

SUMMARY OF NPA SUBMISSION ON
PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL
14 June 2011

CHAPTER 1 – “DEFINITIONS AND OBJECTS OF ACT”

Clause 1 (1) “Definitions” heading amended to “Definitions and interpretation”

- **“Abuse of vulnerability”**
Amendment of “... (f) socio-economic circumstances” to
“(f) social circumstances; or
(g) economic circumstances”
- **“internet service provider”** removed from after “illegal foreign child” and
inserted after “Immigration Act” for alphabetical sequencing
- **“removal of body parts”**
Deletion of “sole” before “purpose” to decrease evidentiary burden in
proving the intention

“trafficking”

- Deletion of “sale” and “lease”
- “of a person trafficked or an immediate family member of the person
trafficked”
- Inclusion of “any one or more of the following”
- Removal of “aimed at either the person in question or, where applicable,
an immediate family member of that person” to a later part of the
definition
- Deletion of (e) “or false pretences”
- Removal of (f) “debt bondage” to become a stand-alone offence
- Inclusion of “of the person in question”
- Deletion of “sexual grooming or abuse of such person, including the
commission of any sexual offence or any offence of a sexual nature in any
other law against such person or performing any sexual act with such
person” to remove emphasis on trafficking in persons for sexual purposes

Addition of “trafficking-related activities” for the purposes of section 11B, means
activities which are intended to facilitate the commission of an offence provided
for in Chapter 3”

“victim of trafficking”

Option 1

“means any person who is a victim of the offence of trafficking in persons as referred to in section 4”

Option 2

“means a child who is certified to be a victim of trafficking or an adult person who is certified to be a victim of trafficking as provided for in this Act”. The Bill also provides in other clauses for a child who is found to be a victim of trafficking or an adult person who has been certified as a victim of trafficking.

Deletion of CHAPTER 2 - “PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS” and Clause 3 on “Public Awareness” in their entirety for later inclusion in clause 41 under “Responsibilities, functions and duties of the Intersectoral Committee”

CHAPTER 3 - “OFFENCES, PENALTIES AND EXTRA-TERRITORIAL JURISDICTION” to become

CHAPTER 2 on “INVESTIGATIONS, OFFENCES, PENALTIES, FORFEITURE AND JURISDICTION”

Amendment of Clause 4 on “~~Trafficking in persons and acts aimed at committing, acquiring another person to commit, or conspire to commit an offence under this Chapter~~” to become

Clause 4 “**Trafficking in persons**”

Clause 4 (1) Deletion of “and is subject to section 51 of the Criminal Law Amendment Act, 1997 (Act No 105 of 1997), liable on conviction to a fine or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine”

Deletion of Clause 4 (2) “A person is guilty of the offence of involvement in trafficking in persons and is subject to section 51 of the Criminal Law Amendment Act, 1997 (Act No 105 of 1997), liable on conviction to a fine or imprisonment, or such imprisonment without the option of a fine or both, if such person ...” as the offence of “involvement in trafficking in persons” should apply to all offences.

Clause 4(3), (4), (5) and (6) have been moved from the current location and are included in a separate clause 9B, to provide for the application of their provisions to the other offences, viz.

Clause 4 (3) "It is no defence to a charge of contravening subsection (1) or (2) that ..."

Clause 4 (4) "In order to establish the liability in terms of subsection (1) or (2) of an employer or principal ..."

Clause (5) "Subsection (4) does not exclude the liability of an employee or agent ..."

Clause (6) (a) "...revocation or cancelation of any licence or registration that the employer or principal may require in order to conduct its business"

Clause (6) (b) Written notification of licence or registration authority by clerk or registrar of the court

Clause (6) (c) Review of licence or registration by responsible authority for possible revocation or cancellation, where necessary

Insertion of a new Clause 4 (2) "Subject to section 51 of the Criminal Law Amendment Act, 1997 (Act No 105 of 1997), a person who is found guilty in terms of subsection (1), is liable to a fine not exceeding R100 million or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine or both"

Clause 8 "Conduct facilitating trafficking in persons"

Amendment of subsection (1) (a) "~~A person is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years if the person –~~

Re-numbering of (a) "intentionally leases, subleases..." into (i)

(b) "advertises, publishes, prints..." into (ii)

Addition of (iii) "after leasing or subleasing becomes aware or suspects or ought reasonably to have suspected..."

