

INVITATION FOR PUBLIC COMMENTS

ON

THE PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS ACT, 2013 (ACT 7 OF 2013): REGULATIONS TO BE MADE UNDER SECTION 43(1)(a) OF THE ACT

1. INVITATION

1.1 The Department of Justice and Constitutional Development invites interested parties to submit written comments on the proposed draft Regulations which are attached.

1.2 The comments on the draft Regulations must be submitted not later than **31 January 2014**, marked for the attention of Ms E Steyn, and —

(a) if they are forwarded by post, be addressed to —

The Director-General: Justice and Constitutional Development

Private Bag X 81

Pretoria

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(b) if they are delivered by hand, be delivered at —

Salu Building, Room 2302

315 Thabo Sehume Street

Pretoria

(c) if they are submitted by email, be emailed to ensteyn@justice.gov.za

(d) if they are faxed, be faxed to 0866485369 or 012 - 4064632

1.3 For further information, please do not hesitate to contact Ms E Steyn at 012 – 4064768.

2. BACKGROUND NOTE

The following background information is hereby furnished in order to assist interested parties to comment on the proposed regulations.

2.1 Section 43(1)(a) of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013)(the Act) provides for the Minister of Justice and Constitutional Development to make regulations to give effect to section 22(2)(b) of the Act. Section 22(2) provides that if during a criminal prosecution of a person, a prosecutor suspects that that person is a victim of trafficking and that the offence was committed as a direct result of that person's position as a victim of trafficking, that prosecutor must –

- (a) apply to the court for a postponement; and
- (b) in the prescribed manner refer that person to the provincial department of social development for an assessment as provided for in section 18(6)(assessment of a child to determine whether that child is a victim of trafficking) or section 19(8)(assessment of an adult person to determine whether that adult is a victim of trafficking).

2.2 Draft regulations to give effect to section 43(1)(a) of the Act follow below.

2.3 Draft regulation 2 provides that a prosecutor must complete a prescribed form and send it to the provincial department of social development for an assessment of the person in question. Provision is also made for a copy of the form to be handed to a police official or a social worker of a designated child protection organisation or organisation which provides services to adult persons, who is escorting such person. It is suggested that this will assist in speeding up the case and serve as a measure of protection of the suspected victim, especially if he or she is an illegal foreigner. For the same reason a copy must be handed to the person in question. The prosecutor is further required to record or cause to be recorded each step taken in terms of this regulation on the case docket.

2.4 (a) The prescribed form in the Annexure contains a notice at the beginning, drawing attention to section 23 of the Act, which criminalises the unauthorised access to or disclosure of information of a victim of trafficking or a suspected victim of trafficking. This is done as there is always the danger of the information of the suspected victims mentioned in the form coming to the attention of the traffickers.

(b) The form is divided into Part A and Part B. Part A is completed and signed by the prosecutor and contains the particulars of the person in question to enable the provincial department of social development to identify and contact the person for the assessment. Part B of the form must be completed by the social worker conducting the assessment on behalf of the provincial department of social development. It provides for the conclusion as to whether the person is a victim of trafficking or not. It must be pointed out that section 22(3) of the Act provides that a letter of recognition or a finding that a child is a victim of trafficking serves as a ground for the withdrawal of the prosecution or discharge of the accused (the victim) if the prosecutor is satisfied that the offence was committed as a direct result of the person's position as a victim of trafficking. The form must be signed by both the social worker and the provincial head and returned to the prosecutor.

**DRAFT REGULATIONS
GOVERNMENT NOTICE
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REGULATIONS RELATING TO PROSECUTORS' REFERRAL OF SUSPECTED VICTIMS
OF TRAFFICKING IN PERSONS**

No. R.....

..... 2014

The Minister of Justice and Constitutional Development has, under section 43(1)(a) of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No.7 of 2013), made the regulations in the Schedule.

Note: The regulations to be made in terms of section 43(2) and 43(3) of the Act are the responsibilities of the Departments of Home Affairs and Social Development, respectively and have not been incorporated into these Regulations

SCHEDULE

Definitions

1. In these regulations, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context indicates otherwise—

“the Act” means the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013).

