**Mandate of the Special Rapporteur on trafficking in persons, especially women and children**

***The implementation of the non-punishment principle in the context of trafficking in person***

1. The Combating of Trafficking in Persons Act is the main legislation giving effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, prevent and combat trafficking in persons, and to protect and assist victims of trafficking. The law makes it an offence to traffick in persons.
2. The law defines “trafficking” as per the following:
3. *the recruitment, sale, supply, procurement, capture, removal, transportation, transfer, harbouring or receipt of a person –*
4. by the use of threat, force, intimidation, coercion, abduction, fraud, deception**,** *abuse of power or abuse of a position of vulnerability; or*
5. *by the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or*
6. *the adoption of a person facilitated or secured through illegal means, for the purpose of exploitation*;
7. Exploitation is further defined as follows:

*“exploitation” includes—*

* 1. *all forms of slavery or practices similar to slavery, including forced marriage;*
	2. *sexual exploitation;*
	3. *forced labour; and*
	4. *the illegal removal of body organs;*
1. ***11. Trafficking in persons***

The Act provides as:

1. *(a) Any person who trafficks another person or allows another person to be*

 *trafficked shall commit an offence.*

1. *It shall not be a defence to a charge under paragraph (a) that a person*

 *who is a victim of trafficking or a person having control or authority*

 *over a minor who is a victim of trafficking, has consented to the act*

 *which was intended to constitute trafficking.*

1. *Any person who knowingly:*
2. *leases a room, house, building or establishment or subleases or allows it to be used, for the purpose of harbouring a victim of trafficking; or*
3. *advertises, publishes, prints, broadcasts, distributes, or causes the advertisement, publication, broadcast or distribution of, information which suggests or alludes to trafficking by any means including the uses of the internet or other information technology, shall commit an offence.*
4. *(a) Every internet service provider operating in Mauritius shall be under a duty to report to the Police forthwith any site on its server which contains information in contravention of subsection (2) (b).*

*(b)**Any internet service provider who fails to comply with paragraph (a) shall commit an offence.*

1. *Any person who knowingly benefits, financially or otherwise, from the services of a victim of trafficking or uses, or enables another person’s usage of, the services of a victim of trafficking shall commit an offence.*
2. There are no specific provisions for the non-punishment of the victims in the law but there is no provision for the prosecution of victims.
3. The law that provides for the protection of the victims is as follows:

***4. Centres for victims of trafficking***

1. *The Minister shall—*
	1. *cause to be set up one or more Centres which shall be premises for the provision of temporary accommodation suited for the needs of victims of trafficking admitted to them;*
	2. *designate an investigating officer to be in charge of each Centre.*
2. *Every Centre—*
3. *shall secure the safety of its inmates against any risk of retaliation;*
4. *shall provide counselling and rehabilitation services to its inmates;*
5. *shall facilitate the integration of its inmates into their families;*
6. *may offer facilities aimed at providing education, skills development*

*and training;*

1. *shall, where necessary, provide reception, care and other facilities for a child who is in the care and custody of an inmate.*
2. *The officer in charge of a Centre shall, on the admission of an inmate, make an assessment to determine—*
	1. *the risks to the safety of the inmate and of any child in his care and custody;*
	2. *the immediate and long term needs of the inmate.*
3. *A Judge in Chambers may, on the application of an investigating officer, order that an adult shall be admitted to a Centre for such period as he may determine*.
4. The law makes specific provision to ensure that victims are not deported or are not repatriated without consideration being given to their safety and for the compensation of victims of trafficking. The relevant provisions of the law are **sections 6, 7, 8 and 9** which provide:

 ***6.******Suspension of deportation***

1. *Notwithstanding any other enactment, the Minister may, allow a victim, of trafficking who is a non-citizen, regardless of his status, to remain in Mauritius for a non-renewable period not exceeding 42 days.*
2. *The non-renewable period referred to in subsection (1) shall not depend upon the willingness of a victim of trafficking to co-operate with investigating officers and prosecuting authorities in the investigation and prosecution of a case of trafficking.*

