

PROHIBITION OF TRAFFICKING IN PERSONS ACT, 2014

(Act 9 of 2014)

ARRANGEMENT OF SECTIONS

SECTIONS

PART I - PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II - TRAFFICKING IN PERSONS

3. Trafficking in persons
4. Child trafficking
5. Aggravating circumstances
6. Benefiting from exploitation of trafficking in persons
7. Aiding, abetting or attempting in commission of offence of trafficking in persons
8. Promotion of trafficking in persons
9. Closure order

**PART III - SERVICES TO PRESUMED VICTIMS OF
TRAFFICKING AND VICTIM OF TRAFFICKING**

10. Reporting and referral
11. Decision on entry into Seychelles
12. Witness protection
13. Protection of privacy of presumed victims of trafficking
14. Vulnerable witness
15. Deportation of presumed victims of trafficking
16. Issuance of permit to a presumed victims of trafficking
17. Non-liability of victims of trafficking
18. Compensation
19. Return of trafficked citizens and permanent residents of Seychelles

PART IV - NATIONAL COORDINATING COMMITTEE ON TRAFFICKING IN PERSONS

20. National Coordinating Committee on Trafficking in Persons
21. Composition of Committee
22. Functions of Committee
23. Meetings
24. Secretariat

PART V - TRAFFICKING IN PERSONS FUND

25. Trafficking in Persons Fund
26. Accounts and audit
27. Plan of activities
28. Annual report

PART VI - MISCELLANEOUS

29. Direction by Minister on policy
30. Application of provisions of Penal Code
31. Protection of acts done in good faith
32. Regulations

30. The members, officers and other employees of the Committee shall be deemed to be employed in the public service and sections 91 to 96 of the Penal Code shall apply to them.

Application of provisions of Penal Code

31. Any civil suit or other legal proceedings shall not lie against the Committee, members, officers and other employees of the Committee in respect of an act done or intended to be done in good faith in pursuance of this Act.

Protection of acts done in good faith

32. The Minister may, in consultation with the Committee, make regulations for—

Regulations

- (a) any matter which is required or necessary to be prescribed to give effect to the provisions of this Act;
- (b) the procedure at meetings of the Committee;
- (c) the Code of Conduct for members of the Committee in order to prevent conflicts of interest and bringing the Committee into disrepute.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 15th April, 2014.



Luisa Waye-Hive
Deputy Clerk

(3) The account of the Committee shall be audited by the Auditor General in accordance with Article 158 of the Constitution.

(4) Where the accounts and statement of accounts of the Committee in respect of a financial year have been audited, the Committee shall furnish the Minister a copy of the statement together with a copy of any report by the Auditor General on the statement of accounts or on the accounts of the Committee.

Plan of
activities

27.(1) The Committee shall prepare a plan of activities and submit it at least 30 days before the beginning of each financial year to the Minister for his or her approval.

(2) The plan of activities under subsection (1) shall —

- (a) include a statement of the short and medium term objectives of the Committee; and
- (b) outline the strategies that the Committee intends to implement in order to achieve its objectives under this Act.

Annual
report

28. The Committee shall, as soon as possible after the expiration of each financial year and in any event not later than the 31st day of March in any year, submit to the Minister an annual report dealing generally with the administration and its activities during the preceding financial year and the Minister shall cause the report to be tabled in the National Assembly.

PART VI – MISCELLANEOUS

Direction by
Minister on
policy

29. The Minister may give in writing the directions of policy to the Committee in regard to the discharge of its functions under this Act and the Committee shall comply with such directions.



PROHIBITION OF TRAFFICKING IN PERSONS ACT, 2014

(Act 9 of 2014)

I assent



J. A. Michel
President

25th April, 2014

AN ACT to provide for the prohibition, prevention and combating of trafficking in persons and measures to protect and assist victims of trafficking in persons to update and modernise laws on human trafficking and to give effect to the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Prohibition of Trafficking in Persons Act, 2014; and shall come into operation on such a date as the Minister may, by Notice published in the *Gazette*, appoint.

Short title and
commencement

2. In this Act, unless the context otherwise requires —

“child” means a person under the age of 18;

“coercion” means use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including —

- (a) threats of harm or physical restraint of any person;
- (b) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
- (c) abuse or any threat linked to the legal status of a person; or
- (d) psychological pressure;

“Committee” means the National Coordinating Committee on Trafficking in Persons established in section 20;

“designated shelter” means a place designated as such by the Minister in terms of section 10 (6)(b);

“exploitation” includes —

- (a) sexual exploitation;
- (b) forced labour or services;
- (c) subjecting a person to practices similar to slavery;
- (d) involuntary servitude;

PART V - TRAFFICKING IN PERSONS FUND

25.(1) There is hereby established a Trafficking in Persons Fund, which shall be managed by the Committee, in accordance with the Public Finance Management Act, 2012.

