

SAINT LUCIA

No. 7 of 2010

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SCHEDULE

No. 7]

Counter-Trafficking Act

[2010.

I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

January 25, 2010.

SAINT LUCIA

No. 7 of 2010

AN ACT to give effect to and to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and to provide for related matters.

[1st February, 2010]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and Senate of Saint Lucia, and by the authority of the same, as follows:

**PART I
PRELIMINARY**

Short title

1. This Act may be cited as the Counter-Trafficking Act 2010.

Interpretation

2. In this Act -

“abuse of a position of vulnerability” -

- (a) means such abuse that the person believes he or she has no reasonable alternative but to submit to the labour or service demanded of the person; and
- (b) includes, but is not limited to taking advantage of the vulnerabilities resulting from the person having entered the country illegally or without proper documentation, pregnancy, and physical or mental disease or disability of the person including addiction to the use of any substance, or reduced capacity to form judgments by virtue of being a child;

“child” means a person below the age of eighteen years;

“child pornography” means -

- (a) audio or visual depiction of any kind, whether -
 - (i) made or produced by electronic, mechanical or other means; or
 - (ii) embodied in a disc, tape, film or other device, whether electronically or otherwise, so as to be capable of being retrieved or reproduced there- from, of sexually explicit conduct involving a child; or
- (b) any representation of the genitalia of a child, where such audio or visual depiction or representation lacks genuine literary, artistic, or scientific value;

“coercion” means violent as well as some form of non-violent or psychological coercion, including -

- (a) threats of serious harm to or physical restraints against any person;
- (b) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(c) the abuse or threatened abuse of the legal process;

“debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of the persons under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

“exploitation” means at a minimum –

- (a) keeping a person in a state of slavery;
- (b) subjecting a person to practices similar to slavery;
- (c) compelling or causing a person to provide forced labour or services;
- (d) keeping a person in a state of servitude, including sexual servitude;
- (e) the exploitation of the prostitution of another;
- (f) engaging in any form of commercial sexual exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child pornography;
- (g) illicit removal of human organs;

“exploitation of the prostitution of others” means the deriving by one person of monetary or other benefit through the provision of sexual services for money or other benefit by another person;

“forced labour” means labour or services obtained or maintained through force, threat of force, or other means of coercion or physical restraint;

“illicit removal of human organs” means the unlawful removal of organs, tissue or body parts from a victim irrespective of whether the victim consented to such removal and is not a legitimate medical procedure for which proper consent has been obtained;

“Minister” means the Minister responsible for national security;

“organized criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert

with the aim of committing one or more offences established in this law in order to obtain, directly or indirectly, a financial or other material benefit;

“practices similar to slavery” means, in general, debt bondage, serfdom, forced or servile marriages and delivery of children for exploitation;

“Protocol” means the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, the text of which is set out in the Schedule;

“restitution” means financial or other compensation for the victim for damages suffered during the process of being trafficked;

“servitude” means a condition of dependency in which labour or services of a person are provided or obtained by threats of serious harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if the person did not perform such labour or services, that person or another person would suffer serious harm;

“sexual exploitation” means compelling the participation of a person in -

- (a) prostitution;
- (b) the production of child pornography or other pornographic materials;
- (c) any other sexual activity as a result of being subjected to threat, coercion, abduction, the effects of narcotic drugs, force of authority or fraud;

“sexually explicit conduct” includes actual or simulated sexual activity, such as sexual intercourse whether between persons of the same or opposite sex and whether involving genital, anal or oral sex, bestiality, masturbation, sadistic or masochistic abuse;

“slavery” means the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised;

“trafficking in children” means the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, irrespective of whether any of the means described in the definition of “trafficking in persons” has been established;

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

“travel documents” means any document that can be used for travel between States such as –

- (a) a passport;
- (b) a visa;
- (c) a tourist card;
- (d) an airline ticket; and
- (e) any other document used under the laws of a State to establish identity in that State;

“victim” means any person against whom the offence of trafficking in persons has been committed.

Force of law

3. The Protocol has the force of law in Saint Lucia.

Object of this Act

4. The object of this Act is to prescribe measures to prevent and combat trafficking in persons with particular regard to victims who are women and children, by –

- (a) protecting and assisting victims of trafficking, having due regard to their human rights;
- (b) facilitating the efficient investigation of cases of trafficking in persons;
- (c) facilitating the just and effective punishment of individuals and organizations involved in trafficking in persons;

- (d) promoting cooperation between Saint Lucia and other States in order to prevent and suppress trafficking in persons and to punish offenders.

