

Malawi

## Trafficking in Persons Act

Chapter 7:06

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## Trafficking in Persons Act

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# Malawi

## Trafficking in Persons Act Chapter 7:06

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Commenced

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*[G.N. 39/2015]*

**An Act to make provision for the prevention and elimination of trafficking in persons; to provide for the establishment of the National Coordination Committee against Trafficking in Persons for the coordination and management of matters related to trafficking in persons; and to provide for matters incidental thereto and connected therewith**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Trafficking in Persons Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"AIDS" means Acquired Immune Deficiency Syndrome;

"child" means a person below the age of eighteen years;

"Committee" means the National Coordination Committee against Trafficking in Persons established under section 4;

"exploitation" includes—

- (a) forced labour or any extraction of work or services from a person;
- (b) the forced participation of a person in all forms of commercial sexual activity such as prostitution, sexually-explicit performance, or in the production of pornography;
- (c) the removal of body parts or the extraction of organs or tissue; or
- (d) any other practice in terms of which it cannot be said that the person participated willingly;

"Fund" means the Anti-Trafficking Fund established under section 51;

"HIV" means the Human Immuno-deficiency Virus which causes AIDS;

"organized criminal group" means a group of two or more persons, existing for a period of time and acting in concert with the aim of committing an offence under this Act;

**"relative"** means—

- (a) a parent, step parent, foster parent, grand parent, sibling, guardian or any person who has legal custody over the child or to whom the child is a dependent; or
- (b) at the time the offence under the Act is committed, a person who is living with the child as a member of that person's family or was under the person's family care and protection;

**"substantial health risk"** means—

- (a) infection with—
  - (i) HIV;
  - (ii) a sexually transmitted disease; or
  - (iii) any other highly contagious or infectious disease;
- (b) any medical condition, occasioned as a result of the exploitation;

**"trafficked person"** means a person or child who has suffered harm, including mental and physical injury, emotional suffering, economic loss or substantial impairment of the persons fundamental human rights through acts that contravene sections 14 and 15;

**"trafficking in persons"** means recruiting, transporting, transferring, harbouring, receiving or obtaining a person, within or beyond the territory of Malawi, through—

- (a) threats or use of force or coercion;
- (b) abduction;
- (c) fraud or deception;
- (d) abuse or threats of abuse of power or position;
- (e) abuse or threats of abuse of position of vulnerability;
- (f) abuse or threats of abuse of the law or legal process; or
- (g) giving or receiving of payments to obtain consent of a person having control of the trafficked person, for the purpose of exploitation of that person.

### 3. Scope of application

- (1) This Act shall apply to a natural or legal person where the offence—
  - (a) is committed wholly or partly within Malawi;
  - (b) is committed outside Malawi and the trafficked person is a citizen of Malawi;
  - (c) is committed outside Malawi by a citizen of Malawi or a person who is resident in Malawi;
  - (d) committed outside Malawi with a view to the commission of an offence under this Act, within Malawi; or
  - (e) involves an organized criminal group.
- (2) Where a person has already been convicted or acquitted of an offence under this Act in a foreign jurisdiction, he shall not be prosecuted again for the same offence in Malawi, unless the proceedings of the court in the foreign jurisdiction—
  - (a) were for the purpose of shielding the person concerned from criminal proceedings outside in a foreign jurisdiction; or

- (b) were not conducted independently or impartially in accordance with norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

## Part II – Administration

### 4. National Coordination Committee against Trafficking in Persons

- (1) There shall be a committee to be known as the National Coordination Committee against Trafficking in Persons for the proper administration of this Act.
- (2) The Committee shall have its secretariat within the Ministry responsible for home affairs or any other ministry, as the President may direct.

### 5. Composition of the Committee

- (1) The Committee shall consist of—
  - (a) the Secretary responsible for Home Affairs;
  - (b) the Secretary responsible for Justice;
  - (c) the Secretary responsible for Gender;
  - (d) the Inspector General of Police;
  - (e) the Chief Immigration Officer;
  - (f) the Executive Director of the Human Rights Commission;
  - (g) a representative of the Faith-Based Organizations, appointed by the Minister; and
  - (h) a representative of non-governmental organizations dealing with issues of trafficking in persons, appointed by the Minister.
- (2) The Minister shall publish in the *Gazette* names of all members of the Committee as first constituted, and every subsequent change in the membership.
- (3) A member shall not be in the employment of the Committee nor serve on a full time basis.
- (4) A person shall not be qualified for appointment by the Minister as a member of the Committee if he
  - 
  - (a) holds a political office; or
  - (b) with the exception of the members listed in section 5 (1)(a) to (e), is an employee in the public service.

### 6. Chairperson of the Committee

The Secretary responsible for Home Affairs shall be the Chairperson of the Committee.

### 7. Tenure of office

- (1) Save for the members appointed under section 5 (1) (a) to (e), a member of the Committee shall, unless he resigns, hold office for a period of three years from the date of appointment and may be eligible for re-appointment once.
- (2) The office of a member appointed under section 5 (1) (g) and (h) of the Committee shall become vacant in the event where the member—
  - (a) dies;

- (b) is adjudged bankrupt;
  - (c) is sentenced, for an offence against any written law, to any term of imprisonment without the option of a fine;
  - (d) fails, without the permission of the Chairperson, to attend three successive meetings of the Committee of which he has had notice;
  - (e) becomes incapacitated by reason of physical or mental disability; or
  - (f) resigns in accordance with subsection (4).
- (3) A member other than any of those appointed under section 5 (1) (a) to (e), may at any time resign his office by giving one month written notice to the Chairperson, who shall forward that resignation to the Minister.
- (4) A vacancy in the membership of the Committee shall be filled by the appointment of a person in accordance with section 5, and the person appointed to fill the vacancy shall serve for the remainder of the relevant term of office, provided that a person shall not be appointed to fill a vacancy if that remaining period of a term is less than six months.