Insertion of (b) "A person who is found guilty of an offence in terms of paragraph (a) is liable to a fine not exceeding R50 million or imprisonment for a period not exceeding 10 years or both"

Clause 9 "Liability of carriers"

Subdivision of sub-clause (1) (a) into (i) and (ii)

Insertion of "delivers, transports or transfers" after "brings"

Substitution of "victim of trafficking" with "such a person"

Substitution of "knowing" with "and which knows, suspects or ought reasonably to have known or suspected"

Insertion of "person is a" before "victim of trafficking"

Deletion of "does not have a passport and, where applicable, a valid visa required for lawful entry into or departure from the Republic, is guilty of an offence and is liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years"

Insertion of sub-clause (1) (a) (ii) "delivers, transports or transfers a person from one place to another in the Republic and which knows, suspects or ought reasonably to have known or suspected that the person is victim of trafficking, must, without delay, report this knowledge or suspicion to a police official for investigation."

Insertion of sub-clause 1 (b) Failure to report made an offence carrying a fine not exceeding R50 million or imprisonment not exceeding R10 years

Insertion of sub-clause 1 (c) In addition to administrative fine imposed in s50 (3) of the Immigration Act, a court may also impose the fine not exceeding R50 million or imprisonment not exceeding 10 years "if the court finds that the carrier knew, suspected or ought reasonably to have known or suspected that the foreigner in question was a victim of trafficking"

Deletion of sub-clause 2 in its entirety on exemption of carrier's liability if entry of the victim into the Republic was due to circumstances beyond his control

Sub-clause (3) becomes (2) and "offence" substituted with "penalty"

Clause 9 A "Involvement of trafficking in persons"

Insertion of sub-clause (1) Definition of the offence

(a) attempt

(b) incites, instigates, commands, directs, aids, promotes, advises, recruits, encourages or procures

(c) conspires

Sub-clause (2) punishment as provided for in the Chapter

Clause 9 B "Liability of persons for offences under this Chapter"

Insertion of Sub-clause (1) "It is no defence to a charge of contravening 4, 5, 6, 7, 8, 9 or 9A that (a) consent by a child victim or a person with control or authority over the child
(b) consent by adult victim"

Insertion of Sub-clause (2) Attributing the conduct of an employer, agent or person acting on behalf of the employer or the principal to the employer or principal to establish liability

Insertion of Sub-clause (3) Sub-clause (2) does not exclude the liability of the employee, the agent or person action on behalf of ... from committing an offence under this chapter

Insertion of Sub-clause (4)

(a) Conviction of offences in this chapter serves as a ground for revocation or cancellation of any licence or registration required to conduct the business

(b) The clerk or registrar of the court which made the finding must, in writing, notify the authority that granted the licence or the registration

(c) Review of the licence or registration by the responsible authority for possible revocation or cancellation, where necessary

Clause 10 "Extra-territorial jurisdiction"

Deletion of sub-clause (3) in its entirety "A person who commits an offence referred to in subsection (1) is liable on conviction to the penalty prescribed for that offence"

Sub-clause (4) becomes (3) "~~The Minister must, in consultation with the Chief Justice and after consultation with the~~ National Director of Public Prosecutions, must, in writing designate an appropriate court in which to conduct a prosecution against any person accused of having committed an offence in a country outside the Republic as provided for in subsection (1)"

Deletion of previous sub-clause (5) as it constitutes a restatement of the common law "double jeopardy" principle

Sub-clause (6) becomes (5) "Institution of a prosecution in terms of this section to be authorised by the NDPP, who must determine the charges, forum and the place"

Clause 11 "Factors to be considered in sentencing"

Deletion of "aggravating" before "factors"

Insertion of sub clause (c) "the nature of the relationship between the victim and the convicted person"

Sub clauses (c) to (h) become (d) to (i)

Insertion of sub clause (j) "the state of the victim's mental health; and
(k) whether the victim had any physical disabilities"

Insertion of Clause 11A "Declaration of forfeiture"

(1) In addition to any penalty imposed by the court on conviction, the court may declare forfeiture of

