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COUNTER-TRAFFICKING IN PERSONS ACT

NO. 8 OF 2010

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COUNTER-TRAFFICKING IN PERSONS ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title and commencement.
2. Interpretation.

PART II – TRAFFICKING IN PERSONS AND RELATED OFFENCES

3. Trafficking in persons.
4. Acts that promote child trafficking.
5. Promotion of trafficking in persons.
6. Acquisition of travel documents by fraud or misrepresentation.
7. Facilitating entry into or exit out of the country.
8. Interfering with travel documents and personal effects.
9. Life threatening circumstances or death.
10. Trafficking in persons for organized crime.

**PART III – TRIAL OF OFFENDERS AND REMEDIES
FOR VICTIMS OF TRAFFICKING IN PERSONS**

11. Confidentiality.
12. Victim impact statement.
13. Restitution.
14. Victim immunity from prosecution.
15. Support and protection of victims of trafficking in persons.
16. Trafficked person exempt from paying fees in civil suits.
17. Confiscation and forfeiture of proceeds of crime.
18. Repatriation of trafficked persons to and from Kenya.

**PART IV – THE COUNTER-TRAFFICKING
IN PERSONS ADVISORY COMMITTEE**

19. Establishment of the Advisory Committee.
20. Functions of the Advisory Committee.
21. Reporting requirements.

**PART V – NATIONAL ASSISTANCE FUND
FOR VICTIMS OF TRAFFICKING IN PERSONS**

22. Establishment of Trust Fund.
23. Funds of the Fund.
24. Trustees of the Fund.

PART VI – MISCELLANEOUS PROVISIONS

25. Extra-territorial jurisdiction.
26. Other penalties.
27. Consequential amendments.
28. Regulations.

Counter-Trafficking in Persons

SCHEDULES

FIRST SCHEDULE-	CONDUCT OF THE BUSINESS AND AFFAIRS OF THE ADVISORY COMMITTEE
SECOND SCHEDULE-	CONSEQUENTIAL AMENDMENTS

NO. 8 OF 2010

COUNTER-TRAFFICKING IN PERSONS ACT

[Date of assent: 13th September, 2010.]

[Date of commencement: 1st October, 2012.]

An Act of Parliament to implement Kenya's obligations under the United Nations Convention Against Transnational Organized Crime particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; to provide for the offences relating to trafficking in persons and for connected purposes

[Act No. 8 of 2010, Act No. 12 of 2012, L.N. 99/2012.]

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Counter-Trafficking in Persons Act, 2010 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

[Act No. 12 of 2012, Sch.]

2. Interpretation

In this Act, unless the context otherwise requires—

“**Advisory Committee**” means the Counter-Trafficking in Persons Advisory Committee established under section 19;

“**Board of Trustees**” means the Board of Trustees of the Fund established by section 24;

“**child**” has the meaning assigned to it in the Children Act, 2001 (No. 8 of 2001);

“**consent**” in relation to a person means that the person agrees by choice, and has the freedom and capacity to make that choice;

“**exploitation**” includes but is not limited to—

- (a) keeping a person in a state of slavery;
- (b) subjecting a person to practices similar to slavery;
- (c) involuntary servitude;
- (d) forcible or fraudulent use of any human being for removal of organs or body parts;
- (e) forcible or fraudulent use of any human being to take part in armed conflict;
- (f) forced labour;
- (g) child labour;
- (h) sexual exploitation;
- (i) child marriage;
- (j) forced marriage;

“**forced labour**” means the extraction of work or services from any person for the purpose of exploitation;

“**Fund**” means the National Assistance Trust Fund for Victims of Trafficking in persons established by section 22;

“**Minister**” means the Minister for the time being responsible for matters relating to women and children;

“**organized criminal group**” means a structured group of three or more persons, acting in concert with the aim of committing one or more serious crimes or offences under this Act, in order to obtain directly or indirectly, a financial or other material benefit;

“**proceeds of crime**” means any property derived from or obtained, directly or indirectly, through the commission of an offence under this Act;

“**publish**” means to advertise, broadcast or distribute information by any means whatsoever so that the information is available to the public or any section thereof;

