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

MEMORANDUM

The object of this Bill is to provide for a legal framework for the prevention of trafficking in persons, prosecution of perpetrators of trafficking in persons, provision of protection mechanisms and services for victims of trafficking in persons, and development of partnerships for cooperation to counter trafficking in persons in the Community.

This Bill is premised on: —

- (a) article 76 of the Treaty on Establishment of the East African Community which provides for establishment of a Common Market among the Partner States and further provides that within the Common Market, and subject to the Protocol on the establishment of the Common Market, there shall be free movement of labour, goods, services, capital, and the right of the establishment.

- (b) Article 7(3) of The Treaty for the Establishment of the East African Community under which the Partner States guarantee the protection of the citizens of the other Partner States while in their territories;
- (c) the East African Community Customs Union Management Act, 2004 which explicitly prohibits transportation and sale of human parts;
- (d) Article 124(5) of the Treaty under which the Partner States agree to enhance co-operation in the handling of cross border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the exchange of information on national mechanisms for combating criminal activities;
- (e) the East African Community Protocol on Peace and Security which provides under Article 2 on scope of operation that the Partner States agree to, inter alia cooperate in combating transnational and cross border crimes; including human trafficking, and undertake joint operations in controlling and preventing transnational and cross border crimes including human trafficking;
- (f) the Protocol to the African Charter on Human and Peoples' rights on the rights of Women in Africa which provides 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.

This Bill further obliges the Council of Ministers to establish such institutions as the Council may deem appropriate to achieve its objectives, promote coordinated action in recognition of increasing levels of the integration process evidenced by, inter alia, the recent agreement on introduction of an international East African E-Passport.

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East African Community
Counter-Trafficking in Persons Bill, 2016

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

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

A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY 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.

Short title
and
commence-
ment.

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

Inter-
pretation

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

“child” means any person under eighteen years of age;

“civil society” means a realm of organized social life that is voluntary, self generating, self – supporting, autonomous from the state, and bound by a legal set of shared values;

“common market” means the Partner States’ markets integrated into a single market in which there is free movement of capital, labour, goods and services;

“common standard travel document” means a 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 includes an inter-state pass;

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

“co-operation” includes the undertaking by the Partner States in common, jointly or in concert, of activities undertaken in furtherance of the objectives of the Community as provided for under this Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Community;

“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;

“Council” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“exploitation” includes 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, the United Republic of Tanzania, the Republic of Burundi, the Republic of Rwanda, the Republic of South Sudan and any other country granted membership to the Community under Article 3 of the Treaty;

“Secretariat” means the Secretariat of the Community established by Article 9 of the Treaty;

“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;

“trafficking in persons” means recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other form of coercion, abduction, fraud, 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.

Objective

3. The objective of this Act is to provide a legal framework at the East African Community level to—

- (a) prevent and counter trafficking in persons, paying particular attention to women and children; and vulnerable members of society;
- (b) protect and assist the victims of trafficking in persons in a manner that respects their human rights; and
- (c) promote cooperation and harmonized action among the Partner States in order to prosecute perpetrators and comprehensively counter trafficking in persons.

PART II—TRAFFICKING IN PERSONS AND RELATED OFFENCES

Trafficking
in persons

4. (1) A person commits the offence of trafficking in persons where, for the purpose of exploitation that person—

- (a) recruits, transports, transfers, harbours or another receives another person within a Partner State;
- (b) recruits, transports or transfers or receives another person from a Partner State to another country;

(c) recruits, transports or transfers another person from another country into a Partner State, by any of the special means in subsection (2).

(2) The means referred to in subsection (1) are —

(a) threat or use of force or other form of coercion;

(b) abduction;

(c) deception or fraud;

(d) the abuse of power, or a position of vulnerability;

(e) the giving or receiving of a benefit in order to obtain the consent of a person who has control over another person.

(3) Notwithstanding the absence of the use of the means specified in paragraphs (a) to (e) of subsection (2), a person who recruits, transports, transfers, harbours or receives a child for the purpose of exploitation of that child commits the offence of trafficking in persons.

(4) It shall not be a defence for a person who commits the offence of trafficking in persons that the offence was committed with the victim's consent.