Trafficking in
Persons Fund

(2) The Fund shall consist of —

- (a) the moneys allocated from the Consolidated Fund;
- (b) donations received for the purposes of the Fund; and
- (c) any other source as may be determined by the Minister.

(3) The Fund may be applied for —

- (a) the payment of expenses related to provision of services to presumed victims of trafficking and victims of trafficking;
- (b) the payment of compensation in accordance with section 18; and
- (c) any other purpose as may be determined by the Minister necessary for the implementation of this Act.

(4) The Auditor General shall ensure the preparation of proper books of account in relation to the Fund.

26.(1) The financial year of the Committee shall be the calendar year.

Accounts
and audits

(2) The Committee shall maintain proper accounts and other relevant records and prepare a statement of accounts in the form and manner approved by the Auditor General.

(5) In any event of an emergency —

- (a) the Minister shall have powers to call an extraordinary meeting of the Committee;
- (b) the Chairperson, in consultation with the Minister, shall have powers to call an extraordinary meeting of the Committee in such an event.

(6) Subject to the provisions of this Act, the Committee may develop rules relating to the conduct of its affairs.

Secretariat

24.(1) The Minister shall provide such officers and other employees as may be necessary for the efficient performance of the functions of the Committee under this Act, which shall function as the Secretariat of the Committee.

(2) The Secretariat shall be responsible for —

- (a) organising meetings of the Committee and compiling minutes;
- (b) assisting the Committee with implementation of its activities;
- (c) serving as an information centre which ensures documentation, data collection and trend analysis of the trafficking in persons in Seychelles; and
- (d) liaising with non-Governmental organisations from the local, regional and international organisations.

(3) The Chairperson of the Committee shall appoint a Secretary for the Committee amongst officers provided under subsection (1).

(e) fraudulent use of a person for removal of their organs or body parts; or

(f) forced marriage;

“Fund” means the Trafficking in Persons Fund established in section 25;

“Minister” means the Minister responsible for Home Affairs;

“organised criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious offences, including trafficking in persons, in order to obtain directly or indirectly a financial or other material benefit;

“presumed victim of trafficking” means a person in respect of whom there are reasons to believe that he or she is a victim of trafficking in persons, whether or not the perpetrator has been identified, apprehended, prosecuted or convicted;

“protection” means the physical protection, identity and privacy of the victim or a witness of trafficking in persons, including measures to protect him or her from intimidation and retaliation, by keeping him or her in a safe and secure place;

“Protocol” means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (adopted by the United Nations General Assembly on 26th December, 2003) supplementing the United Nations Convention against Transnational Organised Crime (adopted by the United Nations General Assembly on 15th November, 2000);

“sexual exploitation” means —

- (a) to encourage, induce, or force a person to be used for the sexual gratification of another person;
- (b) to use a person in or deliberately exposing a person to sexual acts or pornography in view of committing an act of trafficking in person; or
- (c) to procure or allow a person to be procured for commercial sexual exploitation or in any way participate or assist in the commercial sexual exploitation of a person,

for the purposes of obtaining financial or other benefits;

“trafficking in persons” has the meaning as is in section 3(1);

“victim of trafficking” means a person who has been subjected to trafficking in persons;

“vulnerable witness” means —

- (a) a child;
- (b) any presumed victim of trafficking; or
- (c) a person who would suffer undue stress while giving evidence because of a mental or physical disability or because of the possibility of being intimidated by the accused.

PART II – TRAFFICKING IN PERSONS

Trafficking in persons

3.(1) A person who recruits, transports, transfers, harbours or receives another person by any of the following means —

- (d) legal advice and assistance;
- (e) assistance of an interpreter or translator;
- (f) repatriation;
- (g) social reintegration.

(4) The presumed victim of trafficking or victim of trafficking shall be informed of the services available, in a language they understand.

(5) The Minister may, in consultation with the Committee, and with due regard to safety and security of the presumed victims of trafficking and victims of trafficking, by Notice published in the *Gazette* —

- (a) designate an adequate place as a designated shelter for the care and protection of presumed victims of trafficking and victims of trafficking; and
- (b) make regulations on the standards of care and protection of presumed victims of trafficking and victims of trafficking and on the administration of designated shelters.

