

Model Law to Criminalise People Trafficking

1 Purpose of law

This is a law to criminalise people trafficking including in accordance with the obligations under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention Against Transnational Organised Crime*.

2 Definitions

In this law:

child means a person who is under 18.

commercial carrier includes a company, or the owner, operator or master of any means of transport, that engages in the transportation of goods or people for commercial gain.

company means an entity that is not an individual, but which has a legal personality.

exploitation includes all forms of sexual exploitation (including sexual servitude and exploitation of another person's prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

fraudulent travel or identity document means a travel or identity document that:

- (a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country; or
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being improperly used by a person other than the rightful holder.

people trafficking means the recruitment, transportation, transfer, harbouring or receipt of a person for the purposes of exploitation, as set out in sections 3 or 4.

receiving country means any country into which a trafficked person is brought as part of an act of people trafficking.

trafficked person means any person who is the victim or object of an act of people trafficking.

3 Offence of people trafficking

A person commits an offence if the person recruits, transports, transfers, harbours or receives any person or persons for the purpose of exploitation by one or more of the following means:

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) abuse of power or of a position of vulnerability; or
- (g) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

Maximum penalty: *[Set out maximum penalty.]*

4 Offence of trafficking in children

A person commits an offence if the person recruits, transports, transfers, harbours or receives a child by any means for the purposes of exploitation.

Maximum penalty: *[Set out maximum penalty.]*

5 Offence of exploiting a trafficked person

A person commits an offence if the person

- (a) engages or participates in; or
- (b) profits from

the exploitation of a trafficked person.

Maximum penalty: *[Set out maximum penalty]*

6 Consent of trafficked person irrelevant

For sections 3, 4 and 5, it is not a defence that the trafficked person consented to the people trafficking or to the exploitation.

7 Offence relating to fraudulent travel or identity documents

A person commits an offence if the person:

- (a) makes;
- (b) obtains;
- (c) gives or sells; or
- (d) possesses

a fraudulent travel or identity document for the purpose of facilitating people trafficking.

Maximum penalty: *[Set out maximum penalty]*

8 Scope of application

The offences in this law apply, regardless of whether the conduct constituting the offence took place inside or outside [name of country], in the following circumstances:

- (a) if [name of country] is the receiving country or the exploitation occurs in [receiving country]; or
- (b) if the receiving country is a foreign country but the people trafficking starts in [name of country] or transits [name of country]; or
- (c) if the person who engages in the people trafficking is a citizen or permanent resident of [name of country].

9 Participation in a people trafficking offence

- (1) A person who aids, abets, counsels or procures the commission of an offence under this law by another person is taken to have committed that offence and may be punished accordingly.
- (2) For the person to be guilty under subsection (1), the offence must have been committed by the other person.
- (3) A person who urges the commission of an offence under this law is guilty of the offence of incitement.

Maximum penalty: *[Set out penalty - less than the principal people trafficking offence.]*

- (4) A person who conspires with another person to commit an offence under this law is guilty of the offence of conspiracy to commit that

offence and may be punished as if the offence to which the conspiracy relates had been committed.

10 Attempting to commit a people trafficking offence

Any person who attempts to commit an offence under this law is guilty of attempting to commit that offence and may be punished as if the offence attempted had been committed, provided that the person's conduct is more than merely preparatory to the commission of the offence.

[10A Immunity from criminal prosecution

A trafficked person shall not be liable to criminal prosecution in respect of:

- (a) the act of people trafficking;
- (b) that person's illegal entry into the receiving country;
- (c) that person's period of unlawful residence in the receiving country; or
- (d) that person's procurement or possession of any fraudulent travel or identity documents which he or she obtained, or with which he or she was supplied, for the purpose of entering the receiving country.]

11 Money Laundering, Extradition and Mutual Assistance

The offences set out in this law are:

- (a) predicate offences for the purposes of [insert name of country's money laundering legislation];
- (b) extraditable offences for the purposes of [insert name of country's extradition legislation]; and
- (c) offences in respect of which mutual assistance may be granted under [insert name of country's mutual assistance legislation]

[If the country has ratified or intends to ratify the Trafficking in Persons Protocol, then –

If there is no existing extradition or mutual legal assistance relationship then [name of country] accepts that the *United Nations Convention Against Transnational Organised Crime* (in particular Articles 16 and 18), and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* which supplements that Convention (in particular Article 1), forms the legal basis for extradition and mutual legal assistance between [name of country] and other States Parties regarding offences set out in this law.]

12 Obligation on commercial carriers

- (1) A commercial carrier commits an offence if the carrier brings a person into a receiving country and, upon entry into the receiving country, the person does not have the travel documents required for lawful entry into that country.

Maximum penalty: *[Set out penalty – fine]*

- (2) A commercial carrier is not guilty of an offence under subsection (1) if:
 - (a) the carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country; or
 - (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
 - (c) entry into the receiving country occurred only because of illness of or injury to a person on board, stress of weather or other circumstances beyond the control of the commercial carrier.
- (3) A commercial carrier that is guilty of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

13 Liability of a company

- (1) This law applies to a company in the same way as it applies to an individual. A company may be found guilty of any of the offences set out in this law, in addition to the liability of any person for the same offence.
- (2) For the purposes of offences under this law, the conduct or state of mind of an employee, agent or officer of a company will be attributed to the company if that person is acting within the scope of his or her employment or actual or apparent authority or with the consent (express or implied) of a director, servant or agent of the company.
- (3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose and the person's reasons for that intention, opinion, belief or purpose.