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

“**trafficking for sexual exploitation**” means trafficking—

- (a) with the intention of doing anything to or in respect of a particular person during or after a journey within Kenya or in any part of the world, which if done will involve the commission of an offence under the Sexual Offences Act, 2006, (No. 3 of 2006); or
- (b) in the belief that another person is likely to do something to or in respect of the person trafficked, during or after the journey in any part of the world, which if done will involve the commission of an offence under the Sexual Offences Act, 2006 (No. 3 of 2006);

“**trafficking in persons**” has the meaning assigned to it by section 3;

“**victim of trafficking in persons**” includes a person who is being or has been trafficked as defined in section 3.

PART II – TRAFFICKING IN PERSONS AND RELATED OFFENCES

3. Trafficking in persons

(1) A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of—

- (a) threat or use of force or other forms of coercion;
- (b) abduction;
- (c) fraud;
- (d) deception;
- (e) abuse of power or of position of vulnerability;
- (f) giving payments or benefits to obtain the consent of the victim of trafficking in persons; or
- (g) giving or receiving payments or benefits to obtain the consent of a person having control over another person.

(2) The consent of a victim of trafficking in persons to the intended exploitation shall not be relevant where any of the means set out in subsection (1) have been used.

(3) The recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set out in subsection (1) of this Act.

(4) An act of trafficking in persons may be committed internally within the borders of Kenya or internationally across the borders of Kenya.

(5) A person who traffics another person, for the purpose of exploitation, commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.

(6) A person who finances, controls, aids or abets the commission of an offence under subsection (1) shall be liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.

4. Acts that promote child trafficking

(1) A person who for the purpose of trafficking in persons—

- (a) adopts a child or offers a child for adoption;
- (b) fosters a child or offers a child for fostering; or
- (c) offers guardianship to a child or offers a child for guardianship,

commits an offence.

(2) A person who initiates or attempts to initiate adoption, fostering or guardianship proceedings for the purpose of subsection (1) commits an offence.

(3) A person who commits an offence under this section is liable to imprisonment for a term of not less than thirty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life.

5. Promotion of trafficking in persons

A person who—

- (a) knowingly leases, or being the occupier thereof, permits to be used any house, building, or other premises for the purpose of promoting trafficking in persons;
- (b) publishes, exports or imports, any material for purposes of promoting trafficking in persons; or
- (c) manages, runs or finances any job recruitment agency for the purposes of promoting trafficking in persons;
- (d) by any other means promotes trafficking in persons,

commits an offence and is liable to imprisonment for a term of not less than twenty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life.

6. Acquisition of travel documents by fraud or misrepresentation

A person who knowingly misrepresents any fact for purposes of facilitating the acquisition of travel documents or fraudulently obtains any document from Government agencies, in order to assist in the commission of an offence of trafficking in persons commits an offence and is liable to imprisonment for a term of not less than ten years or to a fine of not less than ten million shillings or to both

and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine.

7. Facilitating entry into or exit out of the country

A person who facilitates, aids or abets the exit or entry of persons from or to the country at international and local airports, territorial boundaries and seaports for the purpose of promoting trafficking in persons commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for a term of not less than thirty years without the option of a fine.

8. Interfering with travel documents and personal effects

A person who—

- (a) confiscates, conceals, alters, destroys or in any other manner deals with any identification or travel documents, of another person in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies; or
- (b) confiscates, conceals, destroys or in any other manner deals with personal effects of another person or threatens to do so in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies,

commits an offence and is liable to imprisonment for a term of not less than ten years or to a fine of not less than ten million shillings or to both and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine.

9. Life threatening circumstances or death

Where in the course of commission of an offence under this Act—

- (a) a victim of trafficking in persons suffers any permanent or life-threatening bodily harm; or
- (b) by reason of the act of trafficking in persons, the victim of trafficking in persons dies, or is afflicted with any other life threatening or terminal health condition,

a person convicted of the act of trafficking in persons shall be liable to imprisonment for life.