## 8. Functions and powers of the Committee

- (1) The functions of the Committee shall be to—
- (a) coordinate and oversee investigations and receive reports from enforcement officers on the investigation and prosecution of offences under this Act;
  - (b) ensure that trafficked persons are treated with dignity and respect of their rights during interviews and throughout the investigation and prosecution process;
  - (c) ensure that all screening interviews of trafficked persons are conducted in accordance with the Guiding Principles for Conducting Screening Interviews Trafficked Persons contained in the Schedule hereto;
- [First Schedule; Second Schedule]*
- (d) supervise protection officers assistance, support and protection of trafficked persons;
  - (e) initiate education and awareness programmes on causes and consequences of trafficking in persons;
  - (f) formulate and oversee implementation activities aimed at the suppression of trafficking in persons;
  - (g) formulate policy, programmes and strategies to prevent and suppress trafficking in persons;
  - (h) make recommendations to the Minister on all aspects of prevention and suppression of trafficking in persons;
  - (i) coordinate and oversee training of relevant law enforcement and judicial officers;
  - (j) liaise with Government agencies and non-governmental organizations on rehabilitation and reintegration of trafficked persons;
  - (k) manage the Anti-Trafficking Fund and prepare guidelines for disbursements from the Fund;
  - (l) coordinate research on international, regional and national developments and standards on trafficking in persons;
  - (m) coordinate and oversee data collection; and
  - (n) generally coordinate and monitor the implementation of the Act.

- (2) The Committee shall have powers as may be necessary for, or in connexion with, or incidental to the performance of its functions under this Act on matters of or related to trafficking in persons.

## **9. Duties of the Committee**

The Committee shall ensure that a trafficked person—

- (a) is not subjected to any discriminatory practice;
- (b) has access to adequate health care during their residence at a shelter or any other place;
- (c) where applicable, has access to his diplomatic mission within Malawi on any matter;
- (d) has the right, facilitated by the State, to return to his country of origin;
- (e) is granted a temporary residence permit pending completion of any matter before a court or tribunal in Malawi;
- (f) has his or her full rights respected and observed during investigation, gathering and interpretation of evidence;
- (g) is kept separately from adults, if the trafficked person is a child; and
- (h) is protected from any harm during residence at a shelter.

## **10. Meetings of the Committee**

- (1) The Committee shall hold meetings, at least once every three months, at a place and time to be determined by the Chairperson.
- (2) The quorum of a meeting of the Committee shall be constituted by at least half of its members.
- (3) The Chairperson shall convene and preside over meetings of the Committee.
- (4) In the absence of the Chairperson, the membership of the Committee shall elect a member present, to preside over the meeting.
- (5) At a meeting of the Committee—
  - (a) a matter for the decision of the Committee shall be decided by a majority of members present and voting; and
  - (b) the Chairperson or a person elected to act as such in the event of equality of votes, shall have a deliberative vote in addition to a casting vote.

## **11. Allowances on Committee**

A member of the Committee shall be paid such allowances or other benefits as the Minister may approve, from time to time.

## **12. Procedure**

The Committee shall determine the procedure for its meetings.

## **13. Minutes of meetings**

The Committee shall cause to be kept minutes of proceedings of its meetings.

## Part III – Offences

### **14. Trafficking in persons**

- (1) A person who trafficks another person commits the offence termed trafficking in persons and shall, upon conviction, be liable to imprisonment for fourteen years without the option of a fine.
- (2) The consent of a trafficked person is immaterial, where any of the means set out in section 2 have been used.

### **15. Trafficking in children**

- (1) Notwithstanding section 14, a person who trafficks a child commits an offence termed trafficking in children and shall, upon conviction, be liable to imprisonment for twenty-one years without the option of a fine.
- (2) It is immaterial that at the time of commission of trafficking in children, the means set out in section 2, with respect to trafficking in persons were not used or that the child consented to the commission of the offence.

### **16. Aggravated form of trafficking**

- (1) An offence of trafficking in persons or trafficking in children is deemed to be aggravated if committed in any of the following circumstances—
  - (a) the judicial processes of adoption, fosterage, guardianship or wardship have been used to recruit a child;
  - (b) the accused is a relative of the trafficked person;
  - (c) the trafficked person is of unsound mind;
  - (d) the offence is committed by an organized criminal group;
  - (e) the offence is committed by a public servant, a religious leader, a traditional leader or any person acting in an official capacity in the exercise of his duties;
  - (f) the offence is committed by a person purporting to act, in the exercise of an official duty where such official acts in abuse of authority or moral ascendancy;
  - (g) the offence is committed for the purpose of removing body parts or extracting, tissue or organs; or
  - (h) as a consequence of the commission of the offence the trafficked person—
    - (i) dies;
    - (ii) develops a medical condition;
    - (iii) becomes pregnant or is forced to terminate a pregnancy;
    - (iv) suffers mutilation, disfigurement or permanent bodily injury; or
    - (v) is exposed to any other substantial health risk.
- (2) A person who commits the offence of trafficking in persons or trafficking in children in any of the circumstances in subsection (1), shall, upon conviction, be liable to imprisonment for life without the option of a fine.

**17. Trafficking in persons an offence involving dishonesty or moral turpitude**

The offence of trafficking in persons or trafficking in children constitutes an offence of dishonesty or moral turpitude for the purposes of sections 51 and 80 of the Constitution.

**18. Prohibition against working with children**

A person convicted of the offence of trafficking in persons or trafficking in children is ineligible to work in any capacity with children for a period of seven years following their conviction.

