

THE EAST AFRICAN COMMUNITY COUNTER-TRAFFICKING IN PERSONS BILL, 2016

1. The object of this Bill is to provide for an East African Community legal framework, develop common measures, strategies and programmes and to provide for other related matters for –

- i) Prevention of trafficking in persons;
- ii) Prosecution of perpetrators of trafficking in persons;
- iii) Provision of protection mechanisms and services for victims of trafficking in persons;
- iv) Development of partnerships for cooperation to counter trafficking in persons.

20 APR 2015

Paper laid by the  
Leader of the  
Majority Party on  
20/4/2016 (pm)

2. The East African Community Counter – Trafficking in Persons Bill, 2016 is premised on:

i) Article 6 of the Treaty for The Establishment of the East African Community (Treaty) which provides for Fundamental principles of the Community - in particular Art. 6(d) which states that:

“good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights”.

ii) The Protocol to the African Charter on Human and Peoples’ rights on the Rights of Women in Africa, to which all East African Community Partner States are signatory to, states under Article 4(2)(g) that:

“State Parties shall take appropriate and effective measures to ... prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women at risk.”

iii) Article 7(2) of the Treaty obliges Partner States to abide by universally accepted standards of human rights, in particular, the Universal Declaration of Human Rights, 1948 provides under its Article 4 that:

“No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms”.

iv) Article 76 on establishment of a Common Market which provides for free movement of labour, goods, services, capital, and right of establishment and in particular the Article 7(3) Protocol on the establishment of the East African Community Common Market which guarantees that:

“The Partner States shall, in accordance with their national laws, guarantee the protection of the citizens of the other Partner States while in their territories.”

*Further to this, The East African Community Customs Union Management Act as amended explicitly prohibits transportation and sale of human parts.*

iv) Article 124 of the Treaty on Regional Peace and Security and in particular on The East African Community Protocol on Peace and Security, to which all EAC Partner States are signatory to, which provides under Article 2 on Scope of Operation that:

“... the Partner States shall where necessary develop common measures, strategies and programmes and enter into agreements for the effective implementation of this Protocol ...the Partner States agree to, inter alia cooperate in the following areas: combating transnational and cross border crimes; including ...human trafficking...”

The East African Community Protocol on Peace and Security further provides under Article 12 (1)(d) on Combating Transnational and Cross Boarder Crimes that:

“The Partner States shall undertake joint operations in controlling and preventing transnational and cross – border crimes including: human trafficking”.

v) Operationalization of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime to which all East African Community Partner States are signatory to and are thus obliged to adopt the principles of this Protocol by inter alia, enacting and implementing laws to prevent trafficking, punish traffickers, and protect victims of trafficking.

**HON. DORA C. KANABAHITA BYAMUKAMA (MP)**

**EAST AFRICAN LEGISLATIVE ASSEMBLY**

**MARCH, 2016**

**THE EAST AFRICAN COUNTER – TRAFFICKING IN PERSONS BILL, 2016**

**ARRANGEMENT OF CLAUSES**

**CLAUSE**

PART I - PRELIMINARY

 PART II – PREVENTION OF TRAFFICKING IN PERSONS

PART III – PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

PART IV – PROSECUTION AND OTHER MEASURES

PART V – INSTITUTIONAL ARRANGEMENTS

PART VI – MISCELLANEOUS PROVISIONS



**THE EAST AFRICAN COUNTER – TRAFFICKING IN PERSONS BILL, 2016**

**A Bill for an Act**

**ENTITLED**

**THE EAST AFRICAN COUNTER- TRAFFICKING IN PERSONS ACT, 2016**

An Act to provide a legal framework for the prevention of Trafficking in Persons, prosecution of Traffickers  
protection of victims of Trafficking in Persons and other related matters.

Enacted by the East African Community and assented to by the Heads of State.