Part II

CRIMINAL OFFENCES AND RELATED PROVISIONS

Offence of trafficking in persons

5. – (1) A person who engages in, conspires to engage in, attempts to engage in, assists another person to engage in, or organizes or directs another person to engage in trafficking in persons commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or a term of imprisonment not exceeding five years.

(2) The recruitment, transportation, harbouring, or receipt of a child, or giving of payment or benefits to obtain the consent of a person having control of a child, for the purpose of exploitation, constitutes trafficking in persons irrespective of whether any of the means of trafficking in persons has been established.

Offence of unlawful withholding of identification papers

6. Any person who for the purposes of trafficking in persons and acting or purporting to act as another person's employer, manager, supervisor, contractor, employment agent, or solicitor or client such as a pimp, knowingly procures, destroys, conceals, removes, confiscates, or possesses any passport, immigration document, or other government identification document, whether actual or purported, belonging to another person, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years.

Offence of transporting a person for the purpose of exploiting such a person's prostitution

7. – (1) Whoever knowingly transports, or conspires to transport or attempts to transport, or assist another person engaged in transporting any person in Saint Lucia, or across an international border for the purposes of exploiting that person's prostitution commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or imprisonment for a term not exceeding five years.

(2) The presence of any one of the following aggravating factors resulting from acts of the defendant may permit a longer sentence up to ten years, together with forfeiture of the conveyance used for transporting the victim-

be used or was obtained in the course of the crime or benefits gained from the proceeds of the crime, must be forfeited to the State.

(2) Overseas assets of persons convicted of trafficking in persons are subject to forfeiture to the extent that the assets may be retrieved by the Government.

Aggravated circumstances

10. – (1) As factually appropriate, the following adjustments to the sentence of persons convicted of the crime of trafficking in persons may apply –

- (a) if the convicted person used, threatened to use, or caused another to use or threaten to use a dangerous weapon, two years may be added to the sentence;
- (b) if a trafficked person suffers a serious bodily injury, or if the convicted person commits a sexual assault against the trafficked person, five years may be added to the sentence;
- (c) if the trafficked person had not attained the age of eighteen years of age, five years may be added to the sentence;
- (d) if, in the course of trafficking, or subsequent exploitation, the convicted person recklessly caused the trafficked person to be exposed to a life threatening illness, or if the convicted person intentionally caused a trafficked person to become addicted to any drug or medication, five years may be added to the sentence;
- (e) if a trafficked person suffers a permanent or life-threatening injury, ten years may be added to the sentence;
- (f) if the trafficking was part of the activity of an organized criminal group, three years may be added to the sentence;
- (g) if the trafficking was part of the activity of an organized criminal group and the convicted person organized the group or directed its activities, five years may be added to the sentence;
- (h) if the trafficking occurred as the result of abuse of power or of a position of authority, including but not limited to a parent or guardian, teacher, children’s club leader, or any other person who has been entrusted with the care or supervision of the child, four years may be added to the sentence.

(2) In this section –

“dangerous weapon” means –

- (a) an instrument capable of inflicting death or serious bodily injury; or
- (b) an object that is not an instrument capable of inflicting death or serious bodily injury but
 - (i) closely resembles such an instrument; or
 - (ii) is used in such a way that it creates the impression that the object is an instrument capable of inflicting death or serious bodily injury;

“life-threatening illness” means any illness that involves a substantial risk of death, and includes Human Immune Deficiency Virus Infection and tuberculosis;

“permanent or life-threatening bodily injury” means –

- (a) injury involving a substantial risk of death, loss or substantial impairment of the function of a bodily member, organ or mental faculty that is likely to be permanent; or
- (b) an obvious disfigurement that is likely to be permanent; or
- (c) maltreatment to a life-threatening degree, such as by denial of food or medical care that results in substantial impairment of function;

“serious bodily injury” means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty or requiring medical intervention such as surgery, hospitalization or physical rehabilitation;

“sexual assault” means causing another to engage in a sexual act by using force against that person, threatening or placing that person in fear that any person will be subjected to death, serious bodily injury, or kidnapping, and engaging in a sexual act with an incapacitated person, or a person who cannot express consent or with a minor that constitutes statutory rape.