10. Trafficking in persons for organized crime

Where in the course of the prosecution of a person under this Act it emerges that, the person being prosecuted engaged in trafficking in persons as part of the activities of an organized criminal group or that person organized or directed other persons to commit an offence as an activity of an organized group, that person is liable to imprisonment for life.

PART III – TRIAL OF OFFENDERS AND REMEDIES
FOR VICTIMS OF TRAFFICKING IN PERSONS**11. Confidentiality**

(1) Law enforcement officers or the court and any other person involved in the investigation or trial of an offence under this Act, shall throughout the investigation or trial observe the right to privacy of the victim of trafficking in persons and of the witnesses.

(2) The court dealing with the trial of an offence under this Act, may after considering all circumstances and for the best interest of the parties, order that the trial be held *in camera*.

(3) A person who discloses the name and personal circumstances of the victim of trafficking in persons or any other information tending to establish the identity of a victim of trafficking in persons and the circumstances of trafficking in persons commits an offence.

(4) Where a trial is conducted *in camera*, any person who publishes the proceedings of the court commits an offence.

(5) A person who commits an offence under this section is liable to imprisonment for a term of not less than five years or to a fine of not less than five million shillings or to both, and in the case of a body corporate, a fine of not less than ten million shillings.

12. Victim impact statement

The prosecution in criminal proceedings relating to a trial of an offence under this Act, may adduce evidence relating to the circumstances surrounding the commission of an offence and the impact of the offence under this Act upon a victim of trafficking in persons—

- (a) in order to prove whether an offence was committed under this Act—
 - (i) towards or in connection with the person concerned; or
 - (ii) under coercive circumstances referred to in section 3;
- (b) for purposes of seeking the imposition by the Court of an appropriate sentence, that relates to the extent of the harm suffered by the victim of trafficking in persons.

13. Restitution

Where a person is convicted of an offence under this Act, the court may, in addition to any other punishment prescribed under this Act, order the person to make restitution or compensate the victim for—

- (a) the costs of any medical or psychological treatment;
- (b) the costs of necessary transportation, accommodation and other living expenses; or
- (c) any other relief that the court may consider just.

14. Victim immunity from prosecution

Notwithstanding the provisions of any other law, a victim of trafficking in persons shall not be criminally liable for any offence related to being in Kenya illegally or for any criminal act that was a direct result of being trafficked.

15. Support and protection of victims of trafficking in persons

(1) The Minister shall in consultation with the Advisory Committee formulate plans for the provision of appropriate services for victims of trafficking in persons and children accompanying the victims, including—

- (a) return to and from Kenya;
- (b) resettlement;
- (c) re-integration;
- (d) appropriate shelter and other basic needs;
- (e) psychosocial support;
- (f) appropriate medical assistance;
- (g) legal assistance or legal information, including information on the relevant judicial and administrative proceedings; or
- (h) any other necessary assistance that a victim may require.

(2) When developing the plans under subsection (1), the Minister shall consider the age, gender, and the special needs of children and persons with disabilities and the personal circumstances of each victim of trafficking in persons.

(3) Victims of trafficking in persons may be eligible to work for gain for the duration of their necessary presence in Kenya.

(4) Notwithstanding the provisions of any other law, the victims of trafficking in persons shall be permitted to remain in Kenya until legal proceedings are concluded and may by order of court in such proceedings be allowed to bring their children.

(5) In all dealings with a trafficked person, any Government officer dealing with the victim or any other person who by virtue of duty is dealing with the victim shall ensure that all communication with that person is in a language that the person understands.

(6) The support services provided under this section shall be available to victims of trafficking in persons regardless of their nationality.

16. Trafficked person exempt from paying fees in civil suits

Where a victim of a trafficking in persons offence institutes civil action for damages, the victim of trafficking in persons shall be exempt from the payment of court fees.

17. Confiscation and forfeiture of proceeds of crime

(1) In addition to any other penalty prescribed for an offence under this Act and under any other written law, the Court may order the confiscation and forfeiture, of all the proceeds of crime in favour of the Fund.

(2) All awards for damages shall be taken from the personal and separate property of the person who committed the offence and where the property is insufficient, the balance shall be taken from the Fund.