(a) cash, assets or property

(i) by means of which the offence was committed

(ii) which was used in the commission of the offence

(iii) which was found in the possession of the convicted person

(b) any immovable property which was used for the purpose of or in connection with the commission of that offence

(2) Forfeited items in terms of CPA, restraint order or preservation of property order must be seized and kept

(a) for 30 days from date of declaration of forfeiture

(b) "if any person who claims to have a legitimate interest in the forfeited property under circumstances where the person:

(i) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of the interest; and

(ii) where the person had acquired the interest concerned after the commencement of this Act, that he or she knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities; or

(iii) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of any offence referred to in this Act; or

(iv) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable

steps to prevent the use of the property concerned as an instrumentality of an offence referred to in this Act;

has within the 30 day period referred to in paragraph (a) made an application to the court concerned regarding his or her interest in respect thereof, until a final decision has been made by the court in respect of the application, with any finding regarding (i), (ii), (iii) and (iv) above being made on a balance of probabilities"

(3) Referral to the evidence and trial proceedings and the hearing of further evidence (oral, affidavit, sworn statements) to make a declaration of forfeiture or determine any interest in terms of (2)

(4)(a) If an applicant for an order under subsection (1) adduces evidence to show that he or she did not know or did not have reasonable grounds to suspect that the property in which the interest is held, is an instrumentality of an offence referred to in this Act, the State may submit a return of the service on the applicant of a notice issued under section 51 (3) of the Prevention of Organised Crime Act, 121 of 1998, in rebuttal of that evidence in respect of the period since the date of such service.

(b) If the State submits a return of the service on the applicant of a notice issued under the said section 51 (3) as contemplated in paragraph (a) , the applicant for an order under subsection (1) must, in addition to the facts referred to in subsection (2) (a) and (2) (b) (i), also prove on a balance of probabilities that, since such service, he or she has taken all reasonable steps to prevent the further use of the property concerned as an instrumentality of an offence referred to in Schedule 1.

(5) A court making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order upon the conditions that the Court deems appropriate including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the Court may determine, to prevent the future use of the property as an instrumentality of an offence referred to in this Act

Application for, and issuing of investigation direction in respect of possession of property disproportionate to a person's present or past known sources of income or assets

11B. (1) The National Director of Public Prosecutions, or any person authorised in writing thereto by him or her (hereinafter referred to as the applicant), may apply to a judge in chambers for the issuing of an investigation direction in terms of subsection (3).

(2) An application referred to in subsection (1) must be in writing and must-

(a) indicate the identity of the-

(i) applicant and, if known, the identity of the person who will conduct the investigation; and

(ii) person to be investigated (hereinafter referred to as the suspect);

(b) specify the grounds referred to in subsection (3) on which the application is made;

(c) contain full particulars of all the facts and circumstances alleged by the applicant in support of his or her application;

(d) include the basis for believing that evidence relating to the ground on which the application is made will be obtained through the investigation direction;

(e) indicate whether any previous application has been made for the issuing of an investigation direction in respect of the same suspect in the application and, if such previous application exists, must indicate the current status of that application; and

(f) indicate the period for which the investigation is required.

(3) (a) A judge in chambers may upon an *ex parte* application made to him or her in terms of subsection (1), issue an investigation direction.

(b) An investigation direction may only be issued if the judge concerned is satisfied that-

(i) there has been compliance with the provisions of subsection (2); and

(ii) on the facts alleged in the application concerned, there are reasonable grounds to believe that-

(aa) a person-

(aaa) maintains a standard of living above that which is commensurate with his or her present or past known sources of income or assets; or

(bbb) is in control or possession of pecuniary resources or property disproportionate to his or her present or past known sources of income or assets; and

(bb) that person maintains such a standard of living through the commission of an offence under this Chapter or trafficking-related activities or the proceeds of unlawful activities or that such pecuniary resources or properties are instrumentalities of an offence under this Chapter or trafficking-related activities or the proceeds of unlawful activities; and

(cc) such investigation is likely to reveal information, documents or things which may afford proof that such a standard of living is maintained through the commission of an offence under this Chapter or trafficking-related activities or the proceeds of unlawful activities or that such pecuniary resources or properties are instrumentalities of an offence under this Chapter or trafficking-related activities or the proceeds of unlawful activities.