Referral of children and adult persons suspected of being victims of trafficking in terms of section 22(2)(b) of the Act

2. When a prosecutor, in a criminal prosecution of a person, suspects that that person is a victim of trafficking referred to in section 22(2) of the Act and the court has granted a postponement as provided for in section 22(2)(a) of the Act, the prosecutor must without delay—

- (a) complete a referral form which corresponds substantially with the Form in the Annexure;
- (b) forward that referral form by facsimile or e-mail to a designated/secured facsimile number or e-mail address in the office of the provincial department of social development indicated in the referral form;
- (c) if the person concerned is escorted by a police official or a social worker of a designated child protection organisation or organisation which provides services to adult persons, hand a copy of the referral form to that police official or social worker;
- (d) provide a copy of the referral form to the person concerned; and
- (e) record or cause to be recorded each step taken in terms of this regulation on the case docket.

Short title and commencement

3. These regulations are called the Regulations relating to Prosecutors’ Referral of Suspected Victims of Trafficking in Persons and will come into operation on

ANNEXURE

FORM

Referral of accused person in terms of section 22(2)(b) of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013)

IMPORTANT NOTICE: THE UNAUTHORISED ACCESS TO AND DISCLOSURE OF INFORMATION OF A VICTIM OF TRAFFICKING OR SUSPECTED VICTIM OF TRAFFICKING OR CHILD IN THE CARE OF A VICTIM OF TRAFFICKING IS AN OFFENCE FOR WHICH THE PENALTY IS A FINE OR IMPRISONMENT FOR A PERIOD NOT EXCEEDING 15 YEARS OR BOTH (SECTION 23 READ WITH SECTION 13(c) OF THE ACT)

CASE No.....

.....(Court)

The State vs.....

Case has been postponed until.....(date)

PART A

To fax no/e-mail address:

To the office of the provincial department of social development,

.....

(Town/city/)

The person whose particulars appear below is referred to you in terms of section 22(2)(b) of the Prevention and Combating of Trafficking in Persons Act, 2013 for an assessment in terms of section 18(6) or 19(8) of that Act.

Particulars of person:

Full names and surname:.....

Date of birth/identity number:.....

Age:.....

South African national from(place)

Foreigner from(country)

Passport number, if available:.....

Address where person normally resides, if available:.....

.....

Particulars of charge against person:.....

.....

.....

Briefly give reasons for suspecting that that person is a victim of trafficking:

.....

.....

.....

Person is in custody and being held at

Person is not in custody and stays at

.....

Any other additional information:.....

.....

.....

Note: The person is speaking and requires an interpreter/does not require an interpreter.

Please assess the person without delay and furnish me with your response in Part B below before.....(date).

.....

Name of Prosecutor

.....

Official date stamp

Signature of Prosecutor

.....

Court

Contact details:

E-mail address:.....

Tel no:

Fax no:.....

PART B

To be completed by the provincial department of social development who has assessed the person:

To fax no/e-mail address:.....

To:

Name of Prosecutor

.....

(Court)

Reference no of provincial department of social development:.....

The person,(name) has been assessed as requested in terms of section 18(6)/19(8) of the Prevention and Combating of Trafficking in Persons Act, 2013 and the following conclusion has been made:

(a) The person is a child who is a victim of trafficking and it is recommended that.....

.....; or

(b) the person is a child who is not a victim of trafficking and it is recommended that

.....

.....; or

(c) the person is an adult who is a victim of trafficking and a letter of recognition has been issued to him or her as provided for in section 19(10) of the Prevention and Combating of Trafficking in Persons Act, 2013 and it is recommended that.....

.....; or

(d) the person is an adult who is not a victim of trafficking and it is recommended that

.....

.....

.....

**Name of social worker on behalf of
the provincial department of social**

.....

Signature

development

Office of provincial department of social development,,.....

.....

Provincial Head

**Official date stamp of provincial
department of social development**

Contact details:

E-mail address:.....

Tel no:

Fax no:.....

The following additional particulars/documents are attached, if applicable:

Form 22 of the General Regulations Regarding Children, 2010.

The finding by the provincial department of social development that a child is a victim of trafficking.

A copy of the letter of recognition referred to in section 19(10) of the Prevention and Combating of Trafficking in Persons Act, 2013.