**19. Court to order closure of an establishment**

Where an offence of trafficking in persons or trafficking in children is committed by a person acting or purporting to act in an official capacity for a non-governmental organization or other establishment or body, the court may, upon conviction, order the closure and de-registration of the non-governmental organization, establishment or body under which the person acted.

**20. Benefiting from exploitation of trafficked persons**

A person who intentionally benefits from the exploitation of a trafficked person or causes or enables another person to benefit from exploitation of a trafficked person, commits an offence and shall, upon conviction, be liable to imprisonment for five years.

**21. Attempts, aiding or abetting to commit an offence**

- (1) Where an offence under this Act is committed, each of the following persons is deemed to have taken part in the commission of the offence and may be charged and convicted with the actual commission of the offence—
  - (a) a person who attempts to do the act or to make the omission which constitutes the offence;
  - (b) a person who does or omits to do any act for the purpose of aiding or enabling another person to commit the offences;
  - (c) a person who aids or abets another person to commit the offence;
  - (d) a person who counsels or procures any other person to commit the offence; or
  - (e) a person who being an employee or agent, acted in employment, or under instructions.
- (2) A conviction of an offence pursuant to subsection (1) entails the same consequences in all respects as a conviction of committing the offence.
- (3) Any person who procures another to do or omit to do any act of such nature that if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, commits an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission and he may be charged with himself doing the act or making the omission.

**22. Duty to report**

- (1) A person who knows, suspects or has reason to suspect that an offence under this Act is being, has been or is about to be committed, shall as soon as is practicable, report this to the Police.
- (2) A person who contrary to subsection (1), fails to report to the Police, commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for one year.
- (3) The Officer-in-Charge of the Police Station to which a report has been made shall ensure that the identity of the informant is not revealed.

## 23. Liability of legal person

Where an offence under this Act has been committed by a legal person, any person who at the time of the commission of the offence was in any manner responsible for the management of any affairs of the legal person shall be liable for the offence, unless he or she proves that—

- (a) the offence was committed without his knowledge, consent or connivance; or
- (b) he exercised all diligence to prevent the commission of the offence under the circumstances.

## 24. Carrier liability

- (1) An international transportation provider shall verify that each passenger to any destination into or outside Malawi possesses the necessary travel documents, including a passport and a visa, to enter the destination country and any transit countries.
- (2) Subsection (1) shall apply to the international transportation provider, his agents, and any person selling or issuing tickets, boarding passes or similar documents allowing passengers to travel, and to persons collecting or checking such tickets, boarding passes or similar documents prior to or subsequent to boarding.
- (3) Any person referred to in subsection (2) who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K5,000,000 and to imprisonment for five years.
- (4) Where an offence is committed under this section, the international transportation provider shall bear the costs of returning the person to his initial point of embarkation and shall be liable to pay the person's costs associated with providing accommodation and meals for the person and any accompanying children.
- (5) Where an international transportation provider knowingly transports a trafficked person into or from Malawi, such international transportation provider shall be liable for costs associated with providing accommodation and meals for the trafficked person and any accompanying children for the duration of the person's stay outside or inside Malawi.
- (6) An international transportation provider shall not commit the offence under subsection (1) if the—
  - (a) international transportation provider had reasonable grounds to believe that the documents which the person possess are the travel documents required for lawful entry of that person into the receiving country;
  - (b) 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 international transportation provider.

## 25. Other acts that promote or facilitate trafficking

A person who, for the purpose of the promotion of trafficking in persons or trafficking in children, intentionally—

- (a) leases or subleases, uses or allows to be used any house, building or establishment;
- (b) produces, prints, broadcasts or distributes by any means including the use of information technology or the internet, any brochure, flyer or any other communication material that promotes trafficking in persons;

- (c) assists in misrepresentation or fraud for the purposes of procuring or facilitating the acquisition of necessary exit documents from the Department of Immigration for the purposes of trafficking in persons;
- (d) facilitates exit from or entry into Malawi, a person who is in possession of unissued, tampered or fraudulent travel documents for the purpose of trafficking in persons;
- (e) confiscates, withdraws or destroys the passport, travelling documents or personal documents which belong to a trafficked person for the purposes of furthering trafficking in persons; or
- (f) prevents a trafficked person from leaving Malawi or seeking redress from appropriate law enforcement authorities,

commits an offence and shall be liable, upon conviction, to imprisonment for fourteen years without the option of a fine.

## **Part IV – Investigation and criminal proceedings**

### **26. Designation of enforcement officers**

The Minister may, by notice published in the *Gazette*, designate the following persons as enforcement officers, for the purposes of this Act—

- (a) a police officer;
- (b) an immigration officer; or
- (c) any other public officer as the Minister may deem fit.

### **27. Powers of enforcement officer**

Notwithstanding the provisions of the Criminal Procedure and Evidence Code, an enforcement officer—

- (a) suspects or receives information, that any offence under this Act has been committed or is about to be committed; and
- (b) in his opinion there is a need for urgent action to be taken, and that any delay in doing so would occasion a miscarriage of justice in the circumstances of the matter, or for the purposes of this Act, the enforcement officer shall have power to—
  - (i) institute and carry out an investigation;
  - (ii) arrest any suspect;
  - (iii) interrogate any suspect;
  - (iv) enter premises and search and seize any item under section 33;
  - (v) interview any person suspected of being trafficked in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons contained in the First Schedule hereto; and

*[First Schedule]*

- (vi) certify a person as a trafficked person if such person provides satisfactory information to that effect during the screening interview, having duly completed Form A contained in the Second Schedule hereto.