(c) An investigation direction-

- (i) must be in writing;
- (ii) must indicate the identity of the suspect and, if known, the person who will conduct the investigation;
- (iii) must specify the period for which it has been issued;
- (iv) may specify conditions of restriction relating to the conducting of the investigation; and
- (v) may be issued in respect of any place in the Republic.

(d) An application must be considered and an investigation direction issued without any notice to the suspect to whom the application applies and without hearing that suspect: Provided that where any previous investigation direction has been issued in respect of a suspect, the applicant may only apply for a further investigation direction in respect of that suspect on the same facts, after giving reasonable notice to the suspect concerned.

(e) A judge considering an application may require the applicant to furnish such further information as he or she deems necessary.

(4) If an investigation direction has been issued under subsection (3), the National Director of Public Prosecutions or the person authorised thereto in the investigation direction, may, for the purposes of an investigation direction-

(a) summon the suspect or any other person, specified in the investigation direction, who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control

any property, book, document or other object relating to that subject, to appear before the National Director of Public Prosecutions or the person so authorised, at a time and place specified in the summons, to be questioned or to produce that property, book, document or other object;

(b) question that suspect or other person, under oath or affirmation administered by the National Director of Public Prosecutions or the person so authorised, and examine or retain for further examination or for safe custody such property, book, document or other object; or

(c) at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises where the suspect is or is suspected to be or any premises on or in which anything connected with that investigation is or is suspected to be, and may-

(i) inspect and search those premises, and there make such enquiries as he or she may deem necessary;

(ii) examine any property found on or in the premises which has a bearing or might have a bearing on the investigation in question, and request from the suspect or the owner or person in charge of the premises or from any person in whose possession or charge that property is, information regarding that property;

(iii) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the investigation in question, and request from any person suspected of having the necessary information, an explanation of any entry therein; or

(iv) seize, against the issue of a receipt, anything on or in the premise which has a bearing or might have a bearing on the investigation in question, or if he or she wishes to retain it for further examination or for safe custody:

Provided that any person from whom a book or document has been taken under paragraph (b) or (c) (iv), may, as long as it is in the possession of the person conducting the investigation, at his or her request be allowed, at his or her own expense and under the supervision of the person conducting the investigation, to make copies thereof or to take extracts therefrom at any reasonable time.

(5) (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court applies in relation to the questioning of a suspect or any person referred to in subsection (4): Provided that such a person is not entitled to refuse to answer any question on the ground that the answer would tend to expose him or her to a criminal charge.

(b) No evidence regarding any questions and answers referred to in paragraph (a) is admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (7)(b), or in section 319(3) of the Criminal Procedure Act, 1955 (Act 56 of 1955).

(6) Subject to any directions, conditions or restrictions determined by the judge under subsection (3)(c)(iv), the provisions of sections 28(1)(d), (2) to (10) and 29 (2), (7)(a), (9), (10)(b) and (11) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), relating to the conducting of an investigation and the execution of a warrant in terms of those provisions, apply with the necessary changes in respect of an investigation conducted in terms of subsection (4).

(7) Any person who-

(a) obstructs or hinders the person conducting the investigation or any other person in the performance of his or her functions in terms of this section; or
(b) when he or she is asked in terms of subsection (4) for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading,
is guilty of an offence and is liable, in the case of a sentence to be imposed by a High Court or a regional court, to a fine or to imprisonment for a period not exceeding 10 years, or in the case of a sentence to be imposed by a magistrate's court, to a fine or to imprisonment for a period not exceeding three years.

Insertion of Clause 11B "Application for, and issuing of investigation direction in respect of possession of property disproportionate to a person's present or past known sources of income or assets"

CHAPTER 4 - "IDENTIFICATION AND PROTECTION OF VICTIMS OF TRAFFICKING"
to become "CHAPTER 3"

Clause 12 "Reporting and referral of child victim of trafficking"

(1) Deletion of "on reasonable grounds" and substitution with "knows or suspects or ought reasonably to have known or suspected" in relation to an immigration official, labour inspector, social worker, social service professional, medical practitioner, nurse, teacher, traditional health practitioner, traditional healer and traditional leader

Insertion of "knowledge or" before "suspicion"

(3) (a) Insertion of "knowledge or" before "suspicion"