**PART I – PRELIMINARY PROVISIONS**

1. This Act may be cited as The East African Community Counter Trafficking in Persons Act, 2016 *and shall come into force on such date as the Council may by notice published in the Gazette appoint.*

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

“Assembly” means the East African Legislative Assembly established by Article 9 of this Treaty;

“Child” shall mean any person under eighteen years of age;

“common standard travel document” means any passport or any other valid travel document establishing the identity of the holder, issued by or on behalf of the Partner State of which he or she is a citizen and shall include inter-state passes;

“Community” means the East African Community established by Article 2 of the Treaty;

“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;

“Partner States” means the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty;

“Protocol” under this Act, refers to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children;

“Trafficking in Persons” shall mean 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, or 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;

“consent” consent of a victim of trafficking in persons to the intended exploitation as defined in this Act shall be irrelevant where any of the means set forth in the definition of “trafficking in persons as provided for under this Act” have been used;

“Trafficking in Children” 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 the definition for trafficking in persons as provided for under this Act.

### 3. Objects

The object of this Act is to provide a legal framework at the East African Community level to:

- (a) Prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) Protect and assist the victims of trafficking in persons in manner that respects their human rights;

- (c) Promote cooperation among Partner States in order to prosecute perpetrators and comprehensively counter trafficking in persons.

#### 4. Trafficking in Persons and Related Offences

- (1) A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of –
  - (a) threat or use of force or other forms of coercion;
  - (b) abduction;
  - (c) fraud;
  - (d) deception;
  - (e) abuse of power or of position of vulnerability;
  - (f) giving payments or benefits to obtain the consent of the victim of trafficking in persons; or giving or receiving payment or benefits to obtain the consent of a person having control of another person.
- (2) The consent of a victim of trafficking in persons to the intended exploitation shall not be relevant where any of the means set out in sub-section (1) have been used.
- (3) 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 out in sub-section (1) of this Act.
- (4) An act of trafficking in persons may be committed internally within the borders of a Partner State or internationally across the borders of a Partner State.
- (5) A person who traffics another person, for the purpose of exploitation, commits an offence is liable to penalties as prescribed in the laws of a Partner State.
- (6) A person who finances, controls, aids or abets the commission of an offence under subsection (1) shall be liable a penalty as prescribed in the laws of a Partner State.

(2) Each Partner State shall adopt such legislative and other measures as may be necessary to establish the criminal offence of trafficking in person, when committed intentionally.

(3) Each Partner State shall adopt comprehensive laws and measures as may be necessary to domesticate and operationalize The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational organized Crime.

## **PART II – PREVENTION, COOPERATION AND OTHER MEASURES**

### **Prevention of trafficking in persons**

5. Partner States shall prevent, cooperate and adopt measures to prevent trafficking in persons in accordance with Article 9, 10, 11, 12 and 13 of the Protocol and in particular-
- (i) Establish comprehensive policies, programmes, laws and other measures to prevent and combat trafficking in persons; and o protect victims of trafficking in persons, especially women and children, from re-victimization.
  - (ii) Undertake measures such as research, information and mass media campaigns and social economic initiatives to prevent and combat trafficking in persons.
  - (iii) Policies, programmes and other measure established in accordance with this section shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
  - (iv) Alleviate factors that make persons, especially women and children vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
  - (v) Discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

- (vi) Take or strengthen measures, including bilateral or multilateral cooperation, to alleviate the factors that make persons, especially woman and children vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
- (vii) 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.

## 6. Information exchange and training

1. Law enforcement, immigration and other relevant authorities of Partner States shall, as appropriate, cooperate with each other by exchanging information in accordance with the East African Community and national legal framework, 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 documents that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; or
- (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. Partner States 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:

- (a) methods used in preventing trafficking in persons;
- (b) prosecuting the traffickers;
- (c) protecting the rights of victims, including protecting the victims from the traffickers;



- (d) the need to consider human rights and child and gender sensitive issues; and
- (e) encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. Partner States that receive information shall comply with request by a Partner State that transmitted the information that places restrictions on its use.

## 7. Border measures

1. Without prejudice to free movement of people as provided for by the Treaty for Establishment of The East African Community under the Common Market, Partner States shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each Partner State 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 the *offence of trafficking in persons*.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transport 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 Partner State shall take the necessary measures to provide for sanctions in cases of *Trafficking in Persons*.

5. Each Partner State shall consider taking measures that permit, in accordance with its national law, the denial of entry or revocation of visas of persons implicated in the commission of offences of *Trafficking in Persons*.

6. Partner States shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

## 8. 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 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 Partner State and to prevent their unlawful creation, issuance and use.