23.(1) The Committee shall meet not less than four times a year in the first year of the commencement of this Act, and not less than twice a year thereafter.

Meetings

(2) The quorum for a meeting of the Committee shall be five members.

(3) The Chairperson, or in his or her absence, the Vice-Chairperson shall preside over meetings of the Committee.

(4) In the absence of the Chairperson and the Vice-Chairperson, members of the Committee may elect amongst themselves any person to preside over a meeting.

in the protection of persons against trafficking;

- (b) monitor and prepare an annual report on progress in the national response to trafficking in persons to be submitted to the Minister;
- (c) ensure coordination amongst the government agencies other organisations engaged in the implementation of this Act by —
 - (i) forming a task force on an *ad hoc* basis; and
 - (ii) ensuring the implementation of the national action plan on trafficking in persons and its subsequent reporting;
- (d) make recommendation to the Minister on any matter concerning the implementation of this Act; and
- (e) perform any other function necessary to implement the provision of this Act or the Protocol.

(2) The Committee shall develop and propose to the Minister rules relating to vacancy, meetings and procedures.

(3) The Committee, shall develop a strategy for the provision of services to the presumed victims of trafficking and victims of trafficking, including —

- (a) medical services;
- (b) adequate shelter and basic needs;
- (c) counselling and other psychological support;

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception; including any misrepresentation by words or conduct as to financial incentive or promise of reward or gain and other conditions of work;
- (f) abuse of power or of another person's position of vulnerability; or
- (g) giving or receiving of payments or benefits, knowingly or intentionally, to achieve the consent of a person having control over another person,

for the purposes of exploitation, commits the offence of trafficking in persons and shall on conviction be liable to imprisonment for a term not exceeding 14 years, or such imprisonment and a fine not exceeding SCR500,000.

(2) Where it is proved to the satisfaction of the Court that any of the means referred to in subsection (1) (a) to (g) has been used in committing the offence of trafficking, it shall not be a defence that the trafficked person consented to such act.

4.(1) A person who recruits, harbours, transfers, receives a child, knowingly or recklessly disregarding that the person is a child, for purposes of exploitation, whether or not by use of any means referred to in section 3(1)(a) to (g), commits the offence of child trafficking and shall on conviction be liable to imprisonment for a term not exceeding 25 years, or such imprisonment and a fine not exceeding SCR800,000.

Child
trafficking

(2) A person who adopts, fosters or obtains the guardianship of a child with the intention of exploitation,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 25 years, or such imprisonment and a fine not exceeding SCR800,000.

(3) Where the victim of trafficking in person is a child, the person convicted for committing an offence under this section shall not work in any capacity with children.

Aggravating
circumstances

5.(1) An offence of trafficking in person is deemed to be aggravated if committed in any of the following circumstances —

- (a) if the victim of trafficking suffers serious injury or dies;
- (b) the offence is committed against more than one victims;
- (c) the victim of trafficking is of an unsound mind;
- (d) the accused person is in a position of responsibility or trust with reference to the victim of trafficking;
- (e) the accused person uses drugs, medications or weapons in the commission of the offence;
- (f) the accused person uses violence or threat of violence against relative or any member of family of the victim of trafficking;
- (g) the offence is committed by an organised criminal group;
- (h) the offence is committed by a public servant or any person acting in an official capacity in the exercise of duties; or

- (g) a State Counsel from the Attorney General's Chambers;
- (h) a senior official from the Financial Intelligence and Assets Recovery Unit established under the Anti Money Laundering Act;
- (i) two representatives of the Liaison Unit for Non-Governmental Organisations in Seychelles having experience and knowledge in issues relating to trafficking in persons or human rights.

(2) The Committee may invite to its meetings representatives of national and international institutions and other organisations to provide technical advice and assistance as the committee may consider necessary.

(3) The term of office of a member of the Committee shall be three years.

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

- (a) formulate policy, strategies, guidelines, programmes and other measures relating to —
 - (i) identification and referral of victims of trafficking, and provision of services and protection of presumed victims of trafficking and victims of trafficking;
 - (ii) standard operating procedures for the referral of presumed victims of trafficking; and
 - (iii) capacity building of government agencies other organisations engaged

Functions
of
Committee

- (b) provision of the relevant travel documents and authorisations necessary to travel and re-enter Seychelles; and
- (c) acceptance and return without unreasonable delay and with due regard to safety.

PART IV - NATIONAL COORDINATING COMMITTEE ON TRAFFICKING IN PERSONS

National
Coordinating
Committee on
Trafficking in
Persons

20. There is hereby established, a committee to be known as the National Coordinating Committee on Trafficking in Persons.