(4) Deletion of "on reasonable grounds" and substitution with "knows or suspects or ought reasonably to have known or suspected" in relation to a referral of a child to a designated child protection organisation or the provincial department of social development within 24 hours by a police official to whom a report has been made, pending a police investigation into the matter

Clause 13 "Reporting and referral of adult victim of trafficking"

Merging of sub-clause (a) and (b) into sub-clause (1)

Deletion of "on reasonable grounds, suspects" and substitution with "knows or suspects or ought reasonably to have known or suspected" in relation to the immediate referral of an adult victim by an immigration official, labour inspector, social worker, social service professional, medical practitioner, nurse, teacher, traditional health practitioner, traditional healer and traditional leader to a police official

Deletion of sub-clause (1) be in its entirety in relation to the requirement for the written consent of the victim – except where mentally disabled or in an altered state of consciousness – before reporting of a case by a social worker, social service professional, medical practitioner, nurse, traditional health practitioner, traditional healer and traditional leader

Sub-clause (8) Insertion of "social worker, social service professional, medical practitioner, nurse, teacher, traditional health practitioner, traditional healer and traditional leader after "an immigration official, labour inspector"

Deletion of sub-clause (9) in its entirety in relation to sentence on failure to (a) obtain written consent from an adult victim or (b) to report the case after obtaining the written consent

Clause 16 "Criminal prosecution against victim of trafficking ~~prohibited~~"

Deletion of sub-clause (1) in its entirety in relation to prohibition of prosecution against child victim or adult who has been certified to be a victim

Insertion of new sub-clause (1)

“(1) In deciding/considering whether to prosecute for an offence, the NDPP or a delegated official shall consider the following factors:

- (a) the accused is certified to be a victim of trafficking;
- (b) the offence is a direct result of the person being trafficked;
- (c) the extent of the negative impact of the trafficking; and
- (d) whether or not the person was able to act independently.”

Deletion of sub-clause (2) in its entirety in relation to the postponement of a case and referral of a child to a designated child protection organisation or the provincial department of social development for an investigation or refer an adult person to an accredited organisation or the provincial department of social development for an assessment for inclusion in the NPA policy directives

Sub-clause (3) (a) Insertion of “knowledge or” before “suspicion”

Insertion of “or stopping” after “withdrawal” in relation to the criminal prosecutions

CHAPTER 5 - “STATUS OF FOREIGN VICTIMS OF TRAFFICKING” to become CHAPTER 4

No amendments proposed

CHAPTER 6 - “SERVICES TO ADULT VICTIMS OF TRAFFICKING” to become CHAPTER 5

Clause 20 “Accreditation of organisation to provide service”

Sub-clause (3) (b) Insertion of “and the application of the minimum norms and standards referred to in section 21 with which such programmes must comply” in relation to monitoring mechanisms for programmes

Sub-clause (4) (e) Deletion of “who are involved in the administration of this Act” at the end

Clause 21 “Minimum norms and standards”

Sub-clause (1) Insertion of “and relevant role players” after “and other interested parties” in relation to consultation by the Minister of Social Development

Sub-clause (2) (a) Insertion of “and general well-being” after “the safety” and “threats, intimidation or being killed” after “especially those at risk of harm”

Sub-clause (2) (g) Insertion of "and circumstances" after "the manner" as well as "can be disclosed" in relation to the disclosure of the particulars of a victim of trafficking. "Should" also substituted with "must"

Sub-clause (3) Insertion of new (a) "appropriate facilities to cater for the needs of children" (New numbering (a) to (d) from (a) to (c))

Clause 24 "Plan to address needs of victim of trafficking"

Insertion of "and the immediate family members of the victim, where applicable" in relation to drawing up of a plan to address the immediate and long-term needs of the victim

Clause 25 "Return of adult victim within Republic"

Insertion of "and, if applicable, a child in his or her care or immediate family member"

Substitution of "the person" with "that victim" in sub-clause (a) and insertion of "and, if applicable, a child in his or her care or other immediate family member" as well as "or them" after "process of returning him or her"

Sub-clause (b) the possibility that ~~the person~~ that victim and, if applicable, a child in his or her care or other immediate family member might be harmed, killed or trafficked again if returned to that area.