Consent or past sexual behaviour of a victim is irrelevant

11. – (1) In any prosecution for an offence of trafficking in persons under section 3, the alleged consent of the victim to the intended or realized exploitation is irrelevant once any of the means or circumstances of trafficking in persons is established.

(2) In a prosecution for trafficking in persons under section 4, the evidence of a victim's past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the victim engaged in other sexual behavior, or to prove the victim's sexual predisposition.

Legal age of consent to sex not a defence to trafficking in persons

12. The legal age of consent to sex or to marriage is not a defence to the offence of trafficking in persons.

Victim to be immune from prosecution

13. A victim of trafficking in persons is not criminally liable for any immigration-related offence, or any other criminal offence that is a direct result of being trafficked.

Offences of bodies corporate

14. – (1) Subject to subsection (2), where a body corporate commits an offence under this Act, every director, manager, secretary or other similar officer concerned with the offence is liable on conviction on indictment to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both.

(2) A director, manager, secretary or other similar officer concerned with the management of a body corporate is not liable for an offence under this Act unless the court is satisfied –

- (a) that the offence was committed with the person's connivance;
or
- (b) the person had not exercised all such diligence to prevent the commission, having regard to the nature of functions in that capacity and to all the circumstances.

(3) A body corporate which commits an offence against this Act is liable on conviction or on indictment to a fine not exceeding one hundred thousand dollars.

(4) In this section "director" in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Receiving financial or other benefit knowing that it is as a result of trafficking in persons

15. Every person who receives a financial or other benefit knowing that it results from the offence of trafficking in persons commits an offence

and is liable on conviction on indictment to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding five years or to both.

Entry, search and seizure

16. – (1) Subject to subsection (3), where a Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that evidence relating to an offence under this Act is to be found on any premises specified in the information, a Magistrate may issue a warrant in accordance with subsection (2).

(2) A warrant issued under subsection (1) may authorize a constable named in the warrant to enter the premises specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable to –

- (a) enter upon the premises;
- (b) search the premises for evidence relating to an offence under this Act; and
- (c) seize any article, vehicle or property found in the course of the search that the constable believes, on reasonable grounds, to be evidence of or relating to an offence under this Act.

(3) A Magistrate shall not issue a warrant under this section unless the informant or some other person has given the Magistrate, on oath, such further information as the Magistrate may require concerning the grounds on which the issue of the warrant is sought.

(4) A warrant issued under this section must include –

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the offence of trafficking;
- (b) a description of the kind of article, vehicle or property to be seized;
- (c) the time, not being later than fourteen days, upon the expiration of which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorized to be made at any time of the day or night, or during specified hours of the day or night.

Offence of threatening, obstructing, etc., a constable

17. Any person who threatens, assaults or obstructs a constable acting in the execution of his or her duty under this Act commits an offence and

is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months.

Jurisdiction

18. A court in Saint Lucia has the jurisdiction to try an offence under this Act where the act constituting the offence has been carried out –

- (a) wholly or partly in Saint Lucia;
- (b) by a citizen of Saint Lucia anywhere;
- (c) by a person on board a vessel or aircraft registered in Saint Lucia.

PART III

ASSISTANCE AND PROTECTION OF VICTIMS OF TRAFFICKING

Protection for the safety of victims, including identification of victims

19. – (1) In the investigation and prosecution of offences relating to trafficking in persons, the following guiding principles apply –

- (a) all steps necessary to identify the victims of the trafficking must be taken;
- (b) reasonable protection to a victim of the trafficking must be taken to prevent, recapture and secure the victim from threats, reprisals and intimidation by the traffickers and associates of the traffickers;
- (c) reasonable protection must be taken to secure the victim's family from threats, reprisals or intimidation by traffickers or their associates of the traffickers if the victim's family resides in Saint Lucia; and
- (d) ensure that a victim has an opportunity to consult with the victim's advocate or other appropriate persons to develop a safety plan.

(2) Law enforcement officials such as the Police, Immigration, and other investigative officers shall follow the guidelines specified in subsection (1).

Witness protection

20. – (1) Victims of trafficking who are witnesses or potential witnesses may be eligible for applicable witness relocation and protection

programmes for victims of organized criminal activity or other serious offences, if it is determined that an offence involving a crime of violence directed at the witness or potential witness is likely to be committed.

