

Law no. 6/2008

of July 9

The current worldwide trend in human trafficking, to which Mozambique is not immune, calls for definition of a legal framework to deter and punish such debasing practices and crimes. Thus under paragraph 1 of article 179 in the Constitution, the Assembly of the Republic rules:

CHAPTER I General Principles

Article 1 (Definitions)

The definitions of terms and phrases employed in this law form part of the glossary appended to this law and are deemed integral to it.

Article 2 (Object)

The object of the present law is to set up a legal framework to deter and combat trafficking in persons, especially women and children, namely criminalization of trafficking in persons and related activities as well as affording protection for victims, witnesses and those who may report on said traffic.

Article 3 (Scope)

This law is to deter and combat trafficking in persons into or out of national territory, as long as those responsible are found in Mozambique or may be extradited to Mozambican territory.

Article 4 (Responsibility of legal persons)

1. Should any of the acts covered by the present law undertaken through means, resources, facilities, employees or patrimony held by a legal person, responsibility falls to its chairman, CEO, manager, administration board or associates, as well as any responsible employee, who have participated in the crime or knowingly allowed or not acted against such a crime.
2. Pertaining to the above, legal persons are jointly responsible for payment of claims, indemnity, fines, legal and court costs and any other duties the parties responsible are enjoined to bear, so long as the parties have acted in the interest of the legal person, but not if they have acted against the wishes of the company board or other administrative body.
3. The assets held by Legal Persons that has been used to commit the crimes covered by this law, be they means of transport, accommodation or financial assets, or means of any other nature, as well as establishments, profits, goods or commodities acquired through trafficking in persons, will be seized by and revert to the State.
4. Any registrations and licenses held by legal persons or organizations, covered in this article, will be definitely canceled, the economic activity shall cease, and the persons mentioned under no. 1 are hereby prohibited from engaging in like activities, even under a different company.

Article 5 (Aggravating circumstances)

The following, notwithstanding those envisioned in the Penal Code, are deemed aggravating circumstances:

- a) when the victim is a child, woman or person aged 18 or over, but incapable of protecting him or herself against abuse, neglect, cruelty, exploitation or discrimination, due to disability, or physical or mental condition;
- b) when the crime is committed by any direct or collateral relative of the victim, up to eight times removed;
- c) when the crime is committed by warden, educator, mentor or custodian of the victim, the perpetrator holding a position of authority over, or responsibility for the victim, being a member of the clergy or a

minister to any cult;

d) when the crime is committed by any public authority;

e) when the crime is committed against a person in asylum;

f) when the crime is committed by one charged with protection of the victim;

g) when the victim is used to commit crimes or engaged in armed conflict;

h) when the crime is committed by a syndicate, criminal association or involves a large number of victims;

i) when the crime or the period of time during which the crime is committed results in psychological ill-health, mutilation or contagion by HIV/AIDS and sexually-transmitted diseases.

Article 6 (Attenuating circumstances)

Attenuating circumstances are envisioned in penal law and include, among others, spontaneous and voluntary cooperation with the authorities tasked with investigating the crime.

Article 7 (Penal action)

Penal action against the crimes covered by this law does not depend on complaint, denunciation or report from the victim or its legal representatives.

Article 8 (Duty of report)

All citizens are compelled to report to the relevant authorities any facts that are part of the crimes covered by this Law.

Article 9 (Compulsory report)

1. All employees of Immigration services, customs agents or border police, doctors or health workers and any other civil servant, coming into knowledge that a person is a victim of traffic, is especially compelled to report it to the relevant authorities.

2. Police authorities coming into this knowledge autonomously or through report must initiate the investigative process necessary to prosecution of the perpetrator(s).

CHAPTER II *On the crime of trafficking in persons and connected crimes*

Article 10 (Trafficking in persons)

All those who recruit, transport, give shelter to, supply or receive a person, by any means, including under pretext of domestic work, or work abroad, training or apprenticeships, forced labor, slavery, indentured servitude or debt servitude will be punished by 16 to 20 years of imprisonment.

Article 11 (Pornography and sexual exploitation)

All those who traffic in persons for money, profit or any other advantage, namely a Mozambican citizen dealing with a foreign citizen for purposes of marriage do acquire, buy, offer, sell or trade the person for involvement in pornography, sexual exploitation and forced labor, slavery, indentured servitude or debt servitude will be punished by 16 to 20 years of imprisonment.

Article 12 (Adoption for illicit purposes)

All those who adopt or facilitate adoption of persons for involvement in prostitution, sexual exploitation and forced labor, slavery, indentured servitude or debt servitude will be punished by 16 to 20 years of

imprisonment.

Article 13
(Transportation and kidnapping)

All those who recruit, hire, adopt, transport or kidnap a person through threats or use of force, fraud, deceit, coercion or intimidation, for the purpose of removing or selling the internal organs of said person, will be punished by 16 to 20 years of imprisonment.