Clause 26 "Information management"

Sub-clause (1) Insertion of "and any children or other immediate family members with them, if applicable" after "victim of trafficking"

Insertion of

"(j) any threats, intimidation or harm suffered by any victim or child in his or her care or other immediate family member of the victim during their accommodation at an accredited organisation" after (i) to add a category of information which must be collected

OPTION

Insertion of Clause 26 (A) "Care and accommodation of immediate family member of victim of trafficking"

Sub-clause (1) The Director-General: Social Development is responsible for the care and accommodation of an immediate family member of a victim of trafficking who was in the care of the victim at the time the victim was trafficked: Provided that the Director-General is satisfied that the immediate family member does not have the financial means to pay for his or her own care and accommodation.

(2) An immediate family member in respect of whom the said Director-General is satisfied does not have the financial means to pay for his or her own care and accommodation, is entitled to access a programme offered by an accredited organisation in terms of section 22(1)(a).

(3) The provisions of sections 25 and 26 apply with the necessary changes in respect of an immediate family member of a victim of trafficking

CHAPTER 7 - "COMPENSATION" to become CHAPTER 6

Clause 27 "Compensation to victim of trafficking "

Deletion of sub-clauses (1), (2), (3), (4) and (5) as they would create differential treatment for victims of crime. The defects in the provisions of s300 of the Criminal Procedure Act should be cured in other legislation and not in miniscule pieces, such as this proposed legislation. There is a contrary view within the NPA that this would be difficult to achieve.

Clause 28 "Compensation to State"

Sub-clause (1) (a) Deletion of "penalty" and substitution with "sentence, including any sentence of imprisonment"

Deletion of (b) "in addition to any order for the payment of compensation to a victim in terms of section 27"

Current (c) becomes (b) and "and, if applicable, his or her child or other immediate family member" inserted at the end in relation to care, accommodation, transportation and repatriation expenses

Addition of (3) (a) When making an order referred to in subsection (1), the court may order that the amount be deposited into the Criminal Assets Recovery Account established under section 63 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

(b) Government Departments or accredited organisations which incur expenses associated with the care, support, accommodation, transportation or repatriation of victims of trafficking may apply to the Criminal Assets Recovery Committee for an allocation of funds to defray the expenses in question.

(c) The Criminal Assets Recovery Committee may recommend to Cabinet the distribution of funds deposited in the Criminal Assets Recovery Account through the application of this Act on a preferential basis to satisfy appropriate applications made in terms of paragraph (b) and may recommend the allocation of other funds from the Account for this purpose.

(d) The provisions of section 69A of the Prevention of Organised Crime Act, 1998, apply to any Department or accredited organisation which receives funds in terms of paragraph (b) or (c).

Insertion of Clause 28A "Satisfaction of compensation order"

Sub-clause (1) Despite any provisions to the contrary in any other law, a compensation order made under section ~~27 or~~ 28 may be satisfied out of the proceeds of any successful application for –

(a) a confiscation order or a restraint order under Chapter 5 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998); or

(b) a forfeiture order under Chapter 6 of the said Act, if the application relates to an offence referred to in this Act and if the person against whom the compensation order was made, was convicted of the offence in question.

(2) A compensation order made under section ~~27 or~~ 28 may be satisfied out of the proceeds of any assets forfeited in terms of section 11A which are deemed to be a preferential claim against the assets in question.

(3) Irrespective of whether any person is convicted of an offence under this Act or not, and where the provisions of Chapter 6 of the Prevention of Organised Crime Act, 1998, relating to the forfeiture of property have been applied in respect of such offence, the proceeds of any such forfeiture ~~may be used to satisfy a compensation order made under section 27 where the victim is linked to the matter, whereafter the balance if any, must be deposited in the~~ Criminal Assets Recovery Account established under section 63 of the Prevention of Organised Crime Act, 1998.

(4) The Director-General: Justice and Constitutional Development must, in consultation with the Director-General: Social Development, establish guidelines on how to evaluate the validity and amount of any claim for compensation.