- (2) The programmes in subsection (1) may include –
 - (a) relocation;
 - (b) new identity documents establishing identity;
 - (c) new residence;
 - (d) employment work permits;
 - (e) protection of confidentiality of identity and location.

Protection of the privacy of victims, including proceedings held in camera

21. – (1) In a prosecution for trafficking in persons under this Act or unlawful use of documents under section 4, the identity of the victim and the victim's family must be kept confidential by ensuring that names and identifying information of the victim and the victim's family are not released to the press or the public, including by the defendant.

(2) A hearing under this section must be held in camera if the court so orders.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding one year.

Information for victims

22. The Minister shall inform victims of trafficking, in a language that the victims understand, of the victims legal rights and the progress of relevant court and administrative proceedings, as appropriate, including but not limited to proceedings of the criminal offenders, proceedings for the return of the victims to their country of citizenship or lawful residence, and procedures for seeking legal immigration status under section 25.

Opportunity for the presentation of the victim's views and concerns

23. – (1) The court shall provide an opportunity to the victim of trafficking, if the victim desires it, to present his or her views and concerns at appropriate stages of criminal proceedings against traffickers, in a manner not prejudicial to the rights of the defendant.

(2) An interpreter who speaks a language the victim understands must be made available to the victim during the course of legal proceedings.

Assistance to victims

24. – (1) The Minister in conjunction with other relevant Ministries shall develop a plan, in consultation with non-governmental organizations and other representatives of civil society, for the provision of appropriate services, from governmental and non-governmental sources, for victims of trafficking and dependent children accompanying the victims, including –

- (a) appropriate housing, taking into account the person's status as a victim of crime and including safe conditions for sleeping, food and personal hygiene;
- (b) psychological counseling in a language the victim can understand;
- (c) medical assistance in a language the victim can understand;
- (d) other medical assistance as appropriate;
- (e) employment, educational, and training opportunities; and
- (f) legal assistance or legal information in a language the victim understands.

(2) Victims of trafficking may be eligible to work and to receive proof of work authorization.

(3) Victims of trafficking and the accompanying dependent children of victims may be entitled to receive social benefits for the duration of their stay in Saint Lucia as may be determined by the Minister responsible for social security.

(4) Residence in shelters or other facilities established under this section may be voluntary, and victims may decline to stay in shelters.

(5) Victims may have the option to communicate with and receive visits from family, friends and attorneys-at-law.

(6) In the absence of exigent circumstances, victims of trafficking, once identified as such, must not be housed in prisons or other detention facilities for accused or convicted criminals.

(7) Child victims of trafficking once identified as such, shall not be housed in prisons or other detention facilities for accused or convicted criminals under any circumstances.

(8) The authorities mentioned under subsection (1) shall take into account the age, gender and special needs of the victims and

accompanying dependent children in formulating plans to provide services to them and in delivering such services.

(9) Plans developed in accordance with subsection (1) must be submitted for approval to the Cabinet and the authorities shall also undertake periodic reviews of the plans and implementation of the plans to ensure compliance with the requirements of this section and to ensure that all victims are treated with respect for their human rights and dignity.

Immigration status of victims

25. – (1) The Minister responsible for home affairs may provide victims of trafficking and accompanying dependent children with appropriate visas or other required authorization to permit the victims and dependent children to remain in Saint Lucia for the duration of the criminal prosecution against the traffickers, provided that the victim is willing to comply with reasonable requests, if any, to assist in the investigation or prosecution of the traffickers.

(2) Victims of trafficking may be eligible for residence in Saint Lucia in the manner prescribed in the law related to immigration, provided the victims have complied with reasonable requests, if any, for assistance in the investigation or prosecution of acts of trafficking.

(3) Dependent children accompanying the victim are eligible for resident status in Saint Lucia in the manner prescribed in the said Act.

(4) A victim's spouse and children, and in the case of a child victim, the parents or guardian, and the victim's siblings, may be eligible to join the victim in Saint Lucia as part of the victim's application for residence under this section.

Assistance for citizen or permanent resident victims abroad

26. – (1) The Minister responsible for foreign affairs, through Saint Lucia's diplomatic mission and consular offices abroad, where practicable, shall offer assistance to citizens of or persons holding permanent residency in another country and who are victims of trafficking in persons located abroad, including but not limited to -

- (a) assistance in understanding the laws of the foreign country to which the victims have been trafficked, including the rights of the victims, options for reporting the crime, and opportunities for seeking restitution or other benefits that are available under the laws of that country;

- (b) assistance in obtaining emergency services, including but not limited to medical care and counseling;
- (c) at the request of either the victim or the appropriate authorities in the other country, replacement or provision of passports or other travel documents necessary for the victim to return to Saint Lucia without undue or unreasonable delay;
- (d) material assistance in returning to the last place of residence in Saint Lucia in the same manner provided for other citizens or persons with the right to permanent residency for those who become stranded abroad when the country to which the victim was trafficked does not provide such assistance.

