Act No. and year	Title	Extent of repeal or amendment
		1993 (Act 87 of 1993) and section 56(1)(h) of the Nuclear Energy Act, 1999 (Act 46 of 1999).”.
105 of 1997	Criminal Law Amendment Act	<p>1. The substitution for Part I of Schedule 2 of the following Part:</p> <p style="text-align: center;">“Schedule 2 (Section 51) PART I</p> <p>Murder, when-</p> <p>(a) it was planned or premeditated;</p> <p>(b) the victim was-</p> <p style="padding-left: 20px;">(i) a law enforcement officer performing his or her functions as such, whether on duty or not; or</p> <p style="padding-left: 20px;">(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act 51 of 1977), at criminal proceedings in any court;</p> <p>(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit one of the following offences:</p> <p style="padding-left: 20px;">(i) rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or</p> <p style="padding-left: 20px;">(ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977);</p> <p>(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy;</p> <p>(e) the victim was killed in order to unlawfully remove any body part of the victim, or as a result of such unlawful removal of a body part of the victim; or</p> <p>(f) the death of the victim resulted from, or is directly related to, any offence contemplated in section 1(a) to (e) of the Witchcraft Suppression Act, 1957 (Act 3 of 1957).</p> <p>Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007-</p> <p>(a) when committed-</p> <p style="padding-left: 20px;">(i) in circumstances where the victim was raped more than once whether by the accused or by any co-perpetrator or accomplice;</p> <p style="padding-left: 20px;">(ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;</p> <p style="padding-left: 20px;">(iii) by a person who has been convicted of two or more offences of rape or compelled rape, but has not yet been sentenced in respect of such convictions; or</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;</p> <p>(b) where the victim-</p> <p>(i) is a person under the age of 16 years;</p> <p>(ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or</p> <p>(iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or</p> <p>(c) involving the infliction of grievous bodily harm.</p> <p>Compelled rape as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007-</p> <p>(a) when committed-</p> <p>(i) in circumstances where the victim was raped more than once by one or more than one person;</p> <p>(ii) by a person who has been convicted of two or more offences of rape or compelled rape, but has not yet been sentenced in respect of such convictions; or</p> <p>(iii) under circumstances where the accused knows that the person committing the rape has the acquired immune deficiency syndrome or the human immunodeficiency virus;</p> <p>(b) where the victim-</p> <p>(i) is a person under the age of 16 years;</p> <p>(ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or</p> <p>(iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or</p> <p>(c) involving the infliction of grievous bodily harm.</p> <p>Any offence referred to in section 2, 5, 6, 7, 8, 9, 10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, when it is proved that the offence has-</p> <p>(a) endangered the life or caused serious bodily injury to or the death of, any person, or any number or group of persons;</p> <p>(b) caused serious risk to the health or safety of the public or any segment of the public; or</p> <p>(c) created a serious public emergency situation or a general insurrection.</p> <p>Trafficking in persons <u>as</u> [for sexual purposes by a person] contemplated in section [71 (1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act,</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>2007] <u>4(1) or (2) of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009)</u></p> <p>2. The substitution for Part III of Schedule 2 of the following Part:</p> <p style="text-align: center;">“PART III</p> <p>Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively in circumstances other than those referred to in Part I.</p> <p>Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in section 17 or 23 or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20(1) or 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.</p> <p>Assault with intent to do grievous bodily harm on a child under the age of 16 years.</p> <p>Any offence in contravention of section 36 of the Arms and Ammunitions Act, 1969 (Act 75 of 1969), on account of being in possession of more than 1000 rounds of ammunition intended for firing in an arm contemplated in section 39(2)(a)(i) of that Act.</p> <p>Any trafficking related offence by a [commercial] carrier as contemplated in section [71 (6) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] <u>9 of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009).</u>”.</p>
112 of 1998	Witness Protection Act	<p>The substitution for the Schedule of the following Schedule:</p> <p style="text-align: center;">“Schedule OFFENCES IN RESPECT OF WHICH A WITNESS OR RELATED PERSON MAY BE PLACED UNDER PROTECTION</p> <ol style="list-style-type: none"> 1. Treason. 2. Sedition. 3. Murder. 4. Rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. 5. Public violence. 6. Robbery- <ol style="list-style-type: none"> (a) when there are aggravating circumstances; or (b) involving the taking of a motor vehicle.