(3) Where the proceeds of crime are destroyed, diminished in value or otherwise rendered worthless by any act or omission of the person who committed the offence, directly or indirectly, or have concealed, removed, converted or transferred to prevent them from being found or to avoid forfeiture or confiscation, the offender shall, in addition to any other penalty be ordered to pay the amount equal to the value of the proceeds of crime.

18. Repatriation of trafficked persons to and from Kenya

(1) Subject to this Act the Minister responsible for immigration matters may arrange for the repatriation of the victims of trafficking in persons to their place of origin.

(2) Where a Kenyan victim of trafficking in persons across the borders does not have proper documentation, the Government shall issue the necessary travel documents to enable the victim of trafficking in persons to travel and re-enter the country.

(3) Where, in the opinion of the Minister for the time being in charge of immigration, the repatriation of a victim of trafficking in persons from Kenya is likely to or would expose the trafficked person to danger, the Minister may permit the trafficked person to continue staying in Kenya for such period as the Minister may consider fit.

PART IV – THE COUNTER-TRAFFICKING
IN PERSONS ADVISORY COMMITTEE

19. Establishment of the Advisory Committee

(1) There is established a Committee to be known as the Counter Trafficking in Persons Advisory Committee.

(2) The Counter Trafficking in Persons Advisory Committee shall consist of the following members—

- (a) the Permanent Secretary, in the Ministry responsible for matters relating to immigration;
- (b) the Permanent Secretary, in the Ministry responsible for matters relating to foreign affairs;
- (c) the Permanent Secretary, in the Ministry responsible for matters relating to gender and children;
- (d) the Permanent Secretary, in the Ministry responsible for matters relating to labour;
- (e) the Attorney General;
- (f) the Commissioner of Police;
- (g) a representative of the Kenya National Commission for Human Rights;
- (h) two representatives from civil society nominated by the respective civil societies dealing with issues relating to women; and children with proven record of involvement in the prevention and suppression of trafficking in persons;
- (i) one person nominated by the Central Organization of Trade Unions;
- (j) one person nominated by the Federation of Kenya Employers;
- (k) such other members as may be co-opted by the Advisory Committee.

(3) The persons nominated under paragraph (2)(h), (i) and (j) shall be appointed by the Minister and shall hold office for a term of three years, which shall be renewable for a further one term.

(4) The Secretariat of the Advisory Committee shall reside at the Ministry responsible for matters relating to gender affairs.

(5) The conduct and regulation of the business and affairs of the Advisory Committee shall be as provided in the Schedule.

(6) Except as provided in the First Schedule, the Advisory Committee may regulate its own procedure.

20. Functions of the Advisory Committee

(1) The functions of the Advisory Committee shall be to advise the Minister on inter-agency activities aimed at combating trafficking and the implementation of preventive, protective and rehabilitative programmes for trafficked persons.

(2) Without prejudice to the generality of subsection (1) the Advisory Committee shall advise the Minister on—

- (a) formulation of a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) coordination of policies and programmes of the agencies to effectively address the issues and problems attendant to trafficking in persons;
- (c) coordination of the dissemination of information on the law and the issues relating to trafficking in persons through concerned agencies and non-governmental organizations;
- (d) formulation of programmes for the reintegration of both locally and internationally trafficked persons;
- (e) monitoring and evaluation of the progress of Kenya with respect to prevention, protection and prosecution efforts relating to trafficking in persons;
- (f) consultation and advocacy with Government departments and agencies and non-governmental organizations, to advance the purposes of this Act;
- (g) compilation and documentation of data and information on cases of trafficking in persons for purposes of policy formulation and program direction;
- (h) development of mechanisms to ensure the timely, coordinated, and effective response to cases of trafficking in persons;
- (i) measures to enhance cooperative efforts and mutual assistance between Kenya and other countries through bilateral and multilateral arrangements to prevent and suppress international trafficking in persons;
- (j) measures necessary to rehabilitate victims of trafficking in persons and in particular the—
 - (i) implementation of rehabilitative programmes including education and protective programmes for the victims of trafficking in persons;
 - (ii) provision of counselling services and temporary shelter to victims of trafficking in persons; and
 - (iii) establishment of centres and programmes for intervention at various levels of the community;
- (k) mechanisms to screen persons entering or leaving Kenya to determine if they are victims of trafficking in persons;
- (l) public information campaigns against trafficking in persons;
- (m) establishment of and support community based initiatives that address trafficking in persons;

- (n) implementation of effective pre-employment orientation seminars and pre-departure counselling programmes to applicants for overseas employment;
- (o) such other functions necessary for the implementation of this Act.