 ***7. Temporary residence***

1. *Notwithstanding any other enactment, a visitor’s permit may, subject to the prescribed conditions, be issued by the Minister to a victim of trafficking who—*
	1. *is present in Mauritius;*
	2. *has agreed to co-operate with investigating officers and prosecuting authorities in the investigation and prosecution of a case of trafficking; and*
	3. *is placed in the care of a Centre or of any other authorised person, organisation or institution.*
2. *A visitor’s permit referred to in subsection (1) may be issued to a victim of trafficking regardless of—*
3. *his status; or*
4. *whether a non-renewable period contemplated in section 6 (1) was granted or has expired.*
5. *The Minister may, on humanitarian grounds, extend a visitor’s permit, taking into account the likelihood that the holder of the permit may be harmed, killed or trafficked again if returned to his country of origin or the country from which he has been trafficked.*

 ***8. Repatriation of victims of trafficking***

1. *No victim of trafficking, who is a non-citizen, may, unless he agrees to the proposed course of action, be returned to his country of origin or the country from which he has been trafficked without due consideration being given to—*
2. *his safety during the repatriation process;*
3. *his safety in the country to which he is to be returned; and*
4. *the possibility that he may be harmed, killed or trafficked again.*
5. *Where a decision has been made to return a person, who is a victim of trafficking to his country of origin or the country from which he has been trafficked—*
6. *the Minister shall take steps to obtain information relating to an institution or organisation which, renders assistance to victims of trafficking in the country to which the person is to be returned and which is willing to provide assistance to that person; and*
7. *the person shall, in the prescribed manner, be informed of any arrangements which have been made for his reception in the country to which he is to be returned.*

 ***9. Return of victims of trafficking to Mauritius***

*Where a victim of trafficking is a citizen, or a permanent resident of Mauritius and is to be returned to Mauritius, the Minister shall—*

1. *where the victim is a minor and it is in his interest to do so, designate, an adult, at State expense, to escort the minor home;*
2. *facilitate and accept the return of the victim;*
3. *where necessary, take measures to secure the reception of the victim at a Mauritian port of entry;*
4. *issue such travel document or other authorisation as may be necessary to enable the victim to return;*
5. *at the request of another State which is a party to the United Nations Protocol or to any other agreement relating to trafficking, in persons to which Mauritius is a party, verify that a person who is a victim of trafficking is a citizen or permanent resident of Mauritius;*
6. *all entry into Mauritius, where the victim of trafficking—*
7. *is a minor, refer him to the Child Development Unit;*
8. *is an adult, refer him to a Centre, for such assistance as may be*

 *appropriate.*

1. The Act also provides specifically for compensation to victims of trafficking under **sections 16, 17 and 18**, which read as follows:

 ***16. Compensation to victim of trafficking***

1. *The Court before which a person is convicted of an offence under section 11 may, in addition to any penalty which it may impose in respect of the offence, order the person convicted to pay appropriate compensation to a victim of the offence for—*
2. *damage to, or loss or destruction of, property, including money;*
3. *physical, psychological or other injury; or*
4. *loss of income or support, resulting from the commission of the offence.*
5. *An order made under subsection (1) may award compensation not exceeding 500,000 rupees.*
6. *Where the Court orders compensation under subsection (1), it shall determine the time within which payment is to be made and the method of payment.*
7. *In assessing the compensation which a person may be ordered to pay, the Court shall consider the means of the offender.*
8. *The Court may, where it thinks fit, suspend the sentence imposed for the offence on condition of the payment of appropriate compensation to the victim of the offence.*
9. *Where the amount of damage, injury or loss suffered exceeds an award made under subsection (1), the victim may recover the excess by means of a civil action.*