Act No. and year	Title	Extent of repeal or amendment
		<p>7. Kidnapping.</p> <p>8. Defeating the ends of justice.</p> <p>9. Perjury.</p> <p>10. Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.</p> <p>10A. <u>Trafficking in persons as provided for in section 4(1) or (2) [for sexual purposes by a person] or any trafficking related offence committed by a carrier as provided for in section 9 of the Prevention and Combating of Trafficking in Persons Act, 2009(Act No. of 2009) [or commercial carrier as contemplated in section 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007].</u></p> <p>11. Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), if it is alleged that-</p> <p style="padding-left: 40px;">(a) the value of the dependence-producing substance in question is more than R10 000,00; or</p> <p style="padding-left: 40px;">(b) the value of the dependence-producing substance in question is more than R5 000,00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or</p> <p style="padding-left: 40px;">(c) the offence was committed by any law enforcement officer.</p> <p>12. Any offence referred to in section 1 or 1A of the Intimidation Act, 1982 (Act 72 of 1982).</p> <p>13. Any offence relating to-</p> <p style="padding-left: 40px;">(a) the dealing in or smuggling of ammunition, firearms, explosives or armament; or</p> <p style="padding-left: 40px;">(b) the possession of an automatic or semi-automatic firearm, explosives or armament.</p> <p>14. Any offence relating to exchange control, extortion, fraud, forgery, uttering, theft, or an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004.</p> <p style="padding-left: 40px;">(a) involving amounts of more than R50 000,00; or</p> <p style="padding-left: 40px;">(b) involving amounts of more than R10 000,00, if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or</p> <p style="padding-left: 40px;">(c) if it is alleged that the offence was committed by any law enforcement officer-</p> <p style="padding-left: 80px;">(i) involving amounts of more than R10 000,00; or</p> <p style="padding-left: 80px;">(ii) as a member of a group of persons,</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.</p> <p>15. Any offence referred to in the Prevention of Organised Crime Act, 1998.</p> <p>16. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.</p> <p>17. Any other offence which the Minister has determined by regulation.</p> <p>18. Any other offence in respect of which it is alleged that the offence was committed by-</p> <p style="padding-left: 40px;">(a) a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or</p> <p style="padding-left: 40px;">(b) a law enforcement officer,</p> <p>and in respect of which the Director is of the opinion that the safety of a witness who is or may be required to give evidence, or who has given evidence in respect of such an offence in any proceedings or any related person, warrants protection.</p> <p>19. Any other offence in respect of which the Director, after having considered the factors mentioned in section 10(1) and any information gained in terms of section 10(2), is of the opinion that the safety of a witness who is or may be required to give evidence, or who has given evidence in respect of such an offence in any proceedings or any related person, warrants protection.”.</p>
121 of 1998	Prevention of Organised Crime Act	<p>The substitution for Schedule 1 of the following Schedule:</p> <p style="text-align: center;">“Schedule 1 (Sections 1, 38, 50, 51, 52, 54, 58 and 73)</p> <ol style="list-style-type: none"> 1. murder; 2. rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; 3. kidnapping; 4. arson; 5. public violence; 6. robbery; 7. assault with intent to do grievous bodily harm; 8. sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; 9. any offence contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; 10. any offence under any legislation dealing with gambling, gaming or lotteries;