*[Second Schedule]*

*[Cap. 8:01]*

## 28. Duties of enforcement officer

An enforcement officer shall—

- (a) record all cases of offences under this Act in accordance with section 31;
- (b) refer all trafficked persons to a protection officer for screening as soon as is practicably possible, but in any case no later than twenty-four hours after such a person is brought to the attention of the enforcement officer;
- (c) ensure the proper administration and enforcement of the provisions of this Act;
- (d) submit quarterly reports of all cases of offences in this Act within ten days of the last day of each preceding quarter to the Chairperson of the Committee;
- (e) advise the Committee on the effective implementation of this Act and other ancillary matters;
- (f) refer the cases for further investigation or prosecution as necessary; and
- (g) perform such other duties as are necessary for the effective carrying out of the purposes of this Act.

## 29. Identification of enforcement officers

An enforcement officer, in the exercise of any powers or in the discharge of any functions under this Act shall—

- (a) declare his designation as an enforcement officer; and
- (b) produce evidence of his designation to any person, if required.

## 30. Arrest by person who is not a police officer

Where an arrest of any person under this Act is made by a private person or an enforcement officer who is not a police officer, the person effecting the arrest shall present the arrested person to the nearest police station, as soon as it is practicable to do so, but in any case no later than twenty four hours after the arrest.

## 31. Records

- (1) An enforcement officer shall during interrogation register all relevant information about the offence in a book to be kept in every police station for such purpose and to be called "The Trafficking in Persons Register" in addition to being recorded in the Occurrence Book, according to Form A contained in the Second Schedule hereto in triplicate.

*[Second Schedule]*

- (2) The Officer in Charge of the police station to which a person suspected of having committed or is about to commit an offence under this Act is presented, shall within ten days after the last day of each quarter send to the Inspector General of Police a certified copy of all entries made in the Trafficking in Persons Register during the preceding quarter.
- (3) The Inspector General of Police shall file the certified copy of the entry in the Trafficking in Persons Register in his office and maintain a database of the same.

## 32. Search and seizure

- (1) Where an enforcement officer has reasonable cause to believe that—
  - (a) any premises or conveyance has or is being or is about to be used for the commission of an offence; or

- (b) any premises or conveyance has evidence for an offence under this Act, he or she may apply to a Magistrate on written information, under oath, for a warrant authorizing entry into the premises or conveyance.
- (2) A warrant issued under subsection (1) may authorize the enforcement officer to—
- (a) search the premises or conveyance for any matter connected to the commission of an offence under this Act;
  - (b) seize or remove any matter which may be used in evidence for an offence under this Act; or
  - (c) copy or extract any matter found in the premises or conveyance.
- (3) Where it is deemed necessary, the enforcement officer may, in exercise of his powers under this Act—
- (a) break a door of premises or a conveyance or obstruction to the premises or conveyance in order to effect entry into the premises or conveyance;
  - (b) remove by force, any obstruction to entry, search, seizure or removal of any matter, to which this section applies; or
  - (c) detain a person found in the premises or conveyance until the search is completed.
- (4) Where, by reason of its nature, size or quantity, it is not possible to remove any matter seized under this section, the enforcement officer shall—
- (a) seal the matter, premises or conveyance; and
  - (b) indicate, where possible, that the matter, premises or conveyance has been sealed.
- (5) A person who, without written authority—
- (a) breaks, tampers with, damages or alters the seal referred to in subsection (4); or
  - (b) attempts, aids or abets in breaking, tampering with, damaging or altering the seal, commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

### **33. Search and seizure without warrant**

- (1) Where an enforcement officer has reasonable grounds to believe that obtaining a warrant under section 32 may cause delay or would adversely affect investigation of an offence under this Act, he may, without warrant, with assistance and force as is necessary—
- (a) enter or search any premises or conveyance;
  - (b) stop, enter and search any conveyance;
  - (c) seize or detain a conveyance or any matter connected to investigation for an offence under this Act; or
  - (d) inspect, copy or extract any matter found at any premises or conveyance.
- (2) In exercising powers under this section, the enforcement officer shall have all powers conferred on him under this Act.

### **34. List of seized items**

- (1) An enforcement officer shall prepare a list of all items seized under this Part, in triplicate, and immediately deliver one copy of the list, duly signed by the enforcement officer, to an occupier or

- owner or an agent or servant of premises or conveyance to which the list applies, and another copy to the Chairperson of the Committee.
- (2) Where premises or conveyance are not occupied, the enforcement officer shall, if possible, post the list of items seized at a conspicuous place on the premises or conveyance.

### **35. Access to electronic data**

- (1) A search to which the provisions under this Part applies, shall include data in a computer or other electronic device.
- (2) When exercising powers under subsection (1), an enforcement officer shall be given a password, encryption code, decryption code, software or hardware or any other means required to enable access or comprehension of the data.
- (3) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

### **36. Burden of proof**

Where in any proceedings for an offence under this Act, the prosecution proves that the accused person—

- (a) lived with;
- (b) was habitually in the company of; or
- (c) had knowledge about the whereabouts of the trafficked person,

the accused person shall, unless he or she gives proof to the contrary, be presumed to have committed the offence charged.

### **37. Confiscation**

Where an arrested person is convicted of an offence under this Act, an enforcement officer shall apply to court for an order of confiscation and disposal of the convicted person's assets and properties acquired, obtained or associated with the offence under which the person was convicted.

### **38. Disposal of confiscated property**

- (1) Where an order under section 37 is issued, the Minister shall, by sale or otherwise, dispose off assets and property to which the order applies.
- (2) The proceeds realized from disposal of confiscated assets shall be paid into the Anti-Trafficking Fund.

### **39. Acquittal and assets**

Where an accused person whose property was seized under this Act has been acquitted for an offence under the Act, the court may order that the seized property be released to that person.

### **40. Right to institute civil action**

A trafficked person, irrespective of his immigration status, has the right to—

- (a) institute civil proceedings against any person including a public officer in respect of an offence under this Act; or
- (b) seek compensation, restitution and recovery in damages from any person or from the proceeds of disposal of assets of any person connected with an offence under this Act.