Composition
of Committee

21.(1) The Committee shall consist of the following members, to be appointed by the President, by notice published in the *Gazette*, on such terms and conditions as the President may determine —

- (a) Principal Secretary in the Ministry of Social Affairs, who shall be the Chairperson;
- (b) Principal Secretary in the Department of Immigration and Civil Status, who shall be the Vice-Chairperson;
- (c) Principal Secretary in the Ministry of Labour, and Human Resource Development or his or her representative;
- (d) Director General of Consular Affairs at the Ministry of Foreign Affairs or his or her representative;
- (e) Commissioner of Police or an officer at the rank not below the Superintendent;
- (f) Deputy Commissioner of Customs or his or her representatives;

- (i) where the victim of trafficking —
 - (i) develops a mental illnesses as a result of sexual exploitation or use of force;
 - (ii) becomes pregnant or is forced to terminate the pregnancy as a result of sexual exploitation;
 - (iii) suffers mutilation, disfigurement or permanent bodily injury as a result of sexual exploitation or use of force; or
 - (iv) is exposed to life-threatening diseases, including human immunodeficiency virus or Acquired Immune Deficiency Syndrome or other sexually transmitted disease, as a result of sexual exploitation or use of force.

(2) A person who commits the offence of trafficking in persons under aggravating circumstances shall on conviction be liable to imprisonment for a term not exceeding 25 years, or such imprisonment and a fine not exceeding SCR800,000.

6. A person who, intentionally, benefits from the exploitation of trafficking in persons or causes or enables another person to benefit from trafficking in persons, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 25 years, or such imprisonment and a fine not exceeding SCR800,000.

Benefiting from
exploitation of
trafficking in
persons

7. A person who aids or abets or attempts or counsels a person in the commission of the offence of trafficking in persons commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 15 years, or such imprisonment and a fine not exceeding SCR500,000.

Aiding,
abetting, or
attempting in
commission of
offence of
trafficking in
persons

8. A person who for the purpose of the promotion of trafficking in persons, intentionally —

Promotion of
trafficking in
persons

- (a) leases or subleases, uses or allows the use of any house, building or establishment;
- (b) produces, prints, broadcasts or distributes by any means, including the use of information technology or the internet, any communication material which promotes trafficking in persons;
- (c) assists in misrepresentation or fraud for the purposes of procuring or facilitating the acquisition of necessary exit document from the Department of Immigration for the purposes of trafficking in persons;
- (d) facilitates exit from or entry into Seychelles of a victim of trafficking who is in possession of a valid travel document, tampered with or fraudulent travel documents for the purpose of trafficking in persons;
- (e) confiscates, withholds or destroys the travelling documents or personal documents which belong to a victim of trafficking for the purposes of furthering trafficking in persons; or
- (f) prevents a victim of trafficking from entering or leaving Seychelles or seeking assistance from appropriate law enforcement authorities,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 5 years, or such imprisonment and a fine not exceeding SCR500,000.

Closure
order

9. The Court may, upon conviction of a person under this Act, order the closure of the property or part thereof or forfeiture of any assets, used in the commission of the offence.

- (a) issue an appropriate permit for a period until the completion of any relevant legal proceedings in accordance with the Immigration Decree; or
- (b) take decision to return a presumed victim of trafficking who is not a citizen of Seychelles to his or her country of origin,

subject to humanitarian and compassionate considerations, taking into account the serious likelihood of harm, being killed or being re-trafficked.

(2) When deciding whether to return a presumed victim of trafficking who is a child, the best interests of the child shall be paramount and first consideration being given to the need to safeguard and promote the welfare of the child.

17. A victim of trafficking shall not be detained, charged or prosecuted for the illegal entry into Seychelles.

Non-liability
of victims of
trafficking

18. The Court may, on conviction of the accused, order the payment of compensation for the victim of trafficking, to be paid—

Compensation

- (a) out of the fine imposed on the accused;
- (b) in addition to any penalty; or
- (c) from the Trafficking in Persons Fund,

for the harm suffered as a result of the commission of the offence of trafficking in persons.