Act No. and year	Title	Extent of repeal or amendment
		<p>11. contravention of section 20(1) of the Sexual Offences Act, 1957 (Act 23 of 1957);</p> <p>12. any offence contemplated in Part 1 to 4, or section 17, 18, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004;</p> <p>13. extortion;</p> <p>14. childstealing;</p> <p>15. breaking or entering any premises whether under the common law or a statutory provision, with intent to commit an offence;</p> <p>16. malicious injury to property;</p> <p>17. theft, whether under the common law or a statutory provision;</p> <p>18. any offence under section 36 or 37 of the General Law Amendment Act, 1955 (Act 62 of 1955);</p> <p>19. fraud;</p> <p>20. forgery or uttering a forged document knowing it to have been forged;</p> <p>21. offences relating to the coinage;</p> <p>22. any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992);</p> <p>23. any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament and the unlawful possession of such firearms, explosives or armament;</p> <p>24. any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act 75 of 1969);</p> <p>25. dealing in, being in possession of or conveying endangered, scarce and protected game or plants or parts or remains thereof in contravention of a statute or provincial ordinance;</p> <p>26. any offence relating to exchange control;</p> <p>27. any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones;</p> <p>28. any offence contemplated in sections 1(1) and 1A(1) of the Intimidation Act, 1982 (Act 72 of 1982);</p> <p>29. defeating or obstructing the course of justice;</p> <p>30. perjury;</p> <p>31. subornation of perjury;</p> <p>32. any offence referred to in Chapter 3 or 4 of this Act;</p> <p>32A. any specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;</p> <p>33. any offence the punishment wherefor may be a period of imprisonment exceeding one year without the option of a fine;</p> <p><u>33A. trafficking in persons as provided for in section 4(1) or (2) of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009);</u></p>