21. Reporting requirements

The Advisory Committee shall submit to the Minister and to the National Assembly, an annual report of the policies, programmes and activities relating to the implementation of this Act.

PART V – NATIONAL ASSISTANCE TRUST FUND FOR VICTIMS OF TRAFFICKING IN PERSONS

22. Establishment of Trust Fund

(1) There is established a Fund to be known as the National Assistance Trust Fund for Victims of Trafficking in persons which shall be administered by the Board of Trustees.

(2) The Fund shall be used for the assistance of victims of trafficking in persons.

23. Sources of the Fund

(1) The sources of the Fund shall be—

- (a) such monies as may be appropriated by Parliament for the purposes of the Fund;
- (b) any proceeds of crime confiscated or forfeited under section 17;
- (c) income generated by investments made by the Board of Trustees; and
- (d) any donation received by the Board of Trustees for purposes of the Fund.

(2) Without limiting the generality of section 22(2), the Board of Trustees may make payments out of the Fund for—

- (a) the expenses arising out of assistance to the victims of trafficking in persons in the manner referred to in section 15;
- (b) the balance of damages under section 17(2); and
- (c) such other purposes as the Advisory Committee may recommend.

24. Board of Trustees

(1) The Fund shall be administered by a Board of Trustees which shall consist of—

- (a) the Chairman of the Advisory Committee;
- (b) the Permanent Secretary of the Ministry responsible for gender and children;
- (c) a representative of the Ministry responsible for gender and children, appointed by the Minister, who shall be the Secretary;
- (d) a representative of the Ministry responsible for finance, appointed by the Minister responsible for finance;
- (e) one person conversant with issues relating to trafficking in persons; and
- (f) one person with experience in financial management, who shall be the treasurer of the Board of Trustees.

(2) The members of the Board of Trustees under subsection (1)(e) and (f) shall be appointed by the Minister, by notice in the *Gazette*, for a term of three years and shall be eligible for reappointment at the expiry of the term.

(3) The Board of Trustees shall conduct its affairs in accordance with regulations prescribed by the Minister and subject to the law relating to trustees.

PART VI – MISCELLANEOUS PROVISIONS

25. Extra-territorial jurisdiction

(1) A citizen of Kenya, or a person who permanently resides in Kenya, who commits an act outside Kenya that constitutes an offence under this Act if committed in Kenya, commits such an offence and is liable on conviction to the same penalty prescribed for such offence under this Act.

(2) A person may not be convicted of an offence under subsection (1) if such a person has been acquitted or convicted in the country where that offence was committed.

26. Other penalties

(1) Where a person who is not a citizen has been convicted of an offence under this Act, the person shall be deported immediately after serving the sentence and shall stand barred permanently from re-entering Kenya.

(2) Any employee or official of a Government agency who knowingly issues or approves the issuance of travel documents or other documents to any person or who fails to observe the prescribed procedures and the requirement as provided for in any law, with the intention of assisting in the commission of an offence under this Act, commits an offence and is liable to imprisonment for a term of not less than shillings, or to both.

(3) Where an offender had adopted, fostered or had a child in guardianship who is the subject of an offence under this Act, the court seized of the matter shall rescind the adoption, fostering or guardianship of the child and the child shall be dealt with in accordance with the provisions of the Children Act, 2001.

27. Consequential amendments

The Acts identified in the Second Schedule are amended in the manner set out in that Schedule.