## 41. Obstruction

A person who obstructs, impedes, interferes with or fails to comply with a lawful demand of an enforcement officer in the performance of powers conferred under this Act commits an offence, and shall be liable to imprisonment for five years without the option of a fine.

## 42. Immunity of trafficked persons

A person who has been certified as a trafficked person by an enforcement officer or a protection officer, in accordance with this Act, shall not be subjected to any criminal proceedings directly relating to, or as a direct consequence of, the person's situation as a trafficked person.

# Part V – Care and protection

## 43. Appointment of protection officers

The Minister may, by notice published in the *Gazette*, appoint an officer charged with duties in relation to social welfare, to exercise and perform the duties of a protection officer under this Act.

## 44. Duties of protection officers

A protection officer shall perform the following duties—

- (a) ensure that trafficked persons are accorded proper treatment and are provided with the necessary care, assistance and protection; and
- (b) ensure that all interviews of trafficked persons are conducted in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons contained in the First Schedule and that Form A contained in the Second Schedule is duly completed.

*[First Schedule; Second Schedule]*

## 45. Shelters

- (1) The Minister may, by notice published in the *Gazette*—
  - (a) designate any premises to be a shelter for the care and protection of trafficked persons;
  - (b) make rules for the standard of care and protection services for trafficked persons at a shelter; and
  - (c) make regulations for the administration of any shelter within Malawi.
- (2) A person in charge of a shelter shall ensure that the rights and freedoms of trafficked persons are observed and protected.
- (3) A person or organization may apply to the Minister to designate the premises of that person or organization as a shelter.
- (4) A person who operates a shelter in contravention of this section commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for five years.
- (5) For the purposes of this Part, "Minister" means the Minister responsible for Gender, Children and Social Welfare.

## Part VI – Witness protection

### **46. Restriction on disclosure**

- (1) A person shall not, without leave of court, disclose in the public media regarding—
  - (a) any step taken in relation to a trafficked person at any stage of any judicial proceedings under this Act; or
  - (b) the identity of a trafficked person or any particular that may lead to disclosure of his identity.
- (2) A person shall not disclose any information, capable of prejudicing the safety or provision of care and protection to any trafficked person, acquired in the exercise of the powers, performance of the functions or carrying out of the duties conferred upon, assigned to or imposed upon him by or under this Act.
- (3) Any person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

### **47. Witness protection**

A person who wilfully or negligently—

- (a) allows any unauthorized person to gain access to any witness, trafficked person or child;
  - (b) discloses, in contravention of any provision of this Act—
    - (i) the identity of any protected person;
    - (ii) information that a particular protected person is under protection;
    - (iii) the place of safety or location where any person is under protection or has been relocated in terms of this Act;
    - (iv) any information which could lead to the identification of any such person or any such place of safety;
    - (v) any information which undermines or compromises or could undermine or compromise the integrity of a witness protection programme in terms of this Act; or
    - (vi) any information relating to the relocation or change of identity of a protected person,
- commits an offence and shall, upon conviction, be liable to imprisonment for seven years without the option of a fine.

### **48. Application for protection**

- (1) A witness who reasonably believes that his or her safety or the safety of any member of his family, is or may be threatened, by any person or group or class of persons, by reason of his or her being a witness, may—
  - (a) report such belief—
    - (i) to the investigating officer in the proceedings concerned;
    - (ii) to the officer in charge of a police station;
    - (iii) if he is in prison, to the officer in charge of the prison where he is being detained; or
    - (iv) to the Director of Public Prosecutions; and

- (b) apply to the court requesting that the applicant or any family member be placed under protection.
- (2) If a witness is for any reason unable to make the report or to make an application for protection referred to under subsection (1), any interested person or the investigating officer concerned, who reasonably believes that the safety of the witness or any family member is or may be threatened as contemplated in subsection (1), may make such a report or application on behalf of the witness.
- (3) Unless otherwise provided for under this Act, an application for protection of a minor may be made by or on behalf of the minor without the consent of his parent or guardian.
- (4) Any person to whom a report is made as contemplated in subsection (1), shall assist the applicant in the making of an application for protection and, unless he is the Chairperson of the Committee, shall—
  - (a) inform the Chairperson of the Committee of the application; and
  - (b) submit the application to the court.

#### **49. Confidentiality**

A person, being the Chairperson or member of the Committee, an enforcement officer, a protection officer and an employee of a non-governmental organization or otherwise accredited by the Committee to handle cases dealing with trafficked persons, shall either upon taking office or upon handling every case, taken an oath or make affirmation in the form specified in the Form B, in the Third Schedule hereto before a Commissioner for Oaths.

*[Third Schedule]*

### **Part VII – Financial provisions**

#### **50. Funding of the Committee**

- (1) The Government shall adequately fund the Committee to enable it to perform its duties and functions and exercise its powers effectively.
- (2) The Committee may receive grants or donations of funds, material or any other forms of assistance for the purposes of performing its duties and functions.

#### **51. Anti-Trafficking Fund**

- (1) There is hereby established a Fund to be known as the Anti-Trafficking Fund.
- (2) The Fund shall consist of—
  - (a) such amount of money as may be appropriated by Parliament for payment into the Fund;
  - (b) such amount of money as may be paid to the Fund by way of grants or donations;
  - (c) such amount of money as may be realized from proceeds of confiscation, seizure, or sale of property connected with trafficking in persons after conviction of the offence under this Act; or
  - (d) such amount of money from any source approved by the Minister and the Minister responsible for Finance.