Act No. and year	Title	Extent of repeal or amendment
		34. any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.”.
56 of 2001	Private Security Industry Regulation Act	<p>The substitution for the Schedule of the following Schedule:</p> <p style="text-align: center;">“Schedule TABLE OF OFFENCES</p> <p>High treason. Sedition. Sabotage. Terrorism. Public violence. Arson. Malicious damage to property. Intimidation. Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Murder. Robbery. Culpable homicide involving the use of a firearm or any form of intentional violence. Kidnapping. Assault with the intention to cause serious bodily harm. Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Trafficking in persons [for sexual purposes by a person] <u>as contemplated in section [71 (1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] 4(1) or (2) of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No....of 2009).</u> Child-stealing. Fraud. Forgery or uttering of a forged document knowing it to have been forged. Breaking or entering any premises, whether in terms of common or statutory law, with the intention to commit an offence. Theft, whether in terms of common law or statutory law. Receiving stolen property knowing it to have been stolen. Extortion. Defeating the ends of justice.</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>Perjury, whether in terms of common law or statutory law.</p> <p>An offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004.</p> <p>An offence involving the illicit dealing in dependence-producing substances.</p> <p>Any offence in terms of statutory law involving an element of dishonesty.</p> <p>Any offence in terms of the Domestic Violence Act, 1998 (Act 116 of 1998).</p> <p>Any offence in terms of the Explosives Act, 1956 (Act 26 of 1956).</p> <p>Any offence in terms of the Regulation of Foreign Military Assistance Act, 1998 (Act 15 of 1998).</p> <p>Any offence in terms of legislation pertaining to the control over the possession and use of firearms and ammunition.</p> <p>Any offence in terms of the Interception and Monitoring Prohibition Act, 1992 (Act 127 of 1992).</p> <p>Any offence in terms of the Intelligence Services Act, 1994 (Act 38 of 1994).</p> <p>Any offence in terms of the Protection of Information Act, 1982 (Act 84 of 1982).</p> <p>Crimen injuria.</p> <p>Any offence in terms of statutory law involving cruelty to an animal.</p> <p>Any offence in terms of any law relating to illicit dealing in or possession of precious medals or precious stones.</p> <p>Any offence in terms of statutory law punishable by a period of imprisonment exceeding two years without the option of a fine.</p> <p>Any conspiracy, incitement or attempt to commit any of the above offences.”.</p>
13 of 2002	Immigration Act	<p>1. The substitution for section 27 of the following section: “Residence on other grounds 27. The Director-General may issue a permanent residence permit to a foreigner of good and sound character who-</p> <p>(a) has received an offer for permanent employment, provided that-</p> <p>(i) such foreigner has proven to the satisfaction of the Director-General that the position exists and that the position and related job description was advertised in the prescribed form and no suitably qualified citizen or permanent resident was available to fill it;</p> <p>(ii) the application falls within the yearly limits of available permits prescribed for each sector of industry, trade and commerce, after consultation with the Departments of Trade and Industry, Labour and Education; and</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>(iii) the permit may be extended to such foreigner's spouse and children younger than 21 years of age;</p> <p>(b) taking into account any prescribed requirement, has demonstrated to the satisfaction of the Director-General that he or she possesses extraordinary skills or qualifications, and to those members of such foreigner's immediate family determined by the Director-General under the circumstances or as may be prescribed;</p> <p>(c) intends to establish or has established a business in the Republic and investing in it or in an established business the prescribed financial contribution to be part of the intended book value, and to the members of such foreigner's immediate family, provided that-</p> <p>(i) the Director-General may waive or reduce such capitalisation requirements for businesses prescribed to be in the national interest or when so requested by the Department of Trade and Industry; and</p> <p>(ii) the permit shall lapse if the holder fails to prove within two years of the issuance of the permit and three years thereafter, to the satisfaction of the Director-General, that the prescribed financial contribution to be part of the intended book value is still invested as contemplated in this paragraph;</p> <p>(d) is a refugee referred to in section 27 (c) of the Refugees Act, 1998 (Act 130 of 1998), subject to any prescribed requirement;</p> <p>(e) intends to retire in the Republic, provided that such foreigner proves to the satisfaction of the Director-General that he or she-</p> <p>(i) has the right to a pension or an irrevocable annuity or retirement account which will give such foreigner a prescribed minimum payment for the rest of his or her life; or</p> <p>(ii) has a minimum prescribed net worth;</p> <p>(f) has proven to the satisfaction of the Director-General that he or she has a prescribed minimum net worth and has paid a prescribed amount to the Director-General; [or]</p> <p>(g) is the relative of a citizen or permanent resident within the first step of kinship; <u>or</u></p> <p><u>(h) is a victim of trafficking referred to in section 18 of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009), subject to any prescribed requirements.”.</u></p> <p>2. The substitution for section 29 of the following section : “Prohibited persons 29. (1) The following foreigners are prohibited persons and do not qualify for a visa, admission into the Republic, a temporary or a permanent residence permit: (a) Those infected with or carrying infectious, communicable or other diseases or viruses as prescribed;</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>(b) anyone against whom a warrant is outstanding or a conviction has been secured in the Republic or a foreign country in respect of genocide, terrorism, murder, torture, drug-related charges, money laundering, <u>trafficking in persons</u> or kidnapping;</p> <p>(c) anyone previously deported and not rehabilitated by the Director-General in the prescribed manner;</p> <p>(d) a member of or adherent to an association or organisation advocating the practice of racial hatred or social violence;</p> <p>(e) anyone who is or has been a member of or adherent to an organisation or association utilising crime or terrorism to pursue its ends; and</p> <p>(f) anyone found in possession of a fraudulent residence permit, passport or identification document.</p> <p><u>(1A) A visa or temporary residence permit issued to a foreigner before he or she became a prohibited person in terms of subsection (1)(b) must be withdrawn.</u></p> <p><u>(1B) Subsection (1)(b) does not prohibit the relevant authorities from bringing a person to the Republic for prosecution if a warrant for his or her arrest is outstanding in the Republic.</u></p> <p>(2) The Director-General may, for good cause, declare a person referred to in subsection (1) not to be a prohibited person.”.</p> <p>3. The substitution for section 35 of the following section: “Duties with regard to conveyances</p> <p>35. (1) Save for extraordinary circumstances necessitating otherwise, no person in charge of a conveyance shall cause that conveyance to enter the Republic at any place other than a port of entry.</p> <p>(2) An immigration officer or other authorised person employed by the Director-General may-</p> <p>(a) board any conveyance which is entering or has entered into any port of entry and for good cause prohibit or regulate disembarkation from, or the offloading of, such conveyance in order to ascertain the status or citizenship of its passengers; and</p> <p>(b) request the person in control of a port of entry or any person acting under his or her authority to order the person in charge of a conveyance to park, moor or anchor that conveyance in such port of entry at such distance from the shore or landing place or in such position as he or she may direct.</p> <p>(3) The person in charge of a conveyance entering or prior to entering a port of entry shall upon demand deliver to an immigration officer-</p> <p>(a) a list stating-</p> <p>(i) the names of all passengers on board the conveyance, classified according to their respective destinations; and</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>(ii) such other details as may be prescribed;</p> <p>(b) a list of stowaways, if any have been found;</p> <p>(c) a list of the crew and all other persons, other than passengers and stowaways, employed, carried or present on the conveyance; and</p> <p>(d) a return, under the hand of the medical officer of that conveyance or, if there is no such medical officer, under the hand of the person in charge of a conveyance himself or herself, stating-</p> <p>(i) any cases of disease, whether infectious or otherwise, which have occurred or are suspected to have occurred upon the voyage;</p> <p>(ii) the names of the persons who have suffered or are suffering from such disease;</p> <p>(iii) details of any birth or death which occurred upon the voyage between such port of entry and a previous port; and</p> <p>(iv) any other prescribed matter or event:</p> <p>Provided that such immigration officer may-</p> <p>(aa) exempt from the requirements of this subsection the master of a ship destined for any other port in the Republic, subject to compliance with the duty to deliver such lists or return at such port and with any directive such immigration officer may issue to the master; and</p> <p>(bb) if satisfied that a name should be added to or deleted from any of such lists, authorise such addition or deletion; <u>and</u></p> <p><u>(e) a list of all the children on board of the conveyance indicating which children are unaccompanied.</u></p> <p><u>(3A) If an immigration officer has reason to believe that any passenger on board the conveyance is a victim of trafficking, he or she must forthwith report the matter, in terms of section 11(1) or 12(1) of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. ...of 2009), to a police official.</u></p> <p>(4) If a conveyance arrives at a port of entry with a passenger on board bound for a destination outside the Republic who is not on board when the conveyance leaves such port of entry and has not been admitted, the person in charge or the owner of that conveyance shall forfeit a sum fixed by the immigration officer within a prescribed limit.</p> <p>(5) An immigration officer may require the person in charge of a conveyance to muster the crew of such conveyance on the arrival of such conveyance in any port of entry and again before it leaves such port of entry.</p> <p>(6) The competent officer of customs at any port of entry may refuse to give to the person in charge of a conveyance clearance papers to leave that port of entry, unless he or she has</p>