Article 14
(Lease of real estate for purposes of trafficking)

All those who knowingly rent or sublet or allow use of any house or structure for the purpose of trafficking in persons will be punished by 8 to 12 years of imprisonment.

Article 15
(Publicity and promotion of trafficking)

All those who publicize or advertise, print, transmit or distribute, or cause publicity, publication, printing, transmission or distribution, by any means, including use of information technologies and the internet, or any other propaganda material promoting trafficking in persons will be punished by 2 to 8 years of imprisonment.

Article 16
(Destruction of travel documents)

All those who confiscate, hide or destroy a passport, travel documents, documents or personal belongings of trafficked persons to prevent them from leaving the country or seeking the help of the Government or competent authorities will be punished by 2 to 8 years of imprisonment.

Article 17
(Financial benefits)

All those who knowingly benefit, financially or otherwise, or resort to work or services of a person subject to involuntary servitude, forced labor or slavery, shall be punished by 8 to 12 years of imprisonment.

Article 18
(Victim consent)

The victim's consent does not exclude or mitigate criminal liability attributable to the perpetrators of the crimes covered by this Law.

Article 19
(Supplementary penalties)

1. The former articles notwithstanding, should any foreign perpetrator be convicted of any of the crimes covered by this Law, it is possible to determine expulsion from the country after the convict has served prison time, save if national interest recommends immediate expulsion or any agreements to that effect are in place, having been subscribed by the government.

2. Conviction for these crimes, as envisioned by law, also entails:

- a) that all movable and fixed assets, as well as profits from the crime will devolve upon the State;
- b) prohibiting commercial activity, if the perpetrator conducts such activities, for a period of 5 to 10 years;
- c) wind-up of the company, establishment or closure of the site where the facts have occurred for a period of 2 to 6 years;
- d) confiscation and cancellation of licenses issued to the perpetrator;
- e) prohibiting new activities that, due to their nature, might facilitate trafficking in persons;
- f) payment of damages to the victim and compensation for harm or damage caused.

CHAPTER III
On the victims, informers, witnesses and social activists

Article 20
(Witness protection)

1. The victims of the crimes covered by this Law are entitled to standard witness protection for witnesses undergoing judicial procedures and, especially, entitled to anonymity during trial and even afterwards. Special protection is enforced especially under the following cases:

- a) the person has illegally entered the country or a third country, with or without documents required by law;
- b) pregnancy;
- c) disability;
- d) having been infected by HIV/AIDS, sexually transmitted disease; or malnourishment as a consequence of trafficking;
- e) legal minority;
- f) the person engages in prostitution due to trafficking.

2. People are entitled by law to special protection who, as a consequence of their physical, psychological, economic, material or social predicament may become vulnerable to the crimes covered by this Law.

3. Victims of trafficking are not criminally liable for the commission of trafficking-related acts included in this law or any others they are coerced into, their consent being irrelevant.

Article 21
(Other protection measures)

1. To ensure recovery, rehabilitation and social reinsertion, victims are entitled to:

- a) emergency shelter and appropriate accommodation;
- b) medical and medicinal assistance;
- c) psychological monitoring and assistance;
- d) counseling;
- e) free legal representation and sponsorship of legal fees;
- f) vocational education and training, qualifying for a given profession.

2. A supervision, monitoring and follow-up of recovery, rehabilitation and reinsertion must be implemented by the State.

Article 22
(Right to information)

Victims of trafficking have the right to be duly informed of their rights, protection measures, support organizations and programs, the ongoing status of criminal proceedings and any other information relevant to their predicament.

Article 23
(Repatriation of the victims of trafficking)

1. Within the scope of international relations, the Government must promote actions leading to international agreements on repatriation of Mozambicans who have been trafficked and are abroad, as well as ensuring repatriation of foreign citizens located in Mozambique.

2. The government must see that victims of trafficking await repatriation in adequate accommodation centers, where they may enjoy medical assistance and be provided with suitable nutriment.

3. Foreign citizens trafficked into Mozambique cannot be repatriated to their home country unless the following conditions are cumulatively ensured:

- a) safety of the person during the process of repatriation;
- b) safety of the person in the country they are being conveyed to;
- c) reduced risk of the repatriated person being victimised by traffic again.

4. In the cases foreseen under 3, the victim has a right to being informed on preparations and conditions of their reception at their final destination.

5. The relevant Mozambican authorities must facilitate and put in place conditions so that Mozambicans or foreigners residing in Mozambique that have been trafficked into other countries may return and be assisted on national territory, namely:

- a) assess risks to the security and life of the victim after repatriation;
- b) adopting measures to receive the victim at any entry point on national territory;

- c) issue travel documents or any other authorizations necessary to the person's travel through and entrance into Mozambique;
- d) After entrance into national territory, route the victim to organizations that can assess the victim's predicament.