## 52. Purpose of the Fund

The purpose of the Fund is to finance—

- (a) the training of enforcement officers, protection officers or any other personnel engaged in any capacity to effect the provisions of this Act;
- (b) the provision of care, assistance and support to victims of trafficking in persons, specifically by—
  - (i) constructing or commissioning a building as a reception shelter for such victims;
  - (ii) tracing the family of a victim of offences under this Act and where possible facilitating the reintegration of such a victim with his family;
  - (iii) repatriation of trafficked persons to their respective homes or countries; or
  - (iv) any activity or matter as the Committee may deem fit for the prevention and suppression of trafficking in persons.

## 53. Management of the Fund

- (1) The Fund shall be managed by the Committee which shall deposit all money due to the Fund in an account opened for that purpose.
- (2) The Committee shall develop guidelines for disbursements of money from the Fund.
- (3) The Committee shall, not later than three months before the end of each financial year, prepare and submit to the Minister, detailed estimates of income and expenditure for the next financial year.

## 54. Accounts and audit

- (1) The Committee shall keep books of accounts of the Fund and proper records in relation to them as approved by the Auditor General.
- (2) The Committee shall submit accounts of the Fund to the Auditor General for audit within three months after the end of the financial year.
- (3) The Auditor General shall, not later than three months after the receipt of the accounts, audit the account of the Fund in accordance with the provisions of the Public Audit Act and forward a copy of the audit report to the Minister.

*[Cap. 37:01]*

## 55. Financial year

The financial year for the Fund shall be the same as the financial year of the Government.

## 56. Annual report

- (1) The Minister shall within one month after the receipt of the audit report, submit an annual report to Parliament covering the activities and the operations of the Fund for the year to which the report relates.
- (2) The annual report shall include—
  - (a) the audited accounts of the Fund;
  - (b) the Auditor General's report on the accounts of the Fund; and
  - (c) other information that the Minister may consider necessary.

## **Part VIII – Miscellaneous**

### **57. General penalty**

A person who commits an offence under this Act, where a punishment has not been expressly provided for, shall be liable on conviction to imprisonment for two years without an option of a fine.

### **58. Amendments**

The Minister may by notice published in the *Gazette* amend the Schedules to this Act.

### **59. Regulations**

The Minister may, on the advice of the Committee, make regulations for the better carrying into effect of the provisions of this Act.

## **First Schedule (Sections 8, 27 and 44)**

### **Guiding principles in conducting screening interviews for the identification of trafficked person**

#### **Part I – Minimum standards for interviews**

In all interviews under this Act, regardless of the legal status of the person being interviewed, the person conducting the interview shall ensure that the following minimum standards are in place—

##### **1. Information**

The presumed trafficked person should be informed about the procedure of the police interrogation and its consequences.

##### **2. Language**

The information given should be clear, accurate and in a language the presumed trafficked person understands.

##### **3. Interpretation**

Experienced interpreters should be present during the interview.

##### **4. Privacy**

Questions touching upon the person's privacy, for instance regarding intimate relationships and experiences in prostitution, should be avoided.

##### **5. Identification**

A trafficked person can only be conclusively identified as such if the distinct elements of the crime of trafficking have been detected. This may require time because of the complexity of the crime of trafficking and the vulnerable status of trafficked persons suffering from post-traumatic stress disorder.

## 6. Evidence

Besides the statements of the presumed trafficked person, other evidence should be collected to identify all the facts and relevant information to determine if the case is one of trafficking.

## Part II – General principles

In all interviews under this Act, regardless of the immigration status of the person being interviewed, the person conducting the interview shall endeavour to do the following—

### 1. Do not harm

Treat each presumed trafficked person and the situation as if the potential for harm is extreme until there is evidence to the contrary. Do not undertake any interview that will make a presumed trafficked person's situation worse in the short term or longer term.

### 2. Case familiarization and risk assessment

Learn the risks associated with trafficking and each presumed trafficked person's case before undertaking an interview.

### 3. Preparation of referral information

Be prepared to provide information in a presumed victim's native language and the local language (if different) about appropriate legal, health, shelter, social support and security services and to help with referral, if requested.

### 4. Careful selection and preparation of interpreters and co-workers

Weigh the risks and benefits associated with employing interpreters, co-workers or others and develop adequate methods for training.

### 5. Ensuring anonymity and confidentiality

Protect a respondent's identity and confidentiality throughout the entire interview process from the moment a presumed trafficked person is contacted to the time that details of his case are made public.

### 6. Getting informed consent

Make certain that each presumed trafficked person clearly understands the content and purpose of the interview, the intended use of the information, his right not to answer questions, his right to terminate the interview at any time and his right to put restrictions on how the information is used.

### 7. Listening to and respecting each presumed trafficked person's assessment of her situation and risk to her safety

Recognize that each presumed trafficked person will have different concerns and that the way he views his concerns may be different from how others might assess them.

### 8. Re-traumatization

Do not ask questions intended to provoke an emotionally charged response. Be prepared to respond to a presumed trafficked person's distress and highlight his strengths.

## **9. Emergency intervention**

Be prepared to respond if a presumed trafficked person says he is in imminent danger.

## **10. Use of information collected**

Use information in a way that benefits an individual presumed trafficked person or that advances the development of good policies collected and interventions for persons suspected of being trafficked generally.

# **Part III – Children**

The following principles shall be used in all cases concerning children—

### **1. Time is of the essence**

Interviews should take place as soon as possible after the allegation or suspicion of abuse emerges.

### **2. Safety and support**

A child should feel safe and supported during the interview.

### **3. Sex/age appropriate interviewers**

Girls and younger boys should be interviewed by female interviewers. Older boys can be interviewed by male interviewers.

### **4. Presence of familiar adult during interview**

An adult, who the child trusts, should generally be present during the interview. This person's responsibility is to look after the child's best interests. It could be a guardian, a legal representative or, if neither has been appointed, a teacher or social worker.