Act No. and year	Title	Extent of repeal or amendment
		<p>complied with this Act and produced a certificate of an immigration officer to that effect.</p> <p>(7) A person in charge of a conveyance shall ensure that any foreigner conveyed to a port of entry-</p> <p>(a) for purposes of travelling to a foreign country, holds a valid passport and transit visa, if required; and</p> <p>(b) holds a valid passport and visa, if required.</p> <p>(8) A person in charge of a conveyance shall be responsible for the detention and removal of a person conveyed if such person is refused admission in the prescribed manner, as well as for any costs related to such detention and removal incurred by the Department.”.</p> <p>4. The amendment of section 49 by the substitution for subsection (15) of the following subsection:</p> <p>“(15) Any <u>natural or juristic person, or a partnership</u> who—</p> <p>(a) for the purpose of entering the Republic, or of remaining therein, in contravention of this Act, or departing from the Republic, or of assisting any other person so as to enter or so to remain or so to depart, utters, uses or attempts to use-</p> <p>(i) any permit, certificate, written authority or other document which has been issued by lawful authority, or which, though issued by lawful authority, he, [or] she <u>or it</u> is not entitled to use; or</p> <p>(ii) any fabricated or falsified permit, certificate, written authority or other document; or</p> <p>(b) without sufficient cause has in his, [or] her <u>or its</u> possession-</p> <p>(i) any stamp or other instrument which is used or capable of being used for purposes of fabricating or falsifying or unlawfully recording on any document any endorsement under this Act or required to be submitted in terms of this Act;</p> <p>(ii) any form officially printed for purposes of issuing any permit, certificate, written authority or other document under this Act or required to be submitted in terms of this Act, or any reproduction or imitation of any such form;</p> <p>(iii) any passport, travel document, identity document or other document used for the facilitation of movement across borders, which is blank or reflects particulars other than those of the person in whose possession it is found; [or]</p> <p>(iv) any fabricated or falsified passport, travel document, identity document or other document used for the facilitation of movement across borders, <u>or</u></p> <p><u>(c) intentionally and unlawfully destroys, confiscates, possesses, conceals or tampers with any actual or purported passport, travel document or identity document of another person in furtherance of a crime, shall be guilty of an offence</u></p>