(5) A person who facilitates the offence of trafficking in persons commits an offence.

(6) A person who commits the offence of trafficking in person or who facilitates that offence is liable on conviction to such fine or term of imprisonment as the penal laws of the Partner State may prescribe.

(7) A person who, for the purpose of committing or facilitating an offence under subsection (1) conceals, removes, withholds or destroys any travel document that belongs to another person, or document that establishes or purports to establish another person's identity or immigration status, is liable on conviction to such fine or term of imprisonment as the laws of the Partner State may prescribe.

(8) Every person who receives a financial or other benefit knowing that it results from the offence of trafficking in persons commits an offence and is liable on conviction to such fine or term of imprisonment as the laws of the Partner State may prescribe.

(9) For the purposes of this section, an offence under subsection (1) is facilitated—

(a) where the person alleged to have facilitated the offence knows that such an offence is intended to be facilitated;

(b) whether or not the person alleged to have facilitated the offence knows the specific nature of the offence that is intended to be facilitated; and

(c) whether or not the offence was actually committed.

Offences by
bodies
corporate

5. (1) Subject to subsection (2), where a body corporate commits an offence under this Act, every director, manager, secretary or other similar officer concerned with the offence is liable on conviction to such fine or term of imprisonment as the penal laws of the Partner State may prescribe.

(2) A director, manager, secretary or other similar officer concerned with the management of a body corporate shall not be liable for an offence against this Act unless the Court is satisfied—

(a) that the offence was committed with his or her connivance; or

(b) he or she did not exercise all such diligence to prevent the commission of the offence, having regard to the nature of functions in that capacity and to all the circumstances.

(3) A body corporate which commits an offence under this Act is liable on conviction to such fine as may be prescribed by the penal laws of the Partner State.

6. (1) Where a person is convicted of the offence of Restitution trafficking in persons the court may order that person to pay restitution to the victim.

(2) Restitution shall compensate, where applicable, for any of the following—

(a) costs of medical and psychological treatment;

(b) costs of physical and occupational therapy and rehabilitation;

(c) costs of necessary transportation, temporary housing and child care;

(d) lost income;

(e) attorney's fees and other legal costs;

(f) compensation for emotional distress, pain and suffering;

(g) any other losses suffered by the victim which the court considers applicable.

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Forfeiture

7. (1) All property belonging to persons convicted of the offence of trafficking in persons that was used or obtained in the course of the crime, or the benefits gained from the proceeds of the crime shall be liable to forfeiture to the Partner State in the manner prescribed by regulations made under this Act.

(2) Where any property under subsection (1) is located in the territory of another Partner State, that property shall be subject to forfeiture to the extent that it can be retrieved by the Government of the Partner State.

Immunity of
victim from
prosecution

8. Where a person provides evidence that he or she is a victim, that person shall not be liable to prosecution for any offence against the laws immigration or prostitution, that is a direct result of the offence of trafficking in persons committed against him or her.

Adoption of
legislation
and other
measures to
counter
trafficking
in persons

9. Each Partner State shall adopt such legislative and other measures as may be necessary, to counter the crime of trafficking in persons and related offences in the Community.

PART III—PREVENTION, COOPERATION AND OTHER MEASURES

Prevention
of
trafficking
in persons

10. (1) The Partner States shall prevent, cooperate and adopt measures to prevent trafficking in persons and in particular—

- (a) establish comprehensive policies, programmes, laws and other measures to prevent and combat trafficking in persons;
- (b) protect victims of trafficking in persons especially women and children from re-victimization;
- (c) undertake research, information and mass media campaigns and social economic initiatives to prevent and combat trafficking in persons;

(d) develop appropriate policies and programmes to alleviate factors that make persons, especially women and children vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunities; and

(e) adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons that leads to trafficking.

11. (1) Law enforcement, immigration and other relevant authorities of the Partner States shall cooperate with each other by exchanging information in accordance with the Treaty and the national legal frameworks, to enable them determine—

Information
exchange
and training

(a) whether individuals crossing or attempting to cross any 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 any border are intended for the purpose of trafficking in persons; or

(c) the means and methods used by organized groups of persons 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) The Partner States shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons.