19. The Minister responsible for Foreign Affairs, in consultation with the Minister for Home Affairs shall develop a mechanism for victims of trafficking, who is a citizen and permanent resident of Seychelles, for —

Return of
trafficked
citizens and
permanent
residents of
Seychelles

- (a) verification of nationality at consular level;

- (a) a vulnerable witness may give evidence in any place inside or outside the Court —
 - (i) which is informally arranged to set the witness at ease; or
 - (ii) to facilitate the conduct of proceedings by closed circuit television or any similar media;
- (b) the furniture in a Court room may be re-arranged to set the witness at ease; or
- (c) a support person or intermediary may sit or stand near a vulnerable witness during the giving of evidence to provide physical comfort and alert the Court of any undue distress as necessary, provided that the support person or intermediary shall not assist the witness with answering any question or instruct the witness in giving evidence.

15.(1) Notwithstanding any other written law, the Minister may determine whether to allow a presumed victim of trafficking who is not a citizen of Seychelles, to remain in Seychelles for a period of 30 days for purposes of recovery, without prejudice to the immigration status of the trafficked person.

(2) Any proceedings initiated in respect of deportation of the presumed victim of trafficking shall be stayed, until a decision is taken under section 19 and the presumed victim of trafficking shall be provided with protection and services under this Act.

16.(1) If a person who is not a citizen of Seychelles is identified as a presumed victim of trafficking, the Minister, on the recommendation of the Committee, may —

Deportation
of presumed
victims of
trafficking

Issuance of
permit to a
presumed
victims of
trafficking

PART III - SERVICES TO PRESUMED VICTIM OF TRAFFICKING AND VICTIM OF TRAFFICKING

10.(1) An immigration officer, customs officer, labour inspector, coast guard, official of the National Drug Enforcement Agency, social worker or medical practitioner who on reasonable grounds believes that a person is being trafficked shall report such matter to a police officer.

Reporting
and referral

(2) Any person who on reasonable grounds believes that another person is being trafficked shall report to a police officer.

(3) The identity of the person who makes a report under this section shall be kept confidential.

(4) The police officer shall accept anonymous report.

(5) The police officer to whom a report is made under this section shall without delay refer the matter to the investigating officer for an initial assessment and investigation.

(6) Where the safety of the presumed victim of trafficking is at risk, the police officer shall, immediately, take measures to ensure the safety of the presumed victim of trafficking, and —

- (a) where the presumed victim of trafficking is a child, treat such child as a child in need of compulsory measures of care in accordance with section 79 of the Children's Act and remove the child to a safe and secure place in accordance with section 80 of the Children's Act; or
- (b) where the presumed victim of trafficking or a victim of trafficking is an adult, with the consent of the trafficked person, refer such

person to a safe and secure designated shelter.

Decision on
entry into
Seychelles

11. The Minister, in consultation with the Commissioner of Police, shall take decision on whether to allow the entry of any suspect or presumed victim of trafficking into Seychelles.

Witness
protection

12.(1) Where it appears to the Attorney General that —

- (a) the personal safety of a witness is in danger;
- (b) a witness may be prevented from giving evidence;
- (c) a witness may be intimidated or subject to retaliation; or
- (d) it would be in the interests of the administration of justice that a witness be placed under protection,

the Attorney General may apply to the Court for an order to place the witness under protection.

(2) The Court may, on application under subsection (1), order that the witness be placed under protection, until the completion of the proceeding in respect of the offence of trafficking in persons, unless —

- (a) the Attorney General obtains an order discontinuing the protection at an earlier date; or
- (b) the proceedings have not commenced within six months of such order.

(3) Where it appears to the Attorney General that any delay would defeat the purpose of obtaining the order for the

protection of witness, the Attorney General shall direct that the witness be immediately placed under protection, and within 72 hours of such direction, apply to the Court for an appropriate order.

13.(1) Where it appears to a Court that there is a likelihood of harm to a presumed victim of trafficking or to any other witness in the trial, the Court may order that —

Protection of
privacy of a
presumed
victim of
trafficking

- (a) a presumed victim of trafficking or a witness testifies in closed Court and that no other person shall be present when the evidence is given, unless the presence of the person is necessary for the proceedings or is authorised by the Court;
- (b) the identity of the presumed victim of trafficking or the witness shall not be revealed for a period specified by the Court; and
- (c) no information on proceedings held in closed Court shall be published or only such information whose publication is considered by the Court to be just and equitable may be published.

(2) Any person who discloses, without lawful authority, to another person any information acquired in the course of his or her official duty that enables or leads to the identification of the presumed victim of trafficking or witness of the offence trafficking in persons commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding 15 years, or such imprisonment and a fine not exceeding SCR500,000.

14.(1) A Court may, in relation to the giving of evidence by a vulnerable witness, on its own motion, or on application by the Attorney General, the accused or a vulnerable witness, order that —

Vulnerable
witness