Act No. and year	Title	Extent of repeal or amendment
		<p>and liable on conviction to a fine or to imprisonment for a period not exceeding four years.”.</p> <p>5. The substitution for Schedule 1 of the following Schedule:</p> <p style="text-align: center;">“Schedule 1 OFFENCES REFERRED TO IN SECTION 28 (a) AND (b) OF THIS ACT</p> <p>Treason against the Republic Murder Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively Trafficking in persons [for sexual purposes by a person] as contemplated in sections [71 (1), (2) or (6) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007] 4(1) or (2) and 9 of the <u>Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009)</u> Robbery Kidnapping Assault when a dangerous wound is inflicted Arson Any conspiracy, incitement or attempt to commit an offence referred to in this Schedule”.</p>
38 of 2005	Children’s Act	<p>1. The following provisions are repealed:</p> <p>(a) The definitions of “removal of body parts”, “trafficking”, and “UN Protocol to Prevent Trafficking in Persons” in section 1 of the Act.</p> <p>(b) Chapter 18.</p> <p>(c) Section 305(1)(r) up to and including (s) and (8).</p>
32 of 2007	Criminal Law (Sexual Offences and Related Matters) Amendment Act	<p>1. The substitution for the definition of “sexual offence” in section 1 of the following definition:</p> <p>“ ‘sexual offence’ means any offence in terms of Chapters 2, 3 and 4 and section[s] 55 [and 71(1), (2) and (6)] of this Act <u>and any offence referred to in Chapter 3 of the Prevention and Combating of Trafficking in Persons Act, 2009 (Act No. of 2009), which was committed against a child or a person who is mentally disabled, which offence contains an element of sexual</u></p>

Act No. and year	Title	Extent of repeal or amendment
		<u>exploitation;</u> ”. 2. The repeal of sections 70 and 71

SCHEDULE 2

(Section 1)

Text of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons

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

Preamble

The States Parties to this Protocol,

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

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

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

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

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

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

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

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

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

Article 4

Scope of application

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

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

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

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that

permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

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

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

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

IV. Final provisions

Article 14

Saving clause

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

shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

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

Article 16

Signature, ratification, acceptance, approval and accession

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

inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

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

Article 18

Amendment

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

Article 19

Denunciation

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

Article 20*Depositary and languages*

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

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