(3) The training under subsection (2) shall focus on—

- (a) the different forms of trafficking in persons;
- (b) the methods used in preventing trafficking in persons;
- (c) specialized training for prosecuting the traffickers;
- (d) protecting the rights of victims, including protecting the victims from the traffickers;
- (e) the need to consider human rights and child and gender sensitive issues; and
- (f) encouraging cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

(4) The Partner State that receives information under this section shall comply with any request by a Partner State that transmitted the information that places restrictions on its use.

Border
measures

12. (1) Without prejudice to free movement of persons provided for by the Treaty, the Partner States shall strengthen 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 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, measures under sub section (2) 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.

(5) Each Partner State shall consider taking measures that permit, in accordance with its national laws, the denial of entry or revocation of visas of persons implicated in the commission of offences of trafficking in persons.

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

13. Each Partner State shall take such measures as may be necessary to ensure—

Security and
control of
documents

(a) that travel or identity documents issued by it are of such quality that they cannot be misused, readily falsified, unlawfully altered, replicated or issued; and

(b) that the integrity and security of travel or identity documents issued by or on behalf of the Partner State is guaranteed to prevent their unlawful creation, issuance and use.

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

Legitimacy
and validity
of
documents

PART IV — PROTECTION OF VICTIMS OF TRAFFICKING IN
PERSONS

Assistance
to and
protection
of victims
of
trafficking
in persons

15. (1) 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 systems contain measures that provide victims of trafficking in persons with—

(a) information on relevant court and administrative proceedings; and

(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 ensure that its legal systems contain measures that offer victims of trafficking in persons the possibility of obtaining compensation for damages suffered.

(4) Each Partner State shall implement measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including co-operation with non-governmental organizations, in particular, the provision of—

(a) appropriate housing;

(b) counseling and information regarding their legal rights, in a language that the victims of trafficking in persons understand;

(c) medical, psychological and material assistance;
and

(d) employment, educational and training opportunities.

(5) Each Partner State shall, in applying this section take into account 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.

(6) Each Partner State shall provide for the physical safety of victims of trafficking in persons while they are within its territory.

16. (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 adopt, strengthen and implement legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

Status of
victims of
trafficking
in persons
in receiving
States

(2) In permitting victims of trafficking in persons to remain in its territory, a Partner State shall give appropriate consideration to humanitarian and compassionate factors.

17. (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.

Repatriation
of victims
of
trafficking
in persons

(2) When a State returns a victim of trafficking in persons to a 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 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 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 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 apply without prejudice to any right afforded to victims of trafficking in persons by any national law of the receiving Partner State, or to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

PART V — PROSECUTION OF THE OFFENCE OF TRAFFICKING IN
PERSONS

Prosecution
and
penalties

18. (1) 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.

(2) The Partner States shall take steps to harmonize national laws and penalties for the offence of trafficking in persons and offences related to trafficking in persons.

(3) Without prejudice to the provisions of this section, the offence of trafficking in persons shall, in the Community, be punishable by a minimum of 10 years imprisonment.

PART VI—INSTITUTIONAL ARRANGEMENTS

19. (1) The Council shall designate and establish such institutions as the Council may deem necessary for the effective implementation of this Act. Establishment of institutions

(2) Without prejudice to the generality of subsection (1), the institutions designated and established under that subsection shall—

- (a) promote the harmonization of laws and policies, coordination of strategies to counter trafficking in persons and advance the purposes of this Act;
- (b) share information, compile, document data and information on cases of trafficking in persons for purposes of policy formulation in order to develop mechanisms to ensure timely, coordinated, and effective response;
- (c) plan, coordinate specialized joint training programmes and promote education and awareness in relation to trafficking in persons;
- (d) develop common mechanisms to monitor and evaluate the implementation of laws, policies, plans and other measures to counter trafficking in persons;

(e) prepare annual reports for consideration by the Council; and

(e) perform such other functions as the Council may determine.

PART VII—MISCELLANEOUS PROVISIONS

Annual
report

20. (1) The Head institution designated and established under section 19 shall prepare an annual report on 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.

Compliance
with the Act

21. This Act shall take precedence over other laws in the Partner States to which its provisions relate.

Regulations

22. The Council may make regulations generally for the effective implementation of this Act.