### **5. Informal setting**

Interviews should take place in an informal setting and be conducted by interviewers trained to talk with children.

### **6. Language of interview**

Interview should be in the child's own language. If this is impossible to organize, considerable care must be taken in arranging interpretation.

### **7. Length of interview**

If possible, interviews should not be too long to avoid tiring the child.

### **8. Child's developmental stage**

The child's developmental stage and needs should be considered in planning the interview.

### **9. Child's characteristics**

The characteristics of the child and the child's family background should be considered in planning the interview.

## 10. Opportunity to narrate

The children should be given an opportunity to narrate their story in their own way, before they are asked explicit questions.

## 11. Interview plan

The questions should begin with open questions and direct or leading questions should be reserved for the latter part of the interview.

### **Second Schedule (Sections 8, 27, 31 and 44)**

#### **Trafficked persons screening and identification form**

##### ***Form A***

#### **Part I – Informed consent**

Has the individual been informed that the Enforcement Officer and/or \_\_\_\_\_ (name of partnering organization) reserves the right to share her/his individual case data for assistance purposes and only with authorized officers in the Malawi Police Service, the Department of Immigration and partnering organizations involved in direct assistance? (Yes/No)\*

1. Has the individual further been informed that the Malawi Government reserves the right to use (only anonymous, aggregate) data for research purposes? (Yes/No)\*
2. Has the individual's full and informed consent been obtained to conduct the screening interview based on information given regarding the designation of the enforcement officer, the role of the organization, the voluntary nature of the interview and the use of the information provided by the individual as outlined above? (Yes/No)\*

Note: Informed consent is necessary for all services, such as medical examination and procedure, health assessments, assisted voluntary returns and reintegration assistance.

If the individual is a minor, has the consent of the parent(s)/guardian(s) been obtained? (Yes/No)\*

Signature of interviewer: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of trafficked person: \_\_\_\_\_ Date: \_\_\_\_\_

\*Circle as appropriate

#### **Part II – Registration data**

1. First name(s): \_\_\_\_\_
2. Family name(s): \_\_\_\_\_
3. Sex: \_\_\_\_\_
4. Country of birth: \_\_\_\_\_
5. Place of birth: \_\_\_\_\_
6. Last place of residence in country of origin: \_\_\_\_\_
7. Date of birth: \_\_\_\_\_
8. Is date of birth an estimate? (Yes/No)\* \_\_\_\_\_

9. Age (in number of years): \_\_\_\_\_
10. Citizenship: \_\_\_\_\_
11. Ethnicity: \_\_\_\_\_
12. Identity document (type, country, number and expiry date): \_\_\_\_\_

\*Circle as appropriate

### **Part III – Case and interview data**

1. (Where the trafficked person is referred:)

Type of referring organization/individual: (non-governmental organization/ international organization/ law enforcement/immigration/Government/ embassy/International Organization for Migration (IOM) mission/hotline/ self-referral walk-in/family/friend/client/other)\* Other, please specify \_\_\_\_\_

2. Name/location of referring organization/individual: \_\_\_\_\_
3. Address and telephone number of referring organization: \_\_\_\_\_
4. Screening date: \_\_\_\_\_
5. Screening location: \_\_\_\_\_
6. Name/Designation/Rank of interviewer: \_\_\_\_\_
7. Name of organization/institution: \_\_\_\_\_
8. Interviewee's language(s): \_\_\_\_\_
9. Interpreter? (Yes/No)\* \_\_\_\_\_
10. Name of interpreter: \_\_\_\_\_
11. If minor: Name(s), address(es) and telephone number of parent(s) or guardian(s): \_\_\_\_\_

\*Circle as appropriate

### **Part IV – Entry into trafficking in persons process**

1. How did the individual enter the process (indicate multiple options and continue on separate sheet, if necessary)?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Did entry into the process involve recruitment? (Yes/No)\* If Yes, how was the contact initiated between the individual and her/his recruiter? (personal contact/employment agency/travel agency/Internet advertisement/newspaper advertisement/radio advertisement/television advertisement/other)\*
3. If labour migration, what activity did the individual believe he or she was going to be engaged in following arrival at the final destination (indicate multiple options if necessary)? (Agricultural work/begging/ child care/construction/domestic work/factory work/fishing/low-level criminal activities/military service/mining/prostitution/restaurants and hotel work/study/small street commerce/trade/transport/other)\* If other, please specify
4. What was the individual told would be their benefits following arrival at final destination?  
Salary (equivalent in US\$ per month)

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Other benefits

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5. In which month/year did the individual enter into the process?
6. Was the individual a minor at the time of entry into the process? (Yes/No)\*
7. From which place/country did the individual enter into the process?
8. What place/country is the last (or intended) destination?
9. Did the individual travel alone? (Yes/No)\* If No, who did the individual travel with (indicate multiple options if necessary)? Husband/wife/ partner/relative/friend/recruiter/transporter/unknown persons/other) \* If other, specify
10. Did the individual spend any time in transit place(s)/country(ies) (Yes/No)\*
  - (a) If Yes, who did the individual travel with? (husband/wife/partner/ relative/friend/recruiter/transporter/unknown persons/other)\* If other, specify

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- 11. Did he or she engage in any activity in this place(s)/countiy(ies) (Yes/No)\* If Yes, which activity in first/only transit place/country? (agricultural work/begging/child care/construction/domestic work/ factory work/fishing/low-level criminal activities/marriage/military service/mining/prostitution/restaurants and hotel work/study/small street commerce/trade/transport sector/other)\* If other, specify
- 12. If more places/countries, add respective places and activities engaged in