CHAPTER 8 - "DEPORTATION AND REPATRIATION OF VICTIMS OF TRAFFICKING"
to become **CHAPTER 7**

Clause 29 "Summary deportation of victim of trafficking prohibited"

Insertion of "and, if applicable, a child in his or her care or other immediate family member" in relation to the summary deportation of a victim of trafficking

Clause 30 "Repatriation of victim of trafficking from Republic"

Sub-clause (1) (b) Insertion of "or any immediate family member" in relation to the safety of the child during the repatriation process

Sub-clause (1) (c) Insertion of "or any immediate family member" in relation to the availability and suitability of care arrangements in the country and safety of the child in the country to which s/he is being returned

Sub-clause (1) (d) Insertion of "or any immediate family member" after "child"

Sub-clause (2) (a) (i) Substitution of "that person" with "that victim" and insertion of "and if applicable, a child in his or her care or other immediate family member" in relation to safety during the repatriation process

Sub-clause (2) (a) (iii) Substitution of "that person" with "that victim" and insertion of "and if applicable, a child in his or her care or other immediate family member" in relation to the possibility of harm, death or the repatriation of that victim

Sub-clause (2) (b) Insertion of
"before returning a person referred to in paragraph (a) to his or her country of origin or the country from where he or she has been trafficked—

(i) consult with the National Director of Public Prosecutions to determine whether that person is/ will be required to testify in a subsequent prosecution;

Sub-clause (2) (b) (ii) Deletion of "before returning a person referred to in paragraph (a) to his or her country of origin or the country from where he or she has been trafficked,"

Clause 32 "Repatriation of victim of trafficking to Republic"

Sub-clause (a) (i) Insertion of "and any immediate family member" in relation to the facilitation of the return and reception measures for citizens or permanent residents

OPTION

Clause 33A "Deportation and repatriation of immediate family member of victim of trafficking"

Insertion of "The provisions of this Chapter apply with the necessary changes in respect of an immediate family member of a victim of trafficking who was in the care of a victim at the time the victim was trafficked"

CHAPTER 9 - "GENERAL PROVISIONS" to become CHAPTER 8

Clause 36 "National instructions and directives"

Sub-clause (7) (b) Substitution of "complainants" with "child witnesses" in relation to testimony by closed circuit television system as provided for in s158 of the Criminal Procedure Act

Sub-clause (7) (f) Substitution of "complainant" with "victim" in relation to the protection of the victim's identity as well as the publication of information which may lead to the identification of his or her family

Clause 41 "Responsibilities, functions and duties of Intersectoral Committee"

Insertion of sub-clause (1) (d) "establishing public awareness and education programmes or other measures for the prevention and combating of trafficking in persons, after consultation with relevant non-governmental organisations, which are designed to—

- (i) inform and educate members of the general public, especially those who are vulnerable or at risk of becoming victims of trafficking, foreigners who apply for South African visas who may be victims of trafficking, and South African citizens or permanent residents who apply for South African passports or who depart abroad, on issues relating to trafficking in persons, including—
 - (aa) common recruitment techniques used by traffickers;

- (bb) practices used to keep victims of trafficking in exploitative situations;
- (cc) the forms of abuse to which victims of trafficking may be subjected; and
- (dd) organisations, institutions or law enforcement agencies that may be approached for assistance or information;
- (ii) inform and educate victims of trafficking on—
 - (aa) their rights as victims;
 - (bb) legal or other measures in place to ensure their safety, recovery and repatriation; and
 - (cc) organisations, institutions or law enforcement agencies that may be approached for assistance or information; and
- (iii) discourage the demand for and the supply of victims of trafficking that fosters the exploitation of those victims, especially women and children.”

Insertion of sub-clause (2) (a) The programmes or other measures referred to in subsection (1) (d) must—

- (i) include appropriate measures aimed at reaching rural communities;
- (ii) where possible, be provided in a language understood by the persons at whom they are directed; and
- (iii) be reviewed every second year in order to determine their effectiveness.

(b) The Director-General: Justice and Constitutional Development must take all reasonable steps within available resources to ensure that the programmes or other measures referred to in subsection (1)(d) are implemented throughout the Republic

Current sub-clause (2) becomes sub-clause (3)

Clause 42 “Report to Parliament”

Sub-clause (a) (i) Substitution of “Department or institution” with “functionary”

CHAPTER 10 - “ADMINISTRATION OF ACT” to become CHAPTER 9

No amendments proposed

CHAPTER 11 - “MISCELLANEOUS MATTERS” to become CHAPTER 10

No amendments proposed