(2) The Minister responsible for foreign affairs, through Saint Lucia diplomatic missions and consular offices abroad, shall publish and disseminate both to the appropriate authorities in that country and to possible victims of trafficking who are citizens of Saint Lucia information on the rights of victims of trafficking under the laws of Saint Lucia and the country or countries for which the diplomatic mission has responsibility.

(3) In the case of diplomatic missions and consular offices of countries of destination of trafficking victims, such information shall be provided to appropriate authorities and to potential trafficking victims who are citizens or lawful residents of the country for which the mission or office has responsibility.

(4) Saint Lucia Diplomatic missions abroad shall appoint an officer to be responsible for implementing and supervising plans, and ensuring the provision of services required under this section.

Verification of nationality or age of victims

27. – (1) Upon request by the appropriate authority representative of another State, the Minister responsible for home affairs shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is a citizen, or national of, or holds permanent residency in Saint Lucia.

(2) A request made under subsection (1) may include a request for the verification of –

- (a) the age and name of a person who is a victim of trafficking in persons and who is suspected of being a minor;
- (b) whether the victim is a citizen or permanent resident of the country making the request; or

(c) any other immigration status the victim may have in Saint Lucia.

(3) The Minister responsible for home affairs shall designate an officer to deal with requests made under this section.

Return of victims to country of citizenship or lawful residence

28. – (1) The Ministers responsible for home affairs and foreign affairs shall, in cooperation and after consultation with non-governmental organizations and international organizations, develop plans for the safe return of victims of trafficking in persons, to Saint Lucia or lawful residency.

(2) Plans to develop under subsection (1) must take due account that a victim of trafficking may elect to apply for citizenship or permanent residency of Saint Lucia, or remain in Saint Lucia during the criminal proceedings against the traffickers.

Assistance to victims that are unable to prove their nationality status through normal means

29. – (1) Victims of trafficking abroad who claim to be citizens or persons holding permanent residency in Saint Lucia, but whose identity cannot be verified through ordinary means, can establish the right to return to Saint Lucia by demonstrating significant connections to their country through such factors as –

- (a) place of birth;
- (b) presence of family members;
- (c) presence of friends;
- (d) significant knowledge of specific geographical areas and neighbourhoods;
- (e) long-term residence in Saint Lucia; or
- (f) any other means.

(2) The list of factors in subsection (1) is not exhaustive, and not every factor is required to make the determination.

(3) Determinations under this section are to be made with due concern for compassion and justice to victims.

(4) The fact that the victim would not be eligible for citizenship based on the showing made under this section is not a bar to re-entry.

(5) Diplomatic missions abroad shall assign a specific diplomat to make determinations under this section.

(6) Victims may appeal an adverse determination to the Minister responsible for legal affairs.

(7) Where the Minister responsible for legal affairs determines an individual is eligible to re-enter Saint Lucia under this section, the diplomatic mission abroad shall issue a certificate of identity, permitting re-entry.

Services for returned victims of trafficking

30. Victims of trafficking who return from abroad shall have access to educational and training programmes provided by any governmental or private entity without being differentiated from other participants on the basis of having been trafficked.

Special consideration to be given to a child victim

31. – (1) Assistance in this Part must be provided to trafficking victims who are children in a manner that is in the child's best interest and appropriate to the child's situation.

(2) Child trafficked victims must be provided with appropriate services, which may include understanding of their rights, privacy, housing, care and age-appropriate support and rights specified in this Part.

(3) Special programmes must be developed to accommodate child witnesses including –

- (a) testimony of a minor to be conducted outside the court setting or by video;
- (b) all testimony and court proceedings to take place with a parent, legal guardian, foster parent or social worker present;
- (c) whenever safe and possible, children must be reunited with family members in Saint Lucia or in their country of origin;
- (d) special mental and physical medical care to be tailored to children's needs;
- (e) upon return to Saint Lucia, child victims of trafficking must be guaranteed education which at least matches the general standard of education in Saint Lucia.