13. Were any of the following means used to control the individual?

- (a) Physical abuse? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/ Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (b) Psychological abuse? (Yes/No)\* If Yes, by who? (Recruiter/ Transporter/Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (c) Sexual abuse? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/ Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (d) Threats to individual? (Yes/No)\* If Yes, by who? (Recruiter/ Transporter/Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (e) Threat of action by law enforcement? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/Harbouler/ Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (f) Threats to family? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/ Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (g) False promises/deception? (Yes/No)\* If Yes, by who? (Recruiter/ Transporter/Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (h) Denial of freedom of movement? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/Harbouler/ Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (i) Giving of drugs? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/ Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (j) Giving of alcohol? (Yes/No)\* If Yes, by who? (Recruiter/ Transporter/Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (k) Denial of medical treatment? (Yes/No)\* If Yes, by who? (Recruiter/ Transporter/Harbouler/Receiver/ Other)\* If other, specify  
\_\_\_\_\_
- (l) Denial of food/drink? (Yes/No)\* If Yes, by who? (Recruiter/ Transporter/Harbouler/Receiver/Other)\* If other, specify  
\_\_\_\_\_
- (m) Withholding of identity documents? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/Harbouler/ Receiver/Other)\* If other, specify  
\_\_\_\_\_

(n) Withholding of travel documents? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/Harbourer/Receiver/Other)\* If other, specify

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(o) Debt bondage? (Yes/No)\* If Yes, by who? (Recruiter/Transporter/ Harbourer/Receiver/Other)\* If other, specify

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\*Circle as appropriate

## Part V – Exploitation phase

1. What activity has the individual undertaken since her/his arrival in the last destination? (Agricultural work/begging/child care/ construction/domestic work/factory work/fishing/low-level criminal activities/marriage/military service/mining/prostitution/restaurants and hotel work/study/small street commerce/trade/transport sector/ unemployed/other)\* If other, specify

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(a) How old was the individual when the activity began?

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(b) How long did the only/most significant activity last?

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2. Were any of the following means used to control the individual during the activity? Physical abuse? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify

(a) Psychological abuse? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify

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(b) Sexual abuse? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/ Clients/Other)\* If other, specify

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(c) Threats to individual? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify

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(d) Threat of action by law enforcement? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/Clients/Other)\* If other, specify

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(e) Other Threats to family? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify

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(f) False promises/deception? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify

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(g) Denial of freedom of movement? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/Clients/Other)\* If other, specify

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- (h) Giving of drugs? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/ Clients/Other)\* If other, specify  
\_\_\_\_\_
- (i) Giving of alcohol? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/ Clients/Other)\* If other, specify  
\_\_\_\_\_
- (j) Denial of medical treatment? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify  
\_\_\_\_\_
- (k) Denial of food/drink? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify  
\_\_\_\_\_
- (l) Withholding of wages? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify  
\_\_\_\_\_
- (m) Withholding of identity documents? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/Clients/Other)\* If other, specify  
\_\_\_\_\_
- (n) Withholding of travel documents? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/Clients/Other)\* If other, specify  
\_\_\_\_\_
- (o) Debt bondage? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/ Clients/Other)\* If other, specify  
\_\_\_\_\_
- (p) Excessive working hours? (Yes/No)\* If Yes, by who? (Receiver/ Exploiter/Clients/Other)\* If other, specify  
\_\_\_\_\_
3. If exploited for prostitution (sexual exploitation) were any of the following means used to control the individual during the exploitation?
- (a) Denial of freedom to refuse client? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/Clients/Other)\* If other, specify  
\_\_\_\_\_
- (b) Denial of freedom to refuse certain acts? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/Clients/ Other)\* If other, specify  
\_\_\_\_\_
- (c) Denial of freedom to use condom? (Yes/No)\* If Yes, by who? (Receiver/Exploiter/Clients/Other)\* If other, specify  
\_\_\_\_\_
- (d) Other means of control. Specify:  
\_\_\_\_\_
4. Did the individual experience exploitation? (Yes/No)\* If no exploitation took place—
- (a) was there any indication of a real and substantial threat of exploitation?  
\_\_\_\_\_

- (b) If Yes, what were the reasons why exploitation never took place? (Rescue/Escape/Other)\* If other, specify
- 

\*Circle as appropriate

## Part VI – Additional corroborative evidence

(To be answered as appropriate)

1. Are any of the following additional corroborative materials available?

- (a) Police or other official reports (Yes/No)\*
  - (b) Identity documents (Yes/No)\*
  - (c) Travel documents (Yes/No)\*
  - (d) Medical reports (Yes/No)\*
  - (e) Copies of employment contract (Yes/No)\*
  - (f) Recruitment offer (Yes/No)\*
  - (g) Personal writings by the individual (Yes/No)\*
  - (h) Hotline reports (Yes/No)\*
  - (i) If other, specify
- 

2. Is the individual a trafficked person? Justify this decision with reference to responses to questions 1-17 above. (Continue on separate sheet, if necessary).
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- 

3. Certification that the individual is a trafficked person made by: (specify names, designation and rank):
- 
- 
- 
- 
- 
- 
- 

4. If the individual is a trafficked person, was the type of trafficking in-country or transnational? (in-country/transnational/both)\*
5. If the individual is not a trafficked person, is he or she in need of assistance? (Yes/No)\* If Yes, what is the individual's situation? (Please specify all that applies.)

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## 6. Additional remarks

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\*Circle as appropriate

**Third Schedule (Section 49)*****Form B******Form of oath***

I, \_\_\_\_\_ of \_\_\_\_\_ swear by Almighty God that I shall not make a record of, divulge or communicate information in contravention of this Act.

***Form of affirmation***

I, \_\_\_\_\_ of \_\_\_\_\_ do solemnly, sincerely and truly declare and affirm that I shall not make a record of, divulge or communicate, information in contravention of this Act.