28. Regulations

The Minister may, in consultation with the Advisory Committee, make Regulations regarding—

- (a) any matter which is required or permitted by this Act to be prescribed;
 - (b) the inter-sectoral implementation of this Act;
 - (c) the repatriation process;
 - (d) the conduct of affairs of the Board of Trustees; and
 - (e) any other matter, which is necessary or expedient to prescribe in order to achieve or promote the objects of this Act.
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FIRST SCHEDULE

[Section 19(6).]

CONDUCT OF BUSINESS AND AFFAIRS
OF THE ADVISORY COMMITTEE**1. Tenure of office**

(1) Any member of the Committee appointed under section 19(2)(l), (m) and (n) shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term of three years.

2. Vacation of office by member

A member appointed under section 19(2)(l), (m) and (n) may at any time resign from office by notice in writing to the Minister.

3. Removal of office by member

(1) A member may be removed from office if the member—

- (a) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
- (b) is convicted of an offence involving dishonesty or fraud; or
- (c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness or is becomes otherwise unfit to discharge his duties as a member of the Advisory Committee; or
- (e) fails to comply with the provisions of this Act relating to disclosure.

4. Meetings of the Advisory Committee

(1) The Advisory Committee shall meet not less than four times in every financial year and not more than three months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may call a meeting at any time where it is considered expedient for the transaction of the business of the Advisory Committee, by giving to the members a written notice of not less than seven days.

(3) The members of the Advisory Committee shall, at the first meeting of the Advisory Committee, elect from amongst their number, a Chairperson and Vice-Chairperson who shall not be of the same gender.

(4) The quorum for the conduct of the business of the Advisory Committee shall be eight members.

(5) The Chairperson shall preside at every meeting of the Advisory Committee at which he is present but, in his absence the Vice-Chairperson shall preside over the meeting.

(6) Where both the Chairperson and the Vice-Chairperson are absent, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Advisory Committee shall be by a majority of votes of the members present and, in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to sub-paragraph (4), no proceedings of the Advisory Committee shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Advisory Committee may determine its own procedures at meetings and the procedure for the attendance of any other persons at its meetings.

5. Minutes of the Advisory Committee

The Advisory Committee shall cause minutes of all resolutions and proceedings of meetings of the Advisory Committee to be entered in books kept for that purpose.

SECOND SCHEDULE

CONSEQUENTIAL AMENDMENTS

1. Amendment of section 260 of the Cap. 63

Section 260 of the Penal Code (Cap. 63) is amended by deleting the words “or slavery, or to the unnatural lust of any person”.

2. Insertion of new section 266A into Cap. 63

The Penal Code (Cap. 63) is amended by inserting a new section immediately after section 266 as follows—

266A. Where it appears that any of the offences specified under this Part is committed for the purpose of exploitation, the person committing the offence shall be charged with the appropriate offence as specified in the Counter Trafficking in Persons Act.

3. Repeal of section 264 of Cap. 63

The Penal Code (Cap. 63) is amended by repealing section 264.

4. Repeal of section 265 of Cap. 63

The Penal Code (Cap. 63) is amended by repealing section 265.

5. Repeal of section 13 of No. 3 of 2006

The Sexual Offences Act, 2006 (No. 3 of 2006) is amended by repealing section 13.

6. Repeal of section 13 of No. 3 of 2006

The Sexual Offences Act, 2006 (No. 3 of 2006) is amended by repealing section 18.

7. Amendment of section 22 of No. 8 of 2001

Section 22 of the Children Act, 2001 (No. 8 of 2001) is amended by renumbering the existing provision as subsection (1) and inserting a new subsection (2) as follows—

(2) Where the infringement under subsection (1) constitutes an offence under the Counter Trafficking in Persons Act, the person committing the offence shall be charged with the appropriate offence as specified in that Act.

8. Amendment of section 76 of No. 8 of 2001

Section 76 of the Children Act, 2001 (No. 8 of 2001) is amended by deleting the words “not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months or to both” appearing in subsection (6) and substituting therefor the words “not less than one hundred thousand shillings or to imprisonment for a term not less than one year or to both, and in the case of a body corporate, a fine of not less than one million shillings”