 ***17. Payment of compensation***

*Where a person is ordered to pay compensation, the Court may in its discretion enforce the payment of compensation—*

1. *by allowing the person to pay compensation on such conditions and in such instalments at the intervals it deems fit;*
2. *where the amount expected to be recovered will be sufficient to cover, in addition to the amount of compensation, the costs and expenses involved, by attachment and sale of any property belonging to the person.*

 ***18. Failure to pay compensation***

1. *Where a Court has ordered a person to pay compensation and suspended a sentence pursuant to section 16 (5) and the compensation is not paid in full or recovered in full, the Court which made the order may—*
2. *summon the person to appear before it; or*
3. *issue a warrant directing that the person be arrested and brought before the Court.*
4. *When a person referred to in subsection (1) is brought before the Court, it may, unless the amount due is paid or recovered forthwith, reimpose the sentence which has been suspended, or such lesser sentence as the Court thinks fit taking into account the amount of compensation already paid or recovered*.

 ***19. Compensation to State***

*The Court may—*

1. *in addition to any sentence imposed in respect of an offence under section 11 and to any order for compensation to a victim made under section 16; and*
2. *on application made on behalf of the State, make an order for payment to the State of an amount in compensation for expenses incurred, or reasonably expected to be incurred, in connection with the care, accommodation, transportation and repatriation of the victim of the offence*.
3. The Child Protection Act provides for the following:

***13A.*** ***Child Trafficking***

1. *Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.*
2. *Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child—*
	1. *outside Mauritius for the purpose of exploitation in Mauritius;*
	2. *in Mauritius for the purpose of exploitation outside Mauritius,*

*shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.*

1. *Any person who, in any place outside Mauritius, does an act preparatory to, or in furtherance of, the commission of an offence under subsection (1), shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.*
2. *(a) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child in return for any valuable consideration shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.*

*(b) Any person who, without lawful authority or reasonable excuse, harbours or has in his possession, custody or control of any child in respect of whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person in or outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.*

1. *(a) No press report of any Court proceedings relating to an offence under this section shall include any particulars calculated to lead to the identification of any child who is the victim of that offence, nor shall any photograph or picture be published in any newspaper or broadcast as being or including a photograph or picture of that child.*

*(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 2 years.*

1. *Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.*
2. *Where the Court finds that a person who has parental responsibility and rights in respect of a minor has committed an offence under this section in relation to that minor, it may—*
	1. *suspend the parental responsibilities and rights of that person; and*
	2. *order the minor to be admitted to a place of safety for such period as its things fit.*
3. *In this section, “exploitation” has the same meaning as in the Combating of Trafficking in Persons Act.*
4. The decision to prosecute rests with the Director of Public Prosecution under various Acts. The approach adopted during investigation as well as prosecution is victim-oriented, so that victims of Ttrafficking in Persons are afforded protection rather than prosecution. They are on the hand, used as witnesses for the purpose of prosecution, in order to strengthen the case against human traffickers.
5. Similarly, there are various legal provisions aiming to protect victims who are non-citizens and who have been trafficked and brought into Mauritius. Their deportation is suspended and their stay in Mauritius can be extended. Furthermore, they can benefit from temporary residence in the country or they can be repatriated in their country of origin if they so wish.
6. Moreover, there is no provision in the Immigration Act and the Passport Regulations in respect to the non-punishment principle; however, the law and the regulations have made provisions for admission and refusal to admit in Mauritius. It is worth to note that the law does not provide for:
7. deprivation of citizenship as punishment against trafficked person.
8. arrest, detention or other forms of custody of trafficked persons as punishment
9. discriminatory provisions in the law or policy on the non-punishment principle or discrimination in practice in implementation.
10. The State of Mauritius is conscious of the importance of implementing the non-punishment principle provision to victims of human trafficker and will consider in due course the implications thereof including amendments to the Combatting Against Trafficking in Persons Act after thorough wide consultation with all stakeholders.

02 March 2021