Article 24
(Residence in the country)

Legal demands notwithstanding, the relevant authorities will issue temporary residence permits to victims of trafficking that:

- a) are located in Mozambique;
- b) agree to cooperate with the authorities in investigation and prosecution of trafficking;
- c) are in custody of relief organizations or other duly authorized persons.

Article 25
(Protection of informers and witnesses)

1. Informers, witnesses and social activists benefit from protection ensured by the relevant authorities whenever a threat, clear and present, or imminent, is posed, and their life or physical/moral integrity is in jeopardy.
2. Whenever a threat is verified, the court in charge of prosecution will determine measures to protect the victims, witnesses, informers, social activists and their families.
3. Police protection can be ordered at any stage, as long as due communication procedures are observed.

Article 26
(Informers and witnesses)

1. No plaintiff, whether informer or witness, may be subject to disciplinary action or have their professional careers harmed, be persecuted for their complaint or for reporting the crimes covered by this Law.
2. Whoever violates the provisions of no. 1 above shall be subject to imprisonment for up to a year and fined for up to six months.
3. Duly chartered public organizations may act as informer, witness or plaintiff.
4. Harsher punishment notwithstanding, whoever imposes penalties, persecutes or in any way harms plaintiffs, informers, witnesses or assistants in their professional careers shall be imprisoned for up to a year and fined for up to six months.

CHAPTER IV
Prevention of trafficking

Article 27
(Prevention and fight against trafficking)

It falls to the Government to promote, coordinate and undertake actions tending to prevent and combat trafficking in persons, either directly or through the terms of legislation applicable to partnerships between the State and civil society, namely:

- a) Awareness campaigns, through mass media or any other proven effective, on recruiting techniques used by traffickers, strategies employed to keep victims subdued, forms of abuse the victims are subject to, as well as on the relevant authorities, organizations and bodies that may render assistance or convey information
- b) protection and social reinsertion of victims
- c) investigation and data collection on victims, especially women and children at the communities where they reside
- d) coordination with local government including community authorities for combat against situations of vulnerability.

Article 28
(Training)

Within the scope of prevention and combat against trafficking, it falls to the Government to provide specialist training for immigration, border patrol and customs officers.

CHAPTER V **Final provisions**

Article 29 **(Allocation of profits)**

Lucre, products and commodities employed in trafficking or resulting from same, which under this Law devolve to the State, will be allocated to programs for the prevention of trafficking and the social reinsertion of victims.

Article 30 **(Regulations)**

It falls to the Government to draft the regulations pertaining to this Law, as well as to implement needed mechanisms and organizations.

Article 31 **(Complementary legislation)**

The crimes covered by this law also fall under the scope of the Penal code and relevant pertinent complementary legislation.

Approved by the Assembly of the Republic on April 23, 2008.

The President of the Assembly of the Republic, Eduardo Joaquim Mulémbwè.

Decreed on June 16, 2008.

Let it be published.

The President of the Republic, Armando Emílio Guebuza.

ANNEX

Glossary

For the purposes of this law the following definitions apply:

Child: any person under the age of eighteen.

Sexual exploitation: involvement of a person in prostitution or production of pornographic material under duress, threat, deception, coercion, abandonment, use of force, abuse of authority, debt servitude, fraude or through abuse of vulnerability.

Pornography: any representation, through publication, display, cinematography, obscene spectacle, information technology or any other means, of a person involved in explicit sexual activity, either real or simulated, or any other representation of the sex organs of a person for primarily sexual purposes.

Prostitution: any act, transaction or scheme whereby one person uses another for sexual intercourse or lascivious conduct in exchange for money, profit or any other advantage.

Debt servitude: whereby a person renders services or labor, or the labor of others under his or her control or authority, as warranty or repayment of debt, when the extension and nature of the services is not clearly defined or when the reasonable value of said services is not applied to repayment of the debt.

Forced labor or slavery: obtaining labor or services from any person through means of enticement, violence, intimidation or threat, use of force, including deprivation of freedom, abuse of authority or moral authority, debt servitude or deceit.

Trafficking in persons: recruitment of persons or harboring persons in order to obtain illicit monetary profit or smuggling of persons across country borders to the same end, by resort to threats or use of force, or any other form of coercion, kidnapping, fraud, deception, forced marriage, abuse of authority or vulnerability, or rendering or accepting payment or advantages in order to obtain consent of a person holding authority over another, for purposes of exploitation, which includes prostitution or other forms of sexual exploitation, forced marriage, extraction of human organs, forced labor, slavery or similar practices, as well as servitude.

Recruitment, transportation, enticement, transfer, accommodation or harboring children for exploitation is considered trafficking in persons, even if it does not involve any of the means mentioned in this provision.

Sexual tourism: a program, organized by travel agencies and/or individuals, consisting of travel packages that offer sexual services as a lure to tourists.

Maputo, April 23, 2008.