#### **9. Legitimacy and validity of documents**

At the request of another Partner State, a Partner State 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.

### **PART III - PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS**

#### **10. Assistance to and protection of victims of trafficking in persons**

1. In appropriate cases, each Partner State 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 Partner State shall ensure that its national legal or administrative system contains measures that provide 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 Partner State shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in co-operation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counseling 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 Partner State shall take into account, in applying 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 Partner State shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

Each Partner State shall ensure that its legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damages suffered.

#### **11. Status of victims of trafficking in persons in receiving States**

1. In addition to providing assistance to and protection of victims of trafficking in persons as provided for under this Act, each Partner State 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 permitting victims of trafficking in persons to remain in its territory, each Partner State shall give appropriate consideration to humanitarian and compassionate factors.

#### **12. Repatriation of victims of trafficking in persons**

1. The Partner State 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 Partner State 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 Partner State returns a victim of trafficking in persons to a Partner State 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 Partner State, 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 the a receiving Partner State, a requested Partner State 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 residence in its territory at the time of entry into the territory of the receiving Partner State.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the Partner State 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 Partner State shall agree to issue, at the request of the receiving Partner State, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This Section shall be without prejudice to any right afforded to victims of trafficking in persons by any national law of the receiving Partner State.

6. This Section shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the retrun of victims of trafficking in persons.

#### **PART IV - PROSECUTION OF THE OFFENCE OF TRAFFICKING IN PERSONS**

##### **13. Jurisdiction**

Prosecution of the offence of Trafficking in Persons and other related offences shall be executed in accordance with the laws of the respective Partner State, in the interim, as Partner States harmonize on penalties for the crime of TIP with a period of three years.

##### **14. Establishment of the East African Counter Trafficking in Persons Unit**

(1) There is established a Unit to be known as the East African Counter Trafficking in Persons Unit.

(2) The East African Counter Trafficking in Persons Unit shall consist of –

- (a) Representatives of lead offices and Inter-agency Task Forces with government and non-government actors from Partner States;
  - (b) Technical experts in Trafficking in Persons appointed by the Council;
  - (c) such other members as may be co-opted by the East African Counter Trafficking Unit.
- (3) The Secretariat of The East African Counter Trafficking Unit shall reside at the East African Community Secretariat.
- (4) The East African Counter Trafficking in Persons Unit may regulate its own procedure.

### **15. Functions of the East African Counter Trafficking in Persons Unit**

- (1) The functions of the East African Counter Trafficking in Persons Unit shall be to –
- (a) promote the harmonization and coordination of policies, plans for counter trafficking in persons and advance the purposes of this Act;
  - (b) monitor and evaluate the implementation of policies, plans and other measures for counter trafficking in persons;
  - (c) plan, coordinate specialized training programmes and promote general education and awareness in relation to trafficking in persons;
  - (d) compile, document data and information on cases of trafficking in persons for purposes of policy formulation and in order to develop mechanisms to ensure the timely, coordinated, and effective response; and
  - (d) perform such other functions as the Council may require.

### **16. Reporting requirements**

- (1) The East African Counter Trafficking in Persons Unit shall prepare an annual report on the performance of its functions during that year.

- (2) The annual report prepared under subsection (1) shall be submitted to the Council, which shall cause it to be laid before the Assembly within six months after receiving the report.

### **17. Compliance with the Act**

- (1) This Act shall take precedence over other laws in the Partner States to which its provisions relate.
- (2) Each Partner State shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures to ensure compliance with this Act.
- (3) East Partner State shall notify all other Partner States through the East African Community Unit of the measures it takes pursuant to subsection (1),
- Each Partner State shall draw the attention of all other Partner States to any activity which in its opinion affects the implementation of the purposes and provisions of this Act.

### **18. Regulations**

The Council may make regulations in order to achieve or promote the objects of this Act.

Harmonization of laws? Advisory Committee

Exchange of info. See protocol on peace and art. 124

Clause 143???

Bi-annual reports presented to the Assembly by Council / Secretariat on prevention, suppression and punishment of TIP in EAC and adherence to obligation of the Palermo Protocol.

## **PART VI - MISCELLANEOUS PROVISIONS**

Regulations

Reports