PART IV
MISUSE OF COMMERCIAL TRANSPORTATION

Responsibilities of international commercial transportation companies or individuals

32. – (1) An international commercial transportation provider shall verify that each passenger to any destination into or outside Saint Lucia possesses the necessary travel documents, including passport and visas, to enter the destination country and any transit countries.

(2) Subsection (1) applies to the international commercial transportation provider, his or her 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 is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months.

(4) Where an offence is committed under this section, the international commercial transportation provider shall bear the costs of returning the person to his or her initial point of embarkation.

(5) Where an international commercial transportation provider knowingly transports a victim of trafficking into or from Saint Lucia he or she is liable for costs associated with providing accommodation and meals for the victim and any accompanying children for the duration of the victim's stay outside or inside Saint Lucia.

PART V
PREVENTION OF TRAFFICKING IN PERSONS

National task force for prevention of trafficking

33. – (1) The Minister shall establish an inter-agency task force to develop and implement a National Plan for the Prevention of Trafficking in Persons.

(2) The task force established under subsection (1) must include all aspects of trafficking including trafficking for sexual and labour exploitation.

(3) The Minister shall appoint the members of the task force, which shall include representatives from the Ministries of Legal Affairs, Foreign

Affairs, Labour, Human Services and Social Security, Home Affairs, other appropriate high-level government officials with responsibility for law enforcement, immigration and human and social services and appropriate non-governmental organizations.

(4) The task force shall carry out the following activities either directly or via one or more of the constituent ministries as appropriate -

- (a) develop the National Plan for the Prevention of Trafficking in Persons;
- (b) coordinate the implementation of the Plan;
- (c) coordinate the collection and sharing of trafficking data among government agencies and all data collected must respect the privacy of victims of trafficking;
- (d) coordinate the sharing of information between agencies for the purpose of determining whether individuals crossing or attempting to cross the international border of Saint Lucia with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons, and detecting criminal groups engaged in trafficking;
- (e) identify and engage in efforts to facilitate cooperation with foreign countries, particularly those which are a -
 - (i) significant source of victims,
 - (ii) transit location, or
 - (iii) destination of victim and the cooperation must aim to strengthen bilateral, multilateral, local and regional capacities to assist trafficking victims, prevent trafficking, prosecute traffickers and assist in the appropriate reintegration of victims of trafficking;
- (f) establish policies to enable the Saint Lucian Government to work with non-governmental organizations and other elements of civil society to prevent trafficking and provide assistance of victims;
- (g) coordinate and provide training for law enforcement, immigration and other relevant officials in addressing trafficking in persons;
- (h) in coordination with other appropriate governmental agencies and appropriate non-governmental organizations, prepare public awareness programmes designed to educate potential victims of trafficking and their families to the risk of victimization;

- (i) in coordination with other appropriate governmental agencies and appropriate non-governmental organizations, prepare, disseminate and publish awareness raising material to discourage the demand that fosters the exploitation of persons, especially women and children, that leads to trafficking.

Exclusion of persons implicated in trafficking

34. – (1) The Minister shall periodically identify, in a public report, every person who is a trafficker in persons, or who had knowingly assisted or conspired with another to traffic in persons.

(2) Persons identified in reports under subsection (1), or whom an overseas consular official knows or has reason to believe is a trafficker of persons or who had knowingly assisted or conspired with a trafficker to traffic in persons, shall not receive an entrance or transit visa.

(3) The visas of persons identified in reports under subsection (1) must be revoked.

PART VI GENERAL

Regulations

35. The Minister may make regulations for carrying into effect the objects and purposes of this Act either generally or in relation to any particular case.

Order to increase fines

36. – (1) The Minister may by Order published in the *Gazette* increase the fines provided under this Act.

(2) An Order under subsection (1) is subject to an affirmative resolution.

SCHEDULE

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive

international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1. Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2. Statement of purpose

The purposes of this Protocol are:

Article 5. Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

- (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
- (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
- (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons*Article 6. Assistance to and protection of victims of trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

- (a) Information on relevant court and administrative proceedings;
- (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;

- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7. Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8. Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

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

III. Prevention, cooperation and other measures

Article 9. Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10. Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

- (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11. Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent

possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12. Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13. Legitimacy and validity of documents

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

IV. Final provisions*Article 14. Saving clause*

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16. Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph I of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18. Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the

Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19. Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

