



# LESOTHO

# Government Gazette

## EXTRAORDINARY

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Anti-Trafficking in Persons

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## ACT NO. 1 OF 2021

**Anti-Trafficking in Persons (Amendment) Act, 2021**

Act to amend the Anti-Trafficking in Persons Act, 2011<sup>1</sup> by re-defining the term trafficking and removing an option of a fine for a person convicted of an offence of trafficking in person and to provide for related matters.

Enacted by the Parliament of Lesotho

**Short title and commencement**

1. This Act may be cited as the Anti-Trafficking in Persons (Amendment) Act, 2021 and shall come into operation on the date of its publication in the Gazette.

**Interpretation**

2. Section 2 of the Anti-Trafficking in Persons Act, 2011 (in this Act referred to as the “principal Act”) is amended by -

- deleting the definition of “exploitation” and substituting the following -

“exploitation” includes exploitation of prostitution or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs.

- deleting the word “trafficking” and its definition and substituting the following -

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

(c) inserting the following new subsections -

“(2) The consent of a victim of the commission of the offence of trafficking in persons to be exploited under paragraph (a) shall be no defence; and

(3) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered as trafficking in persons even if the act does not involve any of the means set out in paragraph (a).”.

### **Amendment of section 5**

3. Subsections (1) and (2) of section 5 of the Principal Act are deleted and substituted with the following subsections -

“(1) A person who trafficks another person commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years.

(2) Where the victim in an offence of trafficking in persons is a child, the offender shall be liable to life imprisonment.”.

### **Amendment of section 7**

4. Section 7(2) of the Principal Act is amended by deleting “a fine of M2,000,000.00 or” between the words “to” and “life”.

### **Amendment of section 8**

5. Subsections (1) and (2) of section 8 of the Principal Act are deleted and substituted with the following subsections -

“(1) A person who knowingly and unlawfully buys, engages or otherwise benefits or has reason to believe that the person is buying, engaging or otherwise benefiting from or encourages another to engage the services of a victim of trafficking commits an offence and is liable, on conviction, to imprisonment for a Period not exceeding 25 years.

(2) A person who, for purposes of subsection (1), facilitates by unlawful means, the continued stay or presence of a victim of trafficking in a transit or receiving country commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 10 years.”.

### **Amendment of Section 11**

6. Section 11 of the Principal Act is deleted and substituted with the following section -

“11. A person who makes, obtains, gives, sells or possesses a fraudulent travel or identity document for purposes of facilitating an offence of trafficking or smuggling commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years.”.

### **Amendment of section 12**

7. Subsections (1) and (2) of section 12 of the Principal Act are deleted and substituted with the following subsections -

“12. (1) A person who arranges or assists in an illegal entry into or departure from Lesotho of another person in order to obtain a financial or other material benefit commits an offence of smuggling and is liable, on conviction, to imprisonment for a period not exceeding 15 years.

(2) A person who engages in the offence of smuggling under one or more of the following circumstances -

- (a) the smuggled person is subjected to torture or any other cruel, degrading or inhumane treatment;
- (b) the life or safety of the smuggled person is, or is likely to be, endangered;
- (c) the smuggled person is a child; and
- (d) the smuggled person is intended to be subjected to exploitation, regardless of whether the smuggled person arrives in the receiving country

or not, commits an offence of aggravated smuggling and is liable, on conviction, to imprisonment for a period not exceeding 20 years.”.

**NOTE**

1. Act No. 1 of 2011

GOVERNMENT NOTICE NO. 1 OF 2021

**The Parliament of Lesotho**

**Statement of Objects and Reasons of the  
Anti-Trafficking in Persons Act, 2021**

**(Circulated by the authority of the Honourable Minister  
Motlalentoa Letsosa Minister responsible for home affairs)**

The object of this Bill is to amend the Anti-Trafficking in Persons Act, 2011 by redefining the term trafficking in persons and to remove an option of a fine for persons convicted of an offence of trafficking in persons.

The Bill provides for the definition of trafficking in persons as it appears in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000. The Act omitted to mention that in the case of child trafficking it is not necessary to have elements of threat or use of force, coercion, abduction, fraud, deception or abuse of power as it appears in the Protocol.

The Bill further removes option of a fine where a person has committed an offence of Trafficking and is convicted. Due to the nature of this offence and caliber of its perpetrators, paying a fine would not be a problem thereby not serving as deterrence as it would be the intention of the Legislature.

Moreover, the Bill gives the Courts of law sentencing discretion that was totally eroded by the Anti-Trafficking in Persons Act, 2011 where it provided for strict liability without allowing the Courts liberty to use discretion when sentencing even where contribution to or commission was very minimal.

Finally, the Bill is increasing years of imprisonment for some acts of trafficking from 10 years of imprisonment to 25 years in the same spirit of deterrence.

